



Agenda item:	5a
Report title:	Decisions circular
Report by:	Anna Rowland , Assistant Director, Fitness to Practise Policy, Business Transformation & Safeguarding anna.rowland@gmc-uk.org , 020 7189 5077
Action:	To consider

Executive summary

On 16 May 2017, the GMC / MPTS Liaison Group ('the Group') approved the temporary withdrawal of the decisions circular pending a review. The Executive Board is now asked to agree a number of recommendations relating to the platform by which we make the decisions circular available, the appropriate content, criteria for inclusion on the recipients list and to approve the introduction of guidance to support related decision-making.

Recommendations

The Board is invited to approve the following recommendations:

- a** The decisions circular should be made available to recipients securely via GMC Connect:
 - i** ROs should access the circular via a dashboard in their GMC Connect account;
 - ii** other recipients should be invited to join one of two user groups (UK/EEA or International) and will receive the circular as an excel spreadsheet file once a month.

- b** The decisions circular should primarily contain LRMP data and be supplemented with some non-LRMP data where it is considered to be necessary and proportionate:
 - i** UK/EEA recipients (including ROs) should additionally receive NHS region and NHS UK Country;

- ii** International recipients should additionally receive date of birth and country of registered address.
- c** The content of the administrative and voluntary erasure tab should be expanded to include cases where the doctor has been erased as a consequence of a fraudulent registration application.
- d** The decisions circular should contain a fair processing notice.
- e** Prospective recipients of the decisions circular should have to meet the criteria at Annex B for the purpose of inclusion on the recipients list.
- f** The guidance at Annex C should be introduced to support decision-making in respect of requests to be included on the recipients list and requests for further information following receipt of the decisions circular.

Background

- 1** The MPTS circulates all fitness to practise sanctions and actions on a monthly basis to a wide range of UK / EEA recipients and international regulators, by means of an electronic decision circular. The decisions circular was developed over ten ago, prior to the establishment of the MPTS. It is currently produced as an excel spreadsheet by the FPD MI team and circulated via email by the MPTS because the majority of information relates to MPTS decisions.
- 2** The decisions circular is part of a range of activities across the MPTS and the FPD which ensure transparency about decisions to respond to serious concerns about doctors. The wider framework of transparency includes:
 - a** The publication of the outcome of MPTS hearings for 12 months (there are exceptions relating to confidential matters).
 - b** The publication of all actions taken on a doctor's registration, except those relating solely to a doctor's health, on the List of Registered Medical Practitioners ('LRMP').
 - c** A requirement to share sanctions with all European medical regulators via the European Commission's IMI system. The GMC lobbied for this legal duty.
- 3** We are currently participating in the pilot of a data-sharing tool on the members-only section of the IAMRA website, to test data sharing among international regulators. This is a voluntary scheme, under which members will upload information about

doctors who are restricted or unable to practise in one jurisdiction and may seek to practise in another jurisdiction, as there is no shared legal framework as in Europe.

Legal advice

- 4 We obtained legal advice from Junior Counsel, Robin Hopkins of 11KBW, in relation to our participation in the IAMRA pilot. The same advice also looked at the way we share information via the decisions circular and suggested that we should demonstrate we had carefully considered content provided to recipients and reflect on how to send the data, particularly when sharing information outside of the EEA.

Implications for decisions circular

- 5 In light of the advice, a review was commenced and an 'interim decisions circular' was limited to public domain data contained on the LRMP.
- 6 Given that the information historically contained in the decisions circular was being disclosed for reasons of public safety and to assist other bodies in discharging their public and legislative functions, the information governance team advised there was no immediate cause for concern in respect of past practices.

Further legal advice

- 7 In June 2017 we received follow up advice from leading Counsel, Tim Pitt-Payne QC, who has advised the GMC for many years and has expertise in information rights law. He advised that our pre-May 2017 approach was compliant with the DPA because the sharing of fitness to practise information is in the 'substantial public interest' and the information shared had a clear and proportionate link to supporting our regulatory role. The DPA will not prevent us from resuming our decisions circular service in full.
- 8 Counsel also advised that as a matter of good data protection practice we should review the security measures in place when sending the circular to ensure they are appropriate. We have done this by reviewing the methods used to send the circular.

