

**Review of the Standard of Proof Applied in  
Professional Misconduct Proceedings**

**Farriers Registration Council  
Consultation Report and Decision**

**November 2022**

## **Introduction**

At its meeting on 27 April 2022 the Council considered the standard of proof used as part of its statutory functions delivered by the Investigating Committee (IC) and the Disciplinary Committee (DC). The Council noted that neither the Farriers (Registration) Act 1975, nor Statutory Instrument 1976/700 which sets out the Disciplinary Committee (Procedure) Rules, prescribe the standard of proof to be used by the Council; the standard of proof was therefore a matter of policy choice for the Council. In recent years there has been a marked shift by regulators, such that in England and Wales only one other regulator apart from the FRC uses the criminal standard of proof “so as to be sure” (synonymous with “beyond reasonable doubt”), whereas all other regulators used the civil standard “more likely than not” (or “on the balance of probabilities”).

The rationale for application of the civil standard is that the fundamental purpose of professional regulation and discipline is protection of the public, and not punishment of the individual who committed misconduct. Although the consequences of regulatory proceedings could be severe, they do not include potential for loss of liberty. Professional regulatory proceedings are not part of the criminal jurisdiction but part of the civil jurisdiction and, as such, the proper standard of proof to apply in such proceedings is the civil standard.

Following extensive discussion, the Council concluded that it should conduct a non-binding consultation on the proposal with the profession and the public; such a consultation would serve to inform the Council prior to taking a decision. A consultation took place between 24 June and 6 August 2022; the profession was informed of the consultation via the Bulletin (the FRC’s published journal), the FRC website and via the British Farriers and Blacksmiths Association (BFBA). Information with respect to the consultation was also carried in equine related publications, both printed and online, and the Council wrote to industry bodies and other regulators.

During the evening of Tuesday 26 July 2022, the Chair and a number of other council members, supported by the Registrar, took part in a virtual discussion and question and answer session hosted by the BFBA and to which registered farriers, whether BFBA members or not, were invited.

## **Consultation**

Responses to the consultation were anonymous although industry bodies and other regulators identified themselves when responding. A total of 51 responses were received by the Council. 27 responses were made by those who stated they were Registered Farriers of which 8 were in favour of the proposed change and 19 against. 14 responses were made by those who stated they were members of the public of which 5 were in favour of the proposed change and 9 against. 10 returns were from regulators and industry bodies all of which were in favour; one was an indication of intention. The consultation drew slightly more than the 47 responses to the Defra consultation on Farriers Registration Act 2017 conducted between 12 November and 23 December 2013 and set out in the Defra consultation report of April 2014.

## Comments Made During Consultation

Of 27 returns made by those who stated they were Registered Farriers, 14 offered written comments which are set out below; the comments are 'as made'.

