

## Guidance for Assistant Registrars on anonymous and confidential complaints

### Purpose

- 1** We receive concerns about doctors from a variety of sources and our guidance makes it clear that professionals have a duty to raise concerns in the public interest. In some circumstances, an individual who raises concerns can feel that doing so will cause them harm and they may raise the concern anonymously or confidentially. Such complaints may be made via our confidential helpline or sent directly to the triage team.
- 2** We have a legal duty under the Medical Act 1983 (as amended) ('the Act') to investigate allegations of impaired fitness to practise, and the Registrar can exercise their discretion when determining what investigations to carry out. In light of this, while an anonymous or confidential complaint can be harder to evidence, it should still be progressed until it is clear that there is no prospect of establishing the concern raises a question about the doctor's fitness to practise.

### Assessing an anonymous or confidential complaint

- 3** At triage, a decision must be made as to whether the information amounts to an allegation<sup>1</sup> that raises a question about a doctor's fitness to practise<sup>2</sup>. If the information does not raise a question about a doctor's fitness to practise, it should be closed.
- 4** Provisional enquiries<sup>3</sup> allow us to make further enquiries in three situations. These are where:
  - the allegation itself is unclear
  - it is unclear whether the allegation is serious enough to raise a question of impaired fitness to practise

<sup>1</sup> Under section 35C(2) of the Act

<sup>2</sup> Rule 4(2) of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the rules')

<sup>3</sup> Rule 4(4) of the rules

- the allegation, on the face of it, is serious but the evidence may be unlikely to support a finding of impairment and further information is needed to clarify whether the allegation is capable of raising a question of impaired fitness to practise.
- 5 If a triage decision maker is of the view that the information may raise a question about a doctor's fitness to practise and it meets the criteria for a provisional enquiry, it should be referred for a provisional enquiry.
  - 6 If the information raises a question about a doctor's fitness to practise and is clear and capable of amounting to an allegation of impairment, it must be referred for investigation<sup>1</sup>.
  - 7 Where a triage decision maker considers it would assist to have further information to clarify the allegation, they should ask themselves whether such information can be sought directly from the complainant prior to opening a provisional enquiry. This should be possible with a confidential complaint. However, where the complaint is anonymous, it will not be possible to go back to the complainant to clarify any matters within the complaint unless they have chosen to correspond with us via an alias.
  - 8 In circumstances when further information cannot be obtained from the complainant, thought should be given to whether the relevant responsible officer (RO) may have knowledge that could help inform the decision whether the concern raises a question about the doctor's fitness to practise. If so, a Triage RO enquiry may be justified. This will require a limited disclosure to be made to the relevant RO for the purpose of obtaining further information which will enable decision makers at triage to determine whether the allegation should be referred for a provisional enquiry, an investigation, or closed.
  - 9 When a provisional enquiry or investigation has been opened and there is an unmitigated risk that the anonymous or confidential complainant will be identified if doctor disclosure is undertaken or other data subjects identified in the complaint are contacted, consideration should be given to whether the relevant RO may have knowledge that could help inform our decision about how to proceed. If so, a Provisional Enquiry /Investigation RO enquiry may be justified. This will involve making a limited disclosure to the relevant RO for the purpose of obtaining further information.

## Disclosure of an anonymous or confidential complaint

### General principles of disclosure

- 10 We do not usually disclose details of a complaint to the doctor or to any third parties unless a decision has been made to carry out a provisional enquiry or an investigation. Third party disclosure is not usually undertaken without us having first disclosed to the doctor.

<sup>1</sup> Under rule 4(2) of the rules

- 11** Where at triage it is considered that further information is needed to clarify the allegation, this is typically sought from the complainant in the first instance and so issues relating to disclosure of personal information do not arise. However, where it is necessary to expand the scope of a rule 4(4) investigation beyond asking the complainant to clarify the allegation, issues relevant to disclosure of personal information will need to be considered.
- 12** If a complaint is referred for a provisional enquiry or investigation, we will generally disclose the complaint to the doctor. Operational processes on notifying an individual about how their personal information will be used while we are considering the concern should be followed, as should the [\*Guiding principles on using personal information when considering concerns\*](#) and [\*Guidance for decision makers where an individual raises concerns or makes a request about the use of their personal information\*](#).

### **Anonymous and confidential complaints**

- 13** The nature of an anonymous complaint means that we need to treat the complainant as having raised concerns about our use of their personal information, in particular disclosure of such information. Where a complaint is confidential, it is reasonable to assume that the complainant does not want to disclose their personal information and has raised concerns about our doing so.
- 14** An anonymous complaint is unlikely to contain personal information and generally can be disclosed. If personal information is redacted, a confidential complaint is likely to also be capable of being disclosed. But in every case consideration should be given to whether the nature of the allegation is such that disclosing the complaint will risk identifying the anonymous or confidential complainant.
- 15** It may be that any risk of identification can be appropriately mitigated by redacting any non-contextual or identifying information. However, if an unmitigated risk of identification remains, it will be necessary to consider whether any possible interference with the complainant's right to privacy under the European Convention on Human Rights (ECHR)<sup>1</sup> and any possible breach of the duty of confidence by disclosure of the complaint, are justified in pursuit of the statutory objective.
- 16** Where there is an unmitigated risk of identification associated with disclosure of an anonymous or confidential complaint, an Assistant Registrar (AR) concerns decision will be needed. This is because identifying a complainant who has raised concerns (or should be treated as having raised concerns) about our use of their personal information can amount to a breach of their right to privacy under the ECHR<sup>2</sup> and a breach of the duty of confidence we owe to them.
- 17** Interference with an individual's right to privacy can be justified in certain circumstances, as can a breach of the duty of confidence, but any interference or breach of duty should only be to the extent that it is necessary and proportionate in pursuit of our statutory objectives.

