General Medical Council

Decision on whether regulatory action is required

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Introduction

1. Our role is to protect the public from a PA or AA who is not fit to practise. To decide if a PA or AA is fit to practise, we assess whether they pose any current and ongoing risk to public protection.
2. References made to 'public protection' throughout this guidance refer to our legal duty to protect the public which is split into three distinct parts. It means we must act in a way that:
    - protects, promotes and maintains the health, safety and wellbeing of the public,
    - promotes and maintains public confidence in the professions, and
    - promotes and maintains proper professional standards and conduct for members of the professions.

    Our publication *Decision making principles in fitness to practise* explains our legal duty in more detail.
3. We can only assess whether a PA or AA is fit to practise where there is a legal basis for doing so. There are two legal bases; inability to provide care to a sufficient standard and misconduct*. These are known as the grounds for (us taking) regulatory action.
4. Where there is a legal basis for considering a PA or AA's fitness to practise, to assess whether a PA or AA poses any current and ongoing risk to public protection, the Regulator and case examiners will consider:
    - The seriousness of the concern(s) about the PA or AA's behaviour, performance or the impact of a health condition on their ability to practise safely and effectively,
    - Any relevant context, and
    - How the PA or AA has responded to the concern.

    Our publication *What we mean by fitness to practise* explains these concepts in more detail.

* Article 2(2)(a) of the Anaesthesia Associates and Physician Associates Order 2024 (the Order)

5. Where a decision is reached by the Regulator or a case examiner that a PA or AA does not pose any current and ongoing risk to one or more of the three parts of public protection, and has not significantly departed from the professional standards, the concern will not progress further through the fitness to practise process.

6. If a decision is reached that a PA or AA does not pose any current and ongoing risk to one or more of the three parts of public protection, but has significantly departed from the professional standards, a case examiner can decide to issue them with a warning. This is a formal way of indicating that their behaviour or performance has significantly departed from the professional standards and should not be repeated. Further information about our approach to warnings can be found in the guidance *Decision on whether a warning is required*.

7. If a decision is reached that a PA or AA poses a current and ongoing risk to one or more of the three parts of public protection, a case examiner can propose action to restrict the PA or AA's registration. This might be through putting in place conditions or suspension. The purpose of this type of action is to protect the public until the PA or AA no longer poses any risk and can return to unrestricted practice. However, in a very small number of cases, action may need to be taken to remove a PA or AA's registration. This type of action is reserved for the most serious cases. Further information about our approach to restrictive action can be found in the guidance *Decision on what restrictive action is required*.

8. The purpose of this guidance *Decision on whether regulatory action is required* is to support proportionate, transparent and fair decision-making at all stages of the fitness to practise process to decide whether there is a legal basis for considering a PA or AA's fitness to practise, and where there is, whether that PA or AA poses any current and ongoing risk to public protection.

What are the grounds for taking regulatory action?

9. The Regulator and case examiners must be satisfied that there is a legal basis for considering whether a PA or AA's fitness to practise is impaired meaning that there is a current and ongoing risk to public protection. The table below explains the two grounds for taking regulatory action in respect of PA and AAs.

Ground for Action	Description
Inability to provide care to a sufficient standard (IPCSS)	This is about professional performance. It could be an act or omission and includes failing to act appropriately or being unable to provide care to the standard expected. The performance will be a departure from the professional standards as set out in Good Medical Practice and will often be seen where there are clinical failings or incidents which give rise to a cumulative concern regarding the PA or AA's fitness to practise. Taken together, the departures from the professional standards mean a PA or AA's performance is unacceptably low. To amount to an inability to provide care to a sufficient standard, the acts or omissions will often form part of a wider pattern about the PA or AA's professional skills, knowledge or experience. While having a health condition does not of itself mean there is a departure from the professional standards, if it is not being appropriately managed then this may lead to a departure from the professional standards and / or may impact on a PA or AA's ability to practise safely and provide care to a sufficient standard. All PAs and AAs working in the UK must have the necessary knowledge of the English language in the areas of speaking, listening, reading and writing to provide a good standard of practice and care. This includes being able to effectively engage with patients and other healthcare professionals. If a PA or AA does not have the necessary English language knowledge to communicate effectively in all areas, they are unable to provide care to a sufficient standard. A determination by a health or social care regulatory body or a conviction, caution or civil order/penalty received in the UK, or from an equivalent overseas body, may, in certain circumstances, indicate an inability to provide care to a sufficient standard.
Misconduct	This is about behaviour. It could be an act or omission and includes failing to act appropriately or demonstrating behaviour that falls short of what can reasonably be expected. To amount to misconduct, the behaviour will be a departure from the professional standards as set out in Good Medical Practice. This

	includes single clinical acts or omissions that are serious, or a limited number of clinical acts or omissions that taken together are serious. While having a health condition does not of itself mean there is a departure from the professional standards, if it is not being appropriately managed then this may impact on a PA or AA's behaviour, which, depending on the nature and seriousness of the behaviour in question, might constitute misconduct. A determination by a health or social care regulatory body or a conviction, caution or civil order/penalty received in the UK, or from an equivalent overseas body, can indicate misconduct where it relates to a PA or AA's behaviour.

10. An initial assessment can only be opened where the information received about a PA or AA falls under at least one of these grounds and raises a question as to whether a PA or AA's fitness to practise is impaired i.e. raises a question about a current and ongoing risk to one or more parts of public protection.

11. A finding of impairment can only be made at the case examiner outcome stage where the evidence engages at least one of these grounds and the PA or AA is assessed to pose a current and ongoing risk to one or more parts of public protection.

Assessing whether a PA or AA poses any current and ongoing risk to public protection

12. The following questions should be used to inform an assessment of whether a PA or AA poses any current and ongoing risk to public protection, and if so, what level of risk (low, medium or high):

a. Where on the spectrum of seriousness does the concern lie?

b. What is the impact of any relevant context?

c. How has the PA or AA responded to the concern?

13. The Regulator and case examiners should answer these questions with reference to the information or evidence available that indicates there is a concern about the PA or AA's ability to practise safely and effectively.

14. The information or evidence available to inform the Regulator or case examiners' view on risk will vary depending on the stage of the fitness to practise process. Further information on relevant evidential considerations and how to apply a decision on current and ongoing risk is provided in the following specific pieces of guidance:

- Decisions at the pre-initial assessment stage,
- Decisions at the initial assessment stage, and
- Decisions at the case examiner stage.

a. Where on the spectrum of seriousness does the concern lie?

15. Concerns about a PA or AA can fall on a spectrum of seriousness (the lower end, mid-range or higher end). The starting point for assessing the level of current and ongoing risk

to public protection posed by the PA or AA (low, medium or high) is based on where on the spectrum of seriousness a concern lies. However, some concerns have such a low level of seriousness that they do not give rise to any current and ongoing risk to public protection and do not need to be considered further. These are detailed below.

16. To reach a view on where on the spectrum of seriousness a concern lies (the lower end, mid-range or higher end), the Regulator and case examiners will need to consider:

- The starting points for assessing seriousness, and
- Any factors that increase seriousness.

17. Where the concern relates to a PA or AA's behaviour, performance or how they are managing the impact of a health condition, the Regulator and case examiners need to consider the extent of any departure from the professional standards expected. These can be found in *Good Medical Practice* and the more detailed guidance.

18. Having a health condition is not a departure from the professional standards expected of PAs or AAs. But where the impact of a health condition is such that it can pose a risk to patients, PAs and AAs are expected to take steps to manage that risk. Where those steps have not been taken, the Regulator and case examiners will need to consider the impact of a health condition on the PA or AA's ability to practise safely and effectively as part of assessing where on the spectrum of seriousness the concern lies (the lower end, mid-range or higher end) – see specific case types section.

19. Expert evidence will often be obtained where the concerns about a PA or AA relate to their performance and is used to inform a view on seriousness based on the extent of the departure from the professional standards.

20. The extent of the departure from the professional standards and the consequences or outcome for an individual patient may not be directly related. A less significant departure from the professional standards can sometimes result in significant harm to, or the death of, a patient. Alternatively, there can still be a satisfactory clinical outcome for a patient despite a significant departure from the professional standards expected having occurred.

21. The risk of harm arising from the departure from the professional standards will be the primary consideration to the assessment of where on the spectrum of seriousness the concern lies (the lower end, mid-range or higher end). This means the actual consequences or outcome for an individual patient should not be considered in isolation and the Regulator or case examiners should attach more weight to evidence about the risk of harm arising from any departure from the professional standards.

Matters that are not sufficiently serious to give rise to any current and ongoing risk

22. It will sometimes be clear that information received about a PA or AA relates to matters that fall below the spectrum of seriousness because they are not sufficiently serious to give rise to any current and ongoing risk to public protection. This includes, but is not limited to, information about the following:

- any road traffic offence for which a Fixed Penalty Notice (FPN) was issued,

- minor motoring offences not involving drugs or alcohol, such as speeding, traffic light offences, not wearing a seatbelt when driving and talking on a mobile phone when driving, provided there are no factors that increase seriousness,
- a delay of less than six months in providing a medical report,
- a minor non-clinical matter such as rudeness,
- a complaint about the cost of private medical treatment,
- the impact of a PA or AA's health condition, where there is no concern about their behaviour or performance and no risk relating to their ability to provide safe care to patients,
- any conviction, caution or other method of police disposal for the offence solely of urinating in public, provided there are no factors that increase seriousness,
- all penalty notices for disorder (PND) at the lower tier penalty level (as in force at the relevant time),
- any penalty notices for disorder (PND) at the upper tier (as in force at the relevant time), apart from those on the list of specified offences at Annex A.

