

Guidance for Medical Practitioners Tribunals on adjourning to direct an assessment or for further information or reports to be obtained

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Introduction

- 1** Rule 17(7) of the *General Medical Council (Fitness to Practise) Rules 2004* ('the Rules') gives Medical Practitioners Tribunals ('tribunals') the power to adjourn at any stage before making a determination on impairment, and direct that a doctor undertake an assessment of his or her performance, health and/or, knowledge of English.
- 2** Rule 17(9) gives tribunals the power to adjourn at any stage before making a decision on sanction or warning to allow for further information or reports to be obtained.
- 3** There is no express provision within Rule 22 to allow a reviewing tribunal to adjourn to direct an assessment. However, a reviewing tribunal may adjourn its proceedings for any other reason in accordance with Rule 29(2).
- 4** The aim of this guidance is to provide tribunals with guidance on the factors relevant to their consideration of whether a case should be adjourned. It is intended to promote consistent and fair decision making.
- 5** The guidance covers :
 - adjourning under Rule 17(7) to direct that a doctor undertake an assessment;
 - adjourning under Rule 17(9) to allow for further information or reports to be obtained; and
 - reconvening to consider the outcome of an assessment or the content of further information or reports, including further adjournment.

Adjourning to direct an assessment

- 6** Under Rule 17(7), the tribunal, having regard to the nature of the allegation under consideration, may adjourn at any stage prior to reaching a determination on impairment and direct that a doctor undertake an assessment.
- 7** The tribunal may invite submissions from the parties in relation to the direction to undertake an assessment. Whilst there is no express provision in the Rules for submissions at this stage, submissions will assist the tribunal in identifying capacity or ability to complete the assessment, issues of compliance, and any additional actions that may need to be completed following the assessment.
- 8** The decision whether to direct an assessment is one for the tribunal exercising its discretion. However, tribunals may wish to consider the following factors when deciding whether an assessment is required and if so, when to reconvene the hearing:

- a hearing stage;
- b nature of the allegation;
- c nature of the assessment; and
- d the likelihood of the doctor complying with the assessment.

Each factor is considered in more detail below.

Hearing stage

- 9** Rule 17(7) provides that the tribunal may adjourn at any stage in the proceedings before making a determination that a practitioner's fitness to practise is impaired.
- 10** If new allegations of impairment arise as a result of an assessment, the GMC will be required to particularise these allegations and formally disclose them to the doctor in accordance with Rule 7. If referred to the MPTS, the GMC may also apply to join the new allegation(s) of impairment to the ongoing allegation of impairment.
- 11** If the tribunal directs an assessment prior to making a determination on the facts, it may be possible that either party will apply for the particulars of allegation to be amended to reflect the outcome of the assessment (where the assessment concerns an allegation of impairment which is already before the tribunal to determine). If the assessment raises a new allegation of impairment which is not already before the tribunal to determine, the GMC may decide to make an application to join the new allegation and, if successful, the tribunal may be asked to make findings of fact in relation to that new allegation as well, before considering impairment in relation to all of the allegations where the facts have been found proven.
- 12** If the tribunal directs an assessment following its finding of facts, and prior to making a determination on impairment, the tribunal should be mindful that the facts stage is complete and cannot be re-opened. The tribunal should consider the assessment(s) along with the other evidence presented at the impairment stage, when considering impairment in the category alleged.

Nature of the allegation

- 13** Rule 17(7) states that the tribunal should have *regard to the nature of the allegation under consideration* before adjourning to direct an assessment.

- 14** In practice, this means that the tribunal should provide reasons for the direction in the context of the hearing and the nature of the allegation brought by the GMC.
- 15** Tribunals should not direct an assessment without reason or justification. For example, if the allegation brought by the GMC relates to clinical misconduct, and there is no indication that there has been a pattern of poor care, the tribunal should not direct a performance assessment to see whether the misconduct could amount to a performance allegation.

