Executive summary
In September 2014, the GMC asked Sir Anthony Hooper to review how we handle cases involving individuals who regard themselves as whistleblowers. We published Sir Anthony’s recommendations in March 2015, and at its meeting on 22 July 2015, the Board approved our action plan with indicative timeframes.

We updated the Board on progress at its meeting on 1 December 2015. This paper provides a further update, including the near final version of the Responsible Officer referral form and guidance, the agreed approach to investigation of doctors who raise concerns, plans for training of staff, and an outline of the roundtable to facilitate discussion about an online facility for healthcare professionals to record their concerns.

We reported in December 2015 the anticipated introduction of a requirement to report to Parliament disclosures of information made by whistleblowers to us. We have identified implications across the organisation and will establish a corporate project board to address these.

Recommendation
The Strategy and Policy Board is asked to note progress and advise on any changes to the proposed approach.
Progress report

1 Sir Anthony Hooper made eight recommendations in his report (listed below).

Referrals from organisations

- Recommendations 1 and 2: Organisations should be encouraged to say whether a doctor has raised patient safety or systems concerns; the referral should include a statement of truth and be signed by a doctor.

- GMC Action: Review relevant guidance and discuss with Responsible Officers (ROs) and employers how we would include a signed statement in a referral.

2 A near-final version of the template form for referral by employers and supporting guidance (subject to consultation with operational teams and the Employer Liaison Service (ELS)) is at Annex A. We have highlighted relevant sections including: a question about whether and if so, when, the doctor raised concerns and whether these have been investigated; the declaration, which reflects the wording of the revalidation declaration; and to better understand the chronology of events in a whistleblowing case, a question asking the RO when they made the doctor aware of their concerns about the doctor’s fitness to practise.

3 Feedback from ROs was that the form may not always be signed by a doctor. However, given the importance of a referral to the GMC, we have specified in the guidance that the person signing the form must confirm the RO is aware of the referral.

Exploring the impact on our fitness to practise process

- Recommendations 3 – 6: Where an organisation does not provide information regarding concerns we should: ask them why; obtain material relevant to our understanding of the referral context; take into account an organisation’s failure to investigate the concerns or have proper procedures for handling concerns when assessing the merits of an allegation; where appropriate, use our Rule 4(4) powers to carry out the above and request doctors’ comments.

- GMC Action: Review the use of Rule 4(4) powers to understand the referral context and obtain relevant material; and explore how we will consider a referral organisation’s failure to provide information and/or investigate concerns.

4 We have agreed that, where a RO has disclosed a whistleblowing context or failed to respond to the question on the referral form, unless we receive objective information that makes it clear a full investigation or interim action is needed, we will carry out a provisional enquiry to clarify whether a full investigation is appropriate. Our full policy
position is at Annex B, and the amended paragraph from within the existing provisional enquiries guidance is at Annex C.

**Developing staff training**

- **Recommendation 7:** Those who investigate whistleblowing doctors must be trained to understand whistleblowing in the context of the GMC and the NHS.

- **Action:** Develop a training package for investigation staff.

5. Provision has been made for appropriate training in the 2016 budget. We will be appointing an external organisation to develop and deliver the training, going out to tender in April with a view to delivering training to Fitness to Practise directorate staff in September 2016.

**Online recording facility for all healthcare professionals**

- **Recommendation 8:** The GMC, together with other regulators, set up an independent, confidential, online system for healthcare professionals to record details of when and with whom they have raised concerns.

- **Action:** To facilitate a workshop to allow stakeholders to explore the possibility of an externally hosted and resourced online facility.

6. Working with leads from the Regional Liaison Service (RLS), ELS, Devolved Offices and the Office of the Chair and Chief Executive (OCCE), we have agreed an outline of the event and invited delegates. Kim Holt, Consultant Paediatrician and Founder of Patients First, and Cathy James, Chief Executive of Public Concern at Work will speak. We are currently identifying an appropriate employer representative to join them. We have 27 attendees as at 10 February 2016. Unfortunately, the newly appointed National Guardian, Eileen Sills, and a Department of Health representative are unable to attend.

**Mandatory annual reporting of whistleblowing disclosures**

7. The Department of Business, Innovation and Skills (BIS) has published draft regulations to introduce mandatory annual reporting of whistleblowing disclosures made to us in our role as a prescribed body.

8. The mandatory reporting requirement has corporate implications and we are setting up a cross-directorate project board to take this work forward.