23. Where the information received does not give rise to any current and ongoing risk to public protection, then a question has not arisen as to whether the PA or AA's fitness to practise is impaired and so the information should not be considered further.

Starting points for assessing seriousness of the concern

24. To reach a view on where on the spectrum of seriousness a concern lies (the lower end, mid-range or higher end), the Regulator and case examiners will first need to identify the starting points for assessing seriousness. Once this has been decided, they will need to consider the impact of any factors that increase seriousness.

Which concerns have a starting point of a low level of seriousness?

25. Behaviour or poor performance that has a starting point of a low level of seriousness includes, but is not limited to:

- a single clinical failing,
- an incident of violent behaviour which occurred outside of the, PA or AA's professional role and was limited in nature, caused no physical injuries or any physical, emotional or psychological harm caused was very minor in nature – see specific case types section,
- an incident of dishonest behaviour which occurred outside of the PA or AA's professional role and was not persistent or repeated and the value of any financial or other benefit derived was not significant – see specific case types section,
- a conviction or caution for a minor criminal offence that results in a discharge or fine,
- where a PA or AA has acted without regard for patients' rights or feelings.

Which concerns have a starting point of a mid-range level of seriousness?

26. Whilst a view on the starting point for assessing seriousness will need to be reached based on the individual circumstances of the concern, behaviour or poor performance falling between the types listed above and below as having a low or high level of seriousness as a starting point, are likely to have a starting point of a mid-range level of seriousness.

Which concerns have a starting point of a high level of seriousness?

27. Certain types of behaviour or poor performance represent such a significant departure from the professional standards expected that they have a starting point of a high level of seriousness. This is usually because the departure from the professional standards amounts to an abuse of, or interference with an individual's dignity, and/or breaches the fundamental tenets of the professions to act with honesty, integrity and uphold the law.

28. Behaviour or poor performance that has a starting point of a high level of seriousness includes, but is not limited to:

- a criminal conviction or other court sanction resulting in a custodial sentence (however where the conviction is for a listed offence under paragraphs 1 to 8 of Schedule 2, or any other paragraph of Schedule 2, of the Order in respect of which a custodial sentence has been imposed we are required by law to remove the PA or AA from the register of PAs and AAs as soon as is reasonably practicable),
- a criminal conviction, caution or other disposal that has resulted in a PA or AA being required to register on the sex offenders register,
- sexual assault, indecency or sexual harassment,
- an improper sexual or emotional relationship with a patient, someone close to a patient, or a colleague,
- violence, other than where it occurred outside of the PA or AA's professional role and was limited in nature, caused no physical injuries or any physical emotional or psychological harm caused was very minor in nature,
- dishonesty, other than where it occurred outside of the PA or AA's professional role and was not persistent or repeated, and the value or other benefit derived was not significant,
- unlawfully discriminating in relation to characteristics protected by law,
- where a PA or AA has deliberately misled patients or others about their registration status,
- clinical failings amounting to gross negligence or recklessness about a risk of serious harm to patients,

- where a PA or AA's lack of knowledge of the English language is compromising patient safety and the risk to patients cannot be addressed locally,
- a determination case where the regulatory body ordered the suspension or erasure / removal of the PA or AA from the relevant register.

29. Although cases of violence and dishonesty usually have a starting point of a high level of seriousness, they can involve a range of behaviour with the circumstances giving rise to the concern often occurring outside the PA or AA's professional practice. The Regulator or case examiners will need to decide where on the spectrum of seriousness the violence or dishonesty sits with reference to the guidance in the specific case types section below.

Factors which increase the seriousness of a concern

30. In all cases, once the starting point of seriousness has been established (low, mid-range or high), the Regulator or case examiners will need to identify whether there are any factors which increase the seriousness of the concern. Where one or more factors are identified, the impact on the starting point of seriousness will need to be considered so a view can be reached on where on the spectrum of seriousness the concern now lies (the lower end, mid-range or higher end).

31. The factors below may be seen in any case and where present, will increase the seriousness of the concern.

The behaviour or poor performance was persistent or repeated	Behaviour or poor performance will be persistent or repeated where the same, or similar, act(s) or omission(s) occur(s) multiple times and / or where an act or omission continues over a prolonged period. Persistent or repeated behaviour can be seen inside or outside a PA or AA's working life, whereas persistent or repeated poor performance can only arise inside a PA or AA's working life.

Relevant fitness to practise history	A previous complaint, concern or finding about an individual's fitness to practise is relevant to the seriousness of the current concern where the circumstances are similar in nature or raise similar concerns which indicate a pattern between past and present behaviour or poor performance. PAs and AAs are expected to regularly reflect on the standards of practice and care they provide. However, in some instances, a PA or AA may not have been made aware that a complaint or concern was previously raised (with the GMC or with another body or organisation) and will therefore not have had an opportunity to reflect on it and address any related risk of repetition. However, where a PA or AA was aware of the previous complaint, concern or finding, or the nature of the behaviour or poor performance is such that they should have been aware of the risks arising from it and they have nevertheless gone on to repeat that type of behaviour or poor performance, this indicates the risk of repetition arising from the previous matter has not been successfully addressed. These considerations may be relevant to deciding how much weight, if any, to attach to evidence of fitness to practise history. Where previous regulatory action (a warning or restrictive

	action) has been taken in response to a concern or finding that is similar in nature to the current matter, repetition indicates the PA or AA has shown disregard for the regulatory framework which exists to protect the public and / or has failed to adequately address the risk that led to the prior action being taken. The amount of weight to attach to this factor will be informed by the type of previous regulatory action put in place and whether the circumstances surrounding the concern amount to a breach of current restrictions.

The behaviour was directed towards, or the poor performance involved interaction with, a person with impaired capacity or a person with a particular vulnerability	Most individuals interacting with health services are likely to feel vulnerable to some extent and PAs and AAs should not act in a way that exploits patients' vulnerability or lack of medical knowledge. It is important that the person's full personal circumstances are considered in forming a picture of capacity or vulnerability. A person may have impaired capacity or be vulnerable for other reasons because of certain characteristics or their specific circumstances. Certain characteristics indicating vulnerability include the presence of mental health issues, being a child or young person aged under 18, disability or frailty, or a history of abuse or neglect. Specific circumstances indicating vulnerability may include having learning differences or needs, recent bereavement, being unemployed, lonely and / or isolated and whether they otherwise present as being emotionally vulnerable. Where a patient has impaired capacity or a particular vulnerability, or where the PA or AA perceives them to be vulnerable, there is an even greater duty on the PA or AA to consider their needs and welfare and not act in a way that amounts to abuse or neglect, or otherwise exploits them. Behaviour directed towards a person with impaired capacity or a person with a particular vulnerability may arise inside or outside a PA or AA's working life. Poor performance involving interaction with a person with impaired capacity or a person with a particular vulnerability can only arise in a PA or AA's working life.

Premeditated behaviour	Premeditated behaviour is characterised by the PA or AA having acted intentionally and with planning. It usually arises where a

	PA or AA looks for, or identifies, an opportunity to take advantage of a person or situation and takes steps towards doing so. A PA or AA may behave in a premeditated way inside or outside their working life.

Predatory behaviour	Predatory behaviour is characterised by the PA or AA taking, or attempting to take, advantage of an opportunity to exploit a person or situation. It can involve premeditation or be opportunistic. A PA or AA may behave in a predatory way inside or outside their working life.

Abuse of professional position	Abuse of professional position is where a PA or AA misuses their position of power. It arises because the relationship between the PA or AA and the individual is not equal. The forms it can take include taking advantage of someone, improperly gaining access to information or opportunities, manipulating an individual or a situation, using their title or status to try to take advantage of opportunities to achieve financial or other personal gain or benefit. Abuse of professional position can occur both inside and outside a PA or AA's working life.

A reckless disregard for patient safety or professional standards	A reckless disregard for patient safety is where a PA or AA knew, or ought to have known, that their behaviour, poor performance or the impact of a health condition was causing harm, or risked causing harm, to patients and should have taken steps to prevent this, or where they deliberately closed their mind to the existence of such a risk. A reckless disregard for professional standards is where a PA or AA knew, or ought to have known, they should have followed professional guidance and chose not to do so without having first considered any associated risks and taking reasonable steps to mitigate them. This may include failing to take reasonable steps to check that information provided to others, or written in

	documents, is correct and that relevant information has not been left out. A reckless disregard for patient safety or professional standards is most frequently seen in a PA or AA's working life but can also be seen outside of it.

Undermining a system designed to protect the public	PAs and AAs can play an integral part in maintaining the integrity of systems designed to protect the public. They may do this by providing information about the health status of individuals to organisations carrying out specific statutory functions, or by providing an assessment about an individual's ability to participate in certain activities. Where a PA or AA does not provide accurate information to one of these organisations, their regulator or another body who they're employed by, or registered with, to provide healthcare services, the ability of those organisations to protect the public or deliver safe care to patients can be undermined. Behaviour or poor performance that undermines the integrity of a system designed to protect the public can only arise in a PA or AA's working life.

