General Medical Council

Guidance on making decisions on voluntary erasure applications, advising on administrative erasure and making restoration decisions

Purpose

1 The purpose of this document is to provide case examiners with guidance on the approach they should take when considering applications for voluntary erasure and the relevant factors to be taken into account. The same principles should be applied when providing advice on whether a doctor should be administratively erased for non-payment of the annual retention fee (ARF) or failing to maintain an effective registered address. These erasures will only fall under the case examiners' jurisdiction if there are unresolved concerns about the doctor's fitness to practise. All other administrative and voluntary erasures will be processed by the Registration and Revalidation directorate.

2 It also contains guidance for case examiners on the approach to be taken when deciding if a doctor should be granted restoration where there are outstanding fitness to practise issues.

Background

Voluntary erasure (VE)

3 A doctor may submit an application for voluntary erasure at any time and there is no requirement to wait until the conclusion of fitness to practise proceedings. The procedures for dealing with such applications* apply to all registered doctors, whether or not they hold a licence.

* As set out under The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004

4 Applications for VE will be referred to a lay and a medical case examiner in circumstances where an allegation is being investigated or information is received, including from the doctor applying, which may raise an issue of impaired fitness to practise. The case examiners will make a decision on whether to grant or refuse the application for voluntary erasure. If the case examiners fail to agree, the erasure application shall be referred to the Investigation Committee for determination.

5 Case examiners will also consider VE applications if a case has been referred to a medical practitioners tribunal (MPT), but the hearing has not yet started. If an application for voluntary erasure is received after a hearing before a MPT has begun, the Registrar shall refer the application for determination by the tribunal. This does not apply to referrals to the Investigation Committee.

6 Applications from doctors with undertakings (whether agreed by case examiners or at a MPT hearing), conditions or a substantive suspension do not require referral to the case examiners. Provided there are no new allegations of impaired fitness to practise requiring investigation, the Case Review Team (CRT) can authorise the Registration and Revalidation directorate to remove the doctor's name from the register.

Administrative erasure (AE)

7 The Medical Act 1983 (as amended) authorises the Registrar to erase doctors from the register administratively if the doctor fails to:

a maintain an effective registered address*

b pay their annual retention fee.†

A series of checks will be made prior to erasing the doctor and all cases where there is a potential fitness to practise issue which is still being investigated will be referred to a single case examiner. The case examiner will advise whether it is appropriate for the Registrar to administratively erase the doctor's name. As detailed in paragraphs 58–59 below, caution should be exercised where the doctor's failure to pay their fee or maintain an effective address may be linked to their health.

Case review

8 The Case Review Team can authorise the Registration and Revalidation directorate to administratively erase doctors with undertakings, conditions or a substantive suspension where there are no concerns about the doctor's health and no open allegation of impairment decisions. Advice from a case examiner will be required if

* Under section 30(5) of the Medical Act 1983 (as amended)

† Under Regulation 8(4) of the GMC Registration Fees Regulations 2019

the case involves health or there are new allegations of impairment requiring investigation that have not previously been determined either by case examiners or a MPT.

Summary of key principles

9 Case examiners should consider the following key principles when making VE decisions and giving advice on AE.

a The different factors in an individual case should be balanced against each other to make an overall assessment of whether erasure is in the public interest. The GMC's overarching objective is to protect, promote and maintain the health and safety of the public. This is broken down into three limbs:

i to protect, promote and maintain the health, safety and well-being of the public

ii to promote and maintain public confidence in the medical profession

iii to promote and maintain proper professional standards and conduct for doctors

In some circumstances, it will not be in the public interest to erase a doctor while there are outstanding concerns about their fitness to practise.

b Case examiners must have enough information to assess whether it is in the public interest to erase the doctor. Although a doctor can apply for VE and be at risk of AE at any point in an investigation, case examiners should be very cautious about allowing erasure in the following circumstances.

i The allegations are unclear and further evidence is needed to clarify their precise nature and seriousness.

ii We have not obtained the evidence needed to assess the seriousness of the allegations and whether it would harm the public interest to grant VE or proceed with AE. This may include medical records, an expert report, relevant witness statements and information from local investigations, including audit data. Without key evidence, it will be difficult to make an informed judgement about whether VE or AE can appropriately proceed.

iii VE and AE are not necessarily permanent and a doctor can apply for restoration at any time. As part of their overall assessment of the public interest, case examiners must assess the risk posed by a future restoration application. This can be done by considering the likelihood of the doctor seeking restoration and whether we will be able to revive the unresolved allegation(s) should they do so.

