General Medical Council

Decisions made by the Investigation Committee (Doctors)

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Introduction

1. At the end of an investigation into a concern about a doctor's fitness to practise, there are specific circumstances in which a matter must be referred to the Investigation Committee to decide.

2. This is where the case examiners, or Investigation Committee considering a matter on the papers, consider that a warning is a proportionate outcome but:

   i. the doctor requests an oral hearing before the Investigation Committee, or

   ii. having considered the doctor's representations, the case examiners or Investigation Committee otherwise consider it appropriate to refer the matter for an oral hearing.

3. A matter will also be referred to the Investigation Committee if the case examiners have not been able to agree an outcome at the end of an investigation, including whether to recommend that the doctor be invited to agree undertakings.

4. When exercising its powers, the Investigation Committee must make decisions that are sufficient to achieve public protection.

5. References made to 'public protection' throughout this document refer to the Regulator's[*] legal duty to protect the public which is split into three distinct parts. It means that 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 profession
   - 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 the Regulator's legal duty in more detail.

6. At all stages of the fitness to practise process, including when a matter is being decided by the Investigation Committee, consideration will need to be given to whether an interim order may be needed. Where appropriate, the Investigation Committee should

[*] 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.

consider the guidance *Decisions on interim orders (Doctors)* to inform whether a direction should be given to the Regulator for a referral to be made to an Interim Orders Tribunal to consider making an interim order.

7. The purpose of this guidance is to support fair and consistent decision making by the Investigation Committee:

a. **Part A** provides guidance on how to decide the outcome of a matter that has been referred for an oral hearing where the case examiners, or Investigation Committee considering a matter on the papers, decided that a warning was a proportionate outcome, but a hearing has been requested or is otherwise required.

b. **Part B** gives guidance on how to decide the outcome of a matter that has been referred to the Investigation Committee because the case examiners have not been able to agree an outcome at the end of an investigation.

c. **Part C** gives guidance on relevant procedural matters that may arise in relation to, or during, oral hearings or Investigation Committee meetings.

Being proportionate, transparent and fair

8. The Investigation Committee must be proportionate in its approach to decision making, asking themselves what is required and no more than necessary to achieve public protection. To assess what is proportionate, the Investigation Committee should be clear about the options available to it.

9. To ensure decisions made by the Investigation Committee are transparent, the Investigation Committee must give reasons for its decisions and record them clearly. This means using straightforward language, explaining technical terms, identifying relevant case law, and explaining how that case law and any relevant principles arising from it, apply to its decision.

10. Clear reasoning is key to ensuring confidence is maintained in the Regulator. Without reasons, patients, members of the public and doctors cannot understand the decisions made and hold the Regulator to account. Decisions made by the Investigation Committee must address the particularised concern(s) at an oral hearing or all those concerns included within the scope of the investigation when making a decision under Part B of this guidance.

11. Differences in communication and culture can be difficult to identify from written information alone. However, the Investigation Committee should be mindful that cultural, faith or other characteristics such as those related to disability, can impact on how an individual engages with the fitness to practise process and communicates.

12. To be fair in its approach, the Investigation Committee should have regard to any relevant information available about differences in communication, culture or other characteristics when assessing, and deciding what weight to attach to, any written or oral evidence.

Part A: Deciding the outcome of a matter referred to an oral hearing to determine whether to issue a warning

13. The purpose of this **Part A** is to give guidance to the Investigation Committee on how to decide whether to issue a warning following a referral to an oral hearing.

14. The Investigation Committee has a role in considering afresh whether a warning is a proportionate outcome. To make this decision, the Investigation Committee will consider the concern(s) referred to it, relevant documentary evidence adduced by the parties, submissions made by the parties and if the Investigation Committee considers it necessary to discharge its functions, any oral evidence. The Investigation Committee should not need to determine the facts or revisit the case examiners decision on whether the realistic prospect test has been met[*].

15. However, the Investigation Committee must be satisfied as to the facts before deciding whether or not to issue a warning and in the event any dispute as to facts emerges at an oral hearing, the Committee should include its finding on those matters within their written decision[†]. There is no requirement for a formal fact-finding stage.

16. To decide whether a warning is a proportionate response at an oral hearing, the Investigation Committee should have regard to the guidance *Decision on whether a warning is required (Doctors)*.

17. If, however, new information is adduced at an oral hearing which indicates that a referral to a medical practitioner's tribunal (MPT) is appropriate[‡], the Investigation Committee will apply the realistic prospect test to inform its decision by reference to the guidance in Part B.

Outcomes available to the Investigation Committee at an oral hearing

18. Where the Investigation Committee is deciding at an oral hearing whether a warning is a proportionate outcome, it may[§]:

- conclude the case with no further action
- issue a warning, or

[*] Rule 11(2) and Rule 11(7) of the General Medical Council (Fitness to Practise) Rules 2004 (the FtP Rules 2004)
[†] In accordance with Rule 11(7)(e) of the FtP Rules 2004
[‡] Under Rule 11(6)(c) of the FtP Rules 2004
[§] Under Rule 11(6) of the FtP Rules 2004

- where new information presented at the hearing indicates that it would be appropriate to do so, refer the case to the MPTS for them to arrange an MPT hearing.

19. If the Investigation Committee decides not to issue the doctor with a warning this does not mean that it concluded that a previous decision by the case examiners, or an Investigation Committee who considered the matter on the papers, was 'wrong'.

No further action

20. If the Investigation Committee decides that a warning is not a proportionate outcome, it should conclude the case with no further action.

Warnings

21. The purpose of issuing a warning is to provide a formal response to indicate that the doctor's behaviour or performance represents a significant departure from the professional standards and should not be repeated. This helps maintain public protection.

22. A warning will be an appropriate regulatory response for cases where the Investigation Committee is satisfied that there is evidence to suggest that the doctor's behaviour or performance has fallen significantly below the professional standards expected to a degree warranting a formal regulatory response but restrictive action on the doctor's registration is not required.

Referral to an MPT hearing

23. Where new information is adduced into evidence at a hearing, and this results in the Investigation Committee concluding that the realistic prospect test is met, the Committee should refer the doctor's case to an MPT hearing.

Part B: Deciding the outcome of a matter where the case examiners have not been able to agree an outcome at the end of an investigation

24. The purpose of this **Part B** is to give guidance to the Investigation Committee on how to decide the outcome of a matter that is referred to it because the case examiners have not been able to agree an outcome at the end of an investigation.

25. In these circumstances, the Investigation Committee has a role in considering afresh the appropriate outcome at the end of the investigation. It will decide the matter on the papers at a meeting and will have sight of all the written evidence that was available to the case examiners.

The realistic prospect test

26. To decide the outcome of a matter referred to it under rule 8(5) of the FtP Rules 2004, the Investigation Committee must decide whether there is a realistic prospect of establishing that a doctor's fitness to practise is impaired to a degree requiring restrictive action. This is known as the realistic prospect test.

27. The realistic prospect test applies to both the factual basis of the concern and the question whether, if established, the facts would demonstrate that the doctor's fitness to practise is impaired i.e. there is current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response. It must reflect a genuine (not remote or fanciful) possibility. This is because it is in no one's interest for cases to be referred to a Medical Practitioners Tribunal (MPT) for a hearing when they are bound to fail. On the other hand, cases which raise a genuine issue of impaired fitness to practise that are likely to result in conditions, suspension or erasure are for an MPT to decide.

28. To reach a decision on whether the realistic prospect test is met, the Investigation Committee should consider the following questions:

- Has the concern been sufficiently evidenced?
- If so, would the facts demonstrate that the doctor poses a current and ongoing risk to one or more of the three parts of public protection to a degree requiring restrictive action in response?

29. When assessing whether, if established, the facts would demonstrate the doctor poses a current and ongoing risk to public protection requiring restrictive action in response, the Investigation Committee will consider the seriousness of the concern, any relevant context known about the doctor and / or their working environment and how the doctor responded to the concern i.e. what evidence is available about the doctor's insight and remediation.

30. Where the realistic prospect test is not met, the Investigation Committee can decide to take no further action, recommend that the doctor is issued with advice or issue the

doctor with a warning[*]. The Investigation Committee may also decide that an oral hearing should be held to determine whether a warning should be issued.

31. Where the realistic prospect test is met, the Investigation Committee will consider whether it's appropriate to agree undertakings with the doctor or refer the case to an MPT hearing. Further information can be found in the section *Outcomes available to the Investigation Committee*.

