

Supplementary guidance on assessing the impact of a doctor’s health on their behaviour or performance

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Introduction

1. A doctor's health condition may explain or provide a reason for a concern about their behaviour or performance*. In some cases, it may be possible to address the concern about the doctor's behaviour or performance by dealing solely with addressing the impact of the health condition on their ability to practise safely and effectively, and without taking specific action in relation to the concern about their behaviour or performance.
2. At the end of an investigation into a concern about a doctor's fitness to practise, the case examiners will decide whether there is a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree requiring restrictive action.
3. In cases where there is cogent evidence that a doctor's health condition resulted in a concern arising about their behaviour or performance, the case examiners may conclude that the impact of the doctor's health condition poses a current and ongoing risk to one or more parts of public protection, but the behaviour or performance concern does not separately pose any current and ongoing risk requiring restrictive action on registration. If so, the case examiners can conclude that the realistic prospect test is only met in relation to concern arising from the impact of the doctor's health condition.
4. References made to 'public protection' throughout this guidance refer to the Regulator's[†] legal duty to protect the public which is split into three distinct parts. It means the Regulator must act in a way that:
 - protects, promotes and maintains the health, safety and wellbeing of the public,
 - promotes and maintains public confidence in the professions, and
 - promotes and maintains proper professional standards and conduct for members of the professions.

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

The publication [Decision making principles in fitness to practise \(Doctors\)](#) explains this legal duty in more detail.

5. The purpose of this *Supplementary guidance on assessing the impact of a doctor's health on their behaviour or performance* is to support case examiners reach fair and consistent

* This includes misconduct, cautions, convictions and determinations.

[†] References to 'the Regulator' mean the GMC and GMC staff who are authorised to make decisions at each stage of the fitness to practise process on behalf of the GMC.

decisions about whether a concern about a doctor's behaviour or performance separately poses any current and ongoing risk to one or more of the three parts of public protection requiring restrictive action on registration. This guidance should be considered alongside the guidance [Deciding the outcome of an investigation \(Doctors\)](#).

The realistic prospect test

6. Where a concern has been raised about the impact of a doctor's health condition on their ability to practise safely and effectively and about their behaviour or performance, the case examiners must decide whether there is a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree requiring restrictive in response, in respect of each concern. This is known as the realistic prospect test. Further information about the test and how it should be applied is in the guidance [Deciding the outcome of an investigation \(Doctors\)](#).

Is the realistic prospect test met?

7. To reach a decision on whether the realistic prospect test is met, case examiners should consider:
 - Has the concern been sufficiently evidenced?
 - If so, would the concern demonstrate that the doctor poses any current and ongoing risk to one or more of the three parts of public protection?
8. The case examiners should only assess whether a doctor poses any current and ongoing risk in relation to concerns where they are satisfied that they have been sufficiently evidenced i.e. that there is a realistic prospect of the concern(s) being proved.
9. Where the case examiners are satisfied that the concern about the impact of a doctor's health condition on their ability to practise safely and effectively, and the concern about the doctor's behaviour or performance have both been sufficiently evidenced, they should apply the additional guidance below when assessing if the doctor poses any current and ongoing risk.

Does the doctor pose any current and ongoing risk to public protection?

10. Where the case examiners are satisfied that each concern has been sufficiently evidenced by applying the relevant guidance in [Deciding the outcome of an investigation \(Doctors\)](#), they must assess whether the doctor poses any current and ongoing risk to public protection in respect of each concern.
11. In cases where there are concerns about the impact of a doctor's health condition and concerns about their behaviour and / or performance, the information available to the case examiners about the impact of a doctor's health condition should form part of the

assessment of current and ongoing risk in relation to the behaviour and / or performance concern.

12. The case examiners may conclude that the impact of the doctor's health condition poses a current and ongoing risk to one or more parts of public protection, but the concern about their behaviour or performance does not separately pose any current and ongoing risk requiring restrictive action in response where:

- **there is cogent evidence that the doctor's health condition is linked to the concern about their behaviour or performance.**

There must be evidence that the doctor had the health condition at the time the events arose and the health condition should explain or provide a reason for the concern about their behaviour or performance.

- **the concern about the doctor's behaviour or performance is serious enough to give rise to a question of impaired fitness to practise but does not fall at the higher end of the spectrum of such matters, and there are no features which have the effect of increasing the seriousness of the concern.**

Guidance on assessing seriousness can be found in the guidance [Decision on whether regulatory action is required \(Doctors\)](#).

- **the doctor has taken steps to minimise reoccurrence of any risks posed by their health condition, such as seeking and following treatment, and**
- **there is no evidence of relevant context about the doctor and / or their working environment that increases the risk the doctor poses to public protection.**

13. In cases where case examiners conclude that the doctor may pose a separate current and ongoing risk to public protection in relation to the behaviour or performance concern, restrictive action that solely addresses the doctor's health condition is unlikely to be sufficient to address the overall current and ongoing risk to public protection posed by the doctor, particularly where public confidence is engaged.

14. Where the case examiners have concluded that the behaviour or performance concern does not separately pose any current and ongoing risk to one or more of the three parts of public protection requiring restriction action on registration, the realistic prospect test will not be met in relation to that concern.

15. The case examiners can then go on to consider the proportionate outcome needed to address the concern about the impact of the doctor's health condition.

16. In the first instance, the case examiners should refer to the guidance [Decisions on undertakings \(Doctors\)](#) to consider whether it would be appropriate to propose that the doctor be invited to comply with undertakings. If the case examiners conclude that it is not appropriate to propose undertakings, the doctor's case will need to be referred to a Medical Practitioners Tribunal hearing.