

The Good Practice Framework

Fitness to practise procedures

DRAFT FOR CONSULTATION

We would like comments on draft guidance on fitness to practise procedures.

The Good Practice Framework: handling student complaints and academic appeals was published in December 2014 and revised in December 2016.

This new section sets out some further good practice guidance on fitness to practise procedures.

We have consulted with the Good Practice Framework Steering Group in preparing this section.

The final version will be published in autumn 2019.

You can respond online by filling in the [online questionnaire](#).

You can also respond by completing the [consultation response form](#) on our website and returning it to consultation@oiahe.org.uk.

The deadline for responses is Friday 2 August 2019

The Good Practice Framework – Fitness to practise procedures

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Introduction

1. The [Good Practice Framework: handling complaints and academic appeals](#) sets out core principles and operational good practice for higher education providers in England and Wales. The core principles are: **accessibility; clarity; proportionality; timeliness; fairness; independence; confidentiality; and improving the student experience.**
2. This section of the [Good Practice Framework](#) gives good practice guidance for providers in designing fitness to practise procedures and in handling individual cases.
3. Fitness to practise is the ability to meet professional standards; it is about character, professional competence and having the health to do the job safely and effectively.
4. Most professional bodies make fitness to practise a requirement for registration to practise. The actual requirements for fitness to practise will vary from body to body. Higher education providers that run courses leading to professional qualifications should have in place procedures that ensure that any concerns about a student's fitness to practise are dealt with fairly, promptly and proportionately.
5. This section of the Good Practice Framework should be read in conjunction with the [Disciplinary Procedures section](#), which sets out principles of procedural fairness. However, a fitness to practise process is distinct from a disciplinary process. The purpose of a fitness to practise process is not to punish the student for wrong doing. It is to ensure the safety of the student and those around them, including members of the public, and to safeguard public confidence in the profession. The process should be supportive.
6. The documents referred to in this section of the Good Practice Framework, and other useful sources of guidance, are listed under [Useful resources](#) at the end of the section. Although the documents and guidance we refer to relate to different

professions, we think that general principles can be applied to any fitness to practise proceedings.

What is fitness to practise?

7. Fitness to practise is the ability to meet professional standards; it is about character, professional competence and health. According to the Health and Care Professions Council, someone is fit to practise if they have "the skills, knowledge, character and health to practise their profession safely and effectively"¹.

8. Providers have a duty
 - to ensure that students on a professional course are fit to practise in that profession, or will be when they complete the course;
 - to protect present or future patients, clients, service users, and members of the public;
 - to safeguard public confidence in the profession;
 - to comply with the requirements of professional/regulatory bodies; and
 - to ensure that students are not awarded a qualification that permits them to practise a profession if they are not fit to do so.

9. Different professions have different regulatory systems and structures and different routes to qualifying and practising. Some professions have a professional body and a separate regulator. This means that providers are likely to have different levels of responsibility for assuring fitness to practise for the variety of professional courses they deliver.

10. The provider will have a close relationship with the professional body or regulator which will generally have some requirements for the structure and content of the course. Professional bodies may need to approve some core or compulsory requirements for course content, to set assessment criteria, and to carry out

¹Health & Care Professional Council fitness to practise (this and other documents referred to are listed at the end of this document).

inspections. They may request that the provider certifies (at a minimum) that the student has not only met the provider's assessment criteria but is of good character at the end of the course. Professional bodies normally publish guidance to providers and students about fitness to practise issues. Providers should pay close attention to that guidance, and make sure that their students know about it and understand it.

11. Examples of issues which may lead to fitness to practise concerns include:

- Academic misconduct (for example plagiarism, cheating in examinations, forging records)
- Other disciplinary offences (for example antisocial, abusive or threatening behaviour, sexual misconduct, violence, bullying or harassment, damage to property, internet access abuse, substance/alcohol abuse)
- Health and safety breaches
- Failure to disclose convictions or other information that the student is required to disclose
- Inaccurate or falsified placement documentation
- Unsafe practice, incompetence or requiring too much supervision
- Unprofessional behaviour, including:
 - Lack of respect, aggressive or poor attitude, laziness
 - Indiscipline, failure to follow dress code, inappropriate use of mobile phone, poor time keeping, poor attendance
 - Failure to self-reflect, lack of insight
 - Failure to engage with investigations into unprofessional behaviour
 - Poor self-management, lack of personal accountability
 - Serious or repeated dishonesty
- Behaviour away from the student's studies
 - Criminal conviction eg violent offence; offence of dishonesty
 - Disruptive behaviour in the community
 - Inappropriate use of social media
- Safeguarding concerns

- Poor mental or physical health or serious physical impairment that interferes with the student’s ability to practise safely (see section on “Health and disability issues” below)
- Failure to seek help or engage with appropriate services in relation to health issues
- Not having the necessary knowledge of English

12. As these examples indicate, concerns about a student’s fitness to practise may arise at any time throughout the student’s studies. Providers should ensure that all staff who may be made aware of any of these matters are alert to the possibility of fitness to practise implications for students on professional courses.

Nursing & Midwifery Council guidance on fitness to practise²

NMC publishes guidance that applies to qualified nurses and midwives which gives a helpful example of fitness to practise principles. The guidance says that there are two clear aims for fitness to practise for qualified nurses and midwives:

- A professional culture that values equality, diversity and inclusion, and prioritises openness and learning in the interests of patient safety.
- Nurses and midwives who are fit to practise safely and professionally.

It sets out 12 principles designed to help deliver these aims. They are:

- i. A person-centred approach to fitness to practise.
- ii. Fitness to practise is about managing the risk that a nurse or midwife poses to patients or members of the public in the future. It isn’t about punishing people for past events.
- iii. We can best protect patients and members of the public by making final fitness to practise decisions swiftly and publishing the reasons openly.

