

# GMC Investigations

## What is the GMC and what does it do?

The General Medical Council (GMC) is the governing body of the medical profession in the UK.

The overriding public function of the GMC is to 'protect promote and maintain the health and safety of the public'.

Its current functions cover 5 areas:

- Managing the UK medical register
- Setting the standards for doctors
- Education and training
- Revalidation
- Addressing concerns

## Addressing Concerns

The GMC investigates and acts on fitness to practise concerns about doctors. As part of their investigations the GMC collects and reviews evidence and has the power to issue advice, a warning, agree restricted practice (which may involve retraining or monitoring of health conditions – known as undertakings), and in some serious situations the doctor can be referred to the Medical Practitioners Tribunal Service (MPTS) which has the power to place conditions on a doctor's inclusion on, or suspend or erase a doctor from, the medical register.

A doctor may find themselves subject to a GMC investigation by a variety of means:

- A complaint from a patient or relative of a patient or member of the public;
- A referral by an employer/NHS England/Responsible Officer (RO) for capability, conduct or health concerns;
- Self-referral due to health concerns, or a criminal caution charge or conviction, or following criticism by an official inquiry such as an inquest (as per paragraph 75a of *Good medical practice*).

It is worth remembering that the GMC had 8,468 complaints made in 2020; of these 6,700 did not make it past the triage stage; 310 were passed back to the employer/RO to deal with; 415 were considered as provisional enquiries; and 1,043 (12.3%) of all the complaints received were opened as an investigation.

In 2020 the total number of hearings that took place was 144 and the number of doctors erased or suspended was 95, which is 66% of all hearings but only 9% of all investigations opened and only 1.1% of all complaints made. You can access the fitness to practise statistics [here](#).

## **The Triage Process**

Once a referral has been made to the GMC the concerns are entered into the Investigation Triage process. The GMC determines if the concerns raised indicate that a doctor's fitness to practise may be currently impaired under the following headings:

- misconduct;
- deficient professional performance;
- a criminal conviction or caution;
- adverse physical or mental health that may affect the ability to practise medicine;
- not having the necessary knowledge of the English language;
- a determination by another health regulatory body, in the United Kingdom or elsewhere, that their fitness to practise is impaired.

The GMC gathers information to confirm the doctor's identity, any missing documents, and seeks clarification of places and dates from complainants or referrers. Doctors are often not aware of a GMC case at the triage stage. Most cases which relate to events that took place more than five years before coming to the attention of the GMC are closed at this stage, unless there is a strong public interest in investigating them.

## **Provisional Enquiries**

The GMC undertakes a Provisional Enquiry (PE) when the triage process cannot determine if an investigation should be opened. A PE is not a formal investigation but allows the GMC to gather further information to determine if a formal investigation should be opened. This may involve obtaining records or other documents, and an opinion from an independent expert.

At this stage the doctor is invited to submit their comments on the concern and we would strongly advise you contact MDDUS before doing so as we can offer advice and help draft your comments.

Once the GMC has gathered all the relevant information on the case a decision is made on whether there is sufficient information to close the enquiry or if a formal investigation needs to be opened.

## **Formal Investigations – Rule 4 and Rule 7**

The GMC opens a formal fitness to practise investigation if the concerns raised could represent a serious departure from the standards expected of a doctor.

The investigation includes gathering information such as medical records, documentary evidence (for example from the police or a doctor's employers), statements from those involved, and/or the opinion of an independent expert. The investigation may also involve an assessment of the doctor's performance, health, or knowledge of the English language.

At this stage, known as Rule 4, the doctor has 7 days to return the employer work details form. The GMC will then write to the employer enclosing details of the concern and ask the employer to confirm if they have any concerns about the doctor. If the doctor is a GP there is a requirement under the NHS Performers List regulations to notify the holder of the List if a formal investigation is opened.

The doctor is also invited to provide any comments at this stage, and we would strongly recommend you contact MDDUS for advice before submitting any information to the GMC as it may be better to wait and see what evidence the GMC gather, for example an expert opinion, before making any comments.

Once the investigation officer has gathered all the necessary information, the case is put to the decision maker who will decide if the case can be closed or not.

If the case is not closed it enters the Rule 7 stage. The GMC sends a letter which lists the formal allegations they consider if proven could mean that a doctor's fitness to practise is impaired. At this stage, the GMC also discloses all of the evidence it has gathered in the course of its investigation. The doctor is invited to comment on the charges and also to provide evidence of any learning they have undertaken or reflections they have had on the incident that will demonstrate insight and change in practice. Once the doctor's comments are received the case is put to two Case Examiners, one medical and one non-medical, who are senior decision makers, to decide the outcome of the investigation. The role of the Case Examiners is not to determine the facts but to apply the realistic prospect test, which states as follows:

*"The "realistic prospect" test will apply to both the factual allegations and the question whether, if established, the facts would demonstrate that the practitioner's fitness to practise is impaired to a degree justifying action on registration. It will reflect a genuine (not remote or fanciful) possibility. It is in no-one's interest for cases to be referred to a medical practitioners tribunal when they are bound to fail. On the other hand, cases which raise a genuine issue of impaired fitness to practise justifying action on registration are for the medical practitioners tribunal to decide".*

The test requires the Case Examiners to look at the doctor's current fitness to practise and so the reflection and remediation evidence at this stage of the investigation is extremely important.

