

# Non-compliance guidance for Medical Practitioners Tribunals

## Purpose

- 1** This guidance sets out the factors to be considered by a tribunal when making a finding in respect of the question of non-compliance and determining what order to make, if any, following a finding of non-compliance. The aim of the guidance is to promote consistency and transparency in decision making relating to non-compliance hearings.

## Contents

- 2** [Part A](#) of the guidance sets out the considerations relevant to determining the issue of non-compliance where there has been a referral for hearing by the GMC.
- 3** [Part B](#) of the guidance sets out the considerations relevant to determining the issue of non-compliance where the tribunal is of the opinion a doctor has not complied with a tribunal-directed assessment.
- 4** [Part C](#) of the guidance provides details of the factors relevant to consideration of what action to take following a finding of non-compliance, including:
  - a** directing an order of conditional registration or suspension
  - b** immediate and interim orders
  - c** review hearings.

# Part A – GMC referrals

## The legislative framework

- A1** The GMC may refer a doctor to a Medical Practitioners Tribunal ('MPT') where the Registrar is of the opinion that a doctor has failed to submit to an assessment of their performance, health or knowledge of English or failed to comply with requirements imposed in respect of such an assessment\*.
- A2** Where the Investigation Committee are of the opinion a doctor has failed to submit to an assessment of their performance, health or knowledge of English, or failed to comply with requirements imposed in respect of such an assessment, they may direct the Registrar to make a referral for the case to be considered by a MPT and the Registrar must make the referral<sup>†</sup>.
- A3** The GMC has the power to refer a doctor to a MPT where the doctor has failed to comply with a request to provide information<sup>‡</sup>.
- A4** Rule 17ZA of the [Fitness to Practise Rules 2004](#) (as amended) sets out the procedure to be followed at a non-compliance hearing.

## Approach to non-compliance

### Investigation stage

- A5** The GMC may refer a doctor to a non-compliance hearing if they fail to:

\* Schedule 4, paragraphs 5A(3) and 5C(3) of the Medical Act 1983 (as amended) ('the Act')

<sup>†</sup> Schedule 4, paragraphs 5A(3A) and 5C(3A) of the Act

<sup>‡</sup> Under section 35A(6C) of the Act, with the request having been made under section 35A(1A) of the Act

- a** submit to a direction for an assessment of their health, performance or knowledge of English
- b** comply with requirements imposed in respect of an assessment of their health, performance or knowledge of English
- c** provide information which has been requested\* as being necessary to progress a fitness to practise investigation.

**A6** The GMC may make such a referral where it considers the relevant failure creates a risk to public protection because it means the GMC cannot investigate the concern about the doctor's fitness to practise<sup>†</sup>.

**A7** Before making a referral for non-compliance the GMC should be satisfied that reasonable steps have been taken to engage with the doctor to explain the potential consequences of non-compliance.

## Hearing stage

**A8** The non-compliance hearing will include the following main elements:

- a** presentation of the GMC's case
- b** presentation of the doctor's case
- c** the tribunal's findings on the issue of non-compliance

\* Under section 35A(1A)

<sup>†</sup> The purpose of the non-compliance power is set out in [The General Medical Council and Professional Standards Authority: Proposed changes to modernise and reform the adjudication of fitness to practise cases](#), Department of Health Consultation Response Report, January 2015, pages 31/32.

- d** where there is a finding of non-compliance; further evidence and submissions, and the tribunal's decision on whether to give a direction for conditional registration or suspension
- e** where the tribunal gives a direction for conditional registration or suspension; further evidence and submissions, and the tribunal's decision on whether to impose an immediate order
- f** where appropriate, consideration of whether to impose, vary or revoke any interim order.

**A9** When considering the issue of non-compliance with a GMC direction or request to provide information the tribunal will need to consider whether or not:

- a** the doctor has failed to comply with the GMC's direction or request to provide information
- b** there was a good reason for the doctor's failure to comply.

**A10** The tribunal will not consider whether the doctor's fitness to practise is impaired when determining the issue of non-compliance.

**A11** If the tribunal makes a finding of non-compliance, it can impose restrictions on the doctor's practice by directing conditions on their registration for up to three years or by suspending them for a period of up to 12 months.

**A12** If a doctor is already subject to an interim order at the time of the non-compliance hearing, the tribunal is empowered to revoke the interim order when imposing a non-compliance sanction. The tribunal may also make an immediate order.

**A13** In most cases, the restriction imposed on the doctor's practice will be subject to review before the period of conditions or suspension expires. At the review hearing, the tribunal will consider whether or not the doctor has now complied with the direction or request to provide information in order to determine whether the restriction(s) should be maintained, varied or revoked.

**A14** After a doctor has been suspended under a non-compliance direction for two consecutive years, and there is evidence of continued non-compliance, the tribunal has the power to suspend the doctor indefinitely. A doctor cannot be erased for non-compliance.

**A15** Where non-compliance has not been found, the tribunal should consider whether an interim order needs to be made, or any existing interim order needs to be varied, in order to meet the regulatory purpose of protecting the public while the GMC continues its investigation.

## Decision on non-compliance

**A16** When considering the issue of the doctor's compliance with a GMC direction or request to provide information, the tribunal should ask the following questions:

- a** Has the doctor failed to comply with the GMC's direction or request to provide information?
  
- b** If so, is there a good reason for the doctor's failure to comply?

### **Has the doctor failed to comply with the GMC's direction or request to provide information?**

**A17** There does not need to be culpability on a doctor's part for the

tribunal to conclude there is evidence that the doctor has 'failed to comply.' At this stage, the tribunal is simply considering whether there is evidence to show, as a matter of fact, the doctor has not complied with the GMC's direction or request to provide information.