Ser	Comment	FRC Response
1.	The current disciplinary process is a more reliable and thorough process, this is a Farriers livelihood so the process should be thorough.	Applying the civil standard of proof will not make the disciplinary process any less thorough.
2.	The whole disciplinary process is moot in the case of the FRC. As a regulatory body they do not have 100% power to protect the public or the equine, this is due to their lack of authority regarding 'bare foot trimming'. If, for example, the FRC found a registrant 'guilty' of serious misconduct, to the point that the registrant was considered a danger to the public or the equine, and a suspension or permanent removal was imposed, then this would NOT stop the 'guilty' party from continuing to trim the hooves of equines, as such it would neither 'protect' the public OR the equine. The FRC needs to address the 'barefoot trimmers' issue before wasting more funds on a 'disciplinary process' which has always been unfit for purpose.	FRA '75 expressly excluded trimmers who, at the time, were of negligible numbers and the Government of the day had no wish to criminalise them. Trimmers remain subject to the law and Animal Welfare Act 2006 where they commit animal welfare offences; see RSPCA v Street, Stafford Magistrates Court, October 2014 .(District Judge McGivern).
3.	I don't believe Lowering any Standard could possibly have a positive effect on our industry.	Adopting the civil standard is about using the correct standard of proof noting that regulatory disciplinary proceedings are part of the civil jurisdiction.
4.	Everybody in any disciplinary should always be allowed to voice their opinion to be considered in the event of an incident.	Adopting the civil standard of proof will not affect how a registrant may conduct their defence. The registrant may give evidence, call witnesses, cross-examine witnesses and seek directions on admissibility – none of that would change.
5.	No at what does civil become legal.	Application of the civil standard of proof is legal; it is used by all those who operate in the civil jurisdiction, including disputes or issues to be resolved through established complaints procedures and include those arising in employment law and regulated professions.
6.	Because who then decides on the probability. Only a committee? Not a Judge or Jury.	FRA '75 and the Disciplinary Committee Rules of Procedure place the determination of cases with the Disciplinary Committee. Where a sanction of suspension or removal is applied an appeal may be heard at the High Court or at the Court of Session by a Judge appointed to hear the appeal.
7.	Because it will farriers open to complaints, and expensive disciplinary procedures, that are sent in by horse owners with a grudge! And will give FRC even more powers that they were never set up for! And will only encourage not discourage illegal farriery.	The right of the public to make a complaint will not change. The statutory committees will apply their judgement in weighing the evidence presented; cases shall only be referred to the Disciplinary Committee where there is a realistic prospect of findings of fact, and a finding of serious misconduct in any professional respect. The Council will receive no new powers beyond those in FRA '75.
8.	I believe this would probably be detrimental to farriers, as other professionals may comment about a farriers shoeing as it is not to their personal liking, even though the farrier has not acted or worked in any incorrect manor of shoeing.	The right of the public to make complaints will not change. Both statutory committees include registered farriers who bring their expertise to bear in such cases for the benefit of both statutory committees.
9.	I don't believe this is the best way as people can make things up. There seems little way to stop this, as its their word against yours.	Use of the civil standard of proof does not mean that evidence shall not be tested under examination and cross-examination. The Disciplinary Committee shall have to be satisfied that it is more likely than not that an event took place. The registrant shall be able to challenge evidence, and to cross-examine the complainant and witnesses.
10.	To become in line with other regulatory bodies.	

11.	Disciplinary action should only be taken on cases of absolute proof. If relying upon probability you are increasing the chances of a wrong verdict. This also relies upon honesty from the complainant(s) and their supporting witnesses, without consideration of any mitigating circumstances.	The criminal standard is the highest standard of proof in the justice system 'so as to be sure'/beyond reasonable doubt – there is no standard of proof that is 'absolute proof'. Use of the civil standard of proof does not mean that evidence shall not be tested under examination and cross-examination. The Disciplinary Committee shall have to be satisfied that it is more likely than not that an event took place. The registrant shall be able to challenge evidence, and to cross-examine the complainant and witnesses. The registrant may enter matters of mitigation if they choose to do so, that will not change.
12.	Would provide too much regulatory power in a complex industry where there is already too much. Too little protection as it is for the farrier.	The Council will not receive any new powers; the powers set out in FRA '75 are similar to, but of a lesser extent, than other many other regulators.
13.	On the balance of probabilities isn't and conclusive as beyond reasonable doubt.	The balance of probability is the standard of proof used in the civil jurisdiction. Disciplinary proceedings are part of the civil jurisdiction and therefore the correct standard to apply.
14.	It should not change the outcome of a DC decisions. Just a shame that these decisions have taken so long to filter through to the FRC's IC & DC.	

14 returns were made by those stating they were members of the public, 4 of which offered written comments which are set out below.

Ser	Comment	FRC Response
1.	Totally unnecessary as would hinder business between Companies within the horse- riding industry.	It is not clear how a change to the standard of proof will hinder business activities in the equine industry.
2.	I have watched at least 5 apprentice farriers being treated appallingly by one farrier. One took him to the Council but the Council were too weak to strike him off for his appalling bullying of this apprentice. Will you ever stand up to the appalling bullying that goes on within your industry?	Any complaint of abusive behaviour, including bullying, should be reported to the Council without delay.
3.	I agree that the rationale for application of the civil standard is that the purpose of regulation is protection - of the public, rather than punishment of any individual who commits misconduct.	
4.	To bring parity with the majority of other regulators and avoid having to conduct intensive investigations to prove the criminal standard.	

10 regulators offered comments, all less one operate the civil standard of proof; by way of brevity a sample of 4 comments made by regulators are set out below.

