

Guidance on making decisions on voluntary erasure applications

- 1** A doctor may submit an application for voluntary erasure at any point in the fitness to practise process. The procedures for dealing with such applications are set out in the *Voluntary Erasure and Restoration Regulations 2004*.
- 2** Our fitness to practise powers extend to all registered doctors, whether they hold a licence to practise or registration only. Similarly, the process for considering an application for voluntary erasure when there are outstanding fitness to practise issues will apply to all registered doctors, whether or not they hold a licence.
- 3** Applications for voluntary erasure will be referred to a lay and medical case examiner in circumstances where an allegation is being investigated or a case has been referred to a medical practitioners tribunal, but has not yet commenced. This includes cases in which a doctor is currently subject to undertakings agreed other than by a medical practitioners tribunal as, in these cases, our investigation is on hold and there has been no decision on the doctor's fitness to practise. An application will also be considered by the case examiners if a concern has been raised about the doctor that might give rise to a GMC investigation.
- 4** The case examiners will make a decision on whether to grant or refuse the application for voluntary erasure. If the case examiners fail to agree, the erasure application shall be referred to the Investigation Committee for determination. If an application for voluntary erasure is received and a hearing before a medical practitioners tribunal has commenced, the registrar shall refer the application for determination by the medical practitioners tribunal.
- 5** Decision makers should not generally consider any application for voluntary erasure until the investigation has concluded and all of the evidence has been gathered in relation to the allegations.
- 6** Decision makers should be satisfied that it is right in all the circumstances to agree to voluntary erasure (and not to proceed with the inquiry proper) before any application is granted. 'All the circumstances' can be divided into two categories:
 - the public interest
 - the doctor's health and likelihood of return to practise.

The public interest

- 7 The public interest incorporates three elements.
- The protection of patients and the public generally from doctors whose fitness to practise is impaired.
 - The maintenance and promotion of public confidence in the medical profession.
 - The maintenance and promotion of public confidence in the GMC's performance of its statutory functions.

Protection of patients

- 8 The first of these elements may appear to favour agreeing to voluntary erasure as the GMC's primary (although not sole) task is to protect the public from future harm at the hands of a doctor whose fitness to practise may be impaired. Voluntary erasure would appear to give the public the most immediate and the most effective form of protection at the GMC's disposal. Erasure fully satisfies the need for public protection, as the doctor will not be entitled to practise at all.
- 9 However, decision makers need to bear in mind that voluntary erasure is not necessarily permanent. The (potential) threat posed by a doctor might be revived by a future application for restoration to the register. Of course, the Voluntary Erasure Regulations provide a safeguard in that such applications for restoration would not be granted automatically. Such an application would be referred once again for the case examiners to consider where any unresolved complaints would be taken into consideration.
- 10 Nevertheless, the revival of an unresolved complaint may be easier said than done. During the interval, between the granting of voluntary erasure and the application for restoration, evidence of any alleged misconduct might have disappeared or deteriorated, for example, because a witness's memory has faded or he or she has become uncontactable or even died. This raises the prospect of a doctor's name being restored to the register following voluntary erasure where he or she may not have retained unrestricted registration if the original complaint had been allowed to run its course.
- 11 It is likely, therefore, to be safer to agree to voluntary erasure in cases in which the doctor is willing to formally admit to the allegations against him or her. (In these circumstances, in the event of voluntary erasure being granted, details of the allegations admitted should be made available to relevant enquirers (including potential employers and overseas medical authorities). The allegations admitted would also be considered if the doctor subsequently applies for restoration to the register.

Public confidence

12 There are circumstances in which the nature of the allegations against the doctor may raise public confidence issues even where patients and the public are protected by removing the doctor's name from the register. Decision makers should consider the extent of harm caused to patients and the potential impact on public confidence should we grant voluntary erasure. Where there is reason to believe the doctor's actions may have caused the death of a patient or other significant harm such as cases involving sexual misconduct, there is a strong indicator that voluntary erasure may not be appropriate. In such cases, there is likely to be a significant impact on public confidence where we are unable to place information about our concerns in the public domain.

The doctor's health and likelihood of return to practice

13 Matters to be considered under this category could legitimately include the following factors:

- the doctor's health
- the likelihood of the doctor seeking restoration to the register
- the length of time since the doctor last practised
- the genuineness of the doctor's desire to cease to be registered
- any evidence that the doctor has no intention to practise in the UK or elsewhere in the future.

14 In such cases, decision makers must also exercise their judgement to consider the impact on public confidence of granting voluntary erasure in specific cases as outlined at paragraph 12.

