

Agenda item:	7
Report title:	Publication and disclosure - revised time limit proposals
Report by:	Anna Rowland , Assistant Director of Policy, Business Transformation and Safeguarding arowland@gmc-uk.org , 020 7189 5077
Action:	For decision

Executive summary

At its meeting on 25 February 2016, Council considered the outcome of the recent consultation on changes to our publication and disclosure policy. While agreeing that the majority of proposals should be pursued, Council asked for further consideration to be given to the proposals for the time limits on publication and disclosure of fitness to practise sanctions. In particular it asked whether these could provide for:

- a** Greater differentiation between severity of sanction and between cases of impairment due to adverse health as opposed to other forms of impairment.
- b** Extension of time limits, or re-publication of fitness to practise history, if a doctor receives a second finding of impairment or sanction.

Recommendations

Council is asked to:

- a** Agree the proposed timescales set out in [Annex A](#).
- b** Consider whether to adopt a shorter time limit in cases where impairment is solely due to adverse physical or mental health; and if so, choose between option 1 and option 2 as set out in [Annex A](#):
 - i** Option 1: Five years from the date at which the sanction expires or is revoked.
 - ii** Option 2: Remove from publication as soon as sanction expires/revoked.
- c** Choose between the proposed options for action in relation to doctors who receive a second (or further) fitness to practise sanction:
 - i** Option 3: Reinstatement or extension of a publication period for a first sanction in line with the publication period of the second sanction.
 - ii** Option 4: Extension of a publication period only if the first sanction is still being published when the second is imposed.
 - iii** Option 5: Adopt Option 3 but with a long stop of 20 years on any expired sanction.
 - iv** Option 6: No different publication periods where there is a second sanction.

Introduction

- 1 We consulted last year on the introduction of time limits for publication and disclosure of information about a doctor's fitness to practise. Respondents were strongly in support of this, but a small majority were of the view that the limits proposed were too long. Strong arguments were also put forward for a sliding scale of time limits, according to the severity of the sanction or nature of the impairment.
- 2 Following consideration of the consultation responses, we recommended the introduction of shorter time limits than the 20 years originally proposed for the publication of sanctions on registered doctors. We recommended two levels of time limits of 15 years for doctors who had received a suspension of more than three months, and 10 years for doctors who had received a suspension of three months or less, conditions, undertakings, or a finding of impairment with no sanction.
- 3 Council [considered the recommendations](#) at its meeting on 25 February 2016. It agreed with the reduction of the original time limits proposed. However, Council considered that, in some circumstances, specifically a finding of impairment with no sanction, the limits may still be too long. Council considered a shorter time limit may also be appropriate where a sanction is imposed solely for impairment due to adverse physical or mental health.
- 4 Council also asked for further consideration of a situation where a doctor is subject to more than one sanction during his or her career. It was thought that, in this circumstance, publication of any previous sanction should be extended or reinstated.

Revised proposals for time limits

- 5 We have set out revised proposals for time limits at [Annex A](#). The limits for registered doctors are based on those previously put before Council, but include shorter time limits for cases where a doctor is found impaired but does not receive a sanction, and where sanctions are imposed solely in relation to a doctor's health.
- 6 The category of health was of particular concern to Council, and to some respondents to the consultation. We have put forward two options for cases where impairment is solely related to a doctor's physical or mental health, or where any accompanying performance and conduct issues have been dealt with by health undertakings because they were found to be driven by the doctor's health issues (and not so serious that a response was needed to maintain public confidence).
- 7 Option 1 recommends publication for a period of time after a sanction is lifted, because there is an argument that there is a public interest in transparency about the fact that a doctor has only recently returned to unrestricted practice. A shorter time

limit is proposed however than for other categories of impairment. Option 2 proposes that a sanction should be published only for the period that it is active.

- 8 We discussed these options with Professor Louis Appleby, the mental health expert who is helping with our review of vulnerable doctors. His view was that sanctions in cases where impairment is solely due to adverse physical or mental health should be removed from publication as soon as they expire or are revoked – that is Option 2.
- 9 With both options, in multifactorial cases where performance or conduct is either not considered to be significantly linked to the doctor's health or the concerns are so serious that public confidence requires action, the time limit should be the same as the time limit for that sanction in non-health related cases.

Doctors who receive a second (or further) fitness to practise sanction

- 10 Council has asked for consideration of whether imposition of a further sanction should result in the publication of any earlier sanction being extended or reinstated. We have sought legal advice on this issue. While the principle is unobjectionable, there are risks with the different options for how this might work in practice.
- 11 **Option 3:** Reinstatement or extension of a publication period for a first sanction in line with the publication period of the second sanction. While consistent, this could lead to disproportionate outcomes with first sanctions published over 30 years after they have expired. See example in paragraph 2 of [Annex B](#).
- 12 **Option 4:** Extension of a publication period only if the first sanction is still being published when the second is imposed. This could still lead to disproportionate outcomes, if less so than Option 3, and is also more arbitrary – e.g. a short suspension carrying a publication period of 10 years could be published for 20 years if a second short suspension is imposed one week before the first publication period expires. A longer suspension of 15 years however, could be published only for that time if a second suspension is imposed one week after the first publication expires. See example in paragraph 4 of [Annex B](#).
- 13 **Option 5:** Adopt Option 3 but with a long stop of 20 years on any expired sanction. While this would avoid disproportionate outcomes, it would give rise to anomalies. If continued publication is because public confidence requires us to publish a pattern of sanctions then, in cases where the second sanction occurs after the 20 year limit, the pattern would not be presented to the public. It could also lead to re-publication of sanctions for very short periods e.g. 1 or 2 weeks. See example in paragraph 6 of [Annex B](#).

