

Agenda item:	11
Report title:	Consultation on publication and disclosure policy
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Considered by:	Strategy and Policy Board
Action:	To consider

Executive summary

We are reviewing our policy on what we publish and disclose about fitness to practise and interim orders panel decisions. We propose to consult on key changes in June 2015. The proposed changes are:

- Introducing time limits on how long we publish sanctions on a doctor's record.
- Publishing historical information on sanctions from 1994-2005 on the records of doctors who are still registered.
- Ensuring the information we publish about appeal outcomes is as transparent as possible.
- Providing greater explanation of our decision where cases conclude in undertakings without a panel hearing.

Recommendation

Council is asked to approve the draft consultation document on the GMC's publication and disclosure policy at [Annex A](#).

Issue

- 1 Our publication and disclosure policy sets out our general approach to the routine dissemination of fitness to practise information. We are currently reviewing the policy and our planned consultation seeks views on a number of changes proposed to improve transparency and ensure proportionality.

Proposal 1 – introducing time limits on how long we publish sanctions on a doctor’s record ([Annex A](#): pages 5-10)

- 2 At present, all sanctions on a doctor’s registration remain on their record indefinitely. Transparency and openness about how we deal with serious concerns about doctors is in the public interest and in the interests of the medical profession. However, our approach should be proportionate in relation to matters that took place a long time ago, or where a doctor has given up their registration*.
- 3 We propose to introduce time limits for how long sanctions will be published on a doctor’s record or disclosed to general enquirers. The time limits will range from five to twenty years, depending on the sanction imposed, and on whether the doctor remains registered with the GMC. We will continue to provide information on expired sanctions to current employers on request and are seeking views on whether this should be disclosed to prospective employers.

Proposal 2 - publishing historical fitness to practise information from 1994-2005 on LRMP on the records of doctors who are still registered ([Annex A](#): pages 10-12)

- 4 Fitness to practise information on the list of registered medical practitioners (LRMP) dates from October 2005 when our electronic recording systems were developed. Information on sanctions imposed before this is provided on request, but is not available to search publicly. We propose to transfer fitness to practise information from 1994 on to the LRMP where a doctor is still registered.
- 5 For some doctors, this will mean that information about their fitness to practise history will be publicly searchable for the first time. Approximately 200 doctors will have additional data published and analysis shows that the following groups are over-represented: doctors aged between 50-80, male doctors and international medical graduates. However, the proposal puts doctors with sanctions imposed

* The online register, LRMP, differs from the actual medical register, in that even when a doctor leaves or is erased from the medical register, their details will remain on LRMP with their status changed to ‘not registered’. This helps to protect the public by ensuring that the registration status of anyone offering medical services can be easily checked.

between 1994 and 2005 on the same footing as doctors with sanctions imposed after 2005 (previously an arbitrary distinction based only on the practicality of including the information when the LRMP was first launched). Any information transferred will be subject to the time limits agreed under proposal 1, reducing the adverse impact.

Proposal 3 - ensuring the information we publish about appeal outcomes is as transparent as possible ([Annex A: pages 12-21](#))

- 6 The information we publish about a hearing outcome is intended to help people understand why certain action was taken or not taken. Where the decision is appealed, it can be difficult to present a clear story.
- 7 Our proposals aim to ensure the public can understand what has happened at final outcome. Key proposed changes are:
 - a Where an appeal is successful, reference to the original decision and any sanctions will be removed from the doctor's record, but a note will be added to the doctor's record for 12 months stating that the doctor was found not impaired on appeal. A similar note will be published on the Recent Decisions page of the Medical Practitioners Tribunal Service (MPTS) website. Currently no reference is made to the fitness to practise hearing or appeal on the doctor's record or MPTS website. The outcome of a partially successful appeal where, for example, impairment is found but a sanction is changed will be published as usual on a doctor's record.
 - b Where an appeal is unsuccessful or withdrawn, the fact that there was an appeal, but that it was not successful or was withdrawn will be noted on the doctor's record for 12 months from the date of the appeal together with the original decision and any sanction. Currently all reference to the appeal is removed.
- 8 Our approach to appeals of Interim Orders is unchanged but we will include this for the first time on the face of the publication and disclosure policy. The approach we take is set out on pages 19-21 of [Annex A](#).

