

Guidance for specialist advisers

Overview

- Specialist advisers are registered medical practitioners - who must have a current licence to practise - appointed by the Registrar to **advise** a Fitness to Practise Panel about medical issues relating to a doctor's health or performance which may arise at a hearing. It is vital that they read in full all the information sent to them in advance of a hearing and that they give careful consideration to the oral evidence at the hearing and any further documentary evidence submitted.
- Any advice given by a specialist adviser **must** be given in the presence of **all** the parties to the proceedings.
- Specialist advisers may, **with the consent of the panel chairman**, ask questions of the doctor or other witnesses. Questions asked **must** be restricted to the medical significance of information relevant to the doctor's performance or health and be limited to the issues before the panel.
- Specialist advisers do not sit in camera with the Panel when they retire to make their findings.
- Specialist advisers **must not** do any of the following:
 - Give evidence, for example: their own clinical opinion about the doctor's health or the adequacy of his practice;
 - Express an opinion as to whether or not the doctor's fitness to practise is impaired.

Further information about Fitness to Practise Panels and the role of specialist advisers is set out in the following pages. You should read the information and ensure that you fully understand it before acting as a specialist adviser on any occasion. If you have any questions you should contact the Adjudication team on **0161 240 7112**.

Fitness to Practise Panels

1. Fitness to Practise Panels consider cases which allege that a doctor's fitness to practise is impaired by reason of one or more of the following:
 - a. Misconduct.
 - b. Deficient professional performance.
 - c. A conviction or caution in the British Isles for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence.
 - d. Adverse physical or mental health.
 - e. A determination by a regulatory body in either the British Isles or overseas.
2. Cases are usually either new cases of alleged impaired fitness to practise or review cases, that is, cases where a Fitness to Practise Panel at an earlier hearing imposed conditions on the doctor's registration or suspended their registration. In addition, panels hear applications for restoration following erasure from the Medical Register as well as applications for voluntary erasure after an allegation has been referred to a Fitness to Practise Panel and the hearing has commenced.
3. The Panel's primary function is to protect patients and the wider public interest (which includes the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour) from doctors who are unfit to practise.
4. If a Panel finds a doctor's fitness to practise impaired it may:
 - a. Take no action against the doctor's registration. (Panels will normally take action in order to protect the public interest but there may be exceptional circumstances where no action is appropriate e.g. where the doctor has demonstrated considerable insight into his or her behaviour and has already embarked on **and** completed any remedial action the Panel would otherwise require the doctor to undertake. Such cases are likely to be very rare).
 - b. Impose conditions on the doctor's registration for up to a maximum of 36 months.
 - c. Suspend the doctor's registration for up to a period of 12 months.
 - d. Direct erasure of the doctor's name from the Medical Register, except in cases that relate **solely** to a doctor's health.
5. Panels may also take into account any written undertakings offered by the doctor provided that the doctor agrees that the Registrar may disclose the undertakings, except those relating exclusively to the doctor's health, to:

- a. The doctor's employer or anyone with whom he or she is contracted to provide medical services.
- b. Any person from whom the doctor is seeking employment or a contract to provide medical services.
- c. Any enquirer.

6. In cases where conditions have previously been imposed or the doctor's registration suspended, it is open to the panel at the review hearing, if it concludes that the doctor's fitness to practise is impaired, to impose a further period of conditions for up to 36 months or a further period of suspension for up to 12 months, but it may also move from conditions to suspension or erasure, or from suspension to conditions or erasure although erasure is not an option if the case relates **solely** to the doctor's health. In cases which relate **solely** to a doctor's health, it is open to the Panel, if the doctor's registration has been suspended for at least two years because of successive periods of suspension, to suspend the doctor's registration indefinitely.

Appointment of specialist advisers

7. Rule 3 of the General Medical Council (Fitness to Practise) Rules 2004 provides that the Registrar may appoint:

- a. A panel of specialist health advisers to advise a Fitness to Practise Panel in relation to medical issues regarding a doctor's health which may arise at a hearing before the Panel, and
- b. A panel of specialist performance advisers for the purpose of advising a Fitness to Practise Panel in relation to medical issues regarding a doctor's performance which may arise at a hearing before the Panel.

8. Rule 3 also provides that in selecting a specialist health adviser for a particular case the Registrar shall have regard to the physical or mental condition which is alleged to impair the doctor's fitness to practise and that in appointing a specialist performance adviser shall have regard to the specialty to which the allegation relates. Please note that, on being appointed and at the time of the Fitness to Practise hearing, specialist advisers must have a current licence to practise. Doctors who have previously been selected to act as a medical examiner in relation to a case or a member of an assessment team in relation to the case may not act as specialist advisers to the same case.

The role of specialist advisers

9. Specialist advisers attend Fitness to Practise Panel hearings to provide advice to the Panel on the medical significance of information relating to the doctor's health or performance before the Panel. The number and type of specialist adviser present for any particular case will depend on the nature of the case. In cases where the doctor's health or performance is not an issue, no specialist adviser will be present.

10. Specialist advisers may, with the consent of the Panel Chairman, ask questions of the doctor or other witnesses. Any advice given by specialist advisers must be given in the presence of all the parties, when invited by the Panel Chairman.

11. The specialist adviser may give advice in response to questions from the Panel or may give advice which he considers would assist the Panel. For example:

- a. A specialist health adviser might give advice on the symptom pattern and the course or possible courses of a particular disorder but not his opinion as to the likely course of that disorder in the particular doctor's case.
- b. A specialist performance adviser might explain the nature of procedures or practice in the doctor's speciality but not his opinion as to the adequacy of the particular doctor's practice.