Has the concern been sufficiently evidenced?

32. Where a matter has been referred to the Investigation Committee, it must consider all relevant information and evidence, including any written representations that have been received from the doctor and / or the doctor's representative.

33. The Investigation Committee will need to consider if there is a realistic prospect of the concern being proved at an MPT hearing. The Investigation Committee should bear in mind that at a hearing the MPT will apply the civil standard of proof. This means that the MPT will decide whether, on the balance of probabilities, it is more likely than not that the matters occurred as alleged.

34. Where more than one concern has been raised, the Investigation Committee must consider the sufficiency of evidence in respect of each concern. While the Investigation Committee is entitled to assess the weight of the evidence, it should not normally seek to resolve substantial conflicts of evidence and should proceed with caution given that the Committee is working from documents alone and the evidence before them may be untested.

35. The Investigation Committee should firstly identify any agreed facts and evidence. To reach a view on any disputed matters, the Investigation Committee should assess the evidence in the round. The Committee should consider what conclusions and inferences can be drawn and in assessing the weight to attach to specific pieces of evidence, the existence or absence of contemporaneous documentary evidence may lend support to a particular version of events. Where, for example, witness evidence is based on mere assertion or supposition, the Investigation Committee may conclude that the evidence is weak and therefore, bound to fail before an MPT.

36. The Investigation Committee should also carefully consider any challenge to, or concern raised about, the validity of documents or evidence. Where there has been a challenge or concern raised, the Investigation Committee should explain what wight it has attached to the evidence and why.

37. Care should be taken by the Investigation Committee when relying on the conclusions of others to ensure that its decision is not inadvertently based on assumptions that cannot be verified. This is particularly important when considering expert evidence, especially if additional information is available to the Investigation Committee that was not available

[*] Rule 9(a) and Rule 9(b) of the FtP Rules 2004

to the expert at the time they prepared their report.

38. When deciding whether a concern has been sufficiently evidenced, the Investigation Committee should consider whether further information is needed, or if further investigation is appropriate, in order for it to reach a fair decision. Further guidance on this is given in the section *Requesting further information*.

Specific considerations where the doctor has raised concerns locally

39. The Investigation Committee will, on occasion, be asked to consider a case in which the doctor has raised concerns locally that patient safety or care is being compromised by the practice of colleagues or the systems, policies and / or procedures in the organisation in which they work. This type of concern is distinct from a grievance or private complaint, which may be a dispute about the doctor's own employment position and has no public interest element.

40. Where there is a dispute about whether the doctor raised concerns locally, it may be appropriate for the Investigation Committee to consider what evidence is available to indicate whether or not the doctor did so.

41. Where the referrer or complainant did not share this information with the Regulator at the point of referral and has indicated they were unaware or do not support the doctor's claim that they raised concerns locally, it may be appropriate for the Investigation Committee to consider whether there is objective evidence that concerns were raised. Objective evidence could be in the form of a copy of any correspondence the doctor sent about their concerns.

42. If objective evidence is unavailable to support the doctor's claim that they raised concerns locally, because the doctor says they did this orally and this is disputed by the relevant body, the Investigation Committee should take the usual approach to weighing evidence.

43. Usually, substantial disputes about witness evidence can only be resolved at an MPT hearing. However, as a referral to hearing will have a significant impact on a doctor and others involved in an investigation, where there is a possibility that the referral or complaint to the Regulator related to the doctor raising concerns locally, consideration should be given to whether the Investigation Committee meeting should be paused to obtain evidence to resolve the dispute without the need for a referral to an MPT. However, if, despite efforts to obtain objective evidence to clarify the disputed matters, the conflict still can't be resolved, a referral to an MPT may be necessary.

44. Once any further available information has been obtained, the Investigation Committee should consider whether the concern meets the evidential limb of the realistic prospect test in the usual way.

If established, would the facts demonstrate the doctor poses a current and ongoing risk to public protection requiring restrictive action in response?

45. Restrictive action means agreeing undertakings with a doctor, or an MPT putting in place a sanction of conditions, suspension or erasure.

46. The Investigation Committee should only consider whether there is a realistic prospect of a tribunal finding impairment i.e. that a doctor poses a current and ongoing risk requiring restrictive action in response where it is satisfied that there is a realistic prospect of the concern being proved.

47. When assessing current and ongoing risk, the Investigation Committee should have regard to the guidance *Decision on whether regulatory action is required (Doctors)*. They will consider the following factors:

- 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
- the impact of any relevant context known about the doctor and / or their working environment, and
- 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.

48. Where the Investigation Committee concludes that, if established, the facts would not demonstrate that the doctor poses a current and ongoing risk to one or more of the three parts of public protection requiring restrictive action in response, the realistic prospect test will not be met. The Investigation Committee may decide to take no further action or that it would be appropriate for the doctor to be issued with advice or a warning.

49. Where the Investigation Committee concludes that, if established, the facts would demonstrate that the doctor does pose a current and ongoing risk to public protection requiring restrictive action in response, this means there is a realistic prospect of establishing that the doctor's fitness to practise is impaired. The Investigation Committee should therefore consider proposing undertakings or refer the doctor's case to an MPT hearing.

50. To decide what is a proportionate outcome the Investigation Committee should refer to the guidance in the section *Outcomes available to the Investigation Committee*.

Specific considerations where the doctor holds provisional registration

51. On rare occasions, the Investigation Committee will be asked to decide if the realistic prospect test is met in relation to a doctor who holds provisional, rather than full, registration.

52. A doctor's provisional registration ordinarily automatically lapses on the expiry of their

full allowance of 3 years and 30 days[*]. However, where on the date their provisional registration would have lapsed, the doctor is subject to fitness to practise proceedings, their provisional registration will not lapse until those proceedings are complete[†]. Provisional registration will also lapse upon the receipt of undertakings signed by the doctor.[‡]

53. Although the Regulator's legal duty to protect the public must take precedence, the Investigation Committee is entitled to consider the specific circumstances of a doctor's case. The fact the doctor's provisional registration will lapse on completion of the fitness to practise proceedings[§] is a relevant factor when considering whether restrictive action is proportionate and in the public interest.

54. Where the inherently serious nature of the concern means it falls at the higher end of the spectrum of matters that give rise to a question of impaired fitness to practise and public confidence in the profession would be undermined if the matter was not fully considered at a public hearing, a referral to an MPT hearing should be made.

55. However, for other concerns the Investigation Committee might conclude it is not proportionate to refer a doctor with provisional registration to an MPT hearing, even where the realistic prospect test is met, as their provisional registration is coming to an end.

56. Where a case involves clinical performance concerns where a doctor has been referred to the Regulator following failure of their Foundation year, a referral to an MPT on the grounds of deficient professional performance is unlikely to be proportionate or in the public interest.

[*] The General Medical Council (Maximum Period of Provisional Registration) Regulations Order of Council 2015 (the Order). However, under the Order there are 'periods of disregard' which don't count towards the maximum period of 3 years and 30 days.

[†] This may be through the Investigation Committee's decision to close the case with no further action, recommending that advice be issued, to issue a warning or once an MPT's determination takes effect.

[‡] Under regulation 4(2)(d) of the Order.

[§] It is important to note that the fitness to practise concern must reach a final outcome. This is because unlike circumstances in which a doctor is granted voluntary erasure, or where administrative erasure is authorised, there is no specific power to revisit unresolved fitness to practise concerns if a doctor were, at a future date, to apply for full registration.

Requesting further information

57. When deciding if the realistic prospect test is met, the Investigation Committee may request that further information is obtained where that information is relevant to its consideration of the case.

58. During the investigation, relevant evidence will have been gathered by the Regulator with the aim of enabling a fair outcome to be reached. Specifically, where the outcome of an assessment of a doctor's health, performance or knowledge of English is likely to be relevant to the consideration of a concern, an assessment will usually have already been directed.

59. However, it may be reasonable and proportionate for the Investigation Committee to request further information in circumstances where:

- information was not sought by the Regulator during the investigation or information has been raised for the first time in the doctor's response to the letter sent to them by the GMC at the end of the investigation inviting comments on the concern, and the Investigation Committee considers it is likely to be relevant to its decision and reasonably capable of influencing its assessment of the case, or
- information comes to light for the first time that suggests the doctor might be unwell.

