General Medical Council

Guidance for decision makers at triage on assessing the suitability of allegations for referral to a single clinical incident provisional enquiry

Introduction

1 The purpose of this guidance is to help decision-makers at triage identify single clinical incident (SCI) allegations that are suitable for a single clinical incident provisional enquiry (SCI-PE).

2 The guidance will set out the factors to consider when making the decision to define an allegation as an SCI at triage and provide information on the circumstances in which an SCI allegation is suitable for an SCI-PE, or whether disposal by other means should be considered.

3 Decision-makers at Triage may find it useful to review the SCI/PE tool and to consult supplementary guidance, including:

- **a** *Provisional enquiries guidance (Rule 4(4))*
- **b** *Guidance on categorising Stream 1*
- **c** *Allocating cases to the National Investigation Team.*

Definition

4 An SCI will:

- **a** usually relate to the care of a single patient, and;
- **b** comprise of a concern involving (only) a single consultation or clinical procedure.

5 An SCI may encompass a doctor's whole shift, where the SCI relates to the same clinical issue, e.g. where an obstetrician is alleged to have failed to monitor a CTG trace over several hours. However, allegations about two separate single incidents

(i.e. about more than one consultation procedure or doctor's shift) can't be considered an SCI.

Factors to consider in determining when an allegation is suitable for an SCI PE

6 The GMC's approach to fitness to practise investigations is influenced by case law. There are some cases in which we can properly conclude that an act of misconduct was an isolated error on the part of the medical practitioner and that the chance of it being repeated in the future is so remote that his or her fitness is not currently impaired. This was established in the case of Cohen v GMC [2008] EWCH 581 (Admin).

7 This takes into account firstly that the conduct which led to the charge is easily remediable, secondly that it has been remedied, and thirdly that it is highly unlikely to be repeated. This approach (generally referred to as the principles of Cohen) allow us to take into account evidence of remediation during a SCI.

8 An SCI on its own (unless it is very serious) is unlikely to lead to a finding of impairment, providing the doctor has taken appropriate follow-up action and therefore most SCIs are suitable for a PE. There are however some factors that would render an SCI unsuitable for a PE.

9 In order to assess whether the allegation is suitable for referral into the SCI PE process, the decision maker should confirm the following:

- **a** That the allegations are linked to clinical practice.
- **b** That the concern, including any current open cases and/or previous history, meets the S1 threshold.
- **c** That, based on the currently available information, including any current cases and/or previous history, the enquiry is a single clinical incident that on the face of it, involves only one patient and a single consultation or doctor's shift.

10 If a concern is clearly an SCI suitable for a PE, it should be dealt with in the SCI PE process and not in the traditional PE process as remediation cannot be assessed in the traditional PE process.

11 A case is unlikely to be suitable for the SCI PE process if:

- **a** From the currently available information, the incident, while a one-off, is so serious such that regulatory action is likely to be required even if the risk of repetition is low. This is because failure to take action may impact on public confidence in the medical profession. This was established in the case of CHRE v

NMC and Grant [2011] EWHC 927 (Admin). See paragraphs 31, 32, 33 and 34 for more information on these cases.

b The case is not a single clinical incident because there is a current open case and/or previous history that relates to the doctor's fitness to practise.

c The case is not a single clinical incident because there are health/language concerns that meet the S35A threshold.

d The case is not a single clinical incident because there are any probity/misconduct/criminal issues that meet the S35A threshold.

e There is a significant dispute of witness evidence that is relevant to the allegation (such disputes cannot be resolved at the PE stage).

f The concerns are such that we would ordinarily close the case (i.e. rule 4(4) should not be used to validate a decision to close the case where the criteria for closure are met).

g There is an existing investigation about the same doctor. If so, the allegation should be added to the existing case regardless of the nature of the concerns.

h The incident giving rise to the allegation predates another concluded case about the same doctor and the concerns have been dealt with.

i The concerns relate to systemic rather than fitness to practise issues.

