General Medical Council

Guidance for decision makers on deciding whether an investigation is needed

Purpose

1 The purpose of this guidance is to support decision makers in determining whether a concern raises a question of impaired fitness to practise and should therefore be investigated.

2 Decision makers should refer to relevant operational and decision making guidance alongside this document[1].

Legislative Framework

3 We must consider information we receive from any source which raises a question about a registered doctor's fitness to practise.

4 Subject to the considerations set out below, decision makers[2] are required to refer concerns about a doctor's fitness to practise for investigation where they consider these to fall into the following categories[3]:

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

5 Decision makers should consider whether:

[1] Decision making guidance that may be considered alongside this document can be found on the *How we make decisions* page of our website.

[2] The term decision makers refers to Assistant Registrars throughout this guidance.

[3] As set out at Section 35C(2) of the Medical Act 1983 (as amended).

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- more information is needed in order to make a decision[4] – which may include getting clarification from the complainant, obtaining clinical advice from a medically trained colleague or opening a provisional enquiry
- to proceed where, at the time a concern is first made or first comes to our attention, more than five years have elapsed since the most recent events giving rise to the allegation[5](see *Guidance for decision makers in applying the five-year rule*)
- a complaint could be considered vexatious[6].

Deciding whether an investigation is needed – the rule 4 threshold test[7]

6 The test that is applied by decision makers when considering if a concern about a doctor raises a question of fitness to practise and requires further investigation is referred to as the rule 4 threshold test. The rule 4 threshold test is applied to new concerns brought to our attention. Concerns which are a restatement of those previously raised with us will not be reconsidered under this threshold.

7 Our guidance for doctors, *Good Medical Practice*, sets out the standards of patient care and professional behaviour expected of all doctors registered with us[8]. If a doctor seriously departs from the professional standards, it can mean they pose a current and ongoing risk to one or more of the three parts of public protection:

- protecting and promoting the health, safety and wellbeing of the public
- promoting and maintaining public confidence in the medical profession
- promoting and maintaining proper professional standards and conduct for the members of the profession.

8 Not all departures from the professional standards will require us to take formal action, and many issues can be more appropriately investigated and dealt with locally, by a doctor's responsible officer[9], employer or contractor.

[4] Rule 4(4) of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the rules').
[5] Rule 4(5) of the rules
[6] Rule 4(3) of the rules
[7] Rule 4(2) of the rules.
[8] Guidance which sits alongside *Good Medical Practice* to provide a framework for ethical decision making in a wide range of situations can be found here. Our Ethical hub provides a collection of resources exploring how to apply our guidance in practice.
[9] A responsible officer is a senior clinician who ensures that the doctors for whom they act in a nominated capacity, continue to practise safely and are properly supported and managed in maintaining their professional standards, including through appraisal and revalidation.

9 When deciding whether concerns about a doctor raise a question of impaired fitness to practise, decision makers should assess whether the doctor poses any risk to public protection posed by a doctor on a case by case basis.

10 Decision makers should take into account a doctor's fitness to practise history when it is relevant to the current decision and is fair in the circumstances for that history to be considered. It is likely to be appropriate to take a doctor's previous history into account where current allegations are similar in nature or raise similar concerns. This includes concerns that have resulted in previous formal action and concerns that have been closed as insufficient in isolation to amount to impaired fitness to practise. For more information, including when it is not appropriate to take a doctor's fitness to practise history into account, please see *Guidance for decision makers on when to take a doctor's fitness to practise history into account*.

11 Where concerns are raised about a doctor, decision makers will need to consider the supporting detail provided and/or the likelihood of being able to obtain information which can help to support the concerns raised. Where it is unlikely that any information can be obtained, we may be unable to take any further action.

12 Where the complainant informs us that they wish to withdraw their complaint, decision makers should still consider the seriousness of the concern and the public interest for concerns to be investigated, before deciding whether an enquiry should be closed.

13 Concerns that do not meet our threshold should be closed. In some circumstances, where we decide the threshold is not met but we feel the complaint should be discussed as part of the doctor's appraisal process, we may notify their responsible officer or employer.