60. Where information comes to light that suggests a doctor might be unwell, it may be appropriate to request further information where objective evidence is needed to assess whether the impact of the doctor's health is linked to the concern about their behaviour and / or performance. This is because the assessment of any current and ongoing risk to public protection, and the proportionate regulatory response to address any such risk, may be informed by whether there is a cogent link between the impact of a health condition and a doctor's behaviour and / or performance. This will need to be carefully considered with reference to the *Supplementary guidance on assessing the impact of a doctor's health on their behaviour or performance*.

61. Further information may also be needed where there is a concern about whether the doctor's health condition is likely to have a direct impact on their ability to participate effectively in some or all of the fitness to practise process because, for example, the doctor may lack capacity to provide a response to the concern or instruct a legal representative.

62. Where further information is obtained, as with other available evidence, this will be shared with the doctor and, if appropriate, any relevant third party, who will have the opportunity to make comments. The Investigation Committee will need to consider and assess the impact of that further information, and any representations received from the doctor on the content.

Outcomes available to the Investigation Committee

63. Where the Investigation Committee is deciding the matter because the case examiners have not been able to agree an outcome at the end of the investigation, including whether to recommend that the doctor be invited to agree undertakings, the Investigation Committee may[*]:

- conclude the case with no further action
- recommend that advice is issued to the doctor
- issue the doctor with a warning without an oral hearing being held provided the doctor does not make any representations on whether they should be given a warning, or they provide representations and do not dispute the facts of the concern
- decide that on oral hearing is needed to determine if a warning should be issued
- recommend the doctor is invited to agree undertakings and direct the case examiners to make no decision[†], or
- refer the case to the MPTS for them to arrange an MPT hearing.

No further action

64. If the Investigation Committee decides that the realistic prospect test is not met because if established, the facts would not demonstrate the doctor poses a current and ongoing risk to public protection requiring restrictive action in response, it can conclude the case with no further action. This is the proportionate outcome where the Investigation Committee does not consider that it is necessary to issue the doctor with advice or a warning.

Advice

65. If the Investigation Committee decides that the realistic prospect test is not met, it may recommend that the Regulator issues advice to the doctor[‡]. The purpose of issuing advice is to promote the Regulator's wider regulatory role in maintaining and upholding professional standards.

66. Advice issued by the Regulator should provide the doctor with guidance for future practice. Advice is intended to address less significant departures from the professional standards which do not reach the threshold for a warning but where it is still desirable for the Regulator to advise the doctor about future practice to avoid repetition of the

[*] Under Rule 9 of the FtP Rules 2004
[†] Under Rule 8(2) of the FtP Rules 2004
[‡] Under section 35 of the Medical Act 1983

departure from the professional standards.

67. The Investigation Committee should only recommend that advice is issued by the Regulator where:

- it is satisfied that the doctor has been informed about the concern, provided with copies of relevant documentation and invited to provide a response
- the doctor has made written submissions to the Regulator indicating that the facts of the concern are admitted or do not remain in dispute, or there is a certificate of conviction or certificate of determination which can be relied upon as conclusive evidence of the offence committed or facts found proved*, and
- there is no realistic prospect of establishing that a doctor's fitness to practise is impaired.

68. When recommending the Regulator issues advice, the Investigation Committee will set out the suggested wording as part of their decision.

69. However, if the evidence suggests that the concern involves a significant departure from the professional standards which, if repeated, would meet the realistic prospect test, then the Investigation Committee should consider whether a warning should be issued.

Warnings

70. If the Investigation Committee decides that the realistic prospect test is not met, it may decide that it's appropriate to issue the doctor with a warning. The purpose of issuing a warning is to provide a formal response to indicate that the doctor's behaviour or performance represents a significant departure from the professional standards and should not be repeated. This helps maintain public protection.

71. A warning will be an appropriate regulatory response for cases where the Investigation Committee is satisfied that there is evidence to suggest that the doctor's behaviour or performance has fallen significantly below the professional standards expected to a degree warranting a formal regulatory response but restrictive action on the doctor's registration is not required.

72. To decide whether a warning is a proportionate response, the Investigation Committee should have regard to the guidance *Decision on whether a warning is required (Doctors)*.

73. Where the Investigation Committee decides that a warning is a proportionate outcome, they may:

- **a.** issue a warning without an oral hearing, or
- **b.** decide that an oral hearing should be held to determine whether a warning should be issued.

74. It will be appropriate for the Investigation Committee to issue a warning without an oral

* In accordance with Rules 34(3) and 34(4)

hearing in cases where the doctor does not make any representations on whether they should be given a warning, or the doctor provides representations and does not dispute the facts of the concern.

75. Where the doctor requests an oral hearing or provides representations in which they dispute the facts of the concern, the Investigation Committee must refer the matter to an oral hearing.

Undertakings

76. Undertakings restrict a doctor's ability to practise and / or require them to do something. The purpose of putting in place undertakings is to provide a doctor with time to address concerns and demonstrate they are fit to practise on an unrestricted basis, while ensuring that the current and ongoing risk they pose to one or more of the three parts of public protection is adequately managed.

77. Undertakings can only be agreed where the realistic prospect test is met or is likely to be met on recurrence of a health condition[*], and the Investigation Committee is satisfied that undertakings would protect the public and there is no possibility of erasure should the matter proceed to an MPT hearing.

78. To decide whether undertakings are a proportionate response, the Investigation Committee should have regard to the guidance *Decisions on undertakings (Doctors)*.

Referral to an MPT hearing

79. The Investigation Committee must refer the doctor's case to an MPT hearing where the realistic prospect test is met, and it does not consider that is it appropriate to agree undertakings with the doctor.

[*] Rule 10(2(b) of the FtP Rules 2004

Part C: Procedural matters relating to Investigation Committee meetings and hearings

80. The purpose of this **Part C** and its annexes is to give guidance to the Committee on how to exercise its discretion in respect of procedural matters that may arise in relation to, or during, an oral hearing or a meeting.

81. An oral hearing is held when a matter has been referred to the Investigation Committee to decide whether a warning is a proportionate outcome. Investigation Committee meetings are held when the Committee is deciding the outcome of a matter referred to it because the case examiners have not been able to agree an outcome at the end of an investigation.

Quorum

82. When the Investigation Committee is convened for an oral hearing or a meeting, it must be constituted with three members, including a Chair, drawn from a pool of Investigation Committee members[*]. At least one must be a medical member and at least one must be a lay member[†].

83. A legal assessor will also be appointed to advise the Investigation Committee on points of law, including on evidence and the procedure and its powers, and on the drafting of decisions[‡]. A legal assessor does not count towards the quorum of the Investigation Committee.

Substitution of members of the Committee

84. The need to substitute an Investigation Committee member may arise during an oral hearing or at a meeting or following resumption of a hearing or meeting. This might be because a Committee member is no longer available (for example, due to ill health) or is no longer eligible to hear the case (for example, because of a conflict of interest which has arisen).

85. In practice, the need for substitution during a hearing or a meeting will occur rarely. Where it does arise, the hearing must be adjourned or the meeting must be paused. Any adjournment or pause should be kept as short as possible as prolonged uncertainty of the outcome of the matter the Committee is deciding should be avoided.

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[*] The membership of the Committee is governed by The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015 (the Constitution Rules 2015)

[†] Rule 7 of the Constitution Rules 2015

[‡] Rule 2 of the General Medical Council (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015

Resuming an oral hearing

86. When a Committee hearing is resumed following an adjournment, if there has been substitution of a Committee member, the Committee may, having first heard representations from the parties, issue directions which it considers necessary in the interests of justice, about:

- the stage at which the hearing is to be resumed, and
- any special procedure which must be followed.

87. The factors which the Investigation Committee will take into consideration when deciding how to continue with the hearing will include, but are not limited to:

- the stage the hearing has reached, and
- fairness to the parties if there is further delay due to resuming at a particular point.

88. Where the Investigation Committee has decided that oral evidence is necessary to enable it to reach a decision at an oral hearing, it will decide whether transcripts will be a sufficient substitute to rehearing oral evidence already given; it will take into account whether it is possible or appropriate to recall witnesses and the impact of doing so on the fairness and efficiency of the proceedings.

89. The Investigation Committee will provide a reasoned determination setting out, for example, the stage at which the hearing will resume and directions as to the procedure to be adopted to enable the hearing to be concluded with the substituted Committee member.