Undermining collaborative working	How PAs or AAs treat their colleagues, and how they work together in the interests of patients, is essential for good healthcare. Behaviour that undermines colleagues or is otherwise obstructive to effective team working, can directly or indirectly have a negative impact on patient safety. However, a PA or AA who raises a concern to comply with their professional duty to raise concerns in the public interest should not be regarded as having behaved in a way that undermines collaborative working, even where their doing so has had a negative impact on colleagues or team working. Behaviour that undermines collaborative working can only arise in a PA or AA's working life.

Putting their own interests before those of patients	This occurs when a PA or AA puts their personal interests above those of a patient in a way that could compromise their judgement, decisions or actions. It includes where a PA or AA has

	asked for, accepted, or offered inducements or gifts, that may be seen to affect their behaviour at work, including clinical decision making. It also arises where they are not honest in their financial or commercial dealings, do not declare conflicts of interests and/or allow any interests to affect the way they prescribe, treat, refer or commission services for patients. Where a PA or AA puts their personal beliefs above the delivery of safe care to patients without making other suitable arrangements for treatment, this also amounts to putting their own interests above those of patients. This type of behaviour can only arise inside a PA or AA's working life.

An attempt to hide and / or avoid taking responsibility for behaviour or poor performance	A PA or AA must be open and honest if things go wrong. Where, at the time of the circumstances giving rise to the concern, they attempt to hide unacceptable behaviour or poor performance, or avoid taking responsibility for their behaviour or poor performance by blaming others for their own acts or omissions, this can have a negative impact on patient safety and / or workplace culture. This type of behaviour can only arise in a PA or AA's working life.

32. Where a concern has a starting point of a low level of seriousness, the absence of any factors that increase seriousness will mean the concern falls on the lower end of the spectrum of seriousness. This means the starting point for assessing current and ongoing risk is low and so it's unlikely that the PA or AA will pose a level of risk to public protection that requires regulatory action in response, unless there is relevant context which increases risk and / or a lack of insight and remediation which increases risk.

33. Where a concern has a starting point of a low level of seriousness, the presence of one or more of the factors that increase seriousness will usually mean that the concern falls on the mid-range of the spectrum of seriousness. This means the starting point for assessing current and ongoing risk to public protection will be medium.

34. Where a concern has a starting point of a mid-range level of seriousness, the presence of one or more of the factors that increase seriousness will usually mean that the concern falls on the higher end of the spectrum of seriousness. This means the starting point for assessing current and ongoing risk to public protection will be high.

35. Where a concern has a starting point of a high level of seriousness, the concern will fall on the higher end of the spectrum of seriousness. The presence of one or more of the factors that increase seriousness, will aggravate this further. In all cases that fall at the higher end of the spectrum of seriousness, the starting point for assessing current and ongoing risk to public protection will be high.

b. What is the impact of any relevant context?

36. The Regulator and case examiners should consider information known to them about relevant context i.e. the specific setting or circumstances surrounding a concern, and consider if, and how, it has impacted the PA or AA's behaviour, performance, or health. The impact that relevant context might have on a PA or AA can be negative or positive so, where it does have an impact, it can increase or decrease the level of current and ongoing risk posed to public protection.

37. There are three types of relevant context: working environment context, role and experience, and personal context. Each of these are described in detail in the publication *What we mean by fitness to practise*.

38. Where the Regulator or case examiners identify evidence of relevant context, the type should be specified. If the Regulator or case examiners decide the type of relevant context identified has had an impact on the PA or AA's behaviour, performance, or health, they should state how and go on to consider whether this affects the level of current and ongoing risk to public protection posed by the PA or AA.

39. Where the type of relevant context has had an impact on the PA or AA and there has been no change to the specific setting or circumstances that created the context, this could give rise to a risk of the concern being repeated. This will usually increase the level of current and ongoing risk the PA or AA poses to public protection. However, where there has been a change, either because the specific setting or circumstances that gave rise to the context have changed in and of themselves, or because steps are now in place to mitigate the impact that the setting or circumstances had on the PA or AA, the Regulator or case examiners may consider that this reduces the likelihood of the concern being repeated. This may in turn reduce the level of current and ongoing risk the PA or AA poses to public protection.

40. The level of weight that the Regulator or case examiners attach to evidence of relevant context that's available at the different stages of the fitness to practise process, will depend on the individual circumstances of the case. However, evidence of relevant context that may decrease the level of risk to public protection posed by the PA or AA will usually carry less weight in cases that have a starting point of a high level of seriousness.

41. The ways in which each type of relevant context could increase or decrease the risk to public protection are set out below.

Assessing the impact of working environment context

42. The Regulator or case examiners may have information available to them about systems factors or interpersonal factors that are outside a PA or AA's control, and which had an impact on their behaviour, performance, or health. Where this is the case, the relevant context is likely to decrease the level of current and ongoing risk the PA or AA poses to public protection provided that the likelihood of repetition has been removed or reduced, either because the working environment itself has now changed or because steps have been put in place to mitigate the impact on the PA or AA. This may include where there is evidence to show that workload issues, challenges with technologies or problems caused by poor team or organisational culture have now been addressed, or where the PA or AA

has improved support or supervision arrangements.

43. To comply with the professional duty of candour, all medical professionals are expected to raise and act on concerns about patient safety. Where a PA or AA failed to take reasonable steps to raise concerns about patient safety, this is likely to increase the level of current and ongoing risk the PA or AA poses to public protection because of the potential risk to patient safety.

44. When the Regulator or case examiners are deciding what amounts to 'reasonable' steps, information that has been shared with us about the systems, processes, and culture in the working environment to support raising concerns should be considered. It's unlikely a PA or AA will have failed to take reasonable steps in circumstances where they knew that another individual was raising the relevant concern(s) or the concern(s) were already known to management.

45. In cases where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, the Regulator and case examiners should give less weight to evidence of relevant working environment context which would otherwise decrease the level of current and ongoing risk posed to public protection.

Assessing the impact of role and experience

46. Failure to meet the professional standards expected is not acceptable simply because a PA or AA is newly qualified or new to UK practice. However, where they are inexperienced at the time the behaviour or poor performance occurred and can demonstrate that since then they have developed their skills or gained a better understanding of the UK healthcare system, this may decrease the level of current and ongoing risk they pose to public protection because it reduces the likelihood of repetition.

47. A PA or AA in a senior or leading role is more likely to be capable of influencing others and having an impact on workplace culture. Therefore, where a PA or AA that is in a senior or leading role frequently demonstrates inappropriate behaviour or poor performance, a departure from the professional standards expected has an additional impact.

48. Where the PA or AA was in a leadership position at the time the circumstances giving rise to the concern arose and the behaviour or poor performance had, or could reasonably have had, a negative impact on others in the working environment, this will usually increase the level of current and ongoing risk the PA or AA poses to public protection. The PA or AA no longer being in that role will not have the effect of reducing the level of current and ongoing risk posed to public protection unless the underlying behaviour or poor performance was solely related to them carrying out their leadership role and responsibilities.

49. In cases where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, the Regulator and case examiners will usually give less weight to evidence of relevant role and experience context which would otherwise decrease the level of current and ongoing risk posed to public protection.

Assessing the impact of personal context

50. For personal context to be relevant to the Regulator or case examiners' assessment of current and ongoing risk to public protection, there must be a direct link between it and the PA or AA's behaviour, performance, or health.

51. If the personal context that directly influenced the PA or AA's behaviour, performance or health at the time of the concern has since resolved, or steps have been put in place to avoid the circumstances arising again and / or to help the PA or AA cope with those circumstances if they did arise again, this is likely to decrease the level of current and ongoing risk posed to public protection because it reduces the likelihood of repetition.

52. Where the relevant personal context was out of the PA or AA's control, or where they were taking reasonable steps to minimise the impact, this will usually carry more weight. However, where there is an ongoing impact arising from the personal context and steps are not in place to manage this, the Regulator and case examiners might conclude that there may be a risk of repetition which means the level of current and ongoing risk to public protection may be increased.

53. In cases where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, the Regulator and case examiners will usually give less weight to evidence of relevant personal context which would otherwise decrease the level of current and ongoing risk posed to public protection.

c. How has the PA or AA responded to the concern?

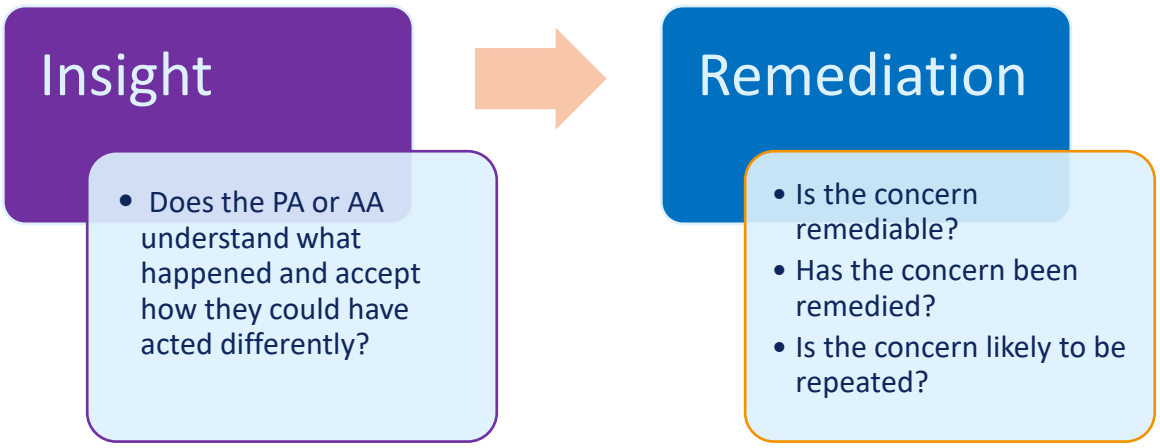
54. The Regulator and case examiners should examine the evidence available to them to establish if the PA or AA has: shown insight into their own practice and behaviour; taken steps which have reduced the risk of similar concerns occurring again (remediation), such as participating in training, supervision, coaching or mentoring relevant to the concern raised; and kept their knowledge and skills up to date.

