

Guidance for decision makers on directing a performance assessment

Introduction

- 1 Deficient professional performance is one of the five areas described in *the Medical Act*^{*} by which a doctor's fitness to practise may be regarded as impaired. It describes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work. It is unacceptably low if there is evidence that it departs from the professional standards applicable to the level and specialty in which the doctor works.
- 2 A performance assessment is a mechanism for obtaining objective evidence of a doctor's professional performance, and will include a test of competence and/or a peer review, as deemed appropriate to the case.
- 3 This guidance aims to help decision makers decide whether or not a performance assessment is required. It is intended to support consistent and fair decision making in relevant cases.
- 4 This document should be considered together with the GMC's publication *Good Medical Practice*.

FTP Rules for requesting a performance assessment

- 5 The Registrar (or his/her designated representative, an Assistant Registrar) may direct a doctor to undergo a performance assessment under the following GMC (Fitness to Practise) Rules[†]:
 - a Rule 7(3) – after an allegation has been referred for consideration by a case examiner as part of a fitness to practise investigation

^{*} Medical Act 1983, 35C (2)

[†] General Medical Council (Fitness to Practise) Rules Order of Council 2004

- b** Rule 13A – after an allegation has been referred to a medical practitioners tribunal as part of a fitness to practise investigation
 - c** Rule 10(6) – where undertakings have been agreed with the case examiners (regardless of the area of impairment)
 - d** Rule 37A(1) – where undertakings have been agreed by a medical practitioners tribunal (regardless of the area of impairment)
 - e** Rule 23(1)(b) – following receipt of an application for restoration following erasure by a Medical practitioners tribunal or due to administrative erasure
- 6** Once a medical practitioners tribunal has opened its proceedings, and before it makes a decision about impairment of a doctor’s fitness to practise, the medical practitioners tribunal may adjourn and direct a performance assessment under Rule 17(7)(a). The Registrar would be notified of any direction made under this rule and does not need to make a separate decision.
- 7** The Registrar may also invite a doctor to undergo a performance assessment under Rule 19(b), prior to the opening of a review hearing, with consideration of the directions made by the medical practitioners tribunal at any previous hearing.

Performance assessments during the investigation stage

- 8** The Registrar must set out their reasons for directing a performance assessment and refer to information that demonstrates, or appears to demonstrate, repeated or persistent poor performance against one or more of the categories in *Good Medical Practice*. Examples of common areas of poor professional performance are:
- a** repeated clinical mistakes
 - b** poor prescribing
 - c** poor performance in record keeping or other administrative tasks essential to patient safety
 - d** a lack of familiarity with basic clinical/administrative procedures and guidelines
 - e** failure to work effectively and/or collaboratively with colleagues
- 9** The decision to direct a performance assessment is informed by the documentation gathered during the investigation process and may also include advice from the in-house legal team and/or a medical case examiner.
- 10** Evidence of poor performance may be received from a number of sources, including reports from local assessments or investigations, and which, when considered

together, shows a pattern of poor performance and informs the decision to direct a performance assessment.

- 11** In deciding on the appropriateness of an assessment request, the Registrar would also need to consider information about the doctor's current working position or recent posts, the areas of concern, the grade of the doctor, whether the doctor is still working in the same speciality to which the allegation relates, and whether the doctor is currently in the UK or not.

Reasons for not directing an assessment

- 12** The Registrar should always consider if there are any reasons that a performance assessment is not appropriate or necessary, and these may include:
- a** the clinical allegation constitutes misconduct, i.e. reflects a single action or omission, or a small number of actions or omissions which, while not amounting to a pattern of poor or unacceptably low standards of professional performance, are sufficiently serious to raise questions about the doctor's fitness to practise
 - b** the doctor in question is a trainee doctor in Foundation Year 1 (FY1) who is provisionally registered
 - c** the doctor has provided evidence of appropriate and effective remediation
- 13** In considering the above factors listed in paragraphs 8 – 12 above, if a doctor is seriously ill the Registrar may wish to consider whether a performance assessment is appropriate.

Performance assessments for doctors with restrictions on their practice

- 14** It may be necessary for a doctor with restrictions to have a performance assessment to establish whether:
- a** the doctor's performance has deteriorated to an extent that undertakings or conditions are no longer appropriate (because they are no longer sufficient to protect the public or uphold public confidence) and suspension may be necessary.
 - b** the doctor has successfully addressed the concerns about their performance and the conditions or undertakings can be revoked
 - c** the undertakings or conditions should be varied

Undertakings cases where successful remediation is indicated

- 15** If a doctor has agreed undertakings, either with the case examiners or the medical practitioners tribunal, in relation to an allegation of deficient professional

performance, the case examiners will need to consider objective evidence about the doctor's fitness to practise before making a recommendation to the Registrar that the undertakings be revoked. The Registrar will need to decide whether to direct a performance assessment to establish whether the doctor has remediated successfully.

