

Guidance for decision makers on when to take a doctor's fitness to practise history into account

Introduction

- 1 The following guidance should be used when considering whether a doctor's fitness to practise history should be taken into account when making one of the following decisions:
 - a A Rule 4 decision at Triage, including a decision to conduct a provisional enquiry (PE), or on receipt of new information during an investigation (allegations of impairment).
 - b A case examiner decision under Rule 8.
 - c A decision regarding referral to an Interim Orders Tribunal.
 - d An assistant registrar's decision to refer a doctor for a health, performance or English language assessment.

What do we mean by a doctor's fitness to practise history?

Closed enquiries

- 2 Every time the GMC receives an enquiry about a doctor it is formally recorded in Siebel and kept against the doctor's record. Some enquiries are closed without being promoted for investigation.

Closed with formal action

- 3 Cases that are closed with formal action will have one of the following outcomes:
 - a Erasure
 - b Suspension

- c Conditions
- d Finding of impairment (no further action)
- e Undertakings
- f Warning

Closed with no formal action

- 4 Some cases are investigated, and following investigation, are closed without any of the outcomes set out above. This category includes cases that are concluded with a doctor receiving advice.

When should a doctor's fitness to practise history be taken into account in making decisions about information received?

- 5 A doctor's fitness to practise history should be taken into account when it is relevant to the current decision and fair in the circumstances for that history to be considered.
- 6 It is likely to be appropriate to take a doctor's previous history into account where current allegations are similar in nature or raise similar concerns (e.g. they fall under the same head of impairment, or fall under different heads of impairment but there are common themes between both sets of allegations).

Making a decision at Rule 4: Triage and allegations of impairment

- 7 The function of the Registrar at Rule 4 is to determine whether a current allegation is capable of supporting a finding of impairment and therefore warrants investigation.
- 8 In considering a current allegation at this stage, the previous history is most likely to be relevant in the following circumstances:

Where the allegations have resulted in previous formal action

- 9 Where the previous history relates to allegations that are similar to the current allegation, the fact that there has been an alleged repetition of similar concerns despite previous action taken to protect the public and/or confidence in the profession indicates a pattern of persistence and means that consideration must be given to the question of remediation and/or the doctor's insight. In this instance,

evidence of similar previous history is likely to exacerbate the seriousness of the current allegation.

10 This includes decisions made by another regulatory body.

Complaints that have been closed as insufficient to amount to impaired fitness to practise, or there is a history of isolated clinical incidents/concerns which were insufficient to amount to impairment

11 These previous incidents, in light of the current allegation, could be sufficient to give rise to an allegation of impaired fitness to practise if:

- a** the previous allegation is similar to the current allegation and/or paints a pattern of concern that, in totality, indicates a pattern of persistence that could give rise to an allegation of impaired fitness to practise. For example, low levels of poor performance which in themselves might not reach our threshold can accumulate and may meet the threshold when joined together; and,
- b** the reason that the previous case was closed relates to seriousness rather than the credibility of the allegation. Where the previous matter was closed because there was insufficient evidence to support it, it would not be appropriate to take it into account without it being re-opened under Rule 12 (for example, based on the current allegation amounting to new information). It should be noted that a doctor's previous history will not be relevant where the factual allegations had been found not proved. It would not be fair to consider these allegations where there has been a formal finding at a Tribunal to the effect that the relevant factual allegations were not proven. However, consensual outcomes agreed by the doctor at the case examiner stage may be taken into account.
- c** If however, there was sufficient evidence to support the previous allegation and it closed on the grounds that it was insufficiently serious in itself to meet the threshold, then as evidence of a pattern it may be relevant to the current allegation.

12 Taking account of previous history will be particularly important when considering an apparently single clinical incident or concern and a previous incident has been closed on the grounds it was an isolated incident (e.g. unlikely to recur). If doctor has a previous history that relates to clinical practice, it will not be appropriate to consider a new matter as a single clinical incident unless the previous matter was found not proved, was a significant time ago, or where the nature of the incidents are very specialised and completely unrelated.

AR decision-reasoning

- 13 Any reliance on previous history should be noted in the AR's decision reasoning and disclosed to the doctor in the initial letter, taking into consideration any concerns or specific requests that any individual has made about how we use their personal information when we are considering concerns about a doctor's fitness to practise.

Cases Examiners Rule 7 and 8: Applying the realistic prospect test (RPT)

- 14 Cases that have been closed with formal action (warnings, undertakings, conditions, suspension, erasure) may be relevant when determining whether the RPT is met in relation to the current allegation, if the previous allegation is similar. This history may reveal a pattern of persistence or provide the decision maker with evidence that the doctor has a propensity to commit the acts of misconduct alleged and therefore has an increased risk of doing so in the future.
- 15 Where complaints have been closed as insufficient to amount to impaired fitness to practise, or where there is a history of isolated clinical incidents/concerns which were insufficient to amount to impairment, these may be relevant in determining whether the RPT is met. The guidance at paragraphs 11 and 12 provides further detail on these circumstances and should be taken into account by case examiners.
- 16 The doctor should be notified that the case examiners may take the doctor's previous history into account if relevant. Where previous matters are taken into account, whether or not they result in formal action, this should be explained in decision-making reasoning and, where relevant, should be included in the bundle to be sent to the doctor so that they have an opportunity to comment.

Decisions about whether an interim order is required

- 17 When making decisions about whether to refer concerns to an Interim Orders Tribunal (IOT), previous cases that include similar allegations that were closed with or without formal action should be considered. For example, if a doctor has previously been convicted of sex offences and is currently facing an allegation of inappropriate sexual behaviour with a patient, the previous history may suggest that there is a heightened risk to the public if the doctor continues to practise without restrictions.
- 18 Cases closed with no findings and/or no formal action are less likely to be relevant to the decision maker at this stage than previous cases that closed with formal action. However, where these are relevant to the current risk posed by a doctor, it may be appropriate to take them into account. In both situations, decision makers need to consider the nature and seriousness of the previous history, how recently the allegation took place, and the strength of evidence relating to the previous history.

Decision to direct a performance, health or language assessment: Rule 7(3)

- 19** When deciding whether to direct a performance, health or language assessment, it may be reasonable for the decision maker to take into consideration previous cases that raised clinical performance, health or language concerns that were closed with no formal action, but where the relevant factual allegations were found proven. However, allegations that were found not proven by a Tribunal following consideration of the evidence should not be taken into consideration.