Insight and remediation

55. The publication *What we mean by fitness to practise* explains the concepts of insight and remediation which are central to consideration of how a PA or AA has responded to a concern.

56. The Regulator and case examiners should consider what has happened since the time of the events giving rise to the concern(s), in terms of the PA or AA's response to the concern(s) and the level of insight and remediation they have shown. They should indicate how much weight they have attached to evidence of insight and remediation and why. This will assist them to explain their view on whether the PA or AA poses any current and ongoing risk to public protection.

57. When assessing evidence of insight and remediation at any stage of the fitness to practise process, the key considerations are:



58. Evidence of insight and remediation in response to a concern can be demonstrated and assessed on the papers. However, where a PA or AA attends a hearing, an Associates Tribunal will be able to hear from that individual directly. The ability to test the PA or AA's evidence through questions may in certain circumstances allow the tribunal to make a more thorough assessment of the level of insight and remediation shown.

59. Evidence of insight and remediation will have a different impact on the assessment of current and ongoing risk to public protection in each case, depending on the circumstances and type of concern. In many cases, as it can reduce the risk of repetition, it can significantly decrease the level of any current and ongoing risk to public protection

posed by the PA or AA.

60. However, in cases where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, evidence of insight and remediation will usually carry less weight when deciding what impact it has, if any, on the assessment of current and ongoing risk to public protection.

Insight

61. To demonstrate insight the PA or AA will need to show they understand what happened and accept how they could have acted differently. This involves showing that they have:

- considered the concern, understand what went wrong and accept they should have acted differently,
- fully understood the impact or potential impact of their behaviour, performance, or health condition,
- empathy for any individual involved, for example by apologising,
- taken, or are taking, steps to remediate and to identify how they will act differently in the future to avoid similar issues arising,
- sought appropriate support for a health condition and are seeking and / or following treatment and advice and / or are engaging with local support and steps put in place to manage any risks to patients,
- complied with the professional duty of candour,
- co-operated with earlier investigations into the concern (if they had the opportunity to do so) and engaged with the GMC's assessment of the concern(s), and / or
- self-referred to their employer and / or the GMC.

Evidence of insight

62. Evidence of insight will usually come directly from the PA or AA in the form of a statement or other reflective material. We cannot require a PA or AA to provide us with copies of material produced for the purpose of professional development or produced while reflecting on their professional practice to improve it (reflective notes), but we can invite them to provide evidence of insight and remediation as part of their response to the concern. Whether the PA or AA does this, and the form it takes, is for them to decide.

63. The Regulator or case examiners may have been provided with objective evidence of insight in the form of a statement from a PA or AA's workplace supervisor (see further information about this in the remediation section below).

Assessing the impact of insight

64. When the Regulator or case examiners are deciding what impact evidence of insight has

on the assessment of current and ongoing risk to public protection, it will be relevant to consider how complete or developed the PA or AA's insight is.

65. When assessing the weight to be attached to evidence of insight, the following are relevant considerations:

- the nature and quality – for example, a full acknowledgment of what has occurred and what the PA or AA needs to do differently, will carry more weight than a simple '...I'm sorry...'. And a detailed, voluntary self-referral and active engagement will carry more weight than a limited self-referral, made in response to a requirement by an individual or organisation to avoid a referral by them, with no onward cooperation.
- the timing – for example, an apology given soon after the relevant events to the appropriate person can carry more weight than if it were given following a delay and just before, or at, the decision point, and a self-referral can carry more weight if it is made voluntarily rather than to avoid a referral by a third party.

66. To fully comply with the professional duty of candour, a PA or AA is expected to be open and honest with patients and people in their care when things go wrong. This includes apologising. However, where there is evidence that a PA or AA wanted to apologise sooner but has been prevented from doing so by systems or procedures, such as governance or ongoing litigation, or the culture in their place of work, this will be relevant to the weight the Regulator or case examiners give to this information.

67. A PA or AA has the right to advance a robust defence to a concern. If their defence is not successful, it may be unrealistic to expect them to immediately accept every finding, in a fully sincere manner, or apologise. However, in these circumstances it may still be possible for the PA or AA to provide some evidence of insight without them having fully admitted the circumstances of the concern. Where a PA or AA gives evidence at a hearing, the tribunal will be able to test evidence of insight to assess whether it is genuine.

68. When deciding what weight to attach to evidence of insight, the Regulator and case examiners will need to consider how any differences in culture, faith and communication that are known about may have impacted on the quality of evidence available, such as how the PA or AA has expressed insight, or framed and communicated an apology. Explanations about the relevance of differences in culture, faith and communication are set out in the section on 'Being fair' in the publication *Decision making principles in fitness to practise*.

69. In many cases, evidence of complete or well-developed insight will have the impact of reducing the level of current and ongoing risk to public protection posed by the PA or AA. What evidence is available will also depend on what stage of the fitness to practise process the assessment of risk is being made at. However, where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, the Regulator and case examiners should usually give less weight to available evidence of complete or well-developed insight, meaning it will have limited bearing on the assessment of current and ongoing risk.

70. In some circumstances, it may be reasonable to conclude that a PA or AA lacks genuine, or

any, insight. This may be because there is evidence they have:

- repeated behaviour or poor performance where the circumstances of a previous complaint or concern are similar in nature or raise similar concerns to the current matter,
- tried to minimise the seriousness or impact of their behaviour, poor performance or health condition,
- provided an explanation after the event in which they have tried to minimise their own role or culpability, or otherwise sought to blame others,
- been blatantly dishonest or deliberately sought to mislead the Regulator or case examiners. This may include, amongst other things, knowingly advancing a case of false primary fact or a defence at the unreal, unreasonable or ludicrous end of the spectrum*, and / or
- failed to comply with a direction to undergo an assessment or a requirement to produce information / documentation, or significantly delayed complying without any reasonable explanation.

71. Where there is a lack of insight, this may increase the level of current and ongoing risk to public protection posed by the PA or AA.

Remediation

72. Where the concern relates to a PA or AA's behaviour or performance it is crucial that they have taken, or are taking, steps aimed at reducing the risk of similar concerns occurring again.

73. Where the concern relates to the impact of a PA or AA's health condition and they are presently working, it is important they're seeking and following treatment and advice and taking steps locally to manage any potential risk to patients.

Evidence of remediation

74. For a PA or AA to remediate, it's important they have insight into the concern. This is because to actively address concerns about their behaviour, performance, or impact of a health condition, a PA or AA must first recognise there is a concern and try to understand how it arose.

75. There isn't a set way to demonstrate remediation and so the way in which a PA or AA can show they have actively addressed the concern(s) will depend on the specific circumstances of the case. It's the evidence that shows the quality of the steps the PA or AA has taken to remediate the concerns that is key to assessing the impact it has had or

* Misra v GMC [2003] UKPC & Sawati v General Medical Council [2022] EWHC 283 (Admin)

can have.

76. Remediation can take several forms, including, but not limited to:

- passing an objective assessment related to performance, health, or language,
- where the concern relates to performance, participating in training, supervision, coaching and / or mentoring relevant to the concerns raised and putting that learning into practice,
- where the concern relates to behaviour, attending courses relevant to the nature of the concerns raised and showing that the learning has been applied,
- evidence that shows what the PA or AA has learnt following the events that led to the concerns being raised, and how they have applied this learning in their practice,
- evidence of good practice in a similar environment to where the concerns arose – this will often be evidence from a PA or AA's employer showing that they were aware of the concerns and have evaluated the PA or AA's practice,
- treatment or rehabilitation for a health condition resulting in the PA or AA now being able to practise safely and effectively with or without supportive measures in place,
- steps taken to manage a health condition such that any potential impact on their ability to provide care to a sufficient standard is mitigated, and / or
- action taken to address language deficiencies which shows the PA or AA can now communicate effectively in the workplace.

77. The Regulator and case examiners should give more weight to objective evidence of remediation than to personal statements ('self-certification'). Objective evidence may include, but is not limited to:

- certificates from completed training modules,
- continued professional development documentation, including evidence of participation in a College or Faculty run 'Continuing Professional Development' scheme or a personal development plan, and / or
- competency reports from supervising medical professionals.

78. The length of time between attendance at a course and the decision point will have an impact on the extent to which the PA or AA can demonstrate how they have put that learning into practice.

Statements from supervisors

79. Evidence that a PA or AA has taken steps to remediate may be provided in the form of a statement from the PA or AA's supervisor and will contain a factual account of the PA or AA's response to the concerns raised.