Nature of the assessment

Performance assessments

- 16** Deficient professional performance describes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor's work. It is unacceptably low if there is evidence that it departs from the professional standards applicable to the level and specialty in which the doctor works.
- 17** A performance assessment is a mechanism for obtaining objective evidence of a doctor's professional performance, and may include tests of competence and/or other methods of assessment, as deemed appropriate to the case.
- 18** In deciding on whether it is appropriate to adjourn for a performance assessment to be carried out, the tribunal would need to consider information about the doctor's current working position or recent posts, the areas of concern, the grade of the doctor, whether the doctor is still working in the same speciality to which the allegation relates, and whether the doctor is currently in the UK or not.
- 19** The tribunal should always consider whether there are any reasons that a performance assessment is not appropriate or necessary, and these reasons may include:
 - a** the doctor has completed a GMC performance assessment and there is no reason to believe that the doctor's performance has changed;
 - b** the clinical allegation constitutes misconduct, i.e. reflects a single action or omission, or a number of actions or omissions, which do not amount to a pattern of poor or unacceptably low standards of professional performance;
 - c** the doctor has provided evidence of appropriate and effective remediation; and / or

- d the doctor is a trainee doctor in Foundation Year 1 (FY1) who is provisionally registered.

20 The tribunal may also find it helpful to refer to the GMC's [Guidance for decision makers on directing a performance assessment](#). However they should be mindful that this relates to directions at an investigation stage, and not all factors will be applicable to the tribunal's consideration.

Health assessments

21 Adverse physical or mental health which raises a possibility of impairment can be assessed through a GMC health assessment. The assessment involves the doctor attending appointments with two health examiners appointed by the GMC. It may also be necessary for the doctor to undertake some form of medical testing, for example hair or blood analysis.

22 It is possible that health issues may arise at a hearing for the first time. For example:

- evidence emerges which indicates a health issue may impact on the doctor's fitness to practise (for example dependence on substances);
- the doctor behaves in a manner that causes the tribunal to become concerned about the doctor's health;
- evidence emerges which calls into question the doctor's ability to engage effectively with the proceedings;
- the doctor presents mitigating evidence in relation to his / her health at the time of the events and it is necessary to corroborate the evidence.

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

24 If information comes to the attention of the tribunal that suggests a doctor might be unwell, the tribunal should be mindful of the need to ask appropriate questions of the doctor or, where appropriate, ask the parties to obtain relevant information from any practitioners treating the doctor and place this before them to aid their consideration of whether an adjournment is necessary or if any adjustments need to be made to support the doctor's engagement in the proceedings, for example increased breaks or shorter sitting days.

- 25** When deciding whether an adjournment is necessary, the tribunal should remember that whilst certain behaviours can be related to a health condition(s), they can also be capable of arising generally in stressful and / or upsetting situations. In each case, the tribunal will need to weigh up all the available evidence, including whether the behaviour or combinations of behaviour being exhibited by the doctor create a cause for concern about their health.
- 26** The tribunal may find it helpful to refer to the GMC's [*Guidance for decision makers on assessing risk in health cases*](#).
- 27** The presence of one or more of the factors below may suggest that a health assessment is required:
- a** a concern about the doctor's health arises for the first time during the hearing and there is no existing independent evidence available about their health;
 - b** the type and severity of the health problem reported is likely to affect the doctor's fitness to practise either now or in the future (e.g. has high rates of relapse or is likely to pose a risk to patients, or result in a lack of insight or cooperation on the part of the doctor);
 - c** the doctor is currently, compulsorily detained under the Mental Health Act 1983 or has recently been detained and is now receiving treatment¹;
 - d** there are existing performance and/or conduct concerns which seem likely to be related to the doctor's health status/condition;
 - e** independent medical opinion raises concern in relation to the doctor's level of insight or compliance as a result of ill health;
 - f** the doctor lacks insight into their condition and/or has failed to seek appropriate treatment;
 - g** the doctor has failed to follow the advice of treating physicians and/or occupational health departments or has ceased to engage with support; and / or
 - h** the doctor's health appears to have led to involvement in dishonest or criminal activity.

¹ A health assessment cannot be completed if the doctor is currently detained in this manner, or receiving treatment. If an assessment is required, the tribunal should adjourn proceedings until such time as the health assessment can be completed.