Ser	Comment	FRC Response
1.	<p><u>General Optical Council</u></p> <p>1. Adopting the civil standard would bring the FRC into step with the large majority of other regulators, removing a potential perception that farriers are accorded preferential treatment. As mentioned in its consultation paper, the FRC is in a small minority of professional regulators that still apply the criminal standard of proof. The General Optical Council (GOC) adopted the civil standard in 2008, through 'The General Optical Council (Fitness to Practise) (Amendment in Relation to Standard of Proof) Rules 2008'. Until then, the GOC had chosen to apply the criminal standard in line with other health regulators, and its legislation stated simply that the panel shall "determine their findings as to fact and as to whether or not the allegation is proven".</p> <p>2. The civil standard is more likely to support public protection and maintain public confidence in the FRC as a regulator. Most health regulators changed their standard as a result of the Fifth Shipman</p>	

	<p>report, which questioned whether it was in the public interest to retain the criminal standard. The GOC considers that public protection could be undermined if registrants are able to avoid regulatory action when it is more likely than not that the facts of the allegations are true, even if the panel cannot be sure of this.</p> <p>3. The civil standard will ensure fairness to registrants, particularly where the allegations are serious. Courts have confirmed, e.g. in <i>Sharma v General Medical Council</i> (2014), that, when assessing the probabilities, a court would consider that the more serious the allegation, the less likely it was to be true, and the stronger the evidence required.</p>	
2.	<p><u>General Dental Council</u></p> <p>Thank you for your letter dated 22 June 2022 regarding your consultation on standard of proof. Whilst we do not intend to respond formally to your consultation via the online survey on your website, we have set out our current approach below to support your policy analysis. As the regulator of dental professionals in the UK, our primary purpose is to ensure patient safety and maintain public confidence in the dental team. If concerns raised indicate that shortcomings in a dental professional's conduct or competence are so great as to put patients at serious risk, or seriously damage public confidence in dentistry, we will investigate and take appropriate action through our Fitness to Practise function.</p> <p>Rule 57(4) of the General Dental Council Fitness to Practise Rules 2006, approved by the Privy Council, state that:  <i>"It shall be for the Council to prove any fact alleged in the notification of a hearing, on the balance of probabilities."</i></p> <p>This is the standard of proof in our Fitness to Practise proceedings and the one most appropriate to effectively deliver our objective to protect the public. We consider that the criminal standard of proof (beyond reasonable doubt) could be perceived by the public as working in the interests of a profession rather than in the interests of the public because it requires the highest degree of satisfaction in the minds of decision-makers.</p>	
3.	<p><u>Royal College of Veterinary Surgeons</u></p> <p>The RCVS is in a small minority of regulators that still applies the criminal standard of proof, i.e. beyond reasonable doubt/so as to be sure, when deciding the facts of a case as other regulators have now moved to the civil standard, i.e. the balance of probabilities/more likely than not. In light of the primary purpose of regulation, the civil standard is considered to be the more appropriate standard of proof as, as the Law Commission explained in its 2014 report on the regulation of health and social care professionals in England, <i>'it is not acceptable that a registrant who is more likely than not to be a danger to the public should be allowed to continue practising because a panel is not certain that he or she is such a danger'</i>.</p> <p>RCVS Council recently considered changing the standard of proof to the civil standard. It agreed not to do so immediately as an isolated measure, but that the change would be integral to a new holistic 'fitness to practise' regime that is intended to be introduced as and when new legislation allows.</p>	
4.	<p><u>British Horseracing Authority</u></p> <p>The only comment which the BHA wishes to pass on is that it concurs that the Royal College of Veterinary Surgeons still uses the criminal level of necessary proof. However, we understand that they are looking to change to the civil standard as well. The BHA would support the farriers moving to the civil standard as this is aimed to protect the public rather than necessarily punishing participants.</p>	

## Council consideration

The Council considered the matter at length; it took note of the matters raised in the consultation and discussed and approved the responses to the matters raised which are set out in the table above. The Council reminded itself that the consultation was not binding and that this approach was similar to that taken by other regulators such as the Bar Standards Board in 2017.

The Council considered in detail the second order issues associated with a change in the standard of proof and sought reassurance in respect of unintended consequences, such as the risks to registrants that might accrue from adopting the civil standard of proof. The Council also considered its duty to safeguard the public interest and to ensure that equine owners and the public at large must be confident that complaints would be properly heard and subject to a standard of proof commensurate with the regulator's disciplinary powers, part of the civil jurisdiction.

