



General
Medical
Council

Changes to the information
we publish and disclose
about a doctor's fitness to practise

Working with doctors Working for patients

About this consultation

When a serious concern is raised about a doctor's behaviour, health or performance, and we find the doctor poses a risk to patients or to public confidence in doctors, we can take action on their registration. We are consulting on changes to the information we publish and disclose about these doctors.

What information do we currently disclose?

We have to publish a range of our decisions about a doctor's fitness to practise in line with the *Medical Act 1983*.^{*} We have a discretionary power to withhold any information about the physical or mental health of a person that we consider to be confidential. We also have a discretionary power to publish or disclose any information about a doctor to any person, where we consider it to be in the public interest.[†]

We are also subject to a range of legislative duties in relation to information governance, including the *Data Protection Act 1998*, the *Human Rights Act 1998*, and the *Freedom of Information Act 2000*.

Our current approach to publishing and disclosing this information is set out in the annex to this consultation document.

In June 2012, the Medical Practitioners Tribunal Service (MPTS) took over running hearings about doctors. It follows the same principles as the General Medical Council (GMC) in relation to publication and disclosure. The MPTS has its own website, which provides information relating to fitness to practise and interim orders panel hearings.

^{*} This requirement is set out in section 35B(4) of the Act and covers decisions by fitness to practise panels, interim orders panels, the Investigation Committee and undertakings agreed with doctors.

[†] This provision is set out in section 35B(2) of the Act.

What information do we publish on the online medical register?

The online medical register – known as the *List of Registered Medical Practitioners* – is a database of all doctors registered with the GMC. It can be accessed from our public website, enabling members of the public to search for information about the registration of individual doctors. All sanctions currently attached to a doctor's registration are published on their individual record, together with relevant hearing decisions.

The online medical register also publishes details of a doctor's fitness to practise history from 20 October 2005, which is when the electronic register was introduced. This includes historical information about sanctions on a doctor's registration that no longer apply, but were in place on 20 October 2005 or were subsequently imposed. We can give details of any sanctions issued before 20 October 2005 on request.

The online register differs from the actual medical register, in that even when a doctor leaves or is erased from the medical register, their details will remain on the online register with their status changed to 'not registered'. This helps to protect the public by ensuring that the registration status of anyone offering medical services can be easily checked.

Information that relates solely to a doctor's health, and any interim orders where we close the case with no action, is not published on the online register or disclosed to enquirers. Warnings that are more than five years old are also not published and are only disclosed to employers.

What is the scope of the review?

We are reviewing our policy on the publication and disclosure of fitness to practise information, to make sure that it is proportionate and provides transparency about the decisions we take.

This policy deals with the routine publication and disclosure of fitness to practise information. We will still continue to consider use of our discretionary powers in individual circumstances on a case-by-case basis, in line with our legislative framework described above.

This consultation covers information routinely published about fitness to practise decisions on the medical register on our website, and on the recent decisions page on the MPTS website.

(www.mpts-uk.org/recentdecisions)

It does not include proposals on publishing information about warnings, which are issued to doctors for lower level concerns where case examiners or fitness to practise panels consider that restricting a doctor's registration would be disproportionate. We consulted in 2014 on issues around the publication and disclosure of warnings as part of our wider review of how we deal with concerns about doctors. There was strong support for a system whereby case examiners and panels determine for how long warnings should be published and disclosed on a case-by-case basis and we are developing this proposal further, with a view to implementation in 2016.

(www.gmc-uk.org/ftpconsultations)

We remain committed to the principles that underpin our current policy – being transparent and open about our processes and decisions, and accessible to enquirers seeking information about a doctor's registration. We believe that openness about the actions we take in response to serious concerns about doctors is in the interests of the public and the medical profession. However, we want to make sure that our policy is proportionate in balancing the public interest with the individual interests of the doctor who has been investigated.

Our proposed changes

- Introducing limits on the length of time that sanctions* in relation to a doctor's registration will be published on the medical register or disclosed to general enquirers. At present, all sanctions (excluding warnings) are published and disclosed indefinitely (pages 4–11).
- Transferring onto the online medical register historical data about sanctions that were imposed during 1994–2005, where the doctors are still registered. At present, the online medical register contains data only from 2005 – the year it was introduced (pages 12–13).
- Where a doctor appeals the decision of a fitness to practise panel, making sure that the information we provide on the outcome of the case is as transparent as possible (pages 14–23).
- Where a doctor appeals the decision of an interim orders panel, clarifying our policy on what information will be published (pages 24–27).
- Providing greater transparency and detail in cases where we agree undertakings with a doctor without a fitness to practise panel hearing (pages 28–30).