- 28** The presence of one or more of the factors below may suggest that a health assessment is not required:
- a** the doctor has completed a GMC health assessment and there is no reason to believe that the doctor's health has changed;
 - b** the type and severity of the health problem reported is unlikely to affect the doctor's fitness to practise or pose a risk to patients either now or in the future;
 - c** there is no evidence that the doctor's health has had a significant effect on his clinical competency or conduct to date; and / or
 - d** there is evidence that the doctor has insight into their condition and is seeking or receiving appropriate treatment or support.
- 29** The tribunal may find it helpful to refer to the GMC's [*Guidance for decision makers on directing a health assessment*](#). However they should be mindful that this relates to directions at an investigation stage, and not all factors will be applicable to the tribunal's consideration.
- 30** When directing a health assessment, the tribunal may wish to consider whether they have any questions about the doctor's health that it would assist them, when reconvening, for the health assessors to have addressed in order to inform the tribunal's consideration of facts and / or impairment.

Knowledge of English language

- 31** A doctor's fitness to practise may be found to be impaired by reason of not having the necessary knowledge of English to practise medicine safely. A language assessment is a mechanism for obtaining objective evidence of a doctor's knowledge of English language. It assesses a doctor's ability in listening, reading, writing and speaking.
- 32** There may be situations where concerns about a doctor's knowledge of English arise during a hearing. Matters which may give cause for concern about a doctor's knowledge of English include:
- the doctor requesting or using an interpreter during a hearing;
 - a self-declaration by a doctor that suggests their knowledge may be limited; or
 - where there is another good reason to believe the doctor has difficulty in communicating with, or understanding, others.

- 33** When assessing information which relates to concerns about a doctor's knowledge of English, the tribunal should consider whether or not there is any evidence to suggest an underlying health concern. A perceived deterioration in, or lack of knowledge of, English language may be symptomatic of an undiagnosed health condition or the deterioration of a diagnosed health condition. Health concerns which may impact on a doctor's communication skills include neurodegenerative disorders and acquired brain injuries from either a traumatic or non-traumatic event.
- 34** Where the tribunal has good reason, based on specific evidence, to indicate that health may be an underlying cause of concern about a doctor's knowledge of English it should consider whether a health assessment may be appropriate. If a health assessment is directed in these circumstances the examiners can be asked to comment on whether any medical condition is likely to impact on the doctor's communication skills. In such cases, careful thought should be given to delaying a decision on whether it is necessary to direct a language assessment until further information is available about the doctor's health.
- 35** It may also be appropriate for the tribunal to consider directing a further language assessment where the doctor has completed an IELTS test or OET and has not achieved the minimum scores in one sitting, as required by the GMC, but at the hearing the doctor has sought to rely on alternative evidence about their knowledge of English relating to the period since they took the assessment. A further test may assist the tribunal when considering the issue of current impairment.
- 36** When dealing with concerns in relation to English language, the tribunal should have regard to [*Guidance for medical practitioners tribunals on dealing with concerns about a doctor's knowledge of English*](#).
- 37** The tribunal may also find it helpful to refer to the GMC's [*Guidance for decision makers on directing doctors to undertake a language assessment*](#). However they should be mindful that this relates to directions at an investigation stage, and not all factors will be applicable to the tribunal's consideration.

The likelihood of the doctor complying with the assessment

- 38** If the tribunal identifies issues, or receives submissions from the parties, in relation to concerns about the likelihood of the doctor complying with the assessment, it may be necessary to consider how to ensure that compliance is achieved. This can be done through issuing detailed directions using the template attached in [Annex B](#), as well as identifying an earlier reconvene date (see below) to enable the parties to come back to the tribunal in the event of non-compliance.