Concerns that are unlikely to meet the threshold for investigation

14 In some circumstances, it may be clear from the outset that the concern is not something we can investigate because it does not relate to a registered doctor or is about matters that cannot raise an issue of impaired fitness to practise. Examples include, but are not limited to:

a concerns about other healthcare professionals, eg nurses, dentists etc

b low-level rudeness on the part of the doctor

c a referral about a doctor's health condition, where there is no concern about the doctor's conduct and there is no risk relating to the clinical care they provide

d private disputes, for example with a neighbour over property or legal issues, where the issue is not related to the doctor's medical practice and does not involve conduct that poses a risk to confidence in the profession

e a complaint about the cost of private medical treatment or delays in providing reports for non-clinical purposes where there is no impact on patient protection.

15 It is important with all concerns raised to consider the issues on a case by case basis to determine whether there is any risk to public protection which might require us to take regulatory action.

16 Some low level criminal offences are considered incapable of raising an issue of impaired fitness to practise unless there are aggravating factors. For further information, please refer to *Guidance for decision makers on closing criminal cases at triage*.

Notify responsible officer /employer

17 Some concerns, on their own, would not raise a question about the doctor's fitness to practise unless they were to be repeated. Although these concerns do not require a GMC investigation, they are matters that a doctor should reflect on as part of their appraisal and revalidation. We usually disclose these concerns to the doctor and their responsible officer. If a doctor does not have a responsible officer, we disclose the concern to the doctor's recent employers or contractors.

18 We would only open an investigation if, in response, the responsible officer, employer or contractor provided information which raised a question about the doctor's fitness to practise.

19 The types of concern we might disclose to the doctor and their responsible officer, or share with employers or contractors, include complaints about the quality of treatment received, or a doctor's poor attitude to patients, where there is no indication of a serious departure from the professional standards that poses a current and ongoing risk to public protection.

Concerns where further information is needed to decide if they meet the threshold for investigation

20 When we receive a concern about a doctor, decisions makers may need to obtain further information to clarify the nature and seriousness of the concern. This might include seeking information or relevant documentation from the complainant or referrer, seeking clinical advice from medically trained colleagues or seeking advice from our legal team or senior colleagues.

21 If decision makers need additional information to help decide whether a concern is likely to raise a question of impaired fitness to practise, they may also decide to open a provisional enquiry which is a process aimed at obtaining limited and targeted information from any source.

Provisional Enquiries

22 The provisional enquiries process can assist us in assessing risk in some concerns raised about doctors. A provisional enquiry is only suitable where, based on the available information, the concern raises issues that are likely to meet the rule 4 threshold but, obtaining limited and targeted additional information may allow us to more quickly and proportionately determine whether an enquiry can be closed or should be promoted to a full investigation.

23 Some concerns raised about clinical care may appear, on the face of it, likely to meet the rule 4 threshold but may not raise a question about a doctor's fitness to practise if evidence can be obtained that shows the doctor has demonstrated insight and undertaken remediation and there is no ongoing risk to public protection.

24 In determining whether clinical concerns are so serious as to require an investigation, the decision maker should consider whether, even if evidence of attempts to remediate were to be provided by the doctor, the matters are not easily remediable and a finding of impairment may still be required. In these circumstances, a provisional enquiry will not be suitable.

25 For more information on provisional enquiries refer to:

- *Guidance on provisional enquiries - Purpose and overarching principles*
- *Guidance on provisional enquiries - Assessing suitability for provisional enquiries*
- *Guidance on provisional enquiries - Allocation to a provisional enquiry stream*

26 In some cases, a doctor who has been referred to us because of concerns about their fitness to practise, may have themselves raised public interest concerns about their employers. To help make sure referrals from employers are fair and appropriate we ask referrers to complete a form which requests information about whether the doctor they're referring has previously raised public interest concerns and to declare that the referral is being made in good faith and is accurate and fair. Where the referrer notifies us that the doctor has previously raised public interest concerns, we will consider if we need to seek further information before we make a decision on whether the concerns meet the threshold for investigation. Information on steps decision makers should take in these circumstances is included in the guidance linked above.

