

Guidance on dealing with breaches of Undertakings and criteria referral to a Fitness to Practise Panel

1. In situations where a doctor's fitness to practise has been called into question as a result of evidence gathered following a health or performance assessment, the case examiners will need to consider whether undertakings might be sufficient for the protection of patients.

2. The first step will be to consider all the available evidence, including any performance and/or health assessment, and apply the investigation stage test:

'The Investigation Committee or case examiner must have in mind the GMC's duty to act in the public interest which includes the protection of patients and maintaining public confidence in the profession, in considering whether there is a realistic prospect of establishing that a doctor's fitness to practise is impaired to a degree justifying action on registration'

3. Assessment reports will include an opinion on whether the doctor is fit to practise, either generally or on a limited basis. Reports will also include recommendations on the management of the case. Case examiners should take account of the recommendations and any additional evidence that is available. However, it is ultimately a matter for the case examiners to decide whether the case reaches the investigation stage test.

4. Rule 10 of the General Medical Council (Fitness to Practise) Rules 2004 provides that where it appears to the case examiners, following the consideration of an assessment report, that the doctor:

- a. is not fit to practise;
- b. is not fit to practise except on a limited basis or under supervision, or both, or
- c. suffers from a continuing or episodic physical or mental condition which, although in remission at the time of the assessment,

may be expected to cause a recurrence of impairment of the practitioner's fitness to practise,

they may recommend that the doctor is invited to comply with such undertakings as they think fit.

5. If the case examiners decide that the doctor is not fit to practise, or is only fit to practise on a limited basis or under supervision, they must consider whether there is a realistic prospect of the doctor being erased. Where there is a realistic prospect of erasure the case examiners may not consider offering undertakings and must refer the case to a FTP panel for adjudication.

6. In situations where the allegations relate solely to a doctor's health, the Medical Act does not allow for the doctor to be erased. Case examiners must, however, consider all relevant evidence relating to the doctor's fitness to practise, and there will be situations in which issues of conduct or performance, outside the scope of the health assessment, raise the possibility of erasure. (In considering whether there is a realistic prospect of erasure the case examiners should refer to the guidance on the investigation stage test and to the sanctions guidance.)

7. If the case examiners are satisfied that there is no realistic prospect of the doctor being erased, they may consider whether undertakings are sufficient to protect patients. The case examiners must have in mind the GMC's duty to act in the public interest, which includes the protection of patients and maintaining the public confidence in the profession.

8. Undertakings entered into by the doctor must be sufficient to ensure that patients are protected and confidence in the profession is maintained. Factors that will need to be taken into account will include the seriousness of the issues raised and the complexity of the concerns. Undertakings are not an option if it is a doctor's conduct that has led to that there is a realistic prospect of establishing impairment to a degree justifying action on registration.

9. Undertakings will only be appropriate if there is reason to believe that the doctor will comply with them, for example, because it is judged that the doctor has shown genuine insight into his problems/deficiencies. The assessment report(s) and the doctor's comments may help case examiners decide whether this is the case. There may also be information about previous attempts to support the doctor at a local level.

10. The assessment reports will provide guidance on what undertakings, if any, may be appropriate. The case examiners should also refer to the standard undertakings contained in the [Undertakings Bank](#).

11. There are three categories of undertaking: those relating to the treatment of a doctor's health condition, those that relate to the need to address deficiencies in clinical performance and those relating to day to day medical practice. Case examiners may use their discretion in drawing up the undertakings, but they should be based on the balance of opinion within any available reports. The standard

undertakings do not have to be followed exactly. Alternative forms of wording can be adopted where appropriate.

12. It is appropriate to include the safeguard that the doctor should seek prior approval from his supervisor before accepting any post, and should cease work immediately if advised to do so. It is also important for patient protection, to be satisfied that there are satisfactory local arrangements to monitor compliance with the undertakings and ensure satisfactory monitoring of the doctor's clinical practice

13. If the concerns are about a doctor's health, it is important that the doctor should be registered with a GP and that the doctor's supervisor is able to exchange information with both the GP and someone in the doctor's workplace.

Interim reports

14. The office will seek interim reports at intervals to be decided by the case examiner. These will probably be every three to six months depending on the circumstances of the case, the length of time the undertakings have been in place and the progress being made by the doctor. However, supervisors should not wait until an interim report is due before notifying the GMC about any serious concerns.

Amending undertakings

15. The Rules allow for undertakings to be amended where, as a result of information received, including any report or further assessment, it appears to the case examiners that the undertakings should be varied or cease to apply.

16. Where it seems that an amendment to undertakings would be desirable, the case examiners should invite the doctor to indicate whether he or she agrees with the proposed amendment to the original undertakings. Where the doctor agrees, there is no problem. However, if the doctor does not agree with the proposed change, the case examiners must decide whether in the light of comments made by the doctor, to persist with the original undertakings or whether to refer the case to a Fitness to Practise panel.

Referral to a Fitness to Practise panel

17. Under Rule 10(7) the Registrar may decide to refer a case to a fitness to practise panel if he receives information that any of the following circumstances have occurred:

(a) the practitioner has not within the period of 28 days from the date of the letter (or such further period as the Registrar may allow) agreed to comply with the undertakings proposed

(b) the practitioner has failed to observe an undertaking he has agreed to

comply with or

- (c) the practitioner's health or performance has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise.

18. A decision on whether to refer to a FTP panel will depend on the extent of the breach or the significance of the deterioration in the doctor's health or performance. As a starting point, the investigation stage test should be considered to determine whether the doctor's fitness to practise is still impaired. If the decision maker is of the view that the doctor's fitness to practise may no longer be impaired, he should refer the case to case examiners for a decision before going on to look at whether further steps (if any) need to be taken.

19. As a main principle, when considering whether a referral to a fitness to practise panel for breach of undertakings might be appropriate, decision makers should consider the following:

- a. The seriousness of the breach;
- b. The significance of any deterioration in the doctor's health or performance and the evidence that supports that assessment;
- c. Patient protection. Any decision to continue monitoring of existing undertakings or to amend undertakings needs to be sufficiently robust to ensure patient protection.

20. Minor breaches, such as a single missed appointment with a supervisor should not generally lead to a referral to a panel. In these circumstances, the doctor should be reminded in writing of the need to comply with undertakings and warned that a repeated incident might result in a referral to a panel. Similarly, a minor deterioration in the doctor's health or performance might be more appropriately handled by agreeing amended undertakings with the doctor. Decision makers will have to consider each reported breach on its merits and should be guided by the doctor's supervisor and the any other information that is brought to their attention.

21. Persistent breaches, such as a doctor missing more than one consecutive appointment, or where there is clear evidence that the doctor has ignored an undertaking, such as not to work in a certain area, may indicate the need for referral to a Panel. Particular concern needs to be given to doctors with addiction problems, who fail to observe an undertaking to abstain from drugs or alcohol. This may be a first sign that the doctor is losing control of their addiction, although guidance from the doctor's supervisor and other medical advisers should assist case examiners to make decisions in these cases.

Disclosure

22. Rule 10(8) provides as follows:

'The Registrar shall disclose details of any relevant undertakings (save those relating exclusively to the health of the practitioner) to —

- (a) any person by whom the practitioner is employed to provide medical services or has an arrangement to do so; and
- (b) any enquirer '

23. A copy of the performance assessment report will be shared with the doctor's employer. (Rule 7(5))

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