

GUIDANCE REGARDING WARNINGS ISSUED BY THE INVESTIGATION COMMITTEE

Background

When considering a complaint about a registrant's Fitness to Practise, the Investigation Committee has a number of options. It can refer the registrant to the Fitness to Practise ("FTP") Committee for a formal hearing into the allegations; it can invite the registrant to undergo a Performance Assessment or a Health Assessment; it can require further investigations to be undertaken; it can direct that no action be taken; or it can issue a formal warning¹.

When will a formal warning be considered?

A formal warning will be considered when the Investigation Committee feels that there are real concerns regarding a registrant's conduct or performance, but those concerns fall short of requiring referral to the FTP Committee. Examples of where the issuing of a formal warning may be considered appropriate include (this list is not exhaustive):

- Where the matters complained of would, if proved, demonstrate a significant failure to meet the GOC core competencies or to follow the GOC Codes of Conduct or the guidance published by the professional bodies, but where a restriction on the registrant's registration would not be necessary;
- Where the matters complained of would not amount, if proved, to an impairment of fitness to practise but if repeated may do so;
- Where there is a significant cause for concern following a performance assessment, but a restriction on the registrant's registration is not necessary;
- Where the registrant accepts that s/he has acted improperly but can demonstrate that this is unlikely to occur again;
- Where the registrant accepts that his or her standards have fallen below an acceptable level but can demonstrate that this is unlikely to happen again.

Whether to issue a warning is a decision that will be taken on the merits of each individual case.

The Investigation Committee does not make factual determinations as to whether a complaint is upheld or not. Neither the registrant nor the complainant has the opportunity to appear before the Committee to challenge the other's account. The fact that a warning is issued is not a finding that the Committee prefers the account of the complainant to that of the registrant.

In cases where the evidence, if proved, would suggest an ongoing risk of harm to patients, the issuing of a warning will not be appropriate. Nor will a warning be

¹ Under Rule 14 of the GOC Fitness to Practise Rules 2005

appropriate in a case solely relating to the alleged ill-health of a registrant. While warnings may be appropriate in cases where the registrant accepts that he or she has acted improperly or below a relevant standard, such an admission is not a bar to the Investigation Committee referring the matter to the Fitness to Practise Committee.

What is the purpose of a warning?

The purpose of a warning is two-fold. First, it alerts the registrant to steps that he or she can appropriately take to reduce the risk of being the subject of a complaint or of FTP action in the future, whether by improving their professional standards or avoiding certain behaviour. Secondly, it allows the GOC to monitor any patterns of complaint that may emerge in respect of a registrant. The GOC has a statutory duty to protect the health and safety of the public and must be aware of patterns of behaviour that might put the public at risk, or undermine the reputation of the optical professions, especially when there may be lapses of time between incidents.

What happens when a warning is issued

Before a warning can be issued, the registrant will be given the opportunity to make written representations as to whether a warning should in fact be given.²

If, having considered the registrant's representations, the Investigation Committee decides to issue a warning, the registrant will be given this warning in writing. The letter will explain the matters that concern the Investigation Committee. The letter may include advice from the Committee as to future conduct, training or standards of performance. These will be recommendations only and the GOC will not monitor them or seek to enforce compliance.

The fact that a warning has been issued will be confirmed to the initial complainant and to the registrant's employer, if any. Warnings will not be publicised; nor will their existence be disclosed to enquirers.

What happens if there is another complaint against the registrant?

Warnings will be in force for four years from the date that they are issued. Should the registrant be the subject of a further complaint of a similar nature within that period, the Investigation Committee will take the original complaint into account in determining what action, if any, to take in respect of the new complaint. The registrant will be invited to provide representations on the relevance of the earlier warning in the context of the new complaint.

When considering a new allegation alongside the circumstances of an earlier warning, it is open to the Investigation Committee to review the decision not to refer the earlier complaint to the FTP Committee.³ Again, this is a matter on which the registrant will be given the opportunity to make representations.

² As is required under Rule 14 of the GOC Fitness to Practise Rules 2005

³ In accordance with Rule 15 of the GOC Fitness to Practise Rules 2005

How long is a warning in place for?

A warning is in force for four years from the date that it is issued. It will expire after those four years have passed. This means that the warning will be recorded against the registrant's entry in the relevant register for four years from the date of the warning letter (this warning will not be displayed on the public register).

Once a warning has expired, the Investigation Committee will not be entitled to take into account its previous existence.
