

Warnings

Introduction

- 1 This guidance aims to help case examiners, the Investigation Committee and the Fitness to Practise Panel (the panel) determine when it is appropriate to issue a warning. While we recognise that individual cases must be decided on their own facts, the purpose of the guidance is to encourage consistent and appropriate decision making. This guidance focuses on thresholds and criteria; for warnings at the investigation stage there is separate operational guidance covering the process for issuing a warning.
- 2 This document should be considered in the context of the main decision-making guidance for case examiners and the Investigation Committee and the Indicative Sanctions Guidance for Fitness to Practise Panel panellists.
- 3 Warnings are available at both the investigation stage and the adjudication stage of the GMC's fitness to practise procedures.
- 4 At the investigation stage, the case examiners or the Investigation Committee must first apply the investigation stage test and satisfy themselves that there is no realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree requiring action on his or her registration. At the adjudication stage, the panel should only consider whether a warning is appropriate, once it has found that the doctor's fitness to practise is not impaired.
- 5 This guidance does not cover the factors that should be considered in determining whether a doctor's fitness to practise is or is not impaired. Decision makers should refer to the main guidance in this respect.
- 6 The same thresholds apply to issuing warnings at both the investigation stage and the adjudication stage. There should be no distinction between the significance attached to warnings issued at the investigation stage and warnings issued at the adjudication stage.
- 7 Given their purpose, warnings are not appropriate if the allegations against a doctor relate solely to his or her health. They are, however, available in all other cases, including multifactorial cases in which health is raised as an issue.

- 8 Warnings are disclosed to any person or body who brought the allegation to the attention of the GMC, the practitioner's employer, and any other enquirer. They are disclosed to any enquirer and published via the GMC's website on the List of Registered Medical Practitioners for a five-year period. After five years, warnings cease to be published on LRMP and are no longer disclosed to general enquirers. However they are kept on record and disclosed to employers on request, indefinitely.
- 9 A warning does not prevent a doctor from holding a licence to practise and does not place any restrictions on their registration.

The purpose of warnings

- 10 The power to issue warnings, together with other powers available to the GMC, is central to our role of acting in the public interest which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.
- 11 Warnings allow the GMC to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC in the interests of maintaining good professional standards and public confidence in doctors. The recording of warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Repeat of conduct for which a warning was previously issued may be taken into account by a Panel in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.
- 12 If any individual allegation is serious enough to amount to a finding of impairment, if proved, then more serious measures are likely to be required at the outset. These more serious measures include undertakings and conditions which restrict the doctor's practice. A warning will not be appropriate where there is a requirement to restrict the doctor's future practice in any way, following a finding of impaired fitness to

practise. Warnings are not available in cases which have resulted in, or in which there is a realistic prospect of a finding of impairment, and the GMC is not able to actively monitor how the doctor responds to a warning.

- 13** Although warnings do not restrict a doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.
- 14** Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell below standards and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.
- 15** It is also important to differentiate between warnings and letters of advice which may be given at the investigation stage. The latter is simply a mechanism to provide helpful advice to a doctor on any given issue. A warning is a formal response drawing the doctor's attention to specific concerns and highlighting that any repetition is likely to result in a finding of impaired fitness to practise.

The test for issuing a warning

- 16** A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below standards to a degree warranting a formal response by the GMC. A warning will therefore be appropriate in the following circumstances:
- There has been a significant departure from *Good Medical Practice* ; or
 - There is a significant cause for concern following an assessment of the doctor's performance.
- 17** There is no definition of 'significant' in the Medical Act or in the Fitness to Practise Rules. The paragraphs below are therefore intended to help decision makers, at both the investigation and adjudication stages, consider whether a warning is appropriate.
- 18** The guidance has been drafted in the light of our operational experience of warnings issued since the reformed procedures were introduced in 2004. The guidance aims to identify some of the factors that decision makers will need to take into account when determining whether a warning is appropriate. Although a number of the warnings that have been given were in response to criminal offences, this guidance focuses on the overriding principles rather

than specific offences. The examples quoted in this guidance are intended to assist decision makers but are not intended to serve as precedents. Each case must be considered on its own merits.

Factors to consider

- 19** Once the decision-makers are satisfied that the doctor's fitness to practise is not impaired, they will need to consider whether the concerns raised are sufficiently serious to require a formal response from the GMC, by way of a warning. When doing so the decision makers must have regard to the public interest (See paragraph 9 above.)
- 20** The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning:
- a. There has been a clear and specific breach of *Good Medical Practice* or our supplementary guidance;
 - b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or a finding of impaired fitness to practise, or in the case before the panel, that the doctor's fitness to practise has not been found to be impaired;
 - c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly;
 - d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

Treatment cases

- 21** Given the terms and function of a warning, it will normally be appropriate to issue a warning following a specific breach of *Good Medical Practice* or allegation of misconduct rather than more generalised concerns about the standard of a doctor's practice.

Convictions and cautions

- 22** There is a presumption that cases involving a conviction or caution should proceed to a Fitness to Practise Panel. There will, however, be cases involving minor convictions or cautions that do not require referral to a Fitness to Practise panel or that, having been referred to a panel, are not considered serious enough to warrant a finding of impaired fitness to practise.
- 23** Examples of convictions and cautions that have resulted in a warning include one-off drink driving offences where we are satisfied that there are no underlying health concerns, common assault outside the context of the doctor's professional practice, disorderly behaviour while drunk and criminal damage. As stated earlier, each case must be considered on its own merits and the response will depend on the particular circumstances of the case. The decision maker will need to consider, in addition to the illegality of the conduct, if there are any other reasons why repetition may cause concern, having in mind any issues of patient protection, the public's confidence in the profession or the reputation of the profession (for example, whether in relation to a conviction or caution for affray, this reveals a tendency towards violence in confrontational situations).

