

Guidance for responsible officers and suitable persons in relation to concerns about a doctor's insurance or indemnity arrangements

Background

1. Good medical practice, paragraph 63, requires doctors to have adequate insurance or indemnity cover in place where necessary.
2. Parliament passed healthcare legislation in 2013, which led to a change to our Licence to Practise and Revalidation Regulations 2012 including provisions about insurance and indemnity cover. The new requirements, which came into effect on 1 August 2015, are set out below:
3. S44C(1) Medical Act 1983 (as amended) (MA 1983) provides that 'A person who holds a licence to practise as a medical practitioner, and practises as such, must have in force in relation to him an indemnity arrangement which provides appropriate cover for practising as such'.
4. S44C(9) Medical Act 1983 provides that 'Where a person who holds a licence to practise is in breach of subsection (1) or there is a failure to comply with regulations made under subsection (4)(b) in relation to him', we may withdraw that doctor's licence to practise or treat the breach or failure as a fitness to practise issue.
5. The change in legislation meant we could write new regulations to add new provisions to the (Licence to Practise and Revalidation) Regulations 2012 (2012 Regulations). The new provisions came into effect on 1 August 2015 and, in addition to our existing powers to restrict or remove a doctor's registration where a doctor's fitness to practise is impaired, gave us new powers to:
 - check that any doctor practising in the UK has appropriate insurance or indemnity cover
 - remove a doctor's licence to stop them from practising, if we learn that they don't have appropriate insurance or indemnity or if they fail to give us the information we ask for
 - refuse to grant a licence to a doctor if they can't assure us that they'll have the adequate and appropriate insurance or indemnity by the time they start practising in the UK.

-
6. Under the law, a doctor must have cover against liabilities that may be incurred in practising medicine having regard to the nature and extent of the risks. The type and level of insurance or indemnity a doctor requires depends on multiple factors, including where a doctor works, whether they are employed (and, if so by whom and for what services) or self-employed, and the nature of work they do.

When should I make a fitness to practise referral about a doctor's insurance and indemnity arrangements?

7. A failure to maintain appropriate insurance or indemnity cover may raise concerns about a doctor's fitness to practise and fall within one of the categories of impairment in the Medical Act 1983. This is likely to be in a limited set of circumstances. In most cases it will be because it could amount to misconduct either as a result of substandard practice where the doctor's insurance has been found to be insufficient to compensate a patient or because the doctor has been dishonest or misleading about their insurance or indemnity cover. This may be because:
 - A patient has been awarded compensation for negligence and the doctor's insurance or indemnity has been found to be insufficient to cover the costs, or
 - In the course of an investigation, evidence emerges that the doctor treated the patient in circumstances where they knew, or should have known, that they did not have adequate insurance or indemnity cover in place, or
 - The doctor has lied about insurance or indemnity cover being in place, as this undermines the public's trust in the profession.
8. Where there is a fitness to practise concern which includes an element of concern about the adequacy of a doctor's insurance or indemnity arrangements, the referral should be made to FPD first.

How do I make a fitness to practise referral?

9. When you identify a concern about a doctor's indemnity or insurance, you should consider discussing it with your Employer Liaison Adviser who can advise you about GMC thresholds and processes.
10. If a concern about a doctor's insurance or indemnity raises fitness to practise concerns, a fitness to practise referral should be made. We will need a certain level of information (in writing) in order to properly consider the concerns, such as:
 - the doctor's full name, or surname, initials and reference number
 - an account of the events or incidents that concern you, with dates, if possible
 - copies of any relevant papers and/or any other evidence you have and/or

-
- details of any local action you have taken already.
- 11.** Wherever possible, you should make your referral via our referral function in GMC connect.
 - 12.** GMC connect requests the core information we need to process your referral. It also details the types of supporting documentation that should be provided with your referral (if applicable and available) to enable us to make appropriate decisions about your referral, and to reduce unnecessary delays.
 - 13.** If some of the supporting documentation is unavailable at the point of referral, you should not delay making the referral, but should send all the documentation that is available, and indicate in your referral what additional documentation will be sent later.
 - 14.** In the event that you are unable to use GMC connect, you should send your referral to us by email at practise@gmc-uk.org and include the referral declaration in your letter of referral. You should also copy in your Employer Liaison Adviser into the email.

The referral declaration

- 15.** Whenever you make a referral, we will ask you to make a referral declaration to confirm that:
 - the referral is made in good faith, based on all the information that is available to you at the time of making the referral and
 - you have taken reasonable steps to ensure that the information contained in your referral is accurate and fair.
- 16.** The referral declaration is completed at the end of the referral process on GMC connect. If you have concerns about the fairness or accuracy of the information that forms the basis of the referral, please clearly indicate this at the point of referral. The referral declaration should accompany any referral made.⁴
- 17.** Ideally, the responsible officer for the doctor or the incident location will complete the referral form in all referrals. However, if this is not possible, we ask that the person completing the form confirms their role and the fact that they are acting on behalf of the responsible officer.

How will you update me about the progress of the fitness to practise referral and any subsequent investigation?

- 18.** You will be updated on the outcome of this, normally within 7 days.
- 19.** You may be asked for some more information to help us decide if an investigation is required.
- 20.** In each case we investigate, we disclose the complaint to the doctor, their responsible

officer or suitable person and to their employer or contracting body. The responsible officer will receive regular case updates at the Employer Liaison Adviser and responsible officer meetings.

When should I make a registration and revalidation referral?

21. When you identify a concern about a doctor's indemnity or insurance, you should consider discussing it with your Employer Liaison Adviser who can advise you about GMC thresholds and processes.
22. If you have information or a concern that a doctor is working without any cover or inadequate insurance or indemnity, but it does not raise concerns about fitness to practise (described in paragraph seven above), your Employer Liaison Adviser will advise you to make a registration and revalidation referral so that we can consider exercising our powers to remove a doctor's licence to practise.

How do I make a registration and revalidation referral?

23. You can email a referral to the Registration Investigation Team - Insurance and indemnity inbox (Insurance&IndemnityE@gmc-uk.org).
24. The referral should include:
 - The full name, GMC UID (Unique Identification), address and place of work of the referred doctor
 - Your name and job title (including whether you are a responsible officer or suitable person). Please also indicate if you have discussed the concern with your Employer Liaison Adviser
 - The reason for raising a concern about the doctor's insurance and indemnity arrangements
 - Any other known information about the doctor's current insurance and indemnity arrangements or the doctor's scope of practise.

What will happen?

25. The Registration Investigation Team will contact the doctor to ask for:
 - details of the full scope of their UK practice
 - documentation confirming that they have a current valid professional medical indemnity arrangement to cover their UK practice and

- documentation confirming the amount of the cover for their UK practice.

26. If, after we have contacted them, a doctor does not provide confirmation that they have an appropriate arrangement, we will take steps to withdraw their licence to practise in accordance with Regulation 4(3)(fa) of the regulations.

27. The Registration Investigation Team will update you by email at each stage of the process.

Referring concerns about a doctor's insurance or indemnity arrangements