9. BIS has not confirmed a timeframe for implementing the regulations. It has told us there is more work needed on the drafting and it doesn’t envisage the SI being
introduced until later in 2016, when it is likely to require debate in both Houses via an affirmative resolution.

Next steps

10 We will:

a Share the referral form and guidance with medical defence organisations (MDOs) and ROs.

b Finalise the process mapping in relation to the provisional enquiry process with the aim of launching a pilot in July 2016.

c Develop training for staff.

d Hold the roundtable event and draft a report of discussions that we will share with key interests.

e Set up the project board for mandatory reporting, address systems issues, discuss the draft regulations with other regulators and liaise with Government.
Referral Form (DRAFT)

This form is for Responsible Officers, employers and their nominated representatives to send Fitness to Practise concerns to the GMC. Guidance for completing this form is available in the Referral Guidance [insert hyperlink]. The guidance provides assistance on making fair and accurate referrals based on GMC thresholds.

If you are a professional raising concerns in your individual capacity or a member of the public, please visit our website to fill in our online form.

Please return this form to practise@gmc-uk.org. If the concerns are of a serious and urgent nature and completing the form could cause a delay then please email us straight away with as much detail about the concern as possible. You can contact your Employer Liaison Advisor on 0845 375 0022 or by email at liaison@gmc-uk.org before making a referral if that would be helpful.

Details about the doctor

Doctor’s name

GMC reference number

Doctor’s position

Place of work

How long has the doctor worked here?

Incident date (if applicable)

Have you discussed your concerns with the doctor?

Yes ☐ No ☐
If no, please say why you have not discussed it with them?

If yes, when did you discuss your concerns with them?

Are you the doctor’s RO?

Yes □ No □

If no, please specify your connection to the doctor

Have you discussed your concerns with an Employer Liaison Adviser (ELA)?

Yes □ No* □

If yes, did the ELA advise you to make a referral?

Yes □ No □

Summary of concerns

Please use the box below to provide the following details:

- Summary of the concern(s) including location and who else was involved
- A chronology of events
- Details of risk to patient safety (if applicable)
- Summary of all local action taken and on-going investigations (if any)
- Please indicate where you have been unable to verify information contained within this referral (e.g. where the information is from a source outside of your remit, where a local process in on-going or where you believe there is an evidential conflict)
- Details of any other concerns or previous complaints (and local actions and outcomes) – this will help us assess whether this incident is part of a pattern of behaviour.

* for details about the Employer Liaison Advisor for your region please visit [http://www.gmc-uk.org/concerns/11956.asp](http://www.gmc-uk.org/concerns/11956.asp). They can discuss your concerns and whether they meet the GMC threshold for an investigation.
**Local restrictions**

*Please provide details of any restrictions on the doctor’s practice at a local level*

<table>
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<tr>
<th><strong>Local restrictions</strong></th>
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<td>Please provide details of any restrictions on the doctor’s practice at a local level</td>
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**Supporting documentation**

*Please list in the box below any available supporting information and mark which items are included with this form and which you intend to send at a later stage.*

**Supporting documentation (where available) could include:**

- Notes, reports and transcripts of internal investigations or disciplinary documentation on this matter or related previous concerns
- Complaint letter
- Anonymised/redacted medical records *
- Witness statement(s) and contact details
- Expert report(s)
- Relevant Royal College reviews
- Relevant audit findings
- NCAS assessment report
- Conviction/caution cases: criminal records check or certificate of conviction
- Health cases: (1) details of any relevant sickness absence; (2) medical reports and (3) notes of any meetings where the doctor’s health has been discussed
- Where the incident being referred is part of a pattern of behaviour – all supporting documentation relating to the other concerns

*Where supporting information contains patient identifiable details, we may ask you to seek consent from those individuals where you have not already done so.*
Other Sources of information

Please use the box to detail any organisations and bodies (e.g. regulatory bodies, the police etc.) that may be able to assist with providing relevant information to the GMC. Where possible, please include the contact details of a named person within that organisation.

Patient Safety Concerns

To your knowledge, has the doctor raised concerns about patient safety with the appropriate organisation ie that patient safety or care is being compromised by the practice of colleagues or the systems, policies and procedures in the organisation in which they work? *

Yes □ No □

If yes:

When did the doctor raise their concern?

Was the concern investigated?

Yes □ No □

Please list any supporting information in regard to the investigation and the patient safety issues raised. If the concern was not investigated please provide an explanation below.