Method for sending the decisions circular

- 9 To date, the decisions circular has been provided as an attachment to an email which is sent by the MPTS to recipients held on one of three lists; a list of ROs produced by IS, a list of European & International recipients produced by the European & International Team and a list of recipients held by the MPTS. Circulation is monthly.
- 10 Whilst we do not have any reason to believe that sending the decisions circular by email has caused us any problems, given the related proposal to include non-LRMP domain data in the content and the legal advice we have received, we recommend that we should distribute the decisions circular securely via GMC Connect.

- 11** Several alternative options for dissemination of the decisions circular were fully considered; LRMP download, SFTS accounts, GMC Connect and encrypted emails or password protected attachments. In order to comply with the seventh data protection principle, we must take reasonable steps to safeguard the data. The use of GMC Connect supports our compliance with the DPA as it is a secure web portal that facilitates the exchange of information with external stakeholder groups.
- 12** Using a secure platform through which to provide the decisions circular to recipients is consistent with other information exchange practices presently in place; IMI alerts are currently sent to European regulators via a secure portal and the IAMRA pilot operates through the members-only area of the IAMRA website.

Options for using GMC Connect

- 13** GMC Connect has the ability to provide information in two main ways; via a dashboard that can be accessed in the user's account or by a file being added to an individual account or to a user group:
 - a** Dashboards have the capability to automatically update once a day, and users will not be automatically notified when the information in the dashboard updates.
 - b** Files have to be added manually to an individual account or user group. When a file is added, an email prompt is sent to the user to notify them there is a new file to view. This method is resource intensive so would need to be created and uploaded once a month.
- 14** Having liaised with the ELS and other internal stakeholders involved in ongoing work to increase the use of GMC Connect by ROs, we recommend that the decisions circular is provided to ROs via a dashboard in their GMC Connect user accounts. The rationale is that:
 - a** ROs have their own statutory responsibilities in respect of fitness to practise. It is helpful to them to receive the most current information we can provide about a doctor's fitness to practise in a dashboard that updates daily.
 - b** This approach is consistent with the wider programme of work ongoing to increase the use of GMC Connect by ROs as a data sharing platform.
 - c** There would be a reduction in the resources needed to support the administration to set up and maintain the recommended GMC Connect User Groups. ROs make up around 40 percent of the existing recipient list. They are already required to have GMC Connect accounts to which the dashboard can easily be added.
- 15** We recommend that all other recipients be invited to join one of two user groups - UK/EEA or International - and receive an excel spreadsheet file once a month as:

- a** In practical terms we cannot send an individualised version of the decisions circular to each and every recipient.
- b** We know that existing recipients are familiar with the excel spreadsheet format and are able to easily navigate around the information it contains. Feedback from recipients was they like the format of excel because they can generate a match report as an essential tool to aid screening (note: ROs will be able to export the dashboard data provided to them into a spreadsheet).
- c** Recipients will receive an email prompt alerting them that a new file is available to review. This pushes the information outwards to recipients, encourages them to access details about new fitness to practise actions and demonstrates that we have taken positive action towards ensuring there is no public protection gap.
- d** This approach is preferred for recipients that do not have close day to day working relationships with the GMC as it is conceivably less technical than a dashboard.

Content of the decisions circular

- 16** To date, two versions of the decisions circular have been produced; UK and International. The content has predominantly been information that is available on the LRMP, supplemented with some non-LRMP data to aid with the identification of doctors who are of relevance to the recipient. Given the different data security considerations that apply when personal data is shared inside and outside of the EEA, we recommend continuing to produce two versions of the decisions circular but categorising them as UK/EEA and International.
- 17** The decisions circular is split into two tabs; FTP actions and Admin / VE. The FTP actions tab contains details of interim and substantive actions that have been taken on a doctor's registration as a result of fitness to practise concerns such as orders of conditions, suspension, erasure made by a MPT and outcomes which result in a warning or undertakings being agreed. The Admin / VE tab lists those cases where a doctor has been granted voluntary erasure or administratively erased and at the time of their erasure there were outstanding fitness to practise concerns.

