

Our reference: IR1-2469940492

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Mr Harry Wiess

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Dear Mr Wiess

Freedom of Information Act 2000 – Internal review

I write in response to your request for an internal review of the handling of your Freedom of Information Act 2000 (FOIA) request. To recap, I've briefly set out below the history of your requests and our responses:

Chronology

F19/10265

'How many fitness to practice concern reports have been denied an investigation by your triage team over the past 5 years where the allegations, if proven, would amount to an impairment of fitness to practise.'

We stated we are required by legislation to investigate any complaint made to us about a registered doctor, except where the events took place more than five years ago (unless it is in the public interest to investigate).

We explained that between 2014 and 2018 there were 454 triage decisions where a complaint wasn't investigated as the events took place over five years previous and it was not in the public interest to investigate. We explained that we would have to manually review each one of these which would exceed the 'cost limit' set by the FOIA (this would engage the exemption at section 12 of the FOIA).

F19/10311/ME

'How many fitness to practice concern reports have been denied an investigation by your triage team over the past year where the allegations, if proven, would amount to an impairment of fitness to practise.'

We stated that for all 97 triages with a '5-year rule' decision to close in 2018, the Registrar had already decided that each one was capable of amounting to an allegation that the doctor's fitness to practise was impaired. However, we explained

that this was distinct from stating that 'the allegations, if proven, would amount to impairment'. We could only state that each was capable of being.

F19/10361/ME

'Please confirm how many fitness to practice concern reports have been denied an investigation by your triage team over the past year, other by reason of the 5 year rule, where the allegations, if proven, would amount to an impairment of fitness to practise.'

In response to this we provided a link to the data explorer tool on our website which provides access to data about the outcome of all complaints (which includes those closed at the initial triage stage).

My review

Your request for a review was set out as follows:

'Whilst the link provided suggests a significant amount of cases have been closed at the triage stage, there is no information as to why the case was closed nor whether the respective allegations, if proven, would have amounted to an impairment of fitness to practise. As such, I do not consider my request has been fully and properly addressed.'

Again, please set out how many fitness to practice concern reports have been denied an investigation by your triage team over the past year where the allegations, if proven, would amount to an impairment of fitness to practise.'

I have reviewed your previous requests and our responses and have considered this matter afresh.

The FOIA obliges us to firstly confirm whether the information requested is held, and secondly to provide it. Both these obligations are subject to a number of exemptions. Therefore, my first consideration is whether we hold the information requested; so whether we record information at the triage stage which sets out whether the allegations, if proven, would amount to an impairment of fitness to practise. As a result I have looked at the decision made at triage and the test that is carried out by the Assistant Registrar.

The test applied at the triage decision stage is whether the information is a potential allegation within the meaning of section 35C(2) of the *Medical Act 1983*, and if so whether the allegation raises a question as to whether the doctor's fitness to practise is impaired.

For reference, section 35C(1)-(2) of the *Medical Act* states:

35C Functions of the Investigation Committee

(1) This section applies where an allegation is made to the General Council against—

- (a) a fully registered person; or*
- (b) a person who is provisionally registered,*

that his fitness to practise is impaired.

(2) A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of—

- (a) misconduct;*
- (b) deficient professional performance;*
- (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;*
- (d) adverse physical or mental health; or*
- (da) not having the necessary knowledge of English (but see section 2(4))*
- (e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.*

The role of the Assistant Registrar when making a triage decision is therefore whether it engages one of the heads of impairment listed at section 35(C)(2) of the *Medical Act*, and if so whether the conduct is serious enough to raise a question as to whether a doctor's fitness to practise is impaired.

Therefore, although we decide if the allegation made is capable of raising a question of impairment, this decision is not the same as the one you describe in your request.

As we have previously set out, if an allegation is capable of raising a question of impairment we will investigate further. The exception to this being cases where the events occurred over five years previous to the concern being raised. In these instances if the allegation is capable of raising a question of impairment we may make a decision that it is not in the public interest to investigate further due to the amount of time elapsed (Rule 4(5) of the *General Medical Council (Fitness to Practise) Rules 2004*). However, I appreciate that you've confirmed this is not the information you are looking for.

Turning back to your request for the number of concerns denied an investigation where a finding of impairment would be made if the allegation were proven; as the assessment we carry out at the triage stage differs to the criteria you set out in your request, my view is that the specific information you have asked for is not held. The FOIA does not oblige us to create information in response to a request (for example to carry out such an assessment for each closed complaint).

In case it is useful, information for patients about how we handle concerns is available on our website at <https://www.gmc-uk.org/concerns/information-for-patients>.

Further action

You have a further right of complaint to the Information Commissioner's Office in respect of our handling of your request. If you wish to pursue this further

information and contact details are available at <https://ico.org.uk/make-a-complaint/> or you can call them on 0303 123 1113.

Yours sincerely

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