Supporting information (where available) could include:

- Reports or notes of internal/external enquiries or investigations

* See ‘the Referral Guidance’ and (paras 22-23) and our guidance on ‘Raising and acting on concerns about patient safety’.
Declaration

In accordance with my duty to raise concerns about the fitness to practise of doctors, I refer the named medical practitioner(s) to the GMC. In so doing, I confirm that:

- The referral is made in good faith, based on all the information that is available to me at the present time
- I have taken reasonable steps to ensure that the referral is fair and accurate

Signed

Role

Date

Please provide the name and role of the person you are acting on behalf of, if applicable:

Acting on behalf of

Role

(e.g. Responsible Officer or Medical Director)
The Referral Guidance

Background

1 This Referral Guidance is provided to assist Responsible Officers (ROs) in making referrals to the GMC. ROs should consult the guidance whenever they are considering making a referral.

2 This guidance is also available as a series of web pages. The most up to date version of this guidance can always be found on the GMC’s website. If you would like to check that you have downloaded the latest version, please visit our webpages about the guidance.

Statutory framework for referrals

RO Regulations

3 The Responsible Officer Regulations [insert link] give you responsibility for the evaluation of the fitness to practise of every doctor with a prescribed connection to your designated body. Additionally, doctors have a duty to protect patients under Good Medical Practice. If a concern is raised about the fitness to practise of a doctor connected to your designated body (that is if you believe that a doctor’s behaviour poses a risk to patients or public confidence in doctors), you have a responsibility to take all reasonable steps to investigate those concerns, and where appropriate, refer those concerns to us.

The Medical Act 1983

4 Under the powers set out in the Medical Act 1983 [insert link], we can take action if we believe that a doctor’s fitness to practise is impaired. A question may arise about a doctor’s fitness to practise for the following reasons:

- misconduct;
- deficient performance;
- a criminal conviction or caution in the British Isles (or elsewhere for an offence which would be a criminal offence if committed in England or Wales);
physical or mental ill-health;

- a determination (decision) by a regulatory body either in the British Isles or overseas; and/or

- lack of the necessary knowledge of English language to be able to practise medicine safely in the UK.

In the event that you have a concern about a doctor, you should consider whether it is appropriate to refer the concern to us, in accordance with your responsibilities as set out in the Responsible Officer Regulations (see below). This Referral Guidance provides assistance to you by:

- outlining the threshold criteria for referral to us;

- highlighting some of the factors that you should consider before deciding whether to make a referral;

- introducing our Referral Form; and

- explaining some of the steps that you must take when submitting your referral.

**The Threshold for Referral**

6 We can act on any information, from any source, which raises a question about a doctor’s fitness to practise.

7 In some cases, it is clear from the outset that there is no need for us to investigate because the concern is about matters that cannot raise an issue of impaired fitness to practise. We will normally close these cases without taking any further action. Examples of cases closed without any investigation include:

- minor motoring offences, not involving drugs or alcohol;

- a delay of less than six months in providing a medical report;

- a minor non-clinical matter; or

- a complaint about the cost of private medical treatment.

8 Allegations of serious or persistent failures to practise in accordance with the principles set out in *Good Medical Practice* may raise a question about a doctor’s fitness to practise. These can be categorised under the following domains:

- knowledge, skills and performance;
- safety and quality;
- communication, partnership and teamwork; and
- maintaining trust.

9 Our threshold for referral is likely to be met when:

- A doctor’s performance has deviated from the guidance set out in *Good Medical Practice* and as a result has harmed patients or put patients at risk of harm;
- Attempts to improve a doctor’s performance locally have failed and you are aware of a remaining unacceptable risk to patient safety;
- A doctor about whom you have significant concerns leaves your designated body and you are not confident that alternative safeguards are in place;
- A doctor has shown a deliberate or reckless disregard of clinical responsibilities towards patients;
- A doctor has abused a patient’s trust or violated a patient’s autonomy or other fundamental rights;
- A doctor has behaved dishonestly, fraudulently or in a way designed to mislead or harm others;
- The doctor’s behaviour was such that public confidence in doctors generally might be undermined if we did not take action; and/or
- A doctor’s lack of knowledge of the English language is compromising patient safety.