Fields of data

- 18** To support considerations in respect of the appropriate content for each version of the decisions circular, existing recipients were invited to participate in one of two online surveys. A comparison table showing past content and proposed future content based on the results of the surveys is at Annex A.
- 19** In summary, it is recommended that both versions of the decisions circular contain the following public-domain data from the LRMP:

- a** FTP actions tab – last name, first name, middle name, doctor UID, gender, PMQ awarding body, PMQ date conferred, primary speciality, GP (yes / no), type of action, status, action start date, action end date, actual designated body name.
 - b** Admin / VE tab – last name, first name, middle name, doctor UID, gender, PMQ awarding body, PMQ date conferred, primary speciality, GP (yes / no), registration status, registration award date.
- 20** For the UK/EEA version we consider it is necessary and proportionate to provide NHS region and NHS UK Country as additional non-LRMP data given the public interest in recipients being able to filter to identify doctors of relevance to them.
- 21** For the International version we consider it is necessary and proportionate to provide date of birth and country of registered address as additional non-LRMP data. Providing date of birth aids with the correct identification of doctors and there is a substantial public interest in international recipients being able to accurately identify doctors subject to fitness to practise actions or concerns. Country of registered address assists international recipients prioritise the potential relevance of doctors listed in the circular and make better use of the information provided.
- 22** There are a number of fields previously provided in the decisions circular which we propose excluding in the future. These are highlighted in red in the table at Annex A.

Expansion of Admin / VE tab

- 23** The Admin / VE tab currently lists those cases where a doctor has been granted voluntary erasure or administratively erased and at the time of their erasure there were outstanding fitness to practise concerns. We recommend expanding the content to include cases where the doctor has been erased as a consequence of a fraudulent registration application. Although the volume of these cases is low (five in the last five years) where a doctor has obtained registration fraudulently, this will be of significant interest to other regulators.

Fair processing

- 24** The DPA requires that we process data fairly and lawfully to protect the interests of the individuals whose personal data is being processed. Good information governance dictates that the GMC has a published policy informing doctors and other data subjects how their personal data may be handled/disclosed. A fair processing / privacy notice is on the GMC website, as is the FTP publication and disclosure policy.
- 25** To supplement these, we recommend that a short fair processing notice is contained within the decisions circular informing recipients that:

- a** The purpose is to allow them to identify doctors who have recently received fitness to practise actions or been erased while there are outstanding fitness to practise concerns.
- b** They should not use this information for other purposes or distribute it more widely.
- c** They must not retain the information for longer than is necessary, and delete it when the information is no longer required.

Criteria for inclusion as a recipient

- 26** Details of existing recipients are held on one of three lists; a list of ROs produced by IS, a list of European & International recipients produced by the European & International Team and a list of recipients held by the MPTS. Given our shared statutory responsibilities with ROs we can be satisfied that the information we hold about ROs is reliable and up-to-date. However, the information on the recipients lists produced by the European & International Team and the MPTS is less robust.
- 27** The European & International Team survey their European and International contacts on average once every 18 to 24 months to ascertain what type of communications and information they would like to receive from the GMC. The decisions circular is one form of communication they can opt-in to receive. A significant proportion of the European or International recipients are healthcare regulators, or equivalent.
- 28** The list of recipients held by the MPTS has grown during the time we have been sending the decisions circular. There are no clear criteria for inclusion and recipients have been added to the list if their request has appeared to be 'reasonable'.
- 29** As we have been providing, and propose continuing to provide, some non-public domain data in both versions, we consider that defined criteria for inclusion on the recipients list is consistent with good information governance practices.
- 30** When developing the criteria recommended at Annex B we were mindful of the purpose for which we provide the decision circular and have sought to ensure that the criteria is consistent with our wider obligations and commitments made in respect of information sharing. The key principles are:
 - a** If the prospective recipient is a UK based individual or organisation they will be provided with a copy of the decisions circular if they meet the criteria for co-operation defined within the Medical Act 1983. We consider that as a minimum this will enable us to provide the decisions circular to; ROs, Royal Colleges, the PSA, the CQC, NHS organisations, private healthcare providers, health departments in the four countries, the RQIA, HIW, HIS, locum agencies and Deaneries.

