General
Medical
Council

Deciding whether to refer a matter to the GMC (Doctors)

Guidance for responsible officers

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Introduction

1. The Responsible Officer Regulations* give responsible officers (ROs) responsibility for the evaluation of the fitness to practise of every doctor with a prescribed connection to the organisation for which they are RO. The Regulations require ROs to:

   a implement procedures to investigate concerns about doctors' fitness to practise raised by patients or staff of designated bodies or from any other source

   b monitor compliance with GMC conditions or undertakings

   c maintain records of doctors' fitness to practise evaluations, including appraisals and any other investigations or assessments

   d where appropriate, refer concerns about a doctor to us, the GMC, as the Regulator.

   Additionally, doctors have a duty to protect patients under *Good medical practice*.

2. Employer liaison advisers (ELAs) advise ROs on how to handle matters about doctors that may give rise to a question of impaired fitness to practise, and whether the matter is serious enough for referral. They will also advise on the appropriate point at which a referral should be made depending on the seriousness of the matter and the doctor's willingness to engage in local remediation.

3. If, as an RO, you have a concern about a doctor's behaviour, performance and / or the impact of a health condition on their ability to practise safely and effectively, you should consider, with support from your designated ELA, whether it is appropriate to refer the matter to us, the GMC, as the Regulator. If the concern is about a doctor who works with your organisation but the doctor has a prescribed connection to another organisation, you and the RO for the other organisation should jointly decide whether to refer the doctor and agree who should make the referral.

4. The purpose of this guidance *Deciding whether to refer a matter to the GMC (Doctors) - Guidance for responsible officers*, is to assist ROs to make fair and proportionate decisions about whether fitness to practise concerns about a doctor need to be referred, and to make accurate referrals when appropriate. It is split into three sections:

   PART A explains our approach to assessing fitness to practise concerns.

   PART B provides guidance on whether a concern about a doctor's fitness to practise should be referred. When considering whether to make a referral, you should seek advice from your ELA unless there is an immediate patient safety risk or the concern is of an urgent or high-profile nature.

   PART C provides information about how to make a referral. When making a referral, you

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* The Medical Profession (Responsible Officers) Regulations 2010

should seek support from your ELA unless there is an immediate patient safety risk or the concern is of an urgent or high-profile nature.

PART A: How the GMC assesses a doctor's fitness to practise

5. Fitness to practise is an assessment of a doctor's ability to practise safely and effectively. It includes considering a doctor's overall ability to perform their individual role, their professional and personal behaviour, and the impact of any health condition on their ability to provide safe care. Further information can be found in our publication *What we mean by fitness to practise (Doctors)*.

6. We can only assess the fitness to practise of a doctor who is registered with us when there is a legal basis for doing so. There are six legal bases[*]:

- **a.** misconduct
- **b.** deficient professional performance
- **c.** a criminal conviction or caution in the British Isles (or elsewhere for an offence which would be a criminal offence if committed in England or Wales)
- **d.** adverse physical or mental health
- **e.** not having the necessary knowledge of English
- **f.** a determination (decision) by a regulatory body either in the UK or overseas to the effect that fitness to practise as a member of the profession is impaired.

These are known as the grounds for taking regulatory action. Further information about the grounds can be found in the section *What are the grounds for taking regulatory action?* in the guidance *Decision on whether regulatory action is required (Doctors)*.

7. An investigation can only be opened where information received about a doctor falls under at least one of these grounds and raises a question about whether the doctor poses a current and ongoing risk to one or more of the three parts of public protection i.e. raises a question as to whether the doctor's fitness to practise is impaired.

8. References made to 'public protection' throughout this guidance refer to our legal duty to protect the public which is split into three distinct parts. It means acting in a way that:

- protects, promotes and maintains the health, safety and wellbeing of the public ('patient safety')
- promotes and maintains public confidence in the profession ('public confidence'), and
- promotes and maintains proper professional standards and conduct for members

[*] Section 35C(2) of the Medical Act 1983 (as amended)

of the profession ('professional standards').

Protecting the public		
protect, promote and maintain health, safety and wellbeing	promote and maintain public confidence	promote and maintain professional standards and conduct

Our publication *Decision making principles in fitness to practise* explains this legal duty in more detail.