80. The statement should detail any factors the author considers relevant, and may include the following:

- details of practical steps taken to address the concerns, including attendance on professional courses and / or other learning,
- details of any expressions of regret or apology made,
- information about the PA or AA's involvement and cooperation with any local investigation, and / or
- an update in relation to the PA or AA's current practice.

81. The information contained within the statement may assist in determining whether a PA or AA has shown insight or whether the concerns have been addressed. The content of the statement should be weighed appropriately against the nature of the concern and other available evidence.

82. In some cases, a statement may not be available as evidence because the appropriate person hasn't provided this information. An adverse inference should not be drawn in cases where a statement is not available.

Assessing the impact of remediation

83. When deciding what impact evidence of remediation has on the assessment of current and ongoing risk to public protection, the Regulator and case examiners should have regard to the quality of the steps taken, or put in place, by the PA or AA.

84. The following should be considered when assessing the impact of remediation:

a) Is the concern easily remediable?

b) Has the concern been remedied or is it being remedied?

c) Is the concern highly unlikely to be repeated?

a. Is the concern easily remediable?

85. Concerns about performance, the impact of a health condition or knowledge of English language are generally more capable of being remediated than others.

86. It can be very difficult to demonstrate sufficient remediation in cases where:

- the concern has a starting point of a high level of seriousness (and therefore the starting point for assessing current and ongoing risk to public protection is high) and is capable of damaging public confidence in the professions,
- the starting point for assessing current and ongoing risk to public protection is mid-range or high on the basis that seriousness is increased because there is a high risk of harm to patients due to the PA or AA's deliberate, reckless, persistent, or repeated behaviour, and / or
- the nature of, or circumstances giving rise to, the concern suggests there is an underlying issue with the PA or AA's attitude.

b. Has the concern been remedied or is it being remedied?

87. In all cases, the quality of the remediation will inform the weight that the Regulator or

case examiners attach to it when deciding if the concern has been remedied or is being remedied.

88. Assessing the quality of remediation involves looking at whether it is:

a) relevant - in that the steps taken to remediate have directly addressed the concerns identified,

b) measurable – in that there is objective evidence available that shows what has been done and what, if anything, is left to be done, and

c) effective - in that there is enough information available to see how any learning has been assessed and/or applied in the PA or AA's practice.

89. Where the concern relates to the PA or AA's performance, the Regulator or case examiners should be satisfied that remediation addresses any risk of harm to patients. A risk of harm will usually still be present where the PA or AA's poor performance is not being, or cannot be, safely managed locally, or local management has been tried and has failed.

90. Remedial steps that have been completed will usually carry greater weight than actions started by a PA or AA that have not yet concluded.

c. Is the concern highly unlikely to be repeated?

91. The extent of the PA or AA's insight, and whether the concern is remediable and has been remediated, will inform the Regulator or case examiners' assessment of how likely or unlikely it is that the concern will be repeated. The environment in which the PA or AA has been practising may also be relevant.

92. Where the PA or AA has been practising in a similar environment to the one in which the concerns arose and they have been exposed to situations where there was a risk of them repeating the behaviour or poor performance giving rise to the concern, the absence of repetition will be relevant. However, where they have not been practising in a similar environment to the one in which the concern arose, either because restrictions have been placed on their practice, they have been out of work, or for any other reason, the absence of repetition will be of little or no relevance.

93. The Regulator and case examiners need to make sure that a low risk of repetition is carefully distinguished from identifying no risk of repetition. This is because a low, but nonetheless real, risk of repetition might be significant and / or have a very serious outcome where the case involves behaviour or poor performance which has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high.

94. In many cases, a conclusion that the concern is highly unlikely to be repeated will have the impact of decreasing the level of current and ongoing risk to public protection posed by the PA or AA. However, where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, a conclusion that a concern is highly unlikely to be repeated will have less impact on the assessment of current and ongoing risk.

95. Where there is no evidence of a PA or AA having completed or started any remediation, it will often be reasonable to conclude that a risk of repetition exists. This may increase the level of current and ongoing risk to public protection posed by the PA or AA.

Has the PA or AA kept their knowledge and skills up to date?

96. To provide a good standard of practice and care, PAs and AAs must be competent in all aspects of their work, including, where applicable, formal leadership or management roles, research, and teaching. This means keeping their knowledge and skills up to date and being aware of relevant guidelines and developments that affect their work.

97. Where a concern has been raised about one or more aspects of a PA or AA's professional practice, they need to demonstrate effective insight and remediation to reduce the risk of the same, or a similar concern, being repeated. Where the circumstances giving rise to the concern are historical and, since they arose, the PA or AA can show they have kept their knowledge and skills up to date and been working within their area(s) of competence, the absence of further concerns about their behaviour or performance may decrease the level of current and ongoing risk posed to public protection. However, where there is evidence that a PA or AA's knowledge and skills are not up to date, this may increase the level of current and ongoing risk they pose to public protection.

Evidence of knowledge and skills

98. Evidence that a PA or AA has kept their knowledge and skills up to date can come in different forms, including, but not limited to:

- documentation showing the PA or AA has passed an objective assessment related to their performance, health, or knowledge of English language,
- certificates from completed training modules,
- continued professional development documentation, including evidence of participation in a College or Faculty run 'Continuing Professional Development' scheme or a personal development plan,
- where the PA or AA has been working, competency reports from supervising medical professionals, and / or
- a report from a clinical attachment programme.

99. Objective evidence of knowledge and skills being up to date may also be available in the form of a statement from a PA or AA's workplace supervisor (see further information about this in the remediation section above).

Assessing the impact of evidence relating to the PA or AA's knowledge and skills

100. Where a PA or AA has not been working for a period since the circumstances giving rise to the concern arose, either at all or in a specific speciality, the Regulator or case examiners may consider that this creates a risk that the PA or AA's knowledge and skills have

deteriorated. It's therefore important that the PA or AA can evidence they have taken steps to mitigate this risk.

101. Where the PA or AA can show that their knowledge and skills are up to date despite any break from practice, this will not usually directly impact on the assessment of current and ongoing risk to public protection because being competent in all aspects of their work and able to provide a good standard of practice and care is a key requirement of the professional standards.

102. If a PA or AA has been working (with or without restrictions) since the circumstances giving rise to the concern arose and can show their knowledge and skills are up to date and that they have been working within their area(s) of competence, this will not usually directly impact on the assessment of current and ongoing risk to public protection for the same reason.

103. An exception to this may be where the circumstances giving rise to the concern are historical, there have been no further concerns raised about the PA or AA's behaviour or performance at work and there is evidence they have kept their knowledge and skills up to date and been working within their area(s) of competence. In these specific circumstances, the Regulator or case examiners may consider that the combination of these factors can decrease the level of current and ongoing risk posed to public protection. However, where the concern has a starting point of a high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, less weight will usually be given to this evidence, which means it will have limited bearing on the assessment of current and ongoing risk.

104. Where there is information that casts doubt over whether the PA or AA's knowledge and skills are up to date, regardless of whether they have been working since the circumstances giving rise to the concern arose, this may increase the level of current and ongoing risk they pose to public protection.

Decision on whether the PA or AA poses any current and ongoing risk to public protection

105. If there is more than one legal basis for considering the PA or AA's fitness to practise i.e. the concerns amount to inability to provide care to a sufficient standard and misconduct, an assessment of current and ongoing risk must be made in respect of each of them.

106. The Regulator or case examiners' view on whether the PA or AA poses any current and ongoing risk to public protection, and if so, what level of risk (low, medium, or high), is based on considering the answers to the following questions:

- Where on the spectrum of seriousness does the concern lie – lower end, mid-range, higher end – considering:
    a. the starting point for assessing seriousness, and
    b. any factors that increase seriousness?

  This provides the starting point for assessing current and ongoing risk to public protection – low, medium or high.
- Is there relevant context that impacted on the PA or AA's behaviour, performance or health and what impact does this have on the assessment of current and ongoing risk – decreases risk, has no impact on risk, increases risk?
- How has the PA or AA responded to the concern and what impact does this have on the assessment of risk – decreases risk, has no impact on risk, increases risk?

107. In cases where the departure from the professional standards indicates a starting point of a high level of seriousness, the starting point for assessing current and ongoing risk to public protection will be high. Evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk will usually carry less weight because these types of concerns can be difficult to remediate. The decision on current and ongoing risk to public protection should be weighted to reflect this and a conclusion that the PA or AA poses a current and ongoing risk to public protection will usually be needed.

108. Although cases of violence and dishonesty usually have a starting point of a high level of seriousness, they can involve a range of behaviour, with the circumstances giving rise to the concern often occurring outside the PA or AA's professional practice. In deciding whether there is a current and ongoing risk to public protection, the Regulator or case examiners will need to decide where on the spectrum of seriousness the violence or dishonesty sits with reference to the guidance in the specific case types section below. Where the violent or dishonest behaviour is at the lower to mid-range of the spectrum of seriousness, more weight may be given to evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk.

109. In certain case types, evidence of relevant context that decreases risk and evidence of insight and remediation will usually carry more weight because these types of concerns are generally more capable of being easily addressed. This means that a conclusion may be made that the PA or AA poses a low level of risk, or no current and ongoing risk to

public protection. This often arises where there is a clinical concern or where the concern relates to the impact of a PA or AA's health condition on their ability to practise safely and effectively. Further guidance is given in the specific case types section below.

