
Guidance to the GMC's Fitness to Practise Rules 2004

Status and scope

1. The purpose of this guidance is to —
 - a. provide a brief overview of the Fitness to Practise procedures; and
 - b. demonstrate the way in which the Fitness to Practise Rules are expected to be put into effect by the General Medical Council.
2. The guidance aims to promote consistency and transparency. Although it does not have legal authority, the courts may refer to this guidance in interpreting the Rules governing the GMC's fitness to practise procedures. It should be followed unless reasons for any departure are clearly justified and explained.
3. The guidance is not intended to be exhaustive and is to be read in conjunction with any other guidance which may be produced by the Council from time to time (for example [Good Medical Practice](#), the [Indicative Sanctions Guidance](#), and any other guidance specifically designed to assist decision-makers by clarifying the criteria and thresholds to apply in reaching fitness to practise decisions). It is a 'living document', which will be updated and revised as the need arises.

Investigation Stage

Initial consideration and referral of allegations (Rule 4)

4. The GMC is entitled to restrict or remove the registration of a practitioner whose fitness to practise is found to be impaired. Under section 35C(2) of the Medical Act 1983 (the Act), a practitioner's fitness to practise may be found to be impaired by reason of any or all of the following:
 - a. Misconduct
 - b. Deficient performance
 - c. A criminal conviction or caution in the British Isles (or elsewhere for an offence which would be a criminal offence if committed in England or Wales)
 - d. Adverse physical or mental health

e. A determination by a regulatory body either in the British Isles or overseas

5. On receipt of initial information about a practitioner by the GMC, the Registrar or his staff (together referred to throughout this guidance as “the Registrar”) will consider if the allegation raises a question whether any of the categories of impairment set out at section 35C(2)(a) to (e) (above) apply. In order to assist him in this task, the Registrar may make any enquiries he thinks fit (for example, of the practitioner’s employer or any person or body for whom the practitioner provides medical services (together referred to throughout this guidance as the practitioner’s “employer”)).

6. Accordingly, the Registrar may conclude the matter at this stage, or refer it forward under the Rules (either for investigation — see paragraph 10 — or direct for adjudication — see paragraph 8). The Registrar will conclude the case if it does not raise a question whether the doctor’s fitness to practise may be impaired, for example, the allegation is not about a registered medical practitioner, or the allegation concerns the level of fees charged for private treatment/service. The Registrar may also conclude the case on the grounds that it is vexatious. If the Registrar does not decide to refer the case forward, he will notify the person(s) who brought the allegation to the GMC’s attention, of his reasons for concluding the case at this stage. Where appropriate, the Registrar may also advise the maker of the allegation about other means of resolution (such as the NHS complaints procedure) or refer the allegation directly to another body for consideration.

7. If the most recent events giving rise to the allegation took place more than five years before receipt of the allegation by the GMC, the Registrar may refer the case forward only if he considers that it is in the public interest, in the exceptional circumstances of the case, for it to proceed. The Registrar may make enquiries before deciding whether or not such a case concerning allegations about events that took place more than five years ago should proceed to investigation, for example, to establish why the allegations were not reported to the GMC sooner.

Convictions, cautions and determinations (Rule 5)

8. There is a presumption that, when the practitioner is the subject of a criminal conviction or caution, or a determination by another regulatory body, the matter will proceed directly to be adjudicated upon by a Fitness to Practise Panel. This will always be the outcome when a criminal conviction has resulted in a sentence of imprisonment (either immediate or suspended). In all other cases, the Registrar may decide to investigate the matter further, before referring it for a decision as to the appropriate action to take (see paragraph 10 onwards, below).

9. When a conviction or determination is adjudicated upon by a Fitness to Practise Panel, the GMC will not be required to re-prove the matters that have already been proved in proceedings elsewhere (Rules 34(3) to (5)).

Investigation of allegations (Rule 7)

10. At the “investigation” stage, the GMC will investigate cases to assess whether they should be referred for adjudication. This will normally involve seeking further information from the maker of the allegation, who will in all cases be asked to agree that the GMC may disclose the information to the practitioner (see further details regarding disclosure at paragraphs 37–40 regarding Rule 13, below).

