General Chiropractic Council

# Investigating Committee Decision-Making Guidance

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# Investigating Committee Decision-Making Guidance

## Introduction

This Guidance document sets out the statutory duties and regulatory function of the Investigating Committee (IC) in accordance with the Chiropractors Act 1994 (the Act) and the GCC's (Investigating Committee) Rules Order of Council 2000 (the IC Rules).

The IC's role is performed in private. The guidance has been designed to ensure that the IC decision making is more fully understood by all parties involved in a fitness to practise investigation, which in turn will enhance the transparency of our procedures.

The GCC is the statutory regulator of the chiropractic profession in the UK. Its functions are set out in the Act.

The Health and Social Care (Safety and Quality) Act 2015 introduced the same overarching objective for all of the statutory regulators of health and care professionals in the UK. That overarching objective is the protection of the public. The 2015 Act states that the pursuit of protection of the public involves the pursuit of the following:

a) to protect, promote and maintain the health, safety and well-being of the public;
b) to promote and maintain public confidence in the profession of chiropractic;
c) to promote and maintain proper professional standards and conduct for members of the chiropractic profession.

Please see paragraphs 61-64 regarding the public interest. This Guidance has been produced to facilitate both the quality and consistency of the IC decision-making when determining whether there is a case for the chiropractor (Registrant) to answer. In achieving these objectives, the Guidance has been designed to provide a framework for decision-making by the IC but **does not** impact on the IC's independence as a decision maker .

## Equality and Diversity Statement

The GCC is listed in the Equality Act 2010 as a public authority and so must have due regard to the need to:

a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
b) advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The public sector equality duty applies to the GCC in relation to the exercise of its public functions[1].

[1] The GCC's published equality scheme can be found on the website – see https://www.gccuk.org/about-us/equality-and-diversity/

## Chiropractors with disabilities

The GCC is under a duty to make reasonable adjustments for chiropractors with disabilities.

## Investigating Committee Constitution

1. The constitution of the IC is governed by the General Chiropractic Council (Constitution of the Statutory Committees) (Amendment) Rules Order of Council 2009.

2. The quorum[2] for an IC meeting is three members, including at least:

    - one registrant;
    - one lay person (those who are not and never have been chiropractors);
    - one lay member appointed by the GCC to act as an IC panel chair (that person may also fulfil the requirement for the panel to include a lay person).

3. A Legal Assessor attends the IC meeting to advise the IC panel on matters of law but otherwise plays no role in the IC's decision making.

## Overview of the function of the Investigating Committee

4. Section 20(9)(c) of the Act establishes the function of the IC. The IC is to investigate any allegation referred to it and to consider in the light of the information which it has been able to obtain and any observations made to it by the registered chiropractor concerned, whether in its opinion, there is a case to answer[3].

5. The IC is not a fact finding committee and must only decide whether, in its opinion, there is a case to answer based on an assessment of the evidence and information placed before it.

6. The IC meets in private and its discussions are confidential. The registrant and complainant do not attend the IC meeting nor are they represented at the meeting.

7. Following the consideration of a case the IC can issue one of the outcomes below:

    - adjourn consideration of the allegation, either for further enquiries to be undertaken, or for another reason;
    - decide that there is a case to answer before the Practice Committee (Professional Conduct Committee (PCC) or Health Committee (HC) and, if so, which one;
    - decide that there is no case to answer and close the case.

[2] See Rule 5(4) of the 2009 Rules as amended

[3] Chiropractors Act 1994 (the Act), section 20(9)(c)

## Conflict of Interest and Bias

8. The concept of natural justice applies to IC meetings, and the Committee must therefore be mindful of ensuring fairness in its decision making at all times.

9. Proceedings may be considered unfair where there is either actual bias, or a real potential for bias or where there is the appearance or perception of bias. The test for whether apparent bias is present relies on an evaluation of whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased.

10. Examples of potential conflicts include:

    - close personal or professional relationship with any of the parties connected with the case, where this relationship may affect the member's ability to consider the allegation fairly and impartially;
    - financial or personal interest in the outcome of a matter;
    - previous acrimonious personal dealings with one of the parties ;
    - being active (for example, by making statements, writing articles or being a representative) in an organisation, which has declared a particular stance on an issue under consideration by the Committee.

11. IC members are provided in advance of IC meetings with a list of registrants and complainants in order to be able to declare any actual or potential conflicts of interest.

12. Where an IC member has previously considered other allegations against the registrant (or is otherwise aware of previous fitness to practise history in respect of the registrant), this does not, in itself, create a potential conflict of interest. Nor does the fact that that IC member has been part of an IC panel considering an application for an interim suspension order in respect of the allegation. However, potential conflicts of interests may, on occasion, arise in these situations, depending on the individual circumstances of the case.

13. The fact that an IC member has been part of an IC panel which referred the case for consideration at an interim order hearing does not, of itself, create a potential conflict of interest when that same IC member then sits as part of the panel at the interim order hearing.

## Registrant's observations

14. The registrant will be given an opportunity to comment on the material to be considered by the IC. Prior to considering a matter, the IC will ensure that the registrant has had such an opportunity to comment in accordance with the IC Rules.

15. The IC must consider any evidence provided by the registrant before determining whether there is a case to answer. If the registrant has not provided evidence by the deadline but the information is received – the day before, or on the morning of the meeting before the IC considers the case – it is at the discretion of the IC whether to include this information or not. Either way, this should be specifically referenced in the IC's written decision.

16. For reasons of fairness the IC should not consider any evidence which has not been disclosed to the registrant prior to the IC meeting. If necessary, the IC may adjourn to allow time for the Registrant to comment on any new material.

## Investigating Committee Decisions

17. The function of the IC panel is to investigate any allegation made or referred to it and determine whether there is **a case to answer**.