110. Where the Regulator or case examiners reach a view that the PA or AA poses a current and ongoing risk to public protection, they should be clear about which parts of public protection – patient safety, public confidence and / or upholding professional standards – are engaged and state the level of risk they've identified – low, medium, or high. For case examiners, the level of current and ongoing risk will be relevant to their decision on what is a proportionate regulatory response at the case examiner stage of the fitness to practise process.

How the assessment of current and ongoing risk to public protection impacts on decisions made at specific points of the fitness to practise process

Pre-initial assessment

111. The Regulator will use their assessment of current and ongoing risk to public protection to decide whether information received about a PA or AA's behaviour, performance or impact of a health condition, if proven evidentially, means that we can, and should, carry out an assessment of their ability to practise safely and effectively i.e. assess their fitness to practise.

112. To reach a decision on whether an initial assessment should be opened, the Regulator should apply the guidance *Decisions at the pre–initial assessment stage*.

Initial assessment and the onward referral decision

113. The Regulator will use their assessment of current and ongoing risk to public protection to decide whether to close a concern or refer it onwards in the fitness to practise process.

114. Where the Regulator is of the view that there is no current and ongoing risk to public protection requiring GMC action (a warning, conditions, suspension, or removal), they should close the concern. However, where they are of the view that there is a reasonable likelihood that the concern presents a current and ongoing risk to public protection such that regulatory action is needed on the PA or AA's registration, they will need to refer the matter onward for a decision on impairment.

115. To reach a decision on whether the onward referral test is met, the Regulator should apply the guidance *Decisions at the initial assessment stage*.

Case examiner decisions

116. Case examiners will use their assessment of the current and ongoing risk to public protection to decide whether the case presents a risk to public protection such that regulatory action (a warning, conditions, suspension or removal) is required.

117. A finding of impairment is a decision by the case examiners that restrictive action (conditions, suspension or removal) is required on a PA or AA's registration to address a current and ongoing risk to public protection.

118. Case examiners must reach a view on whether a PA or AA's fitness to practise is impaired based on their consideration of all information obtained about a case. The decision on impairment is one for the case examiners alone, exercising their judgement and having regard to their view on the current and ongoing risk to public protection posed by the PA or AA.

119. Where case examiners decide that the PA or AA's fitness to practise is not impaired, they may give a PA or AA a warning as to their future behaviour or performance where the concern falls below the professional standards expected. To decide whether a warning is a proportionate response, case examiners should apply the guidance *Decision on whether a warning is required*.

120. Where case examiners find that a PA or AA's fitness to practise is impaired, they should apply the guidance *Decision on what restrictive action is required* to decide what regulatory action is needed to protect the public.

Pre-initial assessment	Initial assessment and the onward referral decision	Case examiner decisions
• The Regulator will use their assessment of any current and ongoing risk to public protection to decide whether information received about a PA or AA's behaviour, performance or impact of a health condition, if proven evidentially, raises a question about whether their fitness to practise is impaired and requires us to open an initial assessment.	• The Regulator will use their assessment of the current and ongoing risk to public protection to decide whether to close a concern or refer it onwards in the fitness to practise process.	• Case examiners will use their assessment of current and ongoing risk to public protection to decide whether a PA or AA's fitness to practise is impaired based on their consideration of all information obtained about a case.

Assessing current and ongoing risk to public protection in specific case types

1. Sexual misconduct

121. Concerns relating to sexual misconduct have a starting point of a high level of seriousness and therefore fall at the high end of the spectrum of seriousness. This means the starting point for assessing current and ongoing risk to public protection will be high.

122. Evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk will usually carry less weight because these types of concerns can be difficult to remediate. The decision on current and ongoing risk to public protection should be weighted to reflect this and a conclusion that the PA or AA poses a current and ongoing risk to public protection will usually be needed. The level of risk will often be medium or high.

123. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	How it might be engaged
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	Sexual misconduct may impact the physical, emotional and / or psychological wellbeing of a patient, relative, colleague or member of the public. This impact can be long lasting and may affect how a patient accesses health services in the future. Where sexual misconduct is directed towards colleagues it may impact on patient safety as it can cause breakdowns in communication and / or in the collaborative working needed to deliver safe patient care. The nature of the behaviour means it often gives rise to a risk of repetition.
Promoting and maintaining public confidence in the profession (public confidence)	Patients must have confidence in PAs and AAs to behave professionally towards them, especially during consultations and where a PA or AA needs to carry out an intimate examination. Sexual misconduct arising inside a PA or AA's professional practice will result in a breakdown of trust and undermine public confidence.

	Sexual misconduct arising outside a PA or AA's professional practice can undermine public confidence. This is particularly the case where sexual misconduct results in a criminal conviction and / or where a PA or AA has been required to register on the sex offenders register. The public having confidence in the profession is more important than the interests of an individual PA or AA.
Promoting and maintaining professional standards and conduct	*Maintaining a professional boundary between you and your patient, Intimate examinations and chaperones* and *Sexual behaviour and your duty to report colleagues* provide guidance on how medical professionals can comply with *Good medical practice*. Sexual misconduct will undermine the PA or AA's integrity and amount to a significant breach of the professional standards.

2. Dishonesty

124. Concerns relating to dishonesty will usually have a starting point of a high level of seriousness and therefore fall at the higher end of the spectrum of seriousness. However, the range of behaviour which may amount to this type of concern will vary considerably and some instances of dishonesty may indicate that a starting point of a low level of seriousness is more appropriate.

125. Where there is an incident of dishonest behaviour, the starting point for considering seriousness will be low where:

- the dishonesty occurred outside of the context of the PA or AA's professional role and the dishonesty was not persistent or repeated over a period of time,
- the value of the financial or other benefit derived by the PA or AA from the dishonesty was not significant,
- the dishonesty did not affect patient care,
- the dishonesty did not involve an attempt to conceal professional misconduct, clinical errors or deficiencies and / or to blame others,
- there is no evidence on the face of it indicating that the PA or AA may repeat the alleged dishonesty in the future,

- an investigation conducted by the police or another relevant body, such as the PA or AA's employer, resulted in no formal action or a single warning by the employer.

126. In these cases, provided there are no other factors that increase seriousness, the concern will fall at the lower end of the spectrum of seriousness and so it is unlikely that the PA or AA will pose a current and ongoing risk to public protection.

127. At the pre-initial assessment stage, where seriousness has been assessed but there is no evidence available in relation to relevant context or insight and remediation, the concern should not be considered further if the Regulator is able to conclude that the PA or AA does not pose any current or ongoing risk to public protection.

128. If, upon receipt of information relating to dishonest behaviour, further limited and targeted enquiries are required to help the Regulator assess seriousness, these will be carried out in line with the approach in the guidance *Decisions at the pre-initial assessment stage*.

129. This will include if:

- on the face of it the information is serious enough to give rise to a question of impaired fitness to practise, but the information we hold suggests aspects may be confused, or based on a misperception, or unlikely to be supported by reliable evidence,
- further information is required to establish the circumstances of the incident more clearly,
- further information is required about the nature and outcome of any investigation by the police or another relevant body such as the PA or AA's employer.

130. If additional information obtained at the pre-initial assessment stage is not sufficient to establish that the concern raises a question of impaired fitness to practise, and no further information is available or likely to become available, the information should not be considered further.

131. Where the starting point for assessing seriousness is high, the starting point for assessing current and ongoing risk to public protection will be high.

132. Evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk will usually carry less weight because these types of concerns can be difficult to remediate. The decision on current and ongoing risk to public protection should be weighted to reflect this and a conclusion that the PA or AA poses a current and ongoing risk to public protection will usually be needed. The level of risk will often be medium or high.

133. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	How it might be engaged
Protecting, promoting and maintaining the health, safety and wellbeing of the public (patient safety)	Dishonest behaviour may impact the physical, emotional and / or psychological wellbeing of a patient, relative, colleague or member of the public, or cause financial harm. These impacts can be long lasting and may affect how a patient accesses health services in the future. Where dishonest behaviour has, or could, impact on patient care, there is a clear risk to patient or public safety. Examples include: • falsifying records • failing to act honestly and with integrity during drug trials • providing false or misleading references or information on a CV resulting in the PA or AA being appointed for a role they do not have the skills to perform safely • theft of resources, such as drugs from a hospital. Where a PA or AA is dishonest in their interactions with colleagues, this can cause breakdowns in communication and/ or in the collaborative working needed to deliver safe patient care.
Promoting and maintaining public confidence in the profession (public confidence)	Patients and members of the public must have confidence in PA and AAs to behave professionally and act with honesty and integrity. Dishonesty arising inside, or related to, a PA or AA's professional practice will result in a breakdown of trust and undermine public confidence. Exploiting patients financially and / or not maintaining boundaries through proper financial processes undermines the trust of patients and is a risk to public confidence in the professions. Dishonesty related to matters outside the PA or AA's clinical responsibility, such as providing false statements or fraudulent claims for monies, can undermine public confidence. The public should be able to trust the integrity of medical professionals, and where a PA or AA undermines that trust there is a risk to public confidence in the profession.