9. It is not our role to resolve individual complaints or punish doctors for past mistakes, but we will take action where needed to protect the public.

10. To assess whether a doctor poses any current and ongoing risk to public protection, we consider:

a. The seriousness of the concern(s) about the doctor's behaviour, performance and / or the impact of a health condition on their ability to practise safely and effectively ('seriousness')

b. Any relevant context known about the doctor and / or their working environment ('relevant context')

c. How the doctor has responded to the concern, including looking at evidence of insight and remediation and, where relevant, if the doctor has kept their knowledge and skills up to date ('how the doctor has responded').

Our publication *What we mean by fitness to practise (Doctors)* explains these concepts in more detail.

11. Following receipt of information about a doctor, we may request limited further information or carry out a provisional enquiry to help us decide whether an investigation should be opened. Further information about how we decide whether or not to open an investigation can be found in the guidance *Deciding whether to open an investigation (Doctors)*.

Seriousness

12. We will only consider information about a doctor's behaviour, performance and / or the impact of a health condition on their ability to practise safely and effectively where it is serious enough to give rise to a question of impaired fitness to practise.

13. To assess the seriousness of a concern, we consider:

a. Is the information serious enough to give rise to a question of impaired fitness to practise?

b. If serious enough, does the concern fall at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise?

14. Some matters will not usually present a risk to one or more of the three parts of public protection and therefore are not usually serious enough to give rise to a question of impaired fitness to practise. A list of these matters is available in the section titled *Matters that are not usually serious enough to give rise to a question of impaired fitness to practise* in the guidance *Decision on whether regulatory action is required (Doctors)*.

15. A wide range of other matters are capable of presenting a risk to one or more of the three parts of public protection and may therefore be serious enough to give rise to a question of impaired fitness to practise. Although it is not possible to describe every matter that may meet this threshold, a list of matters commonly seen are detailed in the section titled *Matters that are usually serious enough to give rise to a question of impaired fitness to practise* in the guidance *Decision on whether regulatory action is required (Doctors)*. As this list is not exhaustive, the question of whether other matters meet this threshold will need to be considered with reference to whether they amount to a serious departure from the professional standards in *Good medical practice* and the more detailed guidance.

16. While having a health condition is not of itself a departure from the professional standards, doctors are expected to take steps to manage any risk to patients arising from a health condition. Where the risk isn't, or can't be, effectively managed, the impact of a health condition on the doctor's ability to practise safely may be serious enough to give rise to a question of impaired fitness to practise.

17. Of those matters that are serious enough to raise a question of impaired fitness to practise, some are more serious than others. In other words, there is a spectrum of matters that give rise to a question of impaired fitness to practise. To reach a view on whether the concern falls at the higher end of the spectrum, we consider the nature of the concern and any features that increase seriousness.

18. Where the concern falls at the higher end of the spectrum, evidence of relevant context and / or how the doctor has responded will have less impact on the assessment of

whether the doctor poses any current and ongoing risk to public protection. This is because the risk to public protection arising from these concerns is generally more difficult to mitigate and address and is therefore less likely to be able to be addressed locally.

Relevant context

19. Relevant context about a doctor and / or their working environment can have an impact on the assessment of whether the doctor poses any current and ongoing risk to public protection. There are three types of relevant context: working environment, role and experience, and personal.

20. We consider all information available to us about relevant context, and consider if, and how, it has impacted the doctor's behaviour, performance, or health. Relevant context can increase or decrease the level of current and ongoing risk a doctor poses. More information about the impact relevant context may have on the assessment of risk can be found in the section *What is the impact of any relevant context known about a doctor and / or their working environment?* in the guidance *Decision on whether regulatory action is required (Doctors)*.

How the doctor has responded

21. We will examine the evidence available to consider if the doctor has:

- **a.** shown insight into the concern about their behaviour, performance or the impact of a health condition
- **b.** remediated i.e. taken steps which have reduced the risk of similar concerns occurring again, such as participating in training, supervision, coaching or mentoring relevant to the concern raised, and
- **c.** where relevant, kept their knowledge and skills up to date.

22. Where a doctor has shown insight and taken steps to avoid the risk of similar concerns occurring again, this can have a significant impact on our assessment of whether they pose any current and ongoing risk to one or more of the three parts of public protection.

