

## Guidance to the GMC's *Fitness to Practise Rules 2004 (as amended)*

### Purpose

- 1 The purpose of this guidance is to:
  - provide an overview of the fitness to practise procedures
  - demonstrate the way in which the [Fitness to Practise Rules 2004 \(as amended\)](#) ('the rules') are expected to be put into effect by the General Medical Council (GMC) and Medical Practitioners Tribunal Service (MPTS).
- 2 The guidance is not intended to be exhaustive. It should be read in conjunction with other relevant guidance produced by the GMC and MPTS. For example [Good medical practice](#), the [Sanctions Guidance](#) and any other guidance specifically designed to assist decision makers by clarifying the criteria and thresholds to apply in reaching fitness to practise decisions.

### Our overarching objective

- 3 When exercising our fitness to practise function, our overarching objective is to protect the public. This includes:
  - protecting, promoting and maintaining the health, safety and well-being of the public
  - promoting and maintaining public confidence in the profession, and
  - promoting and maintaining proper professional standards and conduct.

Any decision taken as part of the fitness to practise process must be made with the overarching objective in mind, setting out which element(s) is engaged.

# Investigation stage

## Initial consideration and referral of allegations (rule 4 – ‘Triage’)

- 4 A doctor’s fitness to practise may be found to be impaired by reason of any, or all, of the following<sup>1</sup>:
- misconduct
  - deficient professional performance
  - a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence adverse physical or mental health
  - not having the necessary knowledge of the English language
  - a determination by another health regulatory body, in the United Kingdom or elsewhere, that their fitness to practise is impaired.
- 5 On receipt of initial information about a doctor, the registrar or their staff will consider if the concern raises a question of whether any of the categories of impairment set out above apply. To assist in this task, the registrar may make provisional enquiries. For example, the registrar may ask for information from the doctor’s employer or any person or body for whom the doctor provides medical services (together referred to as the doctor’s ‘employer’).
- 6 The registrar may conclude the matter at the Triage stage, refer it for investigation and a decision by the case examiners, or refer it direct to a medical practitioners tribunal (‘MPT’) for adjudication).

### 6.1 The registrar can conclude the case if:

- it does not raise a question of whether a doctor’s fitness to practise may be impaired to a degree warranting regulatory action on their registration<sup>2</sup>
- the concern is not about a registered doctor, or
- it is not relevant to the GMC, ie it is about the level of fees charged for private treatment/ service.

<sup>1</sup> In accordance with section 35C(2) of the [Medical Act 1983](#) (as amended) (‘the Act’).

<sup>2</sup> Good Medical Practice clarifies that ‘serious or persistent failures to meet the standards [in Good Medical Practice] will put your registration at risk’.

- 6.2** The registrar may conclude the case on the grounds that it is vexatious.
- 6.3** Cases which do not meet our threshold are closed. In some we may also notify the doctor's responsible officer or employer of the concern.
- 6.4** If the registrar decides to close a case, they will notify the person(s) who brought the concerns to our attention, of the reasons.
- 7** If the most recent events giving rise to the concern took place more than five years before we received it, the registrar may refer the case for investigation only if they consider it is in the public interest.
- 7.1** The registrar may make enquiries before deciding whether or not the case should proceed to investigation.
- 7.2** If the registrar concludes the case on the grounds that the complaint is vexatious, or because the events took place more than five years before receipt of the allegation by the GMC, we will notify the doctor of the concern and the decision to close the case<sup>3</sup>.

## Convictions, cautions and determinations (rule 5)

- 8** There is a presumption that when the doctor is the subject of a criminal conviction or caution, or a determination by another regulatory body, the matter will proceed directly to a hearing by a MPT. This will always be the outcome when a criminal conviction has resulted in a custodial sentence (including suspended sentences). In all other cases, the registrar may decide to investigate further, before referring it to the case examiners for a decision as to the appropriate action to take. When a case involving a conviction or determination is heard by a MPT, we will not be required to re-prove the matters that have already been adjudicated upon<sup>4</sup>. The certificate of conviction, or the certificate signed by an officer on behalf of the regulatory body who made the determination, will be conclusive evidence of the offence unless the doctor disputes being the individual named in the certificate.

## Investigation of allegations (rule 7)

- 9** We will investigate cases to assess whether they should be referred to a MPT. The nature of the investigation that is carried out will depend upon the allegation, but may include:
- seeking further information from the complainant

<sup>3</sup>Subject to considering any concerns raised or specific requests received from the complainant about the use of their personal information.

<sup>4</sup> In accordance with rules 34(3) to (5).

- seeking comments from the doctor under investigation
- obtaining medical records
- obtaining other documentary evidence from third parties such as the police, or the doctor's employers
- taking statements from witnesses
- obtaining expert reports on clinical or other matters
- directing the doctor to undergo an assessment of their health or performance<sup>5</sup>, or knowledge of the English language<sup>6</sup>.

**10** Performance assessments are carried out by assessor(s)<sup>7</sup>. It will be tailored to the doctor's employment or previous employment. It will generally include a review of a sample of records and practice documents, interviews with the doctor and third parties, and tests of competence to assess the doctor's knowledge and skills. The assessor(s) may seek advice or information from any person that they consider will assist them in carrying out the assessment. They will disclose any written information or opinion received, which may influence their assessment of the standard of that doctor's professional performance, to the doctor for them to comment on. The assessor(s) will produce a report which will be disclosed to the doctor and any employer by whom the doctor is employed to provide medical services<sup>8</sup>.

**11** A health assessment<sup>9</sup> involves an examination of the doctor's physical and/or mental health by two independent doctors that we have appointed, known as medical examiners. Each medical examiner will prepare a report that must be disclosed to the doctor<sup>10</sup>.

**12** If an English language assessment is directed<sup>11</sup>, the doctor must arrange to undertake an assessment that is recognised and accepted by the GMC, within the period specified. This will be between 30 and 90 days. We will generally obtain the results direct from the test centre. We will only meet the cost of sitting the test on one occasion.

**13** For the consequences of failure to comply with the assessment process refer to the [Procedure at a non-compliance hearing \(rule 17ZA\) section](#).