The Council noted a body of legal precedent, decisions and case law relevant to the matter of the standard of proof to be used by regulators and similar bodies, including:

- **2008 Health and Social Care Bill.** Re section 112 of the Bill which introduced the requirement for all healthcare regulators to apply the civil standard of proof; comments of Lady Justice Smith<sup>1</sup> and of Baroness Thornton<sup>2</sup>.
- **2008 Case Law – The ‘Sliding Scale’.** In addressing a popular misconception, the House of Lords in 2008 in the case of ‘Re B’ rejected the suggestion that there was any ‘*sliding scale*’ in the application of the civil standard of proof; comments of Lord Hoffman<sup>3</sup>.
- **2008 Case Law.** R (on the application of Independent Police Complaints Commission) v Hayman and Bannister [2008] EWHC 2191 (Admin); comments of Mitting J<sup>4</sup>.
- **2014 – Law Commission Review.** The issue of the standard of proof for regulators was considered by the Law Commission in 2014 when it carried out a review of the law relating to the regulation of health care professionals and social workers; the review report and consultation addressed the issue of standard of proof at <sup>5</sup> and at <sup>6</sup>.
- **2016 – ‘Arslan’ and the Solicitors Disciplinary Tribunal.** A judicial ‘nudge’ towards the civil standard of proof in the case of the Solicitors Regulation Authority v Solicitors Disciplinary Tribunal [2016] EWHC 2862 (Admin) (known as ‘Arslan’); comments around the SDT’s use of the criminal standard by Sir Brian Leveson <sup>7</sup>.

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<sup>1</sup> [House of Commons General Committee a \(parliament.uk\)](http://parliament.uk)

<sup>2</sup> [Health and Social Care Bill - Hansard - UK Parliament](#)

<sup>3</sup> [House of Lords - In Re B \(Children\) \(Fc\) Appellate Committee Lord Hoffmann Lord Scott of Foscote Lord R \(parliament.uk\)](http://parliament.uk)

<sup>4</sup> [Independent Police Complaints Commission, R \(on the application of\) v Hayman | \[2008\] EWHC 2191 \(Admin\) | England and Wales High Court \(Administrative Court\) | Judgment | Law | CaseMine](#)

<sup>5</sup> <https://www.lawcom.gov.uk/project/regulation-of-health-and-social-care-professionals/>

<sup>6</sup> [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7g/uploads/2015/03/cp202_regulation_of_healthcare_professionals_consultation.pdf)

[11jxou24uy7g/uploads/2015/03/cp202\\_regulation\\_of\\_healthcare\\_professionals\\_consultation.pdf](#), para 9.65, page 173.

<sup>7</sup> [The Solicitors Regulation Authority \(SRA\) v Solicitors Disciplinary Tribunal | \[2016\] EWHC 2862 \(Admin\) | England and Wales High Court \(Administrative Court\) | Judgment | Law | CaseMine](#) and

[High Court: Time to consider lowering burden of proof in the Solicitors Disciplinary Tribunal - Legal Futures](#)

- **2019 – Social Work England (SWE).** SWE became operational in 2019 and has the benefit of the most up to date legislation of all the regulators. Part 5 of the Social Workers Regulations 2018 deals with discipline and fitness to practise by SWE. Regulation 25(4) provides that the ***‘standard of proof applicable to fitness to practise proceedings is that applicable to civil proceedings’***. SWE noted the regulations drew on evidence and recommendations for effective professional regulation from numerous places, including reform proposals for healthcare regulation, the Law Commission’s recommendations on health and social care regulation and the Professional Standards Authority’s right-touch reform report.<sup>8</sup>

## **Decision**

The Council weighed carefully the matters set out above; in reaching its decision the Council was mindful that its primary obligation was to safeguard the public interest. The Council decided to adopt the civil standard of proof for use in its professional misconduct proceedings.

## **Implementation**

This consultation report shall be published on the FRC website so that the decision and how it was reached may be understood. The key elements of implementation are:

- Cases that have been referred to the Disciplinary Committee that have yet to be heard shall be heard at the criminal standard having been referred on that basis; thereafter cases shall be heard at the civil standard
- The Council’s statutory committees shall receive training in the operation of the civil standard, and
- Relevant Council publications shall be updated to reflect the change.

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<sup>8</sup> [Report \(for web\) \(professionalstandards.org.uk\)](https://www.professionalstandards.org.uk)