

## **Protocol on the Handling of Criminal Convictions Disclosed by Registrants**

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1. All disclosures of criminal convictions will be referred to the Registrar for consideration.
2. The Registrar will generally presume against registration, restoration or retention on the GOC register where an applicant discloses a conviction for an offence included in Schedule 4 of the Criminal Justice and Court Services Act 2000.
3. The offences included in Schedule 4 of the Criminal Justice and Court Services Act 2000 are:
  - (a) an offence against a child
  - (b) murder
  - (c) manslaughter
  - (d) kidnapping
  - (e) false imprisonment
  - (f) wounding and causing grievous bodily harm
  - (g) assault, including actual bodily harm
  - (h) rape
  - (i) procurement of women
  - (j) an offence under section 128 of the Mental Health Act 1959
  - (k) an offence under the Sexual Offences Act 2003
  - (l) an offence under section 4(3) of the Misuse of Drugs Act 1971.
4. While such a conviction will generally be regarded as so serious as to refuse entry to the register, each case will be considered on its merits.
5. (a) In considering the application the Registrar will presume that:
  - the offence was committed and not entertain argument or evidence to the contrary;
  - a conviction raises a question about the applicant's character;(b) The applicant is responsible for persuading the Registrar that he or she is a fit person despite their conviction.
- (c) The main issue for the Registrar when considering an application will be whether, despite a conviction, the applicant is suitable for registration. This will depend *inter alia* on:
  - The nature and seriousness of the offence;
  - The extent and nature of any risk to patients or the public entailed in the offending behaviour;
  - The time frame of offending;

- Relevance of the offence to professional standards and conduct;
- The applicant's character and conduct since the offence;
- The impact of such an offence being committed by a registrant upon public confidence in the professions.

(i) Nature and seriousness of the offence

The Registrar may take account of evidence and information about:

- the legal definition of the offence, the relevant criminal behaviour, the 'guilty mind' component such as dishonesty, intent or recklessness;
- the maximum sentence the Court could have imposed, the actual sentence imposed and the penalty actually paid;
- the facts of the offence, mitigation offered prior to sentence, and mitigation offered in support of his/her application for registration;
- sentencing remarks made by the Court;
- any victim impact statement presented to the court;
- harm or loss suffered by any victim of the crime.

(ii) pattern of offending

The Registrar will consider whether:

- an offence was a "one-off" incident or involved a series of identical or related offences;
- an early offence lead to more serious subsequent offences;
- there had been a pattern of offending which indicated that the applicant had ceased offending.

(iii) The time frame of offending

The Registrar will consider:

- the interval of time between conviction and application for registration;
- whether any period of a suspended sentence is still outstanding or the period of suspension is completed;
- the period of time over which offences occurred.

(iv) Relevance to professional registration

The Registrar will be guided by:

- relevant aspects of the criminal law (rather than personal views and values);
- the Council's professional guidance and how the conviction involved a departure from the standards required as a professional.

(v) Character and conduct since the offence

In considering the application, the Registrar will:

- assess whether the offence is indicative of attitudes or personal characteristics incompatible with registration;
- consider the risk of re-offending and the seriousness of the consequences of reoffending, should that occur, particularly in respect of patients' safety and security of patients' and public funds;
- not assume that passage of time will cancel out the offence or that the Rehabilitation of Offenders Act, which can lead to convictions being spent, does not apply. However the passage of time may be relevant if it indicates that the risk of re-offending is low or diminishing, particular if that time has been used constructively;
- give due consideration to appropriate positive behaviour.

6. Further Information

In order to make a decision, the Registrar may request further information or clarification from the applicant or others regarding any matter pertaining to the application. Requests for further information will be sent within ten working days of receipt of the application. Should the applicant refuse to agree to this information request, or fail to respond to the request within 14 days the Registrar may consider the application on the basis of the information that is in her possession.

7. Registrar's decision

The Registrar, having considered the case, will give his decision whether to:

- (a) grant the application for registration, retention or restoration;
- (b) refuse the application for registration, retention or restoration;

The Registrar will notify the applicant in writing of his decision within ten working days of receipt of the application or further information, or in the case of failure to provide further information, within ten working days of the deadline for receipt of this information. Where the decision of the Registrar is unfavourable, the Registrar will provide:

- the reasons for that decision; and
- information on the applicant's right of appeal against the decision.

8. Registration Appeals Committee

Under the terms of the Opticians Act 1989 Schedule 1A, any registrant will have recourse to the Registration Appeals Committee for the purpose of hearing and determining appeals against any decision of the Registrar.

26 March 2009

Amended 12 October 2010