10 Case examiners should consider whether VE or AE is appropriate after a careful assessment of all the relevant factors. If they deviate from the broad principles in this guidance, they must provide clear and detailed reasons for their decision.

Approach to be taken

11 Case examiners should be satisfied that it is right in all the circumstances to grant VE or advise that AE can proceed. This will involve a careful balancing of the relevant factors to decide whether or not erasure is in the public interest. Case examiners will need to weigh the seriousness of the concerns against any additional information that is available regarding:

- the doctor's health and the likelihood of the doctor returning to practice
- our ability to revive the allegations should the doctor apply for restoration.

Public interest considerations

12 Case examiners should assess the three different aspects of the public interest which reflect the overarching objective.

Protection of the public

13 On the face of it, the public will be protected by a decision to allow erasure as the doctor will no longer be able to practise medicine and any risk to patients is removed. Case examiners should bear in mind that this protection only extends to patients in the United Kingdom and there is a risk that patients elsewhere may be placed at risk if the doctor practises overseas.

14 When considering protection of the public, case examiners should also note the potential risk posed by a doctor might be revived by a future application for restoration to the register. The regulations provide a safeguard that any restoration application would be referred to the case examiners to consider any outstanding fitness to practise concerns.

15 However, the revival of an unresolved investigation may not be possible as evidence might disappear or deteriorate. For example, a witness's memory may fade or they may be uncontactable or have died. This raises the prospect of a doctor being restored to the register when their registration was likely to have been restricted or erased if the original investigation had been allowed to run its course.

Maintaining and promoting public confidence in the medical profession

16 Case examiners should assess the seriousness of the allegations and whether it would undermine public confidence in the medical profession if they were not fully investigated. This may involve the allegations being heard in public at a tribunal

hearing and the doctor receiving a sanction. This in itself strengthens public confidence that proper standards of conduct and performance are being upheld.

17 The extent to which public confidence is relevant will vary depending on the circumstances of an individual case. It may be of less significance in cases involving allegations relating to health, performance and language. However there is a clear public interest in cases involving serious convictions or serious misconduct being fully considered in accordance with our fitness to practise procedures.

18 A doctor's health and the likelihood of their returning to practice is also relevant to this aspect of the public interest and to maintaining and promoting proper professional standards and conduct (see below.) Public trust in doctors is less likely to be damaged by decisions to grant VE or proceed with AE if there is a cogent link* between a doctor's diagnosed health condition and the outstanding fitness to practise concerns.

19 When weighing different public interest considerations, it will also be relevant to consider the likelihood of the doctor returning to practice. Where there is evidence to suggest a high probability of the doctor subsequently seeking restoration, this will need to be balanced against other factors such as the seriousness and nature of the allegations and our ability to revive them if necessary.

20 Where there will be obvious difficulties in our reviving allegations should the doctor later seek restoration, this is likely to weigh against erasure being in the public interest.

Maintaining and promoting proper professional standards and conduct for doctors

21 Where it is alleged that a doctor has significantly and/or persistently breached the professional standards we set for doctors, this gives rise to a public interest in the alleged breaches being properly investigated (with a public hearing held in some cases) and not evaded.

22 As above, however, case examiners should carefully weigh the extent to which this element of the public interest is relevant as this will vary depending on the particular circumstances of each case.

* Please refer to our separate Guidance for decision makers on assessing the impact of health in misconduct, conviction, caution and performance cases.