	Where dishonest behaviour arises in a research context, such as by presenting misleading information in publications or clinical drugs trials, this can have far reaching consequences and undermines the trust that both the public and the profession have in medicine as a science, regardless of whether it leads to direct harm to patients. Dishonesty arising outside a PA or AA's professional practice can also undermine public confidence. This is particularly the case where the dishonest behaviour resulted in a criminal conviction. The public having confidence in the profession is more important than the interests of an individual PA or AA.
Promoting and maintaining proper professional standards and conduct (upholding professional standards)	*Good medical practice* requires that medical professionals are honest, trustworthy, act with integrity and uphold the law. *Financial and commercial arrangements and conflicts of interests* provides guidance on how to recognise when conflicts of interest arise, how to avoid them wherever possible, and requirements for declaring and managing them. As PAs and AAs are expected to be honest and act with integrity, dishonest behaviour will usually amount to a significant breach of the professional standards.

3. Violent or abusive behaviour

134. Concerns relating to violent or abusive behaviour will usually have a starting point of a high level of seriousness and therefore fall at the high end of the spectrum of seriousness. However, the range of behaviour which may amount to this type of concern will vary considerably and some instances of violent or abusive behaviour may indicate that a starting point of a low level of seriousness is more appropriate.

135. Where there is an incident of violent or abusive behaviour, the starting point for considering seriousness will be lower where the violence:

- occurred outside the context of the PA or AA's professional role
- was limited in nature rather than a sustained or repeated assault
- caused no physical injuries or they were very minor in nature
- any emotional or psychological harm caused was not significant

- there is no evidence on the face of it that the alleged violence was motivated by hostility towards someone's race, sexual orientation, disability, sex, gender, religions, age or the PA or AA's assumptions about the alleged victim's protected characteristics
- no weapons were involved
- there is no evidence on the face of it indicating that the PA or AA may repeat the alleged violence in the future
- an investigation conducted by the police or another relevant body, such as the PA or AA's employer, resulted in no formal action or a single warning by the employer.

136. In these cases, provided there are no other factors that increase seriousness, the concern will fall at the lower end of the spectrum of seriousness and so it is unlikely that the PA or AA will pose a current and ongoing risk to public protection.

137. At the pre-initial assessment stage, where seriousness has been assessed but there is no evidence available in relation to relevant context or insight and remediation, the concern should not be considered further if the Regulator is able to conclude that the PA or AA does not pose any current or ongoing risk to public protection.

138. If, upon receipt of information relating to violent or abusive behaviour, further limited and targeted enquiries are required to help the Regulator assess seriousness, these will be carried out in line with the approach in the guidance *Decisions at the pre-initial assessment stage*.

139. This will include if:

- on the face of it the information is serious enough to give rise to a question of impaired fitness to practise, but the information we hold suggests aspects may be confused, or based on a misperception, or unlikely to be supported by reliable evidence,
- further information is required to establish the circumstances of the incident more clearly,
- further information is required about the nature and outcome of any investigation by the police or another relevant body such as the PA or AA's employer.

140. If additional information obtained at the pre-initial assessment stage is not sufficient to establish that the concern raises a question of impaired fitness to practise, and no further information is available or likely to become available, the information should not be considered further.

141. Where the starting point for assessing seriousness is high, the starting point for assessing current and ongoing risk to public protection will be high.

142. Evidence of relevant context that decreases risk and evidence of insight and remediation

that decreases risk will usually carry less weight because these types of concerns can be difficult to remediate. The decision on current and ongoing risk to public protection should be weighted to reflect this and a conclusion that the PA or AA poses a current and ongoing risk to public protection will usually be needed. The level of risk will often be medium or high.

143. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	**How it might be engaged**
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	It is necessary to protect patients and members of the public from physical, emotional and / or psychological harm resulting from violent or abusive behaviour. The impact of harm arising from this behaviour can be long lasting and may affect how a patient accesses health services in the future. Violent or abusive behaviour directed towards colleagues may pose a risk to patients who may be distressed by witnessing these acts. In addition to any harm to them, there may be patient safety implications as violent and abusive behaviour will have a negative impact on effective communication, and collaborative working, between colleagues. Violent or abusive behaviour outside a clinical setting may still present an indirect risk to patients or the wider public if this behaviour could be repeated within a clinical setting or elsewhere. The nature of the behaviour means it can give rise to a risk of repetition.
Promoting and maintaining public confidence in the profession (public confidence)	Violent or abusive behaviour by a PA or AA is likely to have the effect of undermining public confidence in the professions and professional standards, especially if the act results in a criminal conviction. The public having confidence in the profession is more important than the interests of an individual PA or AA.
Promoting and maintaining professional standards and conduct (upholding professional standards)	*Good Medical Practice* requires that medical professionals treat others fairly and with respect, and act with integrity and within the law. Violent or abusive behaviour will usually amount to

	a significant breach of the standards expected.

4. Discrimination

144. Concerns relating to unlawful discrimination have a starting point of a high level of seriousness and therefore fall at the high end of the spectrum of seriousness. This means the starting point for assessing current and ongoing risk to public protection will be high.

145. Evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk will usually carry less weight because these types of concerns can be difficult to remediate. The decision on current and ongoing risk to public protection should be weighted to reflect this and a conclusion that the PA or AA poses a current and ongoing risk to public protection will usually be needed.

146. Where discrimination is not unlawful, the starting point for assessing the seriousness of the behaviour may be low or mid-range. In these cases, more weight can be given to evidence of relevant context that decreases risk and evidence of insight and remediation that decreases risk.

147. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	**How might it be engaged**
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	Where discrimination has resulted in treatment not being provided, or a delay in treatment being provided, this may impact the physical, emotional and / or psychological wellbeing of a patient or member of the public or make them feel that they have not been treated with respect or in a way that maintains their integrity. This impact can be long lasting and may affect how a person accesses health services in the future. Where discrimination is towards colleagues, in addition to any harm caused to them, it may impact on patient safety by causing breakdowns in communication and / or in the collaborative working needed to deliver safe patient care. Discrimination directed towards colleagues may pose a risk to patients who may be distressed by witnessing these acts. The nature of the behaviour means it can give rise to a risk of repetition.

Promoting and maintaining public confidence in the profession (public confidence)	Patients must have confidence that medical professionals will treat them fairly. All types of discrimination will result in a breakdown of trust and undermine public confidence in the professions. Discrimination relating to a protected characteristic breaches a fundamental tenet of the profession to uphold the law and will impact on the reputation of the profession. The public having confidence in the profession is more important than the interests of an individual PA or AA.
Promoting and maintaining professional standards and conduct (upholding professional standards)	*Good medical practice* states that you must treat individuals fairly whatever their life choices and beliefs. *Personal beliefs and medical practice* explains how PA and AAs can put these principles into practice. Both *Good medical practice* and *Leadership and management* detail how these principles also relate to how medical professionals treat colleagues. Any unlawful discrimination or discrimination which results in unfair or prejudicial treatment amounts to a breach of the professional standards expected of PA and AAs. It is likely to be a significant breach in cases of discrimination relating to a protected characteristic.

5. Clinical concerns

148. Where an expert has concluded that the PA or AA's behaviour or performance has not fallen seriously below the standards expected and there are no factors that increase seriousness, they will not usually pose a current and ongoing risk to public protection in relation to the clinical concern that is being assessed.

149. Where the expert concludes that the PA or AA's behaviour or performance falls seriously below the standards expected, the clinical concern will fall on the spectrum of seriousness and so evidence of relevant context and how the PA or AA has responded will need to be carefully considered to inform the Regulator or case examiners' view on current and ongoing risk to public protection.

150. Where a clinical concern has a starting point of a low or mid-range level of seriousness, in the absence of factors that increase seriousness, and where a PA or AA has demonstrated insight, and the steps they've taken to remediate are sufficient to address the nature of the clinical concern, the PA or AA is unlikely to pose a current and ongoing risk to public protection.

151. Whilst rare, it's possible that in some circumstances, a single act or omission by a PA or AA will be so serious that, even if it is unlikely to recur, the behaviour associated with the act or omission can undermine the public's trust in the profession such that a conclusion there is a current and ongoing risk to public protection will be needed. The decision on current and ongoing risk to public protection should be weighted to reflect this and a conclusion that the PA or AA poses a current and ongoing risk to public protection will usually be needed. The level of risk in these cases will often be medium or high.

152. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	How might it be engaged
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	A PA or AA's clinical failings may impact on the physical, emotional and / or psychological wellbeing of a patient or member of the public. The impact of clinical failings can be long lasting and may affect how a patient accesses health services in the future. The circumstances that led to a clinical failing, and the likelihood of repetition will be central to whether this element of public protection is engaged.
Promoting and maintaining public confidence in the profession (public confidence)	Patients must be able to trust PAs and AAs with their lives and health. They must be confident that they will be treated by a PA or AA working within their area of competence and to an appropriate clinical standard. In a very small number of cases, even if the specific clinical failing is unlikely to recur, the behaviour or performance giving rise to the concern might be such that it undermines the public's trust in the professions. Public confidence in the professions is more important than the interests of an individual PA or AA.
Promoting and maintaining professional standards and conduct (upholding professional standards)	*Good medical practice* sets the standards of conduct that PAs and AAs are expected to meet when carrying out their clinical duties within their professional practice. PAs and AAs are also expected to follow other clinical guidance or guidelines relevant and applicable to their area of work as published by other regulatory or professional bodies. Clinical failings that are persistent or wide ranging will usually amount to a significant breach of the standards.