11. The nature of the investigation that is carried out will depend upon the allegation, but may include:

- Obtaining medical records
- Obtaining other documentary evidence from third parties such as the police, or the practitioner’s employers
- Taking statements from witnesses
- Obtaining expert reports on clinical or other matters
- Directing the practitioner to undergo an assessment of his or her health or performance (Rule 7(3))

12. Although the rules give the power to investigate to the Registrar, in practice, an investigation plan setting out the steps to be taken may take account of advice from one of the GMC’s in-house lawyers or from a case examiner (a specially appointed officer of the Council — see paragraph 16 below). If the case involves clinical issues, the case examiner will be medically qualified. Equally, any decision to direct a health or performance assessment may be recommended by, and must be agreed by, a medical case examiner.

13. The procedure in relation to performance and health assessments is set out in Schedules 1 and 2 respectively. When a health or performance assessment is directed, the practitioner will be invited to agree to undergo such assessment. (For the consequences of failure to agree or comply with the assessment process, please see paragraph 66 below.)

14. A performance assessment will be carried out by an Assessment Team made up of at least one lay assessor and two medical assessors. The selection of the medical assessors will take into account the specialty to which the allegation relates, and one of the medical assessors will act as the team leader. The assessment itself will be tailored to the practitioner’s circumstances, and to assist, the practitioner will be asked to complete a portfolio describing his or her practice. The assessment will generally include a peer review (a visit to the practitioner’s current or most recent place of work, a review of his or her records and practice documents, and interviews with the practitioner and third parties) and a test of competence to assess the practitioner’s knowledge and skills. The Assessment Team may seek advice or information which it considers will assist, and will allow the practitioner to comment on any written information received. The team will then produce a report which will be disclosed to the practitioner and any employer (Rule 7(4) and (5)).

15. A health assessment will involve an examination of the practitioner's physical and/or mental condition by two separate doctors selected by the GMC, known as medical examiners. Each examiner will then prepare a report which shall be disclosed to the practitioner (Rule 7(4)).

Decision by Case Examiners or Investigation Committee (Rules 8 to 9)

16. At the outcome of the investigation stage, the GMC may decide to conclude the case against the practitioner, to issue a warning (see paragraphs 21 to 25), or to refer the matter for adjudication before a Fitness to Practise Panel. Decisions on cases at this stage are taken by two case examiners, one medical and one non-medical. Case examiners are officers of the Council appointed for this purpose by the Registrar following a rigorous recruitment process, overseen by the Office of the Commissioner for Public Appointments, designed to assess their decision-making competencies and skills. In some circumstances, the case examiners may, if they both agree, decide to invite the practitioner to accept undertakings restricting his or her practice or behaviour (see paragraphs 27 to 30). All such course of action must be agreed by both a medical and a non-medical case examiner. If the case examiners do not agree, then the matter will be referred to the Investigation Committee or "Committee" (a statutory committee of the GMC).

17. Before deciding to refer a matter for adjudication or to issue a warning, the Registrar will disclose to the practitioner the allegations against him or her, and the documents and evidence gathered in relation to the allegations. The practitioner will be given at least 28 days to provide written comments, which will be forwarded to the case examiners along with the case file.

18. It is not the role of the Investigation Committee or the case examiners to seek to resolve substantial conflicts of evidence. However, allegations will only be referred for adjudication if there is a realistic prospect of establishing that the practitioner's fitness to practise is impaired to a degree justifying action on registration. This is known as the "realistic prospect test". The case examiners will therefore first consider whether sufficient investigations have been carried out in order to enable them to reach such a decision, and if they feel further information would assist, will request the Registrar to obtain it. Equally, the Committee may adjourn its proceedings in order to make a request for further information. Where a health or performance assessment has been directed, the Committee or case examiner may take into account a practitioner's failure to cooperate with such a direction, or with the assessment itself (see paragraph 66 below).

19. In exercising their discretion, the Committee or 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 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.

20. Further guidance regarding the exercise by the Committee and the case examiners of their functions under these rules can be found [here](#).

Warnings (Rule 11)

21. A warning will be issued if the Committee or case examiners decide that there is evidence to suggest that the practitioner's behaviour or performance has fallen below acceptable standards to a degree warranting formal censure by the GMC. This will be appropriate where the concerns indicate that the matter does not warrant referral to a Fitness to Practise panel and action on registration is not necessary, but there has been a significant departure from the principles set out in the GMC's guidance [Good Medical Practice](#) or there is significant cause for concern following assessment.

