

Guidance for decision makers on the impact of criminal convictions and cautions

Contents

Introduction.....	3
Reporting Criminal Proceedings	4
General Principles	5
Applications for Registration	5
Fitness to Practise	7
Convictions relating to Drugs and Alcohol in Fitness to Practise cases	7
Annex A.....	9
Annex B.....	10

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2.2	31/5/2017	Jo French	Point 23 expanded on issue of matters that become protected during FTP proceedings.
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Introduction

1. This document has been produced to provide decision makers at the GDC with guidance on managing registration applications, and fitness to practise referrals for individuals with criminal convictions and cautions obtained either in the UK or abroad.
2. The guidance applies to all categories of GDC registration, including temporary registration. It applies to all dental professionals applying to join the register for the first time, those already registered with the GDC and former GDC registrants who are applying to be restored to the register.
3. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 came into force on 29 May 2013. The Order states that certain spent convictions and cautions are “protected” which means there is no requirement on individuals to disclose these and they cannot be taken into account when making a decision on an individual’s suitability to carry out a particular occupation.

A conviction is a “protected conviction” if:

- It is not a “listed offence”. A listed offence is defined in paragraph 5 of article 2A in the 2013 Order (a copy of the Order is available [here](#)) AND
- No custodial sentence (or service detention) was imposed AND
- The individual has no other convictions AND
- It was received by a person aged under 18 at the time of the conviction and five years and six months or more have elapsed OR
- It was received by a person aged 18 or over at the time of the conviction and 11 years or more have elapsed

A caution is a “protected caution” if:

- It is not a listed offence AND
- It was given to a person aged under 18 at the time of the caution and two years or more have elapsed OR
- It was given to a person aged 18 years or over at the time of the caution and six years or more have elapsed

Registrants and those applying for registration¹ or restoration are required to declare all convictions and cautions that are not considered “protected”².

¹ Except exempt persons applying to provide services on a temporary and occasional basis under section 36Z3 and Schedule 4 of the Dentists Act 1984 (as amended)

² The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 makes certain changes to the way in which individuals and Disclosure Scotland are required to disclose details of convictions and cautions, particularly in relation to the category of spent convictions appearing on the "offences which are to be disclosed subject to rules" list. Please refer to the Disclose Scotland [website](#) to determine whether the Order applies to the application.

Reporting Criminal Proceedings

4. Since 2003 all dentists, dental hygienists and dental therapists have been required to declare criminal convictions and/or cautions when registering with the General Dental Council and since 14 May 2009 clinical dental technicians, dental nurses, dental technicians and orthodontic therapists have been required to do the same. As of 29 May 2013, applicants have not been required to declare protected convictions and cautions. Notifications of criminality may also be received through third parties and the Notifiable Occupations Scheme, which is operated by the Police service. The GDC did not state explicitly that registrants themselves had to notify the GDC of any cautions / convictions received since their initial registration³ until 30 September 2013
5. On 30 September 2013 the GDC published new guidance which requires all registrants to inform the GDC if on, or after, the 30 September 2013 they:
 - a) are charged with a criminal offence;
 - b) are found guilty of a criminal offence
 - c) receive a conditional discharge for an offence
 - d) accept a criminal caution (including a conditional caution), or otherwise formally admit to committing a criminal offence
 - e) accept the option of paying a penalty notice for a disorder offence (in England and Wales), a penalty notice under the Justice Act (Northern Ireland) 2011 or a fixed penalty notice under the Antisocial Behaviour etc. (Scotland) Act 2004;
 - f) receive a formal adult warning in Scotland
6. Registrants do not need to inform the GDC of the following:
 - a) a fixed penalty notice for a road traffic offence;
 - b) a fixed penalty notice issued by local authorities (for example for offences such as dog fouling, or graffiti);
 - c) an anti-social behaviour, preventative justice, or other social order
7. For existing registrants, both self-referred and third party referred cautions and convictions will be processed by the Fitness to Practise department. For third party referrals consideration will also be given as to whether an allegation of misconduct arises from the registrant's failure to notify the GDC of the offence or if a false declaration was made by the registrant on their application.

³ Except UK dentist who apply to join the register after December 2012 and where the application form states "I will advise the GDC of any criminal convictions or cautions".

