



Screening Committee Guidance

BRITISH/ PSYCHOANALYTIC /COUNCIL

About Us

1. The British Psychoanalytic Council (BPC) is the UK's leading professional association and accredited public register for psychoanalytic psychotherapy. The BPC is a voluntary accredited register; registering psychoanalytic psychotherapists and psychodynamic psychotherapists and is accredited by the Professional Standards Authority (PSA).
2. The core functions of the BPC are to:
 - Set and maintain standards of practice and conduct;
 - Maintain a register of qualified psychoanalytic and psychodynamic psychotherapists ('Registrants');
 - Assure the quality of education and training provided to Registrants by their Member Institutions;
 - Require Registrants to keep their skills up to date through continuing professional development;
 - Consider and investigate complaints and concerns of a Fitness to Practise nature raised against Registrants and issue sanctions, where appropriate to protect the public, act in the public interest and uphold the standards of the profession and maintain public confidence in the profession.
3. The BPC's Council of Member Institutions ('MI') agreed to the introduction of a centralised Complaints Procedure in 2007 and conferred the responsibility for considering complaints raised against Registrants to the BPC.

About this document

4. This document contains guidance for the BPC's Screening Committee to use when considering complaints about a Registrant's Fitness to Practise. This guidance is intended to encourage and assist consistent decision-making by the Screening Committee. The BPC accepts however that every decision the Screening Committee makes will be fact dependent on the case being considered.
5. The BPC recognises the importance of all parties, whether Complainant, Registrant, MI, or other stakeholders, including members of the public, being aware of the basis upon which the Screening Committee operates and makes decisions in connection with allegations of impaired Fitness to Practise raised against Registrants.
6. This document should be read in conjunction with the Fitness to Practise Procedure to provide further information regarding the Fitness to Practise process holistically.

7. The BPC will regularly review this document to ensure that it remains consistent with other BPC associated guidance documents.

Role of Screening Committee

8. The Screening Committee consist of ten people, and they sit in two groups of five people. Each Screening Committee group consists of three lay persons and two current Registrants and/or retired Registrants.
9. The decision of the Screening Committee must be unanimous and where the Screening Committee does not agree; which the BPC anticipates will be in the minority of cases, if any, the Chair of the Screening Committee will hold the casting vote.
10. The Screening Committee will be quorate with three members, one of whom must be a lay member and one must be a Registrant or a former Registrant.
11. The Screening Committee sits in private to consider cases, and the Screening Committee can obtain independent legal advice, as and where they deem it necessary to make a decision. If the Screening Committee wishes to obtain independent legal advice, they must notify the BPC, in writing, who will then procure such advice.
12. The role of the Screening Committee is to consider the allegation(s) of impaired Fitness to Practise referred to them by the BPC and decide whether they ought to be considered by the Fitness to Practise Committee. In essence, the Screening Committee conducts a filtering process and determines which cases should be referred to a Hearing and which should be closed.
13. The Screening Committee should always take into account the public interest. This includes not just the protection of the public but maintenance of public confidence in the profession and declaring and upholding the proper standards of conduct and behaviour expected of a BPC Registrant.

Conflict of Interest

14. Prior to considering an allegation of impaired Fitness to Practise ('allegation') referred to them by the BPC, the individual members of the Screening Committee considering the matter should satisfy themselves that they do not have a conflict of interest.
15. Any conflict of interest, perceived or actual, could lead a right-thinking member of the public to conclude that there is a distinct possibility that the decision-maker is biased.
16. Where a member of the Screening Committee has a conflict of interest, perceived or actual, they should recuse themselves from considering the case and notify the BPC.
17. Where an individual member of the Screening Committee has previously considered a case against a Registrant, this in itself does not automatically create a conflict of interest. Individual members of the Screening Committee must consider their position in connection with each case they are considering and act accordingly.

Interim Orders

18. If the Screening Committee are of the opinion that an Interim Order is required, and an Order is not already imposed, the Screening Committee can refer the case to the Interim Orders Committee and notify the parties involved.
19. The Screening Committee will be aware of the BPC's Guidance on Interim Orders and will note that the test for the Interim Orders Committee is as follows:
 - a. Is it necessary for the protection of the public;
 - b. In the public interest; or
 - c. In the Registrant's own interests

for the Registrant's BPC registration to be interim suspended and/or made subject to interim conditions until the conclusion of the matter.