10 A referral to us is also likely to be necessary when a doctor’s health is compromising patient safety. There is no need for us to intervene if there is no risk to patients or to public confidence. For example, it is unlikely to be necessary for us to investigate a doctor with a health issue if the doctor has insight into the extent of their condition, is seeking appropriate treatment, following the advice of their treating physicians and/or occupational health departments in relation to their work, and restricting their practice appropriately. We are however likely to seek to take action:

- If significant concerns arise about patient safety, for example, where a doctor’s ill-health (including addiction) appears to be uncontrolled or where there is evidence that the doctor is not following advice;
If there is a significant risk of relapse or loss of insight, which may be characteristic of a condition, for example, addiction or certain mental health conditions; and/or

In respect of significant misconduct issues, for example, where a doctor is convicted of a drink-driving offence.

11 This guidance is not an exhaustive list of the circumstances in which it may be necessary to make a referral.

Deciding whether to make a Referral

12 As a referral is a formal submission to us, in your capacity as RO:

- you must exercise your professional judgement when considering whether to make a referral;
- any referral should be made in good faith, based on all the information that is available to you;
- you should take reasonable steps to ensure that any referral you make is accurate and fair; and
- you may choose to delegate the administration of the referral, but you remain accountable for the referral.

13 In order to make sure that referrals are accurate and fair you may first need to:

- complete your own local investigation and consider the conclusions;
- understand the outcomes of any external investigation; and/or
- take any other reasonably practicable steps necessary to understand whether the concerns raise a question about the fitness to practise of the doctor.

14 If you decide to make a referral, we will need a certain level of information in writing in order to properly consider the concerns, such as:

- the doctor's full name, or surname, initials and reference number;
- an account of the events or incidents that concern you, with dates, if possible;
- copies of any relevant papers and/or any other evidence you have; and/or
- details of any local action you have taken already.
Our Referral Form

Wherever possible, you should make your referral using our Referral Form.

Our Referral Form requests the core information we need to process your referral. It also details the types of supporting documentation that should be provided with your referral (if applicable and available) to enable us to make appropriate decisions about your referral, and to reduce unnecessary delays. Our Referral Form can be a very useful checklist to help ensure that you have included the information we might need.

If some of the supporting documentation is unavailable at the point of referral, you should not delay making the referral, but should send all the documentation that is available, and indicate on our Referral Form what additional documentation will be sent later.

The steps you must take when making a Referral

The Referral Statement

Whenever you make a referral, we will ask you to make a Referral Statement to confirm that:

- the referral is made in good faith, based on all the information that is available to you at the time of making the referral; and
- you have taken reasonable steps to ensure that the information contained in your referral is accurate and fair.

If you have concerns about the fairness or accuracy of the information that forms the basis of the referral, please clearly indicate this at the point of referral.

The Referral Statement is most easily completed by ticking the relevant box at the end of our Referral Form. The Referral Statement should accompany any referral made. In the event that you are unable to use our Referral Form, you should send your referral to us by email at practise@gmc-uk.org and include the Referral Statement in your letter of referral.

Ideally, the Responsible Officer will complete the referral form in all referrals. However, if this is not possible, we ask that the person completing the form confirms their role and the fact that they are acting on behalf of the Responsible Officer.

If you discover that you have answered any part of the Referral Form incorrectly please notify us as soon as possible.
Has the doctor raised patient safety concerns?

23 Whenever you make a referral, we will also ask you to identify whether, to your knowledge, the doctor being referred has ever raised patient safety concerns. This is to provide safeguards that either your role as referrer or our role as regulator is not being used inappropriately in response to a doctor raising concerns. If the answer is yes, we will invite you to provide further information to help us better understand the context and outcome.

24 By patient safety concerns, we mean that patient safety or care is being compromised by the practice of colleagues or the systems, policies and procedures of the organisation in which they work.

25 This type of concern is distinct from a grievance or private complaint, for example a dispute about the employee’s own employment position that has no public interest element. For further information see our guidance ‘Raising and acting on concerns about patient safety’.

26 This information is most easily communicated by ticking the relevant box at the end of our Referral Form, and listing any relevant documentation that will help us better understand the context and outcome. You should list this information in any referral you make. In the event that you are unable to use our Referral Form, you should send your referral to us by email at practise@gmc-uk.org and list this information in your letter of referral.

Further Information

Our Employer Liaison Service

27 Our Employer Liaison Service is available to help you and your team understand our thresholds and procedures. If you have a query about our thresholds or procedures, you should discuss this with your designated Employer Liaison Advisor at the earliest opportunity. Our Employer Liaison Advisors are available to offer advice and support at any stage, on a wide range of issues.