General Principles

8. GDC staff members should not be guided by their own values or personal ethical system but by relevant aspects of the criminal law and the GDC's professional guidance. The GDC should consider if the behaviour which led to the conviction or caution involved a departure from the high standards required of dental professionals as outlined in the GDC standards and whether it impacts on the individual's fitness to practise.
9. When deciding on the impact the conviction or caution has on an applicant's fitness to practise, the GDC should consider the nature and seriousness of the offence and the applicant's character and conduct since the offence.
10. The impact of the conviction on both general dental practice and the profession as a whole will impact the decision on the applicant's suitability for registration and their ongoing fitness to practise. For example, criminal behaviour involving abuse of a position of trust, is always likely to have a significant impact on the ability to satisfy the requirements for registration, regardless of the context of the criminality.
11. The applicant's character and conduct since the offence are important issues in the context of their application and their ongoing fitness to practise. This may give the GDC some useful factual basis on which to assess whether the offence was indicative of attitudes or personal characteristics which are fundamentally incompatible with professional registration as well as the risk of re-offending.
12. The GDC should not assume the passage of time itself eventually eliminates the offence that was committed. This is not to say that it is irrelevant, but it depends on the individual circumstances of each application. The passage of time without further offending may be very relevant if it can be shown to indicate that the risk of re-offending is low or diminishing. More positively, the passage of time since the offence can be an important aspect of the application, if there is evidence that time has been used constructively.
13. Due consideration should be given to positive behaviour since the offence. This is not a simplistic weighing of "good" and "bad" deeds. Evidence of insight into the nature of the offence and its consequences, and also evidence of rehabilitative steps taken by the applicant should be considered. The weight to be given to positive behaviours will vary according to their relevance to the concerns prompted by the offence. The GDC will assess the level of risk the conviction or caution will have on protecting members of the public and maintaining confidence in the dental profession. Annex A provides a chart which can be used when evaluating the impact of criminal behaviour.

Applications for Registration

14. When assessing an applicant with a criminal conviction or caution the GDC should accept the conviction as conclusive evidence of guilt and must presume that the applicant committed the offence they were convicted of. They should also presume that the conviction or caution raises questions about the applicant's character.

15. It is the applicant's duty to provide sufficient evidence to the GDC that they fulfil all the requirements of registration (or restoration) despite the conviction or caution. The GDC may request a detailed statement from the applicant outlining the circumstances of the incident. The GDC should take into account all the information that is presented to it by the applicant. However, it is not obliged to gather information or advise the applicant on how to obtain it.
16. If the GDC carries out preliminary assessments and considers that certain specific documents or information are required to reach a decision, it must inform the applicant. It remains the applicant's responsibility to provide that information and substantiate their case. The GDC may also contact other regulators and/or agencies to obtain information where appropriate.
17. The GDC is obliged to consider whether an applicant is of good character in order to determine their suitability for registration. The main issue for consideration is whether, despite the conviction or caution, the applicant's character satisfies the requirements for professional registration which includes protecting members of the public and maintaining confidence in the profession. Examples of factors taken into consideration are outlined in Annex B.
18. The GDC is also obliged to consider whether an applicant is of good character when determining an applicant's suitability for registration of an additional title. Where the applicant has not already done so the Registration Team will refer the criminal conviction or caution to FTP for assessment.
19. Where applicable an applicant's health should be taken into consideration during the application process. Where the GDC is notified of drug / alcohol convictions or cautions the applicant will be requested to provide a reference from their GP or occupational health physician confirming they are medically fit to practise (if this has not already been provided in the course of an application). The GDC must be satisfied that there are no underlying health concerns and any information provided will be taken into account during the assessment of the application
20. When considering a restoration application, the Registration Team will confirm with FTP if the matters have already been considered previously by FTP, and therefore do not need to be reviewed again.
21. Where an applicant for registration/restoration has been charged with an offence, the Registrar will usually await the outcome of the trial before making a decision on registration, particularly in circumstances where the nature of the offence is serious and poses a high risk to public protection. If the GDC decides it is appropriate to make a decision before the outcome of the trial the following factors will be taken into consideration:
 - i. the on-going criminal proceedings reflection on the applicants 'good character'
 - ii. seriousness of offence;
 - iii. the likely length of time it will take it will take for the proceedings to be concluded; and
 - iv. impact on the applicant and effect of any delay with the GDC making a decision.
22. All evidence will be taken into account and the criminal proceedings will not be considered in isolation. If there is evidence of positive characteristics, this will tip the balance in favour of the applicant. However depending on the seriousness of the offence(s) the GDC is open to make a decision on the good character of the applicant.