22. The practitioner will be asked to provide comments which will be taken into account before deciding whether to issue a warning and, if so, in what terms. If the practitioner chooses not to comment or does not dispute the facts alleged, and if a medical and lay case examiner agree to do so, a warning may be issued. In all other cases in which the case examiners believe a warning may be appropriate, the matter will proceed to an oral hearing before the Committee to decide whether a warning should be issued. The practitioner has a right to request that such an oral hearing be held. The Committee may decide to issue a warning, to conclude the case or, if there is new evidence before it that suggests it is appropriate to do so [Rule 11(6)(c)], refer it for adjudication by a Fitness to Practise Panel.

23. If the case examiners disagree in relation to any such decision, the Committee will decide on the appropriate course of action. (The process described above may also be carried out by the Committee when the matter is before them following the failure of the case examiners to agree as to disposal of a case.) If appropriate, the Committee will refer the matter to a differently constituted panel of Committee members for consideration at an oral hearing.

24. The procedure that governs oral hearings in relation to warnings is set out at Rule 11. Although the parties may make representations, there is a presumption that oral evidence will not be received, and this is at the discretion of the Committee considering the case. As the Committee has no power to impose a sanction that will affect the practitioner's registration, the practitioner's rights, and the public interest, will usually be served adequately by a summary hearing of this kind. However, if new evidence at the hearing casts a fresh light on the case, the Committee may refer the matter for adjudication before a Fitness to Practise Panel. Under Rule 41, such hearings will be held in public, unless the particular circumstances of the case outweigh the public interest in holding the hearing in public. Any disputed facts will be decided on the civil standard of proof.

25. Warnings will be disclosed to any person or body who brought the allegation to the attention of the GMC, the practitioner's employer, and any enquirer, and will be publicly available via the GMC's List of Registered Medical Practitioners on our website.

Letters of advice

26. If the case examiners or the Committee decide to conclude the case, they may consider it appropriate, in the circumstances, to exercise the GMC's power to advise members of the profession on standards or medical ethics, by issuing a letter of advice. [This will generally occur when the concerns indicate that there has been a minor departure from the principles set out in the GMC's guidance [Good Medical Practice](#) or a minor cause for concern following assessment, which is not so serious as to merit a formal warning (as above)].

Undertakings (Rule 10)

27. Following the completion of our enquiries, the case examiners will consider all the available evidence, including, where relevant, any performance and/or health assessment reports, and apply the "realistic prospect test". If both a medical and a lay case examiner agree that the practitioner's fitness to practise is impaired (or is likely to be, on recurrence of a medical condition), they may invite the practitioner to accept undertakings and, if these are accepted, decide not to take any action. Such undertakings might include restrictions on the practitioner's practice or behaviour, or the commitment to undergo medical supervision or retraining, and (save for confidential information relating solely to the practitioner's physical or mental condition¹) will be disclosed to his employer, and any subsequent enquirer, and will be publicly available via the GMC's on-line search facility.

28. Undertakings may be proposed only if to do so would provide sufficient protection to the public and, in line with the judgment in *Crabbie –v– GMC (Privy Council Appeal No. 7 of 2002)*, undertakings may not be entered into if there is a realistic prospect that, if the allegation were referred to a Fitness to Practise Panel, the Panel would order that the practitioner's name be erased from the register.

29. When undertakings have been either proposed or accepted, the case may still be referred to a Fitness to Practise Panel if:

- the practitioner declines to accept the proposed undertakings, or fails to reply to an invitation to do so;
- the practitioner subsequently breaches the undertakings;
- the GMC receives new information suggesting a deterioration in the practitioner's health or performance, or otherwise casting a fresh light on the case.

30. When undertakings have been agreed, either by the case examiners or by a Fitness to Practise Panel, they will be monitored and reviewed by the GMC's Case Review Team, which will liaise closely with Deaneries, NHS and other employers. The team will obtain regular progress reports from appropriate parties such as the practitioner's employer, GP and medical and/or workplace supervisor. The team will assess the practitioner's compliance with the undertakings and any change in his or her condition. Each case will be reviewed by a medical case examiner. The matter

¹ The GMC's conditions bank makes clear the categories of health related conditions that are treated as confidential.

may be referred to a Fitness to Practise Panel (as above) or, if appropriate, the case examiners may agree to maintain or vary the undertakings imposed, or to conclude the case.