20. The Interim Orders Committee can decide to issue an interim suspension or an interim order of conditions for up to 18 months and will be reviewed every six months. For further information on Interim Orders, please see Appendix 5 'Interim Orders Guidance'.

Impairment grounds

21. A Registrant's Fitness to Practise can only be found impaired by the Fitness to Practise Committee on the following grounds:
 - a. Professional Misconduct;
 - b. Deficient Professional Performance;
 - c. Adverse Physical or Mental Health;
 - d. An adverse determination against the Registrant by any other professional regulatory body either in the UK or elsewhere;
 - e. A criminal conviction or caution received in the United Kingdom or a criminal offence committed elsewhere which, if committed in England or Wales, would constitute a criminal offence.

Specific guidance on Misconduct

22. In connection with the concept of Professional Misconduct, Case Law states as follows:
 - *"An act or omission which falls short of what would be proper in the circumstances...but certain behaviour may constitute professional misconduct even although [sic] it does not occur within the actual course of carrying on of the person's professional practice, such as the abuse of a patient's confidence or the making of some dishonest private financial gain".¹*
 - *"Mere negligence does not constitute misconduct however, and depending on the circumstances, negligent acts or omissions which are particularly serious may amount to misconduct.*
 - *"A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless, and depending upon*

¹ Roylance v General Medical Council (No 2) [2000] 1 AC 311

the circumstances, a single negligent act or omission, if particularly grave, could be characterised as misconduct”²

- *“Misconduct is two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur out with the course of a professional practice itself, but which brings disgrace upon the [Doctor] and therefore prejudices the reputation of the profession”.³*
- *“Conduct which would be regarded as deplorable by fellow practitioners”.⁴*

Specific guidance on Deficient Professional Performance

23. In connection with Deficient Professional Performance, Case law states as follows:

- *“It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of [the Doctors] work*
- *“A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute ‘deficient professional performance’”.⁵*

Specific guidance on Health cases

24. Where a Health case is referred to the Screening Committee, the Screening Committee may be presented with letters from Doctors or Hospitals attesting to a Registrant’s status of Health or copies of a Registrant’s health records.

25. The Screening Committee is entitled to take these documents at face value and attribute the appropriate weight to them as they see fit.

Specific guidance on Adverse Determinations

26. An adverse Fitness to Practise decision by another UK Health Regulator will be conclusive evidence of the facts found proved in relation to that determination. The only evidence a Registrant can produce to rebut the determination is evidence that they are not the individual referred to within the determination.

27. In connection with determinations of another UK Health regulator, the decision will have been reached by a Disciplinary/Fitness to Practise Panel after a Hearing has been convened in accordance with due legal process and evidence having been tested. The regulator will have the burden of proving the allegations to the civil standard of proof and all parties will have the opportunity to be legally represented.

² Calhaem v General Medical Council [2007] EWHC 2606 (Admin)

³ R (Remedy UK Ltd) v General Medical Council [2010] EWHC 1245 (Admin)

⁴ Nandi v General Medical Council [2004] EWHC 2317 (Admin)

⁵ Calhaem v General Medical Council [2007] EWHC 2606 (Admin)

28. Therefore, the Screening Committee can rely on the determination to provide a reliable basis for referring the allegation to the Fitness to Practise Committee on the basis that there is a realistic prospect of being able to prove the facts as found by the other regulator, and that they are so significant as to indicate that the Registrant's Fitness to Practise is or may be impaired to such a degree that justifies action being taken against their registration.

Specific guidance on Criminal Convictions or Cautions

29. The Screening Committee should not seek to go behind the fact of a conviction. Where a Registrant has been convicted of a criminal offence, a copy of the Certificate of Conviction, Memorandum of Conviction (or an extract conviction in Scotland) is conclusive proof of the conviction. The only evidence which may be presented by the Registrant to rebut the conviction is evidence that the Registrant is not the person referred to in the Certificate, Memorandum, or extract.