**A18** A doctor may have failed to comply with a GMC direction or request to provide information where they have:

- a** explicitly refused to submit to a direction to undergo an assessment or provide the information requested from them
- b** agreed to submit to a direction to undergo an assessment but subsequently failed to comply with some or all of the requirements imposed in respect of that assessment
- c** agreed to provide the information requested but subsequently failed to provide it in part or in full
- d** failed to respond to a direction to undergo an assessment or request to provide information
- e** been prevented from participating in an assessment by reason of their adverse physical or mental health (health-related non-compliance).

**A19** An explicit refusal must be clearly documented and unambiguous.

**A20** Where a case has been referred for hearing on the basis the doctor has failed to respond to a GMC direction or request to provide information, the GMC should produce proof of service of the correspondence containing the direction or request to provide information.

**A21** Evidence that a doctor has been prevented from participating in

an assessment by reason of their adverse physical or mental health will often be in the form of a report from the doctor's treating healthcare practitioner, but may also be an update from their medical supervisor or a report prepared by a GMC health examiner. Referral for hearing will usually be on the basis that a doctor is unable to engage with the GMC during a health investigation, due to an existing health condition.

**A22** If the tribunal is not satisfied that the doctor has failed to comply with the GMC's direction or request to provide information, it does not need to go on to consider the next question. The matter should conclude with no finding of non-compliance.

### **If so, is there a good reason for the doctor's failure to comply?**

**A23** When considering the issue of whether there is a good reason for a doctor's failure to comply with a GMC direction or request to provide information, the tribunal will need to make a judgement based on the individual circumstances of the case.

**A24** Examples of good reason for failing to comply with a GMC direction or request to provide information could include, but are not limited to, where:

- a** there is objective evidence that demonstrates a doctor's adverse physical or mental health prevented them from complying with a GMC direction or request to provide information, and there is a realistic prospect of the doctor being able to comply in a reasonable timeframe in the future (see below)
- b** a doctor can demonstrate they did not receive the GMC's direction or request to provide information and, since its

existence came to the doctor's attention, they have not been provided with an opportunity, and / or sufficient time, to comply

- c** a doctor can demonstrate they are not, or could not reasonably be expected to be, in possession of the information requested by the GMC
- d** a doctor can demonstrate that, in all the circumstances, it was not reasonable for them to comply with the GMC's direction or request to provide information (see below)
- e** a doctor can demonstrate that their failure to comply does not create a risk to public protection because the GMC can still investigate the concern (see below).

**A25** Not having legal representation will not amount to a good reason for a doctor failing to comply with a GMC direction or request to provide information.

**A26** Where a doctor has submitted a completed application for voluntary erasure during the GMC's investigation, it may not be proportionate for the doctor to comply with the GMC's direction or request to provide information until the application has been determined by the GMC. In cases where the doctor receives notification that voluntary erasure has not been granted by the GMC, they will be expected to comply with the GMC's direction or request to provide information.

**A27** All doctors have an ongoing duty to comply with their regulator whilst they remain on the medical register - despite any desire to be removed. Where a doctor is dissatisfied with the outcome of an application for voluntary erasure considered by the GMC, this will not amount to a good reason for failing to comply.

**A28** A doctor who relinquishes their licence to practise is not automatically

removed from the medical register and so the absence of a licence to practise will not amount to a good reason for failing to comply with a GMC direction or request to provide information.

**A29** Stated intentions by a doctor to; no longer practise in the UK, relinquish their licence to practise, or submit an application to have their name removed from the register, are also insufficient to amount to good reasons for failing to comply.

## Adverse physical or mental health

**A30** To find good reason, the tribunal will need to be presented with objective medical evidence that:

- a** sets out how the doctor's adverse physical or mental health prevented them from participating in the assessment or providing the information requested by the GMC, and
- b** indicates that there is a realistic prospect of the doctor participating in the assessment or providing the information requested in a reasonable timeframe.

**A31** It is unlikely to be sufficient for a doctor to provide evidence about the impact of their own health condition, without independent information to support or verify it.

**A32** Objective medical evidence about a doctor's adverse physical or mental health could come from a number of sources, such as: a letter or report from the doctor's treating practitioner or GP, an update from their medical supervisor or a report prepared by a GMC health examiner. As objective medical evidence is independent and verifiable, the tribunal is usually able to attach greater weight to it.

**A33** In the absence of objective medical evidence, or where the objective medical evidence does not indicate there is a realistic prospect that the doctor will be able to comply in a reasonable timeframe, a proportionate regulatory response will usually be to restrict the doctor's practice until such time as they are able to comply with the direction or request for information.

**A34** What amounts to a reasonable time frame will depend on the individual circumstances of the case, including, but not limited to: the content of any available objective medical evidence, whether the case is multifactorial and there are other allegations the GMC are still investigating, the history of the case, and / or the impact of delay on the complainant and / or witnesses.

**A35** In cases where there is no realistic prospect that a doctor will be able to comply in a reasonable timeframe, and there is no other proportionate way of the GMC progressing or concluding the investigation, a health-related non-compliance order\* will restrict the doctor's practice until such time as they are able to comply. An interim order is unlikely to be sufficient in the long term to address the ongoing issues raised by the doctor being unable to comply, whereas a health-related non-compliance order will achieve public protection and limit the impact of an active investigation on an unwell doctor.