<sup>5</sup> In accordance with rule 7(3).

<sup>6</sup> In accordance with rule 7(3A).

<sup>7</sup> In accordance with Schedule 1.

<sup>8</sup> In accordance with rule 7(4) and 7(5).

<sup>9</sup> In accordance with Schedule 2.

<sup>10</sup> In accordance with rule 7(4).

<sup>11</sup> In accordance with Schedule 3.

- 14** At the end of the investigation, the registrar will disclose to the doctor the allegation and any documents and evidence gathered in relation to the allegation. The doctor will be given at least 28 days to provide written comments.

## Decision by case examiners or Investigation Committee (rules 8 to 9)

- 15** Decisions on cases at this stage are taken by two case examiners, one medical and one lay.
- 16** At the conclusion of the investigation stage, the case examiners will be provided with the allegation(s), any evidence collected and, if provided, the doctor's written comments. Having reviewed all relevant information, the case examiners may decide, in agreement, to conclude a case with the following:
- no action
  - the issuing of a [warning](#)
  - inviting the doctor to comply with [undertakings](#), or
  - referring the matter for adjudication before a MPT
  - if no agreement can be reached between the case examiners, or a doctor asks for an oral hearing following the issuing of a warning, the matter will be referred to the Investigation Committee.
- 17** Allegations will only be referred to the MPTS if the case examiners consider that there is a realistic prospect a tribunal would find the practitioner's fitness to practise impaired to a degree justifying action on registration (the realistic prospect test). The case examiners will first consider whether sufficient investigations have been carried out in order to enable them to reach such a decision and, if they feel further information would assist them, they will request that the registrar obtains it.
- 18** Further guidance regarding the exercise by the case examiners and Investigation Committee of their functions under these rules can be found on our [website](#).

## Undertakings (rule 10)

- 19** Before an allegation has been determined by the case examiners at the end of an investigation<sup>12</sup> or has been referred to the Investigation Committee or MPT, the registrar may refer the allegation to the case examiner for the consideration of

<sup>12</sup> In accordance with rule 8(2).

undertakings<sup>13</sup>. If the case examiners agree that a doctor's fitness to practise is impaired or the doctor suffers from a continuing or episodic health condition, which may be expected to cause a recurrence of impairment, they may invite the doctor to accept undertakings. If these undertakings are accepted the investigation will conclude and no further action will be taken.

- 20** Undertakings may be agreed only where they will provide sufficient protection to the public. They may not be entered into if there is a realistic prospect that, if the allegation were referred to a MPT, the tribunal would order that the doctor's name be erased from the medical register.
- 21** Where undertakings have been either proposed or accepted, the case may still be referred to the MPTS to arrange a MPT hearing if:
- the doctor declines to accept the proposed undertakings, or fails to reply to an invitation to do so
  - the doctor subsequently breaches the undertakings, or
  - we receive new information suggesting a deterioration in the doctor's health, performance or English language, or otherwise giving rise to further concerns about the doctor's fitness to practise such that undertakings are no longer sufficient to protect the public.
- 22** Undertakings can be agreed between the doctor and the GMC at a hearing after the tribunal has made a finding of impairment<sup>14</sup>. If undertakings have been agreed between the GMC and the Doctor, the tribunal may take these into account when deciding what action it should take at the sanctions stage, provided that certain conditions are met.
- 23** When undertakings have been agreed by the case examiners or taken into account by a MPT, they will be monitored and reviewed by our Case Review team. The team will obtain regular progress reports from appropriate parties, such as the doctor's employer, GP and medical and/or workplace supervisor. They will assess the doctor's compliance with the undertakings and, in a health case, any change in the doctor's condition. If the undertakings are no longer appropriate or necessary, the matter may be referred to the MPTS to arrange a MPT hearing or the case examiners may agree to maintain or vary the undertakings, or direct that the undertakings no longer apply and the allegation should not be considered further.
- 24** Where the undertakings relate to a doctor's performance or misconduct, we will also seek an objective assessment of their performance before they return to unrestricted

<sup>13</sup> In accordance with rule 10.

<sup>14</sup> Undertakings can also be agreed by the doctor and case examiner before a matter is referred to a hearing.

practice, either through a full performance assessment or a tailored assurance assessment.

## Warnings (rule 11)

- 25** A warning may be issued at both the investigation stage and the adjudication stage of fitness to practise proceedings, if either the case examiners or a MPT have concluded that a doctor's fitness to practise is not impaired but there is evidence to suggest that their performance has fallen below acceptable standards warranting a formal response. A warning will be appropriate if:
- there has been a significant departure from [Good medical practice](#), or
  - there is a significant cause for concern following an assessment of the doctor's performance.
- 26** The doctor will be informed if the case examiners are considering whether to issue a warning. They will be given an opportunity to provide comments and also have the right to request an oral hearing be held. If the doctor chooses not to comment or does not dispute the facts alleged, and if the case examiners agree to do so, a warning may be issued.
- 27** The Investigation Committee may decide to issue a warning, to conclude the case with no action or, if there is new evidence is adduced that suggests it is appropriate to do so, refer it to the MPTS to arrange a MPT hearing.
- 28** The procedure that governs oral hearings held by the Investigation Committee allows for the parties to make representations and submit evidence. The Investigation Committee may receive evidence in documentary or written form and will only hear oral evidence where it considers that this is necessary in order for them to reach a decision on the matter.

## Letters of advice

- 29** If the case examiners or the Investigation Committee decide to conclude the case, they may consider it is appropriate to exercise our power to advise members of the profession on standards or medical ethics, by issuing a letter of advice<sup>15</sup>. This will generally occur when the concerns indicate that there has been a minor departure from the principles set out in [Good medical practice](#) or a minor cause for concern following assessment, which is not so serious as to warrant a warning.

<sup>15</sup> In accordance with the general power under section 35 of the Act to provide advice on standards of professional conduct, standards of professional performance and / or medical ethics.