Proposal 4 - providing greater explanation of the decision where cases conclude in undertakings without a panel hearing ([Annex A: pages 21-22](#))

- 9 Currently, where a doctor has agreed undertakings, these are published on the LRMP with no detail of the concerns or the decision rationale. The number of cases being resolved through consensual disposal is increasing, and it is important that the public can understand the decisions taken about a doctor's registration in response to serious concerns. We therefore propose to publish a short summary with the undertakings to include an overview of the concerns and an explanation of why the case examiners consider undertakings a proportionate outcome, with any aggravating or mitigating factors.

11 – Consultation on publication and disclosure policy

11 – Annex A

Changes to the information we publish and disclose when we have investigated concerns about doctors

About this consultation

When a serious concern is raised about a doctor's behaviour, health or performance, we investigate to see if the doctor is putting the safety of patients, or the public's confidence in doctors, at risk. We are consulting on changes to the information we publish and disclose about these doctors.

What information do we currently disclose?

We have to publish a range of our decisions about a doctor's fitness to practise in line with the *Medical Act 1983*.¹ We have a discretionary power to withhold any information about the physical or mental health of a person that we consider to be confidential. We also have a discretionary power to publish or disclose any information about a doctor to any person, where we consider it to be in the public interest.²

We are also subject to a range of legislative duties in relation to information governance, including the *Data Protection Act 1998*, the *Human Rights Act 1998*, and the *Freedom of Information Act 2000*.

Our current approach to publishing and disclosing this information is set out in the annex.

In June 2012, the Medical Practitioners Tribunal Service (MPTS) took over running hearings about doctors. It follows the same principles as the General Medical Council (GMC) in relation to publication and disclosure. The MPTS has its own website which provides information relating to fitness to practise and interim orders panel hearings.

What information do we publish on the medical register?

The medical register – known as the *List of Registered Medical Practitioners* – is an online database of all doctors registered with the GMC. It can be accessed from our public website, enabling members of the public to search for information about the registration of individual doctors. All sanctions currently attached to a doctor's registration are published on their individual record, together with relevant hearing decisions.

The medical register also publishes details of a doctor's fitness to practise history from 20 October 2005, which is when the electronic register was introduced. This includes historical information about sanctions on a doctor's registration that no longer apply, but were in place on 20 October 2005 or were subsequently imposed. We can give details of any sanctions issued before 20 October 2005 on request.

Information that relates solely to a doctor's health, and interim orders where we close the case with no action are not published on the online register or disclosed to enquirers. Warnings that are more than five years old are also not published and are only disclosed to employers.

¹ This requirement is set out in section 35B(4) of the Act and covers decisions by fitness to practise panels, interim orders panels, the Investigation Committee and undertakings agreed with doctors.

² This requirement is set out in section 35B(2) of the Act.

What is the scope of the review?

We are reviewing our policy on the information we publish and disclose following a fitness to practise investigation, to make sure that it is proportionate and provides transparency about the decisions we take. This policy deals with the routine publication and disclosure of fitness to practise information. We will still continue to consider use of our discretionary powers in individual circumstances on a case-by-case basis, in line with our legislative duties described above.

The consultation covers information routinely published about fitness to practise decisions on the medical register on our website, and on the recent decisions page on the MPTS website.

(http://www.mpts-uk.org/decisions/fitness_to_practise_decisions.asp)

It does not include proposals on publishing information about warnings, which are issued to doctors for lower level concerns where case examiners or fitness to practise panels consider that restricting a doctor's registration would be disproportionate. We consulted in 2014 on issues around the publication and disclosure of warnings as part of our wider review of how we deal with concerns about doctors. There was strong support for a system whereby case examiners and panels determine the length of display and disclosure of a warning on a case by case basis and we are developing this proposal further, with a view to implementation in 2016.

(http://www.gmc-uk.org/concerns/fitness_to_practise_consultations.asp#Reviewingour)

We remain committed to the principles that underpin our current policy – being transparent and open about our processes and decisions, and accessible for enquirers seeking information about a doctor's registration. We believe that openness about the action we take in response to serious concerns about doctors is in the interests of the public and the medical profession. However, we want to make sure that our policy is proportionate in balancing the public interest with the individual interests of the doctor who has been investigated.