**A36** Before reaching a conclusion that the doctor's adverse physical or mental health amounts to a good reason for their failure to comply, the tribunal should consider whether reasonable adjustments to the assessment process were requested by, or explored with, the doctor. In cases where the GMC has offered to make adjustments which would have enabled the doctor to participate in an assessment and the doctor has not complied, it is unlikely the doctor's adverse physical or mental

\* As for all types of non-compliance, in a health-related non-compliance case, a direction of conditions or suspension may be made.

health will amount to a good reason.

**In all the circumstances, it was not reasonable for the doctor to comply with the GMC's direction or request to provide information**

**A37** A doctor may say that, given all the circumstances known at the time the GMC made its direction or request to provide information, it was not reasonable for them to comply.

**A38** Where this is raised, the tribunal should consider the full circumstances of the case to decide whether it was reasonable for the doctor to comply. However, the tribunal should not make a finding on whether the direction or request to provide information was lawful.

**A39** Where a doctor raises their personal circumstances as a reason for not being able to comply, the following situations will not usually amount to a good reason unless there is objective evidence the doctor will be able to comply in a reasonable timeframe:

- a** a doctor says they are unable to travel or obtain a visa to travel
- b** a doctor cites financial difficulties
- c** ill-health of a family member - unless they are a dependent of the doctor and there is objective medical evidence to show the doctor is prevented from complying as a result, and there is realistic prospect of the doctor being able to comply in a reasonable timeframe in the future.

**A40** Any objective evidence submitted by the doctor should:

- a** set out why the doctor is unable to comply, and

- b** provide clear information about when the doctor will be in a position to comply.

**A41** As objective evidence is independent and verifiable, the tribunal is usually able to attach greater weight to it.

**A42** Objective evidence relating to a doctor being unable to travel could include the submission of documents demonstrating a visa had been applied for in a timely manner, consideration of the application had been delayed for reasons beyond the doctor's control but will be complete within a specified time. In this scenario, it is unlikely to be sufficient for a doctor to simply inform the GMC that they were unable to obtain a visa.

**A43** What amounts to a reasonable time frame will depend on the individual circumstances of the case, including, but not limited to: the content of any available objective evidence, whether the case is multifactorial and there are other allegations the GMC are still investigating, the history of the case, and / or the impact of delay on the complainant and / or any witnesses.

**A44** GMC registration requires doctors to cooperate with regulatory processes. In the absence of objective evidence that the doctor will be able to comply in a reasonable timeframe, the above scenarios could lead to the fitness to practise process being delayed for an indefinite period of time. This could have the effect of preventing the GMC from fulfilling its regulatory purpose to protect the public in a proportionate way.

**A45** A proportionate regulatory response will usually be to restrict the doctor's practise until such time as they are able to comply with the direction or request for information. In these cases, any non-compliance order could then be reviewed when the doctor is able to take the assessment, for example, because they can now return to the UK or raise funds.

## The doctor's failure to comply has not created a risk to public protection because the GMC can still investigate the concern

**A46** There is a clear risk to public protection where a concern about a doctor's fitness to practise has been raised but cannot be investigated other than by means of an assessment, or by requiring a doctor to provide information, and the doctor does not comply. The absence of such evidence may interfere with the GMC's ability to take forward a case on the grounds of impairment\*.

**A47** The outcome of the assessment, or the information requested from the doctor, should be material to the GMC's investigation. If, without it, the GMC is unable to proceed with the investigation in a proportionate way and take action in response to the concern, the failure to comply will create a risk to public protection.

**A48** If there are other proportionate means by which the allegations can otherwise be adequately investigated, or the information requested from the doctor can be acquired, this may indicate that the doctor's failure to comply has not created a risk to public protection because the GMC can still investigate.

## Finding on non-compliance

**A49** Having considered the above, the tribunal must announce its finding on non-compliance and provide reasons.

**A50** Where the tribunal finds there is evidence a doctor has failed to comply

\* [The General Medical Council and Professional Standards Authority: Proposed changes to modernise and reform the adjudication of fitness to practise cases](#), Department of Health Consultation Response Report, January 2015, pages 31/32.

with the GMC's direction or request for information and there is no good reason for the doctor's failure to comply, it should make a finding of non-compliance and proceed to consider whether to make a direction in accordance with Part C of the guidance.

# Part B – tribunal directed assessments

## The legislative framework

**B1** Where a Medical Practitioners Tribunal ('MPT'), having given a direction to require a doctor to submit to an assessment ('tribunal-directed assessment'), is of the opinion the doctor has failed to submit to that assessment or to comply with requirements imposed in respect of that assessment, the MPT must consider that matter\*.

**B2** Rule 17ZA of the Fitness to Practise Rules 2004 (as amended) ('the Rules') sets out the procedure to be followed when determining if there has been non-compliance.

## Approach to non-compliance

**B3** During an MPT hearing to consider concerns relating to a doctor's fitness to practise, a tribunal may give a direction for a doctor to submit to an assessment of their health, performance or knowledge of English.

**B4** In a substantive MPT hearing to determine a new concern about a doctor's fitness to practise, the tribunal can adjourn for an assessment to be carried out at any stage before making a determination on impairment<sup>†</sup>. During a review hearing, the tribunal may adjourn its proceedings for any reason, including to direct an assessment<sup>‡</sup>.

**B5** Before adjourning to direct an assessment, the tribunal should follow the [guidance on adjourning to direct an assessment or for further](#)

\* Schedule 4, paragraph 5A(3C) of the Act

<sup>†</sup> Rule 17(7)

<sup>‡</sup> Rule 29(2)

[information or reports to be obtained](#) which provides tribunals with guidance on the factors relevant to their consideration of whether a case should be adjourned.

