General Medical Council

Decisions on undertakings (Doctors)

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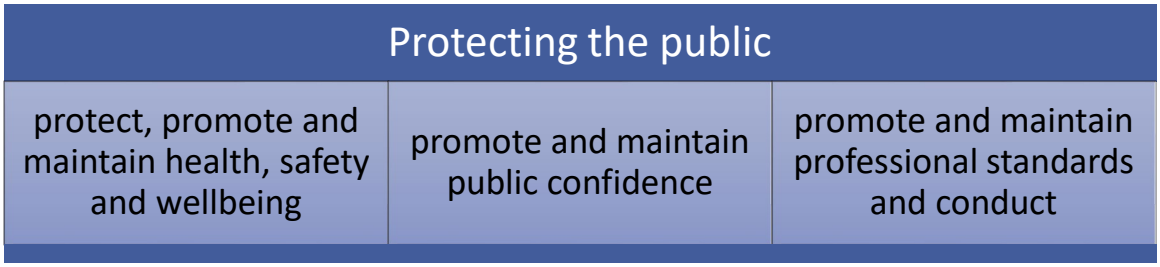
Introduction

1. Undertakings restrict a doctor's ability to practise and / or require them to do something. They are suitable for cases where the doctor's behaviour, performance or the impact of a health condition on their ability to practise safely and effectively, is currently incompatible with unrestricted registration. This means the current and ongoing risk to public protection posed by the doctor needs to be managed by restricting their registration for a period, with the aim they should be able to safely return to unrestricted practice in the future.
2. 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.



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

3. At the end of an investigation, the case examiners will consider all relevant information available to them to decide whether there is a realistic prospect of establishing that a doctor's fitness to practise is impaired to a degree requiring restrictive action in response. To reach a decision, the case examiners will apply the guidance *Deciding the outcome of an investigation (Doctors)*.
4. Where the realistic prospect test is met, or is likely to be met on recurrence of a health condition[†], and the case examiners are satisfied that undertakings would protect the public, they can recommend that the Regulator invite the doctor to comply with undertakings[‡]. However, if the case examiners fail to come to an agreement as to the appropriate outcome, the matter will be referred to the Investigation Committee for

[*] 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.
[†] Under Rule 10(2)(b) of the General Medical Council (Fitness to Practise) Rules 2004 ('FTP Rules 2004')
[‡] Rule 8(3) of the FTP Rules 2004

consideration[*].

5. If the case examiners or the Investigation Committee decide to recommend that the doctor should be invited to comply with undertakings, and the doctor does not agree to them, the matter can be referred to a Medical Practitioners Tribunal (MPT) for consideration[†].

6. Undertakings can also be agreed between a doctor and the Regulator at a hearing after the MPT has made a finding of impairment. If undertakings are agreed, the MPT may take these into account when reaching its decision on sanction[‡], provided that certain conditions are met[§].

7. Where, because of information received by the Regulator, it appears to the case examiners that any undertakings in effect on a doctor's registration should be varied or cease to apply, the Regulator can invite the doctor to comply with varied undertakings or direct that the undertakings will no longer apply[**].

8. The purpose of this guidance *Decisions on undertakings (Doctors)* is to support consistent and fair decision making in respect of undertakings. Part A provides guidance to case examiners and the Investigation Committee on the considerations relevant to deciding whether a doctor be invited to comply with undertakings. Part B gives guidance on the considerations relevant to varying or revoking undertakings.

[*] Rule 8(5) of the FTP Rules 2004
[†] Rule 10(8)(a) of the FTP Rules 2004
[‡] Provided for by Schedule 4 paragraph 1(2C) of the Medical Act 1983 (as amended)
[§] Further details can be found in the guidance Undertakings at medical practitioner tribunal hearings.

[**] Rule 10(7) of the FTP Rules 2004

Being proportionate, transparent and fair

9. Case examiners and the Investigation Committee must be proportionate in their approach to decision making, asking themselves what is required and no more than necessary to achieve public protection. Before deciding to recommend that the Regulator invite the doctor to comply with undertakings, case examiners and the Investigation Committee should be clear about all the options available to them at the end of the investigation and satisfy themselves that undertakings are a proportionate outcome. To be proportionate, undertakings must be appropriate, workable and measurable, and sufficient to address the risk to public protection.

10. To ensure decisions on undertakings are transparent, case examiners and the Investigation Committee must give reasons for their decisions and record them clearly. Clear reasoning is key to ensuring confidence is maintained in the Regulator as a professional body. Without reasons, patients, members of the public and doctors cannot understand the decisions made and hold the Regulator to account. Case examiner and Investigation Committee decisions on undertakings must address all the concerns included within the scope of the investigation.

