

Guidance for decision makers on referring a case for a non-compliance hearing

Introduction

- 1 Under the GMC (Fitness to Practise) Rules, 2004 (as amended) ('the Rules'), at Rule 17ZA, the GMC may refer a doctor to a Medical Practitioners Tribunal ('MPT') where the doctor has failed to comply with a request to provide information or a direction to undergo an assessment from the GMC and, by doing so, has materially impaired the GMC's ability to investigate concerns.
- 2 This guidance sets out the factors to be considered when deciding whether to refer a case for a non-compliance hearing.

Non-compliance process

- 3 We may refer a doctor to a non-compliance hearing if they fail to:
 - submit to a reasonable direction for an assessment of their health, performance or knowledge of English;
 - comply with reasonable requirements imposed in respect of that assessment;
 - provide key information which is required to progress a fitness to practise investigation.
- 4 The power to refer a doctor to a non-compliance hearing should only be used where the failure materially impairs our ability to proceed with an investigation, or to take action in response to concerns.
- 5 At a non-compliance hearing a MPT will consider whether or not:
 - a the direction or request for information was reasonable given the circumstances of the case;
 - b the doctor failed to comply with the direction or request for information;
 - c there was good reason for a doctor's failure to comply (i.e. it was unavoidable or otherwise excusable).
- 6 The MPT will not consider whether the doctor's fitness to practise is impaired.
- 7 If the MPT makes a finding of non-compliance, it can impose conditions on a doctor's registration (for up to three years), or suspend a doctor for a period of up to 12 months.
- 8 In most cases, the restrictions imposed will be subject to review, before the period of conditions or suspension has expired. At the review hearing, the MPT will consider whether or not the doctor has complied with the request or direction in order to determine whether the restrictions should be maintained, varied or revoked.

- 9 After being suspended for two years, and where there is evidence of continued non-compliance, the MPT will be able to suspend the doctor indefinitely. A doctor cannot be erased for non-compliance.
- 10 If a doctor has an interim order at the point of referral to a non-compliance hearing, the MPT is empowered to revoke the interim order and impose a non-compliance sanction which it considers sufficient to protect the public.

Referrals for non-compliance

- 11 When considering whether to refer a case for a non-compliance hearing, the decision maker should ask the following questions:
 - Was the request to provide information or direction to undergo an assessment reasonable given the allegations under investigation?
 - Has the doctor explicitly refused to comply with the request or direction or, failed to respond to our correspondence (failure to respond to correspondence is defined below).¹?
 - Has the doctor submitted to a direction, but subsequently failed to comply with directions made in line with that assessment?
 - Does the failure to comply materially impair our ability to proceed with the investigation?

Other routes of investigation

- 12 Before referring a doctor to a non-compliance hearing, the decision maker should consider whether or not the information requested, or the outcome of the assessment, is *material* to the investigation, and whether or not the doctor's failure to comply will *materially impair* our ability to investigate.
- 13 If there are other means by which information can be acquired, or the allegations can otherwise be scrutinised, these avenues should be pursued before a referral to a non-compliance hearing is made.
- 14 A referral should usually be made where a doctor's failure or refusal to comply materially hampers the GMC's ability to fulfil its statutory objective of protecting the public.

¹ The period of time allowed for a doctor to respond to the GMC varies and depends on the nature of the request. Having failed to respond to a request, a doctor will be sent a reminder and given a further 14 days to respond. If there is still no response at the end of this period, the doctor will be sent a final reminder and given a further 7 days to respond before a referral to a non-compliance hearing can be made.

Reasonable directions

- 15** A reasonable direction is one proportionate to the allegations under investigation and considered necessary to further our investigations. The letters sent to the doctor **must** outline the potential consequences of non-compliance.
- 16** Where a doctor is known not to have sought representation from a medical defence organisation or other body, the decision maker should check the consequences of non-compliance have been clearly communicated. The doctor should also be advised to seek representation.

Health, Performance and English Language Assessments

- 17** In pure health, performance or English language cases, a reasonable direction might be a direction to undergo an assessment, the results of which will enable us to progress an investigation and take action necessary to protect the public.
- 18** If the decision maker is in any doubt as to the thresholds for directing an assessment, they should refer to the relevant guidance on directing health², performance³ and English language⁴ assessments.