18. The IC essentially has a filtering role, to ensure that only those allegations that are capable of being found proved ("well-founded") by a Practice Committee (i.e. where there is a "case to answer") are referred forwards for a hearing.

### Deciding "case to answer" on the facts

19. The IC must first consider whether there is a case to answer in relation to each alleged fact or area of concern. The question for the IC at this stage is: Is there evidence which, taken at its highest, could lead a Practice Committee (PCC/HC) to find the matter proved on the balance of probabilities?

20. The IC should keep in mind, when applying the case to answer test to the alleged facts, that if the allegation is referred to a Practice Committee, the burden of proving the allegation (on the balance of probabilities) will fall on the GCC. In order to discharge the burden of proof to the balance of probabilities standard, the GCC will need to satisfy the Practice Committee that it is more likely than not that the alleged facts occurred.

21. The IC panels should not seek to resolve conflicts of evidence because IC panels do not hear live witness evidence and therefore have no opportunity to ask questions or to assess witnesses' credibility. The IC has no power to make substantive findings on the alleged facts, and should not use language in its decision or reasoning which suggests it has sought to do so.

22. If the IC answers "no" to the question at paragraph 19, there is no case to answer. In circumstances where no case to answer is found in relation to all of the alleged facts, the IC cannot refer the allegation to a Practice Committee. See paragraphs 68-75.

23. If the IC finds that there is a case to answer on any of the alleged facts, it must then consider whether or not there is a case to answer in relation to the allegation as a whole (i.e., the allegation of Unacceptable Professional Conduct (UPC), Professional Incompetence (PI), conviction, or impairment due to ill health).

### Deciding "case to answer" on UPC, PI or current health impairment

24. The question for the IC at this stage is: Is there evidence which, taken at its highest, could lead a Practice Committee to make a finding of UPC, PI or impairment by reason of physical and/or mental condition?

25. There is no burden or standard of proof for such issues – they will be matters for the Practice Committee's professional judgment, if the allegation is referred.

26. In considering whether or not there is a case to answer in respect of UPC or PI, the IC will be assisted by considering the GCC's Standards of Performance, Conduct and Ethics (the Code) that was in force at the time of the matters alleged, but will recognise that a failure to comply with the Code does not of itself give rise to UPC or PI and that not every breach of the Code will amount to UPC or PI.

*Unacceptable Professional Conduct (UPC)*

27. UPC is conduct which falls short of the standard of a registered chiropractor. The standards of conduct and practice expected of a registered chiropractor are contained in the Code. The Code contains the standards that chiropractors must meet if they wish to join and remain on our register, and call themselves a chiropractor in the UK and it will be used as a guide when determining UPC.

28. When exercising its judgement as to whether the facts found proved amount to UPC, the IC should have regard[4] to whether, an ordinary, intelligent member of the public and / or other fellow chiropractors would consider the conduct to be morally blameworthy or deplorable.

29. Case law has established the following principles regarding the concept of UPC:

- A breach of the Code shall not be taken of itself to constitute UPC. A breach of the Code is a starting point and is relevant, but it is not determinative of UPC and does not create a presumption of UPC. A breach of the Code may be significant without making it UPC.
- Not every minor error or isolated lapse will result in a case to answer.
- In determining UPC the critical term is 'conduct'. 'Conduct' is behaviour or the manner of conducting oneself.
- UPC is not a lower threshold than 'misconduct' in other health professions. To reach the threshold of UPC, the unacceptable conduct must be serious.
- A single negligent act or omission is less likely to cross the threshold of UPC than multiple acts or omissions. Nevertheless, and depending on the circumstances, a single negligent act or omission, if particularly grave, could be characterised as UPC.

30. To reach the threshold for a finding of UPC to be made the registrant's shortcoming must be serious so as to justify the implication of moral blameworthiness and degree of strong public concern conveyed by such a finding. Mere negligence does not usually amount to UPC unless what is established is "incompetence or negligence of a high degree".

[4] Judicial guidance of Irwin J in Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin)

31. A caution for a criminal offence or a criminal conviction received outside the UK should be considered as capable of giving rise to a case to answer on UPC if it would be regarded as equivalent to a relevant offence within the UK. Where a chiropractor is convicted of a criminal offence in the United Kingdom, see paragraphs 46-51 below.

### *Professional Incompetence (PI)*

32. PI indicates a standard of professional performance which is unacceptably low. A single incident of negligent treatment would be unlikely to constitute PI, unless it was very serious.

33. PI connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the Chiropractor's work.

34. A number of factors should be taken into consideration when determining whether the facts would amount to PI, including:

- the length of the period of the alleged PI;
- the number of patients concerned;
- a number of failings/shortcomings which may not be serious individually, but together might give rise to a pattern of incompetence;
- the seriousness of the alleged clinical failings.

35. The registrant's lack of competence must be serious. It should be assessed against the GCC's Code but breach of these standards does not, in itself, raise a presumption that a finding of PI will be made.

### *Health*

36. A registrant's ability to practise as a chiropractor may be seriously impaired if they are suffering from a physical or mental health condition.

37. The GCC may become aware of a registrant whose fitness to practise may be seriously impaired by ill-health through a variety of sources, including:

- The registrant themselves may report an ill-health problem affecting their fitness to practise, either during the retention process or at another time.
- Another chiropractor or other healthcare professional (or an employer or a patient) may report concerns that a registrant's ill-health is seriously impacting on their fitness to practise.
- The Registrations or FTP teams may receive information regarding a registrant's ill-health problem affecting their fitness to practise or that a registrant has been convicted (or received some other criminal sanction) for an offence involving misuse of alcohol or drugs, either during the registration / retention process or during a fitness to practise investigation.

38. All matters that could amount to an allegation of serious impairment of fitness to practise due to ill-health will be referred to the IC, to determine whether or not there is a "case to answer".

