

The test of fitness to practise at the point of registration

Introduction

- 1 This guidance is for decision makers in the Registration and Revalidation Directorate who are asked to consider whether an applicant's fitness to practise is impaired when they apply for registration. The guidance aims to ensure consistency, fairness and proportionality in our approach to making decisions on these cases by outlining the factors that decision makers should take into account when they consider fitness to practise issues.
- 2 When taking this guidance into account, decision-makers must apply the principles which apply to [decision-making in the Registration and Revalidation Directorate](#)

Background

- 3 The Medical Act 1983 ('the Act') enables the Registrar to refuse to grant registration where an applicant's fitness to practise is impaired at the time of their application, even if they fulfil all other criteria for registration. We must therefore consider whether a doctor's fitness to practise is impaired when they apply for registration. This is known as the 'test of fitness to practise at the point of registration'.
- 4 You can find more information on the routes to registration and the different criteria that must be met before registration can be granted in [route specific guidance for decision makers \(GDM19 – GDM31\)](#)

Entitlement and discretionary routes to registration

- 5 The test applies to applications for registration made under both the entitlement* and discretionary† routes. The language of the Act means that:

* The entitlement routes are under set out in sections 3, 14A, 15, 15A and 19A of the Act.

† The discretionary routes are under sections 19, 21, 21B, 21C, 27A and 27B of the Act.

- a** Applicants who apply under an entitlement route are 'entitled' to registration if their fitness to practise is not impaired (and they meet the other specified criteria).
 - b** Applicants who apply under a discretionary route 'must satisfy the Registrar' that their fitness to practise is not impaired (and that they meet the other specified criteria).
- 6** In all cases, to grant registration the Registrar must conclude that an applicant's fitness to practise is not impaired based on the evidence available. Under the entitlement routes, if the decision-maker cannot conclude based on the evidence available that fitness to practise is impaired and the other criteria are met, the applicant is entitled to registration. However, for the discretionary routes, the decision-maker is entitled to decide, if he cannot establish the facts on the evidence available, that the applicant has not satisfied them that fitness to practise is not impaired. And if this is the case, registration must be refused, even if all other criteria are met. However, in most situations, whichever route applies, the decision-maker is likely to wish to delay making a decision in order to obtain sufficient evidence to reach a conclusion one way or another (see paras 14 - 16 below).
- 7** When considering whether fitness to practise is impaired at the point of registration, decision-makers must take into account that:
 - a** There is no separate test of fitness to practise in relation to the grant or restoration of the licence to practise.
 - b** The Registrar has no power under the Act to grant either registration or a licence to practise with conditions or undertakings attached.
- 8** Decision-makers must therefore consider whether, in the light of the evidence available, granting registration (and a licence to practise, and thereby access to the profession) would present a risk to patient safety or otherwise undermine confidence in the profession and in medical regulation as a whole.

The grounds of impairment

The grounds on which fitness to practise can be impaired

- 9** Section 35C(2) of the Act sets out the grounds on which fitness to practise may be impaired
 - a** misconduct
 - b** deficient professional performance, which includes professional competence (section 55(1) of the Act)

- c** a criminal conviction or caution in the British Isles (or elsewhere for an offence which would constitute a criminal offence if committed in England or Wales)
 - d** adverse physical or mental health
 - e** a determination of impaired fitness to practise by a health or social care regulatory body either in the British Isles or elsewhere, and
 - f** not having the necessary knowledge of English.
- 10** Fitness to practise can be impaired on one or more of these grounds. Having said that, decision-makers do not need to consider at the point of registration whether fitness to practise is impaired because a doctor does not have the necessary knowledge of English (section 2(4) of the Act). You can find more information and guidance on considering questions relating to a doctor's knowledge of English in our [guidance for decision makers on English language requirements](#)

