

Guidance for decision makers on agreeing, varying and revoking undertakings

Introduction

- 1 The Medical Act 1983 (as amended) and Fitness to Practise Rules 2004 (as amended) give the GMC's case examiners and investigation committee (decision makers) powers to recommend that the Registrar invite a doctor to comply with undertakings. The case examiners may also recommend that the Registrar invite the doctor to comply with varied undertakings or that the Registrar direct that they no longer apply.
- 2 Undertakings provide an effective tool for responding effectively and proportionately to serious fitness to practise concerns. Undertakings mean that we can agree measures to protect patients, by restricting the doctor's practice and by setting out measures for remediation and development.
- 3 This guidance sets out the factors that should be taken into account by decision makers when considering undertakings.
- 4 This guidance should be considered together with the following pieces of guidance:
 - a [Guidance for the investigation committee and case examiners on making decisions at the end of the investigation stage](#)
 - b [Guidance for case examiners and the investigation committee on single clinical incidents](#)
 - c [Guidance for decision makers on assessing the impact of health in misconduct, conviction caution and performance cases](#)

Legislative framework

- 5 Undertakings may be recommended by:
 - a Case examiners when considering an allegation under Rule 8. Under Rule 8(3) the case examiners may unanimously decide to recommend that the doctor be invited to comply with undertakings in accordance with Rule 10(3). If they do so, they will not make a

decision under Rule 8(2) (i.e. to take no further action regarding the allegation, issue a warning, refer the allegation to the investigation committee or refer the allegation to the medical practitioners tribunal).

- b** The investigation committee when considering an allegation under Rule 9. If the case examiners fail to agree as to the disposal of the allegation under Rule 8(2) or whether to recommend that the doctor be invited to comply with undertakings under Rule 8(3), they can refer the matter for consideration by the investigation committee. The investigation committee can decide to recommend that the doctor be invited to comply with undertakings in accordance with Rule 10(3). If they do so, they will direct the case examiners not to make a decision under Rule 8(2).
 - c** Case examiners when considering the withdrawal of a matter referred to a medical practitioners tribunal, other than a non-compliance matter, under Rule 28. If the case examiners decide the matter (or part of it) should be withdrawn, they may decide to consider the matter under Rule 10(2) and recommend that the doctor be invited to comply with undertakings in accordance with Rule 10(3).
 - d** Case examiners when considering allegations referred to them by the Registrar under Rule 12. If the Registrar concludes that all or part of a reviewable decision was materially flawed, or that there is new information which would have probably led to a different decision, they may refer the allegation for reconsideration by the case examiners under Rule 8, 10 or 11.
- 6** If the decision makers recommend that the doctor be invited to comply with undertakings, or that undertakings should be varied, they shall inform the Registrar and suggest appropriate undertakings. The Registrar will write to the doctor to invite them to confirm in writing, within 28 days or any other period the Registrar may consider appropriate, that they are willing to comply.
- 7** Rule 10 sets out the arrangements for agreeing the undertakings or referring the original allegation to a medical practitioners tribunal if the doctor does not agree to comply with the undertakings proposed.
- 8** There are three broad categories of undertakings:
- a** Those which relate to a doctor's underlying health condition.
 - b** Those which relate to deficiencies in clinical performance or knowledge of English.
 - c** Those which relate to multi-factorial cases involving misconduct, where the underlying cause may relate to a health issue.

- 9 Undertakings should normally follow the format set out in the undertakings bank which can be found [here](#). Bespoke undertakings should only be drafted if there is not an appropriate standard undertaking available, in consultation with the Case Review team.
- 10 A link to the set of 'prohibitive' undertakings to be used when a doctor is restricted in one area of medicine or from performing a specific procedure can be found [here](#).
- 11 Unless there are exceptional circumstances, an undertaking which requires a doctor not to work in any post that requires a GMC licence to practise should only be used in health cases or in multi-factorial cases which involve a health element.
- 12 Once undertakings have been agreed, the original allegation can still be referred to a medical practitioners tribunal, if:
 - a the doctor subsequently breaches the undertakings;
 - b the GMC receives new information which suggests deterioration in the doctor's health, performance or knowledge of English, or otherwise gives rise to further concerns regarding their fitness to practise.