Adjourning to allow for further information or reports

- 39** Under Rule 17(9), the tribunal may adjourn for further information or reports to be obtained in order to assist it in exercising its functions at any stage before making its decision as to sanction or warning.
- 40** The nature of the further information or reports required by the tribunal may vary, and as such, so will the timescales. However, tribunals should apply the same principles in relation to assessments above, and consider the:
- a** hearing stage;
 - b** nature of alleged impairment;
 - c** nature of the further information or reports to be sought; and
 - d** likelihood of the doctor complying with the assessment.
- 41** Where the tribunal receives information about an existing health condition or receives new information during the hearing that suggests a doctor might be unwell, they should be mindful of the need to ask appropriate questions of the doctor or, where appropriate, ask the parties to obtain relevant information from any practitioners treating the doctor and place this before them to aid consideration of whether to adjourn for further information or reports.
- 42** When adjourning for further information the tribunal may want to provide the parties with an indication of what further information it would assist them to see when the hearing reconvenes. If adjourning for reports, the tribunal may wish to consider whether there are any specific questions that it would assist for the reports to address. These considerations will be particularly relevant when adjourning for further information or reports about a doctor's health.
- 43** When deciding whether an adjournment is necessary to obtain further information or reports about a doctor's health, the tribunal should remember that whilst certain behaviours can be related to a health condition(s), they can also be capable of arising generally in stressful and / or upsetting situations. In each case, the tribunal will need to weigh up all the available evidence, including whether the behaviour or combinations of behaviour being exhibited by the doctor create a cause for concern about their health.
- 44** Annex A contains information about the types of behaviour that may suggest an individual is unwell. In addition, a perceived deterioration in, or lack of knowledge of, English language may be symptomatic of an undiagnosed health condition or the deterioration of a diagnosed health condition. Health concerns which may impact on a doctor's communication skills include neurodegenerative disorders and acquired brain injuries from either a traumatic or non-traumatic event.

Issuing the direction

- 45** Tribunals must provide reasons for their decision to adjourn in a formal determination. Within the determination, they should explain the requirement for the assessment or further information or reports.
- 46** Tribunals may also wish to consider setting out formal directions and timescales in relation to the assessment, further information or reports. In doing so, tribunals will be issuing a legally binding direction on the parties, and making clear the timescales. This will assist parties in identifying compliance at the reconvened hearing. A suggested template is provided at Annex B.

Identifying the date to reconvene

- 47** Tribunals must ensure that every effort is made to reconvene as soon as possible to ensure that the matter is dealt with in a timely manner.
- 48** In some cases, the tribunal may hear submissions on, or themselves be concerned about, the doctor's compliance with a direction to undertake an assessment or provide information. In these cases the tribunal should use its discretion in deciding whether to identify an earlier date to reconvene, so that the doctor's compliance can be considered by the tribunal.
- 49** In the event that the doctor's compliance is secured, the GMC or the doctor may apply to the MPTS Case Manager to further adjourn the hearing². Applications to the MPTS Case Manager must be made with sufficient notice to allow tribunal members to be stood down.
- 50** In any event, it is advisable to reconvene earlier rather than later, as it is possible to further adjourn a hearing, but it is not possible to bring the hearing date forward.

Timescales

- 51** When identifying a date to reconvene, tribunals should be mindful of the average timescales that apply to the specific assessments or further information or reports being sought. However, timescales should be considered on a case by case basis and in conjunction with submissions provided by the parties.
- 52** Tribunals may also need to be mindful of other notice periods stipulated in the Rules. For example, if the GMC wishes to bring additional allegations arising

² Rule 29(3A)

from the assessment³, report or information obtained, it will be required to disclose this to the doctor and provide a 28 day period for a response.

Performance assessments

- 53** As a general rule, the assessment can take from 6 months (in the case of a General Practitioner) to 12 months and beyond (in the case of a specific speciality).
- 54** Particularly for specialist assessments, the timescales are dependent on the availability of the assessors, often dictated by their clinical commitments.
- 55** In addition to the time required for the assessment, tribunals should consider the time required for the GMC to consider the assessment report when it is received, and for it to be disclosed to and considered by the doctor in preparation for the reconvened hearing.
- 56** A high level overview of the process for arranging a performance assessment is provided in [Annex C](#).

Health assessments

- 57** Health assessments take between 3 to 4 months to complete, and the time can vary on the basis of the doctor's availability to attend appointments with the assessors and submit to any testing.
- 58** As with performance assessments, tribunals should also consider the time required for the GMC to consider the assessment reports, and for them to be disclosed to, and considered by, the doctor in preparation for the reconvened hearing.
- 59** A high level overview of the process for arranging a health assessment is provided in [Annex C](#).