Our proposed changes

- Introducing limits on the length of time that sanctions³ in relation to a doctor's registration will be published on the medical register and disclosed to general enquirers. At present, all sanctions (excluding warnings) are published and disclosed indefinitely (pages 5-10).
- Transferring on to the medical register historical data about sanctions that were imposed during 1994–2005, where the doctors are still registered. At present, the

³ This covers erasure or suspension from the medical register, conditions imposed on a doctor's registration, and undertakings agreed with a doctor.

online medical register contains data only from 2005 – the year it was introduced (pages 10-12).

- Where a doctor appeals the decision of a fitness to practise panel, making sure that the information we provide on the outcome of the case is as transparent as possible (pages 12-19).
- Where a doctor appeals the decision of an interim orders panel, clarifying our policy on what information will be published (pages 19-21).
- Providing greater transparency and detail in cases where we agree undertakings with a doctor without a fitness to practise panel hearing (pages 21-22).

How to take part

Answer the questions online on our consultation website: www.gmc-uk.org/xxxxx.

Alternatively, you can answer the questions using the text boxes on pages x–x of this consultation document and either email your completed response to us at ftpconsultation@gmc-uk.org or post it to us at:

Fitness to Practise Policy team
General Medical Council
350 Euston Road
London NW1 3JN.

This consultation runs from **26 June** to **18 September 2015**.

Find out more

You can find further information about our fitness to practise processes on our website at www.gmc-uk.org/concerns.

Introducing limits to the length of time that sanctions will be published on the medical register or disclosed

The current position

All sanctions on a doctor's registration, imposed by either a fitness to practise panel or an interim orders panel, remain on their record on the medical register indefinitely, even after the sanction no longer applies. These sanctions include erasure, suspension, conditions and any undertakings agreed with a doctor. This is regardless of whether the doctor remains registered with the GMC. The only exceptions to this are information solely relating to a doctor's health, and interim orders where a case is closed with no finding of impairment or no warning.⁴

Reason for change

Transparency and openness about how we deal with serious concerns about doctors is in the public interest and in the interests of the medical profession. However, we want to strike an appropriate balance in relation to matters that took place a long time ago, or where a doctor has given up their registration and is no longer seeking work as a doctor.

Our proposed approach

We propose to introduce a range of limits for the length of time that sanctions will be published on a doctor's record on the medical register or disclosed to general enquirers. The period for which we publish and disclose the information will depend on the sanction imposed, and on whether the doctor remains registered with the GMC. When the time limits expire, this information would not be available by searching the medical register and would not be provided to general enquirers.

We would still provide information on sanctions where the time limit has expired to current employers on request. We would also continue to provide information to overseas regulators on request to make sure that overseas regulators are able to obtain the same level of information from us about a doctor's fitness to practise as they currently do from the medical register. This is to minimise the risk of doctors with sanctions for serious concerns in the UK going on to practise abroad without the appropriate authorities in those countries being aware of their fitness to practise history.

We are considering whether we should continue to routinely disclose information about a sanction, where the time limit for publication has expired, to prospective employers. Our concern is whether this is proportionate, given the time limits that we propose below for

⁴ Warnings are published on a doctor's record on the medical register for five years and disclosed to any enquirers for that period of time. After five years, warnings are no longer published on the medical register or disclosed to general enquirers. However, they are kept on record and disclosed to employers on request indefinitely. As mentioned earlier, the publication and disclosure of warnings is not within the scope of this consultation.

registered doctors will not start to run until a sanction has been lifted, and the information will then be publicly available for 20 years, and welcome views on this point.

We will continue to consider specific requests for information on a case-by-case basis.

Proposed time limits

a *Doctors not currently registered*

Sanction	Time limit
Doctor was erased by a fitness to practise panel	Ten years from the date the doctor was erased from the medical register.
Doctor received a sanction other than erasure (suspension, conditions, undertakings)	Five years from the date the doctor left the register subject to a maximum publication period of 20 years.