Fitness to Practise

23. Where notification of a criminal conviction or caution has been received by the GDC, the Fitness to Practise Team will liaise with the Registration Team to confirm whether:

- (a) the matters have already been considered during the registration application process
- (b) the registrant did not declare the caution / conviction on the application form

If (a), the matter was considered during the registrant's registration application process, it will not be considered again by the Fitness to Practise team, and the case against the registrant will be closed⁴.

If (b), the caution/conviction itself will be considered, as will an allegation of not having declared a caution / conviction to the GDC unless the conviction or caution is 'protected' in accordance with the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 ('the Order') which came into force on 29 May 2013 . Where a conviction or caution was not declared at the point of registration and was not 'protected' in accordance with 'the Order' the associated conduct (misleading, deliberately misleading, and dishonest behaviour) should also be assessed and can form an allegation even if the caution or conviction has become protected at the date of the hearing."⁵

24. When considering the conviction/caution impacts on a registrant's fitness to practise, Case Examiners and/or the Investigating Committee will consider a number of factors, as outlined in Annex B.

25. Where the registrant has been charged with an offence, the GDC will await the outcome of the trial before continuing their investigation. However in exceptional circumstances where the nature of the offence is serious and poses a high risk to public protection, public interest or to the reputation of the profession, then a referral to the Interim Orders Committee (IOC) could be considered.

Convictions relating to Drugs and Alcohol in Fitness to Practise cases

26. In cases of drug/alcohol convictions or cautions, if it is the first complaint that relates to the use of alcohol or drugs that has been referred to the GDC, and there are no identifiable aggravating circumstances, the dental professional will be requested to provide a reference from their GP or occupational health physician confirming they are medically fit to practise.

27. If this information is not received, the registrant will be asked to attend a health assessment. If the registrant does not comply with this request, the case will continue, a health allegation will be raised and consideration will be given to referring the case to the IOC.

28. If the GP or occupational health physician confirms that the registrant is medically fit to practise, the

⁴ An exception to this is when a registrant applying to register an additional title discloses a criminal conviction or caution which has not previously been disclosed to the Fitness to Practise Team. In this scenario, the Registration Team will consider the application for additional title only and refer the conviction or caution to the Fitness to Practise Team for investigation,

⁵ The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 makes certain changes to the way in which individuals and Disclosure Scotland are required to disclose details of convictions and cautions, particularly in relation to the category of spent convictions appearing on the "offences which are to be disclosed subject to rules" list. Please refer to the Disclose Scotland [website](#) to determine whether the Order applies to the application.