11. To be fair in their approach, any undertakings proposed by the case examiners or Investigation Committee must be workable and measurable. This is so the doctor can reasonably be expected to comply and is clear about what is required of them.

Part A: Recommending undertakings

12. To decide whether to recommend that the Regulator invite a doctor to comply with undertakings, case examiners and the Investigation Committee should answer the following questions:

i. **Is the realistic prospect test met?**

ii. **Will undertakings be appropriate, workable and measurable?**

iii. **Are undertakings sufficient to address the risk to public protection?**

13. Where the case examiners or Investigation Committee decide to recommend that the doctor should be invited to comply with undertakings, specific undertakings should be proposed.

i. Is the realistic prospect test met?

14. Case examiners and the Investigation Committee can only recommend undertakings where they are satisfied that there is a realistic prospect, or is likely to be on recurrence of a health condition*, that the doctor's fitness to practise is impaired to a degree requiring restrictive action on registration.

15. To decide if the realistic prospect test is met, case examiners will have applied the guidance *Deciding the outcome of an investigation (Doctors)* and the Investigation Committee will have applied the guidance *Decisions by the Investigation Committee*.

16. Where the realistic prospect test is not met, undertakings should not be recommended. Where it is met, the case examiners and Investigation Committee should go on to consider the next question.

ii. Will undertakings be appropriate, workable and measurable?

17. Case examiners and the Investigation Committee must be satisfied that undertakings will be appropriate, workable and measurable.

18. To be **appropriate**, undertakings must address the specific findings about the current and ongoing risk to public protection posed by the doctor.

19. To be **workable**, undertakings must be capable of producing the desired result of addressing the specific findings about the risk to public protection posed by the doctor.

20. Undertakings are likely to be workable where:

* Rule 10(2)(b) of the FTP Rules 2004

- the doctor has shown insight
- time is needed for the doctor to take steps to address the concerns (remediate), for example through retraining, study, supervision and / or seeking medical treatment
- the doctor is willing to remediate
- the case examiner or Investigation Committee is satisfied the doctor will comply with them.

21. When deciding whether remediation is possible, the case examiners or Investigation Committee should carefully consider any objective evidence that is available to them. This may include the outcome of assessments, or other independent evidence of the doctor's performance, health, or knowledge of English language.

22. Sometimes evidence is provided that a doctor's employer, or another relevant body, will not support certain undertakings if they were to be put in place, which means that a specific undertaking is not workable in that environment. Where alternative undertakings can be identified that are workable and achieve the overall aim of undertakings, and they adequately address the current and ongoing risk to public protection posed by the doctor, consideration can be given to recommending those instead.

23. However, where alternative undertakings are not appropriate the undertakings considered necessary to protect the public should be recommended, despite the fact they may not be supported by the doctor's current employer or relevant body. A lesser or greater action than that which is necessary to protect the public should not be pursued simply because certain undertakings may not be supported by a specific body.

24. An undertaking must be described in specific terms to make it **measurable**. Undertakings must be measurable so that the doctor can be clear about what is required of them. Having measurable undertakings also means that when an assessment of whether the doctor poses any current and ongoing risk to public protection is next made, the extent to which the doctor has complied with the undertakings, and the question of whether the undertakings have had the desired result, can be considered.

25. Where the case examiners or Investigation Committee are not satisfied that undertakings will be appropriate, workable and measurable they should not be recommended.

26. In cases where the case examiners and Investigation Committee are satisfied that undertakings would be appropriate, workable and measurable, the next question should be considered.

iii. Are undertakings sufficient to address the risk to public protection?

27. If there is a realistic prospect that the doctor would be erased from the medical register if the concerns were referred to an MPT hearing, the case examiners must not recommend

that the doctor be invited to comply with undertakings [*]. This is because in these circumstances undertakings will not be sufficient to address the risk to public protection.

28. In cases relating solely to a doctor's health or knowledge of English, there is no possibility of erasure. However, where there are additional concerns which are unrelated to the doctor's health or knowledge of English, this could raise the possibility of erasure. To consider the likelihood of erasure, the case examiners and Investigation Committee should consider all relevant information available to them and refer to the *Guidance for MPTS tribunals*.

29. Where erasure is not a possibility, the case examiners must be satisfied that undertakings will be sufficient to address the current and ongoing risk to public protection posed by the doctor before they can be recommended.