- 14 Option 6:** No different publication periods where there is a second sanction. Where appropriate, previous sanctions already form part of a tribunal's consideration and are therefore referenced in public determinations.
- 15** If any of options 3 to 5 is chosen, we recommend excluding a sanction imposed solely on the grounds of health.

M7 – Publication and disclosure - revised time limit proposals

M7 – Annex A

Revised proposals for time limits

Registered doctors

Sanction	Time limit
Doctor erased by FTP panel and subsequently restored to register	As long as the doctor is registered with the GMC plus five years if they leave
Doctor received a suspension of more than 3 months	15 years from the date the suspension expires
Doctor received a suspension of 3 months or less, or conditions or undertakings	10 years from the date the sanction expires or is revoked
Doctor received a finding of impaired fitness to practise but no sanction	5 years from the date of the end of the MPTS hearing

Impairment solely on the grounds of adverse physical or mental health

Doctor received suspension, conditions or undertakings because of impaired fitness to practise solely on the grounds of health	Option 1 - 5 years from the date at which the sanction expires or is revoked
	Option 2 – Remove from publication as soon as sanction expires/revoked
Doctor received impairment finding but no sanction solely on grounds of health	No publication on the online register

Doctors not currently registered

Sanction	Time limit
Doctor was erased by FTP panel	10 years from the date of erasure
Doctor received a sanction other than erasure	5 years from the date the doctor left the register (subject to relevant 10 and 15 year maximum periods)
Doctor received a finding of impaired fitness to practise but no sanction	1 year from the date the doctor left the register (subject to 5 year maximum period ¹)
Doctor received suspension, conditions or undertakings solely on the grounds of health	Options 1 and 2 - 1 year from the date the doctor left the register (subject to 5 year maximum period for option 1 ¹ ; and subject to still being active for option 2).

¹ This means that if a doctor left the register while a sanction was still active, or with more than a year of the original 5 year time limit left to run, it would be published for 1 year from the date of leaving. If, for example, it had been revoked 4 years 6 months before the doctor left the register, it would be published for a further 6 months from the date of leaving.

M7 – Publication and disclosure - revised time limit proposals

M7 – Annex B

Publication and disclosure: multiple sanctions

Option 3: The publication of any earlier sanction is reinstated or extended in line with the publication period of any second sanction

- 1 This option would ensure a consistent approach is taken to all cases. There is the potential for this approach to lead to quite disproportionate outcomes however. For example:
- 2 *A doctor early in his career receives a 3 month suspension, which carries a publication period of 10 years. 25 years after the first sanction, he receives a second suspension of 3 months for a wholly unrelated issue, again publishable for a period of 10 years. The earlier suspension would then become subject to the publication period of the second, meaning that it would be published for up to 35 years after it had expired.*

Option 4: The publication of any earlier sanction is extended in line with the publication period of any second sanction, only if it is still being published at the time the second sanction is imposed.

- 3 While potentially reducing the likelihood of disproportionate outcomes, when compared with option 3, this approach could still lead to publication periods of over 20 years for the earlier sanctions. It could also operate in a much more arbitrary way than Option 3. For example:
- 4 *Doctor A receives a suspension of 1 month which carries a 10 year publication period. One week before the publication period is due to expire, the doctor receives a second suspension of 1 month, which will also be published for 10 years. The first publication period was still in force, so the first sanction will be published for a period of just over 20 years. Doctor B receives a 6 month suspension which carries a 15 year publication period. One week after the publication period has expired, Doctor B receives another suspension of 6 months. As the first publication period has expired, only the second sanction will be subject to publication, for a period of 15 years.*

Option 5: Adopt option 3, but incorporate an additional long-stop time limit of 20 years on publication of any sanction (except erasure for FTP reasons following restoration)

- 5 While this approach may avoid disproportionate outcomes, it is problematic in other ways. It is difficult to justify why it is appropriate to reinstate or extend publication of an earlier sanction as a result of a second sanction being imposed, but then remove it from publication after a time while that second sanction remains in publication. It could also lead to publication of a time-expired sanction being reinstated for a very short period only. For example:
- 6 *A doctor receives a 1 month suspension (sanction 1). 19 years and 11 months after the suspension ends, the doctor receives a further 1 month suspension (sanction 2). Sanction 1 would have stopped being published after 10 years from the end of the initial suspension. Under this model, it would be reinstated after the imposition of sanction 2, but only for a further month.*