Third party investigations

27 Where there is an ongoing investigation by a third party, for example by the police or courts, or an employer or overseas regulator, and there is no immediate risk to patient safety, we may wait until the third party investigation has concluded before determining whether a concern reaches the threshold for GMC investigation.

Concerns likely to meet the threshold for investigation

28 We will investigate a complaint that raises a question of impaired fitness to practise.

Concerns involving clinical care and/or performance

Determining if clinical concerns meet the rule 4 threshold

29 When determining whether a clinical concern meets the rule 4 threshold, decision makers need to consider if the nature of the error or failure indicates that the doctor may be a risk to patients. Factors that will be considered are:

- if the nature of the error or failure suggests a deliberate or reckless disregard of clinical responsibilities towards patients
- if there was an apparent series of errors or failures that appear to raise questions about the standard of the doctor's practice, and / or
- if the nature of the error or failure raises fundamental questions about aspects of the doctor's fitness to practise, eg by the doctor acting beyond the limits of their skills and qualifications.

30 We will consider the circumstances surrounding the event(s) giving rise to concerns about a doctor's clinical care and / or performance. This may include the consideration of contextual information, such as systems issues and human factors.

31 An adverse outcome, in particular the death of a patient or serious harm, may be a factor in assessing the seriousness of the departure from the professional standards but needs to be considered in the context of the concern as a whole. An adverse outcome does not, in itself, indicate any error on the part of the doctor or the level of any ongoing risk posed by the doctor. The outcome could be the unfortunate consequences of the condition or an inherent risk of the particular treatment or the risk of repetition may have been addressed by effective remediation.

32 Not all breaches of our guidance, including errors in diagnosing and treating patients, will require us to take formal action. Many issues, including concerns about clinical care, can be more appropriately investigated and dealt with locally, by a doctor's responsible officer, employer or contractor.

Concerns involving misconduct

33 Certain categories of misconduct represent such a serious departure from the standards required of doctors that they will generally meet our threshold for investigation.

34 These types of concerns fall within seven main headings:

a sexual assault or indecency

b sexual or improper emotional relationships with a patient or someone close to them

c violence

d dishonesty

e unlawfully discriminating in relation to characteristics protected by law

f knowingly practising without a licence

g gross negligence or recklessness about a risk of serious harm to patients

35 Decision makers should still consider all circumstances of the concern, including the evidence available in support of the concern raised.

Low level violence and dishonesty concern

36 Decision makers should refer to the *Guidance for decision makers on allegations of low level violence and dishonesty* when considering the risk posed by the doctor and deciding whether the violence or dishonesty concerns are likely to raise a question of impaired fitness to practise.

Concerns about a doctor's health

37 Where appropriate, we will first consider health concerns through the provisional enquiries process. If this does not provide assurances that the risk to patients is being appropriately managed, we may need to take action to protect patients and the public. Such concerns include:

- where there are concerns that the doctor's conduct puts patients or public confidence in the profession at risk and the doctor's health condition may have been a contributory factor
- where there are, or have been, serious concerns about the clinical care the doctor has provided, and the health condition may have been a contributory factor
- where the nature of the condition may affect the doctor's conduct or the clinical care they provide, and they are not:

  i seeking and following treatment and advice, and/or

  ii engaging with local support and steps to manage risk,

  suggesting the doctor may lack insight into any risk, or potential risk, their health condition poses, and/or
- where the health condition has only recently been diagnosed, is not well controlled and it is too soon to know if risks to patients can be appropriately managed by the doctor:

  i seeking and following treatment and advice, and/or

  ii engaging with local support and steps to manage risk.

Concerns involving convictions, cautions or determinations by another regulatory body

38 Decision makers should refer to *Guidance on convictions, cautions, determinations and other methods of disposal* when assessing whether concerns involving convictions, cautions and determinations by another regulatory body meet the threshold for investigation.