² NMC Aims and principles for fitness to practise Reference

- iv. Employers should act first to deal with concerns about a nurse or midwife's practice, unless the risk to patients or the public is so serious that we need to take immediate action.
- v. We always take regulatory action when there is a risk to patient safety that is not being effectively managed by an employer.
- vi. We take account of the context in which the nurse or midwife was practising when deciding whether there is a risk to patient safety that requires us to take regulatory action.
- vii. We may not need to take regulatory action for a clinical mistake, even where there has been serious harm to a patient or service-user, if there is no longer a risk to patient safety and the nurse or midwife has been open about what went wrong and can demonstrate that they have learned from it.
- viii. Deliberately covering up when things go wrong seriously undermines patient safety and damages public trust in the professions. Restrictive regulatory action is likely to be required in such cases.
- ix. In cases about clinical practice, taking action solely to maintain public confidence or uphold standards is only likely to be needed if the regulatory concern can't be remedied.
- x. In cases that aren't about clinical practice, taking action to maintain public confidence or uphold standards is only likely to be needed if the concerns raise fundamental questions about the trustworthiness of a nurse or midwife as a professional.
- xi. Some regulatory concerns, particularly if they raise fundamental concerns about the nurse or midwife's professionalism, can't be remedied and require restrictive regulatory action.
- xii. Hearings best protect patients and members of the public by resolving central aspects of a case that we and the nurse or midwife don't agree on.

Information for applicants

13. Providers should set out the professional requirements of the course clearly in the information available to students at the application and induction stage. This should include any information about their character or health that the student will need to disclose when they apply or before they are able to go on a placement. This information may include:

- Whether the student has relevant previous convictions. Whether the conviction is relevant will depend on the course, and the nature of the conviction and when the conviction occurred.
- Any safeguarding concerns.
- Whether they have previously been found not fit to practise.
- Whether the student has a physical, mental or cognitive impairment or health condition that may be relevant to their ability to reach the necessary professional requirements.
- Any other health-related matters such as whether the student has had the necessary inoculations.

14. Providers should tell students where they can go for advice about what information they may need to disclose, and what are the possible consequences of not disclosing relevant information.

15. In some cases, a provider may be able to give a disabled student the support they need to achieve professional and academic standards, but that support may not be available in the workplace. The provider should explain to the student at the application stage that there is a risk they may not be able to practise their profession if that is the case.

Supporting the student to achieve fitness for practice

16. Providers have an important role in supporting students to achieve fitness for practice, in ensuring that students understand why the professional standards are important and what this means for them.
17. As well as giving students information about what they need to disclose when they apply, providers should, at an early stage, bring to students' attention the expected standards of behaviour, and the consequences of breaching those standards. This can be set out in codes of conduct, student charters, and the relevant professional body's guidance.
18. Providers should make sure that course structures incorporate opportunities for students to work through examples of fitness to practise issues, for example through role play, so that they are well equipped for practical placements.
19. Students are not expected to achieve all of the expected standards of professionalism and competence at the beginning of their studies. Some professional qualifications involve different levels of study, for example undergraduate and postgraduate levels. It is the responsibility of the provider to teach, train, mentor and support students towards the standards that apply at each level. The exception to this would be a student who is already registered as a member of a profession and is studying towards a further qualification in that field. Those students would be expected to maintain professional standards from the beginning of their course.

Health and disability issues

20. Sometimes fitness to practise concerns are related to the student's mental or physical health, or to a disability.
21. Providers should be aware of their duties under the Equality Act 2010 to make reasonable adjustments for disabled students in relation to a provision, criterion or practice other than a competence standard. A competence standard is defined

in the Equality Act as “an academic, medical or other standard applied for the purpose of determining whether a person has a particular level of competence or ability”³.

22. If the matter giving rise to the fitness to practise concern may be related to a student’s disability, the provider should consider whether the student requires additional support, and whether it should make reasonable adjustments to the way in which it is assessing the student. Providers should consider each case individually.

23. Providers should consider what evidence, if any, it requires from the student so that it can properly assess their fitness to practise and support them in their studies. This might include medical evidence and/or occupational health referral. Providers should support students in obtaining this evidence, for example, by directing to the appropriate expert and paying for the report where this is proportionate.

24. Most regulators now provide extensive guidance about health and disability issues, which may be relevant to the provider/student relationship. For example, the General Medical Council (GMC) and Medical Schools Council (MSC) publish professional behaviour and fitness to practise guidance, which says:

“In most cases, health conditions and disabilities do not affect a medical student’s fitness to practise, as long as the student:

- demonstrates appropriate insight
- seeks appropriate medical advice
- complies with treatment.

Medical schools must make adjustments, where possible, to allow a student to fulfil the core competencies of their course and enable them to study and work safely in a clinical environment.”⁴

25. A provider may be able to make adjustments to a student's learning and working environment to make it possible for that student to meet competence standards. The GMC's “Welcomed and valued” guidance provides practical suggestions to medical schools to make their courses more accessible to students.

³ Equality Act 2010 Part 5 Chapter 1 Qualifications Section 54

⁴ GMC and MSC Professional behaviour and fitness to practise: guidance for medical schools and their students

Examples of reasonable adjustments

Providers must make reasonable adjustments to the learning environment and to its assessment methods. (There is no requirement to make adjustments to competence standards.)

- Changes to the physical environment to improve access to facilities.
- Providing or allowing students to use assistive tools (such as a visual display stethoscope) or technology (such as dictation software).
- Adjustments to teaching and learning, including providing information in a variety of different formats.
- Adjustments to examinations and practical assessments, such as extra time or provision of a scribe.
- Additional training time when a student's health means they are unable to complete targets.
- Flexible training – reducing working hours on placement to allow a student with a disability to balance work and rest.