Dealing with applications for voluntary erasure

15 Case examiners should consider all aspects of the case, and all of the factors outlined above that are relevant, when considering applications for voluntary erasure in circumstances where there are outstanding fitness to practise issues in relation to the doctor.

- 16** If the allegations are primarily about misconduct, a conviction or a determination concerning the doctor's conduct, there are more likely to be arguments in favour of refusing the application for voluntary erasure. This is particularly likely to be the case if the allegations fall within the categories for which there is a presumption of impaired fitness to practise. In these particular circumstances, voluntary erasure is only likely to be appropriate in exceptional circumstances. These might include situations in which medical evidence from an independent source gives a clear indication that the doctor is seriously ill and would be unfit to participate in our fitness to practise procedures.
- 17** If the allegations are multifactorial, the case examiners will need to look at all the allegations and consider whether, in all the circumstances, voluntary erasure may be appropriate. Again, if the allegations include some for which there is a presumption of impaired fitness to practise, voluntary erasure is unlikely to be appropriate, unless there are exceptional circumstances.

Concerns about a doctor's knowledge of English

- 18** Where allegations relate solely to concerns about a doctor's knowledge of English, voluntary erasure is likely to be appropriate even where the doctor has indicated they may apply for restoration. In multi-factorial cases where the allegations and the evidence relate exclusively to a doctor's knowledge of English and health, decision makers should also generally grant the application. However, consideration should be given to any public confidence issues arising. In such cases, it is particularly important to inform the doctor they may be asked to undertake a language and or health assessment if they later decide to apply for restoration. They will need to demonstrate when applying for restoration that they are fit to practise without any restrictions.
- 19** If a doctor applies for restoration to the register following voluntary erasure, a language assessment may be directed where there are concerns about the doctor's knowledge of English which raise a question of impaired fitness to practise. Such concerns may arise as a result of information received before, after or during the submission of a restoration application.

The doctor's health

- 20** In situations where the allegations and evidence relate exclusively to a doctor's health, decision makers should generally grant the application even where the doctor has indicated they may apply for restoration if their health improves. In such cases, there are no public confidence issues to consider. However, in these circumstances, it will be particularly important to make clear to the doctor the implications of being granted voluntary erasure. In particular, it will be important to explain that if they wish to be restored to the register, they cannot be restored with conditions. They will need to demonstrate when applying for restoration that they are fit to practise without any restrictions.
- 21** In multifactorial cases involving health and performance or/and conduct, decision makers must consider the seriousness of any underlying health condition, likelihood of recovery and the impact on the doctor's ability to instruct legal representatives. Where the doctor has a serious chronic health condition and there is a low likelihood of the doctor recovering sufficiently to return to work this may be a strong indicator that decision makers should grant voluntary erasure. Where the doctor's poor health is acute and there is a strong likelihood of recovery this should generally be considered a strong indicator that voluntary erasure is unlikely to be appropriate.
- 22** In exceptional circumstances a doctor's acute poor health may be episodic in nature and linked to the stress of engaging in a fitness to practise process. Where the doctor's poor health impacts on their ability to instruct legal representatives or significantly increases the immediate risk of a major cardiac event, decision makers should obtain an independent medical health assessment from a psychiatrist or specialist consultant before exercising their discretion in deciding how to dispose of the case.
- 23** Case examiners should also exercise discretion where a doctor's irregular compliance with treatment may impact on the consistency of their ability to instruct legal representatives.

The likelihood of the doctor seeking restoration to the register

- 24** In general, except where the allegations and concerns relate solely to a doctor's health, if decision makers consider that a doctor is likely to seek restoration to the register it will not be appropriate to grant voluntary erasure. This is because where there are outstanding fitness to practise concerns, voluntary erasure is granted on the basis that removal of the doctor's name from the register will ensure that patients are protected in the future.

Career stage

- 25** One of the most significant factors in considering the likelihood of a doctor seeking restoration to the register is whether the doctor is at an early or later stage of their career.
- 26** Where a doctor applies for voluntary erasure during the later stages of their career and can provide evidence to support their intention to permanently retire from the profession this is generally a strong indicator that they are unlikely to seek restoration in the future. However, caution should be applied where the doctor is at an early or mid-career point, where the prospect of return to work is significantly higher.
- 27** In exceptional cases, doctors at a very early stage in their working life may demonstrate genuine insight and express their intention to pursue an alternative career path and may be able to provide robust evidence of that intention. Decision makers should consider carefully the availability of any supporting evidence, for example steps taken to retrain in another profession, in exercising their discretion.