<sup>1</sup> Under Article 8 of the ECHR

<sup>2</sup> Under Article 8 of the ECHR

**18** It may be difficult for decision makers to properly assess the impact of any risk of identification without input from the complainant. Whilst this is usually not possible in the case of an anonymous complaint, in the case of a confidential complaint, it may be appropriate to have further dialogue with the complainant about the proposed use of their information, such as doctor disclosure and contacting potential witnesses, and explain the safeguards that will be taken (such as redaction) to protect them from identification to ascertain if they have any further comments.

## **Decision to make a limited disclosure of an anonymous or confidential complaint to the relevant RO**

### **Triage RO enquiry**

- 19** Where the decision maker considers it would assist to have further information to clarify the allegation, they will usually be able to seek this from the complainant. However, the nature of an anonymous complaint means that we are not able to go back to the complainant unless they have chosen to correspond with us via an alias. We may also encounter difficulties in obtaining further information from a confidential complainant.
- 20** In these cases it may be appropriate to make a Triage RO enquiry which will involve undertaking limited disclosure to the relevant RO for the purpose of establishing if they hold information that will clarify the allegation and assist the decision maker in determining whether the complaint is capable of amounting to an allegation that the doctor's fitness to practise is impaired.
- 21** Any such disclosure will be in accordance with our legal power<sup>1</sup> to disclose information which relates to a doctor's fitness to practise if it is considered to be in the public interest to do so.
- 22** Where decision makers identify that there is a relevant RO who may be able to provide relevant further information, they will need to consider issues relating to disclosure:
- If there is no unmitigated risk of identification associated with making a limited disclosure to the relevant RO through a Triage RO enquiry then the complaint should first be disclosed to the doctor.
  - Where an unmitigated risk of identification remains, an AR concerns decision will need to be made. Decision makers will need to consider if the potential seriousness of the complaint<sup>2</sup> justifies a Triage RO enquiry being made despite the concerns the complainant has raised (or is being treated as having raised) about our use of their personal information and without first disclosing a copy of the complaint to the doctor.

<sup>1</sup> Under section 35B(2)(a) of the Act

<sup>2</sup> When reflecting and deciding on the potential seriousness of the complaint decision makers should also consider the doctor's previous fitness to practise history as detailed in our [Guidance for decision makers on when to take a doctor's fitness to practise history into account](#)

Decision makers should consider the factors that weigh in favour and against proceeding to use personal information where concerns have been raised as detailed in our [Guidance for decision makers where an individual raises concerns or makes a request about the use of their personal information](#).

- 23** If decision makers consider that the potential seriousness of the complaint justifies a Triage RO enquiry in cases where there is an unmitigated risk of identification, the AR concerns decision should specify:
- the reason why a limited disclosure to the relevant RO is considered to be necessary and proportionate
  - whether in the specific circumstances of the case, disclosure to the relevant RO without first having disclosed to the doctor is justified
  - the extent of information to be disclosed (such as a redacted copy of the complaint or summary of the complaint)
  - the relevant RO for the purpose of making the enquiry
- 24** Upon receipt of any further information from the relevant RO decision makers will need to make an assessment as to whether the information amounts to an allegation<sup>1</sup>.

### **PE / Investigation RO enquiry**

- 25** Where an anonymous or confidential complaint has been referred for a provisional enquiry or investigation, we will generally disclose the complaint to the doctor. Where there is no unmitigated risk of identification associated with disclosure of the complaint, it should be disclosed and progressed in the usual way.
- 26** In a provisional enquiry or investigation of an anonymous or confidential complaint an unmitigated risk of identification may exist or arise because:
- it has not been possible to redact the complaint sufficiently to remove all personal information or other information from which the complainant could be identified
  - the doctor requests confirmation of the identity of the complainant
  - contacting other individuals identified in the complaint will risk identifying the complainant
- 27** If there is an unmitigated risk of identification associated with disclosure of the complaint an AR concerns decision will be needed. In that decision, decision makers should consider whether the

<sup>1</sup> Under section 35C(2) of the Act

seriousness of the complaint<sup>1</sup> justifies a Provisional Enquiry/Investigation RO enquiry being made in order seek additional information to inform the decision whether the provisional enquiry or investigation should proceed to use the complainant's personal information despite the concerns that have been raised (or are being treated as having been raised).