Service of notice

90. Ahead of an oral hearing before the Investigation Committee, the Regulator must write to the doctor to give notice of the hearing and to confirm the arrangements[*]. This will include the date, time and location of the hearing as well as the details of the concerns and the facts upon which it is based.

91. The notice must also set out that the doctor has the right to attend the hearing and be represented and inform the doctor that if they do not attend, then the hearing may still go ahead.

92. The Investigation Committee will not proceed in a doctor absence unless it is satisfied that notice of hearing has been served[†].

Postponements of hearings

93. Before the opening of an oral hearing, a member of the Investigation Committee may

[*] Rule 11(5) of the FtP Rules 2004

[†] Rule 40 of the FtP Rules 2004 specifies the methods of service that can be used, and how service can be proved.

postpone the hearing[*]. The decision to postpone a hearing the proceedings may result from the Investigation Committee considering it appropriate to do so or because one of the parties to the proceedings has requested a postponement.

94. Possible reasons for postponement could include, but are not limited to, practical case administration matters such as an unforeseen change in the availability of a Committee member, one of the parties or a witness.

95. A hearing must not be postponed unless the parties have been given a reasonable opportunity to make representations[†].

96. When considering whether to postpone an Investigation Committee hearing, the Committee member should consider the circumstances of the individual case, any representations received from the parties and the following non-exhaustive list of factors:

- whether the hearing can fairly proceed, including the effect any delay may have on the fairness of the proceedings and upon fairness to all parties
- the impact and relevance of other ongoing legal proceedings, including criminal proceedings or Coroner's inquests
- the availability of, and impact of a postponement on witnesses (both lay and expert) where oral evidence is necessary to enable the Investigation Committee to make its decision, which in turn might impact on the efficiency of the proceedings
- whether the benefit of allowing a postponement outweighs the effect of delay upon the responding party, any witnesses and the public interest in hearings proceeding as soon as is fairly possible
- where a request is based on the need to prepare or to obtain further information, the reasonableness of such a request, taking account of the reasons provided, the length of time since the relevant event(s) and the time already afforded to parties to prepare
- where a request is based on a representative's availability, the complexity of the case and the nature and extent of that representative's prior involvement
- where a request is based on a doctor's health, whether independent medical evidence has been provided confirming any relevant medical condition and why that condition prevents participation in the hearing
- whether the doctor is subject to an interim order, and
- any other relevant considerations.

97. If the Committee member agrees to the postponement, a new hearing date will be

[*] Rule 29(1)(a) of the FtP Rules 2004
[†] Rule 29(3) of the FtP Rules 2004

scheduled by the Regulator.

Absence of the doctor

98. Where a doctor does not attend for all or part of their hearing, the Investigation Committee will need to decide whether to proceed in the absence of the doctor[*].

99. The Investigation Committee will need to be satisfied that all reasonable efforts have been made to serve the doctor with notice of the hearing. When considering this issue, the Investigation Committee will refer to any relevant documents, including a service bundle if one is available. All reasonable efforts may include:

- service at the doctor's registered address by post
- service using the doctor's email address, or
- service at an alternative address by post where there is clear information to indicate that is where the doctor is residing.

100. It is unlikely to be reasonable to expect further efforts to serve notice to be carried out beyond this as it is the doctor's responsibility to keep their registered address with the Regulator up to date.

101. If the Investigation Committee is satisfied that all reasonable efforts have been made to serve notice, it will go on to decide whether it is appropriate to proceed in the absence of the doctor. To decide this, it will consider all information available, including whether the reasons for the hearing have been clearly communicated to the doctor by the Regulator.

102. Where notice of the hearing has been served on a doctor, the onus is on the doctor to take steps to attend the hearing and arrange representation if they wish to do so. The Investigation Committee should be mindful that although attendance by the doctor at their hearing is important, it cannot be determinative due to the adverse impact on the effective and efficient running of hearings. Where a doctor is not in attendance at a hearing due them being a serving prisoner, the Investigation Committee may wish to balance the need to proceed with the hearing in the public interest and the doctor's intention and ability to be present within a reasonable timeframe. Virtual attendance at hearings will be accommodated but it will be for the doctor to arrange with the prison to facilitate this.

103. Where there is information available that a doctor is not in attendance due to the impact of a health condition, the Investigation Committee may wish to consider if an adjournment would be appropriate.

104. If the Investigation Committee decides to proceed in the absence of the doctor, it does not need to review this decision again. There is no requirement for the Investigation Committee to pause the hearing at any specific stage in the proceedings to allow the doctor to consider whether to attend the hearing.

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[*] Rule 31 of the FtP Rules 2004

105. While the Investigation Committee's decision will be circulated to an absent doctor, there is no need for the Committee to allow time for the absent doctor to respond.

Representation at oral hearings

106. Doctors have the right to a fair hearing if a public authority is making a decision that has a decisive impact on their civil rights or obligations[*]. This may include the right to appoint appropriate representation at a hearing.

107. When a hearing takes place before the Investigation Committee, a doctor may be represented by:

- a solicitor or counsel[†] ('legal representative')
- a representative from any professional organisation of which they are a member ('professional organisation'), or
- at the discretion of the Committee, a member of their family or other suitable person ('suitable individual')[‡].

108. However, a person that is due to give evidence at the hearing cannot represent the doctor at that hearing or accompany them in the hearing room prior to giving evidence[§].

109. Where the doctor is not represented during the hearing, then the Investigation Committee will assist to ensure that the doctor understands the hearing process at each stage. In doing so, the Investigation Committee should make it clear what stage of the process the hearing is at, what is required of the doctor at each stage and clarify the legal position in plain English.

Requirements for representation at an oral hearing

110. Where a doctor is represented, the representative should be able to:

a. present the doctor's case to the Investigation Committee with independence, honesty, integrity, and

b. understand the hearing procedure and carry out their role fairly and effectively, ensuring in doing so that they are mindful of the Regulator's overarching objective to protect the public[**] and the obligation of the Investigation Committee to deal with concerns fairly and justly.

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[*] See Article 6 of the European Convention of Human Rights, incorporated in Schedule 1 of the Human Rights Act 1998
[†] Also known as an 'advocate' and / or 'barrister'
[‡] Rule 33(1) of the FtP Rules 2004
[§] Rule 33(2) of the FtP Rules 2004
[**] Section 1(1A) of the Medical Act 1983 ('the Act')

Legal Representatives

111. A solicitor or counsel who wants to represent a doctor before the Investigation Committee hearing as a legal representative must be registered to practise in England and Wales, Scotland or Northern Ireland. **Annex A** sets out the criteria for legal representatives to show they meet these requirements.

112. Where the Investigation Committee is not satisfied that an individual meets the requirements in Annex A, an application can be made for that person to represent the doctor as a suitable individual (see below).

Professional organisations

113. Relevant professional organisations that may represent a doctor before the Investigation Committee hearing include trade unions and established medical defence organisations. **Annex B** provides details of the professional organisations recognised by Regulator for the purposes of representing a doctor at hearing before the Investigation Committee.

114. Where a doctor wishes to be represented at a hearing by a person from a professional organisation not listed in Annex B, an application can be made for that person to represent the doctor as a suitable individual (see below).

Suitable individual

115. In all cases where the Investigation Committee allows a person to represent a doctor as a suitable individual, that individual will be expected to treat other hearing participants with respect, engage constructively in the hearing process and not behave in a way that obstructs or frustrates the Committee's ability to make progress.

116. If a person behaves in a manner contrary to the expectations of a suitable individual the Investigation Committee is entitled to revisit its assessment of suitability and decide that the person is no longer a suitable individual and is no longer permitted to act as a representative in the proceedings.

117. Where a person has supported a doctor during a fitness to practise investigation, it does not necessarily follow they are a suitable individual to provide representation at a hearing.

118. The Investigation Committee can be asked to exercise its discretion to allow a person to represent a doctor as a suitable individual at any stage of the hearing. Any person who intends to apply to act as a suitable individual should familiarise themselves with the factors outlined in **Annex C** and declare any matters that would assist the Investigation Committee reach a decision about their suitability.

119. In the absence of any factors indicating that a person may not be suitable, the Investigation Committee and the Regulator will automatically recognise the following as being suitable individuals:

- **a.** a chartered legal executive registered to practise in England and Wales,
- **b.** a solicitor or counsel registered to practise and regulated in specific jurisdictions outside of England and Wales, Scotland or Northern Ireland.