23. More information about the impact that evidence of insight, remediation and the doctor's knowledge and skills may have on the assessment of risk can be found in the section *How has the doctor responded to the concern?* in the guidance *Decision on whether regulatory action is required (Doctors)*.

Decision on whether the doctor poses any current and ongoing risk to public protection

24. During an investigation we can consider all aspects of a doctor's fitness to practise. This may mean considering not only the matters raised in the original referral, but also any other concerns that have come to light during the investigation.

25. The decision on whether the doctor poses any current and ongoing risk to one or more of the three parts of public protection informs what happens at the end of an investigation. At this stage of the fitness to practise process, the doctor's case may:

- **a.** close
- **b.** close with advice
- **c.** conclude by issuing a warning
- **d.** conclude in agreeing undertakings, or
- **e.** be referred to a hearing.

26. Further information on the outcomes available at the end of an investigation can be found in the guidance *Deciding the outcome of an investigation (Doctors)*.

Other considerations to be aware of

27. Where the most recent events that give rise to the question about the doctor's fitness to practise took place more than five years ago, we only investigate if there is a public interest in doing so. Further information can be found in the *Supplementary guidance to support decisions on applying the five-year rule (Doctors)*.

28. At any time during our investigation of a concern, a doctor's case may be referred to an Interim Orders Tribunal. Further information can be found in the guidance *Decisions on interim orders (Doctors)*.

PART B: Deciding if a concern should be referred

29. Where there are concerns about a doctor's fitness to practise, we work closely with ROs, through our Outreach Team, to help resolve concerns locally where possible. This reduces the negative effects for doctors of duplication across local and national complaints processes and achieves more timely resolution of complaints for patients. However, local resolution will not be suitable for all concerns and some matters will need to be referred to us to consider if regulatory action* is required.

30. If you have a concern about a doctor you should decide, with support from your ELA, whether it is appropriate to refer the concern to us, in accordance with your responsibilities as set out in the Responsible Officer Regulations and your duty to protect patients under *Good medical practice*.

31. To make sure that referrals are fair, proportionate and accurate you may first need to:

- **a.** complete your own local investigation and consider the conclusions
- **b.** consider the outcomes of any external investigation, and / or
- **c.** take any other practicable steps you consider are reasonably necessary to understand whether the concern raises a question about the doctor's fitness to practise.

32. You should also consider the diversity that exists in different clinical settings which can present specific challenges for some groups of doctors working within them and take into account the impact of the working environment to ensure all referral decisions are fair and proportionate.

33. The matter is likely to be serious enough for referral when the concern about the doctor's behaviour, performance and / or impact of a health condition meets at least one of the below criteria:

- **a.** It is listed in *Concerns that are likely to fall at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise due to their inherently serious nature* in the guidance *Decision on whether regulatory action is required (Doctors)*. *Additionally,* the matter is likely to be serious enough where a

* A warning or restrictive action of conditions, suspension or erasure

doctor has been acquitted through criminal proceedings or has been investigated by the police with an outcome of no further action[*].

b. (i) It is listed in *Concerns that do not fall in the above category and because of their nature are more likely to be easily remediable* in the guidance *Decision on whether regulatory action is required (Doctors)*, or

(ii) is another serious departure from the professional standards set out in *Good medical practice* and the more detailed guidance,

and the concern contains features listed in *Features of the concern that may increase seriousness* in the guidance *Decision on whether regulatory action is required (Doctors)* and / or you are not confident that any risk to public protection can be managed locally. This may include where the doctor has left your employment.

c. The doctor has accepted a caution, or been charged with or found guilty of a criminal offence, or received an alternative method of disposal by the police[†], unless it falls within *Matters that are not usually serious enough to give rise to a question of impaired fitness to practise* and doesn't contain any of the features in the section titled *Features of the concern that may increase seriousness* in the guidance *Decision on whether regulatory action is required (Doctors)* or the features listed below:

- alcohol or illegal drugs were a factor in the criminal behaviour
- there was a religious or racial motivation behind the underlying criminal conduct
- the underlying circumstances of the offence raise a safeguarding concern suggesting the doctor may pose a risk of harm to children and / or vulnerable adults.

d. Its nature suggests there is a deep-seated issue with the doctor's attitude and / or beliefs. This is because these concerns are more difficult to remediate and therefore local resolution is less likely to be successful.

e. A doctor has abused a patient's trust or violated a patient's fundamental rights.