How to approach the test of fitness to practise at the point of registration

- 11** When considering fitness to practise at the point of registration, decision-makers must apply the same principles that case examiners and medical practitioners tribunals apply when considering concerns about the fitness to practise of registered doctors. In other words, decision-makers must:
- a** Firstly, on the balance of probabilities, establish the facts that point to possible impairment. Under the entitlement routes, where the facts are disputed, decision-makers will need to consider the available evidence and reach a conclusion in relation to the facts. Under the discretionary routes, decision-makers are entitled to reach a decision even if they are unable to establish the facts (see paragraph 6).
 - b** Secondly, consider the seriousness of the issues. Put another way, are the facts as established so serious that they raise a question about the applicant's fitness to practise? For example, by virtue of misconduct, a criminal conviction or adverse physical or mental health.
 - c** Thirdly, if so, consider whether the doctor's fitness to practise is impaired as a result. Here decision-makers should take into account the public interest, which includes the need to maintain confidence in the profession as a whole and patient and public confidence in individuals. It also includes the need to declare and uphold proper standards of conduct and behaviour which is particularly important in very serious cases.
- 12** In establishing the above, decision makers must bear in mind the following principles embedded in our fitness to practise processes:

- a** Decision-makers must judge an applicant's actions against the professional obligations with which the GMC expects registered doctors and medical students to comply. These values and principles are set out in our core guidance, *Good medical practice*, supporting ethical guidance, and guidance to medical students.
 - b** Certain types of cases are likely to raise questions of impaired fitness to practise (see our factsheet on [The meaning of fitness to practise](#), our [Examples of the types of case where failure to meet standards may lead to action on registration](#) and our [guidance for case examiners making decisions on cases at the end of an investigation](#)). These types of case include ones where a doctor has abused a patient's trust or violated their autonomy or other fundamental rights. They also include cases where a doctor has behaved dishonestly, violently or in a way designed to mislead or harm others. A question of impaired fitness to practise would also arise if the doctor has discriminated on the basis of a protected characteristic or displayed gross negligence/recklessness in clinical treatment.
 - c** We normally only investigate concerns that could require us to take action to remove or restrict the doctor's right to practise (see our factsheet [the GMC's Fitness to Practise procedures](#)).
- 13** We must take into account the age of events in question. The time that has since passed impacts on factors such as the 'currency' of any impairment, the robustness of evidence available, and the proportionality of any finding of impairment (see our factsheet on investigating concerns).

Provisionally registered doctors applying for full registration

- 14** Decision-makers can be asked to consider the fitness to practise of a provisionally registered doctor who has applied for full registration where there is:
- a** An open investigation under our fitness to practise procedures, the outcome of which has either not yet been referred to a case examiner or adjudicated on by a fitness to practise panel.
 - b** The application for full registration discloses information that needs to be referred to fitness to practise for consideration by a case examiner following a full investigation.
 - c** A current finding of impaired fitness to practise by a medical practitioners tribunal or the doctor has agreed to comply with undertakings offered by a medical and a lay case examiner.
- 15** While decision-makers might generally wish to delay a decision on full registration until the conclusion of the fitness to practise proceedings, the outcome may not be known for some months. In lengthy proceedings, delaying a decision could be considered unreasonable, constituting a *de facto* refusal of registration which

prevents the doctor from progressing in their medical training and/or practice. Therefore decision-makers should consider whether to grant full registration to a provisionally registered doctor expressly and explicitly on the basis that this is 'without prejudice' to the outcome of the ongoing fitness to proceedings. In considering whether to do so, decision-makers will wish to consider:

- a** The likely time before the outcome will be known. For example, whether the complaint is currently in the triage stage or whether a medical practitioners tribunal hearing has been scheduled. Where the proceedings are likely to conclude quickly, it is more likely to be considered reasonable to defer making a decision pending the outcome.
- b** The seriousness of the issues under investigation. For example, where the doctor might be said to have demonstrated a reckless disregard for professional obligations and standards of behaviour, presents a risk to patient safety, and/or has brought the profession into disrepute and/or has otherwise damaged public confidence in the profession.
- c** The prejudice to the doctor. For example, if an interim orders tribunal has already suspended the doctor's registration, any delay in granting registration will have no impact on the applicant's ability to progress their medical career while the interim order is in place.

16 The Registrar may not grant full registration to a provisionally registered doctor if the doctor's fitness to practise is currently considered to be impaired by a medical practitioners tribunal or through undertakings agreed with case examiners. This is because there is already a finding of impairment which remains in force until the tribunal or case examiners consider the doctor's fitness to practise to be no longer impaired.