English language assessments

- 60** Doctors must be provided with at least 30 days⁴ in which to complete their assessment and provide their results to the GMC.

³ See Rule 7

⁴ Schedule 3 to the Fitness to Practise Rules 2004 (as amended) provides that a doctor may be required to comply with a direction to undertake a language assessment within a specified period, which is no less than 30 days and up to a maximum of 90 days.

- 61** The GMC will reimburse the doctor for one test conducted in that period. However, there is no limit on the number of tests that a doctor can undertake at their own expense during that time.
- 62** Within the timescales set, the doctor must provide the GMC with a copy of their test results from the assessment. The GMC Investigation Team will verify those results with the assessment provider. This verification process should take no more than 1-2 days.
- 63** Unlike performance and health assessments, additional time is not likely to be required to consider the results of the assessment, or disclose them to the doctor. However, the tribunal may still need to consider whether the GMC will be required to undertake any additional statutory disclosure if, for example, the tribunal has not made a finding on facts.

Further information or reports

- 64** The timescales associated with the further information or reports will be variable depending on the circumstances. Tribunals should seek to clarify the timescales required by inviting submissions from the parties.

Days to set down

- 65** The tribunal should use its discretion when identifying how many days to set down for the reconvened hearing. If the tribunal is minded to set down an earlier date to reconvene and consider compliance, it is advisable to set down 1-2 days to allow sufficient time to consider compliance, should it be necessary.
- 66** However, if the tribunal is reconvening to consider the outcome of the assessment and proceed with its consideration of the case, it will need to use its discretion in determining how many days are required. The tribunal may also be assisted by submissions from the parties.

At the reconvened hearing

Where the tribunal adjourned for an assessment

- 67** When the tribunal reconvenes it will need to identify whether the doctor has complied with the assessment.
- 68** If the doctor has complied, the tribunal may:
- a** proceed to consider the case; or,
 - b** refer the allegation to the Registrar for the Case Examiners to consider whether to offer undertakings to the doctor⁵.
- 69** If the doctor has not complied with the assessment, the tribunal must consider whether to make a finding of non-compliance⁶. If non-compliance is found proved, the tribunal may then consider whether to make an order in relation to that non-compliance.

Considering non-compliance

- 70** Tribunals should refer to the [Non-compliance hearings guidance for medical practitioners tribunals](#) for details of how to proceed.

Where a finding of non-compliance is made

- 71** Where a tribunal takes action under rule 17ZA and makes a non-compliance order, it cannot then go on to consider the original allegations. The tribunal should direct a review of the non-compliance order; this will be considered before a non-compliance review tribunal.
- 72** If the doctor does go on to comply with the direction, and the reviewing tribunal revokes the non-compliance order, a reconvened hearing will be scheduled in order that the 'original' hearing can conclude.
- 73** If the tribunal decides not to impose an order in relation to the non-compliance, it may continue with the hearing (notwithstanding the lack of assessment). In doing so the tribunal may want to consider:
- a. whether a further adjournment is appropriate;

⁵ Rule 17(8)(b). This is only expected to occur in a limited number of cases. For example, where both parties make agreed submissions that the outcome of the assessment is capable of affecting the consideration of seriousness, making consensual disposal a realistic outcome.

⁶ Schedule 4, paragraph 5A(3C) and (3D)

- b. whether to exercise its power under Rule 16A to draw an adverse inference in relation to the doctor's failure to comply. Tribunals should refer to the [*Guidance for medical practitioners tribunals on case management and exercising powers under Rule 16A.*](#)

Where there is no finding of non-compliance

- 74** If the tribunal does not make a finding of non-compliance it may consider whether a further adjournment is appropriate.

Further adjournment

- 75** The tribunal should consider the reasons submitted by or on behalf of the doctor as to why further time is required to complete the assessment.
- 76** The tribunal should also seek submissions from GMC Counsel to understand whether the doctor has made attempts to comply with the direction, or whether there may have been any practical or operational reasons that the doctor was unable to comply with the direction that they should take into consideration.