26. Although students have no general duty to a provider to disclose a disability, providers should ensure that they have a supportive environment, which encourages disclosure; and that students understand the need for insight into their condition.

CASE STUDY 1: Health and disability

A trainee teacher has anxiety and depression. The provider meets with the trainee to discuss what it can do to support them during their studies and while they are on placement in schools and a support plan is agreed.

The trainee has an anxiety attack at the school where they are on placement and the school sends them home. The provider meets with the student to discuss what has happened and to see whether there are any fitness to practise concerns about the student's health. The student says that their counsellor is helping them develop strategies for managing their anxiety. The provider agrees some additional support with the student and the school, and the student continues with their studies.

General Medical Council Guidance on considering health and disability issues⁵

The GMC says "Students with health conditions – in particular, those with mental health conditions – are often identified as having problems because they display unprofessional behaviour that is out of character, such as poor attendance or failure to engage with their studies. Medical schools should give their staff training to help them identify, at an early stage, students whose behaviour indicates an underlying health issue.

Medical schools can use low-level concerns processes to identify and support students with health conditions. They can also use their fitness to practise procedures where making adjustments and providing support have been tried without success. The fitness to practise process can help students by making sure they access the support that will enable them to complete their course.

⁵ GMC and MSC Professional behaviour and fitness to practise: guidance for medical schools and their students

When a student has a medical problem, it's important to consider their fitness to study – whether they are well enough to participate and engage in their programme.”

Good fitness to practise procedures

Straightforward language

27. Providers should write their regulations and procedures clearly and in straightforward language and make them accessible to students. Footnotes should be kept to a minimum and acronyms should be defined. Any links to information on external professional bodies' websites should be kept up to date.

Procedural fairness

28. Fair procedures follow the principles of “natural justice”. Providers should follow the principles of procedural fairness set out in the [Disciplinary Procedures section](#) of the Good Practice Framework when deciding whether the student has done what they are accused of doing. In fitness to practise procedures providers should be particularly mindful that:

- Students understand any allegations and/or concerns, and how they relate to the relevant professional standards and the student's fitness to practise;
- Reasons should be given for decisions reached and any conditions or sanctions applied;
- There should be a route of appeal; and
- The investigation, any hearing, and any appeal should be carried out as quickly as possible, consistent with fairness.

29. Where a decision has been made that a student's fitness to practise may be impaired, the fitness to practise process should normally involve a hearing before a specialist panel.
30. If the facts have not already been established (for example in criminal proceedings or disciplinary proceedings), the hearing should be a two-step process. The panel must first establish the facts and allow the student an opportunity to put their defence. Where appropriate, the provider should adhere to the steps and principles outlined in the [Disciplinary Procedures section](#) of the Good Practice Framework.
31. Once the facts giving rise to the fitness to practise concerns have been proven, either through a separate disciplinary procedure or a criminal conviction, or during the fitness to practise hearing, the panel will need to consider whether the established facts give rise to a genuine fitness to practise concern, and if so, what action should be taken.

Burden of proof

The "burden of proof" determines whose responsibility it is to prove an issue. In a fitness to practise case the burden of proof should be on the provider, that is, the provider must prove that the student has done what they are accused of doing. So, for example, if a student is accused of being rude to service users during a placement, it will be for the provider to produce evidence to prove this and explain how this impedes the student's fitness to practise.

Once a provider has produced evidence to prove an allegation, if the student disagrees, it will then be for them to rebut that evidence. Students will also need to prove any mitigating factors that they wish to rely on.

Standard of proof

The “standard of proof” is the level of proof required. In legal proceedings the standard of proof in criminal cases is normally “beyond reasonable doubt”, which is a very high standard. In civil cases it is normally “the balance of probabilities”, that is, it is more likely than not that something happened. Although the “balance of probabilities” standard is lower than “beyond reasonable doubt”, decisions must still be supported by evidence. The standard is higher than simply believing that something is likely to have happened.

Section 112 of the Health and Social Care Act 2008 says that the civil standard of proof must be used in fitness to practise procedures for healthcare students.

A provider’s regulations should explain clearly the standard of proof required in fitness to practise cases but, if they do not, it is reasonable to assume that it is “balance of probabilities”.

If a provider sets the criminal standard of proof “beyond reasonable doubt” in their fitness to practise procedures it must ensure this standard is applied in practice.

Confidentiality and anonymity

32. Providers should have regard to their obligations under data protection legislation regarding sensitive personal information, or “special category data”. Information about students who are subject to fitness to practise proceedings should be kept confidential as far as possible. The information should be disclosed to as few people as possible, and only to those involved in investigating or deciding the matter. Sensitive information should not be disclosed to panel members until their membership has been confirmed (so that the student has had an opportunity to object to a panel member before they have seen the sensitive information).

33. It is not normally appropriate to keep the identity of witnesses secret during fitness to practise proceedings. To do so may undermine the student's ability to respond. Witnesses who are giving their professional opinion are not expected to be anonymous. If the witness does not agree to the student knowing their identity it may not be appropriate to rely on their evidence. However, where evidence comes from service users during a practice placement, the placement provider will need to protect the confidentiality of service users, particularly where those service users are children or vulnerable adults. In these cases, the provider should obtain as much information and evidence from the placement provider as possible. This may include a summary of allegations made by service users, or anonymised witness statements.

