

Guidance for Case Examiners on deciding on the outcome of a case where the doctor under investigation has raised concerns locally

Background

- 1 This document aims to provide guidance to case examiners on deciding the outcome of cases where the doctor whose fitness to practise is under investigation has raised concerns locally.

What do we mean by raised concerns locally?

- 2 This is where a doctor has raised concerns locally about patient safety. This may include concerns that patient safety or care is being compromised by the practice of colleagues or the systems, policies and procedures in the organisation in which they work. The concerns may relate to danger, illegality or anything else that poses a risk to patients, that is in the public interest and has been raised with an appropriate body (for example, the doctor's employer). This type of concern is distinct from a grievance or private complaint, which may be a dispute about the employee's own employment position and has no public interest element.

How do we know if a doctor has raised concerns locally?

Information provided by the referrer

- 3 When Responsible Officers (or persons acting in a public capacity) make a referral to us they are asked to share information about whether, as far as they are aware, the referred doctor has ever raised concerns locally in the public interest. Where this is the case, they are asked to provide details of the outcome of any investigation which was undertaken as a result and when this took place. In these circumstances, in view of the difficulties that can arise locally for doctors who raise public interest concerns (identified in the review of whistle blowing by Sir Anthony Hooper), we will review the information provided to ensure that there is sufficient information to support the referral. We may, if appropriate in the context of the individual case, seek further information to clarify the basis of the referral before deciding if it is appropriate to open an investigation.

Information provided by the doctor

- 4 If, during an investigation into concerns about their fitness to practise, the doctor discloses that they have raised concerns locally prior to the concerns about their fitness

to practise being referred to us then this will be recorded as contextual information and we may seek further information if required.

Is there a dispute about whether the doctor raised concerns locally?

- 5 Where there is a dispute about whether the doctor raised concerns locally and this information is relevant context to the case, it may be appropriate to consider the evidence available to support this. For example, if the referrer did not share this information with us at point of referral and was unaware or does not support the doctor's claim that they raised concerns locally, it may be appropriate to seek objective evidence that concerns were raised (such as a copy of any correspondence the doctor is able to provide). If objective evidence is unavailable to support the facts, for example where the doctor says they raised their concerns orally and this is disputed by the relevant body, case examiners should take their usual approach to weighing statements made that are disputed and not supported by any objective evidence.

Recording information relating to concerns raised locally

- 6 Cases where a doctor has raised concerns locally will be identified in the case advice referral form (CARF). Relevant cases will also be identified on SIEBEL.

Factors to consider when deciding the outcome of a case where the doctor under investigation has raised concerns locally

- 7 Whether the fact that a doctor has raised concerns locally is relevant context in relation to the concerns that the case examiners are considering will depend on the nature and circumstances of the case. The circumstances in which this information may be relevant context are set out below.

Circumstances where this information is unlikely to be relevant context

- 8 Where concerns about a doctor's fitness to practise are supported by objective documentation, any information that they raised concerns locally is unlikely to be relevant context. This is likely to apply where concerns about a doctor's fitness to practise relate to deficient professional performance, a criminal conviction or caution, physical or mental ill health, not having the necessary knowledge of English or a determination by an overseas regulatory body and are supported by objective evidence such as verification of a criminal conviction or caution, the outcome of an IELTS test, a performance and/or health assessment or an opinion provided by a GMC or other independent expert. In these circumstances, the fact the doctor has raised concerns locally is unlikely to be relevant context in relation to the matters that the case examiners are considering.

Circumstances where this information may be relevant context

- 9 Information that the doctor raised concerns locally may be relevant context to the matters that the case examiners are considering at the end of an investigation where the information to support the allegations solely consists of subjective evidence that is disputed by the doctor, such as witness statements provided by those who may have a connection to the doctor's previous history of raising concerns (for example the doctor's colleagues or employer, where the doctor remains in the same employment as when they raised patient safety concerns).
- 10 Such disputes in relation to witness evidence can be particularly difficult where allegations relate to Domain 3: Communication, partnership and teamwork (paragraphs 31 – 52) of [Good medical practice](#) including:
- Persistent unavailability when on call (*para 34*)
 - Persistent failures to listen to, or explain matters to patients (*paras 31-32*)
 - Failure to work effectively with colleagues, e.g. bullying or unfairly discriminating against them (*paras 35-38*)
 - Failure to communicate information about patient care (*para 44*)

Is it appropriate to seek further evidence?

- 11 In a case where the seriousness of the concerns would meet the realistic prospect test, disputes about witness evidence can only be resolved by a tribunal at a hearing. However, a referral to hearing will have a significant impact on a doctor, and where there is a possibility that the referral arose as a result of the difficulties that can arise locally for doctors who raise concerns (identified in the review of whistle blowing by Sir Anthony Hooper), we should consider if it is possible to obtain evidence to resolve the dispute without the need for a referral. Case examiners should consider whether there may be any objective evidence available that we do not hold, that could inform their decision and, where identified, to consider seeking that evidence before deciding how to dispose of the case. Once such information has been obtained, if key evidence continues to relate to disputed witness evidence despite efforts to obtain objective evidence to clarify the disputed matters, a referral to a hearing may be necessary to resolve them.

Deciding the outcome of the investigation

- 12 Once any further available information has been obtained, case examiners should consider whether the evidence available to support the fitness to practise concerns meets the realistic prospect test in the usual way, in accordance with our guidance 'Making decisions on cases at the end of the investigation stage: Guidance for the investigation committee and case examiners'.