Failure to provide information

- 19** A referral on the grounds of failure to provide information is likely to arise where a doctor has failed to provide information required to progress an investigation.
- 20** This may include, but is not limited to:
- details of a specific previous employer or placement
 - details of specific times or dates relevant to an investigation
 - details of a specific location related to an incident for example a pharmacy
 - private patient medical records where they are held only by the doctor under investigation.

² *Guidance for decision makers on directing a health assessment* [http://www.gmc-uk.org/DC6339_Guidance_for_decision_makers_on_directing_a_health_assessment_60761806.pdf]

³ *Guidance for decision makers on directing a performance assessment* [http://www.gmc-uk.org/DC6343_Guidance_for_decision_makers_on_directing_a_performance_assessment_60761601.pdf]

⁴ *Guidance for decision makers on directing doctors to undertake a language assessment* [http://www.gmc-uk.org/DC5933_CE_Decision_Guidance___Annex_E___Directing_a_language_assessment.pdf_58270963.pdf]

- 21** The non-compliance provisions do not apply to a failure to provide current employment details, which are requested under Section 35A(2).
- 22** A Work Details Form ('WDF') requests details of both current and former employers. If a doctor fails to return the form, this should not trigger a referral to a non-compliance hearing. However, if we write to the doctor to request details of a specific previous employer under Section 35A(1A), this could potentially trigger a referral if that information is material to the investigation.
- 23** Where a referral is made to a non-compliance hearing, the decision maker must have sufficient reason to believe that the doctor is in possession of the document or information and must outline this reasoning in their decision.

Failure to comply

- 24** A doctor may have failed to comply where either:
- a** a doctor has **explicitly** refused to comply with a direction to provide information or a direction to undergo an assessment
 - b** a doctor has failed to respond to three directions to provide information or undergo an assessment.
- 25** In scenario (a), the doctor's refusal must be demonstrable in writing in the form of either a letter or an email and should be unambiguous. Furthermore, the doctor should be made aware of the potential consequences of non-compliance prior to a referral.
- 26** In scenario (b), where a doctor does not respond to a request or invitation, each subsequent request should make clear the potential consequences of continued non-compliance. Where a doctor has failed to respond to our normal process for directing an assessment, or with a direction to provide information, reminders should be sent to the doctor warning of the potential consequences of the doctor's failure to respond. The letters should, where possible, be sent both to the doctor's registered address and email address to give the doctor a number of opportunities to comply⁵.
- 27** Where a doctor has failed to comply with a direction to undergo an assessment, the subsequent letters must not be considered new invitations, but should be reminders for the doctor to submit to the original invitation.

⁵ See footnote 1 above.

- 28** It will be necessary to provide proof of service of the direction to provide information or assessment sent to the doctor, either through recorded delivery post to the doctor's registered address, or an email 'read receipt'.

Good reason for non-compliance

- 29** Before making a referral to a non-compliance hearing, the decision maker should consider whether or not a doctor's physical or mental health might have some impact on their ability to comply with a direction, for example where a doctor is too ill to understand the direction or consequences of non-compliance or where a doctor is an inpatient.
- 30** There may be situations in which a doctor is unable to comply with a direction to undergo an assessment because they are out of the country and are unable to return. Where this is out of the doctor's control, it may be a good reason for non-compliance. Efforts should therefore be made to understand the doctor's status before making a referral.

Multi-factorial cases

- 31** Where an investigation is concerned with more than one head of impairment, and the doctor's failure to comply relates to only one (e.g. the doctor is under investigation for health and misconduct, but refuses to undergo a health assessment), the case should still be referred to non-compliance hearing where the failure (e.g. the outcome of the health assessment) is considered to be material to the investigation of whether the doctor's fitness to practise is impaired.
- 32** Where a doctor is referred to a non-compliance hearing as a result of a failure to comply with one aspect of an investigation, any ongoing investigations into other heads of impairment may continue.

Referrals for early review

- 33** Where a doctor complies with a direction before a non-compliance order is due to expire, and the decision maker is satisfied that the doctor has complied with the direction, the case should be referred for an early review hearing under Rule 21.
- 34** In assessment cases, a doctor must not only have submitted to undergo the assessment, but must also have complied with all requests requirements of him/her for the assessment. A referral for an early review will not be appropriate until an assessment has been completed.