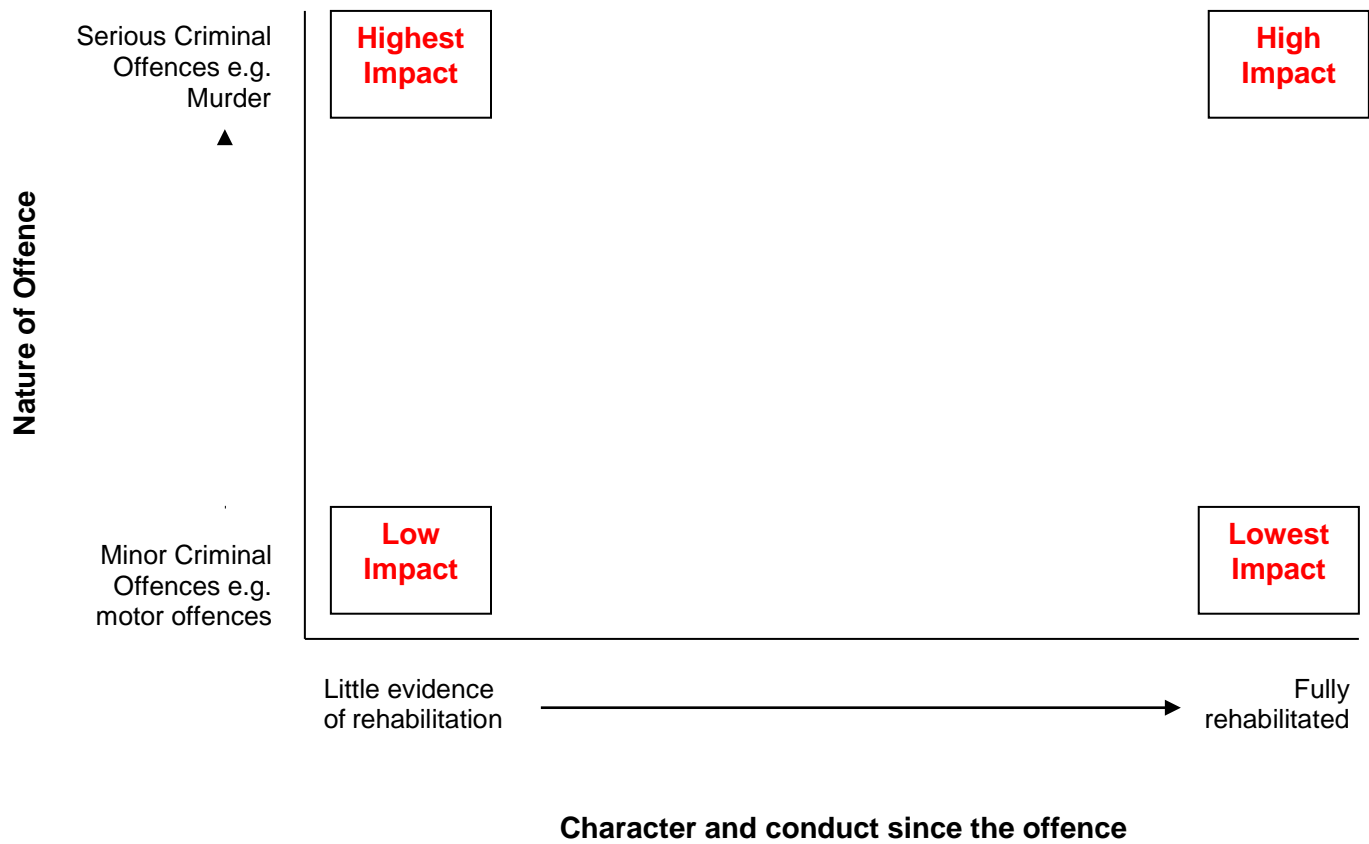
case will be progressed as a conviction/caution case. If concerns are raised about the registrant's fitness to practise, the registrant will be asked to attend a health assessment. If the registrant does not comply with this request the case will continue, a health allegation will be added at the point of assessment and consideration will be given to referring the case to the IOC.

29. If the GDC is notified of further convictions relating to drugs and alcohol or there are aggravating circumstances identified in the first notification, the dental professional will be requested to undertake a full medical assessment prior to the case being assessed.

Guidance approved May 2014

Annex A

Figure 1.0 Evaluating the impact of a conviction on professional character



Annex B

The factors outlined below will be taken into consideration when assessing:

- the suitability of an applicant for registration or restoration
- whether a registrant's FTP is impaired

Factors to consider

This information is provided for guidance only and is not an exhaustive list. Each case will be reviewed on a case by case basis.

a) Location

For example did the offence take place in the work place or on the way to or from work?

b) Victim

For example was the victim a patient, a vulnerable adult or child or a work colleague?

c) Passage of time

For example the time between the offence and registration, was the registrant a juvenile at the time of offence? Did the offence occur before enrolment onto the course leading to registration? Has the sentence been served?

d) Relevance to employment

For example does the offence relate to defrauding the employer?

The GDC will also consider:

- any appeal made by the applicant/ registrant against a conviction for a criminal offence
- and
- any evidence supplied by the applicant/ registrant to demonstrate they are of good character and their fitness to practise is not impaired despite their conviction or caution.

The type of evidence that may be used to assess good character includes:

- e) The level of remorse shown by the applicant
- f) Character references
- g) Medical assessments
- h) Successful completion of relevant awareness course
- i) Charity work undertaken (this should be proportionate and match the allegations)
- j) Level of insight demonstrated

This is not an exhaustive list and each case will be reviewed on a case by case basis.