39. The IC has power[5] to invite a registrant to attend a medical assessment. Medical assessments are undertaken by independent practitioners instructed by the GCC on behalf of the IC to provide a written report indicating their opinion on whether the registrant's fitness to practise is seriously impaired by reason of their physical or mental condition. The cost of a medical assessment is paid for by the GCC.

40. The IC will act proportionately in reaching its decision about the extent of the information it needs in order to reach its "case to answer" decision. The IC may in some circumstances consider that it has sufficient information in order to decide whether or not there is a "case to answer" without a medical assessment being undertaken.

41. In deciding whether or not a medical assessment is required, the IC will have regard to a number of other factors, including:

- Whether the nature of the health concern appears unlikely to seriously impair the registrant's fitness to practise;

- Whether the nature (including the severity) of the health concern appears to pose a clear risk to patients or is likely to do so in the future;

- The existence and number of any related concerns;

- The length of time that has passed since any relevant conduct/behaviour occurred (including conduct or competence matters which seem likely to be related to the health concern);

- Whether or not there is any allegation of alcohol or drug-related concerns in the workplace;

- The presence of any other factors that might indicate an underlying health concern that might seriously impair fitness to practise;

- Any evidence of non-compliance with medical advice or employer support in relation to the health concern;

- The presence of significant relevant independent evidence that may mean a medical assessment is not required e.g. up to date medical evidence about the nature and extent of the registrant's health condition and whether or not it seriously impairs their fitness to practise, evidence that the registrant has insight into their health concern, evidence that the concern is being managed effectively (e.g. evidence to that effect from an employer/occupational health) and that the registrant is compliant with any treatment and, if relevant, has restricted their practice appropriately;

- Whether the registrant is currently seriously ill or undergoing inpatient treatment (in which event requiring a medical assessment might be inappropriate/premature);

[5] Rule 4(3) of the IC rules

- Any linked involvement with criminal or dishonest activity (e.g. driving under the influence of alcohol or drugs). There is a presumption that any sanction imposed for a criminal offence related to misuse of alcohol or drugs will mean that a medical assessment is appropriate. That presumption can be rebutted, for example in circumstances where the registrant has provided an up to date certificate from the Disclosure and Barring Service which shows that they have not received a criminal sanction for another offence involving alcohol or drugs in the preceding 10 years and where the level of alcohol involved in the current offence (as recorded in police/court documents) was no greater than 20% above the legal limit at the time.

42. When the IC decides to invite the registrant to attend a medical assessment, it will indicate the type of assessment and the type of assessor required, for example a general practitioner, specialist or other healthcare professional, so that it is most helpful to the registrant and IC.

43. When the IC decides to invite the registrant to attend a medical assessment, it may decide also to inform the registrant that they can nominate a medical practitioner to examine them and report to the IC (at the registrant's expense), either in place of, or in addition to, the medical assessment[6].

44. If, after the IC has adjourned to issue the invitation for the medical assessment, a registrant refuses to give consent, or is uncooperative with arrangements for a medical assessment, the IC may take that into account when they consider the matter following the adjournment in deciding whether or not there is a "case to answer". Any failure to attend for examination by a medical assessor without good reason may lead to the IC deciding that there is a "case to answer".[7]

45. The registrant is provided with the opportunity to submit observations on the medical assessment report, before the IC decides whether or not there is a "case to answer".

## Deciding "case to answer" on material relevance in conviction cases

### *Conviction cases*

46. When a chiropractor is convicted of a criminal offence in the United Kingdom, the IC is required to consider whether the criminal offence has material relevance to the chiropractor's fitness to practise chiropractic under Section 20 (11) of the Act.

47. The IC should bear in mind the Code which requires registrants to maintain public trust and confidence in the profession. The IC may conclude that there is no case to answer if it considers that the criminal offence in question has no material relevance to the fitness of the registrant concerned to practise chiropractic.

48. While each case is considered on its own merits, there are certain categories of cases that would engage the public interest and it is expected will be referred to a hearing before the PCC:

[6] Rule 4(3)(b) of the IC Rules
[7] Rules 4(4) of the IC Rules

- murder, manslaughter or offences against the person
- sexual offences
- offences involving children or vulnerable adults
- fraud/dishonesty
- criminal damage, theft, burglary etc.

49. A caution for a criminal offence or a criminal conviction received outside the UK should be considered as capable of giving rise to a case to answer on UPC (see paragraph 31 above).

50. The IC should consider the nature and circumstances of the criminal offence, in deciding whether or not it has material relevance, and should refer to the Code and any guidance in force at the time the criminal offence occurred.

51. IC panels will be aware that at a PCC hearing, production of a certificate of conviction ("a certificate purporting to be under the hand of a competent officer of a court in the United Kingdom that a person has been convicted of a criminal offence" or an extract conviction of a court in Scotland) shall be treated as conclusive evidence of the offence committed. The only evidence which a registrant can present to dispute the conviction in those circumstances is evidence to prove that they are not the person referred to in the certificate or extract.

## Matters which are highly likely to be found to constitute a "case to answer"

52. The IC should bear in mind that the following factors may be present in matters which are highly likely to constitute "a case to answer":

    - conduct that would pose a risk to patients if repeated;
    - conduct which is likely to undermine public confidence in the profession, even if unconnected to a chiropractor's professional practice;
    - conduct which, if left unmarked, would undermine professional standards.