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[*] A decision to take regulatory action and criminal proceedings serve different purposes. Just because the police (or another prosecuting authority) have decided not to proceed with a criminal matter against a doctor, this does not mean that we are prohibited from considering information received that might suggest that the doctor's fitness to practise is impaired.

[†] It is a requirement under paragraph 99 of *Good medical practice*, and the more detailed guidance, for all doctors to tell us if this has occurred. Where the RO knows the doctor has done this, there is no need for a separate referral.

f. Public confidence in the profession generally might be undermined if the Regulator (i.e. us) does not take action, even where local measures address any risk to patient safety.

g. A doctor has been criticised by an official inquiry.[*][†]

h. Another regulatory or professional body, in the UK or overseas, has made a determination (decision) against a doctor's registration as a result of fitness to practise procedures.

Further information on each of the above is available in the guidance *Decision on whether regulatory action is required (Doctors)*.

34. To make a referral, you should refer to PART C. Where you decide not to refer a matter to us, the doctor may still need to reflect on it as part of their appraisal and revalidation.

[*] More information on what is meant by "an official inquiry" and what we would consider to be criticism possibly requiring investigation is set out in the more detailed guidance *Reporting criminal and regulatory proceedings within and outside the UK*.

[†] It is a requirement under paragraph 99 of *Good medical practice* for all doctors to tell us if this has occurred. Where the RO knows the doctor has done this, there is no need for a separate referral.

PART C: Making a referral

35. A referral is a formal mechanism for providing information to us about a doctor's fitness to practise. Any referral should be made in good faith and based on all the information that is available. You should take reasonable steps to ensure that any referral you make is fair, proportionate and accurate. You may choose to delegate the administration of making the referral, but you will remain accountable for the content.

36. ELAs have expertise in advising on whether a concern about a doctor's fitness to practise should be referred to us and if so, how to make a referral. You should seek the advice of your ELA when concerns arise and before making a referral, unless there is an immediate patient safety risk or the concern is of an urgent or high-profile nature. However, ELAs don't make the referral decision – that decision is your statutory responsibility, and you must exercise your professional judgment when making it.

37. You can contact your ELA directly for advice or contact the ELA team on 0161 923 6602 or outreach@gmc-uk.org.

38. If, after discussing your concerns with your ELA, you decide to make a referral, you should do this via GMC Connect. If this is not possible, you should complete the referral form and send it to practise@gmc-uk.org. Your ELA should be copied into any referral.

39. If you need to make an urgent referral on the basis that there is an immediate patient safety risk or the concern is of an urgent or high-profile nature, please e-mail practise@gmc-uk.org straight away with as much detail about the matters as possible and copy in your ELA.

Completing the RO referral form

40. Alongside core information about the doctor, the referral form asks a series of questions (listed below) to help us understand and assess the information about the doctor's fitness to practise and promote consistency and fairness across all regulatory stages. These aims are further supported by the referral declaration at the end of the form that you must sign to assure us that the referral is made in good faith and is fair and accurate.

41. In summary, the questions asked in the referral form are:

- **a.** What is the concern about the doctor's fitness to practise?
- **b.** Is there any relevant context known about the doctor and / or their working environment?
- **c.** How has the doctor responded to the concern?
- **d.** Is the doctor an international medical graduate?

e. Has the doctor raised any patient safety concerns?

Further explanation is provided within the referral form to support answering these questions. Additional information is provided below, together with links to relevant guidance.

Responding to questions about the concern, any relevant context known about the doctor and / or their working environment and how the doctor has responded to the concern

42. Being able to fairly and consistently assess whether a doctor poses any current and ongoing risk to one or more of the three parts of public protection is key to us having an effective fitness to practise process that allows us to meet our legal duty. Fully understanding a concern and the circumstances surrounding it allows us to decide if it is serious enough to give rise to a question of impaired fitness to practise and if so, how to proportionately investigate further.

43. By considering and listing any relevant context known about the doctor and / or their working environment, you can demonstrate that context has been taken into account when making a referral decision and it allows us to assess the impact of any relevant context when assessing risk.