120. Annex C sets out the criteria for a person to show they meet these requirements, along with the factors that may indicate a person is not a suitable individual.

121. In all cases where a person does not meet the criteria to be automatically recognised as a suitable individual, the Investigation Committee must balance the interests of the doctor in being represented by a person of their choice against the need to ensure that the hearing proceeds fairly and expeditiously.

122. Before agreeing that a person can act, the Investigation Committee should check that the prospective suitable individual understands the requirements of this guidance and consider all the information available to satisfy themselves there are no issues with that person participating in a hearing.

123. In making its decision, the Investigation Committee must have regard to:

- **a.** the importance of the hearing for the doctor
- **b.** the complexity of the issues to be considered at the hearing
- **c.** whether the person will be able to present the doctor's case with independence, honesty, and integrity
- **d.** whether the person can understand the hearing procedure and is able to carry out their role fairly and effectively, and
- **e.** the need to safeguard the efficient use of hearing resources.

124. The decision as to whether a person is a suitable individual is one for the Investigation Committee's judgement alone. However, the existence of one or more of the factors set out in Annex C may indicate that a person is not a suitable individual.

Sitting in public and private

125. Investigation Committee oral hearings will be held in public unless:

- **a.** the Investigation Committee decides that the public should be excluded from the proceedings or any part of the proceedings because the circumstances of the case outweigh the public interest in holding the hearing in public,
- **b.** the hearing is considering the physical or mental health of the doctor or the health of other individuals involved in the matter which leads the Investigation Committee to conclude that it should be held in private.

126. When deciding if the public should be excluded because the circumstances of the concern outweigh the public interest in holding the hearing in public, the Investigation Committee will consider and weigh:

- the interests of the person raising the concern,
- the interests of any patient concerned,
- whether a public hearing would be likely to adversely affect the health of the doctor, and
- all of the circumstances of the case or matter to be determined.

127. For hearings that would ordinarily take place in public, the parties may apply to the

Investigation Committee for some, or all, of the hearing to take place in private. Any such application should be notified to the Regulator in advance. This will allow the application to be considered by the Investigation Committee as a preliminary application before, or at the outset of, the hearing.

Exclusion from the hearing

128. The Investigation Committee can exclude any individual from the hearing where that individual's conduct is likely to disrupt the orderly running of proceedings. This includes the doctor, representatives, witnesses and members of the public observing the hearing.

129. When deciding whether to exclude an individual from the hearing, the Investigation Committee will consider whether that individual has complied with the expected standards of conduct for attendance at a hearing and have regard to any other information that they consider to be relevant, including the impact that the individual's behaviour is likely to have on the efficient running of the hearing. It is not necessary for the individual's conduct to have already disrupted the hearing for them to be excluded.

130. The expected standards of conduct for a hearing includes, but is not limited to:

- **a.** communicating in a suitable manner that is free from discriminatory or derogatory language, except where an individual is providing direct quotes during witness evidence
- **b.** adhering to any directions given by the Investigation Committee regarding expectations of behaviour
- **c.** adhering to the requirements of the Regulator regarding participation at hearings:
  - **i.** not to publicly share any information from private hearing sessions
  - **ii.** not to make any audio or visual recording or take any images of the hearing, nor to re-use, re-edit or redistribute any recording or image from the hearing
  - **iii.** where the hearing is being held virtually or an individual is giving evidence virtually, not:
    - **1.** sharing access to the hearing link
    - **2.** uploading any links or documents directly to the hearing
    - **3.** doing anything that could compromise the security or integrity of the platform that the hearing is hosted on
    - **4.** having any third-party present without the express permission of the Investigation Committee.

Joinder

131. When concerns have been referred to the Investigation Committee, the Regulator may apply for:

- **a.** two or more concerns against the same doctor which fall within the same or separate grounds for impairment, or
- **b.** concerns against two or more doctors'

to be considered and determined together where it would be just to do so.

132. Joinder applications are identified during the pre-meeting or pre-hearing case management stage, with applications being made by one or both of the parties. The application will usually be decided by the Investigation Committee in advance.

133. By exception, the Investigation Committee may need to consider a joinder application at a meeting or oral hearing where it has not been possible for the issue to be resolved in advance. If this arises, the Investigation Committee should consider the following non-exhaustive list of factors that may be relevant to its decision:

- the desirability of considering each of the concerns raises in the round, to enable the Investigation Committee to make an informed decision on all matters
- the extent of any factual and/or temporal connection between the concerns
- the extent of overlap in evidence to be relied upon by either party
- the extent of any time or costs to be saved by matters being considered together, including any potential saving in hearing time and/or any potential delay caused if joinder is permitted
- the extent of any impact on fairness caused or likely to be caused by joining matters to be heard together or hearing them separately
- whether there are practical benefits or challenges in presenting all matters at a single hearing, including the impact a single or multiple hearings may have on hearing participants, and
- any other relevant consideration.

Adjournments of oral hearings

134. If an oral hearing before the Investigation Committee has already started, the parties can request for the hearing to be adjourned at any time[*].

135. However, where a party had requested a postponement prior to the start of a hearing and the application was refused, the Investigation Committee will not usually agree to a request for an adjournment unless there has been a material change in circumstances. Similarly, the Investigation Committee will not usually agree to hear a subsequent adjournment application where they have already refused to adjourn a case, unless there has been a material change in circumstances.

General principles

136. When considering an application to adjourn a hearing before the Investigation Committee, the Investigation Committee should consider the circumstances of the individual matter, the submissions made by both parties and the following non-exhaustive list of factors:

[*] [*] Rule 29(2) of the FtP Rules 2004

- whether the hearing can fairly proceed, including the effect any delay may have on the fairness of the proceedings and upon fairness to all parties
- the impact and relevance of other ongoing legal proceedings, including criminal proceedings or Coroner's inquests
- whether the benefit of granting the application outweighs the effect of delay upon the responding party, any witnesses and the public interest in hearings proceeding as soon as is fairly possible
- where a request is based on the need to prepare or to obtain further evidence, the reasonableness of such a request, taking account of the reasons provided, the length of time since the relevant event(s) and the time already afforded to parties to prepare
- where a request is based on a representative's availability, the complexity of the case and the nature and extent of that representative's prior involvement
- where a request is based on a participant's health, whether independent medical evidence has been provided confirming any relevant medical condition and why that condition prevents participation in the hearing
- whether the practitioner is subject to an interim order, and
- any other relevant considerations.

137. In all cases, where there is unlikely to be a change in position later if the application for an adjournment is granted, this will weigh towards refusal.

138. The Investigation Committee may decide on its own to adjourn a hearing once it has started. This may be necessary where the hearing will not be able to be concluded within the period listed and additional time is needed for the Committee to reconvene and complete matters.

139. The Investigation Committee may consider that an adjournment may be required to allow for further investigation, such as for an assessment to be completed or for the parties to obtain further information or reports.

140. The Investigation Committee must provide reasons for its decision to adjourn. In its decision, the Committee should also explain the need for an assessment to be completed or for further information or reports, giving clear reasons.

Adjourning for further investigation

141. It may be reasonable and proportionate for the Investigation Committee to adjourn a hearing for further investigation in circumstances where:

- the doctor previously offered to provide information which was not sought by the Regulator at the investigation stage, but the Investigation Committee considers it is likely to be relevant to its decision and reasonably capable of influencing its assessment of the case; or

- information comes to light for the first time that suggests the doctor might be unwell.

142. Where information comes to light that suggests a doctor might be unwell, it is likely to be appropriate to request further information where objective evidence is needed to assess the impact of the doctor's health condition maybe linked to the concern about their behaviour and / or performance. This is because the assessment of any current and ongoing risk to public protection, and the proportionate regulatory response to address any such risk, may be informed by whether there is a cogent link between the impact of a health condition and a doctor's behaviour and / or performance.

143. The further investigation may also help inform whether the doctor's health condition is likely to have a direct impact on their ability to participate effectively in the fitness to practise process because, for example, the doctor may lack capacity.

144. Where further evidence is obtained, as with other available evidence, this will be shared with the doctor who will have the opportunity to make comments. The Investigation Committee will consider and assess the evidence to inform its decision.

