

Guidance on disclosure to Disclosure Scotland and the Disclosure & Barring Service under the Medical Act 1983 (Section 35B(2))

Introduction

- 1 This guidance provides an outline of the GMC's procedure for disclosing information to Disclosure Scotland (DS) and, on rare occasions, the Disclosure & Barring Service (DBS) under section 35B(2) of the Medical Act.
- 2 It is a living document which will be revised periodically. It will also be reviewed in light of any bilateral agreement reached between DS or the DBS and the GMC.

The legislative background

- 3 The GMC has statutory powers to refer doctors who may pose a risk to vulnerable adults or children to the Disclosure & Barring Service (DBS) in England, Wales and Northern Ireland (Safeguarding Vulnerable Groups Act 2006) and to Disclosure Scotland (DS) under the Protection of Vulnerable Groups (Scotland) Act 2007 as amended. The DBS or DS considers the information it receives to decide whether it is appropriate to bar the person from working or volunteering with vulnerable adults and children.
- 4 A referral can only be made where we hold information about a doctor which meets specific criteria as set out in our guidance for decision makers published on our website. In particular, a referral is usually only appropriate if we hold information that a doctor has committed relevant conduct directly involving a vulnerable adult or child.
- 5 However, in certain circumstances we may hold information about a doctor's behaviour in relation to someone who is not a vulnerable/protected adult or child that we believe if repeated may present a risk of serious harm to vulnerable/protected adults or children, and we believe there is a likelihood of repetition. Under the DBS legislation, such information can be referred under the harm test if we have a reasonable belief that the doctor may pose a future risk of harm to children and/or vulnerable adults.
- 6 As there is no equivalent to the harm test in the legislation governing referrals to DS, we may consider sharing information with them under our general power to disclose

anything about a doctor's fitness to practise to anyone where we consider to be in the public interest under [Section 35B\(2\) of the Medical Act 1983](#).

What type of information could we disclose under section 35B(2)?

- 7 There are a number of categories of fitness to practise information which are likely to give rise to disclosure in the public interest to DS under Section 35B(2). Disclosure will usually only be appropriate where there has been a finding of fact by a court or another regulator or the information has led to action on a doctor's registration or a warning being issued and no referral has been made to DS. These are as follows:
- a A serious violent or serious sexual offence directed towards someone, other than a protected adult or child and not in the presence of a child.
 - b Indecent exposure involving someone other than a protected adult or child.
 - c Sexual harassment or inappropriate sexually motivated behaviour towards a person other than a protected adult or child, eg a work colleague.
 - d Taking indecent photographs of someone other than a protected adult or child without permission eg voyeurism.
 - e Stalking or harassment of someone other than a protected adult or child, where this involves aggravating factors such as threatening or violent behaviour.

What type of information would we not disclose under section 35B(2)?

- 8 There are a number of categories of information which are unlikely to be in the public interest to disclose to DS under Section 35B(2). This is because we do not believe DS may wish to consider barring on receipt of this information. These are as follows:
- a Soliciting offences which do not involve a protected adult or child.
 - b Drug offences where this does not involve a protected adult or child.
 - c Stalking or harassment of someone other than a protected adult or child and which does not have any aggravating factors such as threatening or violent behaviour.

Exceptional disclosures to the DBS under section 35B(2)

- 9 Although it will usually be appropriate to use the harm test provisions in section 41 of the Safeguarding Vulnerable Groups Act to disclose information to the DBS that

suggests a doctor poses a risk of harm to children and/or vulnerable adults, there may be exceptional circumstances where this referral limb is not satisfied. In these cases, a disclosure can be made in the public interest under section 35B(2) although it may be necessary to seek legal advice on the basis for the disclosure. Further guidance on the application of the harm test where the information does not relate to a child or vulnerable adult is at paragraphs 85-86 of the *Guidance on making referrals to the Disclosure and Barring Service* .

How will we apply our discretion?

- 10** This guidance is indicative only and not intended to be prescriptive or exhaustive and we will continue to apply our discretion in exercising our power under Section 35B(2) to share fitness to practise information with the barring authorities where we consider it to be in the public interest to do so.

More information

- 11** For more information about our policy on disclosing fitness to practise information please contact our Fitness to Practise Policy team (e-mail FTPPolicy@gmc-uk.org.)

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