**B6** Where, following a tribunal direction, a case reconvenes and the tribunal is of the opinion the doctor has failed to submit to the tribunal-directed assessment, or comply with requirements imposed in respect of that assessment, the tribunal must consider that matter.

**B7** When a tribunal reconvenes and considers non-compliance with a tribunal-directed assessment, the hearing will include the following main elements:

- a** the GMC shall direct the tribunal to any relevant evidence
- b** the doctor may respond and adduce evidence
- c** the tribunal's findings on the issue of non-compliance
- d** where there is a finding of non-compliance; further evidence and submissions, and the tribunal's decision on whether to give a direction for conditional registration or suspension
- e** where the tribunal gives a direction for conditional registration or suspension; further evidence and submissions, and the tribunal's decision on whether to impose an immediate order
- f** where appropriate, consideration of whether to impose, vary or revoke any interim order.

**B8** When considering the issue of non-compliance with a tribunal-directed assessment the tribunal will need to consider whether:

- a the doctor has failed to comply with the tribunal's direction
- b the doctor's failure to comply creates a risk to public protection because it means the tribunal cannot determine the allegation of impaired fitness to practise
- c there is a good reason for the doctor's failure to comply.

**B9** The tribunal will not consider whether the doctor's fitness to practise is impaired when determining the issue of non-compliance.

**B10** If the tribunal makes a finding of non-compliance, it can impose restrictions on the doctor's practice by directing conditions on their registration for up to three years or by suspending them for a period of up to 12 months.

**B11** If a doctor is already subject to an interim order at the time of the non-compliance hearing, the tribunal is empowered to revoke the interim order when imposing a non-compliance sanction. The tribunal may also make an immediate order.

**B12** In most cases the restriction(s) imposed on the doctor's practice will be subject to review before the period of conditions or suspension expires. At the review hearing, the tribunal will consider whether or not the doctor has now complied with the direction in order to determine whether the restriction(s) should be maintained, varied or revoked.

**B13** After a doctor has been suspended under a non-compliance direction for two consecutive years, where there is evidence of continued non-compliance, the tribunal has the power to suspend the doctor indefinitely. A doctor cannot be erased for non-compliance.

**B14** Where non-compliance has not been found, the tribunal should

consider whether an interim order needs to be made, or any existing interim order needs to be varied, in order to meet the regulatory purpose of protecting the public while the fitness to practise process continues.

## Decision on non-compliance

**B15** When considering the issue of a doctor's compliance with a tribunal-directed assessment, the tribunal should ask the following questions:

- a** Has the doctor failed to comply with the tribunal's direction?
- b** If so, does the doctor's failure to comply create a risk to public protection because it means the tribunal cannot determine the allegation of impaired fitness to practise?
- c** If so, is there a good reason for the doctor's failure to comply?

### Has the doctor failed to comply with the tribunal's direction?

**B16** There does not need to be culpability on a doctor's part for the tribunal to conclude there is evidence that the doctor has 'failed to comply.' At this stage, the tribunal is simply considering whether there is evidence to show, as a matter of fact, the doctor has not complied with their direction.

**B17** A doctor may have failed to comply with a tribunal-directed assessment where they have:

- a** explicitly refused to submit to the direction to undergo an assessment
- b** agreed to submit to a direction to undergo an assessment but

subsequently failed to comply with some or all of the requirements imposed in respect of that assessment

- c failed to respond to correspondence sent by the GMC in order to make arrangements for the assessment
- d been prevented from participating in an assessment by reason of their adverse physical or mental health (health-related non-compliance).

**B18** An explicit refusal must be clearly documented and unambiguous.

**B19** Where a doctor has failed to respond to correspondence sent by the GMC in order to make arrangements for the assessment, the GMC should produce proof of service of that correspondence.

**B20** Evidence that a doctor has been prevented from participating in an assessment by reason of their adverse physical or mental health will often be in the form of a report from the doctor's treating healthcare practitioner, but may also be an update from their medical supervisor or a report prepared by a GMC health examiner. Where a doctor is unable to engage with the fitness to practice process due to a health condition, this may be referred to as health-related non-compliance.

**B21** If the tribunal are not satisfied that the doctor has failed to comply with their direction, they do not need to go on to consider the next question. The matter should conclude with no finding of non-compliance.

**If so, does the doctor's failure to comply create a risk to public protection because it means the tribunal cannot determine the allegation of impaired fitness to practise?**

**B22** The outcome of the assessment should be material to the tribunal's ability to determine the allegation of impaired fitness to practise. If, without it, the tribunal cannot go ahead and determine the outstanding matters in the substantive MPT or review hearing, then the doctor's failure to comply will create a risk to public protection.

**B23** If there are other proportionate means by which the tribunal can reach a decision about whether the doctor is fit to practise, this may indicate that the doctor's failure to comply does not create a risk to public protection because they can still determine the allegation.

**B24** If the tribunal concludes that the doctor's failure to comply does not create a risk to public because they can determine the allegation of impaired fitness to practise without the assessment, it does not need to go on to consider the next question. The matter should conclude with no finding of non-compliance.

### **If so, is there a good reason for the doctor's failure to comply?**

**B25** When considering the issue of whether there is a good reason for a doctor's failure to comply with a tribunal-directed assessment, the tribunal will need to make a judgement based on the individual circumstances of the case.

**B26** Examples of good reason for failing to comply with a tribunal-directed assessment could include, but are not limited to, where:

- a** there is objective evidence that demonstrates a doctor's adverse physical or mental health prevented them from complying with the tribunal's direction, and there is a realistic prospect of the doctor being able to comply in a reasonable timeframe in the

future (see below)

- b** a doctor can demonstrate they have not received correspondence sent by the GMC in order to make arrangements for the assessment, despite efforts to engage with the GMC about the assessment process
- c** a doctor can demonstrate that, in all the circumstances, it was not reasonable for them to comply with the tribunal's direction (see below).