44. Including information about how the doctor has responded to the concern can help demonstrate that you have considered if any associated risk has been, or can be, mitigated through local support or action. It allows us to assess the likelihood of the same, or a similar, event occurring again in the future which is relevant to our assessment of whether the doctor poses any current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response.

45. Frank and honest answers should be provided when completing these sections of the form. Only information that you are aware of should be included in the referral, rather than speculation. Our guidance *Decision on whether regulatory action is required (Doctors)* has further detail on how we assess seriousness, relevant context known about the doctor and / or their working environment and the doctor's response to a concern. This may help you decide what information to include in the referral.

46. There is also functionality within the referral form to provide supporting documentation. Having a fair evidence base is vital to our assessment of whether the doctor poses any current and ongoing risk to public protection. If some of the supporting documentation is unavailable at the point of referral, you should not delay making the referral: you should send all the documentation that is available at the time and indicate on the referral form what additional documentation will be sent later.

Responding to "Is the doctor an International Medical Graduate?"

47. UK practice can be very different for doctors who are International Medical Graduates (IMGs). A key consideration is how sub-optimal induction and / or support for such doctors may contribute to disproportionate fitness to practise referrals. Where the doctor is an IMG, before making a referral, ROs should have a conversation with the doctor to identify what induction / support they have been offered. Whilst ROs may not be aware of all the doctor's inductions (i.e. multiple placements / jobs), they should, as a minimum, make themselves aware of what has taken place in the doctor's most recent and current place of employment.

48. You will also be asked for induction details if the doctor has had a prescribed connection to you for five years or less. This is to reflect the fact that if a doctor has worked for an organisation for several years or more, it may not be proportionate to ask about an induction as its importance will reduce over time. However, we encourage consideration of cultural and language differences, and the impact of being an IMG on a doctor, before any referral is made, regardless of how long the doctor has been working in an organisation.

Responding to "Has the doctor raised any patient safety concerns?"

49. When making a referral, we also ask if, to your knowledge, the doctor being referred has previously raised any patient safety concerns with your organisation or any other organisation. Patient safety concerns are concerns that patient safety or care is being compromised by colleagues, the system, policies or procedures in the organisations in which the doctor works.

50. A patient safety concern raised by the doctor is distinct from a grievance or private complaint, for example, a dispute about the employee's own employment position that has no public interest element. Further information can be found in the guidance *Raising and acting on concerns about patient safety*.

51. It is important we know if a doctor has raised patient safety concerns so we can seek appropriate assurance that your role as the referrer, and ours as the Regulator, are not being used inappropriately in response to a doctor raising concerns. If the doctor has previously raised patient safety concerns, you will be asked to provide further information to help us better understand the context and outcome.

Completing the referral declaration

52. Whenever you make a referral, you will be asked to make a referral declaration to confirm it has been made in good faith, with due consideration of potential bias, and that it is accurate, balanced and fair. You will also be asked if the referral has been subject to an 'impartiality check' and to provide evidence where relevant. An impartiality check provides assurance that the decision to refer is fair and that consideration has been given to any bias that may impact it. The check should involve senior / specialist advice to the referrer and document the factors considered, decision and rationale.

53. Completing an impartiality check can include seeking advice from local resources such as HR, Legal, Equality, Diversity & Inclusion (ED&I) specialists and non-executive Directors. You can discuss how you carry out impartiality checks with your ELA.

54. If you have concerns about the fairness or accuracy of the information that forms the basis of the referral, for example, where you are relying on information from a third party or you have been unable to resolve an evidential disparity, this should be clearly indicated in the referral.

After making a referral

55. Once a referral has been made, we will assess whether we can, and should, carry out an investigation of the doctor's fitness to practise. We will update you at appropriate points throughout the process. Depending on what information you provided at the time of the referral, you may be asked for additional information. The length of time it will take to consider a referral depends on many factors, such as the potential seriousness of the concern, availability of information and engagement from any relevant third parties.

56. If you discover that you have answered any part of the referral form incorrectly, or where further information relevant to the referral becomes available, you should notify us as soon as possible. If the referral is still being considered and you have not yet been notified whether we have closed the case or opened an investigation, please email practise@gmc-uk.org. If an investigation has been opened, please contact the investigation officer who will have written to you with their details.