Cases where VE and AE should not proceed unless there are exceptional circumstances

23 The following are examples of cases where (except in exceptional circumstances) it will not be in the public interest to allow voluntary erasure or proceed with administrative erasure before the conclusion of fitness to practise proceedings, including a MPT hearing in some cases. This is because they involve a conviction for a serious criminal offence or the allegation carries a presumption of impaired fitness to practise.

a Ongoing police investigations or convictions for serious offences

Although it is not possible to provide an exhaustive list, the key issue is whether public confidence would be undermined if the GMC did not fully investigate the matter.

b Allegations of sexual assault or indecency

This encompasses a wide range of behaviour including allegations of sexual assault and abuse, allegations in relation to indecent images of children and allegations of sexual harassment in the workplace. This category also includes misconduct within a clinical setting where there is an allegation the doctor's behaviour was sexually motivated. For example, performing an intimate examination with no clinical justification or failing to maintain professional boundaries when treating a patient by making a remark of a sexual or inappropriate personal nature.

c Allegations of violence

d Allegations of improper sexual/emotional relationships with patients including that the doctor:

i behaved in a sexualised way towards a patient

ii pursued a sexual relationship with a patient, particularly but not exclusively where at the time of the professional relationship the patient was additionally vulnerable, for example due to their personal circumstances or mental health problems

iii abused their professional position by engaging in an inappropriate emotional or financial relationship with a patient.

e Allegations of knowingly practising without a licence

f Allegations of unlawful discrimination in relation to characteristics protected by law

g Allegations of dishonesty

h Gross negligence or recklessness about a risk of serious harm to patients

The above is not an exhaustive list and there is clearly a public interest in allowing all allegations of serious misconduct to be fully investigated and, if there is a realistic prospect of establishing impairment, ventilated in public at a tribunal.

Exceptional circumstances

24 There may sometimes be exceptional circumstances when it is appropriate to allow voluntary or administrative erasure prior to the conclusion of the fitness to practise process, even if a case falls into one of the categories above. These may include cases:

a where a careful balancing of the relevant factors leads to the conclusion that erasure is in the public interest. For example, the doctor has assaulted someone in a pub or engaged in an act of minor dishonesty such as stealing a low value item and there is a cogent link between the misconduct and the doctor's health. It would be disproportionate to not allow erasure to proceed in these circumstances.

b where the allegation is at the lower end of the spectrum of seriousness of conduct that attracts a presumption of impairment and the likelihood of the doctor ever returning to practice is extremely remote due to the stage of their career, their retirement status and/or the length of time they have been out of practice. Examples include an isolated incident of a doctor prescribing without a licence or failing to return electronic devices provided by their former employer instead retaining them for personal use.

c where the doctor does not have capacity to understand the allegations or to seek/act on legal advice [see paragraphs 53 to 57 below]

d where the doctor is suffering from a terminal or very serious illness and there is no prospect they will recover sufficiently to practise medicine again

e where the complainant is unwilling or unable, for example due to serious illness or being deceased, to provide evidence to support the allegation and there is no prospect of obtaining it from other sources.

25 If case examiners decide to allow VE or AE when the public interest could weigh against this (for example if the case falls into one of the categories in paragraph 23), they must provide detailed reasoning which clearly records the exceptional circumstances that apply.

Overarching principle

VE or AE should usually be refused or advised against if the allegations against the doctor carry a presumption of impairment and no exceptional circumstances apply. In these cases, the fitness to practise process should be allowed to proceed in the normal way.

Other cases

26 In cases where the allegations do not carry a presumption of impairment and there is no compelling public interest reason to refuse VE or prevent AE, case examiners should go on to assess the risks that may arise should the doctor apply for restoration. This will involve consideration of:

- the doctor's health and the likelihood of the doctor returning to practice
- our ability to revive the allegations against the doctor should they apply for restoration.

The doctor's health and the likelihood of the doctor returning to practice

The doctor's health

27 If a doctor provides evidence they are in poor health and their condition is serious with a low likelihood of recovery, this is likely to be a strong indicator that they are unlikely to seek restoration in future and their application for VE is genuine.

28 In cases where the allegations and evidence relate exclusively to a doctor's health, case examiners should generally grant the application even where the doctor has indicated they may seek to return to practice if their health improves.

The doctor's future intentions

29 A doctor can apply for restoration at any time regardless of any statements they made about their career intentions when applying for VE. Restoration is not automatic and any application where fitness to practise issues arise (either because of the investigation underway when erasure was granted or new concerns) would be considered by two case examiners in accordance with the relevant regulations.*

* If the doctor was granted VE, the relevant regulations would be The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004 but if it was an administrative erasure, the General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004 would apply

Doctors cannot be restored with conditions or undertakings and will (if agreed by two case examiners or a MPT) return to the register with unrestricted registration. Any outstanding concerns about their fitness to practise must therefore be addressed prior to the point of restoration.