Dishonesty

- 24** There is a presumption that the GMC should take some action when the allegations concern dishonesty.¹ There are, however, cases alleging dishonesty that are not related to the doctor's professional practice and which are so minor in nature that taking action on the doctor's registration would be disproportionate. A warning is likely to be appropriate in these cases. An example of this might include, in the absence of any other concerns, a failure to pay for a ticket covering all or part of a journey on public transport.

Proportionality

- 25** In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner.² It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.

¹ Paragraphs 34 to 41 of the main guidance for decision makers at the investigation stage advise that there will be a presumption that the GMC should take some action when the allegations concern dishonesty.

² Further guidance on the issue of proportionality can be found in the case of *Bolton v The Law Society* [1994] 1 WLR 512, [1993] EWCA Civ 32

Evidence Investigation stage

Case Examiners

- 26** Warnings are only relevant at the case-examiner stage if there are no disputed facts once the doctor has made representations, and if the doctor has not exercised his or her right to a hearing before the Investigation Committee.
- 27** The case examiners should not issue a warning if the allegations are so serious as to give rise to a finding of impairment, but the evidential test is not met (namely the allegations are not provable before a Panel).

Investigation Committee

- 28** The Investigation Committee has a role in considering afresh whether to refer the doctor to a FTP Panel hearing or whether to issue a warning or conclude the case with no action. The Investigation Committee will have sight of all the evidence available to the case examiners, any further submissions, and, if the committee considers it necessary in order to discharge its functions, any oral evidence. It will only refer a case to a Panel where information arises during the hearing that was not available to the case examiners, and that suggests that to do so would be appropriate.
- 29** The Investigation Committee, when considering a case previously considered by case examiners, is likely to have additional information available. The fact that the Investigation Committee subsequently decides not to issue a warning does not mean therefore that the Committee concluded that the case examiner's decision was 'wrong'.

Adjudication stage

- 30** At the adjudication stage the panel will only consider the question of whether a warning is appropriate once it has made findings of fact and concluded that the doctor's fitness to practise is not impaired. The panel should seek representations from both parties on whether a warning is appropriate before reaching a decision.

Mitigation

- 31** A distinction can be made between circumstantial mitigation (relating to the specific events that are said to have occurred) and personal mitigation (relating to the doctor's character, career or personal circumstances).
- 32** If the decision makers have concluded that the doctor's fitness to practise is impaired or that the realistic prospect test is met, they cannot then take account of personal mitigation to decide that a warning is appropriate. As explained above, warnings may only be issued where the decision makers have concluded that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met.

33 However, if the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of aggravating or mitigating factors to determine whether a warning is appropriate. These might include:

The level of insight into the failings;

- a. A genuine expression of regret/apology
- b. Previous good history
- c. Whether the incident was isolated or whether there has been any repetition;
- d. Any indicators as to the likelihood of the concerns being repeated;
- e. Any rehabilitative/corrective steps taken;
- f. Relevant and appropriate references and testimonials.

Reasons for decisions

34 The decision makers should record their reasons for issuing or for not issuing a warning.

Drafting warnings

35 Bearing in mind their purpose, warnings must be relevant to the doctor's practice, highlight the conduct/behaviour that led to the warning and place the doctor on notice about his or her future conduct, behaviour or performance.

36 A warning will normally need to do the following:

- a. Highlight the particular concerns that have led to the warning;
- b. Make clear why the concerns impact on patient safety and/or on public confidence in the profession and/or the reputation of the profession;
- c. Make clear what the conduct, behaviour or performance is, that it should not be repeated, and why;
- d. Refer to any relevant guidance in Good Medical Practice or other GMC supplementary guidance.

37 Where possible warnings should follow the format adopted in the warnings template at Annex A. The template provides for warnings to be specific to the identified failings in conduct, performance or behaviour, relevant to the case in question.

Annex A

Dr X

INSERT the facts – as agreed with the doctor or as established by the Investigation Committee. EG: On 18 October 2007, you accepted a Police caution for....

[**NOTE:** This should be kept as simple as practically possible – and where there is a caution or conviction for a criminal offence, the exact offence should be stated. However, there is an opportunity to include, in exceptional circumstances and as briefly as possible, the background and context to these facts, where this is appropriate in light of the individual case. Where contextual information is included this should not under any circumstances attempt to 'go behind' the facts, especially where there is a conviction or caution.

NOTE: In cases primarily about treatment or clinical judgement, it is important not to name particular patients. In these cases, Warnings should include a short generalised summary of the facts. Rather than list each particular incident (of which there may be many), a warning should usually describe, in general terms, the shortcomings or omissions evidenced in the case(s) in hand.]

This conduct / behaviour / performance [delete as appropriate] does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good Medical Practice and associated guidance. [Include, if appropriate - In this case, paragraph X of {title of guidance} is particularly relevant. NB: in caution / conviction cases, paragraph 57 of GMP should usually be quoted] Whilst this failing in itself is not so serious as to require any restriction on your registration, it is necessary in response to issue this formal warning.

This warning will be published on the List of Registered Medical Practitioners (LRMP) for a period of five years and will be disclosed to any person enquiring about your fitness to practise history. After five years, the warning will cease to be published on LRMP however it will be kept on record and disclosed to employers on request.