Where the tribunal adjourned for further information or reports

- 77** When the tribunal reconvenes it will need to ascertain whether the GMC or doctor has obtained the further information or reports sought.
- 78** If the further information or reports have been obtained, the tribunal should proceed to consider the case. This can include consideration of whether to adjourn for an assessment under Rule 17(7) or whether another adjournment for further information or reports under Rule 17(9) is necessary and proportionate.
- 79** Where the further information or reports relate to the doctor's health, the tribunal should be mindful of the need to ask appropriate questions to assist their consideration of the relevance and impact of the evidence obtained, and to aid in any assessment of whether a further adjournment may be appropriate.
- 80** If the GMC or doctor has not obtained the further information or reports required, the tribunal may want to consider:
- a** whether a further adjournment is appropriate;
 - b** in cases where a direction was made, whether to exercise its power under Rule 16A to draw an adverse inference in relation to the doctor's failure to comply. Tribunals should refer to the [*Guidance for medical practitioners tribunals on case management and exercising powers under Rule 16A.*](#)

Annex A



Types of behaviour that may suggest that an individual is unwell

Suicidal thoughts or self-harm	Serious or persistent negative ways of thinking or talking.	Anger
Severe feelings of anxiety	Failure to respond to communication, or excessive frequency of communication.	Tearfulness
Dissociation, unusual ways of thinking	Failure to meet deadlines	Irritability
Delusions	Changes in appetite, weight, sleeping patterns	Poor memory, difficulty recalling facts or events
Rapid or severe fluctuations in mood		
Pressurized and rapid speech		

Whilst certain behaviours can be related to a health condition(s), they can also be capable of arising generally in stressful and / or upsetting situations. In each case, the tribunal will need to weigh up all the available evidence, including whether the behaviour, or combinations of behaviour, being exhibited create a cause for concern about the individual's health.

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

Annex B



Tribunal directions

Hearing details

Hearing	«Hearing.Contacts.Doctor. First Name + Last Name»
Hearing Dates	<Hearing. Planned Start Date> to <Hearing. Planned End Date>
Adjourned on	
Reconvene date(s)	

Parties details

GMC Details	Represented by [Name], GMC Legal Team
Doctor Details	[In person][Represented by [Name], [Firm]]

Instructions [delete before finalising version]

- 1 Tribunals should use the following template to set out their directions, and calculate the relevant due dates.
- 2 Directions should be clear and realistic; tribunals may be assisted by the submissions made by the parties.

Directions

Performance assessment

	Direction	GMC due date	Doctor due date
1	GMC to issue the doctor with a Performance Assessment Portfolio	[Date A = Insert date]	
2	Doctor to return fully completed Performance Assessment Portfolio		[Date B = Date A + 28 days]
3	GMC to appoint Performance Assessment Team	[Date C = Date B + 42 days]	
4	Assessment dates scheduled and confirmed	[Date D = Date C + 28 days]	[Date D = Date C + 28 days]
5	Assessment to be completed by	[Date E = Date D + 80 days]	[Date E = Date D + 80 days]
6	Report review date	[Date F = Date E + 42 days]	
7	Report finalised by	[Date G = Date F + 28 days]	
8	GMC to disclose assessment report to the doctor	[Date H = Date G + 14 days]	

Health assessment

	Direction	GMC due date	Doctor due date
1	GMC to issue the doctor with a Health Assessment Form	[Date A = insert date]	
2	Doctor to return completed Health Assessment Form		[Date B = Date A + 14 days]
3	GMC to appoint Health Assessment Examiners	[Date C = Date B + 28 days]	
4	Assessments to be completed by	[Date D = Date C + 84 days]	[Date D = Date C + 84 days]

	Direction	GMC due date	Doctor due date
		days]	
5	GMC to disclose assessment reports to the doctor	[Date E = Date D + 14 days]	