30 Case examiners should consider carefully the available information about a doctor's motivation for seeking VE and the likelihood of their applying for restoration. It might also be relevant to consider whether a doctor has purposefully not paid their ARF or maintained an effective address with the intention of being administratively erased to avoid fitness to practise proceedings.

31 VE should not be granted where there is evidence to suggest the doctor has applied solely to avoid a sanction or otherwise circumvent the fitness to practise process and their intention to cease practice is not genuine. However, in cases where the public interest would not be compromised by allowing erasure, applications should not be refused merely because there is evidence our investigation has contributed to a doctor's decision to retire or stop practising.

32 The following factors are relevant to the case examiners' overall consideration of the likelihood a doctor will apply for restoration.

The doctor's age and stage of career

33 Where a doctor applies for VE during the later stages of their career and has retired or can provide evidence to support their intention to retire, this is generally a strong indicator that they are unlikely to seek restoration in the future. However, caution should be applied where the doctor is at an early or mid-career point, where the prospect of a return to work is significantly higher.

34 In some cases, doctors at a very early stage in their working life may demonstrate genuine insight and express their intention to pursue an alternative career path and can provide evidence of that intention. This may include paperwork confirming enrolment in alternative training, eg teacher training or academic study.

35 When considering the likelihood of the doctor seeking restoration, case examiners should also consider the length of time since the doctor last practised medicine. In general, a doctor is less likely to apply for restoration if they have not worked for a significant period of time. When considering a doctor's work history, any evidence that the doctor has practised medicine overseas should be treated with equal weight.

Evidence that the doctor has no intention to practise in the UK or elsewhere in the future

36 Objective information that the doctor does not intend to practise medicine might indicate that the probability of their applying for restoration is low. This could include evidence they have removed themselves from a performers list or resigned from a practice partnership.

37 Any evidence suggesting the doctor intends to return to medicine after a short break should weigh against a decision to grant VE or proceed with AE and the fitness to practise process should be allowed to proceed as normal.

Our ability to revive the allegations against the doctor should they apply for restoration

38 This factor will be relevant to VE decisions and advice about AE.

39 It is important that case examiners assess how feasible it would be to revive the allegations against the doctor should they apply for restoration by considering the following.

a Whether there is a criminal conviction or a determination by another medical or professional regulatory body.

This will mean that the matter can easily be revived in the event of a restoration application. However, as most potential erasures involving serious criminal convictions or determinations will be refused on public interest grounds, this will likely only be relevant if the offence or regulatory matter is at the lower end of the scale in terms of seriousness.

b Whether the doctor has admitted any or all of the allegations against them.

Our ability to revive concerns will be greater if the doctor has admitted the allegations against them. This will most reliably be through a formal response at the rule 4 or 7 stage or via a self-referral at the beginning of an investigation. The admissions would then be considered as part of any subsequent restoration application. If the doctor denies the allegations or disputes any facts, a more cautious approach to granting VE or advising on AE should be used. In these circumstances, it may be safer to allow the current case to progress up to the point a decision is reached on the key issues, which in some cases may include a tribunal determination as to whether the doctor's fitness to practise is impaired.

c Whether we have obtained our own expert report and any other third party evidence which may be at risk of destruction or its relevance decreasing over time.

Where the alleged misconduct took place in a clinical setting, it may be necessary to obtain our own expert report prior to allowing erasure to establish if the doctor's actions fell seriously below the expected standard. It will be difficult to assess whether erasure is in the public interest if the seriousness of the concerns has not been established.

Case examiners should also be satisfied that we have obtained any third party evidence needed to determine both that erasure is appropriate and to safeguard against any risk it will be destroyed or its value degraded over time. Whether or not additional information is required will vary according to the

specific nature of the case but could include medical records, local investigation reports, audit data and witness statements. Obtaining this information will reduce the risk of our being unable, in the event of a restoration application, to revive the allegations due to significant evidence no longer being available or credible.

