

Guidance for decision makers on assessing insight when considering whether undertakings are appropriate

Introduction

- 1 The purpose of this guidance is to assist decision makers when considering whether a doctor has demonstrated the insight necessary to be a suitable candidate for agreeing undertakings at the end of the investigation stage.
- 2 In particular, this guidance is intended to consider the cultural factors which may influence how a doctor demonstrates insight. To ensure a fair and consistent approach, decision makers should take a broad view of evidence of insight and consider whether the doctor is likely to co-operate with the process of agreeing undertakings and comply with agreed undertakings. The absence of an apology should not in and of itself preclude an offer of undertakings.
- 3 This guidance should be considered together with other guidance for decision makers and, in particular, the guidance on undertakings.

Application of undertakings

- 4 Undertakings are likely to be appropriate where a doctor understands the need to limit his/her practice or undertake retraining or other remedial measures, increasing the likelihood of a return to safe unrestricted practice in the future.
- 5 *Good Medical Practice* provides the following guidance at paragraph 30 and 31 to doctors when things go wrong:

'Being open and honest with patients if things go wrong.

- 30 If a patient under your care has suffered harm or distress, you must act immediately to put matters right, if that is possible. You should offer an apology and explain fully and promptly to the patient what has happened, and the likely short-term and long-term effects.

- 31 Patients who complain about the care or treatment they have received have the right to expect a prompt, open, constructive and honest response including an explanation and, if appropriate, an apology. You must not allow a patient's complaint to affect adversely the care or treatment you provide or arrange.'
- 6 The guidance we provide for panellists on sanctions at panel hearings (the *Indicative Sanctions Guidance*) states at paragraph 32 that this reflects a number of expectations on behalf of the profession and the public, including that:
 - (a) Patients should be protected from similar events reoccurring, and
 - (b) Doctors should take positive steps to learn from their mistakes, or when things go wrong.

Expressions of regret and apology

- 7 A doctor's willingness to apologise is to be encouraged, however, the *Indicative Sanctions Guidance* (paragraphs 33 – 37) recognises that whilst the duty to 'offer an apology' where appropriate reflects that, in our society, it is almost always expected that a person will apologise when things go wrong, there can be different cultural factors which influence somebody's willingness to do so.
- 8 Cross-cultural communication studies¹ into the different ways people from different cultures acknowledge fault show that there are great variations in the way that individuals from different cultures and language groups use language to code and de-code messages. This is particularly the case when using a second language, where speakers may use the conventions of their first language to frame

¹ Influential thinkers and academics in this field include S. M Gass, Marc L. Bergman and Keiko Okumura. The supplementary paper 'Academic research into the different ways people from different cultures acknowledge fault' provides a list of further reading.

and structure sentences, often translating as they speak and may also be reflected in the intonation adopted. As a result, the language convention, subtleties or nuances of the second language may not be reflected. In addition, there may be differences in the way that individuals use non-verbal cues to convey a message, including eye contact, gestures, facial expressions and touch.

- 9** Awareness of, and sensitivity to, these issues are important in determining the following:
- (a)** How a doctor frames his/her 'insight'.
 - (b)** Whether or how a doctor offers an apology.
 - (c)** The doctor's demeanour and attitude.
- 10** Decision makers should be aware that there may be cultural differences in the way that insight is expressed, for example, whether or how an apology or expression of regret is framed and delivered and the process of communication, and that this may be affected by the doctor's circumstances, for example, their ill-health.
- 11** To some individuals, (and this may or may not depend on their culture), offering an apology may amount to an acceptance of personal guilt which, depending on the facts, a doctor may regard as inappropriate or excessive. It is also possible that occasionally a doctor may be constrained by issues involving legal liability, for example, a criminal investigation, and/or legal advice and therefore does not offer an apology.
- 12** The main consideration for decision makers is to ensure that the agreement of undertakings will provide adequate protection to patients in that the doctor has recognised that steps need to be taken to limit their practice or undertake remediation. It is not necessary to be prescriptive about the form that evidence of such insight needs to take and this approach is consistent with the Indicative Sanctions Guidance (paragraph 37).

Evidence of insight

- 13** Doctors are expected to apologise in certain circumstances but this is not a prerequisite for demonstration of insight. The absence of an apology should not in and of itself preclude an offer of undertakings. To ensure a consistent approach, which can be applied fairly across people from all backgrounds, decision makers should consider the following two factors, when assessing evidence of insight;
- (a)** An indication that the doctor is likely to be co-operative in accepting undertakings.
 - (b)** An indication that the doctor is likely to comply with any proposed undertakings.