

Guidance on Declarations consultation

Thank you for inviting us to participate in this consultation.

1.) Is the guidance clear on the requirements for applicants and registrants who need to make a declaration in relation to their health?

Yes. Insofar as it differentiates between a temporary illness from which the Registrant may reasonably expect to recover and a long-term condition. However, by making this distinction, the guidance appears to suggest that any condition which is chronic/long-term requires a declaration to be made; this may not be the case. We welcome clarification that health issues are a matter of subjective assessment, but consider the way in which the guidance is worded could lead to confusion. We consider that the guidance could be clearer. Additionally, there is no guidance on what information the GOC requires when making a declaration.

2.) Is the guidance clear on the requirements for applicants and registrants who need to make a declaration in relation to criminal or disciplinary investigation or outcome?

The guidance is clear in respect of criminal convictions. However the guidance fails to explain the difference between a caution and a street caution/warning. This is a confusing area of law and needs more clarification for registrants. Additionally, the guidance suggests that where a street caution or warning is given for violent conduct this requires a declaration. The guidance provides no examples of offences that may be suitable for a street caution/warning in relation to violence. For example, public disorder may encompass violence, but equally may not.

The guidance advises that a declaration should be made in relation to a determination by a Regulatory Body or a Primary Care Organisation. It is not clear whether the determination should be disclosed only where it is adverse. The guidance is contradictory in that in one paragraph it asks the Registrant to notify the GOC if they have received a "sanction" in relation to a fitness to practice hearing; this implies an adverse finding. However in the following paragraph the guidance asks for disclosure of the "outcome or sanction". We would be grateful for clarification, as a matter of urgency, if it is now proposed to seek declarations on all matters irrespective of whether the outcome is adverse or not, and the detailed reasons for this requirement. We do not understand why when a Registrant's practice has not been found to be a cause for concern, it should be deemed a matter for disclosure.

The guidance in relation to clinical negligence claims is confusing and fails to advise the Registrant to take advice if they are unsure.

3.) Does the guidance clearly explain how the GOC will process the information that is provided, and how we will reach decision about the application

No. This guidance does not provide any explanation in terms of processing information or how a decision will be reached. The only information we consider can be drawn from the document is that the more information a Registrant provides the more quickly it will be processed by the registration team for review by the Registrar. This is an administrative process and is what can be reasonably expected of a regulatory body in dealing with any application.

There is no guidance for the Registrant on what information should be provided either in respect of a health issues and only limited information in relation to conviction/caution.

There is no information on timescales of processing information by the registration team or how or when the Registrar will make a decision in respect of any application once the information has been received. Whilst we recognise each application will turn on its own facts, it would be helpful if guidance could be either provided or the Registrant be directed to information about both timescales and the decision-making process

The guidance advises that the registration team will provide a summary of the information to the Registrar on which to make a decision. It is not clear whether this information will also be provided to the Registrant. The Registrant is told the Registrar will provide a reasoned decision and ensure it is consistent. We are unclear as to how consistency will be achieved in the decision-making process. In the absence of information on the steps to be adopted, an indication of how various issues in both relation to health and convictions/cautions will be viewed there is no benchmark to judge consistency. For example it is our understanding from reviewing past decisions any conviction where dishonesty is an element the matter is referred either for a fitness to practice investigation or the applicant is refused registration. It would be helpful in terms of both health and convictions/cautions to have some indicative guidance. Furthermore the guidance advises that some declarations may result in a fitness to practice referral but there is no link to information on those procedures.

In terms of the retention process, particularly for students who are completing their final preregistration year, there is no mention of how the GOC will deal with an ongoing fitness to practice investigation in terms of transferring the student to the full register. Historically, the GOC has declined to transfer a preregistration student who has qualified to the full register until any fitness to practice investigation has been completed. The guidance makes no reference to this power or the circumstances in which it is used.

The decisions in relation to registration following a new or retention application are not usually in the public domain. As a consequence no comparisons or understanding of consistency can be made by considering other decisions. A framework of the decision making process, including indicative guidance should be

laid down at the outset and disclosed to both registrant and stakeholders so that fairness and consistency can be reviewed.

The guidance also advises where an application has been granted it may be subsequently reviewed. However there is no information on what basis review may take place and what information will be provided to the rRegistrant in such circumstances.

In respect of declarations in relation to health, the guidance suggests that the Registrar may advise on further steps to be taken in relation to a health condition. It is not clear if that advice is limited to matters in relation to the declaration or in respect of ongoing health monitoring or treatment. There is no information on what or how the Registrar will make such a recommendation and whether or not that advice can be challenged and by what procedure. The same is true for the advice tendered by the Registrar in respect of criminal or disciplinary matters. It seems to us that there is a potential for unilateral advice to be given and a requirement for that advice to be followed without any right of challenge being provided to the Registrant. This would clearly be unfair and unacceptable.

4.) Does the format of the guidance make easy to use?

No. It is lengthy, repetitive, confusing and provides little, tangible information.

5.) Do you have any other comments relating to the proposed guidance document?

The guidance is very confusing in parts. We refer in particular to the advice on retention. In one paragraph it advises the Registrant to make a declaration that might affect their fitness to practice at the time it occurs. However in the next sentence it advises if it comes to the Registrant's attention that he/she has failed to declare a matter that should have been declared they should do so at the next retention period. Whilst we think the GOC is seeking to differentiate between immediate matters and historical issues that come to light subsequently they are potentially both matters that have just occurred from the Registrant's perspective and might affect their fitness to practise.

Whilst the guidance invites a Registrant to disclose matters in relation to a primary care organisation investigation and associated outcomes, it is factually inaccurate to include these organisations as a Regulatory Body. They are not regulatory bodies.

Finally, throughout the guidance, the Registrant is advised where they are not sure they should make a declaration. We are at a loss to understand how this accords with the GOC's Code of Conduct. The code requires registrants to act within their competence/sphere of knowledge. This guidance asks the Registrant to provide information even where they are unsure as to whether it is appropriate to do so. It seems to us that the advice in the guidance should be limited to where a Registrant is unsure of whether a declaration should or should not be made that they should take advice. We think this is particularly the case given the guidance provides no examples of the type of information or documents that should be disclosed to the GOC or how it will be dealt with subsequently.

This document invites the Registrant to make declarations where the Registrant considers it may affect their fitness to practice but provide no examples of what the GOC would consider is a relevant issue in terms of fitness to practice. It is in effect asking the Registrant to make a decision as the GOC's perception of seriousness in relation to various issues and fitness to practice.

We accept it would be impossible for the GOC to provide an exhaustive list of issues which may be a cause for concern but we consider it will be possible to provide a series of examples that would assist registrants (and those of us who advise them) in making an informed decision on declarations.

We hope these comment are helpful in improving the usefulness of the guidance and would be happy to comment on further iterations.

**Submitted by Ben Cook on behalf of the Optical Confederation
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