- b** If the prospective recipient is responsible for regulation, provision, supervision or management of health professionals/services outside the UK they will be provided with a copy of the decisions circular, capturing appropriate European and International regulators.
- c** If the GMC considers that providing a prospective recipient with the decisions circular will support its statutory FTP functions, a copy can be provided. This is a public interest limb which affords the GMC a discretion in respect of disclosure, which is consistent with our legal power under s.35B(2) of the Medical Act 1983.

Guidance

- 31** The policy guidance at Annex C has been developed to support the application of the criteria recommended at Annex B. The Board is asked to approve the content.

5a – Decisions circular

5a – Annex A

Summary of the proposed changes to the content of the decisions circular

UK/EEA - FTP action tab

Field	Included previously?	LRMP data?	Include in future?	Justification where change of approach or non-LRMP data
Last name	Y	Y	Y	
First name	Y	Y	Y	
Middle name	N	Y	Y	Aids with correct identification of Dr.
Doctor UID	Y	Y	Y	
Gender	Y	Y	Y	
PMQ awarding body	Y	Y	Y	
PMQ date conferred	Y	Y	Y	
NHS region	Y	N	Y	Public interest in recipients being able to filter to identify Drs of relevance.
NHS UK	Y	N	Y	Public interest in recipients being

Country				able to filter to identify Drs of relevance.
Primary speciality	Y	Y	Y	
GP (Y/N)	Y	Y	Y	
Type (undertakings / conditions etc)	Y	Y	Y	
Start date	Y	Y	N	Duplicate of 'FTP action start date'.
Status	Y	Y	Y	
FTP action start date	Y	Y	Y	
FTP action end date	Y	Y	Y	
Actual DB name	Y	Y*	Y*	

*suppressed for some groups e.g. those in armed forces, Drs working for fertility clinics

UK/EEA – Admin / VE tab

Field	Included previously?	LRMP data?	Include in future?	Justification where change of approach or non-LRMP data
Last name	Y	Y	Y	
First name	Y	Y	Y	
Middle name	N	Y	Y	Aids with correct identification of Dr.
Doctor UID	Y	Y	Y	

DOB	Y	N	N	Amounts to personal data which is not necessary to share with UK/EEA recipients in light of other identifiers available.
Gender	Y	Y	Y	
PMQ awarding body	Y	Y	Y	
PMQ date conferred	Y	Y	Y	
NHS region	Y	N	Y	Public interest in recipients being able to filter to identify Drs of relevance.
NHS UK Country	Y	N	Y	Public interest in recipients being able to filter to identify Drs of relevance.
Primary speciality	Y	Y	Y	
GP (Y/N)	Y	Y	Y	
Registration status	Y	Y	Y	
Registration award date	Y	Y	Y	
Actual DB name	Y	Y	N	Once the Dr is no longer subject to revalidation this appears as 'unspecified' on LRMP. It therefore does not add anything to the content of the circular.

International – FTP action tab

Field	Included	LRMP	Include in	Justification where change of
-------	----------	------	------------	-------------------------------

	previously?	data?	future?	approach or non-LRMP data
Last name	Y	Y	Y	
First name	Y	Y	Y	
Middle name	N	Y	Y	Aids with correct identification of Dr.
Doctor UID	Y	Y	Y	
DOB	Y	N	Y	Substantial public interest in international recipients being able to accurately identify Drs subject to FTP actions.
Gender	Y	Y	Y	
PMQ awarding body	Y	Y	Y	
PMQ date conferred	Y	Y	Y	
NHS region	Y	N	N	This information is not of significance relevance out the UK/EEA so it is not considered necessary / proportionate to provide this non-LRMP data.
NHS UK Country	Y	N	N	This information is not of significance relevance out the UK/EEA so it is not considered necessary / proportionate to provide this non-LRMP data.
Country of registered address	Y	N	Y	Aids international recipients prioritise the potential relevance of Drs listed and make better use of the circular.
Primary speciality	Y	Y	Y	