30. With reference to Cautions, these are only offered when a person admits the offence and where the decision-maker e.g. the Police or Crown Prosecution Service consider there is sufficient evidence to provide a realistic prospect of conviction if the person concerned were to be prosecuted.

31. Therefore, any submissions presented by the Registrant that they are not guilty of the offence or that they did not know what they were agreeing to should not be given any weight by the Screening Committee. This Screening Committee is, however, not prevented from considering background facts and circumstances surrounding the conviction which are likely to be relevant when considering current impairment.

Realistic Prospect Test

32. When considering whether to close a case or refer a case to a Fitness to Practise Committee, the Screening Committee will apply the 'realistic prospect' test in connection with each allegation alleged.

33. The realistic prospect test is as follows:

- 1) *Is there a realistic prospect of being able to prove the allegations alleged against the Registrant if referred to a Fitness to Practise Hearing; and*
- 2) *If the alleged facts were found proven, are they so significant as to indicate that the Registrant's fitness to practise is or may be impaired to a degree that justifies action being taken against their registration.*

34. The realistic prospect test requires the Screening Committee to determine whether there is a genuine, as opposed to a remote or fanciful possibility of the allegation(s) being found proven **and** the Registrant being found impaired at a Fitness to Practise Committee Hearing.

Limb 1 of the Test

35. When considering whether there is a realistic prospect of the facts being found proven, the Screening Committee will not only consider the original allegation, and evidence that has been gathered by the BPC, but also any written representations received from the Registrant and further comments from the Complainant, where appropriate.

36. The Screening Committee can consider any documentary evidence placed before them irrespective of whether that evidence would be admissible in any Court proceedings providing it is relevant and fair. Therefore, and for the avoidance of doubt, the Screening Committee can consider audio recordings, video recordings, text messages, pictures and/or other social media messages in addition to written correspondence and documentary evidence.
37. The Screening Committee should reach their decision based solely on the information placed before them by the BPC. The Screening Committee must not use the internet or other sources to locate additional information about the Registrant where the information before them is incomplete. If the Screening Committee deems that further information/evidence is required, they should adjourn consideration of the case and contact the BPC accordingly (discussed in further detail below).
38. It is not the Screening Committee's role to make any findings of fact and/or determine whether the Registrant is impaired. This is the Fitness to Practise Committee's role, should the case be referred onto that stage. The Screening Committee's role is to determine whether the allegations stand a realistic prospect of being established before a Fitness to Practise Committee.
39. Where there is a conflict between the Registrant and Complainant's account, and on one account the case would call into question the Registrant's Fitness to Practise, the conflict should be resolved by the Fitness to Practise Committee and not the Screening Committee.
40. The Screening Committee can however assess the weight of the evidence placed before them. In some cases where there is a factual dispute, there may be very clear and cogent evidence supporting one side of the dispute, which is confirmed or supported by other (often documentary) evidence, whereas the evidence to the contrary may be wholly implausible or inherently inconsistent.
41. If the Screening Committee are in doubt as to whether to refer the case to the Fitness to Practise Committee or not, the Screening Committee should consider the Complainant's version of events at its highest (e.g. what the Complainant has stated is true, accurate and reflects what happened) and then apply the realistic prospect test.
42. The Screening Committee should not refer allegation(s) to the Fitness to Practise Committee that are not supported by any evidence. There must be a genuine, not remote, or fanciful possibility that both the facts alleged could be found proven at a Hearing and if they are, that the Registrant's Fitness to Practise could be found impaired by the Fitness to Practise Committee.
43. When determining whether the realistic prospect test is met in relation to an allegation of culpable omission (e.g. where the Registrant failed to do something that they ought to have done), the Screening Committee must consider whether a) there is a realistic prospect of proving that the Registrant had a duty to complete the action and b) there is a realistic prospect of proving that the Registrant failed to complete the action. If the realistic prospect test is not met for both, it will not be met for the allegation overall.
44. The presence of an Interim Order should not be a factor the Screening Committee considers when deciding whether to refer an allegation to the Fitness to Practise Committee for an Interim Order does not constitute a factual finding.