53. The following are matters which are viewed by the GCC as being particularly serious. As a result, if the IC is satisfied that there is a case to answer in respect of the factual allegations, it is highly likely to refer the matter for a public hearing:

    - The serious abuse of a clinical relationship, including the breach of boundaries with a patient;
    - A conviction for certain categories of cases referred to above in 48; paragraph
    - Undertaking treatment or procedures beyond competence;
    - Serious abuse of the privileged position enjoyed by registered professionals;
    - Lack of appropriate indemnity cover/lack of evidence of appropriate indemnity cover;
    - Risk of patient harm due to the registrant's alcohol or drug use;
    - Failing to co-operate with an employer or the GCC in the investigation of a concern;

- Misleading behaviour, deliberate or otherwise and dishonesty; all of which can include deliberate acts and/or omissions; and/or
- Failure of safeguarding or duty of candour - failing to raise concerns about matters which may (or may have) posed a risk to patient or public safety; and/or by inhibiting others from raising concerns which may (or may have) posed a risk to patient or public safety; and or failing to be open and honest with patients when things go wrong.
- Conduct that could amount to discrimination, harassment, or victimisation on the basis of any protected characteristic—including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

54. This list is not exhaustive and is not intended to be inflexible. Each allegation must be considered on its own merits, and there may be circumstances associated with allegations falling within these categories which mean that, nonetheless, it is appropriate for an IC panel to decide that there is no case to answer.

**Matters to Consider**

55. Whether there is a case to answer is a matter for the IC's judgement.

56. Each case will turn on its own facts – even if it bears similarities to other cases. The IC must exercise its judgement in each individual case.

57. It is not the IC's role to determine whether those facts are proved or to determine that they amount to the relevant allegation – that is the remit of the PCC or the HC.

58. The IC should consider each element of the concerns raised, to see whether there is evidence to support the facts alleged and whether those facts would amount to the statutory ground.

59. In applying the Threshold Criteria annexed to this guidance (see Annex 1) containing factors that <u>may assist</u> the IC, the IC should bear in mind that matters that are not usually capable of amounting to UPC, should generally not be referred to the PCC. The Threshold Criteria are intended to serve as a guide for the IC and are not exhaustive. Each allegation must be considered by the IC on its own merits as to whether there is a case to answer.

60. In the unusual event the IC remains unsure about whether it is satisfied that the evidence taken at its highest, could lead a Practice Committee to make a finding of UPC, PI or impairment by reason of physical and/or mental condition, the IC should consider whether the overriding objectives are better met through referral to the Practice Committee to consider all the evidence.

**Public Interest**

61. The GCC's overarching objective is to protect the public. The public interest consideration is an important part of the decision-making framework. In reaching a decision on outcome, the IC should give appropriate weight to the wider public interest.

62. Public interest considerations include:

- protecting the public
- maintaining public confidence in the profession
- maintaining proper standards of behaviour

63. Consideration of the public interest is part and parcel of the overall question for the IC (whether there is a case to answer) and therefore relevant when looking at paragraph 17 onwards of this guidance.

64. When deciding whether it is in the public interest to refer to the PCC, the IC may take into account the following:

- the seriousness, or potential seriousness, of the matter,
- whether referral is the proportionate response,
- the circumstances and setting in which the issue happened,
- the risk of harm to patients caused by the Registrant in the past, how serious the possible harm was, and whether there would be similar risks if the incidents or issues happened again,
- The particular circumstances of the registrant, for example a significant health issue.

***These factors are not exhaustive and not all factors will be applicable in every case.***

65. Please see paragraphs 87 - 89 with regards to ensuring that the written reasons include any public interest considerations.

**Evidence**

66. In deciding whether or not there is a case to answer the IC should have regard to all the information and evidence before it. If the IC feels that further information is required, please see paragraphs 78 -81 as to adjourning for further information. The IC should not second guess whether a Practice Committee would exercise its discretion to admit evidence which might not ordinarily be admissible, or what weight it would give to such evidence; these are properly matters for the Practice Committee.

67. The IC should not try to resolve conflicts of evidence. Where there is a material conflict of evidence it should be resolved by the PCC or HC. A conflict of evidence, where the conflict is not material, does not necessarily mean that the allegation should be referred to the PCC or HC. In contrast to resolving conflicts of evidence, the IC may reject evidence that is fanciful, irrational, implausible or self-contradictory.

## No case to answer - Closure of an allegation

68. An allegation should be closed when the IC considers that there is no case to answer on:
    - the facts alleged; and/or
    - the allegation as a whole; or
    - in the case of a conviction, if the IC concludes that the criminal offence in question has no material relevance to the registrant's fitness to practise chiropractic.

69. If the IC decides that there is no case to answer, it closes the allegation and no further action is taken.

### No case to answer - advice

70. There is no explicit power contained within the Act or the Rules which provides that the IC can issue advice to a registrant. However, in Spencer v General Osteopathic Council[8], Mr Justice Irwin considered there was 'nothing to prevent the PCC from giving advice' to a registrant where allegations have been made out, and which constitute a breach of the Osteopathic Practice Standards (OPS), but where neither professional incompetence nor unacceptable professional conduct is made out. Correspondingly, the IC may offer advice to a registrant in connection with his or her future conduct, performance or practice, where it is appropriate.

71. Any advice given should be relevant to the allegations that are being considered by the IC. The IC may also wish to consider the extent to which admissions have been made by the registrant when deciding whether advice is appropriate. The advice should be designed to ensure future compliance with the Code and should clearly identify where the registrant needs to reflect on his or her future conduct or performance.

72. The IC should carefully consider whether specific advice can adequately deal with the issue. Advice may be appropriate where the evidence, taken at its highest, could not lead a Practice Committee (PCC/HC) to find the matter proved or where there are no aggravating factors or there is some evidence the registrant's conduct has fallen below the standards expected of a chiropractor but not so far below so that it could lead a Practice Committee to make a finding of unacceptable professional conduct.

73. If the IC decides advice is appropriate and proportionate, it should clearly set out what that advice should be. It should form part of the IC reasons for its decision, and be included in the outcome letter sent to the registrant.

    Note: Any advice issued does not affect a registrant's registration status and will not be recorded on the Register of chiropractors as it is not a formal sanction, nor would any restrictions be placed on the registrant's registration. However, the fact that advice was issued will form part of the registrant's records with the GCC and the GCC may seek to rely on the fact of the advice if the Registrant is referred to the PCC in the future.

