

<b>Agenda item:</b>	<b>7</b>
<b>Report title:</b>	<b>Guidance for decision makers on assessing the impact of health in conduct and conviction or caution cases</b>
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<b>Action:</b>	<b>To consider</b>

## Executive summary

In September 2015 we asked Professor Louis Appleby, a leading mental health expert, to advise us as we carried out a fundamental review of our approach to cases relating to a doctor's health and in our interactions with doctors who may be vulnerable. Following this review, we have revisited our guidance for decision makers on assessing the impact of health in conduct and conviction or caution cases.

The new guidance in this area, at Annex A, clarifies when a conduct concern linked to health may be addressed by taking action to address the health issue alone, or when action must be taken to address both the health and conduct concerns.

## Recommendations

The Strategy and Policy Board is asked to approve the *Guidance for decision makers on assessing the impact of health in conduct and conviction or caution cases*, at Annex A.

## **Background – why are we addressing this subject?**

- 1** We recently carried out a fundamental review of our fitness to practise processes, overseen by Professor Louis Appleby, a leading mental health expert. Following this review, we have finalised a series of proposals focusing on changes to our fitness to practise processes to help reduce the stress and impact that these can have on doctors – particularly those with health concerns.
- 2** In light of this work, we have reviewed our guidance on assessing the impact of health in conduct and conviction/caution cases to ensure that it reflects the principles of the Appleby proposals, while also ensuring that our approach to serious misconduct/conviction cases linked to health continues to maintain patient safety and public confidence in the GMC.

## **Approach**

- 3** The guidance, at Annex A, aims to ensure that decision makers make fair and consistent decisions by clarifying the circumstances in which conduct concerns linked to health can be addressed solely by taking action to address the health concerns, or whether action may need to be taken to address the health and conduct issues separately.
- 4** The guidance adopts a proportionate approach. Where a conduct concern or conviction/caution is closely linked to a health issue, is relatively minor, and there is no patient harm, the conduct issue may be addressed solely by taking action to address the health concern. This is likely to reduce stress for doctors in our fitness to practise procedures and is unlikely to negatively impact public confidence.
- 5** However, in cases where the misconduct is more serious or the doctor receives a conviction/caution and the Realistic Prospect Test is met in terms of both health and conduct, the guidance states that action will need to be taken to address both of these issues.
- 6** In cases where a doctor receives a custodial sentence, the Rules direct that the case is referred directly to a Medical Practitioners Tribunal.

## **Equality and diversity considerations**

- 7** We have considered the aims of the equality duty and the potential impact of the guidance on people from protected groups.
- 8** Where the conduct is less serious and is linked to a doctor's health, the position of the guidance allows decision makers to address the conduct concerns by taking action only to address the health concerns. This is likely to reduce the stress for doctors with disabilities, in particular those with certain mental health conditions.

- 9** In cases where the misconduct or conviction is more serious, while we recognise that this may at times involve doctors who are vulnerable or unwell, we must take action to protect patients and uphold confidence in the medical profession. However, the programme of work to reduce the impact of the process on vulnerable doctors will mean that our communication is dealt with more sensitively and there is more support available, reducing the overall impact on the doctor.

**7 – Guidance for decision makers on assessing the impact of health in conduct and conviction or caution cases**

**7 – Annex A**

**Guidance for decision makers on assessing the impact of health in conduct and conviction or caution cases**

**Introduction**

- 1** This guidance aims to help decision makers make fair and consistent decisions in conduct and conviction or caution cases, where health is a factor. It sets out the factors to consider when deciding how a conduct, conviction or caution case, which also involves a doctor's health, should be treated.
- 2** A health problem may explain, or provide a motive for, misconduct or behaviour leading to a conviction or caution.
- 3** Where a doctor's health is closely connected to conduct concerns or a caution/conviction, this may affect whether there is a realistic prospect of establishing that a doctor's fitness to practise is impaired by reason of that conduct or conviction/caution. Where there is no realistic prospect of finding impairment by reason of the conduct or caution/conviction, this may mean that a case can be treated as a pure health case, rather than as a conduct or a conviction/caution case. Alternatively, a case may be treated as a health and conduct or health and conviction/caution case, if the realistic prospect test is met in respect of both aspects of the case.
- 4** Where the conduct is less serious, there is no patient harm and the health issue is closely connected to the conduct or conviction/caution, the conduct concerns may be addressed by taking action solely to address the health concerns. In these less serious cases, the health issue is likely to mean that there is no realistic prospect of finding impairment by reason of misconduct.
- 5** Where there is serious misconduct or there is no link between a health issue and a conduct concern, then the concerns should be treated separately (including a conviction/caution).