## Reviews of decisions (rule 12)

- 30** In certain specified circumstances, the registrar may decide to review a decision we have taken to conclude a case with no action, issue a warning, or cease consideration of a case on receipt of undertakings.
- 31** The review may arise as a result of: an application by the doctor, the complainant and, on the registrar's own initiative or any other person who, in the opinion of the registrar, has an interest in the decision.
- 32** A review may only take place if either:
- the decision in question may be materially flawed, for any reason, wholly or partly or
  - there is new information which may have, wholly or partly, led to a different decision
- and
- the registrar considers that the review is necessary for the protection of the public; the prevention of injustice to the doctor; or is otherwise necessary in the public interest.

The registrar will not review a decision more than two years after it was made, except in exceptional circumstances.

- 33** When the registrar decides to review a decision, they will first notify the relevant persons and seek representations from the doctor, the complainant and any other person who, in the opinion of the Registrar, has an interest in their decision to review a case. The registrar will disclose to them any new information received and carry out any further enquiries considered necessary to enable a decision to be made.
- 34** Following a review where the registrar concludes that all or part of the original decision was:
- materially flawed; or
  - there is new information which would probably have led to a different decision, wholly or partly
- and
- where he considers that to do so is necessary for the protection of the public; or for the prevention of injustice to the practitioner; or otherwise necessary in the public interest.



the registrar may decide to replace the original decision with a new decision (if it is one that the registrar is entitled to make) or refer the matter for reconsideration by the case examiners. Otherwise the registrar must decide that the original decision should stand.

- 35** Following the review, the registrar will notify the doctor, the complainant and any other party whom the registrar considers has an interest in the matter.

## Notification of allegation to employer and other persons

- 36** If a doctor is subject to investigation by us, they must, by law, provide us with details of their employer(s) so that we can notify them of the investigation<sup>16</sup>.
- 37** Notification should be undertaken as soon as reasonably practicable after the earliest of the following decisions has been taken<sup>17</sup>:
- to investigate or assess the doctor's fitness to practise<sup>18</sup>
  - to refer the allegation for consideration by the case examiners<sup>19</sup>
  - to refer the allegation for consideration by an interim orders tribunal (see below)
  - to refer the allegation to the MPTS to arrange a MPT hearing.
- 38** We will not routinely disclose to a doctor or their employer, enquiries that are closed at the triage stage and there is no requirement to notify a doctor's employer of a provisional enquiry. However, while some concerns would not on their own raise a question about the doctor's fitness to practise unless repeated, we will notify the doctor's Responsible Officer as these are matters that a doctor should reflect upon as part of their appraisal and revalidation.

## Interim orders

- 39** The Interim Orders Tribunal ('IOT') of the MPTS may suspend, or impose conditions upon, a doctor's registration on an interim basis pending completion of the investigation and/or hearing of the case. The registrar may at any stage refer a case to the MPTS to arrange an IOT hearing to consider whether such an order should be

<sup>16</sup> In accordance rule 13 and sections 35B(1)(b) and 35A(2) of the Act.

<sup>17</sup> In accordance with rule 13.

<sup>18</sup> In accordance with rule 7(2).

<sup>19</sup> In accordance with rule 8.

made for the protection of patients, or in the public interest or in the interests of the doctor<sup>20</sup>.

- 40** The procedure governing interim order referrals to the MPTS and the consideration of cases by the IOT tribunal is found at rules 25 to 27. Although the parties may make representations at the hearing, oral evidence will not normally be received.
- 41** IOT hearings will be held in private, unless the doctor requests otherwise, or the IOT considers it appropriate to hold the hearing in public <sup>21</sup>.
- 42** In determining the date and location of the hearing, the MPTS will take account of the urgency with which the case should be considered by the IOT. The doctor will be given such notice of the hearing as is reasonable in the circumstances and will be provided with a reasonable opportunity to make representations. The notice of the hearing will be sent by the MPTS and the notice of reasons for the referral by the GMC. Service will be effective when both notices have been sent to the doctor.
- 43** At the first hearing, the IOT may impose an interim order for an initial period of up to 18 months. Any interim order is subject to periodic review; it must be reviewed within six months of the order being made, and thereafter every six months (or in certain circumstances three months). The doctor may, after three months, request an earlier review. An order may be reviewed whenever new evidence relevant to the order becomes available which suggests that the order ought to be reviewed. Where we and the doctor agree on the terms of the order, a '[review on the papers](#)' may be held, ie without the need for the parties to attend in person<sup>22</sup>.
- 44** If we wish to extend an interim order beyond the period initially set by the IOT, then we must apply to the High Court (or the Court of Session in Scotland) to extend the order. Any extension granted by the Court will be for a maximum of 12 months.
- 45** An interim order may be revoked at any time by the IOT if it is no longer required or by the MPT at the end of the substantive hearing.
- 46** A MPT has the power to impose an interim order where it considers it necessary to do so and where the doctor has been afforded an opportunity of appearing before the tribunal and being heard on the question of whether such an order should be made. A MPT will generally only exercise this power where it has decided to adjourn the case and there is no interim order in place at that time. It also has the power to review an interim order<sup>23</sup>.

<sup>20</sup> In accordance with rule 6.

<sup>21</sup> In accordance with rule 41(3) and rule 41(6).

<sup>22</sup> In accordance with rule 26A.

<sup>23</sup> In accordance with section 41A of the Act.

# Action following referral to the MPTS

## Preliminary matters

### *Further investigation of allegations*

- 47** Once a case has been referred to the MPTS to arrange a MPT hearing, the registrar may carry out investigations in order to fully prepare the case for hearing<sup>24</sup>.
- 48** The nature of the investigations required will depend on the circumstances of the case, and the investigations already carried out at the earlier stages, but may include:
- obtaining further documentary evidence
  - taking statements from witnesses
  - obtaining expert reports on clinical or other matters
  - directing the doctor to undergo an assessment of their performance, health, or knowledge of the English language.