[8] Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin)

74. The IC should be mindful of the impact closing a case can have on the complainant and should ensure that there is sufficient reasoning to justify their decision-making.

75. The IC should proceed with caution in closing a case where their decision may be perceived as inconsistent with that of another public body in relation to the same or substantially the same facts (unless the IC is satisfied that the matter has been dealt with by that other body).

**Matters which are not usually capable of amounting to UPC**

76. The matters set out in Annex 1 are not usually capable of amounting to UPC and should not generally be referred to the PCC.

**Standards of Conduct and Practice**

77. When deciding whether any alleged fact or set of facts may amount to an allegation, the IC should have regard to the standards set out in the Code. These standards will apply to events that took place on or after 30 June 2016[9].

**Adjournments for further evidence / investigation of additional concerns**

78. The IC should adjourn a case when it has insufficient evidence on which to reach a decision. It may also be appropriate for the IC to adjourn consideration of a case when additional concerns are apparent but there is inadequate information to suggest that these concerns have been properly investigated to enable the IC to determine whether there is a case to answer. If necessary, the IC may adjourn to allow time for the Registrant to comment on any material.

79. The IC should set out clearly in its reasons what additional information is required.

80. In these circumstances the IC must adjourn consideration of the allegation, pending further evidence / the investigation of the additional concerns it has identified.

81. Once a matter has been referred for a hearing by the IC, there is no mechanism under the GCC legislation (as there is with some regulators) for a case to be referred back to the IC for a review of its decision.

**Amendments**

82. The IC may be provided with a copy of the Regulatory concerns identified by the GCC at an early stage of the investigative process. The IC should ensure that the regulatory concerns are a fair and proper representation of the case. If the IC varies or amends a regulatory in a materially adverse way, the registrant concerned should be given a further opportunity to make observations on the revised regulatory concern before a final 'case to answer' decision is made.

[9] For events that occurred before this day, the IC should have regard to the Code of Practice and Standard of Proficiency (June 2010) and (Dec 2005)

## Indemnity

83. Chiropractors are required by law to have appropriate professional indemnity insurance (PII) in place. Section 37 of the Act states that a failure to comply with the appropriate indemnity arrangements may be treated as UPC.

84. Chiropractors must have appropriate arrangements in place for patients to seek compensation if they suffer harm. The IC should consider whether a registrant had appropriate indemnity insurance during the period alleged and should not be persuaded merely by the fact that a registrant may have ceased working or has since obtained retrospective indemnity cover for the alleged period.

## Referral to a Practice Committee

85. If the IC decides in accordance with s20 of the Chiropractors Act that there is a case to answer on the allegation under consideration, it should identify to which Practice Committee the allegation should be referred. The IC shall:

- refer an allegation of UPC, PI or conviction to the PCC; and
- refer an allegation of serious impairment of ability to practise due to an adverse physical and/or mental health condition to the HC.

## GCC Executive Recommendations

86. The Executive (the GCC Executive means staff who are employed by the GCC) may make recommendations to assist the IC with the consideration of a case. The recommendations may offer a suggestion on how to deal with a particular case or offer amendments to the allegations. This information is provided as guidance only and is not intended to fetter the independence of the IC. In all cases the IC must exercise its own independent judgement, with advice from the legal assessor where appropriate, in deciding whether there is a case to answer. Where the GCC make recommendations to assist the IC with consideration of a case, those recommendations will be served on the Registrant for comment at least 14 days before the date set for the IC to meet.

## Providing Written Reasons

87. The legislative framework within which the IC operates requires the IC to notify both the registrant and the complainant of its decision as to whether or not there is a case to answer[10]. Clear and adequate reasons should be given for every decision an IC makes and reasons should be clear and intelligible but do not need to be lengthy or identify each individual piece of information taken into account.

[10] section 20(12)(a) and section 20(13) Chiropractors Act 1994

88. The IC should aim to provide reasons that are adequate and sufficient to allow readers to understand in broad terms why a particular decision has been reached. The reasons must be appropriate in the circumstances of the case and leave the reader with a clear understanding of:

- the decision made;
- why the decision was made; and
- how the decision was reached.

89. The reasons may include the following:

- the evidence/information the IC took into consideration;
- the decision made;
- which areas of concern have been referred and which have not;
- why the decision was made, including consideration of the public interest;
- how the decision was reached (including the case to answer test);
- why any advice or material (including any expert evidence) was accepted or rejected, if this happened;
- any advice the IC received from the legal assessor;
- why the IC chose not to follow any guidance and/or the advice of the legal assessor;
- if the IC panel has departed from any presumption within this guidance, an explanation.

**Referral to an interim suspension hearing**

90. Where an allegation against a registered chiropractor is being investigated which raises immediate concerns about the protection of the public, the matter will be referred to the IC panel as a preliminary matter in order for consideration to be given as to whether to refer the case for an Interim Suspension Hearing (ISH).

91. The IC's role at the preliminary referral stage is not to decide whether an interim suspension order is necessary for public protection, but to make a filtering decision where there is sufficient evidence to warrant consideration of an interim suspension order at a hearing.

92. If the IC at the preliminary referral stage determine that there is evidence which warrants referral for consideration of an interim suspension order, the matter will be listed for an ISH.

**Interim suspension powers of the IC**

93. The Act and the Rules provide that, where the IC is investigating an allegation against a registered chiropractor, it may order the Registrar to suspend the chiropractor's registration if it is satisfied that it is necessary to do so in order to protect members of the public whilst those allegations are investigated.