**B27** Not having legal representation will not amount to a good reason for a doctor failing to comply with a tribunal-directed assessment.

**B28** A doctor may submit a completed application for voluntary erasure for consideration after a MPT hearing has started. Where a tribunal is seized of the application but has not yet determined whether to grant or refuse it, the doctor will still be expected to comply with any tribunal-directed assessment. In some cases the outcome of the assessment will be relevant to the tribunal's decision on the issue of whether to grant or refuse the application, as it is likely to be capable of informing their assessment of impairment and risk.

**B29** All doctors have an ongoing duty to comply with their regulator whilst they remain on the medical register – despite any desire to be removed. A tribunal being seized of an application for voluntary erasure will not amount to a good reason for the doctor failing to comply with a tribunal-directed assessment.

**B30** A doctor who relinquishes their licence to practise is not automatically removed from the medical register and so the absence of a licence to practise will not amount to a good reason for failing to comply with a tribunal-directed assessment.

**B31** Stated intentions by a doctor to no longer practice in the UK, relinquish their licence to practise, or submit an application to have their name removed from the register, are also insufficient to amount to good reasons for failing to comply.

### Adverse physical or mental health

**B32** To find good reason, the tribunal will need to be presented with objective medical evidence that:

- a** sets out how the doctor's adverse physical or mental health prevented them from participating in the assessment, and
- b** indicates that there is a realistic prospect of the doctor participating in the assessment in a reasonable timeframe.

**B33** It is unlikely to be sufficient for a doctor to provide evidence about the impact of their own health condition, without independent information to support or verify it.

**B34** Objective medical evidence about a doctor's adverse physical or mental health could come from a number of sources, such as: a letter or report from the doctor's treating practitioner or GP, an update from their medical supervisor or a report prepared by a GMC health examiner. As objective medical evidence is independent and verifiable, the tribunal is usually able to attach greater weight to it.

**B35** In the absence of objective medical evidence, or where the objective medical evidence does not indicate there is a realistic prospect that the doctor will be able to comply in a reasonable timeframe in the future, a proportionate regulatory response will be to restrict the doctor's

practice until such time as they are able to comply with the direction or request for information. In these cases, a health-related non-compliance order\* will achieve public protection and limit the impact of ongoing fitness to practise proceedings on an unwell doctor who is unable to engage effectively with the hearing process.

**B36** What amounts to a reasonable time frame will depend on the individual circumstances of the case, including, but not limited to: the content of any available objective medical evidence, whether there are other allegations before the tribunal to determine, the history of the case, and / or the impact of delay on the complainant and / or witnesses.

**B37** Before reaching a conclusion that the doctor's adverse physical or mental health amounts to a good reason for their failure to comply, the tribunal should consider whether reasonable adjustments to the assessment process were requested by, or explored with, the doctor. In cases where the GMC has offered to make adjustments which would have enabled the doctor to participate in an assessment and the doctor has not complied, it is unlikely the doctor's adverse physical or mental health will amount to a good reason.

### **In all the circumstances, it was not reasonable for the doctor to comply with the tribunal's direction**

**B38** A doctor may say that given all the circumstances known at the time the tribunal's direction was made, it was not reasonable for them to comply.

**B39** Where this is raised, the tribunal is entitled to consider the full circumstances of the case to decide whether it was reasonable for the

\* As for all types of non-compliance, in a health-related non-compliance case, a direction of conditions or suspension may be made.

doctor to comply. However, the tribunal should not make a finding on whether the original direction was lawful as to do so would go beyond the function and purpose of a non-compliance hearing.

**B40** Where a doctor raises their personal circumstances as a reason for not being able to comply, the following situations will not usually amount to a good reason unless there is objective evidence the doctor will be able to comply in a reasonable timeframe:

- a** a doctor says they are unable to travel or obtain a visa to travel
- b** a doctor cites financial difficulties
- c** ill-health of a family member - unless they are a dependent of the doctor and there is objective medical evidence to show the doctor is prevented from complying as a result, and there is realistic prospect of the doctor being able to comply in a reasonable timeframe in the future.

**B41** Any objective evidence submitted by the doctor should:

- a** set out why the doctor is unable to comply, and
- b** provide clear information about when the doctor will be in a position to comply.

**B42** As objective evidence is independent and verifiable, the tribunal is usually able to attach greater weight to it.

**B43** Objective evidence relating to a doctor being unable to travel could include the submission of documents demonstrating a visa had been applied for in a timely manner, consideration of the application had been delayed for reasons beyond the doctor's control but will be complete within a specified time. In this scenario, it is unlikely to be sufficient for a

doctor to simply inform the GMC and / or tribunal that they were unable to obtain a visa.

**B44** What amounts to a reasonable time frame will depend on the individual circumstances of the case, including, but not limited to: the content of any available objective medical evidence, whether there are other allegations before the tribunal to determine, the history of the case, and / or the impact of delay on the complainant and / or witnesses.

**B45** GMC registration requires doctors to cooperate with regulatory processes. In the absence of objective evidence that the doctor will be able to comply in a reasonable timeframe, the above scenarios could lead to the fitness to practise process being delayed for an indefinite period of time. This could have the effect of preventing the tribunal from fulfilling its regulatory purpose to protect the public in a proportionate way.