Reviews of decisions (Rule 12)

31. In certain specified circumstances, the Registrar may decide to review a decision taken by the GMC to conclude a case, issue a warning, or cease consideration of a case on receipt of undertakings.

32. The review may arise as a result of an application by the practitioner, the maker of the allegation or may be on the Registrar's own initiative.

33. A review may only take place if (1) either the decision in question may be materially flawed; **or** there is new information which may have led to a different decision **and** (2) the Registrar considers that the review is necessary for the protection of the public; the prevention of injustice to the practitioner; or is otherwise necessary in the public interest. The Registrar will not review a decision more than two years after it was made except in exceptional circumstances.

34. When the Registrar decides to review a decision, he will seek representations from the practitioner and the maker of the allegation on his decision to review a case, and, where appropriate, disclose to them any new information received. The Registrar will carry out any further enquiries that he considers are necessary to enable him to make a decision.

35. Where the Registrar concludes that all or part of the original decision was materially flawed or that there is new information which would probably have led to a different decision, and where he considers that to do so is necessary for the protection of the public; or for the prevention of injustice to the practitioner; or otherwise necessary in the public interest, he may decide to replace the original decision with a fresh decision (if one that the Registrar is entitled to make); or refer the matter for reconsideration by the case examiners. If the Registrar decides that there are no grounds to do so, then the original decision will stand.

36. Following the review, the Registrar will provide reasons for his decision to the practitioner, the maker of the allegation and any other party whom the Registrar considers has an interest in the matter.

Notification of allegation to employer and other persons (Rule 13)

37. If a practitioner is subject to investigation by the GMC, he must by law provide the GMC with particulars of his employer(s) so that they may be notified of the investigation (see Rule 13 and sections 35B(1)(b) and 35A(2) of the Act).

38. Rule 13 sets out the trigger point for a request to the practitioner under section 35A(2) and disclosure to his employers under section 35B(1)(b). This is as soon as reasonably practicable after the earliest of the following decisions has been taken:—

- To investigate or assess his or her fitness to practise
- To refer the allegations for consideration by the case examiners
- To refer the allegations for consideration by an Interim Orders Panel (see below)
- To refer the allegations for adjudication by a Fitness to Practise Panel.

39. In practice, therefore, on receipt of the maker of the allegation's consent to do so, the GMC will disclose to the practitioner all allegations that are not concluded at the outset (see paragraph 5). At the same time, the practitioner will be asked to provide his or her employer details.

40. For some complaints it is clear from the outset that the GMC will need to investigate. We refer to such cases as Stream 1. Those complaints which might justify action by the GMC if they form part of a wider pattern of concern, but which do not do so by themselves, we refer to as Stream 2 cases. In both circumstances, the complaint will be disclosed to the practitioner and his employers as above. In Stream 2 cases, however, we will, if appropriate, refer the matter directly to the local NHS procedures on the understanding that these will be considered locally and referred back to us should the results of such enquiries reveal that the practitioners fitness to practise may be impaired to a degree potentially justifying action on registration.

Interim Orders

41. The GMC may suspend or impose conditions upon a practitioner's registration on an interim basis, pending investigation and/or adjudication of the case. The Registrar may at any stage (either of his own motion or on the recommendation of the Investigation Committee or a Case Examiner) refer a case to an Interim Orders Panel to consider whether such an order should be made for the protection of patients, or in the interests of the public or the practitioner.

42. The procedure governing referrals to an Interim Orders Panel and the consideration of cases by such panel, is found at Part 7 (Rules 25 to 27). Although the parties may make representations at the hearing, oral evidence will not normally be received. In accordance with Rule 41, hearings before the Interim Orders Panel will generally be held in private, unless the practitioner requests otherwise, or the Panel considers it appropriate to hold the hearing in public on the balance of interests.

43. In determining the date and location of the hearing, the Registrar will take account of the urgency with which a particular case should be considered by the Panel. The practitioner will be given such notice of the hearing as is reasonable in the circumstances and will be provided with a reasonable opportunity to make representations.

44. At the first hearing, the Panel may impose an interim order for a period of up to 18 months. The Act requires that such an order is subject to periodic review. Any order must be reviewed within six months of the order being made, and thereafter every six months. However the practitioner may, after three months, request an earlier review. An order may also be reviewed whenever new evidence relevant to

the order becomes available which suggests that the order ought to be reviewed. If the GMC wishes to extend an order beyond the period initially set, then the GMC must apply to the High Court (or the Court of Session in Scotland) to extend the order. Any such extension will be for a maximum of 12 months.

