

Agenda item:	9
Report title:	Retention and Disposal of GMC Records: Responding to Public Inquiries
Report by:	Andrew Ledgard , Head of Information Policy andrew.ledgard@gmc-uk.org , 020 7189 5418 Kathryn Dziubak , Head of Information Security and Records Management. Kathryn.Dziubak@gmc-uk.org , 0161 240 8383
Action:	For decision

Executive summary

The Executive Board was asked to approve the implementation of our records retention policy at their meeting of 26 June 2017. At that meeting a couple of queries were raised by colleagues:

- a** We were asked to consider whether sufficient weight had been given to the need to respond to public inquiries and to undertake some analysis of the approach taken by the other health regulators.
- b** We were asked to provide further information about the content of the summary records.

We propose to increase the retention period for all FTP records.

Recommendations

- a** The Executive Board is asked to approve the implementation of the revised retention and disposal policy.
- b** Future amendments to the summary record will be approved by the Records Retention Programme Board.

The Information Governance Context

- 1 As a public authority, the GMC is obliged to balance its business needs against statutory privacy requirements such as those imposed by the Data Protection Act and Article 8 of the Human Rights Act.
- 2 Since 2002 we have participated in a number of major public inquiries (including: Shipman, Neale, Ayling, Kerr/Haslam, Morecambe Bay, Mid-Staffordshire, Gosport and most recently, we have engaged with the three Historic Abuse Inquiries). We recognise we play an important role in maintaining patient safety and it is essential that our processes are open to scrutiny.
- 3 In parallel, over the course of the last 15 years, case law in relation to personal privacy has developed and public authorities are subject to closer monitoring in respect of their records holdings. For example, judgements relating to the retention of police information emphasised the importance of proportionality. Police forces were required to review their records retention and disclosure arrangements.
- 4 We have received legal advice from senior counsel confirming that extending the period for which records can be held is compliant with privacy legislation.

Responding to public inquiries

- 5 The law requires us to perform a balancing exercise in respect of our record holdings. For lower-level fitness to practise (FtP) matters, the justification for holding such material diminishes over time. Our current retention schedule requires us to delete this material relatively quickly. We recognise that the issue has moved on. We are asked to provide increasing volumes of material to public inquiries, often of a historic nature.
- 6 Following the previous Executive Board discussion in June 2017, we met with counsel to explore our concerns in more detail. We recognise that we can't keep low level material forever, however, given the requirement to service public inquiries, would it be acceptable to extend our retention period further to reduce the level of risk? For example, where we currently wish to dispose of triage case records after five years, would it be reasonable to extend this retention period by 10 years, taking the total retention to 15 years? In relation to records where we initially felt a 10 year retention period would be acceptable, for example, some closed Stream 1 cases, would it be proportionate to extend this to 20 years? Counsel felt that this was acceptable and he acknowledged that we could add an additional 10 years retention to these sorts of records. A summary of these records is provided below.

Record Type	Original retention period	Proposed retention period
Enquiries closed at triage (no further action)	5 years from closure	15 years from closure
Provisional enquiry (Closed, No further action)	5 years from closure	15 years from closure
Notify RO (no further action)	5 years from closure	15 years from closure
Cases closed in Stream 2 (no further action)	5 years from closure	15 years from closure
Cases closed in Stream 1 following investigation (no further action)	10 years from closure	20 years from closure
Cases closed following a MPTS Tribunal or Interim Order Tribunal. (no further action)	10 years from closure	20 years from closure

- 7 Counsel did however make two further points. First, we need to recognise that the longer we retain this sort of material, the greater the likelihood of a successful legal challenge. Second, when the GDPR comes into force on 25 May 2018, we will be required to be more overt about our retention arrangements, making our retention schedule publicly accessible. This in turn increases our potential exposure.

How do other bodies deal with records retention and high profile cases?