We impose a sanction on a doctor's registration only when we find serious concerns about their fitness to practise. In light of that, publishing or disclosing the sanction after a doctor has left the medical register is important to maintain confidence in the medical profession through transparency and openness. As we erase a doctor in only the most serious cases, where the issues found proven are fundamentally incompatible with the doctor continuing to be registered, we need to publish or disclose this information for a longer period. This also provides a safeguard should an erased doctor continue to practise medicine despite no longer being registered. However, in both these situations, we think that the need to publish and disclose information in the public interest declines over time, and the doctor's right to pursue alternative employment without interference increases.

b *Registered doctors*

Sanction	Time limit
Doctor was erased by a fitness to practise panel and has been restored to the medical register	As long as the doctor is registered with the GMC
Doctor received a sanction other than erasure (suspension, conditions, undertakings)	20 years from the date the sanction expires or the undertakings are revoked

We think that the need to be transparent and open about historical sanctions is more important for doctors who remain registered than for those who are no longer registered. In these cases, it is proportionate to publish and disclose the sanctions for a significant period of time to maintain confidence in the medical profession. For sanctions other than erasure, we have suggested that 20 years since the sanction expired is an appropriate period. After this time, we think the need to publish and disclose the sanction in the public interest declines and indefinite publication is not necessary.

The need for transparency is most critical in cases where a doctor has previously been erased from the medical register. In a small number of cases, a doctor who is able to demonstrate they are fit to practise can be restored to the medical register. As these doctors are now able to work with patients, and in view of the seriousness of the original concerns, we think it is proportionate to publish the doctor's fitness to practise history for as long as the doctor remains on the medical register.

1 Do you think the time limits described above provide the right balance between being transparent and open in the public interest and being fair to individual doctors?

Yes/No/Not sure

Do you have any comments on the time limits proposed?

2 Do you consider that, if time limits are introduced, we should routinely disclose information about sanctions to prospective employers once the time limit has expired?

Yes/No/Not sure

Do you have any comments on this proposal? _____

3 Do you have any other comments on the issues discussed in this section?

Publication and disclosure after a doctor has died

Our current policy is to publish sanctions relating to a doctor's registration indefinitely, which means that information remains on the online register even after a doctor has died. As our primary purpose in publishing information about a doctor's registration is to protect the public and uphold confidence in the profession, we do not think that continued publication of information about sanctions is generally necessary after a doctor has died. We propose to remove fitness to practise information from the online register once we have been formally notified of a doctor's death, unless there is a public interest in continued publication.

We do however think it is important that the public are informed of the outcome of any public fitness to practise hearing and the reasons for the decisions taken, in order to maintain confidence in the profession and its regulation. For this reason, we propose that the outcome of a fitness to practise hearing would continue to be published on the online medical register and on the MPTS website for a period of time from the end of the hearing, even where the doctor concerned has subsequently died. We suggest that six months might be an appropriate length of time.

After the point at which we stop publishing information on fitness to practise about a doctor who has died, we propose that this information would be disclosed to general enquirers (in line with the time limits agreed under our first proposal) to enable us to deal transparently with queries where there is a public interest. This would include for example, cooperation with a request for information from a coroner during an inquest into a death, or a public inquiry.

4. Do you agree with the proposal to stop publication of fitness to practise information after a doctor has died, unless there is a public interest in continued publication?

Yes/No/Not sure

Do you have any comments on the proposal?

5. Do you agree that we should continue to publish the outcome of a public fitness to practise hearing for a period of time after the end of the hearing, even if a doctor subsequently dies?

Yes/No/Not sure

Do you have any comments on the proposal?

6. If you have answered yes to question 5, do you agree that six months from the end of the hearing is an appropriate length of time?

Yes/No/Not sure

Do you have any comments on the length of time proposed?

7. Do you agree that, where a doctor has died, we should continue to disclose fitness to practise information to enquirers after the point at which we stop publication of the information to enable us to deal transparently with queries where there is a public interest?

Yes/No/Not sure

Do you have any comments on the proposal?

8. Do you have any other comments on the issues discussed in this section?

Transferring on to the medical register historical data about sanctions that were imposed during 1994–2005

The current position

Fitness to practise information on the online medical register dates from 20 October 2005, when the electronic register was introduced. It includes sanctions that no longer apply, but were in place on 20 October 2005 or were subsequently imposed. We can provide information on request about sanctions imposed before 20 October 2005, but this information is not available to search publicly.