94. The IC will be asked to consider an interim suspension order (ISO) when an allegation has been made about the chiropractor and which raises immediate concerns about the protection of the public. Such allegations may include one or more of the following (which is a non-exhaustive list):

- Allegation that a chiropractor's ability to practise as a chiropractor is seriously impaired because of a physical or mental condition
- Allegations of a sexual nature
- Inappropriate or sexual relationship with a patient
- Other serious failure to maintain professional boundaries
- Criminal proceedings, conviction for a serious offence (e.g. convictions for crimes motivated by racial or sexual discrimination) or currently serving a criminal sentence
- Serious dishonesty, including related to practice resulting in harm to patient or raising potential of serious harm
- Inappropriate use of X-rays (e.g. pregnant women or excessive routine use etc.)
- Misuse of alcohol and/or drugs including (but not limited to) practising under the influence of alcohol or drugs
- Practising without the required professional indemnity insurance
- Verbal or physical abuse of patients or public
- Clinical complaints where if the allegations are substantiated, there is an ongoing risk to patients from the chiropractor's clinical practice, such as allegations indicating a serious lack of basic chiropractic knowledge or skills.
- Non-clinical complaints, where if the allegations are substantiated, the chiropractor poses a risk to patients if allowed to continue in practice (NB: matters of this kind may normally already be under investigation by the police, for example very serious alleged offences including murder, attempted murder, rape, attempted rape and sexual abuse).
- Negligence resulting in death or serious harm
- Any other matter giving rise to a risk of serious harm to a patient or the public.

95. The IC panel may only make an ISO if it satisfied that it is necessary to suspend the chiropractor's registration in order to protect members of the public. The IC has no legal power to order an ISO on any other basis, such as the wider public interest[11].

96. In addition:

- the ISO must specify the period of suspension, which must not exceed two months;
- The IC panel may not make more than one ISO in respect of the same allegation;
- The IC may not make an ISO in respect of any allegation that it has already referred to a Practice Committee;
- the registrant concerned shall be given an opportunity to appear before it to argue their case against the making of the proposed ISO;
- the registrant has the right to be legally represented at any hearing;
- the IC should ensure that its decision is recorded in writing.

[11] Note that this is a narrower test than that which may apply for other healthcare regulators, who may impose an order if it is in the public interest, or the interests of the registrant, to do so.

**The test to be applied**

97. There is only **one** statutory ground whereby the IC may impose an ISO and that is where it is satisfied that it is necessary to do so in order to protect members of the public. The test is one of necessity. What this means is that the IC must be satisfied that there is a real continuing risk (actual or potential) to patients, colleagues or other members of the public if an ISO is not made. This requires the IC to look to the future, albeit in light of what is alleged to have occurred in the past. What is crucial in any assessment undertaken by the IC is the nature of the wrongdoing alleged against the chiropractor. Assessing the risk involves a consideration of the following:

    - The nature and seriousness of the allegation(s) made about the chiropractor;
    - The likelihood of the alleged conduct being repeated if an ISO was not imposed;
    - The severity of harm likely to result should the alleged conduct be repeated;
    - The weight of the information or evidence.

98. The IC should take into account any concessions made by the registrant about the truth of the allegation. The IC must permit both parties to make their submissions on the need for an interim order. For that purpose, it must consider the nature of the evidence on which the allegation is based. The registrant may also give or provide (i.e., statement) evidence to establish that the information before the IC is manifestly unfounded or exaggerated.

99. However, if an allegation is denied, it is not the function of the IC in interim order hearings to seek to decide the credibility or merits of a disputed allegation: that is a matter for the substantive hearing. The IC can expect that the allegation has been made or confirmed in writing, albeit that it might not be reduced to a formal witness statement.

100. The IC will need to consider the source of the complaint. If there is evidence that the allegation is unfounded the IC must take that evidence into account.

101. An ISO is capable of giving rise to serious consequences for the future professional career of a chiropractor, as well as creating immediate consequences of hardship. The IC may receive and assess any evidence on the effect of an interim order on the registrant and he / she is entitled to give evidence on this. This must be taken into account by the IC in conducting a balancing exercise as to whether the imposition of the ISO is proportionate to the risk it has identified. For example, would the consequences of an ISO for the registrant be disproportionate to the risk the IC is seeking to prevent.

102. The IC panel may take advice from a Legal Assessor at ISO hearings. The Legal Assessor plays no role in the IC's decision making.

103. At a hearing of an application for an ISO either a GCC Committee Secretary or Usher is present to provide support, and to liaise with the parties and to facilitate the smooth running of the hearing. They do not retire with the IC and play no part in the decision-making process.

104. The IC panel must provide reasons, in the form of a written determination, when it considers an ISO application. The reasons should include:

- a summary of the main submissions made by the parties or their representatives;
- any relevant codes;
- the risk posed by the registrant to public protection;
- why the ISO is proportionate to the risk identified by the IC after balancing this with the interests of the registrant;
- reason(s) for any period of time the IC recommends the ISO should be imposed for.

**Useful reading**

The following documents may provide useful further information:

- Chiropractors Act 1994 (www.gcc-uk.org/act1994)
- The Code (www.gcc-uk.org/the-code)
- Guidance on Sanctions (www.gcc-uk.org/guidance-sanctions)
- Conditions Bank (www.gcc-uk.org/conditions-bank)
- Remote Hearing Protocol (www.gcc-uk.org/remote-hearings-protcol)
- GCC Governance Manual (www.gcc-uk.org/governance)