45. The Screening Committee will be aware that there may be cases which involve allegations concerning multiple aspects of a Registrant's Fitness to Practise. When making a decision, and applying the realistic prospect test, it is the cumulative effect of all potential impairment factors that must be taken into account.
46. There is a public interest in individual Registrants not being harassed by unfounded or vexatious allegations.
47. The Screening Committee reserves the right to close a case where the complainant indicates they do not wish to cooperate with the investigation. In this particular situation, the Screening Committee will be mindful of the BPC's responsibility to protect the public and/or act in the public interest and understands that the BPC can, to a large extent, continue with a case where the complainant is no longer involved. The Screening Committee will however need to consider and balance the weight of the available evidence and whether the realistic prospect test can still be met.
48. The Screening Committee should proceed with caution in closing a case where their decision may be perceived as inconsistent with that of another public body in relation to the same or substantially the same facts.
49. The Screening Committee should note that the BPC will generally presume against registration, restoration, or retention where an applicant discloses a conviction for an offence as convictions are not compatible with being a registered professional.
50. Where the Screening Committee discounts clinical opinion provided by an expert or the BPC's Head of Professional Practice, they must provide very clear reasoning for doing so.

Limb 2 of the Test

51. There is no definition of what amounts to Impairment of Fitness to Practise, and the Screening Committee should note that not every case of misconduct, deficient professional performance etc will mean that a Registrant's Fitness to Practise is impaired.
52. In determining whether there is a realistic prospect of impairment being established before a Practice Committee, the Screening Committee should be aware that a Fitness to Practice Committee must consider whether a Registrant's Fitness to Practise is *currently* impaired e.g. at the date of the Hearing looking forward.
53. As a general principle, and in connection with older allegations, the Screening Committee will need to consider where there is a realistic prospect of *current* impairment being established.
54. An assessment of current impairment will often involve consideration of the following:
 - Whether the Registrant's admitted failings are capable of being remedied;
 - Whether the failings been remedied;
 - What is the likelihood of the risk of repetition

as well as the weight that can reasonably be given to that evidence. Such evidence submitted by a Registrant could include reflective writing, evidence of training courses attended, demonstration of insight at an early stage etc.

55. These factors should, however, be weighed against the public interest in upholding proper professional standards and maintaining public confidence in the profession which is of fundamental importance in assessing impairment of a Registrant's Fitness to Practise.
56. The Screening Committee should keep in mind the presence of mitigating factors submitted by the Registrant which may result in an allegation not being referred to the Fitness to Practise Committee providing the mitigation is:
- Supported by credible evidence;
 - Relatable to the circumstances of the allegation and not the Registrant's personal circumstances;
 - So significant that there is no realistic prospect of the Fitness to Practise Committee finding that the Registrant's Fitness to Practise is impaired.
57. The Screening Committee should note that certain types of misconduct are more capable of being remedied than others – an example being allegations of a clinical nature. Types of misconduct which may be less capable of remediation include dishonesty and sexual misconduct.
58. The test for dishonesty is set out *Ivey v Genting Casinos UK Ltd (t/a CrockfordsClub) [2017] UKSC 67* which was approved for regulatory proceedings in *GMC v Krishnan [2017] EDHC 2892 (Admin)*. The test states that, firstly, the Registrant's actual state of mind as to the facts should be ascertained and then a Fitness to Practise Committee, where the allegation is referred, will then move onto consider whether his or her conduct was dishonest by the standards of ordinary decent people.
59. If the Screening Committee are satisfied that there is evidence that the Registrant has remediated, they can still decide to refer the allegation(s) to a Fitness to Practise Committee on public interest grounds. In *CHRE v Nursing and Midwifery Council (Grant) [2011] EWHC 927*, the High Court stated that, in deciding whether fitness to practise is impaired, the Committee should ask themselves "*Not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.*"
60. Where both limbs of the realistic prospect test are met, there is a public interest in there being a public hearing before the Fitness to Practise Committee.