## Case management (rule 16)

- 49** The case management powers in the rules allow a legally qualified MPTS case manager or MPT to issue case management directions to the GMC and/or the doctor. The aim of case management directions is to ensure that both parties are prepared, in order to reduce delays, narrow the issues in dispute and minimise the stress placed on witnesses at a hearing.
- 50** In certain hearing types, the MPTS may arrange one or more pre-hearing meetings ('PHM') to list a MPT hearing and give legally binding case management directions. A PHM may take place in a case relating to any type of allegation of impairment.
- 51** A PHM will be chaired by a MPTS case manager and will typically be held by telephone conference.
- 52** The MPTS case manager will issue case management directions and provide parties with a record of those directions, as well as any other key points from the discussion<sup>25</sup>. The record of the PHM will be provided to the MPT at the substantive hearing.

<sup>24</sup> In accordance with rule 13A.

<sup>25</sup> A non-exhaustive list of case management directions the MPTS case manager may make is set out at rule 16(6).

**53** Directions issued by the MPTS case manager are legally binding upon the parties and a failure to comply with them may result in adverse inferences being drawn, evidence not being admitted, or costs being awarded<sup>26</sup>. In considering whether to take such action, the tribunal will apply the guidance contained within [Guidance for Medical Practitioner Tribunals on Case Management and Exercising Powers Under Rule 16A](#).

### **Notices (rule 15)**

**54** Following a decision to refer a case to the MPTS to arrange a MPT hearing, the registrar will, at least 28 days before the hearing, send the doctor a notice setting out the allegations of impaired fitness to practise and any facts upon which the allegations are based. The MPTS will notify the doctor of the date and location of the hearing at least 28 days before the hearing. A shorter timeframe for serving notice of the allegation or the Notice of Hearing may be agreed by the doctor or may be applied by the registrar or the MPTS where it is in the public interest to do so<sup>27</sup>.

## **Procedure before the medical practitioners tribunal ('MPT')**

**55** A MPT will include at least one lay tribunal member and one medical tribunal member, and a chair, who may be a legally qualified chair (LQC).

### **Preliminary matters**

**56** The MPT hears and determines any preliminary legal arguments. The doctor will be asked to confirm their name, a registration number, and the chair will ask whether the GMC wishes to amend the particulars of the allegation(s) and whether the doctor wishes to make any admissions to the allegations.

### **Facts**

**57** The GMC will present evidence and make submissions relating to any allegation(s) in dispute.

**58** The doctor may make submissions that insufficient evidence has been presented to find some or all of the disputed facts proved and that the hearing should proceed no further as a result. If submissions are made the tribunal will consider them *in camera*<sup>28</sup> and announce its decision, with reasons. If the submission relates to all allegations and is upheld, the case concludes at that stage.

<sup>26</sup> In accordance with rules 16A and 16B.

<sup>27</sup> Rules 20 and 23 provide equivalent notice provisions for review and restoration hearings (see below).

<sup>28</sup> The term *in camera* describes the parts of the hearing where the parties and their representatives are not allowed to observe the procedure or process, this applies in both public and private hearings.

- 59** If no submission is made, or if the MPT does not uphold any submission, at all or in full, the doctor may present their case on the disputed facts.
- 60** Both parties may then make submissions as to the facts to be found proven in light of the evidence received by the MPT.
- 61** The MPT then considers, *in camera*, whether the disputed facts are proved<sup>29</sup>. Once it has reached a decision on the disputed facts, the MPT announces its decision and the reasons for it, in open session<sup>30</sup>.

## **Impairment**

- 62** Where some, or all, of the facts are admitted or found proven, the MPT receives further evidence and hears submissions, first from the GMC's representative and then from the doctor, as to whether on the basis of the facts found proved, the doctor's fitness to practise is impaired. It is for the tribunal to decide, exercising its judgment, whether the doctor's fitness to practise is impaired.
- 63** The MPT considers, *in camera*, whether the doctor's fitness to practise is impaired. Once it has reached a decision the MPT announces its decision, and the reasons for it, in open session.
- 64** If the MPT concludes that the doctor's fitness to practise is not impaired, it may invite submissions on whether a warning should be issued to the doctor. The MPT will consider the submissions *in camera* and then announces its decision, and the reasons for it, in open session.
- 65** If the MPT concludes that the doctor's fitness to practise is impaired, it then hears further evidence and submissions from both parties relating to sanction.

## **Sanction**

- 66** Having heard the evidence and submissions, the MPT will consider *in camera* whether to impose a sanction on the doctor's registration. It will announce its decision in open session and must give reasons for the decision.
- 67** If the MPT decide to impose a sanction on the doctor's registration, it will then invite further submissions on whether to impose an immediate order on the doctor's registration. It will then consider, *in camera*, whether to impose an immediate order

<sup>29</sup> The tribunal applies the civil standard of proof to any disputed facts.

<sup>30</sup> The term *open session* describes the parts of the hearing where all parties and their representatives are present, this applies in both public and private hearings.

and announce its decision and the reasons for it, in open session. The MPT should also consider whether any existing interim order needs to be varied or revoked.

**68** If the doctor's fitness to practise is found to be impaired, the tribunal must impose the minimum sanction necessary to ensure the public are protected. The tribunal may<sup>31</sup>:

- impose a period of conditions on their registration for up to three years
- suspend their registration for a specified period up to 12 months, or
- direct that a doctor's name shall be erased from the medical register, except where the allegations relate solely to the doctor's health or to a doctor's knowledge of the English language.

**69** Where a tribunal finds that a doctor's fitness to practise is impaired, and the doctor and GMC have agreed written undertakings, the tribunal may take the undertakings into account when considering whether to impose a sanction. In order to decide that a case can conclude with no action, on the basis that the doctor and the GMC have agreed undertakings, the tribunal must consider the undertakings sufficient to protect patients and the public interest. The doctor must agree that the undertakings will be disclosed to their employer and any subsequent enquirer.

## Joinder

**70** A MPT may, having regard to any relevant directions given by a MPTS case manager at a PHM, consider and determine together<sup>32</sup>:

- two or more allegations of impairment against the same doctor which fall within the categories of impairment as set out in the Act<sup>33</sup>, or
- allegations against two or more doctors

where it is considered just to do so.

## Post-hearing procedure

**71** When, following a hearing, the practitioner is subject to undertakings or conditions, these will be monitored and reviewed by the Case Review team.