40 In addition, case examiners should consider whether the nature of the alleged impairment is such that the doctor will be able to provide objective evidence (in respect of these allegations) that they are fit to practise unrestricted upon restoration to the register. For example, in cases where there are concerns about health, performance or knowledge of English, the doctor may be able to demonstrate these have been remedied by undergoing the relevant assessment.

Overarching principle

VE or AE should usually be refused or advised against if an assessment of the relevant factors suggests the doctor may apply for restoration in future and, should they do so, we will not be able to effectively revive the allegations against them. In these circumstances, the fitness to practise process should be allowed to proceed in the normal way.

Applying the guidance

41 With some exceptions, erasure can usually proceed in cases involving health, language or performance as they do not generally raise significant public interest concerns. The future risk to patients arising from a restoration application is low because the doctor will have to demonstrate their fitness to practise by undergoing an objective assessment should they wish to return to practice.

Cases involving concerns about a doctor's health or knowledge of English

42 Where the allegations and evidence relate exclusively to a doctor's health or knowledge of English, case examiners should generally grant the application even if the doctor has indicated they may apply for restoration in future. In such cases, there are no public confidence issues to consider and, if the doctor applies for restoration, we can ask them to undergo a health or language assessment to demonstrate that they are fit to practise without restriction.

Cases involving concerns about a doctor's performance or clinical competence

43 In most cases where the concerns solely relate to a doctor's performance or clinical competence, it is likely to be appropriate to grant VE or authorise AE even where a performance assessment has found the doctor is not fit to practise or is only fit to practise on a limited basis. Patients will be protected by the doctor's erasure as they will be unable to work. The risk arising from any restoration application will be small

because we can ask the doctor to undergo a performance assessment to demonstrate that in respect of their clinical knowledge and/or skills they are fit to practise without restriction. Doctors applying for restoration will bear the cost of performance assessments.

44 There may however be cases involving allegations of poor performance where there is a public interest in the concerns being fully investigated and ventilated before a tribunal. This may be because the doctor's allegedly deficient performance has been linked to serious harm to patients or resulted in significant public concern. Although the circumstances of each case will need to be carefully considered, neither voluntary nor administrative erasure should be allowed where it would be contrary to the public interest.

Poorly defined performance concerns

45 There will be cases where (at the time of the VE application or request for advice on AE) the concerns about the doctor's performance are vague or their seriousness has not yet been established. Case examiners should be cautious about allowing erasure if there is a significant likelihood of the doctor seeking to return to practice. Ill-defined performance allegations may be hard to revive in the event of a restoration application as it will be difficult to require a doctor to undergo a performance assessment if we are unable to precisely define the concerns about their practice.

46 Although decisions should be made on a case by case basis, it may be appropriate to refuse erasure and allow the investigation to continue with a view to re-evaluating the position when sufficient evidence has been obtained to allow an informed decision.

Allegations of misconduct, criminal cases and determinations by regulatory bodies

47 VE or AE should usually be refused in cases of a serious nature involving allegations of misconduct, ongoing police investigations or convictions and determinations by other regulatory bodies. By cases of a serious nature, we mean that public confidence in doctors would be undermined if a full investigation did not take place. Examples of cases where it will not be in the public interest to prematurely end the fitness to practise process are at paragraph 23 above.

48 If the concerns are insufficiently serious to weigh against VE or AE, then case examiners should consider, as part of their overall assessment of the public interest, the likelihood of the doctor seeking to practise again and whether the concerns could be effectively revived in the event of a restoration application. This requirement will be satisfied where we have evidence of a criminal caution/conviction or a determination by a professional regulatory body. If however our investigation is at an early stage or significant information is still awaited, it will be appropriate to wait

until our evidence collection is more advanced before granting VE or advising in favour of AE.

Multi-factorial cases

49 When considering multi-factorial cases, case examiners should carry out the same assessment as for alleged misconduct and criminal/determination cases with greatest weighting being given to the public interest considerations arising from the most serious allegation. Erasure should be refused if any aspect of the case would mean it is inappropriate to remove the doctor's name from the register pending full investigation of the allegations against them.