Determining whether the allegation meets the threshold for Stream 1 investigation

12 As with traditional PEs, for a case to be suitable for an SCI PE, it must, on the face of it, meet the threshold for investigation into a doctor's fitness to practise, as set out in section 35C(2) of the Medical Act 1983. In making this assessment, it may also be useful to consult further guidance (see the introduction of this document for further details). If there is sufficient information to close a matter at triage because it does not meet the investigation threshold, the PE process should not be used to obtain more information. The PE process is only suitable for those cases that based on the available information, raise issues that are likely to meet the investigation threshold and/or where there is insufficient information about a serious matter to be able to close the complaint. A helpful question to ask is whether, without provisional enquiries, we would refer the case for investigation.

13 If it is unclear whether the allegation should be closed, promoted to Stream 1, or referred as a PE/SCI PE, the AR may seek further information to assist in making a decision. For example, the AR may approach the complainant to:

a identify relevant doctors

b obtain any missing documents

c seek clarification of places and dates.

14 Further information can be sought in the triage operational manual.

Ambiguity over the nature of clinical concerns

15 Where there is ambiguity over the nature/seriousness of clinical concerns, the AR may also seek the view of a medical case examiner (MCE).

16 MCE advice may be of particular use in the following situations:

a To provide information on the frequency of a particular complication (resulting from a procedure/drug).

b To assess the significance of drug-reported side effects.

c To help clarify the responsibility of each doctor in multi-doctor enquiries.

Ambiguity over the nature of non-clinical concerns

17 The view of a lay case examiner may also be sought where there is a lack of clarity relating to non-clinical aspects of an allegation.

Previous history

18 A doctor's previous history should be taken into account when determining:

a whether a current allegation is likely to meet the threshold for Stream 1 investigation, and;

b whether the current allegation can be considered an SCI.

19 When considering a doctor's fitness practise history, decision makers may find it useful to consult GMC *Guidance for decision makers on when to take a doctor's fitness to practise history into account.*

20 Where a doctor has a history of FTP allegations, it is unlikely that the allegation will be suitable for consideration under the SCI PE stream. For example, if a doctor has received previous FTP action as the result of allegations which are similar in nature to those which are currently under assessment, then it is unlikely that the case can be viewed as an SCI. An exception is where the FTP history was a significant time ago. A previous similar allegation, resulting in FTP action, may also mean that the current

allegation is viewed in a more serious light as the repetition of an incident may indicate a lack of insight/remediation, and/or a pattern of concerns.

21 For example, where a doctor has a number of previous complaints of clinical under-performance that have been closed as individually insufficient to amount to misconduct or deficient professional performance, or were isolated clinical incidents/concerns which were insufficient to amount to impairment. These previous incidents, in light of the current allegation, could be sufficient to give rise to an allegation of deficient professional performance where:

a The previous allegation is similar to the current allegation and/or paints a pattern of concern that, in totality, could give rise to an allegation of deficient professional performance. Low levels of poor performance, which of themselves might not reach our threshold, can accumulate, and together meet the threshold.

b The reason that the previous case was closed relates to seriousness rather than the credibility of the allegation. Where the previous matter was closed because there was insufficient evidence to support it, it would not be appropriate to take it into account without new evidence to reopen it under Rule 12. If however there was sufficient evidence to support it and it was closed on the grounds that it was insufficiently serious in itself to meet the threshold, then, as evidence of a pattern, it may be relevant to the current allegation.

c An apparently single clinical incident or concern has been closed on the grounds it was an isolated incident (i.e. unlikely to recur). If a doctor has a previous history that relates to clinical practice it will not be appropriate to consider a new matter as a single clinical incident unless the previous matter was found not proved or was a significant time ago or where the nature of the incidents are very specialised and completely unrelated.

22 Where a doctor has received previous allegations or regulatory action that is not connected to the current allegation, the allegation may be suitable for an SCI PE.

23 For further information, please see the *Guidance for decision makers on when to take a doctor's fitness to practise history into account.*

Links to open cases

24 In determining whether an allegation can be treated as an SCI, the triage AR will also need to consider whether there are any links to open cases.

25 Where there is an existing open case, the current allegation should be joined to it, meaning that it would not be suitable for an SCI PE. This is particularly important where the current allegations are similar to those in the open case. However, this principle applies to all cases, even where the current allegations are not similar to those in the open case, because it is important to consider a doctor's fitness to

practise as a whole. The SCI pilot is designed to deal with cases where the **only current concern** about a doctor is a single clinical incident.