Adjourning for an assessment to be completed

145. Where the outcome of an assessment is likely to be relevant to the fitness to practise process, the Regulator will usually have directed an assessment, where appropriate, during the investigation stage.

146. However, in a small number of cases, issues relevant to the doctor's performance, health and/or knowledge of English language arise for the first time during a hearing or further relevant information comes to light. When this happens, the Investigation Committee may wish to consider whether to adjourn the hearing to allow an assessment to be completed, or for further information or reports to be provided.

147. The Investigation Committee should invite submissions from the parties in relation to whether adjourning a hearing for an assessment to be completed is appropriate and proportionate. Submissions will assist the Investigation Committee in identifying:

- whether an assessment is proportionate
- the likelihood of the doctor complying, and
- any additional actions that may need to be completed by the parties following the assessment and prior to the case reconvening.

148. The decision whether to adjourn a hearing for an assessment to be completed is one for the Investigation Committee exercising its judgement. Having considered submissions, the Investigation Committee should set out its decision and reasons in a written determination.

149. The Investigation Committee should consider the following factors when deciding whether adjourning for an assessment to be completed is proportionate:

- the stage the hearing has reached
- the nature of the concern

- the nature of the assessment, and
- the likelihood of the doctor complying with the assessment.

The stage the hearing has reached

150. The stage the hearing has reached is relevant to the Investigation Committee’s consideration of whether adjourning for an assessment is a proportionate response to issues that exist, or have arisen, in relation to the doctor’s performance, health and/or knowledge of English language.

151. If new concerns arise because of an assessment, the Regulator will be required to particularise these allegations and formally disclose them to the doctor.

152. If the assessment raises a new concern which is not already before the Investigation Committee, the Regulator may make an application to join the matters and, if successful, the Investigation Committee may be asked to consider whether the realistic prospect test has been met in relation to that new concern, as well as considering the concerns that were originally referred to it.

Nature of the concern

153. In practice, this factor means that the Investigation Committee should provide reasons for considering an assessment is needed in the context of the hearing and the nature of the concern.

154. The Investigation Committee should not adjourn for an assessment to be completed without proper reason or justification. For example, if the concern relates to clinical misconduct, and there is no indication that there has been a pattern of poor care, the Investigation Committee should not adjourn for a performance assessment to be completed to see whether the misconduct could amount to a performance allegation.

155. The Investigation Committee should exercise caution when considering adjourning for an assessment that does not relate to the concern under consideration. The Investigation Committee must be clear on the purpose of adjourning for an assessment and how it will enable the Committee to fulfil its regulatory function in a fair and proportionate way.

156. For example, if the concern relates to the doctor’s behaviour, the Investigation Committee should only adjourn for an assessment of a doctor’s health or knowledge of English language to be completed where it is capable of helping it determine an issue in the case, or is needed to inform its approach to ensuring the doctor has a fair hearing, such as by making adjustments.

Nature of the assessment

Performance assessments

157. Deficient professional performance describes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work. It is unacceptably low if there is evidence that it departs from the professional standards applicable to the level

and specialty in which the doctor works.

158. A performance assessment is a mechanism for obtaining objective evidence of a doctor's professional performance and may include tests of competence and/or other methods of assessment, as deemed appropriate to the case.

159. In deciding whether it is appropriate to adjourn for a performance assessment to be carried out, the Investigation Committee would need to consider information about the doctor's current working position or recent posts, the areas of concern, the grade of the doctor, whether the doctor is still working in the same specialty to which the concern relates, and whether the doctor is currently in the UK or not.

160. The Investigation Committee should always consider whether there are any reasons that a performance assessment is not appropriate or necessary, and these reasons may include:

- the doctor has already completed a GMC performance assessment and there is no reason to believe that the doctor's performance has changed
- the clinical allegation reflects a single action or omission, or a number of actions or omissions, which do not amount to a pattern of poor or unacceptably low standards of professional performance
- the doctor has provided evidence of appropriate and effective remediation, and / or
- the doctor is a trainee doctor in Foundation Year 1 (FY1) who is provisionally registered.

161. The Investigation Committee may also find it helpful to refer to the guidance on *Deciding how to approach evidence collection (Doctors)*.

Health assessments

162. The impact of a doctor's health condition which impacts on their ability to provide safe and effective care and raises a possibility of impairment can be assessed through a GMC health assessment. The assessment involves the doctor attending appointments with two health examiners appointed by the Regulator. It may also be necessary for the doctor to undertake some form of medical testing, for example hair or blood analysis.

163. It is possible that a concern about the impact of a health condition may arise at a hearing for the first time. For example:

- evidence emerges which indicates a health condition may impact on the doctor's fitness to practise, for example, dependence on substances,
- the doctor behaves in a manner that causes the Investigation Committee to become concerned about the doctor's health,
- evidence emerges which calls into question the doctor's ability to engage effectively with the proceedings,
- the doctor presents evidence about personal context in relation to their health at the time of the events giving rise to the concern and it is necessary to corroborate the evidence.

164. Annex D contains information about the types of behaviour that may suggest that an individual is unwell. In addition, a perceived deterioration in, or lack of knowledge of, English language may be symptomatic of an undiagnosed health condition or the deterioration of a diagnosed health condition. Health concerns which may impact on a doctor's communication skills include neurodegenerative disorders and acquired brain injuries from either a traumatic or non-traumatic event.

165. If information comes to the attention of the Investigation Committee that suggests a doctor might be unwell, the Committee should consider the context in which the information has arisen, and whether it impacts on its ability to proceed to make a decision at the end of an investigation, before deciding that a health assessment is needed. For example, in a misconduct case, a doctor may put forward the impact of a specific health concern as an explanation for their behaviour. An adjournment in these circumstances would only be appropriate where the Investigation Committee considers the nature of the health condition can have a direct impact on its ability to determine the issues in the matter.

166. The Investigation Committee should also be mindful of the need to ask appropriate questions of the doctor or, where appropriate, ask the parties to obtain relevant information from any healthcare practitioners treating the doctor and place this before them to aid its consideration of whether it is necessary to adjourn for a health assessment to be completed, or whether it would be possible to make any adjustments to support the doctor's continued engagement in the proceedings. Adjustments might include increased breaks or shorter sitting days.

167. When deciding whether it is necessary to adjourn for a health assessment to be completed, the Investigation Committee should remember that whilst certain behaviour can be related to the impact of a health condition, it can also be capable of arising generally in stressful and / or upsetting situations. In each case, the Investigation Committee will need to weigh up all the available evidence, including whether the behaviour, or combinations of behaviour, being exhibited by the doctor create a cause for concern about their health.

168. The presence of one or more of the factors below may suggest that an adjournment for a health assessment to be completed is proportionate:

- a concern about the doctor's health arises for the first time during the hearing and there is no existing objective evidence available about their health and how it might impact on the matters under consideration and / or their current fitness to practise and / or ability to participate effectively in the hearing
- the type and severity of the health condition reported is likely to affect the doctor's fitness to practise either now or in the future, for example it has high rate of relapse or is likely to pose a risk to patients, or result in a lack of insight or cooperation on the part of the doctor
- the doctor is currently compulsorily detained under the Mental Health Act 1983 or has recently been detained and is now receiving treatment
- there are existing concerns about the doctor's behaviour or performance which seem likely to be related to the doctor's health condition

- objective medical opinion raises concern in relation to the doctor's level of insight or compliance because of a health condition
- the doctor lacks insight into their health condition and/or has failed to seek appropriate treatment
- the doctor has failed to follow the advice of treating healthcare practitioners and/or occupational health departments, or has ceased to engage with support, and / or
- the doctor's health condition appears to have had the impact of leading to involvement in dishonest or criminal activity.

169. The presence of one or more of the factors below may suggest that an adjournment for a health assessment to be completed is not required:

- the doctor has already completed a GMC health assessment and there is no reason to believe that the impact of the doctor's health condition has changed
- the type and severity of the health condition reported is unlikely to affect the doctor's fitness to practise or pose a risk to patients either now or in the future
- there is no evidence to suggest that the doctor's health condition is having, or is likely to have, an impact on their ability to participate effectively in the hearing
- there is no evidence that the doctor's health condition has had a significant impact on their behaviour or performance to date, and / or
- there is evidence that the doctor has insight into their condition and is seeking or receiving appropriate treatment or support.