The potential outcomes are:

- No action;
- Letter of advice - A letter of advice would not be considered an adverse finding, but you should ensure you take heed of the advice. A letter of advice would constitute fitness to practise history;
- A warning - where there is evidence of behaviour or performance significantly below the expected standard which does not meet the threshold for referral to a hearing, visible for two years on the public register. A warning would constitute fitness to practise history;
- Undertakings - an agreement about certain aspects of a doctor's future practice, such as to work under supervision, or to receive medical attention, visible for ten years after expiry, although health conditions remain confidential. Undertakings would constitute fitness to practise history;
- Referring the case to an Investigation Committee hearing - where there may be disagreement between the decision-makers at the GMC, or where a doctor is not willing to accept a warning that has been offered;
- Referral to a Medical Practitioners Tribunal Hearing.

Fitness to practise history can be taken into account by the GMC when assessing future fitness to practise issues. Fitness to practise history must also be disclosed by the doctor when asked, for example when applying for a new job. The GMC can also disclose fitness to practise history in certain circumstances.

## **Medical Practitioner Tribunal Service Hearings**

The Medical Practitioners Tribunal Service (MPTS) is a statutory committee of the GMC and is accountable to the GMC Council and the UK Parliament. The MPTS is independent in its decision making and operates separately from the investigatory role of the GMC. The decision of the MPTS panel can be appealed by the GMC and/or the Professional Standards Authority (PSA) and the doctor and the appeal is heard in the High Court and its equivalents in Scotland and Northern Ireland.

A doctor can be referred to a Tribunal Hearing at two points during an investigation.

### **1. Interim Orders Tribunal (IOT)**

The purpose of an IOT is not to determine the facts but to examine the weight of the evidence to see 'if it were true' ought there to be a restriction placed on a doctor's registration. Cases that go to IOT are usually those concerning allegations where there is a potentially serious risk to patient safety arising from concerns about a doctor's clinical skills or allegations of inappropriate behaviour towards patients, their health, performance or knowledge of English. In addition, the public interest test which includes the maintenance and promotion of public confidence in the profession, can also necessitate an IOT when a doctor's personal conduct unrelated to their practise of medicine, may lead to the loss of public trust in the profession, for example criminal charges unrelated to their professional practice may have been raised.

The purpose of an interim order is to protect the public or to maintain public confidence in the profession whilst the serious allegations are investigated. Cases considered by an IOT are usually heard in private. The IOT can impose an order of conditions/suspension for up to 18 months to allow the GMC investigation to proceed to its conclusion however the order must be reviewed within 6 months to see if it is still necessary and then after that at intervals of no more than 6 months. If the investigation takes longer than 18 months then the GMC can apply to the High Court or equivalent to have the order extended.

A doctor is usually referred to an IOT with very little notice – typically 1-2 weeks – and it is vitally important to contact MDDUS as soon as you are notified of an IOT so suitable representation can be arranged.

### **2. MPTS Hearings**

Once the Case Examiners have concluded, from the evidence before them, that *on balance of probabilities* (the civil not criminal 'beyond reasonable doubt' test) there is a *realistic prospect* of finding the doctor's fitness to practise is impaired the case is referred to a MPTS hearing.

These hearings do examine the facts and are run like a trial. The MPTS panel consist of a legally qualified chair and one lay person and one medical person. If the panel chair is not legally qualified then a Legal Assessor will also be present. The role of the Legal Assessor will be to advise the panel on questions of law. The Legal Assessor plays no part in the panel's decision making. There is a barrister and legal team for the GMC who seek to prove the charges they have listed will show that the doctor's fitness to practise is impaired. Doctors in membership with MDDUS are represented by MDDUS' legal team and barrister who meet with and support the doctor and prepare their defence. Witnesses can be called to give evidence for the GMC and for the defence and can be witnesses of fact or expert medical witnesses and also character reference witnesses.

The hearing has three stages:

1. **The facts** – where the GMC set out to prove the facts. If the facts are not proved the case will close at this stage. If the facts are admitted or proved then the hearing progresses to the next stage.
2. **Impairment** – this stage deals with the here and now. Even if the doctor's fitness to practise was impaired at the time the incident occurred that does not mean that the doctor's fitness to practice is currently impaired. This part of the hearing looks at the doctor's subsequent CPD evidence of learning and reflections. If the tribunal finds the doctor has remediated sufficiently and there is no current impairment, then the hearing can conclude with no finding of impairment. If there is a finding of impairment, then the hearing moves on to the next stage.
3. **Sanction** – the main reason for imposing sanction is to: protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession; and to promote and maintain proper professional standards and conduct for the members of the profession  
In order to be fair and transparent the GMC has produced Sanctions Guidance to advise MPTS panels on the appropriate sanction to give.

The hearing can conclude with:

- No action;
- A Warning (if impairment has not been found). A warning would constitute fitness to practise history;
- Conditions (usually reviewed up to 12 months). Conditions would constitute fitness to practise history;
- A Suspension (for up to 12 months). A suspension would constitute fitness to practise history;
- Erasure (if a doctor is removed from the register they can re-apply to join after a period of 5 years). Erasure would constitute fitness to practise history.

The MDDUS has an expert team of advisors and solicitors to assist our members with every stage of the GMC investigation process. We would strongly recommend you contact us as soon as you are notified of a GMC investigation and we will support and advise you in dealing with it.