Considering whether fitness to practise is impaired

17 When considering whether fitness to practise is impaired, decision-makers need to consider the extent of the doctor's remediation and insight. Decision-makers might be satisfied on the basis of the evidence available that the doctor has full and genuine insight, and has remediated past unprofessional behaviour to the extent that they can be satisfied that repetition is unlikely. If this is the case, then decision-makers will consider that fitness to practise is not impaired.

18 However, there are certain types of allegation which, if proven, would amount to such a serious failure to meet the standards required of doctors, that there will be a presumption of an issue of impaired fitness to practise. Where the allegations about the doctor's fitness to practise fall within one of the seven categories below, the decision maker should not normally consider any arguments in mitigation made by the doctor. This is because allegations which carry a presumption of impaired fitness to practise are unlikely to be easily remediable.

- a. sexual assault or indecency
- b. violence
- c. improper sexual/emotional relationships
- d. knowingly practising without a licence
- e. unlawfully discriminating in relation to characteristics protected by law
- f. dishonesty
- g. gross negligence or recklessness about a risk of serious harm to patients.

19 In other cases, evidence to support remediation and insight may include:

- a Character references and other testimonial evidence.
- b Certificates of participation in continuing professional development and other medical education or training.
- c The doctor's explanation for their actions and how they might be judged in the context of *Good medical practice* and other relevant ethical guidance issued by the GMC.
- d In health cases, evidence of compliance with treatment and ongoing care-planning.
- e The need to protect the public interest, including the need to declare and uphold proper professional standards of behaviour, might outweigh any evidence of remediation submitted by the doctor.

20 When considering character references and other testimonial evidence, decision-makers will need to take into account:

- a Whether the referee is fully aware of all matters under consideration.
- b How long the referee has known the doctor and in what capacity (for example, whether a friend, family member or professional colleague).
- c If a colleague, whether they are they likely to have had regular contact with the applicant in the course of their professional practice.
- d Whether the referee is medically qualified and/or in a position to speak authoritatively with regard to the applicant's practice and professional behaviour (for example they are in a supervisory or appraiser role).

e Whether the referee is bound by professional ethical standards with regard to their own conduct (for example, a nurse, solicitor or barrister).

21 When considering remediation, decision makers will need to take into account the principles in:

a paragraphs 31-33 of the [Sanctions Guidance](#) applied by medical practitioners tribunals and

b paragraphs 71-80 of the [guidance for case examiners making decisions on cases at the end of an investigation](#).

Factors to consider

22 The checklist below outlines the factors that decision-makers should consider when considering fitness to practise at the point of registration.

<u>Checklist</u>	
1	Does the information available suggest that the applicant has breached any of our guidance (whether guidance issued to medical students or registered doctors)?
2	Has the applicant been open and honest when completing their fitness to practise declaration?
3	Have any alleged facts been fully explored or investigated? Are further investigations necessary before a decision can be reached?
4	Has the evidence that suggests the applicant is potentially impaired been verified? If not, can it be? For example, through contact with recognised medical institutions, healthcare employers, regulators, ministries or government departments?
5	How robust and objective is the available evidence, including evidence of remediation? The less robust and objective the evidence, the less weight you will wish to attach to it.
6	Do any decided or admitted facts amount to one or more of the grounds of impairment under section 35C(2)?
7	Does the case involve dishonesty or one of the categories giving rise to a presumption of impairment?
8	Would allowing the applicant to practise present a risk to patient or public safety, or undermine confidence in the profession or medical regulation? Are the issues so serious that a finding of impaired fitness to practise is required to declare and uphold proper professional standards?
9	Alternatively does the case fall within the guidance on minor convictions, or is it otherwise clear that the matter is not of a nature or severity that makes it proportionate to prevent the applicant from practising?
10	How recent are the events giving rise to a concern? If five years old or more, do they nonetheless support a finding of impairment in the public interest (the age of the events that suggest impairment will impact on the factors relevant to 'current' impairment as well as the robustness of the evidence or the proportionality of any finding of impairment)?

11	Has the applicant provided sufficient evidence of remediation and insight into the issues which cause concern to the extent that recurrence is unlikely and that patients and the public would be protected if registration were granted?
12	Having taken all the above factors into account, does the available evidence and information provide assurance that an applicant's fitness to practise is not impaired at the point of their application?

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