Reason for change

We believe that our approach to publication of fitness to practise sanctions should be as consistent as possible for all doctors who are still registered with the GMC and as transparent and accessible as possible to maintain confidence in the medical profession. We therefore propose to transfer information about sanctions imposed before 20 October 2005 on to the medical register, even if they have expired, except for information about a doctor's health. This puts doctors who received those sanctions in the same position as doctors who had active sanctions at that date or had sanctions imposed after 20 October 2005. This information will be included in line with any time limits agreed under the first proposal in this consultation paper⁵.

⁵ Limitations arising from the way in which data was recorded historically mean that we will need to run the time limits in these historic cases from the date of the end of the fitness to practise hearing and not the date at which a sanction expired, where that expiry date was before October 2005.

We propose to go back only as far as 1994 as we need to make sure the resources required to transfer this data are proportionate and the data we hold from before this time is less likely to have continuing relevance in relation to doctors who are currently registered. We also consider it proportionate to display this information only for doctors who remain registered with the GMC at the date we transfer the data.

Our proposed approach

We propose that any sanctions imposed between 1994-2005 in relation to a doctor's registration should be included on the medical register for doctors who are currently registered, together with links to the following additional fitness to practise information:

- public hearing minutes from the Professional Conduct Committee and the Committee on Professional Performance during 1994–2005
- public hearing minutes for fitness to practise panel hearings that are not already on the medical register and have been held since we introduced our new rules⁶ in 2004
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We have always intended that this information should be available to the public and we have provided it on request. The information was not included on the medical register when it was first introduced due to the volume of data being transferred at the time and not for any reason of principle. Those constraints no longer exist.

9 Do you agree that, in the interests of transparency, we should transfer information on to the medical register about sanctions imposed on a doctor's registration between 1994–2005, where that doctor is currently registered?

Yes/No/Not sure

Do you have any comments on the proposal?

Increasing transparency in the information we publish when a doctor appeals a fitness to practise panel's decision

The current position

⁶ These are the rules we follow when investigating complaints and making decisions at hearings about doctors.

Fitness to practise panels hear evidence and decide whether a doctor's fitness to practise is impaired. If it is, the panel can agree undertakings with the doctor or impose a sanction of erasing or suspending the doctor from the medical register, or conditions on the doctor's registration. The panel can also decide to take no action. In cases where the doctor's fitness to practise is not impaired, the panel can give a warning or take no further action.

In cases where a fitness to practise panel makes a finding that a doctor's fitness to practise is impaired but does not impose a sanction, or where the panel decides to give the doctor a warning, the doctor does not have a right to appeal the decision, but they can challenge it by judicial review.

A doctor can however appeal a decision of a fitness to practise panel to impose a sanction and interested parties are updated on the progress and outcome of any appeal. If a doctor launches an appeal, their record on the medical register is updated to reflect this. If an appeal is dismissed or withdrawn, the original decision and any sanction are published on a doctor's record, but all mention of the appeal is removed. If an appeal is successful, the original decision and all mention of the appeal are removed from the doctor's record and from the MPTS recent decisions webpage.

However, as appeals are matters of public record and contribute to the development of the common law, information on both fitness to practise and interim orders appeals is published in appeal circulars, which provide feedback and guidance to MPTS panel members. These are published elsewhere on the MPTS website.

Reason for change

The information we publish about a hearing outcome is intended to help people understand why certain action was taken, or not taken, to protect the public and uphold confidence in doctors. Where the decision on a case is later appealed or judicially reviewed, it can be difficult to present a clear story about the reasons why the final outcome is considered to be in the public interest.

There is concern that gaps in information arising from our current approach may lead to a perception that we are not being transparent in our decision making and may reduce public confidence that sufficient action has been taken to protect the public.

Our proposed approach

To improve transparency about case outcomes and to make sure that information on what has happened in a fitness to practise case is as clear and accessible as possible, we propose a number of changes to what we publish about appeals and judicial reviews of a fitness to practise panel's decisions. These changes involve information displayed on both the medical register and the MPTS recent decisions webpage.

Proposed changes

We set out below the current approach and our proposed changes to what is published on both the medical register and the MPTS recent decisions webpage, in the following six scenarios:

- A – appeal is unsuccessful
- B – appeal is successful
- C – appeal is partly successful and is sent back to the GMC for a new hearing
- D – appeal is partly successful and the original outcome is changed by the appeal court
- E – appeal is withdrawn
- F – no appeal is made.

We also set out our proposed approach where a doctor judicially reviews a finding by a fitness to practise panel of impairment with no action, or a decision to give a warning to a doctor.