Caring responsibilities

- 28** Where a doctor applies for voluntary erasure because they intend to cease practising medicine to undertake personal caring responsibilities, the primary indicator of the likelihood of their seeking to be restored to the register in the future is the doctor's career stage as above. Again, caution should be applied to doctors at an early or mid point in their career where the prospect of return to work is significantly higher. However, each case should be viewed on its individual merits, taking all relevant information into account.

The length of time since the doctor last practised

- 29** In general, the longer the time since a doctor last practised medicine, the less likely they are to seek restoration to the register. Equally, the longer the time since a doctor last practised medicine the less likely it is that any future application for restoration will be successful due to the increased risk of deterioration of medical knowledge as time elapses.
- 30** When considering a doctor's work history, any evidence that the doctor has practised medicine overseas or within the UK should be treated with equal weight.

The genuineness of a doctor's desire to cease to be registered

- 31** The genuineness or sincerity of a doctor's desire to cease to be registered is a significant factor for consideration in deciding whether or not it may be appropriate to grant voluntary erasure.

- 32** Where there is evidence to support the fact a doctor had already instigated steps to retire from medical practice, or reduce the scope of their medical practice before any concerns were raised, this may be a strong indicator that the doctor's desire to cease to be registered is sincere. Caution should be applied where an application for voluntary erasure appears to be triggered by fitness to practise proceedings.
- 33** In assessing the genuineness of a doctor's desire to cease to be registered, decision makers should consider any insight the doctor has shown in relation to any concerns raised about their fitness to practise. Decision makers may also wish to consider whether the doctor has previously been truthful in any communication with the GMC and other reputable bodies, in assessing the doctor's credibility and sincerity.

Any evidence that the doctor has no intention to practise in the UK or elsewhere in the future

- 34** In general, except where the allegations and concerns relate solely to a doctor's health, if decision makers believe that a doctor intends to practise in the UK or elsewhere in the future it will not be appropriate to grant voluntary erasure. In other cases where the doctor is mentally unwell, decision makers should consider the doctor's state of mind when expressing their plans for the future.
- 35** Where a doctor expresses an intention to practise medicine either overseas, on a part-time basis, or in private practice in the future this is as equally relevant as where the doctor expresses an intention to practise medicine on a full-time basis in the UK. Whilst the remit of the GMC is confined to regulating doctors in the UK we have a wider public interest in ensuring the protection of patients everywhere.
- 36** It is also in the public interest to consider any plans the doctor may have to pursue work in an allied health profession (regulated or otherwise) or in health management or policy. In such circumstances, decision makers should consider the impact on public confidence where there is reason to believe the doctor may relinquish registration and seek to occupy a position of responsibility in a health organisation in the future.

Informing the doctor of the outcome of their application

- 37** If the application is granted, the letter informing the doctor of the decision must make it clear that any subsequent application for restoration to the register will be referred to the case examiners to consider. At this point, any previous evidence concerning the doctor's fitness to practise will be taken into account and a further investigation may be initiated before any decision is made in respect of the restoration application.

Dealing with applications for restoration following voluntary erasure

- 38** Doctors can apply for restoration following voluntary erasure at any time. When applying for restoration the burden lies with the doctor to demonstrate that they are fit to practise. If any fitness to practise concerns have arisen since the doctor was removed from the register or if there are any outstanding issues, the registrar would refer the matter to the case examiner for consideration.
- 39** Case examiners have the power to grant restoration, refuse restoration, or refer the matter to a medical practitioners tribunal. Two case examiners (lay and medical) will consider the application and if they are unable to agree, the matter is referred to the Investigation Committee.
- 40** Where fitness to practise concerns have previously been considered by a medical practitioners tribunal any application for restoration will be referred to a hearing for consideration.
- 41** In the first instance, case examiners should consider whether the fitness to practise concerns, if proved, may potentially give rise to a finding of impaired fitness to practise.
- 42** If the concerns are not of such a serious nature that, if proved, they may give rise to a finding of impairment case examiners would normally be expected, bar the most exceptional cases, to grant restoration without referring the matter to a tribunal.
- 43** If the concerns are of such a serious nature they may give rise to a finding of impairment case examiners should consider whether the doctor has previously been made aware of any fitness to practise concerns.

Disclosure to the doctor

- 44** The doctor has a reasonable expectation that he or she be made aware of any matters which case examiners may take into account as they decide whether or not to grant restoration. Where the complainant declines consent for disclosure to the doctor the case examiner must consider whether there is any wider public interest in pursuing the matter.
- 45** If there is no wider public interest, where the complainant declines consent for disclosure the case examiner would usually, in all but the most exceptional of cases, grant restoration to the doctor.
- 46** If the complainant consents to disclosure or if there is a wider public interest in taking the matter forward, the case examiner should advise the doctor that they will take the matter into account in deciding how to dispose of the case.