Timeliness

34. Fitness to practise proceedings can be particularly stressful for students, and the outcomes can have serious consequences for their studies and future careers. It is therefore particularly important that the investigations, hearings and appeals are conducted as quickly as possible, consistent with fairness. It is good practice where possible:

- to tell the student that fitness to practise concerns have been raised as soon as possible;
- to complete the entire process, including any appeal, within 90 days of the concerns being notified to the student. This should include the time taken to conduct any prior disciplinary proceedings. In such cases the fitness to practise process will not need to prove facts, allowing for proceedings to be concluded swiftly.

35. Delays are likely to occur where the case is complex, the student or witnesses are not available to attend meetings or hearings, or where proceedings are put on hold because of a criminal investigation or the student's impending assessments. Providers may also sometimes find it difficult to convene a panel with the right professional involvement. In those cases, the provider should keep the student and any witnesses informed about the progress of the investigation,

and when it is likely to conclude.

Support and representation

36. Providers should direct students who are going through fitness to practise procedures to the support services available, for example the students' union, or relevant professional trade unions, which can provide independent support and advice. It is good practice to give students access to support and advice and, where it is not practicable to do so internally, providers should consider arranging for students to access support services at neighbouring institutions, partner providers or other local community services.

37. Students who have access to well-trained and resourced student support services will not normally need to seek legal advice, although they may wish to in serious cases. It is good practice for providers to permit legal representation in complex cases, or where the consequences for the student are potentially very serious. Most professional regulators permit legal representation when dealing with fitness to practise issues for practitioners.

CASE STUDY 2: Representation

A second-year social work student is asked to attend a fitness to practise panel hearing because of concerns about her relationship with a service user. The student denies the impropriety and asks the provider for permission to bring a legal representative to the hearing. The student explains that she is already a qualified nurse, and that a finding that she is unfit to practise could have serious consequences, not just for her future on the social work programme, but on her career as a nurse. The provider allows the student to be legally represented.

Reasonable adjustments to the process

38. It is good practice to ensure that procedures are available to all students in accessible formats. Providers should consider in each case whether to make reasonable adjustments to procedures to take account of the individual needs of students. It is good practice to keep a record of any adjustments made. In fitness to practise procedures, providers may need to make adjustments for hearings, or allow a student longer to respond to allegations.
39. In some cases, the student may not be well enough to go through a fitness to practise process. In those cases, the provider should offer the student time away from their studies until their health is improved. The provider should explain to the student that the fitness to practise process will recommence when the student is ready to return.
40. Providers should tell students who have mental health difficulties about the specific support services available to them, for example counselling services and, where appropriate, services external to the provider.

Relationship with other procedures

41. It is important to remember that fitness to practise concerns can arise from disciplinary or misconduct issues, or from health-related or disability issues, and different procedures may apply in each case. Providers must explain how their procedures relate to each other and set out clearly how the different processes will be followed and in what order.
42. *Fitness to practise* is not *disciplinary* in nature and is distinct from *fitness to study* (or support for study) processes. A disciplinary matter might lead to fitness to practise procedures if the behaviour that led to disciplinary action against the student calls into question the student's fitness to practise. The [Disciplinary](#)

[Procedures section](#) of the Good Practice Framework sets out principles of procedural fairness for disciplinary proceedings.

CASE STUDY 3: Academic misconduct and fitness to practise

A first-year law student was accused of plagiarising an assessment. They were told that academic misconduct may give rise to concerns about a student's fitness to practise. At the end of the disciplinary process, the student was found to have plagiarised the work but that this was because they had not properly understood and followed guidance on avoiding plagiarism. The student was given a mark of zero, but they were allowed to resubmit the assessment for a capped mark.

The provider then wrote to the student to say that it was investigating the fitness to practise concerns. After a meeting with the student, the provider decided that the student had not been deliberately dishonest, and that there were no concerns about their fitness to practise. The provider explained this to the student and kept a record of the process and the outcome on the student's file.

Fitness to Study

43. Fitness to *study*, or support for study processes apply to all students not just to those on professional courses and relate to a student's well-being. If a student's health or well-being causes the provider concern about that student's ability to study on their programme, the provider may take action under its fitness to study procedures. This may arise where, for example, the provider has concerns that the student poses a risk to their own health or safety or that of other people (at the provider or placement provider) or the student's behaviour is affecting the learning experience of other students.

44. Fitness to study procedures are separate to fitness to practise procedures but a student may sometimes be taken through both sets of procedures. Providers

should ensure that students understand the process or processes that will be followed.

CASE STUDY 4: Fitness to study and fitness to practise

A veterinary student suffered a deterioration of an existing mental health condition. Fellow students reported that the student had been behaving erratically and had talked about harming themselves. The provider was concerned about the student's well-being and took steps under its fitness to study process. At the end of that process the student agreed to suspend their studies so that they could get treatment and recover their health. The provider explained that it would need to make sure that the student was fit to practise when they were ready to return.

When the student returned, the provider started a fitness to practise investigation to see whether the student had taken responsibility for their own health, and whether they had recognised that their health might affect their ability to practise safely and effectively.

The provider decided that the student had been aware that their health was deteriorating and had contacted their GP before the fitness to study referral. They had shown insight into their health and had also reacted positively to the fitness to study intervention, getting treatment and support during their period of suspension. There was no suggestion that the student had done anything unsafe. It concluded that the student was fit to practise and could return to their studies.

Behaviour that amounts to a criminal offence

45. If the police or courts are involved, providers should normally await the outcome of those proceedings before conducting an internal investigation. The provider should keep in touch with the student(s) involved, and with the police during this

process. The provider may need to take some form of temporary action against the student, in order to protect other students, staff members and service users. For example, a student may be suspended, or temporarily withdrawn from their placement. Providers should consider each case individually, weighing up the risk to others against the potential disadvantage to the student of a potentially lengthy suspension while the criminal investigation proceeds.