- 16 The decision to direct a performance assessment is informed by the documentation gathered by the Case Review Team when monitoring the doctor's compliance with their undertakings, and may include advice from a case examiner.
- 17 The Registrar must set out their reasons for directing that a doctor undergo a performance assessment and refer to information that suggests remediation has been successful. Examples include:
 - a the undertakings require the doctor to have a performance assessment
 - b the doctor has successfully met the aims set out in a personal development plan, signed off by the doctor's responsible officer (or nominated deputy)
 - c the doctor has engaged effectively in relevant learning opportunities or structured training and reports from educational supervisors or other relevant supervisors are positive
 - d the doctor has worked in a structured workplace for a sufficient period, and relevant feedback is positive

Undertakings cases where remediation is not demonstrated or performance deteriorates

- 18 Sometimes a doctor is unable to demonstrate successful engagement in, or completion of, remedial training and the Registrar may be asked to decide whether to direct that a doctor undergo a performance assessment to establish whether the doctor's performance has deteriorated since agreeing undertakings with either the case examiners or medical practitioners tribunal.
- 19 The outcome of the performance assessment will provide objective information to decide whether the current undertakings are sufficient to protect patients or whether other action is necessary.
- 20 The decision to direct that a doctor undergo a performance assessment is informed by the documentation gathered by the Case Review Team when monitoring the doctor's compliance with undertakings, and may include advice from the in-house legal team and/or a case examiner.
- 21 The Registrar must set out their reasons for directing a performance assessment, and refer to information that suggests that the doctor's performance has deteriorated. Timescale is an important factor to consider because the doctor must have had

reasonable time to provide evidence of engagement in remediation, or to improve on slow or unsatisfactory progress, excepting where serious concerns arise that require immediate action.

- 22** Examples of information which may support a decision to direct a performance assessment in these circumstances include:
- a** the undertakings require the doctor to have a performance assessment
 - b** the doctor has failed to meet the aims set out in a personal development plan
 - c** there is evidence that remedial training has been unsuccessful, or the doctor has failed to engage in suitable remedial training
 - d** there have been recent or serious complaints about the doctor's performance

Conditions and suspensions cases

- 23** If a doctor has conditions or has been suspended by a medical practitioners tribunal, in relation to a finding of impairment by reason of deficient professional performance, the medical practitioners tribunal will need to consider objective evidence about the doctor's fitness to practise to decide if the doctor remains impaired and what, if any, sanction is required. These matters will be considered at a medical practitioners tribunal review hearing.
- 24** In their determination, the medical practitioners tribunal will set out the information they want to consider at the review hearing, including whether a performance assessment is required.
- 25** The Registrar will invite a doctor to undergo a performance assessment under Rule 19(b), and the tribunal's direction would form the main rationale for the decision, with reference to the information received as part of the monitoring process, including whether it suggests successful, failed or ongoing remediation.
- 26** It would be unusual for the Registrar to decide *not* to invite a doctor to undergo a performance assessment if the medical practitioners tribunal has requested one, but there are circumstances when assessment might not be appropriate, for example, if the doctor has only recently secured a training placement and remediation will be ongoing at the time of the review hearing. It may be relevant for the Registrar to seek advice from the in-house legal team in such cases.

Assurance Assessments

- 27** In January 2015, the GMC commenced a pilot of tailored performance assessments* for those doctors with restrictions on their registration, where objective evidence is needed to provide reassurance that a doctor is fit to return to unrestricted practice.
- 28** The first phase of the assurance assessments pilot will focus on doctors with restrictions whose cases involve clinical concerns and which meet one or more of the following criteria:
- a** the doctor has been found impaired on the grounds of **performance** (at a medical practitioners tribunal), which has resulted in undertakings being agreed or conditions/a suspension being imposed
 - b** the doctor has performance related undertakings, agreed with the case examiners
 - c** the doctor previously had a performance assessment (either during the investigation stage, or during monitoring by the Case Review Team)
 - d** the doctor has a condition or undertaking in place to have an assessment of their performance.
- 29** The second phase of the pilot will additionally include cases which involve clinical concerns and meet one or more of the following criteria:
- a** the doctor has been found impaired (at a medical practitioners tribunal) on the grounds of misconduct as a result of clinical concerns
 - b** the doctor has undertakings related to clinical concerns, agreed with a case examiner
 - c** the doctor has been suspended as a result of a finding of impairment on the grounds of performance or misconduct as a result of clinical concerns
- 30** The Registrar should refer to the separate GMC guidance document, *Guidance for decision makers on directing an assurance assessment*, which outlines the various factors and information to consider when directing such an assurance assessment.

Restoration to the GMC register

- 31** If a doctor applies to be restored to the register after erasure by a medical practitioners tribunal, the Registrar may be asked to decide if a performance assessment is necessary. The decision to direct a performance assessment is

* Guidance for decision makers on directing an assurance assessment

informed by any documentation provided by the doctor in support of the restoration application. Rule 23(1)(b) would apply in this instance.

- 32** The GMC guidance document, [*Guidance on making decisions on voluntary erasure applications*](#), provides guidance for decision makers about applications for restoration to the GMC register following voluntary erasure, where there are concerns about a doctor's performance. The same guidance applies when considering performance assessment for a restoration application following administrative erasure.