Health

- 47** Where concerns relate to a doctor's health case examiners should consider whether there is any reason to believe that the doctor is not able to manage their condition adequately to ensure patient safety. If the case examiners are satisfied that there is no potential risk to patient safety or public confidence and there are no other fitness to practise concerns, restoration would usually, in all but the most exceptional of cases, be granted. If the case examiners have concerns that the doctor's health presents a risk to patient safety or public confidence the doctor should be invited to undergo a health assessment.
- 48** Where both assessors agree that the doctor is fit to practise without restriction this may give rise to the expectation that the case examiners will grant restoration. Where both assessors agree that the doctor is not fit to practise without restriction this is likely to be a strong indicator in favour of the case examiners refusing restoration. Where the assessors do not agree on whether or not the doctor is fit to practise, case examiners should refer the matter for consideration by a fitness to practise tribunal.
- 49** If the doctor declines to undergo a health assessment case examiners may consider this to be an indicator that it is appropriate to refuse to grant restoration.

Performance

- 50** There may be a concern about a doctor's performance arising from a historic complaint or referral or notification of concerns arising from the doctor's practice in another jurisdiction whilst not registered in the UK. Where the doctor has taken an extended break from practising medicine for any reason this may also give rise to concerns about their current fitness to practise.
- 51** If there are concerns about a doctor's performance the doctor should be invited to undertake a performance assessment unless:
- the doctor has recently undertaken a health assessment which found they were not fit to practise without restriction
 - there is other significant evidence to demonstrate that an assessment is almost certain to find the doctor's performance to be deficient.
- 52** If, based on the available facts, case examiners believe it is very likely that an assessment would find the doctor's performance to be deficient this should be made clear to the doctor. This will enable him/her to make an informed decision as to whether to accept the invitation to undertake an assessment.

- 53** Where the assessors consider the doctor's performance to be deficient, this would normally give rise to the expectation that case examiners will refuse restoration. If the assessors consider that the doctor's performance is not deficient this would normally give rise to the expectation that the case examiners will grant restoration. Where an assessment produces no conclusive view on a doctor's performance, case examiners should normally, except in the most exceptional circumstances, refer the matter for consideration by a medical practitioners tribunal.
- 54** If the doctor declines to undergo a performance assessment case examiners may consider this to be an indicator that it is appropriate to refuse to grant restoration.

Multifactorial cases

- 55** In multifactorial cases, where either a health or performance assessment raises concerns that the doctor is not fit to practise without restriction this would be a strong indicator in favour of the case examiners refusing restoration. Where there are additional concerns in relation to misconduct which may potentially give rise to a finding of impairment case examiners should exercise their judgement to consider whether the matter should be referred to a medical practitioners tribunal.

Conduct and convictions

- 56** If there is reason to believe that a doctor's conduct may give rise to impairment and the matter has not previously been considered by case examiners or a medical practitioners tribunal this would normally give rise to the expectation that any relevant information should be referred for consideration by a medical practitioners tribunal.
- 57** Where a doctor was granted voluntary erasure while their registration was suspended due to concerns about their conduct this may be considered a strong indicator that any application for restoration should be referred to a medical practitioners tribunal for consideration.
- 58** If a doctor has been convicted of a criminal offence considered to present a very significant risk to public confidence in the profession (such as murder, rape, sexual assault of an adult or other sexual offences relating to children and vulnerable people), case examiners should normally refuse restoration without referring the matter to a medical practitioners tribunal. If the doctor has been convicted of any other serious crime this would normally give rise to the expectation that the matter will be referred to a medical practitioners tribunal for consideration.

Administrative erasure

- 59** The above guidance on restoration would also be applicable where the doctor is subject to administrative erasure.

Is there a time period before a doctor can re-apply after being refused restoration?

- 60** If a doctor is refused restoration by a medical practitioners tribunal the doctor cannot re-apply until 12 months after the date of the tribunal's decision. The medical practitioners tribunal also has the power to specify a longer time period in individual cases where appropriate.
- 61** Case examiners do not have a power to specify how long the doctor must wait before reapplying after being refused restoration. If a doctor is refused restoration by case examiners they can re-apply at any time.
- 62** Where a doctor has made repeated applications for restoration case examiners may, at their discretion, refer the matter to a medical practitioners tribunal for consideration.