- 8 In reviewing our position, we were also invited to undertake some cross-regulator analysis. The results of this analysis are attached at Annex A. Broadly, our proposed approach is in alignment with our regulatory partners, however, the GMC might be viewed as being at the more cautious end of the spectrum. i.e. we tend to keep records for slightly longer than the other regulators. It should also be noted that the GMC is the only regulatory body to maintain a summary record. Given this, we would be in a stronger position when responding to public inquiries even when the retention policy is implemented.
- 9 Additionally, the majority of comparable organisations and regulators don't appear to differentiate in respect of high profile cases (eg. the Police, Information Commissioner's Office and the other health regulators) but the Parliamentary and Health Service Ombudsman (PHSO) and Crown Prosecution Service (CPS) do. PHSO

have a very short one year retention policy for all material, which explains their need to exceptionally retain certain records for longer. It should also be noted that some of these organisations are subject to the Public Records Act 1958 (PRA) which imposes restrictions on the disposal of their records holding. The GMC is not subject to the PRA and is obliged to develop its own approach to retention, disposal and archive selection.

- 10 If we were to differentiate, the challenge would be that these would need to be manually flagged and reviewed to ensure any retention remains relevant (PHSO and CPS review flagged cases periodically.) We believe that retaining material for longer across the board would mitigate this risk while avoiding the need to set up a potentially resource intensive process which may also introduce the opportunity for manual errors. If a case is reopened or a new case emerges we will automatically reset the retention period for all records of all cases relating to that doctor.
- 11 In summary, adopting a risk-based approach to records retention creates the potential for us to destroy material that could be of future interest to a public inquiry. This risk is substantially mitigated through the maintenance of summary records and by retaining material for as long as legally acceptable.

The Summary record

- 12 Given the potential significance of the summary record following the implementation of the retention policy, we were asked to confirm the contents of a typical summary. A redacted example is attached at Annex B.
- 13 As a minimum (for enquiries closed at triage), we would retain: an explanation of the complaint, the action we took, the doctors name and UID, the complainants name and address, date of the incident, date it was reported to us, case category, incident location, closure date and the closure category.
- 14 By their nature, lower level complaint summaries contain less information than a more serious FtP summary record because we generate larger volumes of material as a case progresses. Given the operational nature of the summary record, we seek approval from the Executive Board for the nature and scope of such records to be delegated to the records retention programme board.

Annex B – a summary record

Home	Doctors	Applications	Safeguarding Issues	Litigation	Cases	Investigations	Contacts	Enquiries	Service	Activities
Enquiry Home Enquiry List										
E1- [redacted]										
Check Spelling Complainant Details Create Investigation Go To Investigation										
Enquiry Number:	[redacted]	Owner:	[redacted]	Status:	Completed	Date Received:	11/06/2016 07:09:3			
Type:	Complaint	ELA:	[redacted]	Source Type:	Public (Individu	Incident Date:				
Notes:	[redacted]			Complainant:	[redacted]	Completed Date:	14/06/2016 12:24:3			
	LXC 13/6/16 *IO contacted, see activities. *Added 2nd online complaint form from E1- [redacted]			Complainant Last Updated:	[redacted]	Service Date:	18/06/2016 07:09:3			
				Referring Organisation:	[redacted]	Reopened Date:				
				Referring Org ODS Code:	[redacted]	Channel:	Online Form			
				Reopen Reason:	[redacted]					
Summary	Online Complaint Details	Activities	Notes	Litigation	Complainants	Service Requests	DO Service Requests	Rule 12		
Summary Description										
Allegation										
Complainant is the patient and submitted two online complaint forms										
Complainant sets out they were prescribed medication for anxiety and spoke to their dr before going on holiday. They explain the dr stopped their medication with no warning and instead stated they should have psychiatric treatment. Dr also alleged to have made comments such as saying the Complainant would be shot if they went abroad on medication. The dr said the patient should not go on holiday.										
Complainant states they are now unable to go on the holiday.										