30. Undertakings may be sufficient to protect the public where the doctor has shown a degree of insight into the concern and some, or all, of the following factors are present:

- the doctor has demonstrated they are willing and / or able to remediate
- identifiable areas of the doctor's practice need prohibiting, monitoring, or retraining
- the doctor has demonstrated they are willing to be open and honest with patients and others they work with if things go wrong
- the doctor will not put patients, or the public at harm, either directly or indirectly, by having undertakings on their registration.

31. A doctor may have demonstrated they are willing and able to remediate where they've provided evidence that they're committed to improving their knowledge and skills and keeping them up to date throughout their working life, improving the quality of their work and seeking and responding to feedback. They may not have demonstrated they are willing and / or able to remediate where there is evidence there have been previous unsuccessful attempts to remediate, or where there is evidence the doctor has been unwilling to engage.

32. Where there are concerns about the doctor's knowledge of English that meet the realistic prospect test, the case examiners and Investigation Committee should carefully consider the level of the doctor's deficiency, and the level of knowledge required to practise medicine safely. In these cases, a question may arise about whether undertakings are sufficient to address the actual harm or risk of harm to patients, even where the doctor is not currently working or is only working with non-English speaking patients, considering the need to liaise with the wider healthcare system.

33. Undertakings are unlikely to be sufficient to protect the public in cases where:

[*] Rule 10(5) of the FTP Rules 2004

a. the nature of the concerns about the doctor's behaviour or performance fall at the *higher end of the spectrum of matters that give rise to a question of impaired fitness to practise.*

b. the nature of the concerns suggest an underlying problem with the doctor's attitude, such as where a doctor has:

- shown a deliberate or reckless disregard of clinical responsibilities towards patients
- abused a patient's trust or violated a patient's autonomy or other fundamental rights **or**
- behaved dishonestly, fraudulently or in a way designed to mislead or harm others.

34. However, in some cases where the concern about the doctor's behaviour or performance falls at the *higher end of the spectrum of matters that give rise to a question of impaired fitness to practise*, there may be exceptional circumstances that mean undertakings can be justified. This may include where the concerns are closely linked to an underlying health condition and the case examiners or Investigation Committee are satisfied that undertakings can fully address the current and ongoing risk to public protection posed by the doctor.

35. Where the case examiners or Committee decide there are exceptional circumstances, they must fully and clearly explain:

- what the exceptional circumstances are
- why the circumstances are exceptional
- how the exceptional circumstances justify recommending undertakings.

36. Where the case examiners or Investigation Committee are not satisfied that undertakings are sufficient to protect the public, they should not be recommended.

37. In cases where the case examiners and Investigation Committee are satisfied that undertakings would be sufficient to protect the public, they can be recommended.

What undertakings should the doctor be invited to comply with?

38. When recommending undertakings, as well as giving reasons for the need for this type of restrictive action, the objectives should be clearly set out, so they are measurable.

39. Undertakings should be drawn from the suite of undertakings detailed in the *Undertakings bank*. The wording of undertakings in the bank should be retained unless, unusually, it is necessary to amend or add to them, considering the individual circumstances of the case.

40. *Prohibitive undertakings* can be used when a doctor's practice needs to be restricted in one area of medicine or where the doctor should be restricted from performing a specific

procedure.

41. Unless there are exceptional circumstances, an undertaking which requires a doctor not to work in any post that requires a GMC licence to practise should only be used in health-only cases or in multi-factorial cases which involve a health element.

When will undertakings take effect?

42. Undertakings require agreement from the doctor for them to take effect. Where the doctor has agreed to the undertakings, they will take effect from the date on which the doctor signed the schedule of undertakings sent to them by the Regulator.

43. Where an interim order is in place at the time that undertakings are agreed, the Regulator should usually arrange for these to be revoked. The exception is where the interim order relates to other concerns in the fitness to practise process that have not yet been decided.

How long will undertakings be in place for?

44. Undertakings will remain in place until the doctor has addressed the concerns, and the case examiners are satisfied that there is no longer a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree which would justify restrictions on their registration.

45. In most cases undertakings will be in place for a limited period, following which the doctor will return to unrestricted practice.

46. Where undertakings are put in place to manage the impact of a doctor's health condition on their ability to practise safely and effectively, the doctor's return to unrestricted practice may be triggered by a full recovery. But, as many doctors have remitting and relapsing illness, it may also be triggered by a doctor developing insight that enables them to recognise any warning signs and / or where the impact of the doctor's health condition is being appropriately managed and so there is no longer any current and ongoing risk to one or more parts of public protection requiring restrictive action in response.