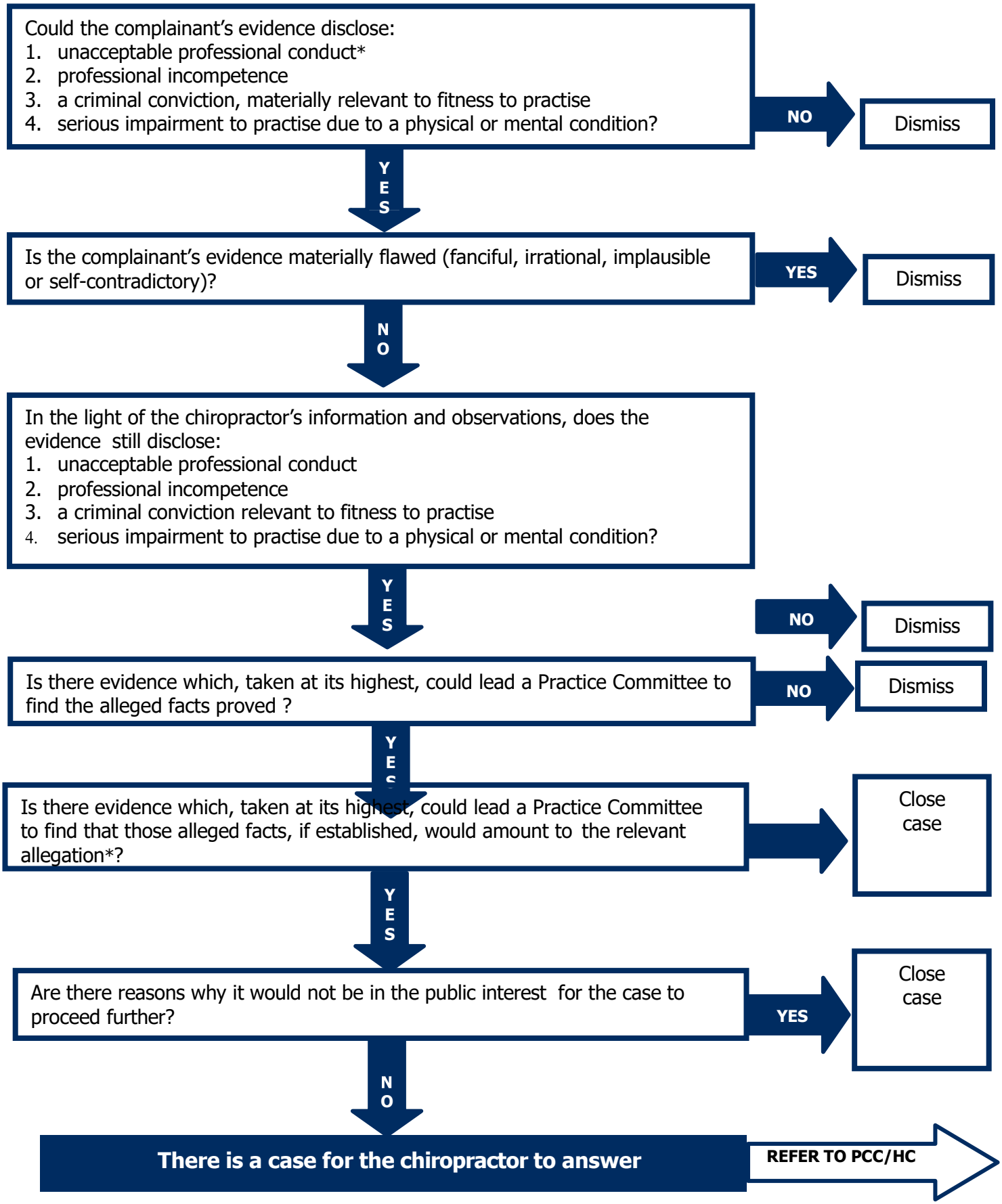
The following guidance and toolkits to help registrants remain Code compliant, as referenced in the GCC's Registrant Resource Centre:

- Guidance on Advertising (www.gcc-uk.org/guidance-advertising)
- GCC Registrant Toolkit: Advertising (www.gcc-uk.org/toolkit-advertising)
- Guidance on Candour (www.gcc-uk.org/guidance-candour)
- Joint Statement on Duty of Candour (www.gcc-uk.org/js-candour)
- Guidance on Confidentiality (www.gcc-uk.org/guidance-confidentiality)
- Joint Statement on Conflicts of Interest Guidance (www.gcc-uk.org/js-conflicts)
- Guidance on Consent (www.gcc-uk.org/guidance-consent)
- Guidance on Diagnostic Imaging (www.gcc-uk.org/guidance-diagnostic-imaging)
- Government Guidance on Female Genital Mutilation (www.gcc-uk.org/guidance-fgm)
- Guidance on First Aid (www.gcc-uk.org/guidance-first-aid)
- Guidance on Maintaining Sexual Boundaries (www.gcc-uk.org/guidance-sexual-boundaries)

- GCC Registrant Toolkit: Mental Health (www.gcc-uk.org/toolkit-mental-health)
- Joint Statement on Reflective Practice (www.gcc-uk.org/js-reflective-practice)
- Guidance on Social Media and Messaging (www.gcc-uk.org/guidance-social-media)
- GCC Registrant Toolkit: Social Media and Messaging (www.gcc-uk.org/toolkit-social-media)
- Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals (Council for Healthcare Regulatory Excellence, January 2008)

## Investigating Committee – decision-making flowchart

(Please note this it is intended as an illustrative summary of the narrative guidance not as a modification of it)




* The Investigating Committee should apply the Threshold Criteria for unacceptable professional conduct

## Annex 1 - Threshold Criteria for Unacceptable Professional Conduct

Purpose of this document

1. The purpose of this document is to provide guidance to complainants and registrants and to the Investigating Committee (IC) of the General Chiropractic Council (GCC), about the sorts of matters that will be considered under the GCC's fitness to practise procedures.

2. In line with its overarching objective[12], the fitness to practise procedures of the GCC are designed to protect the public. They are not intended to serve as a general complaints resolution process, nor are they designed to resolve civil disputes between registrants and patients.

3. Investigating allegations properly is a resource-intensive process. The public interest requires that such resources should be used effectively to protect the public and should not be diverted towards investigating matters that do not raise cause for concern.