Cases likely to result in a warning

50 Where a warning is the likely outcome, it will usually be appropriate to allow voluntary or administrative erasure to proceed as the concerns about the doctor even if proven would not amount to impaired fitness to practise. However, warnings are a significant regulatory action which are published on the doctor's online record for two years and disclosed to current employers indefinitely. Their purpose includes promoting and maintaining good professional standards and conduct together with public confidence in doctors. Case examiners should therefore be mindful that in some cases it will not be in the public interest to allow erasure until the warning has been issued and appears on the doctor's published history. The public interest extends beyond media interest in a case and focuses largely on our responsibility to uphold proper professional standards by taking action when these are significantly breached which, in turn, will help promote and maintain public confidence in the medical profession and proper professional standards and conduct.

51 Examples of cases where it may be appropriate to delay erasure until a warning has been issued are:

- convictions for driving with excess alcohol
- a significant breach of our guidance on obtaining consent for medical treatment
- a breach of data protection legislation resulting in patient information being inappropriately disclosed to a third party.

This is not an exhaustive list and the public interest considerations should be weighed carefully in each case.

Doctors working overseas

52 If there is information that a doctor intends to practise overseas, case examiners should consider whether erasure is in the public interest following the principles in this guidance. In doing so, case examiners should bear in mind that in this context the public interest is primarily the interests of the UK public unless the nature and

seriousness of the outstanding allegations suggest a serious potential risk to overseas citizens. In some circumstances, we can use our powers under section 35B(2) of the Medical Act 1983 (as amended) to disclose unresolved concerns to overseas regulators and legal advice should be sought if case examiners feel this is appropriate in a specific case.

The doctor's ability to engage in fitness to practise proceedings

53 This will usually only be relevant in cases where it would not otherwise be in the public interest to allow erasure due to the serious nature of the outstanding concerns.

54 It will generally be appropriate to grant VE where we have been provided with sufficient evidence that the doctor is unable to understand or participate in fitness to practise proceedings due to an ongoing mental or physical condition. Such evidence should be provided by the doctor seeking VE. Additional information should be sought if the evidence provided on behalf of the doctor does not fully address the relevant factors. These will include the permanence of the doctor's condition, its specific impact on their ability to address the allegations against them and the likely risk of harm to the doctor from the continuation of fitness to practise proceedings. In the first instance, further clarification should be requested from medical professionals already familiar with the doctor's health. However, rarely, it may be necessary to request an opinion from a GMC health examiner about the doctor's ability to take part in the fitness to practise process.

Long term impairment

55 On occasion, an application for VE may be submitted on behalf of a doctor whose mental capacity is severely impaired, for example through a degenerative illness like Alzheimers disease. Applications may also be received from doctors with serious long term health conditions such as cancer which make it difficult for them to take part in fitness to practise proceedings. Case examiners should consider:

a the extent of the impact on the doctor's ability to understand the allegations against them and provide a response or instruct legal representatives

b the quality of evidence provided to support the VE application on the grounds of diminished capacity or other serious health issues. As a minimum this should include an up to date medical report by a consultant psychiatrist or other appropriate specialist involved in the doctor's treatment which specifically comments on their ability to participate in fitness to practise proceedings. Any report should also indicate whether there is a possibility of recovery or if the doctor's condition is likely to deteriorate further over time.

Short term or episodic impairment

56 In some circumstances, a doctor's acute ill health may be episodic in nature and linked to the stress of engaging in a fitness to practise process, eg depression or an anxiety disorder. Where the doctor's ill health impacts on their ability to instruct legal representatives or significantly increases the risk of suicide or another act of self-harm, case examiners should consider if the evidence provided addresses all the necessary issues. Such evidence should be provided by the doctor seeking VE but if this is not sufficient, additional information should be obtained from their treating doctor(s) or more rarely an independent opinion may be needed from a GMC health examiner. As above, however, this will only be necessary if the case would otherwise not be suitable for voluntary erasure due to public interest or other concerns such as our ability to revive the allegations in future.

57 Case examiners should also exercise discretion where a doctor's irregular compliance with treatment may affect their ability to instruct legal representatives. They should assess whether the evidence provided on the doctor's behalf is adequate or if further clarification is needed on the extent to which the doctor is affected by their health condition.