Knowledge of English assessment

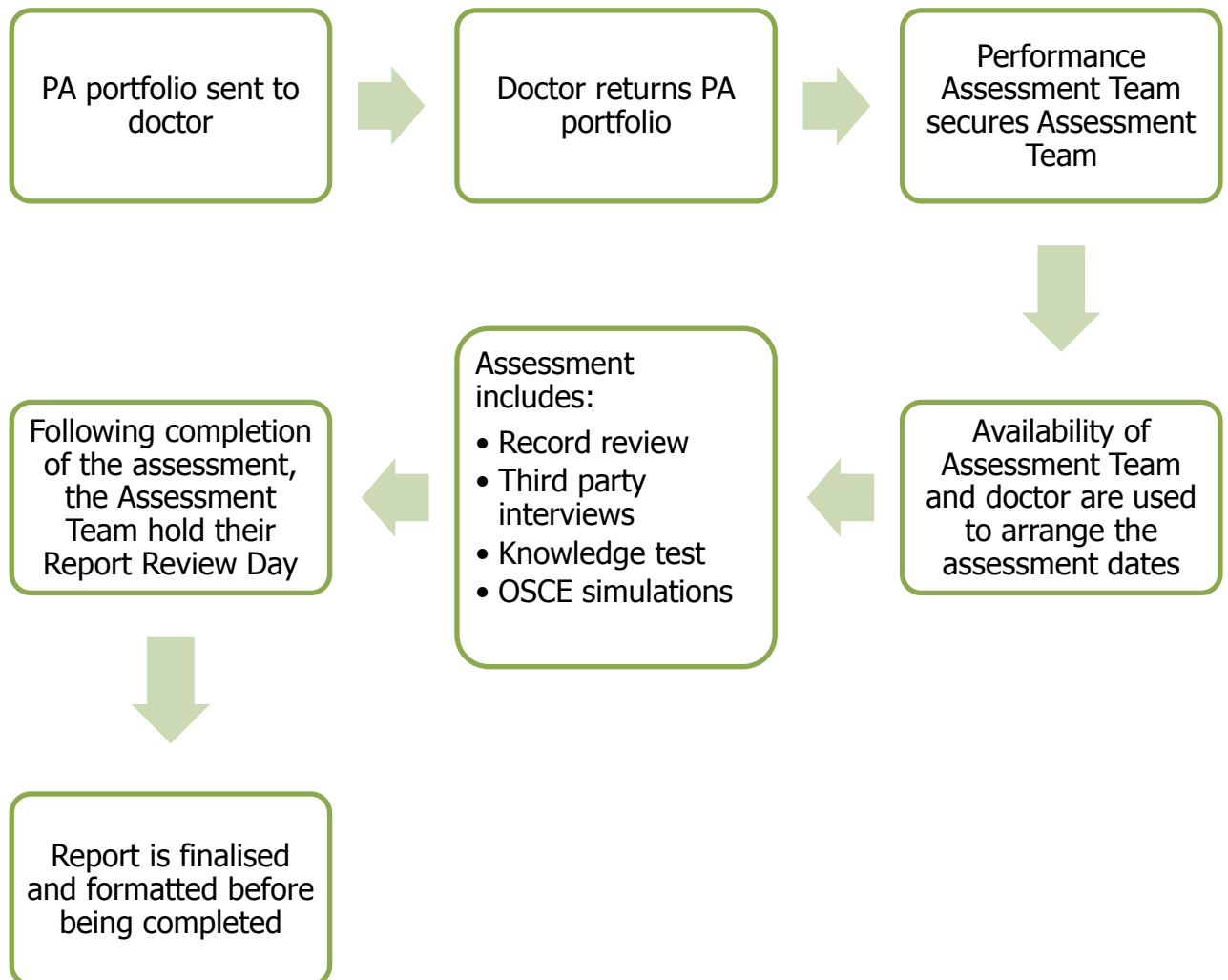
	Direction	GMC due date	Doctor due date
1	GMC to issue the doctor with details of how to book an English language assessment Information	[insert date]	
2	Doctor to provide the GMC with details of their scheduled assessment		Once scheduled
3	Doctor to provide GMC with details of their assessment results		[Within 90 days of direction 1]

Further report / Information required

	Direction	GMC due date	Doctor due date
1	[insert detail]		

Annex C

Overview of the performance assessment arrangements



Overview of the health assessment arrangements