Criteria for recommending undertakings

Licence to practise

- 13 Undertakings are linked to the doctor's registration¹. They are therefore appropriate for doctors who are registered either with or without a licence to practise.

Impaired fitness to practise

- 14 Under Rule 10(2), case examiners must only recommend undertakings where it appears that the 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.
- 15 When considering whether there is a realistic prospect of establishing that the doctor's fitness to practise is impaired, decision makers must take into account all available evidence, including, where relevant, any performance, language and/or health assessment reports, and apply the [realistic prospect test](#).
- 16 Undertakings are not usually appropriate where there is any significant disagreement regarding the allegations or whether they amount to impaired fitness to practise.

¹ Please refer to the [guidance for the investigation committee and case examiners on making decisions at the end of the investigation stage](#) where this is explored in more detail

- 17 Where undertakings are considered following a Rule 28 decision for withdrawal, the allegations to which they relate must meet the realistic prospect test.
- 18 If there has been an assessment of the doctor's health or performance, the assessments will include an opinion on whether the doctor is fit to practise, either generally or on a limited basis. Assessment reports will also include recommendations on the management of the case. The decision makers should accept the recommendations, unless there are exceptional reasons not to do so, and take into account any additional evidence to decide whether the case meets the realistic prospect test. If the decision makers do not accept the assessor's recommendations, they must give clear reasons for not doing so.
- 19 If there has been an assessment of the doctor's knowledge of English², the decision makers should refer to the GMC policy on the test scores required to demonstrate an adequate level of English to practise medicine safely, which is published on our [website](#). Where a doctor has failed to achieve the minimum criteria to satisfy us they have the necessary knowledge of English this is likely to indicate the case meets the realistic prospect test. Decision makers should also take account of any additional evidence available.
- 20 Decision makers must record the reasons for their decision.

Protecting patients and maintaining public confidence

- 21 Rule 10(5) provides that a doctor shall not be invited to comply with undertakings if there is a realistic prospect that, if the allegation were referred for consideration by a medical practitioners tribunal, their name would be erased from the register.
- 22 If the allegations relate solely to a doctor's health and or knowledge of English, the Medical Act specifically precludes the possibility of erasure.
- 23 In multi-factorial cases, decision makers must consider all relevant evidence relating to the doctor's fitness to practise; there will be situations in which issues of misconduct or performance, which are unrelated to health or knowledge of English issues, raise the possibility of erasure. In considering whether there is a realistic prospect of erasure, the case examiners should refer to the [guidance for the investigation committee and case examiners on making decisions at the end of the investigation stage](#) and the [sanctions guidance](#).
- 24 Undertakings should address all heads of impairment that meet the realistic prospect test, even where there may be a link between a doctor's health and an allegation of impairment on the basis of misconduct, deficient performance or inadequate knowledge of

English. For further guidance on misconduct, conviction or caution, and performance cases, where health is a factor please refer to the [guidance for decision makers on assessing the impact of health in misconduct, conviction caution and performance cases](#).

- 25** A doctor shall only be invited to comply with undertakings if they are sufficient to protect patients and maintain public confidence in the profession.
- 26** In cases involving allegations which relate to the doctor's knowledge of English, decision makers should consider the level of knowledge required to practise medicine safely. A question may arise about whether undertakings can adequately address the actual harm or risk of harm to patients, even when they are not currently working as a doctor or are working only with non-English speaking patients, in light of the need to liaise with the wider healthcare system. Decision makers will have to exercise their judgement to consider the individual features of the case.
- 27** Undertakings are not usually appropriate where:
- a** a doctor has shown a deliberate or reckless disregard of clinical responsibilities towards patients
 - b** a doctor has abused a patient's trust or violated a patient's autonomy or other fundamental rights
 - c** a doctor has behaved dishonestly, fraudulently or in a way designed to mislead or harm others

There may, however, be exceptional circumstances where undertakings would still be appropriate, for example in multifactorial cases where the allegations are closely linked to an underlying health problem and if the undertakings fully address the risk of any harm to patients and/or to public confidence³. Any exceptional circumstances should be fully explained by decision makers.