12. The specialist adviser **must not**:

- a. Give evidence e.g. give his or her own clinical opinion about the doctor's health or the adequacy of his or her practise.
- b. Express a view on whether the doctor's fitness to practise is impaired.

Information available to specialist advisers

13. About 10 days prior to a hearing all the information in a case to be considered by a Fitness to Practise Panel is sent to the panel members and to the specialist advisers. The bulk of the evidence is presented in documentary form and usually comprises medical reports, assessment reports on the doctor's performance, correspondence and other material relevant to the doctor's fitness to practise. These papers are also sent to the doctor and his or her legal representative at the same time.

14. At the hearing, the doctor or his or her legal representative may adduce further evidence for example by giving oral evidence and anyone who has provided documentary evidence may be called either by the GMC or by the doctor to give evidence.

15. It is vital that specialist advisers study all the evidence sent to them in advance of the hearing and that they give careful consideration to the oral and other documentary evidence given at the hearing.

Conflicts of interest

16. If you recognise a conflict of interest, or think there may be a conflict, or if you relinquish your licence to practise before the hearing, contact the Adjudication team on **0161 240 7112** immediately. Failure to do so increases the risk that the hearing may not be effective.

17. We will advise whether it is appropriate for you to sit on the case. Before providing that advice, they may need to seek views from others e.g. the parties to the proceedings.

18. If you have to stand down, we will find another specialist adviser to replace you.

19. Conflicts of interest may also become apparent on the morning of the hearing or during the course of a hearing. These should be dealt with as they arise.

Procedure at hearings

20. Each case will be considered by a Panel comprising at least three people, including at least one medical panellist and one lay (i.e. non-medical) panellist. Panel chairmen are appointed from the list of panellists eligible to chair panels and may be either medical or lay.

21. In addition to the Panel and specialist adviser(s) a legal assessor will be present throughout to advise the Panel on points of law.

22. Hearings are normally held in one of the hearing rooms at the GMC's offices in either London or Manchester. Occasionally, hearings may be held at other venues. A shorthand writer will be present to take a verbatim note of the proceedings although he or she does not record the Panel's private deliberations.

23. Hearings are normally held in public, although they will be held in private if the case relates **solely** to the doctor's health. In cases where the doctor's health is one of the issues but there are also other issues for example relating to the doctor's conduct or performance the hearing will normally be held in public except for those parts where evidence is given relating to the doctor's health.

24. Doctor's are invited to attend the hearings and the majority do so. Most, but not all, doctors are legally represented; some doctors bring a member of their family or attend alone. The Panel may proceed in the absence of the doctor if it is satisfied that all reasonable steps have been taken to serve Notice of the hearing on the doctor at his or her registered address or last known address.

25. The Presenting Officer, that is the GMC's representative, presents the GMC's case and may call witnesses. Witnesses called by the Presenting Officer may be cross examined by the doctor or his or her representative. The Panel also have an opportunity to ask questions of witness to clarify any points. The chairman will indicate when the specialist adviser(s) may put any questions to the witnesses.

26. Once the Presenting Officer has concluded the case for the GMC it is the turn of the doctor or his or her representative to present his or her case. The doctor may give evidence and/or to call witnesses. The Presenting Officer may cross examine the doctor and/or any witnesses he or she calls. The Panel then ask questions and the chairman will again indicate when the specialist adviser(s) may put questions to the witnesses.

27. Once all the evidence has been heard and any closing submissions made the Panel will retire to consider whether the facts alleged in the charge have been found proved. The specialist adviser does **not** retire with the Panel. Should the Panel require any advice from the specialist adviser it will resume in public (or in a health only case in the presence of the parties) and seek the advice required. This ensures that all parties have an opportunity to hear the advice given and, if necessary, to

comment on it. The Panel will announce its decision on findings of fact in public or, in cases relating **solely** to a doctor's health, to the parties.

28. Assuming that at least some of the facts have been found proved the Panel will then consider further evidence and hear submissions on whether, on the basis of the facts found proved, the doctor's fitness to practise is impaired. It will then retire again to consider in private whether the doctor's fitness to practise is impaired. Again, the specialist adviser does **not** retire with the Panel but when considering findings of fact the Panel will resume in public/in the presence of the parties should it wish to seek further advice from the specialist adviser. Having reached a decision the chairman will announce the decision and the reasons for it in public or, in cases relating solely to a doctor's health, to the parties.

29. If the Panel find that the doctor's fitness to practise is impaired, it will proceed to consider further evidence and hear submissions on what sanction if any to impose on the doctor's registration. The options available to the Panel are set out in paragraphs 4 - 6 above. In deciding on the appropriate sanction the Panel must have regard to the *Indicative Sanctions Guidance* published by the Council and available on the GMC's website. Again the specialist adviser does **not** retire with the Panel. Have deliberated in private the Panel will announce its decision and the reasons for that decision in public or, in cases relating solely to a doctor's health, to the parties.

30. If, however, the Panel conclude that the doctor's fitness to practise is not impaired it may decide to issue a warning to the doctor if there has been a significant departure from the standards set out in *Good Medical Practice* or where there is significant cause for concern on assessment of the doctor's performance. Warnings cannot, however, be given in cases relating solely to a doctor's health. As with other decisions the Panel will deliberate in private and announce their decision and the reasons for the decision in public.

Appeals

31. The doctor has a right of appeal to the High Court (Court of Session in Scotland) in any case where the Panel take action affecting the doctor's registration. The Council for Healthcare Regulatory Excellence may also refer a case to the High Court (Court of Session in Scotland) if it believes that the action taken by the Panel has been unduly lenient.

Length of cases

32. Cases vary considerably in length depending on their complexity. Some cases are scheduled for one day while others, particularly those relating to several aspects of the doctor's fitness to practise, may take several days, weeks or months to conclude.

November 2011