How to take part

Answer the questions online on our consultation website: <https://gmc.e-consultation.net/econsult/>.

Alternatively, you can answer the questions using the text boxes in this consultation document and either email your completed response to us at ftpconsultation@gmc-uk.org or post it to us at:

Fitness to Practise Policy team
General Medical Council
Regent's Place
350 Euston Road
London NW1 3JN.

This consultation runs from
1 July to 23 September 2015.

Find out more

You can find further information about our fitness to practise processes on our website at www.gmc-uk.org/concerns.

* This covers erasure or suspension from the medical register, conditions imposed on a doctor's registration, and undertakings agreed with a doctor.

**Introducing limits
on the length of
time** that sanctions
will be published on
the online medical
register or disclosed

The current position

All sanctions on a doctor's registration, imposed by either a fitness to practise panel or an interim orders panel, remain on their record on the medical register indefinitely, even after the sanction no longer applies. These sanctions include erasure, suspension, conditions and any undertakings agreed with a doctor. This is regardless of whether the doctor remains registered with the GMC. The only exceptions to this are: information solely relating to a doctor's health; and interim orders where a case is closed with no finding of impairment or no warning.*

Reason for change

Transparency and openness about how we deal with serious concerns about doctors are in the public interest and in the interests of the medical profession. However, we want to strike an appropriate balance in relation to matters that took place a long time ago, or where a doctor has given up their registration and is no longer seeking work as a doctor.

* Warnings are published on a doctor's record on the medical register for five years and disclosed to any enquirers for that period of time. After five years, warnings are no longer published on the medical register or disclosed to general enquirers. However, they are kept on record and disclosed to employers on request indefinitely. As mentioned earlier, the publication and disclosure of warnings is not within the scope of this consultation.

Our proposed approach

We propose to introduce a range of limits for the length of time that sanctions will be published on a doctor's record on the online medical register or disclosed to general enquirers. The period for which we publish and disclose information will depend on the sanction imposed, and on whether the doctor remains registered with the GMC. When the time limit expires, information about the sanction, and any history relating to that sanction, including interim orders, will not be available by searching the online medical register and will not be provided to general enquirers.

We will still provide information on sanctions where the time limit has expired to current employers on request. We will also continue to provide information to overseas regulators on request to make sure they are able to obtain the same level of information from us about a doctor's fitness to practise as they currently do from the medical register. This is to minimise the risk of doctors with sanctions for serious concerns in the UK going on to practise abroad without the appropriate authorities in those countries being aware of their fitness to practise history.

We are considering whether we should continue to routinely disclose information about a sanction, where the time limit for publication has expired, to prospective employers. Our concern is whether this is proportionate, given that the time limits that we propose below for registered doctors will not start to run until a sanction has been lifted, and the information will then be publicly available for 20 years. We would welcome views on this point.

We will continue to consider specific requests for information on a case-by-case basis.

Proposed time limits

Doctors not currently registered

Sanction	Time limit
Doctor was erased by a fitness to practise panel	Ten years from the date the doctor was erased from the medical register
Doctor received a sanction other than erasure (suspension, conditions, undertakings)	Five years from the date the doctor left the register subject to a maximum publication period of 20 years

We impose a sanction on a doctor's registration only where we find serious concerns about their fitness to practise. In light of that, publishing or disclosing the sanction after a doctor has left the medical register is important to maintain confidence in the medical profession. As we erase a doctor in only the most serious cases, where the issues found proven are fundamentally incompatible with the doctor continuing to be registered, we need to publish or disclose this information for a longer period.

This also provides a safeguard should an erased doctor continue to practise medicine despite no longer being registered. However, in both these situations, we think that the need to publish and disclose information in the public interest declines over time, and the doctor's right to pursue alternative employment without interference increases.

Registered doctors

Sanction	Time limit
Doctor was erased by a fitness to practise panel and has been restored to the medical register	As long as the doctor is registered with the GMC, with a further publication period of five years if they leave the register
Doctor received a sanction other than erasure (suspension, conditions, undertakings)	20 years from the date the sanction expires or the undertakings are revoked

We think that the need to be transparent and open about historical sanctions is more important for doctors who remain registered than for those who are no longer registered. In these cases, it is proportionate to publish and disclose the sanctions for a significant period of time to maintain confidence in the medical profession. For sanctions other than erasure, we have suggested that 20 years since the sanction expired is an appropriate period. After this time, we think the need to publish and disclose the sanction in the public interest declines and indefinite publication is not necessary.