28 You can contact your Employer Liaison Advisor on 0845 375 0022 or by email at liaison@gmc-uk.org. If, having discussed your concerns with your Employer Liaison Advisor, you wish to make a referral, you should complete the Referral Form [INSERT LINK] and send it to practise@gmc-uk.org or alternatively, write to practise@gmc-uk.org copying in your Employer Liaison Advisor.
8 - Update on response to the independent review of whistleblowing

8 - Annex B

Whistleblowing - outline policy position

Referral form for Responsible Officers

1. We will develop a form for Responsible Officers (ROs) and employers to use to refer fitness to practise concerns to us, including questions about whether the doctor being referred has raised patient safety or systems concerns. This includes concerns about danger, illegality or anything else that poses a risk to patients, that is in the public interest and has been raised with an appropriate body (for example, the doctor’s employer). This type of concern is distinct from a grievance or private complaint, which may be a dispute about the employee’s own employment position and has no public interest element.

2. They will be asked:
   - Has the doctor raised a patient safety concern locally?
   - If so, when and was the concern investigated? and
   - To provide a brief summary of the outcome of the investigation/explain why an investigation has not been carried out.

3. They will also be asked when they notified the doctor of their concerns about the doctor’s fitness to practise (to help us understand the chronology of events) and to sign declaration confirming that the referral is made in good faith and the RO has taken reasonable steps to ensure the referral is fair and accurate.

Provisional enquiries

4. If an RO confirms a doctor has raised a patient safety concern locally, the referral should be assessed under our current process for whether it should be referred for provisional enquiries. If the supporting documents with the referral contain objective confirmation of the basis of the referral (e.g. medical evidence and/or local investigation reports) and it meets S35C2 of the Medical Act it should be referred for
investigation. In all other cases, it should be referred for provisional enquiries and information sought to provide objective confirmation of the basis of the referral.

5 If an RO has referred a case without answering the question about patient safety and/or has not signed the form, we should contact them and ask them to complete the form. If the RO refuses or continues to fail to complete the form, the case should be assessed as in 4 above and the wider issue of the RO’s difficulty with the form will be taken forward by the Employer Liaison Adviser (ELA).

**Stream 1**

6 Where we hold information relating to patient safety concerns raised locally, this information should be included in any referral to Stream 1 and made available to the investigation officer. A note should be made in Siebel that the case involves a doctor who has raised concerns.

7 If during the course of the investigation, we receive further information to throw a new complexion on the concerns raised locally by the doctor under investigation or we receive information for the first time about concerns raised locally, this will be assessed, as now, as important context in the case. The investigation officer (IO) should discuss the case with the investigation manager to consider if it has any implications for the investigation, taking advice from GMC Legal and/or Case Examiners (CEs) as appropriate.

8 The CARF (Case examiner referral form) will be amended to include a section for the IO to confirm that the case involves a doctor who has raised concerns locally and any relevant information in that regard. This information will be relevant context for the case examiner decision.

9 CEs and Investigation staff will receive awareness training about how such information will affect the handling of a case.

10 Where the investigation establishes objective evidence that either indicates impairment or indicates no impairment the information about concerns raised locally, while important context to the complaint will be unlikely to affect the outcome.

11 Where the case concerns matters where the evidence is of a subjective nature (such as witness statements) or are less clear cut, particularly cases involving poor relationships with colleagues, the information about concerns raised locally will alert the decision maker to the possibility that this is a factor in the case so that they can bear this in mind when considering the allegations.

12 Where, following investigation, we consider that an RO has misled the GMC about a doctor’s whistleblowing history, or that the reason for a referral was in retaliation for concerns raised locally, we would, as now, consider whether this raises a question about the RO’s fitness to practise.
8 - Update on response to the independent review of whistleblowing

8 – Annex C

Provisional Enquiries (Rule 4(4)) guidance (excerpt)

The following amendment has been made to the Provisional Enquiries (Rule 4(4) guidance:

Principles

5 Subject to the limitations referred to below at paragraph 12, this guidance provides for the AR to make further enquiries in situations where:

a the allegation (in the complaint or referral) itself is unclear

b more information is needed to clarify whether the allegation raises a fitness to practise issue, for example, if the allegation appears misconceived, or in the context of a clinical incident or concern, if the allegation was a widely accepted complication or risk or if the allegation may be part of a wider pattern of concerns

c on the face of it, there is an allegation which raises a fitness to practise issue, but the evidence may be unlikely to support a finding of impairment or the context suggests the need to check the evidential basis (for example the referred doctor has raised patient safety concerns) and further information is needed to clarify whether the allegation is capable of raising a question of impaired fitness to practise