4. In reaching a decision on outcome, the IC should give appropriate weight to the wider public interest. Public interest considerations include:
   - protecting the public
   - maintaining public confidence in the profession
   - maintaining proper standards of behaviour

5. The GCC considers that this approach is a proportionate response to the volume of complaints it receives, and is consistent with the principle of 'right touch regulation' promoted by the Professional Standards Authority.

6. The GCC has, in consultation with its stakeholders including public and patient representatives, produced these 'threshold criteria'.

7. These criteria *will guide* the IC when determining whether or not to close an allegation referred it and will guide the IC when determining whether or not there is a 'case to answer'.[13]

### The Threshold Criteria

8. The *Chiropractors Act 1994* provides that 'Unacceptable Professional Conduct' is 'conduct which falls short of the standard required of a registered chiropractor'.[14]

9. It also provides that a failure to comply with any provision of the Code of Practice should be taken into account but shall not, of itself, constitute Unacceptable Professional Conduct.[15]

10. When exercising their judgement as to whether the facts found proved amount to Unacceptable Professional Conduct, the IC should have regard16 to whether, an ordinary, intelligent member of the public and / or other fellow chiropractors would consider the conduct to be morally blameworthy or deplorable.

[12] The overriding objective of the General Chiropractic Council in exercising its functions is the protection of the public (Section 1 4(A) of the Chiropractors Act 1994).
[13] Section 20 (9) (c) of the Chiropractors Act 1994.
[14] Section 20 1(a) and (2).
[15] Section 19 (4)
[16] Judicial guidance of Irwin J in Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin)

11. In having regard to the High Court case of Spencer v the General Osteopathic Council, matters that are not **usually** capable of amounting to Unacceptable Professional Conduct, and that should therefore not **generally** be referred to the Professional Conduct Committee, include:

| | |
|---|---|
| a. Complaints about note-taking and record-keeping alone | In the absence of:<br>i. 'incompetence or negligence of a high degree';<br>ii. evidence of a failure to comply with relevant information governance legislation such as the *Data Protection Act 1998* (and any subsequent or amending legislation); or<br>iii. dishonesty or intent to deceive or mislead |
| b. Complaints that do not fall within the statutory grounds of section 20 of the *Chiropractors Act 1994* | |
| c. Vexatious complaints, including where the complainant:<br>i. repeatedly fails to identify the precise issues that he or she wishes to complain about;<br>ii. frequently changes the substance of the complaint or continually seeks to raise new issues; or<br>iii. appears to have brought the complaint solely for the purpose of causing annoyance or disruption to the registrant | |
| d. Complaints that have been made anonymously **and** cannot be otherwise verified | |
| e. Complaints in which the complainant refuses to participate and provide evidence **and** in which the allegation cannot otherwise be verified or proved | |

| | |
|---|---|
| f. Complaints that relate to disputes between registrants and patients about fees or the costs of treatment | Provided that there is no allegation of dishonesty or intent to deceive or mislead |
| g. Complaints that:<br><br>i. seek to reopen matters which have already been the subject of an employment tribunal process or civil proceedings and which do not raise fitness to practise issues;<br><br>ii. seek to pre-empt or influence the outcome of other regulatory or civil proceedings; or<br><br>iii. Are within the concurrent jurisdiction of the GCC and another Regulator* | |
| h. Complaints that amount to a difference of professional opinion | Provided that the opinion is:<br><br>i. accepted as proper and responsible by a responsible body of chiropractors who are skilled in that particular area of practice and acting responsibly; and<br><br>ii. reasonably held and capable of withstanding logical analysis |
| i. Complaints that relate to employment disputes | |
| j. Complaints that relate to contractual disputes, including arrangements for lease of premises and facilities | |

| | |
|---|---|
| k. Complaints that relate to business disputes, including:<br><br>i. passing off/similar sounding web domain names or trading names;<br><br>ii. 'patient poaching'; and<br><br>iii. matters arising from the break-up of a principal/associate relationship | Provided that there is no allegation of a breach of patient confidentiality or data protection |
| l. Complaints about a registrant's personal life (including matters arising out of divorce proceedings) | Unless the complaint relates to abusive behaviour or violence, or engages public confidence in the profession |
| m. Complaints that have no public protection implications but are made simply on the basis that the complainant is aware that the other party to a dispute is a registrant (e.g. boundary disputes between neighbours) | |
| n. The following motoring offences:<br><br>i. parking and penalty charge notice contraventions; and<br><br>ii. fixed penalty (and conditional offer fixed penalty) motoring offences | Provided that drugs or alcohol are not involved and there are no potential health issues in relation to the registrant |
| o. Penalty fares imposed under a public transport penalty fare scheme | |

12. **The criteria noted above are intended to serve as a guide for the IC and are not exhaustive. Each allegation must be considered by the IC on its own merits as to whether there is a case to answer.**

13. When applying the Threshold Criteria the IC must ensure that:

    a. All complaints are considered separately

    b. All evidence and observations are taken into account

    c. IC decisions are supported by full and proper reasons

*** Cases where there is concurrent jurisdiction:**

In cases where there is concurrent jurisdiction, such as advertising matters, it makes legal and practical sense for the Advertising Standards Authority ('ASA') which is the more specialist body with regards to advertising, to conduct its own investigation pursuant to its concurrent jurisdiction. It will then be for the GCC to perform its role taking full account of any decision reached by the ASA.

As a result, complaints about advertising should generally be divided into three categories:

<u>Category 1</u>

- Progression for consideration by the IC directly.

<u>Category 2</u>

- Referral to the ASA in the first instance, before the complaint is then considered by the GCC's IC

<u>Category 3</u>

- Closure without further action *(closure being possible only in very limited circumstances, such as where a complaint is made against an individual who is not under the jurisdiction of GCC)*.