A – Appeal is unsuccessful

Current approach	The original sanction, the date of the decision and a link to the decision are published on the doctor’s record on the medical register. All reference to the appeal is removed and the doctor’s record is amended to show that any sanction is now effective on the doctor’s registration. The decision of the panel hearing is published on the MPTS recent decisions webpage for 12 months.
New approach – the online medical register	As now, the original sanction, the date of the decision and a link to the decision will be published on the doctor’s record. The fact that there was an appeal but that it was not successful will be noted on the doctor’s record for 12 months.
New approach – the MPTS recent decisions page	No change – as now, the decision of the original panel hearing is published on the MPTS recent decisions webpage for 12 months.

10 Do you agree with the proposal in relation to appeals that are dismissed in scenario A?

Yes/No/Not sure

Do you have any comments on the proposal?

B – Appeal is successful

Current approach	The original sanction, the date of the decision, the link to the decision, all references to the appeal and any information on interim orders are removed from the doctor's record on the medical register. The decision of the panel hearing is removed from the MPTS recent decisions webpage.
New approach – the online medical register	As now, the original sanction, the date of the decision and a link to the decision will be removed from the doctor's record. Any information on interim orders will also be removed. A note will be added to the doctor's record stating that the doctor was found not impaired on appeal, which will remain for 12 months.
New approach – MPTS recent decisions page	As now, the decision of the original panel hearing will be removed from the MPTS recent decisions webpage. This will be replaced with a note stating that there was a hearing, that there was an appeal against the decision of that hearing, and that the doctor was found not impaired on appeal. This will remain for 12 months. As now, guidance will continue to be issued to MPTS panel members through appeal circulars, which are publicly available elsewhere on the MPTS website.

11 Do you agree with the proposal in relation to appeals that are successful in scenario B?

Yes/No/Not sure

Do you have any comments on the proposal?

C – Appeal is partly successful and is sent back to the GMC for a new hearing

Current approach	The outcome of the original hearing is removed from the doctor's record on the medical register. The outcome of the new hearing is displayed on the medical register, and on
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	the MPTS recent decisions webpage for 12 months. In some cases, where it is necessary to make sense of the decision, the appeal decision is published alongside the outcome of the further hearing with a brief explanatory note.
New approach – the online medical register	As now, the outcome of the original hearing will be removed from the doctor’s record. A note will be added to the doctor’s record, stating that a hearing was held and that, on appeal by the doctor, the case was sent back to the GMC. This will remain for 12 months or until any new hearing has taken place, whichever is the later date. At the end of any new hearing, any sanction will be published on the doctor’s record with a link to the decision.
New approach – the MPTS recent decisions page	As now, the decision of the original panel hearing will be removed from the MPTS recent decisions webpage. This will be replaced with a note stating that there was a hearing, that there was an appeal against the decision of that hearing, and that the appeal was allowed in part and sent back to the GMC. At the end of any new hearing, the outcome will be published as normal on the MPTS recent decisions webpage for 12 months. As now, where it is necessary to make sense of the decision, the appeal decision will be published alongside the outcome of the further hearing with a brief explanatory note.

12 Do you agree with the proposal in relation to appeals that are partly successful and sent back to the GMC for a new hearing in scenario C?

Yes/No/Not sure

Do you have any comments on the proposal?

D – Appeal is partly successful and the original outcome is changed by the appeal court

Current approach	Cases are dealt with on a case-by-case basis.
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New approach – the online medical register	The outcome of the original hearing will be removed from the doctor’s record. Where the appeal results in a doctor’s fitness to practise being found impaired and/or the doctor receiving a sanction, this will be published as usual on the doctor’s record. There will be a link to the appeal decision, and where it is necessary to make sense of the decision, the original decision will be published alongside, with a note making clear that the original decision has been superseded by the appeal.
New approach – MPTS recent decisions page	The outcome of the original hearing will be removed from the MPTS recent decisions webpage and replaced with the appeal decision, which will remain for 12 months from the date of appeal. Where it is necessary to make sense of the decision, the original decision will be published alongside the appeal decision. It will be made clear that the original decision has been superseded by the appeal.

13 Do you agree with the proposal in relation to appeals that are part successful and the original outcome is changed by the appeal court in scenario D?