46. Where a student is acquitted of a criminal offence, or where the criminal investigation has been dropped, the provider may still take action under its disciplinary and/or fitness to practise process.

47. If the student is convicted of a criminal offence, the role of the fitness to practise panel is to determine whether what the student has done impairs their fitness to practise.

CASE STUDY 5: Criminal proceedings and fitness to practise

A student social worker was formally charged with a violent offence. The provider suspended the student from practical placements during the police investigation and subsequent court case. The student was permitted to continue attending academic teaching.

The student pleaded not guilty, but was subsequently found guilty of the offence and given a suspended sentence. The provider then commenced fitness to practise proceedings.

The student continued to deny that they had committed the offence. The fitness to practise panel did not rehear the allegation but took as its starting point the student's criminal conviction for the offence. Its role was to decide whether what the student had done impaired their fitness to practise. The panel decided that the nature of the offence meant that it was not appropriate for the student to work with vulnerable adults. It therefore decided that the student was not fit to practise and terminated their place on the programme.

Placements

48. Concerns about a student's fitness to practise often first arise during practical placements in a professional setting, for example in a school or hospital, when students interact with the public. Providers should have clear processes in place to allow for any concerns to be brought to their attention in a timely manner.
49. Placements may have internal disciplinary and fitness to practise processes which apply to students as well as staff. The provider should do its best to ensure that the placement process is fair and timely, and should support the student through the placement's internal processes. If the placement's internal process raises fitness to practise concerns the provider should consider these under its own processes.
50. Where a placement is suspended or terminated because of concerns about the student's fitness to practise the provider should carry out its own investigation into events giving rise to the termination. Where possible it should obtain witness statements from staff at the placement which the student can comment on. In some cases, it may be appropriate to ask placement staff to attend a fitness to practise hearing.
51. It is reasonable for the provider to attach significant weight to the professional opinion of staff at the placement. But it should also listen to the student's account of what happened on the placement and investigate any factual disputes or allegations that the student has not been treated fairly.
52. If the student has been through a formal disciplinary process at the placement then it is reasonable for the provider to take the conclusions of that process as a starting point for its own fitness to practise process.
53. If the provider decides that the student should be allowed to continue with their

studies (with appropriate support in place) it may not be possible for the student to return to the same placement because the relationship has broken down. In that case every effort should be made to find other placement opportunities for the student.

54. Providers should take care to distinguish between a student's failure to achieve the standard necessary to pass the placement, and a student's fitness to practise. A student who fails to achieve the necessary standards might expect an opportunity to extend the placement or repeat it so that they can improve their practice. A student who is found to be unfit to practise will not be able to continue unless the provider agrees supportive improvement measures to give the student an opportunity to remedy the issues identified with their practice.

CASE STUDY 6: Placements

A trainee teacher was on a placement in a school. The placement school had some safeguarding concerns about the trainee's practice. The school immediately terminated the placement and reported the matter to the Local Authority Designated Officer (LADO). The LADO investigated the concerns and concluded that they were "Substantiated". During the LADO investigation the trainee was allowed to attend lectures at the provider but was not allowed to go on a practical placement.

At the end of the LADO investigation, the provider started fitness to practise proceedings. The trainee's case was considered by a fitness to practise panel. The panel did not reinvestigate the concerns, but considered whether the LADO's decision meant that the trainee was not fit to practise. The panel decided that the concerns identified by the placement school and subsequent LADO investigation were so serious that the trainee's behaviour was fundamentally incompatible with being a teacher. The panel concluded that the trainee was not fit to practise and terminated their place on the programme.

Professional judgment

55. The question of whether the student is fit to practise in a particular occupation is often a question which can only be answered by someone with specialist knowledge of that profession. That conclusion would be a professional judgment.
56. A panel exercising professional judgment must do so on the basis of sound evidence. For example, where staff at a placement say that a student's behaviour is unprofessional, the panel should consider witness evidence and placement records to see whether they support the allegations against the student.
57. In some cases, the decision about whether the student is fit to practise will not require professional judgment, for example, where the student is imprisoned for a violent offence.

Record keeping

58. Providers should ensure that they keep proportionate records of fitness to practise proceedings and outcomes. Records should be kept even when the proceedings do not result in any action being taken against the student. This is because behaviour or concerns that are not considered serious enough to warrant any action may be relevant in subsequent proceedings if the student's behaviour recurs or other concerns are raised. It is good practice to keep a record even if the student is completely exonerated in case a dispute later arises about the proceedings or outcome. Providers should have clear policies that set out how long such records will be kept, and under what circumstances they might be disclosed to other bodies.
59. The provider should explain to the student what record has been kept and for what purpose.

The process

Preliminary stage / Cause for concern

60. It is good practice for providers to have a preliminary stage or a “Cause for Concern” procedure. This stage of the procedure is intended to be developmental and supportive. It gives the student the opportunity to improve their practice or approach.
61. Providers should agree with the student supportive improvement measures, which should be set out in an action plan along with associated timescales for improvement. Providers should make it clear to students what the next steps are if they do not meet the improvements outlined in the action plan.
62. Students need to be able to demonstrate that they have the necessary insight into their behaviour or issues giving rise to concerns about their fitness to practise. Providers may ask the student to complete a piece of work to reflect on their practice. Providers should make it clear to the student what the purpose of this work is, how it will be assessed, and what will be the consequences if the student does not complete it to a satisfactory standard.
63. It is good practice to tell the student that concerns have been raised about their practise or behaviour even if the provider decides to take no action.
64. A provider may sometimes bypass the “Cause for Concern” procedures if the issue giving rise to the fitness to practise concern is sufficiently serious. This may be appropriate for example if the student has harmed or risks harming others, or if fitness to practise concerns have arisen following a criminal conviction. It may also be appropriate to move to the more formal stages of the procedure if the student disputes the events or behaviour giving rise to the cause for concern. This is to ensure that the student has a fair opportunity to present their case.