Likelihood of the doctor's compliance

- 28** Decision makers should not recommend undertakings if there is any reason to believe that the doctor will not comply with them.
- 29** In assessing the likelihood that the doctor will comply with undertakings, decision makers should consider any history of non-compliance in the doctor's case. A previous non-compliance order may suggest that a doctor is less likely to comply with undertakings, but should not, in itself, preclude the possibility of agreeing undertakings.

³ For further details, please refer to the [guidance for decision makers on assessing the impact of health in misconduct, conviction, caution and performance cases](#)

- 30** Should, in light of a health assessment, decision makers have concerns regarding the doctor's capacity to consent to or comply with undertakings as a result of a health issue, decision makers should seek advice from the FTP policy team.
- 31** Insight on the part of a doctor is also likely to be an important factor in considering whether undertakings are appropriate in a particular case. A doctor who demonstrates an understanding of their failings and the need to limit their practice or undertake retraining or other remedial measures may be more likely to comply with undertakings.
- 32** When assessing whether the doctor has demonstrated insight, the case examiners should consider whether there is credible evidence that the doctor:
- a** accepts that they should have behaved differently; and
 - b** has demonstrated the timely development of insight prior to the case examiners considering the matter, for example by identifying and taking steps to remediate and apologise, even if they have not been able to fully remediate the deficiencies in their performance or conduct.
- 33** For the purposes of determining whether undertakings are appropriate in an individual case, the fact that a doctor has accepted that corrective action needs to be undertaken is more important than the manner in which any apology is expressed.
- 34** Decision makers should be aware that there may be cultural differences in the way that insight is expressed and the process of communication, and that this may also be affected by the doctor's circumstances, for example, their ill-health.
- 35** Different cultural factors can influence somebody's willingness to apologise. Cross-cultural communication studies⁴ into the different ways people from different cultures acknowledge fault show that there are great variations in the way that individuals from different cultures and language groups use language to code and de-code messages. This is particularly the case when using a second language, where speakers may use the conventions of their first language to frame and structure sentences, often translating as they speak and may also be reflected in the intonation adopted. As a result, the language convention and subtleties or nuances of the second language may not be reflected.
- 36** In relation to considering whether a doctor has offered an apology, decision makers will need to be alive to the cultural factors at play but also recognise that our guidance *Good medical practice* clearly explains that a doctor is expected to apologise when things go

⁴ Influential thinkers and academics in this field include S. M Gass, Marc L. Bergman and Keiko Okumura. The supplementary paper 'Academic research into the different ways people from different cultures acknowledge fault' provides a list of further reading.

wrong. This requirement has been further highlighted by the introduction of a joint statement from the healthcare regulators regarding the professional duty of candour which states that every healthcare professional must be open and honest with patients when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress⁵.

37 *Good medical practice* provides the following guidance at paragraphs 55 and 61 to doctors about how to handle situations where something has gone wrong:

'Being open and honest with patients if things go wrong.

55 You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:

- a** put matters right (if that is possible)
- b** offer an apology
- c** explain fully and promptly what has happened and the likely short-term and long-term effects.

61 You must respond promptly, fully and honestly to complaints and apologise when appropriate. You must not allow a patient's complaint to adversely affect the care or treatment you provide or arrange.'

Workable, measurable, attainable and proportionate

38 Decision makers must ensure that any undertakings are workable, measurable, attainable and proportionate.

39 Decision makers should also consider the need to explain the impact to the doctor as part of the undertakings decision to ensure they realise the practicalities before accepting where there are circumstances specific to the doctor involved which may significantly influence how the undertakings work in practice. For example, a restriction on the practice of a doctor currently working as a single handed practitioner (such as the requirement for them to be clinically supervised) may, in practical terms prevent them from continuing to work in their own practice meaning that they would need to work elsewhere, and will need to ensure their new workplace will allow them to comply with the undertakings.

⁵ For further details please refer to [Openness and honesty when things go wrong: the professional duty of candour](#) which complements the joint statement from the healthcare regulators and gives more information on how to follow the principles set out in [Good medical practice](#). It also details the statutory duty of candour for case organisations across the UK

- 40** Undertakings must address the specific concerns about the doctor. On occasion this may include restricting practice in a particular area of medicine or in relation to a specific procedure. See paragraph 10, relating to 'prohibitive' undertakings.