**72** If there is evidence to suggest there has been a breach of conditions or undertakings taken into account at the sanction stage of a MTP hearing or that the doctor's fitness

<sup>31</sup> For the information on the functions of a medical practitioners tribunal please refer to Section 35D of the Act.

<sup>32</sup> In accordance with rule 32.

<sup>33</sup> In accordance with section 35C(2)(a) to (e) of the Act.

to practise has otherwise deteriorated, then the doctor can be referred for an early review hearing in order that appropriate action may be taken. If there is evidence to suggest there has been a breach of undertakings agreed at the investigation stage, the allegations will be referred for a new MPT hearing.

- 73** A doctor is entitled to appeal to the High Court or Court of Session against any decision of a MPT so the determination will not take effect until either the appeal period (28 days) expires, or any such appeal is determined. Where an immediate order is made, any such order takes immediate effect and continues until such time as any appeal is determined.
- 74** The GMC has the right to appeal the decision of a tribunal where it considers it is not sufficient to protect the public and any such appeal must be lodged within 28 days of notification of the decision. Unlike in cases where the doctor appeals, if the GMC appeals, any substantive sanction will take effect once the 28 day period has expired and continue until such time as the GMC's appeal is determined.

## Procedure at a non-compliance hearing (rule 17ZA)

- 75** Where a doctor has failed to comply with a reasonable request to provide information made by the GMC<sup>34</sup>, or with a reasonable direction to undergo an assessment, the absence of such evidence may interfere with our ability to take forward a case on the grounds of impairment. Under these circumstances, the registrar may refer the matter to the MPTS for a non-compliance hearing before a MPT.
- 76** Having dealt with any preliminary arguments, the MPT hears evidence and submissions relating to the question of non-compliance from the GMC<sup>35</sup>. The doctor may then make submissions. The MPT will consider them, in camera, and announce its decision with reasons in open session. If the MPT do not find that there has been a failure to comply with a direction or request to provide information without good reason, the case concludes at that stage.
- 77** Where the MPT makes a finding that that the doctor has failed to comply with a reasonable direction or request to provide information without good reason, they will proceed to consider what sanction, if any, is appropriate. In doing so, the MPT may receive further evidence and hear further submissions from both parties.
- 78** The MPT may direct that a doctor's registration be made conditional for up to three years or a suspension is imposed for a period of up to 12 months.

<sup>34</sup> In accordance with section 35A(1A) of the Act.

<sup>35</sup> In accordance with rule 17ZA(1) which provides the order of proceedings at a non-compliance hearing.

- 79** Following any such submissions the MPT consider in camera whether to impose an immediate order of conditions or suspension (as applicable) and then announces its decision and the reasons for it, in open session.
- 80** The tribunal may consider whether to make, review or revoke an [interim order](#), as appropriate.

### **Non-compliance review hearings**

- 81** As set out in rule 22A, the tribunal must determine whether the doctor has complied with the original request or direction, or whether they have breached any conditions previously imposed.
- 82** The tribunal may extend or revoke the order (to conclude the case) or vary the sanction previously imposed, as appropriate and in accordance with its powers under the Act<sup>36</sup>.
- 83** After a doctor has been suspended under a non-compliance sanction for two consecutive years, and there is evidence of continued non-compliance, the tribunal can suspend the doctor indefinitely. A doctor cannot be erased for non-compliance.

### **Review hearings**

- 84** A MPT may direct a review to be carried out at the end of the period of conditions or suspension to assess whether the doctor's fitness to practise remains impaired.
- 85** If the tribunal has imposed an order of conditions or suspension but they have not directed a review, the registrar will consider whether it is desirable for one to be directed before the expiry of the sanction.
- 86** Before the review hearing, the registrar will carry out any investigations necessary in relation to the consideration by the tribunal of its decision on review and this may include directing a performance, health or English language assessment (rule 19) or a tailored assurance assessment.
- 87** Information relating to the doctor's performance, health and conduct following the imposition of conditions will have been obtained by the Case Review team.

<sup>36</sup> In accordance with section 35D(5), (6), (8), (10), or (12) of the Act.



## Procedure

**88** On review, the tribunal must determine whether the doctor's fitness to practise remains impaired, or whether they have breached any conditions previously imposed<sup>37</sup>. Depending on the outcome, the tribunal may:

- extend the length of the order of conditions or suspension
- revoke the order to conclude the case, or
- vary the sanction previously imposed

as appropriate and in accordance with its powers<sup>38</sup>. In addition, it may take [undertakings](#) agreed between the doctor and the GMC into account when deciding what action it should take.

**89** In cases that relate solely to a doctor's health or knowledge of English language the doctor cannot be erased from the medical register. However, where the doctor's registration has been suspended for at least two years, because of two or more successive periods of suspension, the tribunal can suspend the doctor's registration indefinitely.

**90** If the tribunal decides to direct indefinite suspension, there is no automatic further hearing of the case. But two years after the indefinite suspension takes effect, the doctor can ask for it to be reviewed.

## Early review hearing

**91** An early review hearing may be held, at the discretion of the registrar, where new information received by the GMC indicates that to do so would be desirable<sup>39</sup>.

## Referral of a new allegation

**92** The tribunal will first consider whether the facts alleged in relation to the new matter has been found proved<sup>40</sup>.

<sup>37</sup> In accordance with the procedure set out at rule 22.

<sup>38</sup> In accordance with section 35D(5), (6), (8), (10), or (12) of the Act.

<sup>39</sup> In accordance with rule 21

<sup>40</sup> In accordance with rule 21A which sets out the procedure to be adopted by the tribunal when considering a new allegation together with a case for review.

**93** The tribunal will then proceed to consider the review matter but will have regard to their findings of fact in respect of the new matters when considering whether the doctor's fitness to practise is impaired and whether to impose a sanction<sup>41</sup>.

### **Review on the papers**

**94** Where the GMC and a doctor agree on a proposed outcome and have notified the MPTS, the MPTS must arrange for the matter to be considered on the papers<sup>42</sup>.

**95** The review can be conducted by either a full tribunal or by a tribunal chair. The tribunal/chair may accept the agreed terms, or direct that an oral hearing take place, but cannot amend the terms of the agreement.