**B46** A proportionate regulatory response will usually be to restrict the doctor's practise until such time as they are able to comply with the direction or request for information. In these cases, any non-compliance order could then be reviewed when the doctor is able to take the assessment, for example, because they can now return to the UK or raise funds.

## Finding on non-compliance

**B47** Having considered the above, the tribunal must announce its finding on non-compliance and provide reasons.

**B48** Where the tribunal finds there is evidence a doctor has failed to comply with the tribunal's direction, the failure has interfered with the tribunal's ability to fulfil its regulatory purpose of protecting the public and there is

no good reason for the doctor's failure to comply, it should make a finding of non-compliance and proceed to consider whether to give a direction for conditional registration or suspension in accordance with Part C of the guidance.

**B49** As the doctor's non-compliance has interfered with the tribunal from being able to go on to determine the outstanding matters in the substantive MPT or review hearing, that case will adjourn part-heard. Consequently, the doctor's non-compliance will have frustrated the regulatory process which means it is likely that protection of the public will only be adequately achieved by the tribunal directing an order of suspension. However, when determining the appropriate direction, the tribunal should take into account the guidance at Part C.

**B50** If the doctor later complies with the tribunal-directed assessment, and on review a tribunal revokes the non-compliance order, the MPTS will schedule a hearing so that the proceedings that previously adjourned part-heard can resume and conclude.

**B51** In cases where the tribunal makes no finding of non-compliance, the tribunal may wish to consider whether any adjustments need to be made to the hearing process in order to facilitate a fair hearing. The tribunal should then go on to consider the outstanding matters in the substantive MPT or review hearing.

# Part C – directing an order of conditional registration or suspension, immediate and interim orders, review hearings

## Directing an order of conditional registration or suspension

- C1** Following a finding of non-compliance, the tribunal may receive further evidence and hear any further submissions from the parties before making a decision whether to give a direction for conditional registration or suspension ('a non-compliance order').
- C2** A non-compliance order differs from the sanctions outlined in the [Sanctions guidance](#) in that, when considering a non-compliance case, the tribunal has not made a finding of impairment. However general decision making principles, such as those relating to proportionality, will still apply.
- C3** At this stage, the tribunal will need to be informed if there is an existing interim order on the doctor's registration and have sight of all relevant documentation. This includes the most recent interim order determination, so that they can be satisfied that any order they make will address all relevant risks. Where the doctor's practice will be restricted under a non-compliance order, it will usually be desirable to revoke any existing interim order to avoid there being two separate orders in place.
- C4** Where the doctor has failed to comply with a direction made in respect of one head of impairment, but other heads of impairment are under investigation or part of the substantive MPT hearing in which a finding

of non-compliance with a tribunal-directed assessment has been made, the tribunal will need to consider any risks that arise from all allegations when making an order.

- C5** In order to assess the overall seriousness of the risks, the tribunal will carry out a risk assessment. The tribunal will not make any findings of fact, but will decide what action, if any, is needed to protect the public based on all the information available.
- C6** When making an assessment of the overall risk, the tribunal will need to sit in private when considering the facts relating to any heads of impairment which form part of an interim order. The tribunal should resume sitting in public as soon as is practicable.
- C7** In considering whether to make a non-compliance order, the question for the tribunal is whether, on the basis of their finding in respect of non-compliance, action is needed to protect the public.
- C8** Protection of the public means acting in a way that meets the three elements of the statutory overarching objective:
- i. protecting, promoting and maintaining the health, safety and wellbeing of the public
  - ii. promoting and maintaining public confidence in the profession
  - iii. promoting and maintaining proper professional standards and conduct for the members of the profession.
- C9** Where a tribunal has made a finding of non-compliance, some action against the doctor's registration is likely to be necessary in order to protect the public. The tribunal should consider the relevance of, and impact on, each of the three elements of the statutory overarching

objective and specify in their decision which elements are met by the order of conditional registration or suspension.

**C10** The tribunal must give reasons for the action they take. It must show that it started by considering the least restrictive option first, working upwards to assess the most appropriate and proportionate order. The decision should also include an explanation as to why the order should last for a particular period.

### **Conditional registration (maximum 3 years)**

**C11** Conditions restrict a doctor's practice or require them to do something. For example, a restriction can limit a doctor to work only in NHS posts, to no longer carry out a particular procedure, or to require the doctor to undergo medical supervision or retraining.

**C12** Conditions should be appropriate, proportionate, workable and measurable.

**C13** Conditions might be appropriate where the doctor has provided some mitigation for their non-compliance that, whilst not sufficient to satisfy the tribunal that the doctor had a good reason for their past non-compliance, does satisfy the tribunal that the doctor will comply in the future and that conditions are sufficient to meet the regulatory purpose of protecting the public.

**C14** Conditions are unlikely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information, or has failed to respond to a direction or request to provide information, and there is no mitigating information available.

**C15** The objective of any conditions should be made clear so that the doctor knows what is expected of them.

- C16** The tribunal can impose a condition relating to the assessment or request to provide information with which the doctor has failed to comply. For example, where the tribunal has found that a doctor has failed to comply with a direction to undergo a health assessment, they may direct that the doctor's registration is to be conditional on their compliance with a health assessment
- C17** Any condition to undergo an assessment or provide information should stipulate a period of time within which the doctor is required to comply.
- C18** Further conditions can be imposed in order to achieve the overarching regulatory purpose of protecting the public.
- C19** Where the doctor is currently subject to an interim order, the tribunal should consider what restrictions are necessary to protect against the same risks identified by the interim orders tribunal where the tribunal considers these risks still to be present, and against any new risks identified by the tribunal during the non-compliance hearing.
- C20** The condition relating to non-compliance, and any further conditions put in place for the protection of the public, should be drawn from the non-compliance conditions bank.
- C21** Conditions may be imposed for up to a maximum of three years, to be reviewed after a period of time considered appropriate by the tribunal, or at the request of the GMC.