170. The Investigation Committee may find it helpful to refer to the guidance on *Deciding how to approach evidence collection (Doctors)*.

171. Before adjourning for a health assessment to be completed, the Investigation Committee should consider the purpose of the assessment and ask itself whether it would be more proportionate, and less likely to result in significant delay, to seek relevant information another way. For example, through permitting a short adjournment for further information or reports to be obtained from the doctor's treating healthcare practitioners or others already involved in the doctor's care. This will be particularly relevant in cases where any concerns or issues that have arisen during the hearing are not directly related to the concerns under consideration by the Investigation Committee and / or where it appears to the Committee that the doctor may reasonably have been able to obtain relevant evidence in advance of the hearing.

172. For example, if the concern relates to the doctor's behaviour and information is needed about a doctor's health to inform the Committee's approach to ensuring the doctor has a fair hearing, such as by making adjustments, it may be more proportionate for the Committee to seek relevant information by asking for further information or reports.

173. When adjourning for a health assessment to be completed, the Investigation Committee may wish to consider whether they have any questions about the doctor's health condition that would assist it, when reconvening, for the health assessors to have addressed to inform the Committee's consideration of any issues to be determined and / or the doctor's ability to participate effectively in the hearing.

Knowledge of English language

174. A doctor's fitness to practise may be found to be impaired by reason of not having the necessary knowledge of English to practise medicine safely. A language assessment is a mechanism for obtaining objective evidence of a doctor's knowledge of English language. It assesses a doctor's ability in listening, reading, writing and speaking.

175. There may be situations where concerns about a doctor's knowledge of English arise during a hearing. Matters which may give cause for concern about a doctor's knowledge of English include:

- the doctor requesting or using an interpreter during a hearing
- a self-declaration by a doctor that suggests their knowledge of English may be limited, or
- where there is another good reason to believe the doctor has difficulty in communicating with, or understanding, others.

176. The Investigation Committee should consider the context in which the concerns about the doctor's knowledge of English have arisen, and whether they impact on the Committee's ability to proceed to determine the issues in the matter, before deciding that an adjournment for an English language assessment is needed. For example, in a misconduct case a doctor may put forward communication issues as an explanation for their behaviour. An adjournment in these circumstances would only be appropriate where the Investigation Committee considers the nature of the communication concern can have a direct impact on its ability to determine the issues in the case or on the doctor's ability to participate effectively in the proceedings.

177. The Investigation Committee should be mindful of the need to ask appropriate questions to aid its consideration of whether an English language assessment is necessary. It should also consider inviting comments from parties on whether it would be possible to make any adjustments, for example by using an interpreter, to support the doctor's continued engagement in the proceedings.

178. When assessing information which relates to concerns about a doctor's knowledge of English, the Investigation Committee should consider whether there is any evidence to suggest the doctor has an underlying health condition. A perceived deterioration in, or apparent lack of knowledge of, English language may be symptomatic of an undiagnosed health condition or the deterioration of a diagnosed health condition. Health conditions which may impact on a doctor's communication skills include neurodegenerative disorders and acquired brain injuries from either a traumatic or non-traumatic event.

179. Where the Investigation Committee has good reason, based on specific evidence, to indicate that a health condition may be having an impact on the doctor's ability to demonstrate their knowledge of English, it should consider whether adjourning for a health assessment to be completed may be appropriate. But before doing so, the Committee should consider the guidance above.

180. If a health assessment goes ahead, the examiners can be asked to comment on whether any health condition is likely to impact on the doctor's communication skills. In such cases, careful thought should be given to delaying a decision on whether it is necessary to adjourn for a language assessment to be completed until further information is

available about the doctor’s health.

181. The Investigation Committee may find it helpful to refer to the guidance on *Deciding how to approach evidence collection (Doctors)*.

The likelihood of the doctor complying with the assessment

182. If the Investigation Committee identifies issues, or receives submissions from the parties, in relation to concerns about the likelihood of a doctor complying with an assessment, it may be necessary to consider whether it remains proportionate to adjourn for an assessment to be completed.

Adjourning a hearing to allow for further information or reports

183. The nature of the information or reports required by the Investigation Committee may vary, and as such, so will the timescales for obtaining them. However, the Committee should apply the same principles in relation to assessments above, and consider:

- the stage the hearing has reached
- the nature of the concern
- the nature of the further information or reports to be sought, and
- the likelihood of the doctor complying.

184. Where the Investigation Committee has information about an existing health condition or receives new information during the hearing that suggests a doctor might be unwell, they should be mindful of the need to ask appropriate questions of the doctor or, where appropriate, to require the parties to obtain relevant information (for example, from treating healthcare practitioners or others already involved in the doctor’s care) to aid consideration of whether to adjourn for further information or reports.

185. When adjourning for further information the Investigation Committee should be clear in its decision about what further information it would help the Committee to see when the hearing reconvenes. If adjourning for reports, the Investigation Committee may wish to consider whether there are any specific questions that it would assist for the reports to address. These considerations will be particularly relevant when adjourning for further information or reports about a doctor’s health.

186. When deciding whether an adjournment is necessary to obtain further information or reports about a doctor’s health condition, the Investigation Committee should remember that, whilst certain behaviours can be related to the impact of a health condition, they can also be capable of arising generally in stressful and / or upsetting situations. In each case, the Investigation Committee will need to weigh up all the available evidence, including whether the behaviour, or combinations of behaviour, being exhibited by the doctor create a cause for concern about their health.

187. **Annex D** contains information about the types of behaviour that may suggest an individual is unwell. In addition, a perceived deterioration in, or apparent lack of knowledge of, English language may be symptomatic of an undiagnosed health condition or the deterioration of a diagnosed health condition. Health conditions which may impact on a doctor’s communication skills include neurodegenerative disorders and

acquired brain injuries from either a traumatic or non-traumatic event.

Reconvening following an adjournment

188. When the Investigation Committee reconvenes, it will need to ascertain what further investigation has taken place.

189. If further relevant evidence has been obtained, the Committee should proceed to consider the case. This can include consideration of whether to adjourn for an assessment or whether another adjournment for further investigation is necessary and proportionate.

190. Where the further information or reports relate to the doctor's health, the Investigation Committee should be mindful of the need to ask appropriate questions to assist its consideration of the relevance and impact of the evidence obtained, and to aid in any assessment of whether a further adjournment may be appropriate, such as for a health assessment to be completed.

191. If the Regulator or doctor has not obtained the further information or reports required, the Investigation Committee may want to consider whether a further adjournment is appropriate.

Record of the meeting or oral hearing

192. The Investigation Committee's determination will be the official record of any decision(s) reached. Any discussions or notes that are captured during the Investigation Committee's private deliberations do not form part of the decision and are destroyed at the conclusion of the meeting or hearing.

193. The Investigation Committee does not make decisions about what information is published about a meeting or hearing after it has concluded. Further information about this can be found in the Regulator's policy on publication and disclosure of fitness to practise information for doctors.

Annex A: Legal representative requirements

The definition of legal representative includes references to ‘solicitor’, ‘counsel’, ‘barrister’ and ‘advocate’ dependant on the legal framework in each country.

Solicitor and Counsel requirements in England and Wales

Under the Legal Services Act 2007, the Legal Services Board is responsible for overseeing the legal services approved regulators in England and Wales.

Two separate bodies are responsible for regulating solicitors and barristers:

- The Solicitors Regulation Authority (‘SRA’) - an independent body established by the Law Society of England and Wales to provide regulation of solicitors and law firms in England and Wales. Solicitors must have a practising certificate issued by the SRA in order to be authorised to provide legal advice.
- The Bar Standards Board (‘BSB’) - the independent regulatory arm of the Bar Council, responsible for regulating barristers in England and Wales. In order to be authorised to practise as a barrister the BSB Handbook requires persons to obtain an annual practising certificate.

Solicitor and Counsel requirements in Scotland

Two bodies are responsible for solicitors and advocates:

- The Law Society of Scotland - the professional body regulating solicitors in Scotland. It is responsible for issuing practising certificates for appropriately qualified members under the Solicitors (Scotland) Act 1980.
- The Faculty of Advocates - a professional body to which qualified lawyers who have been admitted to the office of ‘Advocate’ in Scotland belong. The Faculty of Advocates regulates Advocates under powers delegated to it by the Court of Session under the Legal Services (Scotland) Act 2010.