6. Impact of a health condition

153. Factors indicating that the impact of a health condition is unlikely to pose a current and ongoing risk to public protection include, but are not limited to, where:

- there is no evidence the health condition has had a significant impact on the PA or AA's behaviour or performance,
- the PA or AA is in stable, long-term employment or training, or works only in appropriately supervised environments,
- the PA or AA has insight into the impact of their health condition and the importance of taking steps to manage any potential risks, and / or
- the PA or AA is seeking and following treatment and advice and taking steps locally to manage any potential risks to patients.

154. In other health cases, a conclusion of current and ongoing risk may be needed where there is evidence that the health condition and any impact it may have on their behaviour or performance is not being, or cannot be, effectively managed. This includes where a PA or AA is unable to understand, does not accept, or lacks insight into, the risks that are posed by their health condition on their ability to practise safely and effectively.

155. Factors that may indicate a PA or AA cannot practise safely and effectively include, but are not limited to, where:

- the type and severity of the health condition means there is a clear risk to patients,
- there are, or have been, serious concerns about the PA or AA's behaviour or performance and their health condition may be a contributory factor,
- the PA or AA's health condition is serious, has only recently been diagnosed, is not well controlled and it is too soon to know if risks to patients can be appropriately managed by them seeking and following treatment and advice and / or engaging with local support and steps to manage risk,
- there is no adequate or effective local support plan in place,
- the PA or AA is (or was) part of a locally managed action plan but is intending to leave (or has left) employment while the existing employer believes that a risk to patient safety persists, and / or
- the PA or AA is not in stable employment or training and is known to be seeking work.

156. In cases where there is cogent evidence that a PA or AA's health condition is linked to a concern about their behaviour or performance, a conclusion may be reached that the PA or AA does not separately pose a current and ongoing risk to public protection in relation to the behaviour or performance concern. This is likely to be applicable where the concern about the PA or AA's behaviour or performance is at the lower end of the spectrum of seriousness and at the time the events arose they already had the health condition.

157. In cases where the related behaviour or performance concern is at the higher end of the spectrum of seriousness, it will not usually be appropriate to conclude that the PA or AA does not pose a separate risk to public protection in relation to the behaviour or performance concern. In these cases, regulatory action that solely addresses the PA or AA's health condition is unlikely to be sufficient to address the overall current and

ongoing risk to public protection, particularly where public confidence is engaged.

158. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	How it might be engaged
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	Where a PA or AA has a serious health condition that could be passed on to others, or if their behaviour or performance is affected by a health condition that is not being managed effectively, this may impact on the physical, emotional harm and / or psychological wellbeing of a patient, member of the public or the PA or AA themselves. This impact can be long lasting and may affect how a patient accesses health services in the future.
Promoting and maintaining public confidence in the profession (public confidence)	The public must have confidence that PAs and AAs will not practise when their own health affects their ability to provide safe care and that they will make the care of their patients their first concern. A PA or AA's health condition will not on its own undermine public confidence in the professions. Trust in the PA or AA will only be called into question where the health condition has impacted, or is likely to have an impact, on the PA or AA's behaviour or performance.
Promoting and maintaining professional standards and conduct (upholding professional standards)	*Good medical practice* requires a medical professional to consult a suitably qualified colleague, and follow their advice, if the PA or AA's judgement or performance could be affected by a health condition or its treatment. Not doing so will usually amount to a significant breach of the standards in cases where there may be, or has been, an impact on patient safety.

7. Insufficient knowledge of English

159. Where a PA or AA has not achieved the required scores in an English language assessment, this will usually indicate there is a current and ongoing risk to public protection. In cases where the concern is based on witness evidence rather than the results of an assessment, the impact any shortcomings had, or could have had, on the PA

or AA's practice will have to be considered to reach a view on risk.

160. Patient safety concerns may arise in cases of prescribing errors caused by poor knowledge of English or where other health professionals are unable to understand what's been set out in treatment plans. However, low level issues relating to minor poor spelling or grammar, or difficulty in understanding regional slang or English colloquialisms are unlikely to be sufficient to indicate there is a current and ongoing risk to public protection.

161. Where a PA or AA has a poor knowledge of English and is presently working, or states an intention to work, in the UK but only with non-English speaking patients, this does not circumvent the need for them to have the necessary knowledge of English. To provide safe care to patients, PAs or AAs need to be able to communicate with other individuals who may need to be involved in the delivery of a patient's care, including other healthcare professionals and the emergency services. In these circumstances a conclusion there is a current and ongoing risk to public protection is likely to be needed.

162. A conclusion there is a current and ongoing risk to public protection is also likely to be needed in cases where a PA or AA is not presently working in the UK but there is evidence they do not have the necessary knowledge of English. This ensures that action can be taken to protect patients in the event the PA or AA subsequently seeks to work in the UK.

163. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	**How it might be engaged**
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	Where a PA or AA does not have the necessary knowledge of the English language to provide a good standard of practice and care, this may impact the physical, emotional and / or psychological wellbeing of a patient or member of the public. This impact can be long lasting and may affect how a patient accesses health services in the future. Poor communication with colleagues can cause a breakdown in the collaborative working needed to deliver safe patient care.
Promoting and maintaining public confidence in the profession (public confidence)	The public must have confidence that PAs and AAs have the necessary knowledge of the English language to care for their patients. Trust in the PA or AA will be called into question where they knew they did not have the necessary knowledge of the English language but continued to practice.
Promoting and maintaining	*Good medical practice* requires a medical

professional standards and conduct (upholding professional standards)	professional to work within the limits of their competence and have the necessary knowledge of the English language to provide a good standard of practice and care in the UK. A failure to do so will usually amount to a significant breach of the standards expected where there may be, or has been, an impact on patient safety.

8. Criminal convictions and cautions and determinations by another body responsible for the regulation of a health or social care profession

164. A range of behaviour and / or poor performance can be seen in cases where the PA or AA is the subject of a conviction, caution or determination. Where the nature of the departure from the professional standards indicates a starting point of high level of seriousness and therefore the starting point for assessing current and ongoing risk to public protection is high, evidence of relevant context that reduces the risk to public protection and evidence of insight and remediation that decreases risk will usually carry less weight.

165. For convictions, cautions or determinations relating to s*exual misconduct, dishonesty, violent or abusive behaviour, discrimination or clinical concerns* reference should also be made to the guidance above.

166. Where a criminal conviction results in a custodial sentence (immediate or suspended), this will generally mean the current and ongoing risk to public protection is medium or high. Cases involving non-custodial convictions, cautions and determinations cover a wide range of behaviour which may raise a current and ongoing risk to public protection that ranges from the lower to the higher depending on the conduct which gave rise to the criminal sanction.

167. While the courts distinguish between degrees of seriousness, any conviction for child sex abuse materials will mean the current and ongoing risk to public confidence in the professions is high.

168. Very rarely, a PA or AA will be convicted for a criminal offence relating to their clinical practice. For example, conducting a clinical procedure without proper consent, or where a PA or AA's intentional or reckless practice results in a conviction for assault. Exceptionally, in the case of a patient death, a PA or AA could be convicted of gross negligence manslaughter[*] or culpable homicide[†]. In these cases, the impact on the three parts of

[*] In England, Wales and Northern Ireland

[†] In Scotland

public protection may mean that the current and ongoing risk to public protection is medium or high.

169. When considering which parts of public protection are engaged, the Regulator and case examiners should refer to the table below alongside the explanatory publication *Decision making in fitness to practise*.

Part of public protection	How it might be engaged
Protecting, promoting and maintaining the health, safety and well-being of the public (patient safety)	Behaviour or poor performance that has led to a conviction, caution or determination may impact on the physical, emotional and / or psychological wellbeing of a patient or member of the public. This impact can be long lasting and may impact on how a patient accesses health services in the future. Where the behaviour resulting in a conviction, caution or determination is towards colleagues, in addition to any impact on them, the behaviour may also impact on patient safety by causing breakdowns in communication and / or in the collaborative working needed to deliver safe patient care.
Promoting and maintaining public confidence in the profession (public confidence)	Patients and members of the public must have confidence in PAs and AAs to behave professionally, act with honesty and integrity and act within the law. A conviction, caution or determination resulting from behaviour arising inside a PA or AA's working life may result in a breakdown of trust and undermine public confidence. A conviction or caution for an offence arising outside a PA or AA's working life can undermine public confidence. This is particularly the case where a conviction has led to a custodial sentence and / or where a PA or AA has been required to register on the sex offenders register. Public confidence in the professions is more important than the interests of an individual PA or AA.
Promoting and maintaining professional standards and conduct (upholding professional standards)	PAs and AAs are expected to act in accordance with the law and comply with their professional guidance. A conviction, caution or determination will usually amount to a significant breach of the standards expected of PAs and AAs.

Annex A: List of specified offences

Penalty Notices for Disorder at the upper tier penalty level

Upper Tier - £90 for 16-year-olds and over

Offence	Notice
Wasting police time or giving false report	s5(2) of the Criminal Law Act 1967
Disorderly behaviour while drunk in a public place	s91 of the Criminal Justice Act 1967
Possession of cannabis (and its derivatives) or Khat (or other product containing khat) (may only be given on one occasion)	S5(2) and Schedule 2 of Misuse of Drugs Act 1971
Theft (under £200 retail/commercial only)	s1 of the Theft Act 1968
Destroying or damaging property (limited to damage under £300)	s1(1) of the Criminal Damage Act 1971
Words/behaviour likely to cause harassment, alarm or distress	s5 of the Public Order Act 1986