When immediate action is required during a fitness to practise investigation

65. Where a student may be a danger to themselves or others, providers have a responsibility to do what they can to protect their students, staff, service users at practice placements, and members of the public. In some cases, the provider may need to take immediate action, particularly where a student is undertaking a practice placement. These may include, but are not limited to:

- Cases involving a threat of serious harm to the student and/or others
- Cases involving gross misconduct/serious incidences of unprofessional behaviour
- Cases where a student has demonstrated unsafe practice
- Cases where the student's mental health is at risk
- Cases raising serious safeguarding concerns.

66. Fitness to practise procedures should set out what action a provider can take and in what circumstances and who has the authority to decide this.

Examples might include temporarily removing a student from placement but allowing them to continue to attend academic teaching; limiting access to the provider's services; or a period of temporary suspension.

67. The [Disciplinary Procedure section](#) of the Good Practice framework provides further good practice guidance for providers when taking such action.

The formal stage

68. The procedures followed should be proportionate to the nature and complexity of the issues raised, and potential consequences for the student.

Formal stage investigations

69. Where a student's fitness to practise is being considered because of previous findings under a disciplinary procedure, or as a result of a criminal conviction, a formal investigation of the facts is generally not necessary or required.

70. The provider will need to conduct an investigation where the facts of the case have not yet been established. Or where further information is needed about the effects of the matter giving rise to concern on the student's fitness for practice. In those cases, the investigation should be carried out by a member of staff who has had no previous involvement in the case. Staff members charged with investigating fitness to practise concerns should be properly trained, resourced and supported.

71. The investigator should meet with the student and they should do so at the earliest opportunity. The student should be given notice of the meeting and provided with sufficient information to allow them to respond to the concern(s), and a copy of the relevant procedure at that time. The student should also be told how to access advice and support, and who can accompany them to the meeting. It is good practice to provide the student with a note of the meeting, but it will not normally need to be a full transcript.

72. It is essential to be clear about exactly what is being investigated and how it applies to the relevant professional standards, to ensure that both the staff member and student understand the purpose and scope of the investigation and the possible outcomes. The member of staff investigating the case may talk to staff at the provider, staff at the placement, and/or other students. They will also consider documents and other evidence.

73. The staff member should produce a report based on their investigations which outlines the process followed, the information gathered, and their conclusions. The student or their representative should receive copies of the information obtained during the investigation, a copy of the investigation report and information about the next steps in the process. The student should also be told who they can contact with any queries about the progress of the case.

74. Where the investigator concludes that the student's fitness to practise may be impaired, the matter should be referred to a fitness to practise panel hearing. The investigator may present the case to the panel but should not be involved in

the panel's decision making.

Fitness to practise panel hearings

75. It is good practice to hold a hearing or meeting with a specialist panel because of the serious potential consequences of fitness to practise proceedings for a student. This is particularly important where there are questions of fact to be decided.

76. The role of the panel will differ depending on whether the facts of the case have already been established (for example in criminal proceedings or disciplinary proceedings). Where the fitness to practise concerns relate to something that has not been proven, the panel must first establish the facts and allow the student an opportunity to put their case. The provider should, during this stage of the process, follow the [Disciplinary Procedures section](#) of the Good Practice Framework.

77. Once any disputed facts have been decided, either through a separate disciplinary procedure or criminal proceedings, or by the fitness to practise panel, the role of the panel will be to consider whether the established facts give rise to a genuine fitness to practise concern, and if so, what action should be taken.

78. All panel members should be properly trained so that they have a clear understanding of the process, the remit of the panel, the possible outcomes, relevant professional requirements and equalities legislation. The panel should include at least one professional with relevant expertise in fitness to practise issues. Some professional regulators require providers to run fitness to practise panels in a certain way. The General Dental Council, for example, requires a registered dental practitioner to be on the panel and makes other suggestions for the composition of the panel. It also lays down requirements for an appeal mechanism.

79. The procedures should set out:

- Who may sit on a panel and who may chair it;
- What would happen if the panel members are unable to agree;
- That the student can be accompanied and/or be represented and by whom;
- Whether the student is permitted to attend the hearing or meeting by alternative means (for example by video call);
- Whether the hearing or meeting will proceed if the student chooses not to or is unable to attend;
- The process for rearranging the date of the hearing or meeting if the student or other witness is unable to attend for good reason;
- Who may attend the hearing or meeting and in what capacity;
- Whether the panel may seek support from legal advisers or other external people.

80. The procedures should also set out that, where the panel has to decide disputed facts:

- The student may call witnesses;
- Whether other witnesses may be called and whether the student may ask them questions directly or through the panel's chair;
- Whether any witnesses may attend by alternative means (for example by video call).

81. The hearing or meeting should be arranged promptly, and the student should be given adequate notice of it. This includes informing the student of the purpose of the meeting or hearing; of their right to attend; how to access advice and support; their right to be accompanied and/or represented and what role any representative or companion is permitted to play in the hearing or meeting. If the student is permitted to attend the hearing or meeting by alternative means (for example by video call) the provider should explain how it will arrange and facilitate this.