Publication of agreed undertakings

- 41** Agreed undertakings will be disclosed to the doctor's employer and to any other enquirer, with the exception of confidential undertakings which relate to the doctor's health. Undertakings relating to a doctor's practice are published on the medical register on the GMC's website, along with a short summary of the concerns and reasoning behind the decision to agree undertakings with the doctor. For further guidance relating to this, please refer to the separate [guidance for case examiners on writing a summary to accompany the publication of undertakings on the medical register](#).

Monitoring undertakings

- 42** The GMC's Case Review Team will monitor the doctor's compliance with undertakings. Following a period of undertakings, and taking into account any new information received, the case examiners may recommend that the undertakings are varied or revoked.
- 43** Under rule 10(6), where undertakings have been agreed, the Registrar may carry out any additional enquiries that are appropriate to the question of the doctor's compliance or fitness to practise. Any enquiries are likely to inform the case examiners' decision about whether undertakings should be maintained, varied or revoked. The enquiries might include an assessment of the doctor's health or performance. The Registrar should have regard to the GMC [guidance for decision makers on directing a performance assessment](#) and [guidance for decision makers on directing a health assessment](#).
- 44** Variation or revocation of a doctor's undertakings should be considered with reference to available evidence, which will vary depending on the doctor's situation and undertakings. Annexes A and B list examples of evidence to be considered in cases relating to a doctor's health, performance, or misconduct. The Annexes are not intended to be an exhaustive list or checklist, as the evidence listed will not always be relevant or available.
- 45** Where, as a result of information and evidence received, it appears to the case examiners that a doctor's undertakings should be varied or revoked, they shall inform the Registrar, who shall invite the doctor to comply with the varied undertakings recommended by the case examiner or direct that the undertakings be revoked.
- 46** Undertakings may be amended or revoked by the Registrar on the recommendation of case examiners regardless of whether they were initially recommended by case examiners (rule 10(7)) or a medical practitioners tribunal (rule 37A(4)).

Variation of undertakings

- 47** To inform the Registrar of the need to vary undertakings, the case examiners must consider the evidence received, as suggested in Annexes A and B and must be satisfied that:
- a** while the doctor's fitness to practise may still be impaired, based on the evidence received, the current level of restrictions is no longer necessary to protect the public and the undertakings may be relaxed; or
 - b** the information received indicates the doctor's fitness to practise is still impaired and deterioration in the doctor's health or performance mean the doctor's undertakings need to be tightened to ensure adequate public protection; or
 - c** due to a change in the doctor's circumstances, the undertakings are no longer effective and/or workable in their current format, for example because a change in the doctor's contract or working environment, and alternative undertakings are appropriate.
- 48** Where a doctor has breached their undertakings, the Registrar will need to make a decision on what action to take and whether to refer the original allegation to a medical practitioners tribunal.

Revocation of undertakings related to a doctor's health

- 49** If undertakings are agreed on the basis that it appears to the decision makers that a doctor's fitness to practise is impaired due to adverse physical or mental health, they should remain in place until they are no longer required in order to safeguard patients, maintain public confidence and/or protect the doctor's welfare. In most cases the undertakings will be in place for a limited period of time, following which the doctor will return to unrestricted practice. This return to unrestricted practice may be triggered by a full recovery but, as many doctors have remitting and relapsing illness, it may also be triggered by a doctor developing insight that enables them to recognise any warning signs, where the doctor's illness is being appropriately managed and there are no on-going public safety risks.
- 50** To consider making a recommendation to revoke undertakings, the case examiners must be satisfied that there is no longer a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree which would justify restrictions on the doctor's registration, based on the evidence received as suggested in Annex A. This evidence may include a health assessment, although a health assessment may not be required in every case.
- 51** In health cases, we aim to avoid subjecting the doctor to unnecessary assessment. The case examiners will therefore need to decide on a case-by-case basis whether a health assessment is needed in addition to other evidence.