Yes/No/Not sure

Do you have any comments on the proposal?

E – Appeal is withdrawn

Current approach	The original sanction, the date of the decision and a link to the decision is published on the doctor’s record on the medical register. The decision is published on the MPTS recent decisions webpage for 12 months. All reference to the appeal is removed and the doctor’s record is amended to reflect that any sanction is now effective on the doctor’s registration.
New approach – the _____	The original sanction, the date of the decision and a link to the decision will be published on the doctor’s record. An _____

online medical register	explanatory note will be added stating that an appeal was withdrawn by the doctor on a specified date. This will remain for 12 months.
New approach – the MPTS recent decisions page	No change – the decision of the panel hearing will be published on the MPTS recent decisions webpage for 12 months.

14 Do you agree with the proposal in relation to appeals that are withdrawn in scenario E?

Yes/No/Not sure

Do you have any comments on the proposal?

F – No appeal is made

Current approach	The original sanction, the date of the decision and a link to the decision is published on the doctor’s record on the medical register. The decision is published on the MPTS recent decisions webpage for 12 months.
New approach – the online medical register	The original sanction, the date of the decision and a link to the decision will be published on the doctor’s record. A general comment will be added noting that all doctors have a 28-day period to appeal a decision before any sanction takes effect on their registration.
New approach – the MPTS recent decisions page	No change – the decision of the panel hearing will be published on the MPTS recent decisions webpage for 12 months.

15 Do you agree with the proposal in relation to cases where no appeal is made in scenario F?

Yes/No/Not sure

Do you have any comments on the proposal?

Judicial review of a fitness to practise panel's finding of impairment with no sanction or a decision to give a warning

The situation with regard to judicial review differs from the right of appeal of a sanction decision in that the original panel decision is not put on hold but remains in place until such time as it is successfully overturned. We do not currently publish the fact that a judicial review is ongoing and any impact on publication and disclosure relates only therefore to situations where a judicial review is successful.

In so far as possible, we want to treat these cases in the same way as with successful appeals at scenario B above. We therefore propose, as a general approach, that where a panel's finding of impairment with no sanction or a decision to give a warning is overturned, all details of the original decision will be removed and a note will be added to the doctor's record for 12 months from the date of the judicial review outcome, stating that 'the doctor was found not impaired following a judicial review', or that 'the warning issued to the doctor was removed following a judicial review'.

It is not possible however, to predict every potential outcome from a judicial review decision, and we will need to consider these cases on a case by case basis, in line with the overarching principles of our publication and disclosure policy, of transparency, accessibility and proportionality.

16. Do you agree with our general approach to situations where a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning, is overturned on judicial review?

Yes/No/Not sure

Do you have any comments on the proposal?

Developing our policy on the information we publish when a doctor appeals an interim orders panel's decision

The current position

An interim orders panel hearing considers whether a doctor's registration should be temporarily restricted while allegations about their practice or conduct are investigated. The panel may suspend or impose conditions on a doctor's registration for up to 18 months, although this can be extended by applying to the High Court in England, Northern Ireland and Wales or to the Court of Session in Scotland.

Our approach to publishing information about appeals of interim orders is not currently set out in our publication and disclosure policy but we propose going forward to include it. The approach we take is as follows.

If a doctor appeals an interim order, we make no reference to the appeal before it is concluded. If the appeal is dismissed or withdrawn, the original order will continue to be published without amendment and with no reference to the appeal on either the medical register or the MPTS website. Decisions on what should be published in cases where an appeal is successful or successful in part depend on the nature of the decision taken by the appeal court. Depending on the circumstances, we adopt one of the following three approaches.

Appeal is successful and the court decides the decision should not have been made

The online medical register	The original order is removed from the doctor's record. The doctor's registration is shown with no restrictions unless imposed in a separate case. No reference is made to the appeal.
The MPTS recent decisions page	The original order and press release is removed from the MPTS recent decisions webpage.

Appeal is successful and the court does not decide that the original decision should not have been made, but decides that it should no longer have effect

The online medical register	The original order is removed from the doctor's record, but a reference to the order remains in the fitness to practise history section of the doctor's record.
The	The panel's decision will have been included in a press release published

MPTS recent decisions page	on the MPTS recent decisions webpage for six weeks and is likely to have been removed by the time an appeal is resolved. If it has not been, then the decision would be removed from the MPTS recent decisions webpage.
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Appeal is partly successful and the period of the order or the conditions is changed

The online medical register	The original order is removed from the doctor's record. Where the appeal results in a new order, this is published on the doctor's record.
The MPTS recent decisions page	The original order and the appeal decision is published for six weeks from the date of the appeal decision.