26 Where a case is at a critical point, e.g. it is about to go to Tribunal, or a Tribunal has already commenced, it may not be possible to join the cases.

27 Where an allegation cannot be joined to an existing case, the triage AR must still consider the impact that the open case has on the current allegation. For example, it would not be appropriate to consider an allegation within the SCI PE process if we have a current ongoing case that relates to clinical practice.

Health / language concerns

28 Where an allegation includes both clinical practice and health or language concerns, the enquiry will not be suitable for a PE SCI where the health or language allegations meet the threshold for Stream 1 investigation.

29 If the health concerns do not, at the outset, meet the threshold for Stream 1 investigation, and there are no other concerns in relation to the SCI, then the enquiry may be suitable for the PE SCI stream.

Misconduct / criminality / probity

30 Where an allegation includes both clinical practice and conduct concerns, the case would not be suitable for an SCI PE where the conduct concerns meet the threshold for a stream 1 investigation. This is also the case where the conduct concerns are closely linked to clinical practice. For example:

- **a** Removal of life supporting treatment despite knowledge of a family seeking a court order.
- **b** Refusal to provide treatment due to a disagreement about lifestyle choices.
- **c** Subsequently amending a consent form after a procedure has taken place.

Seriousness

31 There will be some allegations where the concerns about clinical care are so serious that it will be clear that, even though they relate to a single incident, action is required. This is because failure to take action in these cases would undermine confidence in the medical profession. These cases may also need immediate IOT referral.

32 In determining whether the concerns are so serious as to require a full investigation, we must ask, despite the evidence of remediation presented by the medical practitioner, whether a finding of impairment may still be required in order to uphold

proper professional standards and public confidence in the individual and in the profession (CHRE v NMC and Grant [2011] EWHC 927 (Admin)). This principle should be considered in all SCI cases but is likely to be engaged in only a small number of cases where the seriousness of the error, or disregard for patient safety, appears to be 'gross', in the sense of outrageously or shockingly bad.

33 Those working at the GMC will, in the course of their work, see a volume of serious matters. The judgment as to whether the error in question is in this sense 'gross' should be judged by whether a matter would be likely to be viewed as outrageously or shockingly bad by a reasonable, fair-minded and informed member of the public. In considering this at triage, if there is a likelihood that an error or disregard for patient safety could be considered gross, the matter should be referred to Stream 1 so that a case examiner can make a decision about whether the error or disregard for patient safety is such that action is required.

34 In practical terms at SCI, there are likely to be two situations where we conclude that, despite evidence of remediation that could be obtained, a stream 1 investigation must be opened as there is a possibility that a finding of impairment may still be required in order to uphold proper professional standards and public confidence:

a When the suitability of a referral or complaint is being considered for the SCI PE process, if the information available at that point indicates that the seriousness of the error, or reckless disregard for patient safety could be considered particularly gross (outrageously or shockingly bad) then a stream 1 case should be opened.

b When an SCI has been opened and a documented discussion or other independent evidence from the SCI PE process expresses very serious concerns about the seriousness of the error, or reckless disregard for patient safety such that they could be considered to be particularly gross (outrageously or shockingly bad) then the case should be transferred to Stream 1.

Disputed witness evidence

35 If there is disputed witness evidence that is material to the allegations that meet the threshold for investigation, then the case cannot be considered under SCI PE because such disputes cannot be resolved at Triage.

SCI cases involving multiple doctors

36 Multiple doctor SCI cases can, in principle, be handled as an SCI PE case. In assessing whether multiple doctor cases can be treated as an SCI, where there are no other factors about the incident that would exclude it from the SCI PE process, the Triage AR will need to consider the matter on a case by case basis and should consider the following factors:

a Whether there is clarity about the role that each of the doctors has played in the incident.

b The likely complexity of the enquiries/investigation required to understand what has happened and the involvement that each doctor has played.

Voluntary erasure cases

37 As we only carry out a PE in cases which suggest the information raises a question about the doctor's fitness to practise, VE should not generally be granted until the outcome of the PE has been concluded.

Doctors without a connection

38 Allegations about an SCI relating to a doctor who has no connection (either RO or SP), will still be suitable for SCI PE consideration.