

## **Guidance on Undertakings**

### **Introduction and overview**

1. The purpose of this guidance is to demonstrate the way in which Rule 10 of the Fitness to Practise Rules (revised) is to be put into effect by the General Medical Council.
2. This guidance should be considered together with other guidance for decision makers, including the main decision making guidance for case examiners and guidance on single clinical incidents.
3. Rule 10 provides for the agreement of undertakings between a doctor and the GMC, when there is information which indicates that the doctor's fitness to practise is impaired and the doctor acknowledges the impairment. In these circumstances, the doctor may be invited to enter into binding undertakings with the General Medical Council.
4. Undertakings may include restrictions on the doctor's practice or behaviour, or the commitment to undergo medical supervision or retraining. The undertakings will be disclosed to the doctor's employer and to any other enquirer, unless they contain confidential information about the doctor's health. Undertakings relating to a doctor's practice are published on the List of Registered Medical Practitioners on the GMC's website.
5. The GMC will monitor the doctor's compliance with undertakings. Following a period of undertakings, and taking into account any new information received, the case examiners may decide to maintain, vary or remove the undertakings imposed. Case examiners will have regard both to compliance and insight when considering whether to vary or retain undertakings.

### **The process for agreeing undertakings**

6. Following the completion of our preliminary enquiries, the case examiners will consider all the available evidence, including, where relevant, any performance and/or health assessment reports, 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'

7. When the Investigation Committee or case examiners are satisfied that there is no realistic prospect of establishing that the doctor's fitness to practise is impaired, they should consider whether it is appropriate to issue a warning. If they conclude that a warning is not appropriate, the case should be concluded.

8. Rule 10 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) provides that where it appears to the case examiners that:

(a) the practitioner's fitness to practise is impaired; or

(b) the practitioner 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 practitioner be invited to comply with such undertakings as they think fit (including any restrictions on practice).

9. Rule 10(5) provides:

(5) The Registrar shall not invite the practitioner to comply with any such undertakings where there is a realistic prospect that, if the allegation were referred to a FTP Panel, his name would be erased from the register.

10. If, during the course of our enquiries and investigation, it appears likely that undertakings may be an appropriate outcome, the Registrar will contact the complainant or referring body to seek their views on the possibility of concluding the case by agreeing undertakings with the doctor.

11. Undertakings may only be proposed when, 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 where there is a realistic prospect that, if the allegations were referred to a Fitness to Practise panel, the doctor would be erased from the Register.

12. If there has been an assessment of the doctor's health or performance, the assessments will include an opinion on whether the doctor is fit to practise, either generally or on a limited basis. Assessment reports will also include recommendations on the management of the case. Case examiners should take account of the recommendations and any additional evidence to decide whether the case reaches the investigation stage test threshold.

13. In situations in which the allegations relate solely to a doctor's health, the Medical Act specifically precludes the possibility of erasure. 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.)

14. 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.

15. In considering whether it may be appropriate to invite the doctor to accept undertakings, the case examiners shall also have regard to:

- a. this guidance and, in particular, paragraphs 21 to 28 below;
- b. the guidance for case examiners and the Investigation Committee on making decisions at the end of the investigation stage;
- c. any representations received from the complainant or referring organisation concerning the possibility of concluding the case by agreeing undertakings with the doctor (see paragraphs 26 and 27).

16. When a medical and a lay case examiner recommend that the doctor should be invited to comply with undertakings, the Registrar will write to the doctor inviting him to state, within 28 days, whether he is prepared to comply with the undertakings.

17. If undertakings have been proposed or accepted, the case can be still be referred to a Fitness to Practise panel, if:

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

18. Under rule 10(6), where undertakings have been agreed, the Registrar may carry out any additional enquiries that are considered necessary. These might take the form of an assessment of the doctor's health or performance or some other form of enquiry. Further enquiries may be required, for example, to assess whether undertakings should be varied or lifted.

## **Amending undertakings**

19. The Rules allow for undertakings to be amended if, 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.

20. If it seems that an amendment to the 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. If 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 to refer the case to a Fitness to Practise panel.

## **Criteria for agreeing undertakings**

21. In considering whether undertakings may be appropriate, the case examiners shall have regard to the guidance for decision-makers on the application of the investigation stage test.

