

# Guidance for decision makers on Provisional enquiries

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## Purpose

- 1 This guidance sets out the principles and approach that decision makers should follow at triage and each stage of the provisional enquiry (PE) process. It is intended to support staff in the Triage and Provisional Enquiries team to do the following:
  - determine whether further limited enquiries into a concern should be made under Rule 4(4) and, if so, which PE stream is most appropriate
  - identify and obtain the information needed to determine whether a question is raised about the doctor's current fitness to practise
  - decide the outcome of a provisional enquiry.
- 2 The guidance does this through:
  - clarifying the circumstances in which it is appropriate to make further enquiries
  - setting out the types of information that can be obtained as part of the PE process
  - outlining the factors that decision makers should consider when deciding the outcome of a provisional enquiry and highlighting where these may differ depending on the type of concern being considered.
- 3 The Triage and Provisional Enquiries teams should consider this guidance alongside the following:
  - Triage manual
  - Triage manual for health enquiries
  - Provisional enquiries manual
  - Health provisional enquiries operational guidance
  - Guidance on categorising Stream 1
  - Notify RO and Notify Employer Guidance
  - Allocating cases to the National Investigation Team and the Regional Investigation Teams
  - [COVID-19: assessing the risk to public protection posed by a doctor as a result of concerns about their practice during the pandemic.](#)

## Part A – Overarching principles of Provisional enquiries

### Definition of a PE

- 1 A provisional enquiry involves obtaining limited and targeted information at triage to help inform a decision about whether the concern raised amounts to an allegation that a doctor's current fitness to practise is impaired\* and therefore requires a full investigation.
- 2 It is an initial enquiry which is usually limited to gathering one or two discrete and easily obtainable pieces of information. PE involving public interest concerns (PIC) may involve gathering more information because it is designed to safeguard doctors who have raised public interest concerns from retaliatory referrals rather than simply to clarify whether an allegation meets the threshold like other types of PE. Examples of information usually obtained during a PE include:
  - medical records
  - a coroner's report or local investigation report
  - an expert opinion or advice from a medical case examiner.
- 3 A provisional enquiry does not require the decision maker to make findings of fact as a Medical Practitioners Tribunal (MPT) would. Instead, the process is about gathering and assessing information to determine whether an enquiry can be closed or if it should be promoted to a full investigation as the triage test is met.

### Purpose of a PE

- 4 Our primary objective as a regulator is to protect the public which includes promoting and maintaining public confidence in doctors. We do this by assessing and taking action to address any risk that is posed to patients by a doctor's impaired fitness to practise. Our response to this risk must be proportionate and targeted.
- 5 Using provisional enquiries can assist us to accurately assess risk in some enquiries which enables us to respond quicker and more proportionately, reducing stress to doctors and complainants and focussing use of our resources by ensuring we only carry out a full investigation where necessary.

\* Under one of the grounds set out in Section 35C(2) of the Medical Act 1983 which broadly summarised are misconduct; deficient professional performance; a criminal conviction or caution either in the UK or overseas; adverse physical or mental health; not having the necessary knowledge of English or a determination by a regulatory body in the United Kingdom or overseas to the effect that the doctor's fitness to practise is impaired.

## Rule 4(4)

- 6 Rule 4(4)\* provides an explicit power for the Registrar (delegated to Assistant Registrars) to make further enquiries before making a decision at triage under Rule 4(2). The Assistant Registrar (AR) can:

'...carry out any investigations as in his opinion are appropriate to the consideration of:

- a whether or not the allegation falls within section 35C(2) of the Act;
- b the practitioner's fitness to practise; or
- c the matters outlined within paragraph 5 ... [this refers to Rule 4(5) the five-year rule].'

## The test at Rule 4(4)

- 7 The test at rule 4(4) is not whether the realistic prospect test is met but whether the concerns appear to raise a question as to whether the doctor's fitness to practise is impaired.
- 8 Where the allegation is clear and/or there is sufficient information to make a decision, the AR should make a decision to close or promote the allegation following the usual procedure at triage.

## Principles to be applied by decision makers

- 9 When making decisions as part of the Rule 4 process, decision makers should take into consideration the principles outlined below.
- a Decisions should be made in the context of our overarching objective which is to protect the public. Where concerns have been raised about a doctor, decision makers should consider their relevance, and impact on, each of the three elements of our objective. The three elements of our overarching objective are to:
    - protect and promote the health, safety and wellbeing of the public
    - promote and maintain public confidence in the medical profession
    - promote and maintain proper professional standards and conduct for the members of the profession.

\* Of the General Medical Council (Fitness to Practise) Rules 2004 (as amended)

- b** We are committed to being open and transparent in our decision making. Therefore, decision makers should make sure that the process is as transparent as possible. This includes giving reasons to explain why a decision maker has decided to close an enquiry or promote to a full investigation.
  - c** PEs should be proportionate and targeted to make sure we only promote allegations where necessary and we continue to investigate thoroughly complaints that raise serious concerns. This means limited enquiries that can be completed within a shorter period of time compared to a full investigation. This is with the exception of provisional enquiries where the doctor has raised public interest concerns (known as PIC PE) which are likely to take longer because they are designed to protect doctors who have raised public interest concerns from retaliatory referrals rather than simply clarifying whether an allegation meets the threshold like other types of PE.
  - d** Decisions should be made on a case by case basis taking into account the individual circumstances of each enquiry.
  - e** PE is part of the triage process and therefore its focus is solely on whether the concerns raise a question about a doctor's fitness to practise.
  - f** A PE should not be used to validate or further clarify a triage closure decision by obtaining more evidence to support it, if without access to PE it would otherwise have been closed. Enquiries should be closed if the concerns are not sufficient or not serious enough to amount to impaired fitness to practise.
- 10** In line with our statutory obligations, we are committed to making sure that our processes for dealing with concerns about doctors are fair. By setting out the approach and overarching principles that decision makers should consider in detailed guidance, we will promote impartial, fair and consistent decision making throughout the PE process.