

04 March 2015

To: All Panellists  
Legal Assessors

Cc: Panel Secretaries

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## **Quality Assurance Group (QAG) – Learning Points**

As you know the QAG meets monthly to review decisions of the Fitness to Practise Panels and Interim Orders Panels. Further to recent cases where the consideration of warnings has been required we thought it would be helpful to provide a reminder about warnings.

### **Warnings**

- S35D(3) Medical Act 1983 provides:

*'Where the Panel find that the person's fitness to practise is not impaired they may nevertheless give him a warning regarding his future conduct or performance'*

- Rule 17(2) of the Fitness to Practise rules provides:

*'(k) the FTP Panel shall consider and announce its findings on the question of whether the fitness to practise of the practitioner is impaired, and shall give reasons for that decision'*

*'(l) the FTP may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner's fitness to practise is not found to be impaired, the question of whether a warning should be imposed.'*

- Indicative Sanctions Guidance for the FTP Panel (April 2009) provides:

*'39. In the interests of fairness to both parties, panels should invite submissions from the GMC and the doctor on whether a warning should be issued before considering whether to conclude the case with no action or a warning.'*

- Guidance on Warnings (May 2012) provides:

*'14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.'*

The MPTS makes impartial decisions in doctors' fitness to practise hearings. The MPTS is part of the General Medical Council, but it is operationally separate and it is accountable to Parliament.

*'16 A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or MPTS panel. A warning will therefore be appropriate in the following circumstances:*

- *There has been a significant departure from Good Medical Practice; or*
- *There is a significant cause for concern following an assessment of the doctor's performance.'*

No definition of 'significant' is provided in the guidance but factors to consider are set out in paragraphs 19 – 24.

### **Issues for consideration**

- Warnings are likely to be appropriate where the Panel has made findings of fact from which the Panel can conclude that the Doctor's conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession. They are a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.
- Accordingly, where a Panel does not make any findings of fact from which the Panel can conclude that the Doctor's conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession, it is difficult to see how the test for the issue of a warning in such circumstances could be made out and therefore the Panel do not need to go on and invite submissions from the parties (notwithstanding the apparent mandatory nature of paragraph 39 of the ISG and paragraph 30 of the Guidance on Warnings).
- Where, however, a Panel does find that the Doctor's conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession, but that for whatever reason it is not sufficient to amount to misconduct or deficient professional performance (as defined by the Medical Act 1983 and relevant case law), then the Panel must also conclude that there is no impairment. The Panel should, in those circumstances, go on to consider whether they have identified the factors set out in paragraph 20 as part of their determination. If so, then they should invite submissions as to whether a warning is appropriate.
- Where a Panel finds that the Doctor's conduct, behaviour or performance has fallen significantly below the standard expected of members of the profession as to amount to misconduct or deficient professional performance, but having taken into account the parties submissions under R17(2)(k) have determined nevertheless that the doctor's fitness to practise is not impaired, it is likely that the Panel will have identified issues which require the consideration of a warning and they should

therefore invite submissions under R17(2)(l) before concluding the case with either no action or the issue of a warning.

I hope that this note is useful but please do contact us should you wish to discuss this further.

Kind Regards

A handwritten signature in black ink, appearing to read 'David Pearl', with a long horizontal flourish underneath.

H H David Pearl  
Chair, Medical Practitioners Tribunal Service