Potential Outcomes

61. The potential disposal outcomes open to the Screening Committee when considering a case are as follows:
- Adjourn the case for further information;
 - Close the case with no further action;
 - Close the case with no further action but issue advice to the Registrant about their future conduct;
 - Issue a Warning to the Registrant;
 - Refer the case to the Fitness to Practise Committee

Adjourn the case for further information

62. Where the Screening Committee determines that further information/evidence is required to enable them to make a decision, the BPC will obtain such information/evidence and provide the Registrant with a copy of the additional evidence obtained and provide them with a reasonable opportunity to respond.
63. Where appropriate, the BPC will also give a copy of the additional evidence to the complainant and provide them with reasonable opportunity to respond. The BPC will then provide the Screening Committee with copies of the additional evidence along with any additional comments received and the Screening Committee will resume consideration of the case.
64. Where, during consideration of a case, the Screening Committee considers there may be evidence of allegations not already included by the BPC, or that the allegations should be amended, the Screening Committee should adjourn consideration and notify the BPC. The BPC will then consider the matters raised by the Screening Committee and take the necessary action.
65. Once the Registrant has been provided with sufficient time to consider and respond to the new allegations and/or evidence, a copy will be provided to the Screening Committee, and they will continue their consideration of the case.

Close the case with no further action

66. Where the Screening Committee determines there is no realistic prospect of the allegation being established before a Fitness to Practise Committee, they may conclude that it is appropriate to close the case without issuing a Warning or Advice.
67. This would include cases where the Screening Committee determines:
 - The allegation does not call into question the Registrant's Fitness to Practise;
 - There is no realistic prospect of the allegation(s) being found proven before the Fitness to Practise Committee;
 - The alleged facts, even if proved, are not sufficiently serious to result in the Registrant's Fitness to Practise being impaired to an extent that would justify action being taken against their registration, and a Warning is deemed unnecessary;
 - The alleged facts, if proved, may demonstrate that a Registrant's Fitness to Practise is impaired, but there is no realistic prospect of being able to prove the alleged facts for evidential reasons, and a Warning is deemed unnecessary.

Close the case with no further action but issue advice to the Registrant about their future conduct;

68. Where the Screening committee determines there is no realistic prospect of the allegation being established before a Fitness to Practise Committee, they may conclude that it is appropriate to close the case with Advice.

69. The Advice has no formal status, it is simply advice. The Screening Committee may issue the Registrant advice regarding future conduct or practice.
70. Where Advice is issued, the Screening Committee should draft the Advice carefully so as to be clear that they are not issuing a Warning.

Issue a Warning to the Registrant

71. The Screening Committee will only consider a Warning once they have decided the allegation should not be referred to the Fitness to Practise Committee.
72. When writing the reasons for issuing a Warning, the Screening Committee must avoid giving the impression that it has made a finding or determination of facts on the issues arising from the complaint/concern.
73. The term(s) of the Warning must be clear and should not seek to impose a more onerous obligation on the Registrant than that required under the terms of the Code of Ethics.
74. A Warning issued by the Screening Committee formally records their concern, while not requiring a referral to the Fitness to Practise Committee, and as such is potentially significant.
75. A Warning will remain on the Registrant's record for a period of 2 years and is not shown on the BPC's public register. Warnings will be taken into consideration by the Screening Committee should another complaint be raised against a Registrant of a similar nature.
76. A Warning will only be issued by the Screening Committee once they have received further representations from the Registrant on their intention to issue a Warning and have disclosed the proposed terms of the Warning. The Screening Committee must consider the representations submitted by the Registrant prior to determining whether to impose the Warning or not.
77. For further guidance on the imposition of a Warning, please see Appendix 3 'Warnings Policy and Guidance'.

Refer the case to the Fitness to Practise Committee

78. Where the Screening Committee determines that both limbs of the realistic prospect test are met, the case will be referred to the Fitness to Practise Committee.

Fitness to Practise history

79. The Screening Committee is entitled to know whether a Registrant has previous Fitness to Practise history or not as this is an important factor in their decision-making process.