- 28** Decision makers should consider the factors that weigh in favour and against proceeding to use personal information where concerns have been raised as detailed in our [\*Guidance for decision makers where an individual raises concerns or makes a request about the use of their personal information\*](#). Each case should be considered on its facts.
- 29** Just because a complaint has been made anonymously or confidentially this does not mean that there is no realistic prospect of evidencing the complaint and establishing impairment. There may be documentation or other witness evidence that can be obtained.
- 30** In some cases, the facts of the case may be such that the only real prospect of evidencing a complaint lies in the complainant providing witness evidence. In those cases, given the anonymous or confidential nature of the complaint, there will be no realistic prospect of evidencing the complaint and establishing impairment, and therefore disclosure to the doctor is unlikely to be justified.
- 31** However, if the allegations are of a very serious nature, thought should be given to whether a Provisional Enquiry/Investigation RO enquiry is appropriate. This will involve making a limited disclosure to the relevant RO to establish if they have knowledge about the matter that will:
  - identify avenues of investigation we might pursue that are not apparent to us based on the information we currently hold
  - remove the need for us to undertake doctor disclosure or contact a third party identified in the complaint. This could arise because they have already investigated the matter and are able to provide us with evidence that removes the need for us to conduct an investigation
- 32** Any such disclosure will be in accordance with our legal power<sup>2</sup> which allows us to disclose information which relates to a doctor's fitness to practise if it is considered to be in the public interest to do so.
- 33** If the decision maker considers that the seriousness of the complaint justifies a Provisional Enquiry/Investigation RO enquiry in cases where there is an unmitigated risk of identification, the AR concerns decision should specify:

<sup>1</sup> When reflecting and deciding on the potential seriousness of the complaint decision makers should also consider the doctor's previous fitness to practise history as detailed in our [\*Guidance for decision makers on when to take a doctor's fitness to practise history into account\*](#)

<sup>2</sup> Under section 35B(2)(a)

- the reason why a limited disclosure to the relevant RO is considered to be necessary and proportionate
  - whether in the specific circumstances of the case, disclosure to the relevant RO without first having disclosed to the doctor is justified
  - the extent of information to be disclosed (such as a redacted copy of the complaint or summary of the complaint)
  - the relevant RO for the purpose of making the enquiry
- 34** Upon receipt of any additional information from the relevant RO, the decision maker will need to decide whether to proceed to use the complainant's personal information in the provisional enquiry or investigation despite the concerns that have been raised.
- 35** In some cases, a decision not to use the complainant's personal information will mean that the provisional enquiry or investigation cannot progress further.
- 36** Where decision makers consider that we should continue to use the complainant's personal information, any risk of identification as a result of disclosure should be minimised as far as possible by redaction. The complaint should then be disclosed and the investigation progressed in the usual way to case examiner decision.

## Relevant RO

### Identifying the relevant RO

- 37** Decision makers will need to consider on a case by case basis who is the 'relevant RO' and thus the most appropriate recipient of the limited disclosure. They should specify in their decision whether this is the doctor's RO<sup>1</sup> or the RO for the incident location.
- 38** The starting point will usually be the doctor's RO as they hold statutory responsibility relating to the evaluation of the doctor's fitness to practise. We publish details of the doctor's RO on our website so complainants may raise concerns with them directly, especially if the care was provided through an organisation that is not a designated body, such as an out of hours service.
- 39** However in some circumstances, for example in the case of a locum or trainee, it may be more appropriate to disclose to the RO for the incident location since they are likely to have access to

<sup>1</sup> Where the doctor does not have an RO they may have a suitable person and so disclosure to the suitable person could be justified on a similar legal basis as disclosure to the doctor's RO.

relevant information and responsibilities in relation to clinical governance systems at the location of the concern.

**40** In some circumstances, decision makers may determine that it is necessary and proportionate to make a limited disclosure to more than one RO. For example:

- In a case concerning a trainee, where the complainant confirms the Dean has been informed, the doctor's RO (the Dean) and the RO for the incident location could both hold information that may assist.
- In the case of a locum the RO for the incident location may be more likely to hold information about the complaint, but if it is not clear what the location of the incident is, it may be that the doctor's RO could help with that question initially, as they should be able to confirm the locations where the doctor works.
- In a small number of cases the RO for the incident location may have been contacted before the doctor's RO and their response leads us to reconsider whether the doctor's RO may hold relevant information and should also be contacted.

**41** When making the decision about which RO to make the limited disclosure to, the key questions are: what is the nature of the assistance that we are currently seeking from the RO; and which RO is most likely to be able to provide that assistance.

### **Approaching the relevant RO**

**42** Where a decision has been made that a Triage RO enquiry or Provisional Enquiry/Investigation RO enquiry is appropriate, the Employer Liaison Service should be asked to approach the relevant RO. Once the appropriate Employer Liaison Adviser has been identified they should be notified of the decision and provided with the following:

- the decision number
- a copy of the information to be disclosed (such as a redacted copy of the complaint or summary of the complaint)
- confirmation of the relevant RO for the purpose of making the enquiry

This guidance was last updated in March 2020.