45. A Fitness to Practise Panel will generally revoke any interim order which is in place prior to delivering its determination at the conclusion of a hearing. A Fitness to Practise Panel also has the power to impose an interim order where it considers it necessary to do so and where the practitioner has been afforded an opportunity of appearing before the Panel and being heard on the question of whether such an order should be made. A Fitness to Practise Panel will generally exercise this power where it has decided to adjourn the case. It also has a power to review an interim order (see section 41A of the Act).

Adjudication Stage

Preliminary Matters

Further investigation of allegations

46. Once a case has been referred to a Fitness to Practise Panel, the GMC will continue, with the assistance of its lawyers, to investigate in order to prepare the evidence to be presented at the hearing in accordance with Rule 13A. The nature of the investigations required will depend on the circumstances of the case, and the investigations already carried out at the earlier stages, but may include:

- Obtaining further documentary evidence
- Taking statements from witnesses
- Obtaining expert reports on clinical or other matters
- Directing the practitioner to undergo an assessment of his or her health or performance

A decision to direct a health or performance assessment will be agreed by a medical case examiner.

Case Management (Rule 16)

47. The rules introduce a case management mechanism intended to reduce delays, narrow the issues before a Fitness to Practise Panel and to minimise the stress placed on witnesses at a hearing. In certain cases, the Registrar may consider one or more case reviews to be desirable in order to facilitate effective listing and consideration at a hearing before a Fitness to Practise Panel. A case review may potentially take place in a case relating to any type of allegation of impairment. However, in exercising his discretion in this respect, the Registrar will consider carefully the benefits of any such review, having regard, amongst other matters, to the complexity of the legal, evidential and procedural issues, and the powers of the case manager (see below).

48. A case review will, as a general rule, be held by telephone conference, in the presence of the parties and a case manager, who is required to act independently of the parties.

49. The case manager will issue directions and maintain a record of those directions, and any admissions made or decisions reached. A non-exhaustive list of directions the case manager may make is set out at rule 16(6). The case manager's record may form part of the evidence before the Fitness to Practise Panel at the substantive hearing. Paragraph 30 of [Good Medical Practice](#) states "*You must co-operate fully with any formal inquiry into the treatment of a patient and with any complaints procedure which applies to your work. You must give, to those who are entitled to ask for it, any relevant information in connection with an investigation into your own, or another health care professional's, conduct, performance or health*". Directions issued by the case manager should be complied with and any failure to do so may result in evidence not being admitted (a Panel has a general discretion to admit evidence before it having in mind fairness and relevance — Rule 34(1)) or adverse inferences being drawn (Rule 16(8)). The Panel will, however, exercise due caution before doing so, given its duty to make due inquiry into the case before it and to take into account all relevant information.

50. Directions issued by the case manager may relate to the disclosure of evidence. As a general rule, however, the GMC will in any event disclose evidence supporting its case against a practitioner as and when this becomes available and in advance of any disclosure by the practitioner of the evidence in support of his defence.

Notice of allegation (Rule 15)

51. Following a decision to refer a case to a Fitness to Practise Panel (and after any relevant case review has been held) the Registrar will send the practitioner a notice setting out the allegations of impaired fitness to practise and any facts upon which the allegations are based. The findings on assessment of a practitioner's health or performance may comprise the facts underlying an allegation of impairment on the grounds of health or performance.

52. The practitioner will be notified of the date and location of the hearing at least 28 days before the hearing. Whilst the precise time and venue will be notified at the same time, it may be necessary to change such details at short notice, and these may be notified at a later date, so long as this is no later than 7 days before the hearing. A shorter timeframe may be agreed between the parties, or may be applied where appropriate in the exceptional circumstances of the case.

53. Rules 20 and 23 provide equivalent notice provisions for review and restoration hearings (see below).

Procedure before the Fitness to Practise panel

Powers of the panel

54. A Fitness to Practise Panel may consider at the same hearing two or more allegations of impairment (of any kind), and allegations against two or more practitioners (Rule 32). Hearings will, therefore, be holistic, in that allegations will be brought forward based on the totality of the evidence obtained during the investigation stage (including, when appropriate, health and performance assessment reports) and may comprise a combination of allegations relating to a practitioner's health, performance or conduct, or based on a caution, conviction or determination.