- 6** If a doctor has received a conviction resulting in a custodial sentence, it is not possible to address the conduct concerns solely by addressing the health issue, even where health may provide a full or partial explanation for the behaviour. These cases must be referred directly to a Medical Practitioners Tribunal (MPT). In addition, where there is no link between a health issue and a conduct concern or a conviction/caution, the concerns should be treated separately.
- 7** This document should be read in conjunction with the following pieces of guidance:
  - a** [Guidance for the Investigation Committee and Case Examiners on making decisions at the end of the investigation stage](#)
  - b** [Guidance for decision makers on assessing risk in health cases](#)
  - c** [Guidance for decision makers on assessing insight when considering whether undertakings are appropriate](#)
  - d** [Sanctions guidance for members of medical practitioners tribunals and the General Medical Council's decision makers.](#)

## Factors to consider

- 8** The seriousness of the conduct concerns raised about a doctor, the behaviour leading to a conviction/caution, and the potential risk to future patients are the primary factors that should be taken into account when considering whether a conduct issue or a conviction/caution can be addressed solely by taking action to address the health issue.
- 9** Decision makers should also take into account other factors relating to a case, such as:
  - a** a doctor's insight into their conduct or behaviour leading to a conviction
  - b** insight into their health and its impact on their practice
  - c** whether the doctor is in treatment
  - d** the likelihood that the misconduct might be repeated.
- 10** Further details of factors to be considered are set out in the [Sanctions guidance](#) and [Guidance for the Investigation Committee and Case Examiners on making decisions at the end of the investigations stage](#).

## Lower-level concerns

### *Lower-level misconduct*

- 11** In less serious conduct cases, where there is no patient harm and the doctor's health is closely connected to the conduct, the case examiners may address the concerns by taking action to address solely by taking action to address the doctor's health. This will only be appropriate where the doctor's health explains the doctor's conduct, meaning that the realistic prospect test is not met in respect of the doctor's conduct.
- 12** Where a doctor's health is connected to the conduct concerns, but it does not explain the doctor's behaviour, if the conduct (although less serious) still amounts to misconduct and the realistic prospect test is met, the case should be treated as a health and misconduct case.

### *Minor convictions (not resulting in a custodial sentence) and cautions*

- 13** In cases where a doctor has a minor conviction (and has not received a custodial sentence) or caution which is closely connected to a health issue, there is no patient harm, and the Registrar indicates that the case should be referred to the case examiners rather than to a MPT for a decision, the case examiners may address the concerns solely by taking action to address the doctor's health.
- 14** This will only be appropriate where the health concerns provide an explanation for the conduct which led to the doctor's conviction or caution, meaning that the realistic prospect test is not met in respect of the conviction or caution element of the case. Where the health concerns are connected to, but do not explain, the doctor's conduct leading to the conviction or caution, such that the realistic prospect test is met in respect of the conviction or caution, the case should be treated as a health and conviction/caution case.

### *Deciding whether undertakings are appropriate*

- 15** In cases where the case examiners consider that the concerns may be addressed solely by taking action to address a doctor's health, undertakings are likely to be appropriate where the case examiners have determined that there is a realistic prospect of an MPT finding a doctor's fitness to practise to be impaired and where undertakings will be sufficient to protect patients and maintain public confidence.
- 16** When deciding to resolve cases involving health concerns through undertakings, case examiners should also take into account any other mitigating or aggravating factors as specified in the [Sanctions guidance](#) and [Guidance for decision makers on assessing insight when considering whether undertakings are appropriate](#).

- 17** Examples of the types of cases which might be suitable for undertakings can be found in Annex A.

### **More serious concerns**

- 18** Some health and conduct or conviction/caution cases may still need to be referred to a MPT. This is the case even where health provides an explanation for the conduct.
- 19** These types of cases fall into four categories:
- a** Where the misconduct is so serious that public confidence would only be maintained by referring the case to hearing.
  - b** Where a doctor has a conviction that results in a custodial sentence (where the Registrar is required to refer directly to an MPT).
  - c** Where a doctor has a conviction or a caution (without a custodial sentence) and the Registrar indicates that the case should be referred to a MPT, rather than to the case examiners for a decision.
  - d** Where the misconduct is not explained by the doctor's health and meets the RPT.
- 20** The guidance on [\*Making decisions at the end of the investigations stage: Guidance for the Investigation Committee and case examiners contains\*](#) further information on the types of cases that should be directly referred to a MPT.

### *Serious misconduct*

- 21** Serious misconduct may relate to a doctor's actions during their professional practice or an incident which has taken place in their personal life. In order to be considered as serious misconduct, the actions or incident are likely to pose a risk to the public's confidence in the medical profession.
- 22** Where the conduct is so serious that public confidence would only be maintained by referring the case to a hearing, the case should not be resolved through undertakings, even where a doctor's health may explain or provide a motive for the conduct.
- 23** The more serious the misconduct, the more likely there will be a public interest in the matter being referred to a hearing. The sorts of misconduct which is likely to result in a referral include (but are not limited to):
- i** Sexual assault or indecency
  - ii** Violence

- iii Improper sexual or emotional relationship
- iv Knowingly practising without a license.