Part B: Reviewing undertakings

47. Following a period of undertakings, the case examiners may be asked to review whether undertakings remain necessary and proportionate. To make this decision, case examiners must consider all relevant information available to them and assess whether the doctor still poses a current and ongoing risk to public protection that requires restrictive action in response.

48. Relevant information that is available to the case examiners may include evidence received from the doctor and / or third parties and / or the output of enquiries carried out by the Regulator.

49. The Regulator will have been monitoring the doctor's compliance with undertakings and to do so effectively, can carry out any additional enquiries that are appropriate to assessing the doctor's compliance or current fitness to practise[*]. The exceptions to this are when the undertakings are solely prohibitive, unless there is a health element that requires monitoring by the Regulator, or where the doctor has relinquished their licence to practise.

50. Such enquiries might include an assessment of the impact of a doctor's health condition, an assurance assessment or a review of alternative objective evidence submitted by the doctor in place of an assurance assessment.

51. Having reviewed whether undertakings remain necessary and proportionate, the case examiners may decide to recommend that:

- the current undertakings should be maintained
- the Regulator invite the doctor to comply with varied undertakings **or**
- the Regulator should direct that the undertakings should no longer apply i.e. be revoked.

Do undertakings remain necessary and proportionate?

52. To decide whether undertakings remain necessary and proportionate, the case examiners will need to answer the following questions:

i. **Is the realistic prospect test met?**

ii. **Will undertakings still be appropriate, workable and measurable?**

iii. **Do undertakings remain sufficient to protect the public?**

iv. **Should the current undertakings be varied?**

[*] Rule 10(6) of the FTP Rules 2004

Is the realistic prospect test met?

53. To decide if the realistic prospect test is met, the case examiners should apply the guidance *Deciding the outcome of an investigation (Doctors)* and have regard to the specific evidential considerations that apply as set out below.

54. Where the current undertakings are intended to address the risk to public protection arising from more than one type of concern, a decision on whether the realistic prospect test is met will need to be made in respect of each of them.

55. Where the realistic prospect test is not met, the case examiners should recommend that the Regulator makes a direction that the undertakings should no longer apply i.e. be revoked.

56. Where it is met in relation to one or more types of concern, the case examiners should go on to consider the next question.

ii. Will undertakings still be appropriate, workable and measurable?

57. The case examiners must be satisfied that undertakings will still be appropriate, workable and measurable. To reach a view on this, the case examiners should apply the guidance in Part A on *Will undertakings be appropriate, workable and measurable?*

58. Where the case examiners are not satisfied that undertakings will still be appropriate, workable and measurable, it will not be appropriate to recommend that undertakings are maintained or varied. In these cases, the Regulator will need to decide whether to refer the matter to an MPT hearing on the basis the doctor has (a) failed to comply with the current undertakings or (b) the doctor's health, performance or knowledge of English has deteriorated or otherwise gives rise to further concern regarding their fitness to practise*.

59. In cases where the case examiners are satisfied that undertakings would still be appropriate, workable and measurable, the next question should be considered.

Do undertakings remain sufficient to protect the public?

60. Undertakings must still be sufficient to address the current and ongoing risk to public protection posed by the doctor. To reach a view on this, the case examiners should apply the guidance in Part A on *Are undertakings sufficient to address the risk to public protection?*

61. Where the case examiners are not satisfied that undertakings remain sufficient to protect the public, it will not be appropriate to recommend that undertakings are maintained or varied. In these cases, the Regulator will need to decide whether to refer the matter to an

* Rule 10(8) of the FTP Rules 2004

MPT hearing on the basis the doctor has (a) failed to comply with the current undertakings or (b) the doctor's health, performance or knowledge of English has deteriorated or otherwise gives rise to further concern regarding their fitness to practise*.

62. In cases where the case examiners are satisfied that undertakings remain sufficient to protect the public, they can recommend that the current undertakings should be maintained or that the Regulator invite the doctor to comply with varied undertakings.

Should the undertakings be varied?

63. Case examiners can recommend to the Regulator that undertakings are varied where they are satisfied that:

- while the doctor still poses a current and ongoing risk to one or more parts of public protection requiring restrictive action in response, the current level of restrictions are no longer necessary to mitigate the risk associated with the concern(s) and the undertakings may be relaxed
- deterioration in the doctor's health or performance means that additional or alternative undertakings may be required to ensure adequate public protection **or**
- due to a change in the doctor's circumstances, the undertakings are no longer effective and / or workable in their current format but alternative undertakings have been identified that are appropriate, workable and measurable, achieve the overall aim of undertakings and adequately address the current and ongoing risk to public protection posed by the doctor.