### **Suspension (up to twelve months)**

- C22** In the context of non-compliance, an order of suspension sends a message about the important role the GMC and MPTS play in making sure that a doctor's practice meets the expected standards and that the public is adequately protected where fitness to practise concerns have been raised.

**C23** When considering whether a period of suspension is a proportionate response to a doctor's non-compliance, the tribunal may want to take into account the previous opportunities the doctor has had to comply and the level of the doctor's engagement with the fitness to practise process.

**C24** Suspension is likely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information, or has failed to respond to a direction or request to provide information, and there is no mitigating information to suggest that conditions are likely to be sufficient.

**C25** Suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and public about what behaviour is expected from a registered doctor. Suspension from the register also has a punitive effect, in that it prevents the doctor from practising and therefore from earning a living as a doctor during the period of suspension, although this is not its purpose.

**C26** An order of suspension can be made for up to a maximum of twelve months, to be reviewed after a period of time considered appropriate by the tribunal, or at the request of the GMC.

## **Indefinite suspension**

**C27** After a doctor has been suspended under a non-compliance order for two consecutive years, and there is evidence of continued non-compliance, the tribunal can suspend the doctor indefinitely. A doctor cannot be erased for non-compliance.

**C28** If a tribunal decides to direct indefinite suspension, there is no automatic further review hearing of the case, although it is open to the doctor to request a review after a period of two years have elapsed from the date when the indefinite suspension takes effect.

## Determining the length of conditional registration or suspension

**C29** The following factors will be relevant when determining the length of any non-compliance order:

- a** the nature of the original direction or request to provide information i.e. what is it the doctor has failed to comply with?
- b** the amount of time the doctor is likely to require in order to evidence full compliance
- c** the risk to public protection, i.e. the risk to the element(s) of the overarching objective that are engaged.

**C30** The length of the order will need to allow sufficient time for any assessment to be fully completed in advance of any review hearing. Whilst each case should be considered based on its own circumstances, the GMC expects that a performance assessment will take at least 6 months to complete, and a health or English language assessment will take at least 3 months to complete.

**C31** Where a non-compliance order is made as a result of failure to provide information, consideration should be given to the length of time it might take the doctor to provide the information requested by the GMC. If the information is already in the doctor's possession, for example where the GMC has requested details of a specific previous employer, a period of one month should allow the doctor sufficient time to demonstrate compliance. However, if the doctor needs to acquire the information from a third party, a period of three months might be more appropriate.

**C32** Tribunals must provide reasons for the length of order made, including the factors that led them to conclude that the particular period - whether the maximum available or a shorter period - was appropriate.

**C33** The tribunal should make clear in their determination that the onus is on the doctor to demonstrate compliance and that if at any time the doctor considers they have fully complied, they can make a request to the GMC for them to consider arranging an early review of the non-compliance order.

## Immediate and interim orders

**C34** A doctor is entitled to appeal against any order made that affects their registration. This includes conditions or suspension imposed in respect of non-compliance. The order does not take effect during the appeal period (28 days after service of notification of the decision) or, if an appeal is lodged, until that appeal has been disposed of. During this time, a doctor's registration remains fully effective unless it is restricted by an interim order or the tribunal has imposed an immediate order\*.

**C35** Where a non-compliance order has been made the tribunal is required to consider whether an immediate order is necessary<sup>†</sup>. Before making a decision the tribunal must consider any further evidence and submissions received from the parties.

**C36** In all cases, the tribunal can consider whether to make an interim order<sup>‡</sup>.

**C37** The tribunal should explain fully the reasons for any decision reached

\* This sub-section deals with immediate and interim orders in new cases only. See the sub-section in the review hearings section for guidance on the approach to take to immediate and interim orders at a review hearing.

<sup>†</sup> Rule 17ZA(1)(h)

<sup>‡</sup> Rule 17ZA(1)(i)

in respect of an immediate or interim order.

## Immediate orders

**C38** The tribunal may impose an immediate order where it is satisfied that it is:

- a** necessary to protect members of the public
- b** desirable in the public interest to maintain public confidence and uphold proper standards of conduct and behaviour
- c** in the interests of the doctor.

**C39** An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety, or where immediate action is required to protect public confidence in the medical profession.

**C40** In considering whether to impose an immediate order, the tribunal should have regard to the seriousness of the matter that led to the direction of conditions or suspension being made and consider carefully whether it is appropriate for the doctor to continue in unrestricted practice pending the non-compliance order taking effect.

**C41** Where the tribunal is considering imposing an immediate order of conditions, it may not be appropriate to replicate all of the conditions imposed on the doctor under the non-compliance order. For example, it is unlikely to be appropriate to include in an immediate order a condition for the doctor to comply with an assessment of their health given the immediate order is only likely to be in place for 28 days and it takes longer than that for a health assessment to be conducted.

**C42** It is sometimes argued by doctors, or their representatives, that no

immediate order should be made as the doctor needs time to make arrangements for the care of their patients before the substantive order for suspension takes effect.

**C43** In considering such arguments, the tribunal will need to bear in mind that any doctor whose case is considered by a non-compliance tribunal will have been aware of the date of the hearing for some time and consequently of the risk of an order being imposed. The doctor will therefore have had time to make arrangements for the care of patients prior to the hearing, should the need arise.