GP (Y/N)	Y	Y	Y	
Type (undertakings / conditions etc)	Y	Y	Y	
Start date	Y	Y	N	Duplicate of 'FTP action start date'
Status	Y	Y	Y	
FTP action start date	Y	Y	Y	
FTP action end date	Y	Y	Y	
Actual DB name	Y	Y*	Y*	

*suppressed for some groups e.g. those in armed forces, Drs working for fertility clinics

International – Admin / VE tab

Field	Included previously?	LRMP data?	Include in future?	Justification where change of approach or non-LRMP data
Last name	Y	Y	Y	
First name	Y	Y	Y	
Middle name	N	Y	Y	Aids with correct identification of Dr
Doctor UID	Y	Y	Y	
DOB	Y	N	Y	Substantial public interest in international recipients being able to accurately identify Drs subject to FTP actions.
Gender	Y	Y	Y	

PMQ awarding body	Y	Y	Y	
PMQ date conferred	Y	Y	Y	
NHS region	Y	N	N	This information is not of significance relevance out the UK/EEA so it is not considered necessary / proportionate to provide this non-LRMP data.
NHS UK Country	Y	N	N	This information is not of significance relevance out the UK/EEA so it is not considered necessary / proportionate to provide this non-LRMP data.
Country of registered address	Y	N	Y	Aids international recipients prioritise the potential relevance of Drs listed and make better use of the circular.
Primary speciality	Y	Y	Y	
GP (Y/N)	Y	Y	Y	
Registration status	Y	Y	Y	
Registration award date	Y	Y	Y	
Actual DB name	Y	Y	N	Once the Dr is no longer subject to revalidation this appears as 'unspecified' on LRMP. It therefore does not add anything to the content of the circular.



5a – Decisions circular

5a – Annex B

Criteria for inclusion on the decisions circular recipients list

The GMC may provide a copy of the decisions circular to an individual or organisation if:

- a** they are a relevant body with which the GMC has a duty to co-operate under paragraph 9A(1)(b) of Schedule 1, Part II of the Medical Act 1983¹;
- b** they are responsible for the regulation, provision, supervision or management of health professionals or services outside of the UK; or
- c** the GMC considers that doing so will support it to discharge its statutory functions in respect of fitness to practise.

Paragraph 9A(1)(b) of Schedule 1, Part II of the Medical Act 1983:

‘(b) co-operate, in so far as is appropriate and reasonably practicable, with public bodies or other persons concerned with -

- (i) the employment (whether or not under a contract of service) of provisionally or fully registered medical practitioners,
- (ii) the education or training of medical practitioners or other health care professionals,
- (iii) the regulation of, or the co-ordination of the regulation of, other health or social care professionals,
- (iv) the regulation of health services, and
- (v) the provision, supervision or management of health services.’

¹ [Schedule A](#) provides a non-exhaustive list of relevant individuals or organisations falling within paragraph 9A(1)(b).

Schedule A

Responsible Officers	Royal Colleges
The Professional Standards Authority ('PSA') and the other UK healthcare regulators	The Care Quality Commission ('CQC')
NHS organisations, including local trusts and NHS improvement	Private UK healthcare providers
Health departments in the four UK countries	The Regulation and Quality Improvement Authority ('RQIA')
Healthcare Inspectorate Wales ('HIW')	Healthcare Improvement Scotland ('HIS')
Locum agencies for registered medical practitioners	Deaneries



5a – The decisions circular

5a – Annex C

Guidance on requests to be include don the recipients list and requests for further information

Introduction

- 1 Transparency about the action taken to respond to serious concerns about doctors plays a very important role in upholding public confidence in the medical profession and medical regulation, but also in public protection. Sharing decisions with the public in the UK can lead to complainants coming forward to share important information. Appropriate information sharing with overseas regulators enables them to take suitable action in their own jurisdictions.
- 2 Encouraging the exchange of information with individuals and organisations both inside and outside of the UK increases patient safety. We therefore proactively inform others about fitness to practise actions that are capable of having an impact on whether a doctor is fit to practise generally where it is necessary and proportionate to do so.
- 3 The decisions circular is part of a range of activities across the GMC which ensure transparency about decisions to respond to serious concerns about doctors. The wider framework of transparency includes; the publication of all actions taken on a doctor's registration, except those relating solely to health, on the LRMP; the publication of the outcome of MPTS hearings for 12 months; a requirement to share sanctions with all European medical regulators via the European Commission's IMI system.