Administrative erasure – cases involving health

58 Case examiners should exercise caution when advising on whether administrative erasure should proceed if there are concerns about the doctor's health. This is because the doctor may find it difficult or impossible to be restored to the register in future as this would require them to demonstrate they are fit to practise without any restriction. Had the doctor remained on the register, it is likely they would have retained registration with their practice being restricted through undertakings.

59 If the doctor's failure to pay their ARF or maintain an effective address is likely to be linked to the concerns about their health, this is an indicator that administrative erasure is not appropriate and advice on the likelihood of a link may need to be sought, where applicable, from the doctor's medical supervisor. AE would be unfair in these circumstances as, should the doctor's health improve and they wish to return to practice, their ability to do so may be significantly hindered by not being able to demonstrate they are fit to practise unrestricted.

Dealing with applications for restoration following voluntary and administrative erasure

60 Doctors can apply for restoration at any time following VE or AE. When applying for restoration the onus lies with the doctor to demonstrate that they are fit to practise without restriction. If any concerns have arisen since the doctor was erased from the register or if there are any outstanding fitness to practise issues, the Registrar will refer the matter to case examiners for consideration.

61 Case examiners have the power to grant restoration, refuse restoration, or refer the matter to a MPT. Two case examiners (lay and medical) will consider the application and if they are unable to agree, the matter is referred to the Investigation Committee.

62 In the first instance, case examiners should consider whether the fitness to practise concerns, if proved, may give rise to a finding of impaired fitness to practise. The test for restoration is whether the doctor is fit to practise unrestricted having regard to the GMC's overarching objective.

63 Case examiners should consider whether the doctor is fit to practise and if restoration is in the public interest. In brief, case examiners should ask themselves: will the public be protected by restoration and will both confidence in the medical profession and proper professional standards and conduct for doctors be maintained by allowing the doctor to practise again?

64 If this test is met, case examiners would normally be expected to grant restoration without referring the matter to a tribunal. There may however be cases where there is insufficient information to assess the seriousness of the concerns and therefore whether restoration should be granted. Where appropriate, case examiners should request any further information which is needed to clarify the gravity of the allegations and make a restoration decision.

Health

65 Where concerns relate to a doctor's health, case examiners should consider whether there is any reason to believe that the doctor is not able to manage their condition adequately to ensure patient safety. If the case examiners are satisfied that there is no risk to patient safety or public confidence and there are no other fitness to practise concerns, restoration should be granted. If the case examiners have concerns that the doctor's fitness to practise may be impaired by reason of ill health, the doctor should be invited to undergo a health assessment. This may include concerns about a recurring condition which may render them unfit to practise in future.

66 Where both health examiners agree that the doctor is fit to practise without restriction, this will usually indicate that it is appropriate for case examiners to grant restoration. If both health examiners agree that the doctor is not fit to practise without restriction, this is likely to be a strong indicator in favour of the case examiners refusing restoration. Where the examiners do not initially agree on whether or not the doctor is fit to practise, they will be asked to confer with a view to reaching a consensus. If one health examiner maintains that the doctor is not fit to practise without restriction, case examiners should usually refuse restoration or refer the matter to a MPT.

67 If the doctor declines to undergo a health assessment, this will weigh in favour of case examiners refusing to grant restoration, as we will not have objective evidence they are fit to practise without restriction.

Language

68 Where there are outstanding concerns about a doctor's knowledge of English, they should be asked to undergo a language assessment. If the doctor passes this will usually (in the absence of any other concerns) indicate that restoration should be granted. A doctor's failure to reach the minimum acceptable score will be a strong indicator their application should be refused.

69 If the doctor declines to undergo a language assessment, it is likely to be appropriate for case examiners to refuse to grant restoration, as we will not have objective evidence they are fit to practise without restriction.

Performance

70 There may be concerns about a doctor's performance arising from a historic complaint or referral or notification of concerns arising from the doctor's practice in another jurisdiction whilst not registered with the GMC.

