General Medical Council

Regulating doctors
Ensuring good medical practice

Stream 2: Guidance for complainants

1 This fact sheet explains what action we will take when we receive complaints that we consider are not appropriate for the GMC to investigate, but require contacting the doctor's employer(s)/contracting organisation(s) to ensure there are no wider concerns about a doctor's fitness to practise.

The role of the GMC

2 Our powers and sanctions are linked to our responsibilities for maintaining the register of doctors able to practise medicine in the UK. The GMC's fitness to practise procedures focus on the most serious concerns that call into question a doctor's fitness to practise and their right to retain unrestricted registration – that is his or her right to practise medicine anywhere in the UK.

3 Some complaints that we receive do not fall into this category. This does not mean that we do not believe the information set out in the complaint is correct or that we do not consider the issues raised have had a serious outcome for the patient concerned. However, we need to consider whether the information provided, in the absence of any other concerns about the doctor, raises sufficiently serious concerns to suggest that we need to take action to stop the doctor working or to limit the work that they can do.

4 We are not a general complaints body and we are unable to provide answers to specific questions with regards to care provided. These can only come from the doctor or the healthcare provider directly.

Local complaints handling procedures

5 All NHS bodies and many private healthcare organisations are required to have their own complaints handling procedures. Local procedures are often better placed to provide the explanation, reassurance or apology that a patient may require. They are also in a better position to assess whether there are any wider problems that may need to be addressed.

6 If you have not already done so, you may wish to raise your concerns directly with the organisation where you saw the doctor about whom you have complained. They will be able to advise you if they are better able to consider your complaint through their own procedures.

What action will the GMC take?

7 We normally only investigate complaints that could result in formal action on the doctor's registration (that is, their right to practice medicine). We review all new complaints to identify those that we need to investigate ourselves because the issues are potentially serious. We refer to these as Stream 1 complaints.

8 Many of the complaints we receive do not fall within this category. This is because the concerns raised, on their own, are unlikely to require us to take formal action against the doctor's registration. We refer to these as Stream 2 complaints.

9 A Stream 2 complaint is a preliminary investigation in which we will contact the doctor's employer(s)/contracting organisation(s) and ask them to confirm whether there are any immediate concerns about the doctor's fitness to practise that might require any further GMC investigation. We will also forward them a copy of the complaint so that they are aware of the issues which have prompted us to write to them.

10 The employer(s)/contracting organisation(s) may decide that they can investigate the complaint through their own procedures. Please note that we will not be asking the employer(s)/contracting organisation(s) to investigate the complaint, and if they decide to do this, then this is their decision.

Who decides whether a complaint is Stream 1 or 2?

11 The Assistant Registrar, an experienced lay member of staff, makes the decision. If medical advice is needed before a decision is made, guidance is sought from a medically qualified Case Examiner.

12 Why are you asking for my consent when you are not going to investigate my complaint?

13 We would like your consent so that we can disclose your complaint to the doctor and obtain details of their employer(s)/contracting organisation(s). This means that we can send a copy of your complaint to the doctor's employer(s)/contracting organisation(s). We will ask the employer(s)/contracting organisation(s) to confirm whether or not they have any immediate fitness to practise concerns about the doctor that they think we need to investigate.

Will the GMC contact me when they hear back from the doctor's employer(s) contracting organisation(s)?

14 We will not contact you again unless we later decide to carry out a Stream 1 investigation. We would do this if we received any additional information that raised concerns about the doctor's fitness to practise.

What will happen if the employer identifies any concerns?

15 If the doctor's employer(s)/contracting organisation(s) identifies any serious concerns about the doctor, either relating to your particular complaint or more generally, we will undertake our own investigation into the doctor's fitness to practise within the Stream 1 process. At the end of our Stream 1 investigation, two case examiners will decide whether to refer the doctor to the Medical Practitioners Tribunal Service for a fitness to practise panel hearing to formally consider the doctor's fitness to practise.

Further information

16 More information about the GMC's fitness to practise procedures is available on our website **www.gmc-uk.org**.

Guidance on categorising Stream 1 and Stream 2 cases

Introduction

1. This guidance is intended to help Investigation Managers, at initial assessment, to categorise cases into Stream 1 or Stream 2. The guidance is supplementary to the instructions in the Investigation Manual and the Initial Processing and Assessment Form (IPA).

2. Categorising cases as Stream 1 and Stream 2 allows us, at an early point in our procedures, to identify the most appropriate level for investigating a complaint and to decide, in particular, whether the concerns could more appropriately be considered locally, by the doctor's employer, at least in the first instance.

3. Stream 1 complaints are those complaints that, in and of themselves would, if proven, raise questions about the doctor's fitness to practise.

4. Stream 2 complaints are those complaints which, in and of themselves, do not appear to raise a question about the doctor's fitness to practise, though they could potentially require action if part of a wider pattern of concerns.

5. At the initial assessment point, we should not attempt to pre-empt the decision of the case examiners at the end of our investigations. In other words, it is not for the Investigation Manager to apply the realistic prospect test. Rather, the test focuses on whether the issues are such that they require immediate investigation by the GMC or whether it would be more appropriate and proportionate for them to be considered locally in the first instance.

6. It is important to remember that when we categorise a case as Stream 2, we are not deciding that the case should be concluded at that point, but simply determining that it is more appropriate for the concerns to be considered locally, at least in the first instance. In all Stream 2 cases, we ask for the employer's assurance that there are no fitness to practise issues for us to consider before we conclude the case.