55. The powers of a Fitness to Practise Panel are found at section 35D of the Act. In summary, and if the practitioner's fitness to practise is impaired, the Panel may impose a period of conditions on his or her registration (for up to three years), suspend his or her registration for a specified period (up to 12 months), or (save where the allegations relate solely to the practitioner's health) erase his or her name from the medical register (section 35D(2)). In addition, the Panel may accept written undertakings entered into by the practitioner where he agrees that these may be disclosed to his employer and any subsequent enquirer, and where it would be sufficient to protect patients and the public interest to do so. If the practitioner's fitness to practise is found not to be impaired, the Panel may issue a warning (section 35D(3)). This is likely to take place in circumstances similar to those set out at paragraph 21 above.

56. The procedure to be adopted by the Panel is set out at Rule 17(2). This provides for a staged approach. Having dealt with any preliminary arguments and a number of other matters (e.g. admissions by the doctor) the Panel hears evidence and submissions relating to the allegation(s).

57. Once the Presenting Officer has presented all the evidence on behalf of the GMC, the doctor may make submissions that insufficient evidence has been adduced to find the disputed facts proved, or to support a finding of impairment. If the doctor makes such submissions the Panel will consider them and announce its decision and the reasons for the decision, as to whether the submissions are upheld. If the submissions are upheld the case concludes at that stage.

58. If no such submissions are made, or if the Panel does not uphold any such submissions, the doctor may present his or her case on the facts. The Panel then considers, *in camera*, whether the disputed facts are proved. In doing so the Panel applies the civil standard of proof to any disputed facts, deciding on the balance of probabilities whether it finds those matters proved. Once it has reached a decision on the disputed facts, the Panel announces its decision in open session. Generally speaking, Panels are not required to give reasons for findings of fact but the Courts have made clear that there may be cases where the principle of fairness requires reasons to be given.

59. The Panel then receives further evidence and hears submissions, first from the GMC's Presenting Officer and then from the doctor, as to whether on the basis of the facts found proved, the doctor's fitness to practise is impaired. The Courts have confirmed that it is for the Panel to decide, exercising its judgment, whether the doctor's fitness to practise is impaired.

60. Having heard the evidence and submissions on impaired fitness to practise, the Panel considers, *in camera*, whether the doctor's fitness to practise is impaired. Once it has reached a decision the Panel announces its decision in open session and must give reasons for the decision.

61. If the Panel concludes that the doctor's fitness to practise is impaired, the Panel then hears further evidence and submissions relating to sanction.

62. Having heard the evidence and submissions, the Panel then considers *in camera* what sanction, if any, to impose on the doctor's registration. It is open to the Panel when it has found that the doctor's practice is impaired, and as an alternative to sanction, to accept written undertakings offered by the doctor provided it is satisfied that the undertakings are sufficient to protect patients and the wider public interest **and** provided that the doctor agrees that the undertakings may be disclosed to his or her employer and any enquirer. The Panel then announces its decision in open session and must give reasons for the decision. If the Panel decide to impose a sanction on the doctor's registration it will then invite further submissions on whether to impose an immediate order on the doctor's registration. Following any such submissions the Panel consider *in camera* whether to impose an immediate order and then announces its decision and the reasons for it, in open session.

63. If the Panel concludes that the doctor's fitness to practise is not impaired it may invite submissions on whether a warning should be issued to the doctor. Following any such submissions the Panel consider *in camera* whether to issue a warning and then announces its decision, and the reasons for it, in open session.

64. When, following a hearing, the practitioner is subject to undertakings or conditions, these will be monitored and reviewed by the Case Review Team, as described in relation to undertakings agreed at the investigation stage (see paragraph 30). If evidence suggests that these have been breached or that the practitioner's fitness to practise has otherwise deteriorated, then the practitioner will generally be referred for a review hearing in order that appropriate action may be taken (see paragraph 67 below).

65. A practitioner is entitled to appeal to the High Court or Court of Session against any decision of a Fitness to Practise Panel and so the determination will not take effect until either the appeal period (28 days) expires, or any such appeal is determined. The Panel should seek submissions from the parties as to whether it is necessary for the protection of the public, or in the interests of the public or the practitioner, to make an order which immediately suspends or imposes conditions on the practitioner's registration. Any such order takes immediate effect and continues until such time as any appeal is determined.