71 If there are significant outstanding concerns about a doctor's performance, they should be invited to undertake a performance assessment and case examiners may be asked to provide advice to the Registrar on the necessity and potential scope of any assessment. Performance concerns will arise from information that demonstrates, or appears to demonstrate, repeated or persistent poor performance against one or more of the categories in *Good Medical Practice*. Examples of common areas of deficient professional performance are:

a repeated clinical mistakes

b poor prescribing

c poor performance in record keeping or other administrative tasks essential to patient safety

d a lack of familiarity with basic clinical/administrative procedures and guidelines

e failure to work effectively and/or collaboratively with colleagues

The information may have arisen from a variety of sources including previous reports from local assessments or investigations that, when considered together, shows a pattern of poor performance which may place patients at risk. The Registrar will direct the doctor to undergo a performance assessment following careful consideration of all the relevant factors, including case examiner advice.

72 A performance assessment prior to restoration will not be indicated if:

a the doctor has recently undertaken a health assessment which found they were not fit to practise without restriction (in which case the application should be refused)

b there are concerns about the doctor's knowledge of English and they have not achieved the minimum acceptable score in a language assessment

c there is other significant evidence to demonstrate that an assessment is almost certain to find the doctor's performance to be deficient.

73 Where an assessment is undertaken and the assessors consider the doctor's performance to be deficient, it is likely to be appropriate for case examiners to refuse the restoration application. If the assessors consider that the doctor's performance is not deficient this would normally give rise to the expectation that the case examiners will grant restoration. Where an assessment produces no conclusive view on a doctor's performance, case examiners should normally refer the matter for consideration by a MPT.

74 If the doctor declines to undergo a performance assessment, this will be a strong indicator that case examiners should refuse to grant restoration, as we will not have objective evidence they are fit to practise without restriction.

Misconduct, convictions and determinations

75 If there is a realistic prospect of establishing that a doctor's fitness to practise is impaired by reason of misconduct, a caution/conviction or a determination and the matter has not previously been determined by case examiners or a MPT, the application should be referred for consideration by a MPT.

76 Where a doctor was voluntarily or administratively erased while their registration was suspended or subject to conditions or undertakings due to concerns about their conduct, this may be considered a strong indicator that any application for restoration should be referred to a MPT for consideration.

77 If a doctor has been convicted of a criminal offence considered to present a very significant risk to public confidence in the profession (such as but not limited to murder, human trafficking, rape, sexual assault of an adult or other sexual offences relating to children or vulnerable adults), case examiners should normally refuse restoration without referring the matter to a MPT.

78 If the doctor has been convicted of another crime which, although serious, is not fundamentally incompatible with registration as a doctor, this would normally give rise to the expectation that the matter will be referred to a MPT for consideration.

79 There will also be restoration applications from doctors who have received a criminal caution or conviction for offences at the lower end of the scale which resulted from misconduct in their personal life. For example, driving with excess alcohol, criminal damage or fare evasion. It will usually be appropriate for case examiners to allow restoration in these circumstances. However, a careful assessment should be made to ensure there are no aggravating factors or public interest concerns requiring referral to a tribunal.

80 It will usually be appropriate to refer a restoration application to a MPT if there is a new or outstanding determination against the doctor by another regulatory body including those overseas. Determinations of this nature usually raise an issue of impairment although there may be rare occasions when case examiners (having carefully considered all the circumstances) feel it is appropriate to grant restoration as the doctor is fit to practise unrestricted.

Multifactorial cases

81 In multifactorial cases, an application for restoration should be refused or referred to a tribunal if any of the outstanding concerns about the doctor's fitness to practise would make this appropriate.

Is there a time period before a doctor can re-apply after being refused restoration?

82 Case examiners do not have a power to specify how long the doctor must wait before reapplying after being refused restoration. If a doctor is refused restoration by case examiners they can re-apply at any time.

83 Where a doctor has made repeated applications for restoration case examiners may, at their discretion, refer the matter to a MPT for consideration.

84 A MPT cannot indefinitely suspend the doctor's right to apply if they were voluntarily or administratively erased from the register as these applications were not made under section 41 of the Medical Act.

85 However, the regulations governing restoration following both voluntary and administrative erasure provide that, should a MPT refuse restoration, the doctor cannot apply again for 12 months or "such other period as the medical practitioners

tribunal may specify."* The tribunal can therefore set a period longer than 12 months if it deems this appropriate in the circumstances.

Last updated in September 2019

* regulation 4(9) of The General Medical Council (Restoration following Administrative Erasure) Regulations Order of Council 2004 and regulation 5(9) of The General Medical Council (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations Order of Council 2004