- 52** A health assessment may not be necessary where the evidence suggested in Annex A raises no concerns. However, in substance misuse cases, a health assessment is likely to be required if regular and rigorous test results are not available to the case examiners. This is to ensure that all relevant evidence is in place before making a decision to revoke undertakings. In cases not involving substance misuse, positive information contained in reports from treating doctors or mental health professionals may be sufficient although a health assessment may still be helpful in assessing matters such as the doctor's recovery, risk of relapse, insight and resilience.
- 53** Where the evidence, with or without a health assessment, is sufficient and raises no relevant concerns, the case examiners may recommend that the Registrar revokes a doctor's undertakings.
- 54** Where the evidence suggested in Annex A raises concerns and/or a health assessment finds that a doctor's fitness to practise is still impaired due to adverse physical or mental health, or raises further relevant concerns, and the revocation of undertakings is considered inappropriate, the case examiners may recommend that the Registrar maintains or varies a doctor's undertakings as may be appropriate.
- 55** Where, based on the concerns raised or findings in the assessment reports, there is considered to be a deterioration in the doctor's health or other fitness to practise concerns, the Registrar will need to make a decision on what action to take and whether to refer the original allegation to a medical practitioners tribunal.

Revocation of undertakings related to a doctor's performance or misconduct

- 56** In cases where undertakings relate to a doctor's professional performance or misconduct (usually related to clinical concerns), the doctor is expected to take responsibility for a structured approach to improvement, over a reasonable period of time, in the areas of their professional performance or practice identified as deficient. It is also expected that a doctor will take responsibility for keeping their skills up-to-date in order to demonstrate that they are fit to return to unrestricted practice.
- 57** To consider making a recommendation on the revocation of undertakings, the case examiners must be satisfied that there is no longer a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree which would justify restrictions on the doctor's registration, based on relevant evidence suggested in Annex B.
- 58** It is our policy to ask for an objective assessment of a doctor's performance to give assurance that any identified failings or issues have been addressed. This may be a full performance assessment or a tailored assurance assessment. However, we will only do so where it is relevant, reasonable and proportionate and there may be circumstances in which a performance or assurance assessment is not required; for example, if a doctor has recently completed an alternative form of objective assessment which the case

examiners consider sufficient in the particular circumstances of the case. A full performance assessment or tailored assurance assessment is likely to be required if concerns arise from the other evidence suggested in Annex B.

- 59** Where the evidence in Annex B, together with an assessment where required, raises no relevant concerns, the case examiners may recommend that the Registrar revokes a doctor's undertakings.
- 60** Where the evidence in Annex B raises concerns and/or an assessment finds that a doctor's fitness to practise is still impaired, or raises further relevant concerns, and the revocation of undertakings is considered inappropriate, the case examiners may recommend that the Registrar maintains or varies a doctor's undertakings as may be appropriate.
- 61** Where, based on the concerns raised or findings in the assessment report, there is considered to be a deterioration in the doctor's performance or other fitness to practise concerns, the Registrar will need to make a decision on what action to take and whether to refer the original allegation to a medical practitioners tribunal.

Revocation of undertakings related to a doctor's knowledge of English

- 62** It will usually be appropriate to consider revoking undertakings in such cases on receipt of evidence that a doctor has completed an English language assessment that is acceptable to the GMC⁶ to the standard currently required of International Medical Graduate applicants to the medical register.
- 63** It may also be appropriate to consider varying undertakings requiring supervision which were imposed due to the doctor's knowledge of English, if there is a change in career circumstances. For example, if we receive new information about a doctor's career plans or employment situation and they have not yet completed an English language assessment that is acceptable to the GMC to a satisfactory standard, it may be appropriate to consider varying undertakings to ensure any requirements for supervision are proportionate and adequate to protect the public.
- 64** Where, based on information received, there is considered to be a deterioration in the doctor's knowledge of English, the Registrar will need to make a decision on what action to take and whether to refer the original allegation to a medical practitioners tribunal.

⁶ For further details on which English language assessments are acceptable to the GMC, please refer to the [GMC website](#)

Multi-factorial cases

- 65** In multi-factorial cases where undertakings are intended to address issues in relation to a combination of a doctor's knowledge of English, misconduct, health or performance, care should be taken to consider the public protection implications of varying or revoking undertakings for all areas of concern following the relevant guidance provided in the above three sections dealing respectively with a doctor's health, performance or misconduct and their knowledge of English.