Categorising cases

7. The IPA provides that the Investigation Manager should categorise a case as Stream 1 where one or more of the following criteria apply:

a. Persistent clinical errors;

b. Persistent failures to provide appropriate treatment/care;

c. Any single serious clinical error or failure to provide appropriate care;

d. Any conduct which would fall into the category of 'presumed impairment' (as described in the Guidance on Criteria and Thresholds);OR where there is a presumption that the GMC will take some form of action, i.e. allegations of dishonesty;

e. Serious or persistent breaches of GMC guidance on consent and/or confidentiality;

f. Serious impairment by reason of ill health, to the extent that patient safety may be compromised.

Cases involving clinical care or treatment

8. Making decisions on allegations about the standard of clinical care and treatment is often particularly difficult. This is likely to be the case for the Investigation Manager, when applying the criteria at a-c above. There is no definition in the IPA or the Investigation Manual of 'serious' or of 'persistent'.

9. When considering whether a complaint should be categorised as Stream 1, the Investigation Manager should consider the following questions:

a. Does the nature of the error(s) or failure(s) indicate that the doctor may be a risk to patients?

b. Does the nature of the error(s) or failure(s) suggest a deliberate or reckless disregard of clinical responsibilities towards patients?

c. Were the consequences of the apparent failure(s) or error(s) so serious that we need to investigate immediately?

d. Was there an apparent series of errors or failures that appears to raise questions about the standard of the doctor's practice?

e. Does the nature of the error(s) or failure(s) raise fundamental questions about aspects of the doctor's fitness to practise? For example it may have been caused by an apparent failure to seek appropriate advice or by the doctor acting beyond the limits of his skills and qualifications.

10. Many of the complaints we receive are of a general nature about the standard of treatment or care received. In many cases, it will be more appropriate for the doctor's employer to consider the complaints, at least in the first instance. There should be a presumption that cases involving clinical care or treatment are categorised as Stream 2 where none of the criteria at paragraph 9 apply.

The seriousness of the outcome

11. An adverse outcome (in particular the death of a patient or serious harm) will undoubtedly be a factor in assessing the possible seriousness of an alleged failure or breach. However, such an outcome needs to be considered in the context of the case as a whole. An adverse outcome does not, in itself, indicate any error on the part of the doctor. Often the outcome will simply be the unfortunate consequences of the particular condition or an inherent risk of the particular treatment. Similarly, 'errors' in diagnosing or treatment are an inevitably fact of medicine and will not necessarily raise questions about a doctor's fitness to practise. There will be many cases, therefore, where notwithstanding an adverse outcome, it is still more appropriate for the matters to be considered initially under local procedures. (See also the case examiners' guidance on single clinical incidents.)

Non-clinical cases

12. Where any of the criteria at d-f apply, the task of categorising the case will normally be more straightforward. The nature of the allegations in such cases mean that there may be concerns about the doctor's fitness to practise. There is a presumption that these cases will be categorised as Stream 1.

13. All cases involving allegations where there is a presumption of impairment (allegations of sexual assault and indecency, violence and inappropriate relationships) or where the allegations involve dishonesty should be categorised as Stream 1, unless there are exceptional reasons not to do so. There may however be some allegations of dishonesty which, while potentially serious, may be better considered locally in the first instance. (e.g. a patient alleging that the doctor has deliberately put incorrect information in medical records.) Local enquiries may be more appropriate to establish whether the allegations arise out of a misunderstanding or whether there has been apparent misconduct by the doctor that we need to consider.

14. In some cases it is clear that allegations concerning consent and breaches of confidentiality are potentially very serious, and require immediate investigation by the GMC. There are however, likely to be cases where it may be more appropriate to consider the concerns locally. Complaints involving consent and confidentiality issues are often not clear-cut and may involve for example a systems failure or a misunderstanding by the complainant. In such cases, local procedures may be better placed to investigate and where appropriate to resolve the issues with the complainant.

15. Most cases concerning impairment by ill health arise from a referral from the doctor's employer or from a drink-driving case. These cases should be categorised as Stream 1.

Other factors

Referral by a public body

16. Referrals from public bodies should be categorised as Stream 1. There are special arrangements for police cases and convictions. It would not be appropriate to redirect a referral from an employer back to local procedures. The Investigation Manual provides guidance on handling referrals from public bodies where local procedures have not been exhausted or where another option, such as referral to the National Clinical Assessment Service, may be more appropriate.

The outcome of local investigations

17. When a complaint has already been considered by local procedures, the Investigation Manager should apply the criteria in this guidance to determine whether the complaint should be categorised as Stream 1.

18. In some cases, adverse findings of local procedures (or of the Healthcare Commission or Health Services Ombudsman or their equivalents) will be a signal that there are issues which we need to investigate and the case should be categorised as Stream 1.

19. Where there are no adverse findings or the case has been concluded with some limited advice, it is unlikely that there will be matters for us to investigate.

20. We are not, of course, an appeals body. Therefore, the fact that a complainant has exhausted local procedures does not mean that it is appropriate for us to investigate the complaint ourselves.

21. Where a complainant has only gone down part of the local complaints process and there are no other factors which indicate that the complaint should be categorised as Stream 1, the complainant should be advised to referred to the relevant body such as the Healthcare Commission or the Health Services Ombudsman or their equivalents.

22. We also receive complaints from individual doctors or other medical professional about their colleagues. In most cases, we should recommend that they should seek initially to address any concerns through local management. Where we receive such complaints, we should apply the criteria in this guidance to assess whether we should categorise the complaint as Stream 1.