22. Undertakings are likely to be appropriate in the following circumstances:

- a. following an assessment of the doctor's health or performance in accordance with Schedules 1 and 2 of the Fitness to Practise Rules;
- b. following a single clinical incident or because of concerns about a specific area of the doctor's practice and where the case examiners do not consider that an assessment of the doctor's performance is required<sup>1</sup>;
- c. the concerns about the doctor's practice are such that a period of retraining and/or supervision is likely to be the most appropriate way of addressing them;
- d. a determination by another regulatory body which resulted in conditions or undertakings (or the equivalent).

23. The case examiners should take the following factors into account when considering whether to invite the doctor to accept undertakings:

- a. whether undertakings appear to offer sufficient safeguards to protect the public;
- b. whether the doctor has shown sufficient insight into any apparent failings.

24. Undertakings will only be appropriate if there is reason to believe that the doctor will comply with them, for example, because the doctor has shown genuine insight into his or her problems/deficiencies. The assessment report(s) and the doctor's comments

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<sup>1</sup> Clearly our response will depend on the particular circumstances of the single clinical incident. Decision makers should take account of the advice in the main decision-making guidance for case examiners on single clinical incidents .

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.

25. Undertakings will not be appropriate in many cases, in particular if:
- a. there is a realistic prospect of erasure;
  - b. there is a need for a public hearing, because there is a need to test the facts;
  - c. the complainant or referring body has made compelling arguments why the case should proceed to a hearing (see below);
  - d. the case results from a conviction resulting in a custodial sentence;
  - e. there are other public interest arguments that make a public hearing desirable;
26. Indicators that there is a realistic prospect of the doctor being erased if the case were referred to a Fitness to Practise panel include:
- a. the allegations involve an element of dishonesty, violence or indecency;
  - b. the case results from a determination by another regulatory body which resulted in erasure (or the equivalent);
  - c. the allegations are such that, if proved, there is likely to be a need for a more serious sanction, to flag up to the profession that the doctor's conduct, practice or behaviour was not acceptable;

### **Evidential issues**

27. In considering whether it is appropriate to invite the doctor to accept undertakings, the case examiners will also need to have regard to the question of the degree to which the evidence has been or needs to be tested. The case examiners will need to be wary of agreeing undertakings if there is any significant disagreement as to the facts.

28. In most cases there will need to be some certainty as to the 'facts' before undertakings can be offered. There may be no issues in relation to the underlying facts because:

- a. there has been an assessment of the doctor's health or performance; or
- b. the doctor has admitted the allegations .

### **Representations made by the complainant or referring organisation**

29. The case examiners should consider any comments provided by the complainant or referring body concerning the possibility of concluding the case by agreeing undertakings. The case examiners shall have particular regard to:

- a. any arguments made by the complainant/referring body in favour of a public hearing (For example because there is some dispute as to the facts.);
- b. any arguments made concerning the need for a more severe sanction;
- c. any arguments made (in particular by the doctor's employer) which indicate that undertakings may not be workable because of the particular circumstances of the doctor's employment.

30. The case examiners shall take account of any representations made by the complainant, together with any other relevant considerations. The case examiners are not obliged to comply with any preferences expressed by the complainant/referring body but should have appropriate regard to them.

### **Reasons for decision**

31. The case examiners shall record the reasons for their decision. In particular, they shall record their reasons for agreeing undertakings when the complainant or referring body has made representations that the case should proceed to a FTP panel hearing.

### **Categories of undertaking**

32. There are three categories of undertaking:

- a. those relating to the treatment of a doctor's underlying health condition;
- b. those that relate to the need to address deficiencies in clinical performance; and
- c. those relating to day-to-day medical practice.

33. 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. Case examiners should ensure that any undertakings are appropriate, proportionate, and are sufficient to protect patients and the public, and are an effective way of addressing the concerns about the doctor.

34. Undertakings should normally follow the format of the standard undertakings in the bank of conditions and undertakings. Bespoke undertakings should normally only be drafted if there is not an appropriate standard undertaking available.

35. Save by exception, an undertaking which requires a doctor to refrain from all forms of medical practice should only be used in health cases. Any exception to be agreed with Head of Case Review.

[Link to bank of undertakings](#)

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