As with fitness to practise appeals, information on interim orders appeals is also published in appeal circulars to MPTS panel members to inform decisions in future cases. These are published elsewhere on the MPTS website.

Our proposed approach

We are not proposing any changes to the way in which we currently approach publishing interim orders, described above. However, in the interests of transparency and consistency, we believe we should set out our approach in our publication and disclosure policy.

It is worth highlighting that our approach to publishing interim orders differs to that proposed for appeals of fitness to practise panels' decisions (consultation questions 4–9). This is because interim orders serve a different purpose to the decisions of fitness to practise panels. They aim to keep patients safe while we investigate concerns about the doctor's fitness to practise, and they are imposed before the panel finds whether the allegations against a doctor are proven. They come into effect immediately and there is no time limit for an appeal – they can be appealed at any point while they are in force.

17 Do you have any comments on our approach to displaying information about appeals in interim orders cases, as set out in the section above?

Providing greater transparency and detail in cases where we agree undertakings with a doctor without a fitness to practise panel hearing

The current position

Fitness to practise cases can conclude with doctors voluntarily agreeing undertakings to restrict their practice or to take specific action such as retraining. In these cases, we consider that a fitness to practise panel would be likely to find the doctor's fitness to practise impaired, but that we can resolve the issues without the need for a panel hearing.

The only note on the doctor's record on the medical register is the list of undertakings. There is no explanation of the concerns that the undertakings are intended to address or why they are considered to be a proportionate response. This differs from the approach to undertakings agreed or conditions imposed by a fitness to practise panel, as the panel's decision with accompanying reasoning is publicly available through the medical register. For doctors whose fitness to practise is not impaired but who are given a warning, we currently publish more about the reasoning for the decision than we do about doctors given undertakings.

Reason for change

It is important that the public can understand the decisions taken about a doctor's registration in response to serious concerns.

Following a public consultation in 2011, a report on the outcome of which can be found [here](#), we are taking steps to make sure that we refer cases for a fitness to practise panel hearing only where necessary, which reduces delay and stress for doctors and witnesses involved. Going forward we would like to resolve more cases consensually, including more serious cases where a fitness to practise panel might impose a suspension or erasure, and we received support for this approach when we consulted in 2011. This approach will require legislative change and we are seeking those changes from the Department of Health.

As increasing numbers of cases conclude without a hearing, we believe that transparency is critical to maintaining public confidence about the action we take to respond to serious concerns.

Proposed change

In addition to the list of undertakings we currently publish on a doctor's record on the medical register, we propose to publish a short summary of the concerns and the reasoning behind our decision to resolve the case consensually in cases where we agree undertakings

with a doctor (similar to our current approach to warnings). The proposed summary will include:

- an overview of the concerns
- an explanation of why we consider undertakings are a proportionate outcome
- a note of any aggravating or mitigating factors taken into account in the decision.

The summary will be published as a link on the medical register for as long as the undertakings are effective on the doctor's registration. Once the undertakings are revoked, they will remain in the doctor's fitness to practise history according to the time limits decided in response to questions 1 and 2 of this consultation. As with panels' decisions, health information will not be published (unless it is at the request of the doctor).

If we go ahead with this proposal, when proposing to doctors that they accept undertakings, we will send the doctor both the list of proposed undertakings and the proposed summary.

18 Do you agree that we should give greater explanation of the background and reasons for resolving the case consensually when we agree undertakings with a doctor and conclude the case without a fitness to practise panel hearing?

Yes/No/Not sure

Do you have any comments on the proposal?

Equality

We have carefully considered the aims of the equality duty in developing our proposals.

The Equality Act 2010 identifies nine characteristics that are protected by the legislation: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

19 Do you think that any of our proposals will affect people with protected characteristics that are covered by equality legislation? This could include doctors, patients and members of the public.

Yes/No/Not sure

If you have answered yes to this question, please tell us which proposals and what you think the impact might be.

About you

DRAFT