The need for transparency is most critical in cases where a doctor has previously been erased from the medical register. In a small number of cases, a doctor who is able to demonstrate they are fit to practise can be restored to the medical register. As these doctors are now able to work with patients, and in view of the seriousness of the original concerns, we think it is proportionate to publish the doctor's fitness to practise history for as long as the doctor remains on the medical register, and for a further five years if they subsequently leave the register.

1 Do you think the time limits proposed above provide the right balance between being transparent and open in the public interest and being fair to individual doctors?

Yes No Not sure

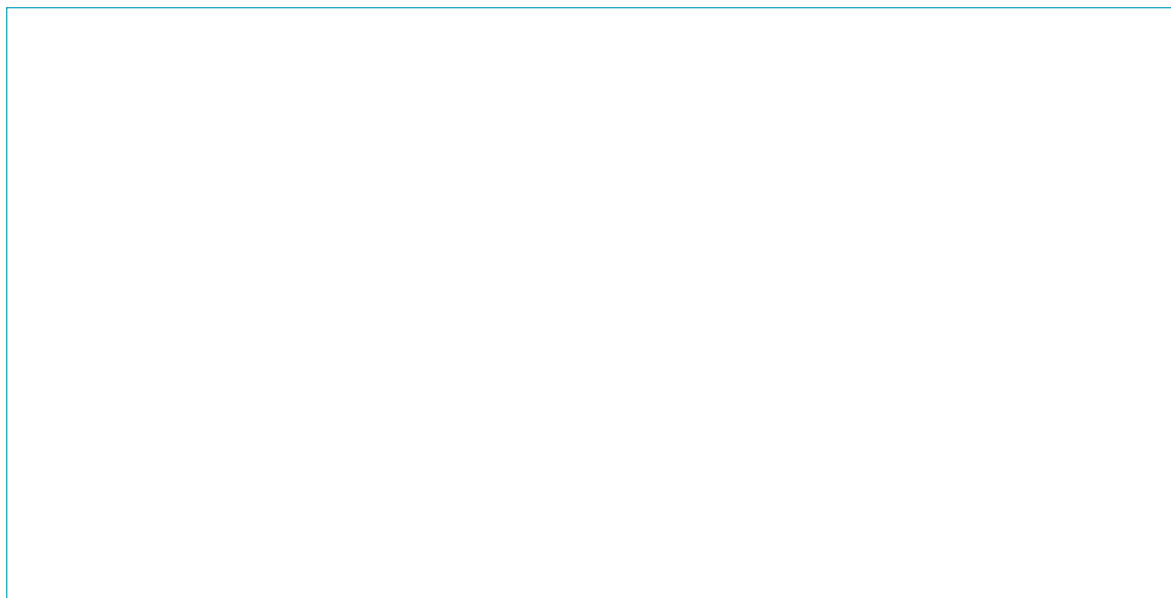
Do you have any comments on the time limits proposed?

2 Do you consider that, if time limits are introduced, we should routinely disclose information about sanctions to prospective employers once the time limit has expired?

Yes No Not sure

Do you have any comments on this proposal?

3 Do you have any other comments on the issues discussed in the above section?



Publication and disclosure after a doctor has died

Our current policy is to publish sanctions relating to a doctor's registration indefinitely, which means that information remains on the online register even after a doctor has died. As our primary purpose in publishing information about a doctor's registration is to protect the public and uphold confidence in the profession, we do not think that continued publication of information about sanctions is generally necessary after a doctor has died. We propose to remove fitness to practise information from the online register once we have been formally notified of a doctor's death, unless there is a public interest in continued publication.

We do however think it is important that the public are informed of the outcome of any public fitness to practise hearing and the reasons for the decisions taken, in order to maintain confidence in the profession and its regulation. For this reason, we

propose that the outcome of a fitness to practise hearing would continue to be published on the online medical register and on the MPTS website for a period of time from the end of the hearing, even where the doctor concerned has subsequently died. We suggest that six months might be an appropriate length of time.

After the point at which we stop publishing information on fitness to practise about a doctor who has died, we propose that this information be disclosed to general enquirers (in line with the time limits agreed under our first proposal) to enable us to deal transparently with queries where there is a public interest. This would include cooperation with a request for information, for example, from a coroner during an inquest into a death, or a public inquiry.

4 Do you agree with the proposal to stop publication of fitness to practise information after a doctor has died, unless there is a public interest in continued publication?

Yes No Not sure

Do you have any comments on this proposal?

5 Do you agree that we should continue to publish the outcome of a public fitness to practise hearing for a period of time after the end of the hearing, even if a doctor subsequently dies?

Yes No Not sure

Do you have any comments on this proposal?