Solicitor and Counsel requirements in Northern Ireland

Two bodies are responsible for solicitors and barristers:

- The Law Society of Northern Ireland – the professional body responsible for the regulation of solicitors in Northern Ireland. It is responsible for issuing certificates to practise for appropriately qualified members. This role is enshrined in law under the Solicitors (Northern Ireland) Order 1976 and Solicitors Practice Regulations 1987 (as amended).
- The Professional Conduct Committee – the professional body responsible for regulating barristers in Northern Ireland, established by the Bar Council of Northern Ireland. It is responsible for setting the standard of conduct for barristers, through the Bar Code of Conduct, and regulating barristers in Northern Ireland.

Annex B: Professional Bodies recognised by the MPTS and GMC

Trade Unions

Section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 empowers a Certification Officer to keep a list containing the names of all independent trade unions that meet the statutory definition of a trade union and have applied to be listed. This list is available here.

Any trade union on this list is recognised as a relevant professional organisation for the purpose of this guidance. This includes the British Medical Association.

Medical Defence Organisations

There is no statutory definition of a medical defence organisation ('MDO'). However, the MPTS and GMC automatically recognises several MDOs as professional bodies. These are:

- The Medical Defence Union.
- The Medical Protection Society.
- The Medical and Dental Defence Union of Scotland.

Each of these organisations are mutual organisations[*] who provide indemnity and advice on medico-legal matters.

[*] This means the organisation is owned by, and run for, the benefit of its members, who are actively and directly involved in the business.

Annex C: Suitable individuals

Suitable individuals recognised by the MPTS and GMC

Chartered Legal Executives

Chartered legal executives are trained legal professionals who specialise in a particular area of law. They are regulated in England and Wales by the Chartered Institute of Legal Executives, a body set up under the Legal Service Act 2007. For the purposes of this guidance, possessing the qualifications and experience of being a chartered legal executive is sufficient to be considered suitable for representing a doctor.

A solicitor or counsel registered to practise and regulated in specific jurisdictions outside of England and Wales, Scotland or Northern Ireland

When considering whether a solicitor or barrister registered to practise and regulated outside of England and Wales, Scotland or Northern Ireland can be automatically recognised as being a suitable individual under this guidance, Section 89 of the Courts and Legal Services Act 1990 provides a useful starting point. The act uses the term ‘foreign lawyer’ and defines such a lawyer as “a person who is not a solicitor of England or Wales or a barrister but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside of England and Wales.” However, for the purpose of this guidance, the references made to England and Wales should be read as including Scotland and Northern Ireland.

An individual who does not meet the legal representative requirements set out in Annex A, and who wishes to rely on the above definition to act as a suitable individual, must be able to provide confirmation from the appropriate regulator that they are entitled to practise as a solicitor or counsel and that they are a member of a legal profession regulated within the relevant jurisdiction.

The Tribunal or the Committee may be assisted by the list of jurisdictions and professions recognised by the SRA as meeting the criteria for registration with them as a registered ‘foreign lawyer’. It is expected that a lawyer within the professions listed here ought to be able to provide the required proof.

If the jurisdiction and/or profession are not on this list, and the Tribunal or the Committee is not satisfied that the person meets these requirements, then a full application can be made for that person to represent the doctor as a suitable individual.

Factors that may indicate that a person is not a suitable individual

- They have been removed, or suspended, from a professional register (or their registration is subject to conditions) due to concerns about their fitness to practise which may impact on their ability to provide suitable representation.
- They have been refused restoration to a professional register or had their licence revoked or refused for a professional activity, due to concerns about their fitness to practise which may impact on their ability to provide suitable representation.
- They have been barred from working with vulnerable adults and or children by the Independent Safeguarding Authority or Disclosure Scotland or equivalent overseas body.
- They have been the subject of an adverse finding (including in civil or criminal proceedings) that raises a question about their honesty and / or integrity.
- They have been subject to any form of civil restraint order or have been found to be a vexatious litigant.
- They have been subject to any other justified complaint relating to regulated activities or are currently the subject of proceedings of a regulatory or criminal nature (or have been notified of any potential proceedings or any investigation which may lead to those proceedings) where the allegation is serious* and likely to impact on their ability to provide suitable representation.
- They have previously had their right to represent a doctor at a Tribunal or Committee hearing withdrawn due to having disrupted the proceedings.
- They have had a previous application to act as a suitable individual for the same doctor refused and the circumstances leading to that assessment have not materially changed.

* Serious allegations include, but are not limited to, dishonesty, blackmail, sexual or violent offences, human trafficking and hate crime.

Annex D: Types of behaviour(s) that may suggest than an individual is unwell

1. During a hearing, the Investigation Committee may observe behaviour, or become aware of other information about an individual, that is a cause for concern. Types of behaviour that may suggest an individual is unwell include, but are not limited to:

- suicidal thoughts or self-harm
- serious or persistent negative ways of thinking or talking
- severe feelings of anxiety
- dissociation, unusual ways of thinking
- delusions
- rapid or severe fluctuations in mood
- anger, irritability or tearfulness
- pressurised and rapid speech
- failure to respond to communication, or excessive frequency of communication
- failure to meet deadlines
- poor memory, difficulty recalling facts or events, and
- changes in appetite, weight, sleeping patterns.

Emotional distress and anger

2. Being involved in regulatory and / or disciplinary procedures as a doctor or a witness can lead to individuals experiencing feelings of upset, frustration and negative ways of thinking about the process. However, these can also be signs of emotional distress and even illness, especially when this is serious or persistent.

Depression and low mood

3. Depression and low mood can severely affect how an individual functions. People affected by depression can sometimes find it very difficult to formulate and express thoughts and ideas, for example they may take long pauses, mumble, be very quiet or hesitant in their way of speaking.

4. Sometimes individuals who are depressed or anxious feel that they are detached from their situation as if it isn't real. Although it might appear as if an individual is being evasive, rude or inappropriately sarcastic or jovial, this could also be a sign that they are unwell.

Failure to respond to communication or deadlines

5. People experiencing depression sometimes do not feel that they have enough energy or

concentration to be able to respond to correspondence or deadlines. They may avoid official correspondence or even withdraw from contact with almost everyone they know because they feel overwhelmed by such encounters.

6. These behaviours may be exhibited during an investigation, where the doctor's particular health condition or vulnerability prevents or interferes with their ability to engage in the fitness to practise process.

7. Anxiety and depression can cause an individual to experience significant 'biological' changes and these may be reported by the individual or be reflected in the content of correspondence that is placed before the Investigation Committee. Some types of mental health condition can lead to very rapid 'highs and lows' of mood and can make communication unpredictable. People with, for example, bipolar disorder can sometimes seem elated, overly talkative or irritable and may express very grand ideas about their plans or their own importance. Sometimes in the hypomanic phase of a bipolar illness, because thoughts are racing, a person may send multiple communications where the ideas are difficult to follow or seem only loosely connected.

Delusions and unusual ways of thinking

8. Some severe types of mental health condition can lead to an individual experiencing disordered thoughts and a person might make unusual connections between themselves and events to which they have no obvious link. This might also include fixed, unshakeable beliefs that seem illogical or are plainly untrue, but the person believes them; these are known as delusional beliefs.

Responding to signs that an individual is struggling or may be unwell

9. Whilst certain behaviour(s) can be related to a health condition(s), they can also arise generally in stressful and / or upsetting situation, be the impact of acute stress or the side-effect of medication that the individual is taking. In each case, the Investigation Committee will need to weigh up all the available evidence, including whether the behaviour, or combinations of behaviour, being exhibited create a cause for concern about the individual's health.

10. Consideration should be given to how to support the individual during the hearing and, where necessary, reflecting on whether the behaviour(s) exhibited may indicate a health condition which might lead the Investigation Committee to consider if a health assessment would be beneficial before the hearing proceeds further.

11. It is important for the Investigation Committee to consider the views of the individual who may be struggling or unwell when considering whether they are vulnerable or whether any adjustments or additional support may be needed. Often the individual will have insight into their own circumstances and the extent to which any matters affect their ability to perform the functions of a witness and/or to participate effectively in the hearing.

12. However, where the individual concerned is the doctor and they demonstrate a lack of insight into the impact of a possible health condition, the Investigation Committee may need to consider whether there is sufficient cause for concern that leads it to conclude that it would be appropriate to adjourn for an assessment, further information or reports.