### **Powers of the tribunal on review**

**96** At the review hearing, the MPT will consider whether the doctor's fitness to practise is still impaired, and if so, if any further action needs to be taken<sup>43</sup>. MPTs must impose the minimum sanction necessary to ensure the public are protected.

**97** The tribunal have the full range of sanctions available for imposition on review. The [Sanctions guidance](#) provides further information on sanctions at review hearings.

## **Restoration to the medical register (rules 23 and 24)**

**98** If a doctor has been erased from the medical register by a MPT, they may apply for their name to be restored to the register after a period of five years has elapsed since the erasure took effect. Such applications will be determined by a MPT<sup>44</sup>. The five year restriction, however does not apply to doctors who have been administratively erased or voluntarily erased.

**99** A doctor will not be restored to the register unless the tribunal considers they are fit to return to unrestricted medical practice. If a MPT rejects an application for restoration, the doctor cannot apply again for restoration until at least 12 months have elapsed from the date of the earlier decision. If a practitioner's application for restoration is unsuccessful on more than one occasion, the MPT may indefinitely suspend their right to apply for restoration to the register. The doctor can apply to the registrar to arrange for a tribunal to review such a determination not less than three years after the decision is made<sup>45</sup>.

<sup>41</sup> In accordance with rule 22.

<sup>42</sup> In accordance with rule 21B which sets out the circumstances in which a matter can be reviewed on the papers.

<sup>43</sup> In accordance with rule 22(1).

<sup>44</sup> In accordance with rule 24.

<sup>45</sup> In accordance with section 41(11) of the Act.

**100** Before the hearing the registrar will carry out any investigations necessary in relation to the tribunal's consideration of the application for restoration. This may include directing a health, English language or performance assessment<sup>46</sup>. Once the hearing has started, the MPT may adjourn, at any time, to give any direction that it sees fit including that the doctor undergoes a health, English language or performance assessment<sup>47</sup>.

### **Restoration following Administrative Erasure or Voluntary Erasure**

**101** While rules 23 and 24 apply to doctor's seeking restoration following either administrative erasure or voluntary erasure, there are different restrictions placed upon doctors seeking restoration following these forms of erasure, compared to those erased from the medical register by a MPT.

**102** Doctors may apply to the Registrar for restoration at any time following voluntary or administrative erasure. The onus lies with the doctor to demonstrate they are fit to practise without restriction. When an application is received the registrar will either<sup>48</sup>:

- a** restore the doctor's name to the register and notify them accordingly
- b** where information is received which raises concerns that the doctor's fitness to practise may be impaired, refer the application to the case examiners, or
- c** where the application does not meet requirements, reject the application.

**103** When the application is referred to the case examiners they will consider whether the doctor is fit to practise and if the restoration is in the public interest. They have the power to grant restoration, refuse restoration, or to refer the matter to a MPT.

### **Applications for withdrawal of all or part of a matter (rule 28)**

**104** At any time after an allegation has been referred to the Investigation Committee, or to the MPTS to arrange an IOT or MPT hearing, and before the hearing has opened, the registrar may consider that a hearing is no longer necessary. The doctor may also withdraw their request for an oral hearing before the Investigation Committee. In both scenarios, the registrar may refer the matter to the case examiners to decide whether all or part of the matter should be withdrawn.

<sup>46</sup> In accordance with rule 23(1).

<sup>47</sup> In accordance with rule 24(2)(g).

<sup>48</sup> In accordance with regulation 4&5 of the Voluntary Erasure and Restoration following Voluntary Erasure Regulations Order of Council 2004 and regulation 3&4 of the Restoration following Administrative Erasure Regulations Order of Council 2004.

- 105** If it is decided that all or part of a matter should be withdrawn (excepting a non-compliance matter) it can be referred to the CEs to consider whether to impose a warning<sup>49</sup> or recommend undertakings<sup>50</sup>.
- 106** For further information please refer to [\*Guidance for case examiners on the withdrawal of referrals under Rule 28.\*](#)

## **Applications for postponement or adjournment (rule 29)**

- 107** Before the opening of an Investigation Committee hearing, an Investigation Committee member may postpone the hearing, either of their own motion or upon the application of the GMC or the doctor. The hearing can be postponed until such time and date as the Investigation Committee member thinks fit.
- 108** Where a hearing before the Investigation Committee has commenced, the Investigation Committee may adjourn the hearing, either on their own motion or on the application of the GMC or the doctor, until such time as the Investigation Committee thinks fit.
- 109** Before the opening of a hearing before an IOT or MPT, an MPTS case manager may postpone the hearing, either of their own motion or upon the application of the GMC or the doctor. The hearing can be postponed until such time and date as the case manager may think fit.
- 110** Where a hearing before an IOT or MPT has commenced, the applicable tribunal may adjourn the hearing, either on their own or on the application of either the GMC or the doctor, until such time as the tribunal thinks fit.
- 111** Where a hearing before an Investigation Committee or a tribunal, other than a review hearing, has been adjourned, an Investigation Committee member or MPTS case manager (as appropriate) may further adjourn the hearing until such time and date as they think fit. Alternatively, where they consider it appropriate, an Investigation Committee member or MPTS case manager may direct that the issue of postponement be dealt with by the Investigation Committee or tribunal considering the matter.
- 112** Before the decision maker takes a decision to postpone or adjourn a hearing, the GMC and the practitioner must be given reasonable opportunity to make representations. In considering whether to adjourn or postpone a hearing, the decision maker will take into account all material circumstances, including any likely impact on witnesses and the effect of any delay on the fairness of the proceedings.

<sup>49</sup> In accordance with rule 11.

<sup>50</sup> In accordance with rule 10.