Examples of evidence in cases related to a doctor's health

Evidence	
Report from the medical supervisor	<p>This report should show a documented and evidenced sustained improvement in the doctor's health, which should now be stable.</p> <p>In addition the doctor's medical supervisor should formally advise on:</p> <ul style="list-style-type: none"> ■ the likelihood of the doctor relapsing – this must be judged as low. ■ whether the doctor has insight into their own health, are able to recognise the signs of relapse and the need to limit their practice in the event of a relapse. ■ if the doctor suffers from a relapsing or recurring illness, the medical supervisor should specifically comment on whether the doctor's support network is adequate to help manage the doctor's illness.
Feedback from other people involved in the doctor's health care (where appropriate)	<p>This feedback should show a documented and evidenced improvement in the doctor's health, which should now be stable.</p> <p>Evidence of feedback from the following healthcare professionals should be available to decision makers through medical supervision reports, where appropriate:</p> <ul style="list-style-type: none"> ■ treating psychiatrist and/or other mental health professional ■ general practitioner ■ occupational health practitioner
Evidence from the doctor	<p>If working, the doctor may choose to submit evidence of satisfactory performance.</p>

Evidence	
Report from the workplace reporter	Where the doctor is working, the workplace reports should confirm that no unresolved concerns remain in relation to the doctor's clinical practice, general behaviour or state of health.
Testing reports	Tests taken over a sustained period should demonstrate no prohibited substance use.
Doctors with substance misuse who continue to be prescribed drugs used in the prevention of relapse	<p>For these doctors, whilst abstinence without the use of the prescribed drug is preferred, it is not essential.</p> <p>Case examiners should consider the doctor's position in the round, taking account of their general condition, likelihood of relapse and insight into their substance misuse. Notwithstanding the doctor remaining on drugs used in the prevention of relapse, where they meet the other requirements for ceasing supervision, consideration can be given to revoking the undertakings.</p>
Report from the doctor's responsible officer (RO)	Where the doctor is working, their RO, or nominated deputy, should confirm that, to their knowledge, no further concerns have been raised in relation to the doctor's clinical practice, general behaviour or state of health.
Health Assessment report	<p>Depending on the nature of the concerns and the evidence provided, the Registrar may require a doctor to undergo a health assessment to establish whether the doctor has sufficiently recovered and is ready to return to unrestricted practice.</p> <p>Assessors will provide an opinion on whether the doctor is fit to practise and, if appropriate, make recommendations on the future management of the case.</p>

Examples of evidence in cases related to a doctor's performance or misconduct

Evidence	
Report from the doctor's clinical supervisor	<p>This report should show a documented and evidenced sustained improvement in the doctor's performance or area(s) or concern.</p> <p>In addition, the doctor's clinical supervisor should formally advise if the doctor has insight into their own performance and understands the importance of limiting their practice if appropriate.</p>
Reports from other people involved in the doctor's supervision, training or remediation	<p>These reports should show a documented and evidenced sustained improvement in the doctor's performance or area(s) of concern.</p> <p>These reports should be requested from the following where appropriate:</p> <ul style="list-style-type: none"> ■ educational supervisor ■ any other person involved in the doctor's supervision or remediation.
Evidence from the doctor	<p>The doctor may choose to submit:</p> <ul style="list-style-type: none"> ■ evidence of satisfactory performance ■ their up to date personal development plan with evidence of reflective learning.
Workplace reports	<p>Where the doctor is working, the recent workplace reports, as relevant to the particular case, should confirm that no concerns remain in relation to the doctor's clinical practice or general behaviour.</p>

Evidence	
Report from the doctor's responsible officer (RO)	Where the doctor is working, their RO, or nominated deputy, should confirm that to their knowledge, no further concerns have been raised recently in relation to the doctor's clinical practice or general behaviour.
Report from a tailored Assurance Assessment or a full Performance Assessment	<p>Depending on the nature of the concerns and the evidence provided above, the Registrar may direct that a doctor undergo a full performance assessment or a tailored assurance assessment to establish whether the doctor has remediated and is ready to return to unrestricted practice.</p> <p>The Assessment Team appointed will assess the scope of the deficiencies and will determine whether a full performance, or tailored assurance assessment, is required.</p> <p>Assessors will provide an opinion on whether the doctor is fit to practise and make recommendations on the future management of the case.</p>