66. If a practitioner has failed to comply with reasonable requests made by an Assessment Team in relation to the assessment of his or her professional performance, the Fitness to Practise Panel may suspend, or impose conditions on, his or her registration as a direct result. If a practitioner otherwise fails to cooperate with a request that he undertake an assessment of his health or performance, this failure may be taken into account by the Panel in reaching a view as to whether or not his fitness to practise is impaired. In addition, where the practitioner suffers from a physical or mental condition which is in remission, the Panel may nonetheless consider him to be impaired by reason of ill health, where it considers any likely recurrence will render his fitness to practise impaired.

Review (Part 5)

67. An order for suspension or conditions will generally be reviewed by the Fitness to Practise Panel before the end of the period imposed. In some cases it may be self-evident that following a short period of suspension, there will be no value in a review hearing. In most cases, however, in which a period of suspension is imposed and in all cases in which conditions have been imposed the Panel will need to be reassured that the practitioner is fit to resume practice either unrestricted or with conditions. The Panel will also need to satisfy itself that the practitioner has fully appreciated the gravity of the offence, has not re-offended, and has maintained his or her skills and knowledge and that patients will not be placed at risk by resumption of practice or by imposing conditional registration. An early review hearing may be held, at the discretion of the Registrar, where new information received by the GMC indicates that to do so would be desirable.

68. Before the review hearing, the Registrar will carry out any investigations necessary in relation to the consideration by the Panel of its decision on review (see below) and this may include directing a health or performance assessment (Rule 19)(Once again, a decision to direct a health or performance assessment will be agreed by a medical Case Examiner). Information relating to the practitioner's conduct or behaviour following the imposition of conditions will have been obtained during the period of conditional registration by the Case Review Team (see paragraph 30 above). The evidence for the hearing will be prepared by the GMC's in-house or external lawyers.

69. The procedure to be adopted by the Panel is set out at Rule 22. On review, the Panel must determine whether the practitioner's fitness to practise remains impaired, or whether he or she has breached any conditions previously imposed and may extend, revoke the order to conclude the case or vary the sanction previously imposed, as appropriate and in accordance with its powers under section 35D(5), (6), (8), (10), or (12) of the Act. In addition, it may accept undertakings in the same circumstances as set out above. In cases relating solely to the practitioner's health, and in which a practitioner has been suspended for a period of two or more years, the Panel may indefinitely suspend his registration. An order for indefinite suspension may be reviewed at the request of the practitioner provided at least two years have elapsed since the order took effect or since the date of the last review.

70. Rule 21A explains the procedure to be adopted by the Panel when considering new allegations together with a case for review. The Panel will first consider whether the facts alleged in relation to the new matters have been found proved. The Panel will then proceed to consider the review matters in accordance with Rule 22, but will have regard to their findings of fact in respect of the new matters when considering whether the practitioner's fitness to practise is impaired and what sanction, if any, to impose.

Restoration following erasure by a Fitness to Practise Panel (Rules 23 and 24)

71. If a practitioner has been erased from the Register by a Fitness to Practise Panel, he may apply for his name to be restored to the register after a period of five years has elapsed. Such applications will be determined by a Fitness to Practise Panel in accordance with Rule 23. A practitioner will not be restored to the register unless the Panel considers he or she is fit to return to unrestricted medical practice. If a Fitness to Practise Panel rejects an application for restoration, the practitioner cannot apply again for restoration until at least 12 months has elapsed from the date of the earlier decision. If a practitioner's application for restoration is unsuccessful on more than one occasion, the GMC may suspend indefinitely his right to apply for restoration to the register. The practitioner can invite the Panel to review such a determination not less than three years after the decision is made.

72. The procedure to be adopted by the Panel at a restoration hearing is set out at Rule 24. Before any such hearing, the Registrar will carry out any investigations necessary in relation to the consideration by the panel of its decision on restoration, and this may include directing a health or performance assessment (Rule 23(1)) (Once again, a decision to direct a health or performance assessment will be agreed by a medical case examiner). In addition, if for example this has not taken place before the hearing, the Panel may at any time, adjourn in order to direct that the practitioner undergoes a health or performance assessment (Rule 24(2)(g)).

Procedure

73. Under Rule 41, all Fitness to Practise Panel hearings will be held in public, unless the circumstances of the individual case suggest that there is an overriding public interest reason to do otherwise. Issues relating solely to a practitioner's health will be heard in private.