For further information please refer to [Guidance on the postponement of an Interim Orders Tribunal or a Medical Practitioners Tribunal hearing under rule 29.](#)

**113** When an Investigation Committee or tribunal resumes an adjourned or postponed hearing, it is possible that some Investigation Committee members or tribunal members may have been substituted. The Investigation Committee or tribunal may issue directions in the interests of justice regarding the stage at which the hearing is to be resumed and any special procedures or directions which must be followed as a result of the substitution. For further information on substitution please refer to [Guidance on the substitution of tribunal members at Medical Practitioners Tribunal hearings.](#)

## Attendance (rules 31 and 33)

**114** Practitioners are expected to attend any hearings held by the GMC or MPTS. While a doctor cannot be compelled to attend or participate, it is often in their interests to do so. A doctor may attend in person or be represented at the hearing by a legal representative or by a representative from certain professional organisations. On a case-by-case basis, the Investigation Committee or tribunal may allow a doctor to be represented by another suitable person, such as a friend, colleague or family member, unless that person is also giving evidence at the hearing. For information on who may be considered appropriate to provide representation for doctors at hearings, please refer to the [Guidance for decision makers on fit and proper persons to provide representation at medical practitioners tribunals, interim orders tribunals and Investigation Committee hearings.](#)

**115** If the doctor does not attend, the Investigation Committee or tribunal may proceed to hear the case in their absence. In deciding whether or not to proceed in the absence of the doctor, they will consider whether all reasonable efforts have been made to serve the doctor with notice of the hearing) and the notice of allegation or matters to be considered at the hearing<sup>51</sup>.

## Evidence and witnesses (rules 34, 35 and 36)

### Evidence (rule 34)

**116** The Investigation Committee or a tribunal – both MPTs and IOTs – may admit any evidence they consider fair and relevant to the case before them<sup>52</sup>.

<sup>51</sup> In accordance with rule 31.

<sup>52</sup> In accordance with rule 34(1).

- 117** The Investigation Committee or a tribunal is to treat a Certificate of Conviction as conclusive evidence of the offence committed, unless the doctor disputes being the individual named on the certificate.
- 118** The Investigation Committee or a tribunal is to treat a certificate of a determination by another health regulatory body regarding the fitness to practise of a person as conclusive evidence of facts found proved in relation to that determination, unless the doctor disputes being the individual names on the certificate.
- 119** A doctor's admission of a fact or description of a fact may be treated as proved.
- 120** Where the Investigation Committee or a tribunal would have admitted an original version of a document, a copy of such a document may be received by the Investigation Committee or a tribunal without the need for proof.
- 121** At any time during proceedings, a party may serve notice on the other party to produce any document that is relevant to proceedings and alleged to be in the possession, ownership or control of that party. This notice is also admissible evidence.
- 122** Parties to proceedings before the Investigation Committee or a MPT are required, at least 28 days before the date of the hearing, to provide the other party with:
- a** a list of every document they propose to introduce as evidence, and
  - b** a copy of every document within that list that they have not yet received
- unless directed differently by a case manager or if agreed between the parties.
- 123** If, in relation to any document, the receiving party requires any relevant person to attend proceedings to give oral evidence or to be available to be cross-examined, they must notify the other party within 14 days of a document list or document being provided. Where the notification relates to a document that is a witness statement and the receiving party wants to apply to the Investigation Committee or a tribunal<sup>53</sup> for the relevant witness to give evidence-in-chief orally, the notification must state this and the reasons for the application.
- 124** However, where the notification requesting a witness to give oral evidence relates to anything other than a signed witness statement, the document may be received into evidence without oral evidence if, having regard to all the circumstances<sup>54</sup> and to justice, that is proper to do so.

<sup>53</sup> In accordance with rule 34(11)(c).

<sup>54</sup> For example, the difficulty or expense in obtaining the attendance of a witness.

- 125** There is a presumption that an Investigation Committee or tribunal will receive signed witness statements, including from the doctor, into evidence. The witness will not be required to give oral evidence-in-chief unless it is agreed between the GMC and the doctor, directed by a MPTS case manager or ordered by the Investigation Committee or tribunal, of their own motion or on application by a party. If a party requires a witness to give oral evidence-in-chief they must give notice, stating their reasons<sup>55</sup>.
- 126** The tribunal will apply the civil standard of proof – the balance of probabilities – to any disputed facts<sup>56</sup>.
- 127** The parties may agree during a PHM that particular witnesses may give oral evidence by video link or telephone link. During the course of the hearing, a party may also apply to the Investigation Committee or tribunal for the oral evidence of a witness to be given in this manner. The Investigation Committee or tribunal is to have regard to any agreement between the parties, relevant directions given by a MPTS case manager on this point and any representations by the other party and may only grant the application if the Investigation Committee or tribunal considers that it is in the interests of justice to do so<sup>57</sup>.

### **Witnesses (rule 35)**

- 128** A witness may be required to answer questions from the tribunal or in cross examination by the other party or their representative<sup>58</sup>.
- 129** The Investigation Committee or tribunal may, on the application of a party, or on its own, agree that the identity of the witness will not be disclosed in public<sup>59</sup>.
- 130** Except for the doctor who is the subject of the allegation in question, or where the Investigation Committee or tribunal decides otherwise, no witness of fact will be allowed to attend or watch proceedings at a hearing until after they have completed giving evidence and have formally been released by the chair<sup>60</sup>.

### **Vulnerable witnesses (rule 36)**

- 131** The Investigation Committee or tribunal can adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness<sup>61</sup>. These may include, but aren't limited to the use of:

<sup>55</sup> In accordance with rule 34(11).

<sup>56</sup> In accordance with rule 34(12).

<sup>57</sup> In accordance with rule 34(13-14).

<sup>58</sup> In accordance with rule 35(2).

<sup>59</sup> In accordance with rule 35(4).

<sup>60</sup> In accordance with rule 35(6).

<sup>61</sup> As defined by rule 36(1).

- video links
- use of pre-recorded evidence
- interpreters
- screens or other measures that prevent the identity of a witness being revealed to the press or general public or the doctor gaining access to the witness, or
- the hearing of evidence in private.

This is on the basis that the quality of their evidence is likely to be adversely affected as a result. Grounds for being deemed a vulnerable witness include, amongst others, witnesses under the age of 18 or with physical disabilities who require assistance to give evidence.