**24** See Annex B for a list of example cases.

*Where a doctor has a conviction that results in a custodial sentence*

**25** Where a doctor has a conviction that results in a custodial sentence, the case must be referred to a MPT, even if health is connected to, or provides an explanation for, the conduct that led to the conviction. This is also the case where health is additionally identified as a separate reason for impairment.

*Convictions (not resulting in a custodial sentence) and cautions*

- 26** Other (less serious) types of convictions and cautions will be referred to a MPT, even if health is closely connected to, or provides an explanation for, the conduct that led to the conviction or caution, unless the Registrar indicates that the case should be referred to a case examiner for consideration.
- 27** The guidance on [Convictions, cautions and determinations](#) has further information on the types of cases that should be directly referred to an MPT.

## Annex A – Examples of health and conduct cases where undertakings may be suitable

This annex outlines a number of case studies where both health and conduct issues are present and there is no patient harm. While these case studies can be used to give an indication of the types of cases where undertakings might be considered, each case will be different and there may be other mitigating or aggravating factors present which affect the outcome.

### Example 1

A local investigation determines that a doctor has stolen opiates from the controlled drugs cupboard. A health assessment diagnoses opiate dependence syndrome.

**Suitable for undertakings** - In this case the conduct is closely linked to the health issue and while serious, it is not so serious as to require us to refer it to a hearing. Undertakings would be suitable in this case if the doctor has insight and is engaged in treatment.

### Example 2

A doctor is suspended from work for smelling of alcohol and having slurred speech and difficulty walking during his hospital shift. A health assessment diagnoses harmful use of alcohol.

**Suitable for undertakings** - Likely to be suitable for undertakings if the doctor has insight and is engaged in treatment.

### Example 3

A doctor failed to turn up to work on several occasions and didn't contact the surgery to let them know. On each occasion, he remained uncontactable and no-one knew where he was. A health assessment diagnosed bipolar disorder.

**Suitable for undertakings** – Likely to be suitable for undertakings where the absences are considered to be linked to the doctor's health issue, the doctor has insight, and is engaged in treatment.

### Example 4

A doctor argued with a colleague and threw a chair at the wall during a staff meeting, causing some minor damage. A health assessment diagnosed an anxiety disorder.

**Suitable for undertakings** – Likely to be suitable for undertakings where the incident is considered to be linked to the doctor's health issue, the doctor has insight, and is engaged in treatment.

## Annex B – Examples of health and conduct or conviction/caution cases where undertakings are not appropriate

### Example 1

A doctor is convicted of possession of heroin and sentenced to community order. A health assessment diagnoses opiate dependence syndrome.

In this case it would depend on the circumstances of the case. On the face of it a conviction for Class A drugs is a serious offence that would usually lead to a custodial sentence. In this case it resulted in a community order. The sentence in itself may not be a good indicator of seriousness so it would depend on for example the doctor's insight, whether they were engaged in treatment, the likelihood of repetition, etc.

### Example 2

A local investigation determines that a doctor has siphoned off opiates for his own use from patient prescriptions and administered reduced amounts to patients. A health assessment diagnoses opiate dependence syndrome.

**Referral to a hearing** - If the doctor's action put patients at risk or reduced their pain medication, it would not be appropriate to respond to this solely by way of undertakings to address the health issues. Given the seriousness of the misconduct, a separate response would be required to directly respond to the misconduct.

### Example 3

A doctor is convicted of three counts of aggravated burglary and possession of crack cocaine. A health assessment diagnoses opiate dependence syndrome.

**Referral to hearing** - In this case, the crime of aggravated burglary is very serious. The allegation carries a presumption of impairment and undertakings would not be suitable. If it attracted a custodial sentence the case would have to be referred directly to a hearing under our rules.

### Example 4

A doctor is convicted of sexual assault against two junior nurses and a receptionist. The doctor was found to have kissed and touched their breasts without consent. A health assessment diagnoses a depressive disorder and harmful use of alcohol.

**Referral to hearing** - This conduct carries a presumption of impairment and would not be suitable for undertakings. If it attracted a custodial sentence the case would have to be referred directly to a hearing under our rules.

### Example 5

A doctor is convicted of viewing 250 indecent images of children. A health assessment diagnoses a depressive disorder and harmful use of alcohol.

**Referral to hearing** - This conduct carries a presumption of impairment and would not be suitable for undertakings. Also likely to carry a custodial sentence where we are required to refer direct to a hearing under the rules.

### Example 6

A local investigation found that a doctor had been dealing cannabis to a 17 year old. A health assessment diagnoses a drug dependence disorder.

**Referral to hearing** – Due to the seriousness of the concerns, it would not be appropriate to respond to this solely by way of undertakings to address the health issues. Given the serious nature of the misconduct, a separate response would be needed to directly address this, as well as any health concerns.