74. The Panel will sit with a Legal Assessor (who may provide legal advice) and may also be joined by a specialist health or performance adviser (who may provide medical advice relating to the practitioner's medical condition or practice specialty respectively). Any advice from the Legal Assessor must be given or repeated in the presence of the parties attending the hearing.

75. The Panel will apply the civil standard of proof to any disputed facts. The issue of whether the practitioner's fitness to practise is impaired, and whether a sanction should be imposed, are matters of professional judgment for the Panel. The Panel must be confident that any proposed action (whether to close a case with or without a warning, or to impose a sanction on the practitioner's registration) is sufficient to protect patients and the public interest, failing which it must consider

taking action against the practitioner's registration or imposing a more severe sanction, as appropriate.

General provisions relating to hearings before the Investigation Committee, Fitness to Practise Panel or Interim Orders Panel

Applications for Cancellation, Postponement or Adjournment (Rules 28 and 29)

76. At any time after an allegation has been referred to the Investigation Committee, an Interim Orders Panel or a Fitness to Practise Panel and before the hearing has opened, the Registrar may consider that a hearing is no longer necessary. In such circumstances, the Registrar may refer the matter to a member of the Investigation Committee to consider whether the hearing should be cancelled (Rule 28). Guidance on cancelling referrals to Fitness to Practise Panels can be found [here](#). On considering cancellation, the Investigation Committee member may cancel the hearing, allow it to proceed on the basis of all or some of the matters alleged, or refer it to the case examiners to consider whether to impose a warning under Rule 11 or recommend undertakings under Rule 10.

77. In considering whether to postpone or adjourn a hearing, the GMC will take into account all material circumstances, including any likely inconvenience to witnesses and the effect of any delay on the fairness of the proceedings.

Attendance (Rules 31 and 33)

78. Practitioners are expected to attend any hearings held by the GMC. A practitioner may attend in person or be represented at the hearing by a legal or professional representative. On a case-by-case basis, the Committee or Panel may allow a practitioner to be represented by another person, such as a friend, colleague or family member, unless that person is also giving evidence at the hearing.

79. If the practitioner does not attend, the Committee or Panel may proceed to hear the case in his absence. In deciding whether or not to proceed in the absence of the practitioner, they will consider whether or not all reasonable efforts have been made to serve the practitioner with notice of the hearing, in accordance with Rule 31, and will take into account the following factors where applicable:

- the nature and circumstances of the practitioner's behaviour in absenting himself from the hearing or disrupting it, and in particular where the behaviour was voluntary and so plainly waived the right to be present;
- whether an adjournment would resolve the matter;
- the likely length of such an adjournment;
- whether the practitioner, though absent, wished to be represented or had waived his right to representation;
- whether the practitioner's representatives were able to receive instructions from him and the extent to which they could present his defence;
- the extent of the disadvantage to the practitioner in not being able to present his account of events;
- the risk of the hearing reaching an improper conclusion about the absence of the practitioner;

- the general public interest that a hearing should be held within a reasonable time;
- the effect of the delay on the memories of witnesses;
- where there is more than one practitioner involved, and not all are absent, the undesirability of having separate hearings.

Witnesses (Rules 35 and 36)

80. Except for the practitioner who is the subject of the allegations in question, or where the Committee or Panel decides otherwise, no witness of fact will be allowed to attend or watch proceedings at a hearing until after they have completed giving evidence and have formally been released by the Chairman.

81. The Committee or Panel may, on the application of the party calling a witness, agree that any personal details which reveal the identity of the witness will not be disclosed in public. Any reasonably practicable measures will be taken to enable and assist a witness defined as vulnerable under the Rules (for example, as a result of their physical or mental condition, their age, or the fact that they are an alleged victim of sexual misconduct by the practitioner) in giving evidence if they are less able to do so as a result. If the witness is an alleged victim of sexual misconduct by the practitioner, the practitioner may not cross examine the witness on his or her own behalf and must instruct a legal representative to do so, failing which the GMC may instruct a legal representative to cross-examine the witness on the practitioner's behalf.

Publication of decision

82. The decisions reached by a Committee or Panel, together with reasons, will be notified to the practitioner, his employer and any person or body who brought the allegation to the GMC's attention. In addition, all decisions will be published via the GMC's List of Registered Medical Practitioners on our website. The sole exception to this practice will occur in relation to confidential information relating to the practitioner's physical or mental condition.²

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² See note 1