Prospective recipients

- 4 The GMC may provide a copy of the decisions circular to a prospective recipient if they meet the criteria at paragraph five.
- 5 The GMC may provide a copy of the decisions circular to an individual or organisation if:

- a** they are a relevant body with which the GMC has a duty to co-operate under paragraph 9A(1)(b) of Schedule 1, Part II of the Medical Act 1983¹;
- b** they are responsible for the regulation, provision, supervision or management of health professionals or services outside of the UK; or
- c** the GMC considers that doing so will support it to discharge its statutory functions in respect of fitness to practise.

Disclosure to support the GMC discharge its statutory functions

- 6** The GMC's overarching objective is to protect the public and the GMC has related statutory obligations to maintain a register of doctors and to investigate fitness to practise concerns.
- 7** The GMC has wide powers in respect of publication and disclosure of fitness to practise information:
 - a** Section 35B(4) of the Medical Act 1983 imposes an obligation to publish, in such manner as we see fit, decisions of Medical Practitioners Tribunals (including warnings), decisions of Interim Orders Tribunals, warnings of the Investigations Committee and undertakings agreed with a doctor.
 - b** Section 35B(2) of the Medical Act 1983 provides that the GMC may publish or disclose fitness to practise information if considered to be in the public interest to do so.
- 8** To comply with data protection law, the transfer of the information contained in the decisions circular must be in the public interest where it is being sent within the EEA and in the substantial public interest if it is being sent elsewhere.
- 9** The principles of the over-arching objective are closely related to the term 'public interest': striving to achieve the objectives set out within the overarching objective is in 'the public interest'.
- 10** The public interest has two elements: the particular need to protect individuals and a collective need to maintain the confidence of the public in their doctors (Merrison Report). It is well established that there is an important distinction between what is in the public interest, and what is interesting to the public or subject to public clamour, especially in the media.

¹ [Schedule A](#) provides a non-exhaustive list of relevant individuals or organisations falling within paragraph 9A(1)(b).

- 11** When considering the public interest, the GMC should not be unduly influenced by the private interests of the prospective recipient.
- 12** If the GMC is satisfied that providing the information is in the 'substantial public interest' by implication the 'public interest' will also have been met.

Substantial public interest

- 13** The transfer of the information contained in the decisions circular serves a substantial public interest in the UK because:
 - a** it is important to ensure the safety and adequacy of medical services worldwide as these are capable of having an impact on the safety and wellbeing of UK residents who travel abroad and generally as a result of movement of people between countries;
 - b** by transferring information to overseas regulators the GMC may in turn receive information from those regulators that will be relevant to our assessment of the fitness to practise of overseas doctors wishing to practice in the UK;
 - c** if doctors who have had action taken against their registration in the UK are able to work overseas when there are concerns about their fitness to practise, this could damage the reputation of the UK's healthcare system and its system of regulation;
 - d** doctors who are subject to regulatory sanctions in the UK such as suspension or erasure, may still be able to work overseas during the period of the sanction and then use their overseas experience to facilitate a return to work in the UK.

In this context a doctor's fitness to practise is a matter of 'substantial public interest'.

- 14** When deciding whether to disclose the decisions circular to a prospective recipient on the basis that it will support the discharge of its statutory functions in respect of fitness to practise, the GMC should be satisfied that the transfer of information will serve a substantial public interest.

Schedule A

Responsible Officers	Royal Colleges
The Professional Standards Authority ('PSA') and the other UK healthcare regulators	The Care Quality Commission ('CQC')
NHS organisations, including local trusts and NHS improvement	Private UK healthcare providers
Health departments in the four UK countries	The Regulation and Quality Improvement Authority ('RQIA')
Healthcare Inspectorate Wales ('HIW')	Healthcare Improvement Scotland ('HIS')
Locum agencies for registered medical practitioners	Deaneries