**132** If the allegation against the doctor is sexual in nature and the witness is the alleged victim, the doctor may not personally cross examine the witness without the written consent of the witness. If there is no written consent provided, the doctor should instruct a legal representative to cross examine the witness on their behalf, failing which the MPTS must instruct a legal representative to cross-examine the witness on the doctor's behalf<sup>62</sup>.

## Voting (rule 38)

**133** Voting procedures at a tribunal or at the Investigation Committee are bound by the following principles:

- a** Decisions made by the Investigation Committee or by a tribunal are done so by a simple majority.
- b** The chair of the Investigation Committee or a tribunal is not permitted to exercise a casting vote.
- c** Abstention from voting is not permitted at the Investigation Committee or at a tribunal.

**134** If, at the end of voting, the Investigation Committee or a tribunal are equally split, they are to decide the issue being considered in favour of the doctor<sup>63</sup>. There are, however, two exceptions to this rule.

<sup>62</sup> In accordance with rules 36(4) and (5).

<sup>63</sup> In accordance with rule 38 (5).



**135** Where, after voting, a MPT is equally split when considering either:

- a** a restoration application, or
- b** submissions made by a doctor regarding the sufficiency of evidence adduced to find some or all of the facts proved and whether, as a result, the hearing should proceed

they are to decide the issue against the doctor or person.

## Transcripts (rule 39)

**136** Any party to the proceedings at the Investigation Committee or a tribunal may obtain a copy of the written transcript of any part of the proceedings that they were permitted to attend, with the exception of the deliberations of the Investigation Committee or a tribunal.

**137** Applications to obtain a copy of a transcript from the Investigation Committee are to be made to the registrar of the GMC. Applications to obtain a copy of a transcript from a tribunal are to be made to the MPTS.

## Attendance of the public (rule 41)

**138** There is a presumption all Investigation Committee and MPT hearings will be held in public<sup>64</sup>; however the MPT may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the individual case outweigh the public interest in holding the hearing in public.

**139** Issues relating solely to a doctor's physical or mental health, or whether to make or review an interim order will be heard in private. However, the doctor may request that an IOT be held in public.

**140** The Investigation Committee or tribunal may consider whether to make or review an interim order, or consider a case solely relating to the doctor's physical or mental health in public, where they consider it appropriate, having regard to<sup>65</sup>:

- the interests of the maker of the allegation (if any)
- the interests of any patient concerned
- whether a public hearing would adversely affect the health of the doctor, and

<sup>64</sup> In accordance with rule 41.

<sup>65</sup> In accordance with rule 41(6).

- all the circumstances, including the public interest.

**141** The Investigation Committee or Investigation Committee or tribunal may exclude from any hearing any person whose conduct, in their opinion, is likely to disrupt the orderly conduct of the proceedings<sup>66</sup>.

**This was last updated in August 2019.**

<sup>66</sup> In accordance with rule 42.

# Annex A

## Glossary of terms

### **Administrative Erasure**

The Medical Act 1983 (as amended) authorises the Registrar to erase doctors from the register administratively if the doctor fails to maintain an effective registered address or 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.

### **The assessor(s)**

The assessor(s) is a senior GMC staff member who is in charge of carrying out an assessment of a doctor's professional performance, the outcome of which is used in order to determine whether their fitness to practise is impaired.

### **Case examiner**

Case examiners are senior GMC staff who are responsible for making decisions at the end of investigations by the GMC into allegations made against a doctor.

### **Good Medical Practice**

Good Medical Practice is the GMC's core guidance for doctors. It sets out the principles and values on which good practice is founded.

### **In camera**

The term *in camera* describes the parts of a hearing where the parties and their representatives are not allowed to observe the procedure or process, this applies in both public and private hearings.

### **Interim Orders Tribunal ('IOT')**

Interim Orders Tribunals can impose an interim order on a doctor while we investigate concerns.

### **Investigation Committee**

The Investigation Committee decides how to resolve our investigations where our senior decision makers issue a warning to a doctor, but the doctor does not accept the warning and asks for an Investigation Committee oral hearing to review that decision.

## **Medical Act 1983 ('the Act')**

The Medical Act 1983 provides the GMC with a mandate to regulate the medical profession. The Act covers our statutory purpose, the governance of the GMC, our powers and responsibilities.

## **Medical Practitioners Tribunal ('MPT')**

Medical practitioners tribunals hear evidence and decide whether a doctor's fitness to practise is impaired and their registration should be restricted.

## **Medical Practitioners Tribunal Service ('MPTS')**

The Medical Practitioners tribunal service are responsible for running hearings for doctors whose fitness to practise has been called into question.

## **Open session**

The term *open session* describes the parts of the hearing where all parties and their representatives are present, this applies in both public and private hearings.

## **Realistic Prospect Test**

The Realistic Prospect Test is used by the case examiners and members of the Investigation Committee, when making a decision on whether the factual allegations and, if established, the facts would demonstrate that the doctor's fitness to practise is impaired to a degree justifying action on their registration. The Realistic Prospect Test requires there to be a genuine, not a remote or fanciful, possibility that the doctor's fitness to practise is impaired to a degree justifying action on their registration.

The test requires case examiners and member of the Investigation Committee to consider the standard of proof required by a MPT, assess the weight of the evidence against the doctor concerned (but should not normally seek to resolve substantial conflicts of evidence) and consider aggravating and mitigating factors.

## **The registrar**

Under the Medical Act 1983, the GMC's statutory powers are vested in an official known as 'the registrar' or, through delegated authority, in the assistant registrar(s). The registrar or assistant registrar(s) powers relate to decisions outlined in the GMC's legislative framework, such as deciding whether to investigate fitness to practise concerns relating to a doctor.

## **Responsible Officer**

The post of Responsible Officer is a statutory role held by senior doctors within designated bodies which makes them accountable for local clinical governance processes. In broad

terms, they are responsible for the local evaluation of doctors' fitness to practise for the purposes of revalidation, for overseeing the operation of local clinical governance arrangements necessary to support revalidation (except in Scotland, where this is a matter for medical directors), and for ensuring appropriate action where there are concerns about doctors' fitness to practise.

### **Voluntary Erasure**

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. 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.