**C44** In any event, the GMC also notifies the doctor's employers, or in the case of general practitioners, the relevant body, of the date of the hearing and they have a responsibility to ensure that appropriate arrangements are in place for the care of the doctor's patients should an immediate order be made.

## **Interim orders**

**C45** A doctor may have interim restrictions in place at the point of the non-compliance hearing. Whilst these may relate to the same allegations that led to the referral for a non-compliance hearing, or referral to the substantive MPT hearing, they may also arise from concerns relating to other heads of impairment.

**C46** Where a tribunal makes no finding of non-compliance with a GMC direction or request to provide information, or a tribunal-directed assessment, the tribunal should consider whether an interim order needs to be made, or any existing order needs to be varied or revoked, in order to meet the regulatory purpose of protecting the public while the fitness to practise process continues.

**C47** In cases where the tribunal makes a finding of non-compliance and

no interim order exists, the tribunal should consider whether it is appropriate to make an interim order. This includes in cases where a finding of non-compliance is made but exceptionally, the tribunal is satisfied that a non-compliance order is not needed to protect the public.

**C48** Where the tribunal imposes a non-compliance order, they should go on to consider whether any existing interim order should be maintained, varied or revoked. Where an interim order exists, the tribunal should have considered the risks arising from both the facts underlying the doctor's non-compliance and the risks arising from any other heads of impairment in respect of which there is an interim order, when making their decision (see above).

**C49** In all cases, the question for the tribunal is whether an interim order is required to protect the public while the doctor's case continues through the fitness to practise process. This requires the tribunal to make an assessment of the risk posed if the doctor's practice is unrestricted.

**C50** The guidance on [Imposing interim orders](#) sets out the considerations for the tribunal as being whether an interim order is:

- a** necessary to protect members of the public
- b** desirable in the public interest to maintain public confidence and uphold proper standards of conduct and behaviour
- c** in the interests of the doctor.

**C51** The tribunal should apply this test and follow the guidance.

## Review Hearings

**C52** A non-compliance review hearing will include the following main elements\*:

- a** presentation of the GMC's case
- b** presentation of the doctor's case
- c** the tribunal's findings on the issue of whether there is continued non-compliance
- d** where there is a finding of continued non-compliance, the tribunal's decision on whether to make a non-compliance order.

**C53** The tribunal will need to consider, and make a finding, as to whether the doctor has:

- a** continued to fail to comply with the direction or request to provide information that led to the non-compliance order being made, and
- b** failed to comply with any requirement imposed on them as a non-compliance condition at the previous hearing.

**C54** Where they make a finding of continued non-compliance the tribunal should consider whether, on the basis of their findings, an order is required to protect the public. The general principles above relating to non-compliance orders will apply.

\* Rule 22A sets out the procedure a tribunal must follow at a review hearing

**C55** The following additional factors will be relevant to the tribunal's decision:

- a** whether there is any new information before the tribunal that might affect the tribunal's decision on the appropriate order, and
- b** whether the doctor has complied with any conditions put in place by the previous tribunal for the protection of the public during the term of the non-compliance order.

**C56** In making its decision, the tribunal can decide to:

- a** extend the order
- b** vary the order
- c** revoke the order.

**C57** Where a tribunal has found that a doctor has not complied with a requirement imposed on them as a non-compliance condition at the previous hearing, a further order of conditions is unlikely to be sufficient. In such cases an order to direct a suspension is likely to be a proportionate response.

**C58** Where a doctor's registration is suspended, the tribunal may direct that the current period of suspension be extended up to 12 months. Where a doctor has been suspended under a non-compliance order for two consecutive years, it is open to the tribunal to suspend the doctor's registration indefinitely.

**C59** Where no finding of continued non-compliance is made on review, the tribunal should revoke the non-compliance order. The tribunal will need

to consider whether it is necessary to impose an interim order to address any remaining risks (see below).

**C60** Where the tribunal revokes a non-compliance order made following a finding that a doctor has failed to comply with a tribunal-directed assessment, the MPTS will schedule a hearing so that the associated adjourned proceedings can resume and conclude.

## **Interim orders following revocation of a non-compliance order**

**C61** At a review hearing the tribunal can consider whether an interim order needs to be made, or any existing order needs to be maintained varied or revoked\*.

**C62** Following revocation of a non-compliance order the tribunal should consider, where appropriate, whether an interim order is required to protect the public while the doctor's case continues through the fitness to practise process. This requires the tribunal to make an assessment of the risk posed if the doctor's practice is unrestricted.

**C63** The guidance on [Imposing interim orders](#) sets out the considerations for the tribunal as being whether an interim order is:

- a** necessary to protect members of the public
- b** desirable in the public interest to maintain public confidence and uphold proper standards of conduct and behaviour
- c** in the interests of the doctor.

\* Rule 22A(1)(i)

**C64** The tribunal should apply this test and follow the guidance.

**C65** The tribunal should have sight of all documentation as would be required by an IOT. They should also consider any evidence relating to the doctor's compliance during the time the doctor's practice was restricted by the non-compliance order the tribunal has revoked. For example, in a health case, the tribunal would likely need to have seen health reports as evidence that the doctor has complied with the direction to undergo an assessment. The content of the same reports would also inform their decision in respect of the need to make an interim order to address any risks relating to the doctor's health.

**C66** In multifactorial cases, where the doctor has complied with a direction made in respect of one head of impairment, but other heads of impairment are under investigation, the tribunal will need to consider any risks that arise from all allegations. Evidence relating to the other heads of impairment will therefore need to be made available to the tribunal.

**C67** The tribunal should explain fully the reasons for any decision reached in respect of an interim order.