82. It is essential to provide the student in advance with information about who will be on the panel and who will attend and what their role will be. Students must also be given a copy of the information to be considered before the hearing.
83. Fairness requires panels to be free of any bias or any reasonable perception of bias. In the context of a fitness to practise process, a perception of bias might arise where the student has a close relationship with a panel member, or the student has made a formal complaint about a panel member. In fitness to practise proceedings, panel members are more likely to know the student involved because it may be necessary to involve staff members with expertise of the profession and the course. However, the provider must ensure a balance of panel members and those members should have had no previous involvement in the fitness to practise concerns. The panel should include some members who are completely independent and providers may need to invite staff from other institutions. The student should have the right to object to a panel member before information about their case has been disclosed to panel members.
84. The cultural mix or diversity of the panel may be a relevant consideration in some cases and is important to reduce the risk of unconscious bias. The provider needs to consider the constitution of panels and take steps to ensure that those responsible for reaching a decision come to the matter afresh and are properly trained, resourced and supported.
85. Fitness to practise procedures are internal to a provider and should not be unduly formal. It will not normally be necessary for a student or the provider to be legally represented at a fitness to practise hearing, but it is good practice for the procedures to permit this where there are good reasons.
86. A written record should be kept of any meeting or hearing, setting out who attended, a brief outline of the proceedings, and the reasons for the decisions taken, including the outcome and/or any conditions or sanctions applied. The reasons given should be sufficiently detailed to enable the student to understand the rationale for the decision. It is not normally necessary to make an oral

recording or full transcript of the meeting or hearing, but it may be helpful to do so, particularly where the case is complex, or there is a significant factual dispute.

CASE STUDY 7: Fitness to practise procedures

A nursing student is accused of falsifying their attendance records while on placement. The provider writes to the student inviting them to a meeting with their personal tutor and the Head of Department. The letter sets out the allegation and how it relates to the standards for pre-registration nurses, and explains the fitness to practise process. The letter tells the student where they can get support, and that they can bring someone to the meeting.

The student denies the allegation at first, but then accepts that they copied their placement mentor's signatures onto the placement record on some days when they had forgotten to get the mentor to sign it. The student shows that they did attend the placement on those dates.

The provider asks the student to write a reflective assignment to show what they have learned from the experience and the student does that. The provider does not think that the student's reflective assignment shows that the student has enough insight into what they have done and why it was wrong.

The provider tells the student that there will be a panel hearing to consider whether they are fit to practise. The provider writes to the student setting out the process for the hearing, who will be on the panel, who will attend, and who the student can bring with them.

Relevance of previous misconduct or fitness to practise findings

87. It is reasonable for a panel to consider a student's previous disciplinary and fitness to practise record and, if relevant, their health record, when determining their overall fitness to practise.

CASE STUDY 8: Previous fitness to practise concerns

At a fitness to practise hearing, a panel decides that a fourth-year medical student has behaved unprofessionally towards patients whilst on a placement. The panel hears that the student also behaved unprofessionally towards colleagues during two placements in their third year. The earlier incidents had resulted in the student being given a written warning and an opportunity to demonstrate an improvement in their behaviour. The fitness to practise panel decides that the student has not addressed concerns about their behaviour or shown any insight. The cumulative effect of the three separate incidents mean that the student is not fit to practise and they are permanently excluded from the programme.

Outcomes and conditions or sanctions imposed by fitness to practise panels

88. A finding that a student is not fit to practise is different from a finding of misconduct. A finding of misconduct under a disciplinary process may attract a range of penalties whereas a finding that a student is not fit to practise may result in the student being removed from their course, with little chance that they will be able to train elsewhere. Providers may sometimes suspend students for a period, or put in place a series of supportive improvement measures to give students an opportunity to remedy the issues identified and demonstrate fitness to practise.

89. Where a provider puts in place conditions that the student needs to meet, those

conditions should be carefully explained to the student, proportionate and with a clear and measurable outcome. If the measures are related to the student's health the provider should tell the student what evidence they will need, for example a satisfactory occupational health report, before they can resume their studies.

90. The decision as to what action to take when a student's fitness to practise is found to be impaired will usually require professional judgment. The panel should explain the reasons for the action or actions it has decided to take, especially in cases where the action has serious consequences and may prevent the student from commencing their intended career.

91. It is good practice for the panel to consider each possible sanction, starting at the least severe, before reaching a decision about what action it should take. Sanctions are not intended to punish the student, but should be applied proportionately where there is a need to protect the public or preserve public confidence in the profession. Providers have a responsibility to explain why a particular sanction has been chosen for a fitness to practise case. This includes why lesser sanctions are not deemed appropriate and/or why remedial action is not considered to be possible, and how the sanction relates to the relevant professional requirements.

92. The panel should also consider mitigating and aggravating factors, such as the level of insight the student has demonstrated, evidence of good practice, personal circumstances and previous disciplinary concerns or patterns of behaviour. The student should be given the opportunity to put forward any mitigating factors before the panel decides what action it should take.

93. If the provider concludes that the student is currently unfit to practise, but that they may become fit to practise in the future, it should explain to the student what steps they may be able to take to resume their studies.

94. The provider may have to report to the professional body or regulator that the student has been withdrawn from their course because they are not fit to practise. The provider should explain this to the student, and whether the outcome will also need to be disclosed by the student when applying for other regulated courses.

95. In the final stages of professional training, standards of behaviour for students are often measured against what would be expected of a newly qualified professional. [The NMC's online Fitness to Practise Library](#) provides some useful guidance about decision-making factors in fitness to practise cases for qualified professionals.

CASE STUDY 9: Sanction

Concerns are raised about the behaviour of a student on a Postgraduate Certificate in Education (PGCE). Staff at a school practice placement say that the student lost their temper and shouted at children at the school several times over the previous month. The student admits to this, but explains that they were behaving out of character because they were unwell.

The student provides evidence that they have recently encountered some difficult personal circumstances and are receiving treatment for anxiety and depression.