80. When reviewing Fitness to Practise history, the Screening Committee should consider whether it is adverse. Examples of Fitness to Practise history which would be considered adverse are:

- Advice issued by the Screening Committee;
- A Warning issued by the Screening Committee;
- A finding of Misconduct or Impairment made by the Fitness to Practise Committee;
- A sanction issued by the Fitness to Practise Committee

81. The Screening Committee should then consider the relevance of the previous history to the current allegation. This may reveal a pattern of similar behaviour or demonstrate a persistent lack of regard for their obligations as BPC Registrant where the Registrant in question has significant previous Fitness to Practise history.

82. The Screening Committee should remember, and proceed with caution, when considering previous Warnings or Advice issued by the Screening Committee as no findings of fact or a judgement on impairment would have been made.

Guidance which may assist the Screening Committee

83. The Screening Committee may be assisted by the following guidance in their deliberations:

- Duty of Candour: www.bpc.org.uk/professionals/registrants/duty-of-candour/
- Social Media Guidance: www.bpc.org.uk/professionals/registrants/social-media/
- Code of Ethics: www.bpc.org.uk/professionals/registrants/ethical-framework/

Recording a Decision

84. The Screening Committee should give clear and detailed reasons for their decision so that the Registrant and the Complainant can easily understand the decision.

85. When drafting a decision, the Screening Committee should:

- Be clear in which allegation(s) they are referring to the Fitness to Practise Committee, on which ground of impairment and why;
- State which documents they have read and how these relevant documents relate to the decision reached;
- Explain, where relevant, why (if they have) discounted the clinical opinion of an expert or the Head of Professional Practice;
- Where there is a realistic prospect of finding the allegations proven, but they decide not to refer the case to the Fitness to Practise Committee due to evidence of insight and remediation, they should clearly set out the reasons for the evidence being so compelling that they have decided not to make an onward referral to the Fitness to Practise Committee.

Decision Review

Decision not to refer to the Fitness to Practise Committee

86. Where the Screening Committee have decided not to refer a case to the Fitness to Practise Committee, the Complainant or the BPC can refer the case to the Screening Committee for a review of the decision. If so, the other Screening Committee who did not originally consider the case will conduct the review.
87. The only basis upon which a decision can be sent to the Screening Committee for review, in connection with cases not referred to the Fitness to Practise Committee, are as follows:
1. Where there is new evidence or information which makes a review necessary:
 - a. For the protection of the public;
 - b. To prevent injustice caused to the Registrant; or
 - c. Is otherwise in the public interest
 2. Where there is information available to indicate that the British Psychoanalytic Council has erred in its administrative handling of the case, and it is necessary in the public interest to review.
88. The Screening Committee will consider whether the criteria in paragraph 85 above are met and if not, the Screening Committee will write a decision, setting out their reasoning, which will be provided to the Complainant and Registrant.
89. If the Screening Committee determine that the criteria is engaged, they will consider the new information/evidence received and decide whether:
- The original decision should stand;
 - A Warning may be given;
 - To refer the matter to the FTPC; or
 - To remove from a Registrant's record, any previous Warning that has been issued.
90. The Screening Committee will write a decision, setting out their reasoning, and a copy will be provided to the Complainant and Registrant accordingly.
91. There is no further right of review. For further information on Decision Review, please see Appendix 4 'Decision Review'.

Decision to refer to the Fitness to Practise Committee

92. Where an allegation has been referred to the Fitness to Practise Committee, the Registrant and/or BPC may request a review of the Screening Committee's decision. If so, the other Screening Committee who did not originally consider the case will conduct the review.

93. The Screening Committee will consider the documents provided to them by the BPC; which will include the original application, the other party's response to the application and potentially comments from the Complainant, and decide whether:

- The original decision to refer the case to the Fitness to Practise Committee should stand; or
- The referral to the Fitness to Practise Committee should be terminated with no further action to be taken against the Registrant.

94. Where the Screening Committee are reviewing an application on the basis of a witness or Complainant no longer willing to cooperate with the investigation, the Screening Committee should consider whether the information can be obtained from another person or source. Should the Screening Committee consider that it is in the public interest, the referral may continue without the cooperation of the witness/Complainant although consideration must be had to the weight of the available evidence and whether the realistic prospect test can still be met.

95. There is no further right of review.