64. Where the case examiners are recommending that undertakings are varied, undertakings should be drawn from the suite of undertakings detailed in the *Undertakings bank*. The wording of undertakings in the bank should be retained unless, unusually, it is necessary to amend or add to them, considering the individual circumstances of the case.

65. Varied undertakings require agreement from the doctor for them to take effect. Where the doctor has agreed to a variation of undertakings, they will take effect from the date on which the doctor signed the schedule of undertakings sent to them by the Regulator.

Specific evidential considerations

66. When reviewing undertakings, the case examiners must reach a view on whether there is a realistic prospect of establishing that the doctor's fitness to practise is impaired to a degree which would justify restrictions on the doctor's registration, based on relevant and objective evidence. The type of relevant and objective evidence available to the case examiners will vary depending on the nature of the concern.

* Rule 10(8) of the FTP Rules 2004

67. To support a conclusion that the realistic prospect test is not met in a case relating to the impact of a doctor's health condition, relevant and objective evidence may include:

- **a report from the doctor's medical supervisor**

  This report should show a documented and evidenced sustained improvement in the doctor's health, which should now be stable. The report should also demonstrate the likelihood of the doctor relapsing is low, and they have insight into their own health.

  Where the doctor suffers from a relapsing or recurring illness, the medical supervisor must address whether the doctor is able to recognise the signs of a relapse and the need to limit their practice in the event of a relapse. The medical supervisor should also comment on whether the doctor's support network is adequate to help manage the doctor's illness.

- **a report from the doctor's responsible officer**

  This should confirm that, to their knowledge, no further concerns have been raised in relation to the doctor's clinical practice, general behaviour or health.

- **feedback from other people involved in the doctor's health care (where appropriate)**

  This should show a documented and evidenced improvement in the doctor's health, which should now be stable.

- **workplace reports**

  These should confirm that no unresolved concerns remain in relation to the doctor's clinical practice, general behaviour or health.

- **testing reports**

  These should demonstrate no prohibited substance use over a sustained period.

- **information on the doctor's use of prescribed drugs in the prevention of relapse *and / or***

  While abstinence without the use of the prescribed drug is preferred, it is not essential. Case examiners should consider the doctor's general condition, likelihood of relapse and insight into their substance use

- **a health assessment report**.

  This should show that the doctor has sufficiently recovered and has insight into their own health, the likelihood of relapse is low, and they are ready to return to unrestricted practice.

68. The case examiners will need to assess on a case-by-case basis whether a health assessment report may be needed in addition to other evidence. For example, a health assessment is likely to be required in substance use disorder cases if regular and rigorous testing reports are not available, or in cases where it may be the only effective way to

understand whether the doctor has fully remediated the concerns.

69. To support a conclusion that the realistic prospect test is not met in a case relating to the impact of a doctor's performance, relevant and objective evidence may include:

- **a report from the doctor's clinical supervisor**

  This should show a documented and evidenced sustained improvement in the doctor's performance or area(s) of concern.

  The doctor's clinical supervisor must also address whether the doctor has insight into their own performance and understands the importance of limiting their practice if appropriate.

- **reports from other people involved in the doctor's supervision, training or remediation**

  These should show a documented and evidenced sustained improvement in the doctor's performance or area(s) of concern.

- **workplace reports**

  The recent reports should confirm that no concerns remain in relation to the doctor's clinical practice or general behaviour.

- **a report from the doctor's responsible officer *and / or***

  The responsible officer should confirm that to their knowledge, no further concerns have been raised recently in relation to the doctor's clinical practice or general behaviour.

- **an assurance assessment report.**

  This should confirm that any identified failings or issues have been remediated, and the doctor's fitness to practise is no longer impaired.

70. While the doctor may choose to submit evidence of satisfactory performance through their up-to-date personal development plan with evidence of reflective learning, this will usually need to be corroborated by objective evidence.

71. To support a conclusion that the realistic prospect test is not met in a case relating to a doctor's knowledge of English, relevant and objective evidence may include:

- **a language assessment report.**

This should show that the doctor has completed an English language assessment that is acceptable to the GMC* and achieved the minimum scores required.

* The language assessments acceptable to the GMC are the academic version of the International English Testing System (IELTS) and the Occupational English Test (OET).