The Panel decides that the student's fitness to practise is impaired and decides to suspend the student for one year, to enable them to receive treatment. This is because the mitigating circumstances do not excuse the behaviour, but do indicate that the student may not be permanently unfit to practise as a teacher. The panel applies conditions to the student's return, including that they must obtain medical evidence showing that they are well enough to resume their studies, and the student will have a period of close monitoring whilst on placement to ensure that the behaviour is not repeated.

Concluding the formal stage

96. The provider should write to the student setting out the outcome of the formal stage, giving a clear explanation of, and setting out the reasons for its decision and any conditions in straightforward language. This will help the student decide whether to appeal.

97. The decision letter should also give information about:

- the student's right to appeal;
- the grounds on which they can do so;
- the time limit for submitting an appeal;
- the appropriate procedure; and
- where and how to access support.

98. If the student does not appeal within the time limit for doing so, the provider should close the matter and notify the student in writing. It is good practice to issue a Completion of Procedures Letter at this stage if the student asks the provider to do so, but the letter should explain that the student has not completed the provider's internal processes. The OIA publishes guidance on issuing Completion of Procedures Letters.⁶

The appeal stage

99. The student should be permitted to appeal against a fitness to practise decision. The appeal should normally be considered by an appeal panel, consisting of members who have not been involved at any previous stage. The appeal panel should include at least one member of the relevant profession. Providers can require a student (or their representative) to submit an appeal in writing, by email

⁶ OIA Completion of Procedures guidance

or online by completing the appropriate form.

100. The appeal stage may involve a review of the formal stage, or a complete rehearing of the case. It is good practice to set out the grounds on which a student may appeal. Those grounds might include:

- That the procedures were not followed properly;
- That the decision maker(s) reached an unreasonable decision;
- That the student has new material evidence that they were unable, for valid reasons, to provide earlier in the process;
- That there is bias or reasonable perception of bias during the procedure;
- That the sanction imposed was disproportionate, or not permitted under the procedures.

101. It is important to be clear about the remit of an appeal to ensure that students understand the purpose and scope. If the student's expectations appear to exceed the scope of the appeal stage, the provider should explain this to the student as soon as possible in writing so that they understand the possible outcomes. The procedures should say whether the appeal panel can overturn the outcome of the formal stage and substitute its own decision, or whether the matter needs to be referred back to the formal stage for reconsideration. The [Disciplinary Procedure section](#) of the Good Practice framework provides further good practice guidance for providers.

102. Students should be given information about how to access support and advice during the appeal process.

Concluding the appeal stage

103. If the appeal is not upheld, or is not permitted to proceed under the grounds of appeal, a Completion of Procedures Letter should be sent to the student within

28 days.⁷ This should include, or be accompanied by, an explanation of the decision reached and the reasons for it, in straightforward language. This will help the student decide whether to pursue the matter further.

104. The decision should also advise the student about:

- Their right to submit a complaint to the OIA for review;
- The time limit for doing so;
- Where and how to access advice and support, especially where the provider has set conditions that the student must meet before they can continue with their studies.

105. The time limit for bringing a complaint to the OIA is 12 months. It is good practice to tell the student any reasons why they should bring the matter to the OIA promptly. For example, learning may become out of date, or placements may be difficult to find.

106. Where an appeal is upheld, the provider should provide the student with a written outcome that explains what action the provider will take. It is good practice to issue a Completion of Procedures Letter if requested by the student. If the outcome involves referring the case back to the formal stage for reconsideration, it is good practice to ensure that reconsideration is concluded as soon as possible and, where practicable, within the 90 calendar days timeframe.

Independent external review (OIA)

107. Once the appeal stage has been completed, the student is entitled to ask the OIA, the independent ombudsman service, to review their complaint about the outcome of the provider's fitness to practise process. The complaint needs to be submitted to the OIA within 12 months of the date of the Completion of Procedures letter.

⁷ OIA Completion of Procedures guidance

Useful resources and footnote document references

Disability Rights advice sheet:

<https://www.disabilityrightsuk.org/making-complaint>

Information Commissioner's Office Guide to the GDPR:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

OIA Guidance Note regarding Completion of Procedures Letters:

<http://www.oiahe.org.uk/media/100365/oia-guidance-note-may-2016.pdf>

Universities UK How to handle alleged student misconduct which may also constitute a criminal offence:

<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/guidance-for-higher-education-institutions.pdf>

Supporting medical students with mental health conditions

<https://www.gmc-uk.org/education/standards-guidance-and-curricula/guidance/supporting-medical-students-with-mental-health-conditions>

NMC's online Fitness to Practise Library:

<https://www.nmc.org.uk/ftp-library/>

The GMC's Welcomed and valued: Supporting disabled learners in medical education and training

<https://www.gmc-uk.org/education/standards-guidance-and-curricula/guidance/welcomed-and-valued/welcomed-and-valued-supporting-disabled-learners-in-medical-education-and-training>

GMC and MSC Professional behaviour and fitness to practise: guidance for medical schools and their students

https://www.gmc-uk.org/-/media/documents/professional-behaviour-and-fitness-to-practise-0816_pdf-66085925.pdf

RCVS Code of Professional Conduct for Veterinary Surgeons

<https://www.rcvs.org.uk/setting-standards/advice-and-guidance/code-of-professional-conduct-for-veterinary-surgeons/>

HCPC Health & Care Professional Council – Fitness to practise

<https://www.hcpc-uk.org/concerns/what-we-investigate/fitness-to-practise/>

NMC Aims and principles for fitness to practise Reference: FTP-1

<https://www.nmc.org.uk/ftp-library/understanding-fitness-to-practise/using-fitness-to-practise/>

Equality Act 2010