6 If you have answered yes to question 5, do you agree that six months from the end of the hearing is an appropriate length of time?

Yes No Not sure

Do you have any comments on the length of time proposed?

7 Do you agree that, where a doctor has died, we should continue to disclose fitness to practise information to enquirers after the point at which we stop publication of the information (subject to our overall publication time limits) to enable us to deal transparently with queries where there is a public interest?

Yes No Not sure

Do you have any comments on this proposal?

8 Do you have any other comments on the issues discussed in the above section?

A large, empty rectangular box with a thin blue border, intended for the respondent to provide their comments on the issues discussed in the previous section.

Transferring onto the online medical register historical data about sanctions that were imposed during 1994–2005

The current position

Fitness to practise information on the online medical register dates from 20 October 2005, when the electronic register was introduced. It includes sanctions that no longer apply, but were in place on 20 October 2005 or were subsequently imposed. We can provide information on request about sanctions imposed before 20 October 2005, but this information is not available to search publicly.

Reason for change

We believe that our approach to publication of fitness to practise sanctions should be as consistent as possible for all doctors who are still registered with the GMC and as transparent and accessible as possible

to maintain confidence in the medical profession. We therefore propose to transfer information about sanctions imposed before 20 October 2005 on to the medical register, even if they have expired, except for information about a doctor's health. This puts doctors who received those sanctions in the same position as doctors who had active sanctions at that date or had sanctions imposed after 20 October 2005. This information will be subject to any time limits agreed under the first proposal in this consultation document.*

* Limitations arising from the way in which data was recorded historically mean that we will need to run the time limits in these historical cases from the date of the end of the fitness to practise hearing and not the date at which a sanction expired, where that expiry date was before 20 October 2005.

We propose to go back only as far as 1994 as we need to make sure the resources required to transfer this data are proportionate. Also the data we hold from before this time is less likely to have continuing relevance in relation to doctors who are currently registered. We also consider it proportionate to display this information only for doctors who remain registered with the GMC at the date we transfer the data.

- public hearing minutes from the Professional Conduct Committee and the Committee on Professional Performance during 1994–2005
- public hearing minutes for fitness to practise panel hearings that are not already on the medical register and have been held since we introduced our new rules* in 2004.

Our proposed approach

We propose that any sanctions imposed between 1994 and 2005 in relation to a doctor's registration should be included on the online medical register for doctors who are currently registered, together with links to the following additional fitness to practise information:

We have always intended that this information should be available to the public and we have provided it on request. The information was not included on the online medical register when it was first introduced due to the volume of data being transferred at the time and not for any reason of principle. Those constraints no longer exist.

9 Do you agree that, in the interests of transparency, we should transfer information on to the medical register about sanctions imposed on a doctor's registration between 1994 and 2005, where that doctor is currently registered?

Yes No Not sure

Do you have any comments on this proposal?

* These are the rules we follow when investigating complaints and making decisions at hearings about doctors.

Increasing transparency in the information we publish when a doctor appeals a fitness to practise panel's decision

The current position

Fitness to practise panels hear evidence and decide whether a doctor's fitness to practise is impaired. If it is, the panel can agree undertakings with the doctor or impose a sanction of erasing or suspending the doctor from the medical register, or conditions on the doctor's registration. The panel can also decide to take no action. In cases where the doctor's fitness to practise is not impaired, the panel can give a warning or take no further action.

In cases where a fitness to practise panel makes a finding that a doctor's fitness to practise is impaired but does not impose a sanction, or where the panel decides to give the doctor a warning, the doctor does not have a right to appeal the decision, but they can challenge it by judicial review.

A doctor can however appeal a decision of a fitness to practise panel to impose a sanction and interested parties are updated on the progress and outcome of any appeal. If a doctor launches an appeal, their record on the medical register is updated to reflect this. If an appeal is dismissed or withdrawn, the original decision and any sanction are published on a doctor's record, but all mention of the appeal is removed. If an appeal is successful, the original decision and all mention of the appeal are removed from the doctor's record and from the MPTS recent decisions webpage.

However, as appeals are matters of public record and contribute to the development of the common law, information on both fitness to practise and interim orders appeals is published in appeal circulars, which provide feedback and guidance to MPTS panel members. These are published elsewhere on the MPTS website.

Reason for change

The information we publish about a hearing outcome is intended to help people understand why certain action was taken, or not taken, to protect the public and uphold confidence in doctors. Where the decision on a case is later appealed or judicially reviewed, it can be difficult to present a clear story about the reasons why the final outcome is considered to be in the public interest.

There is concern that gaps in information arising from our current approach may lead to a perception that we are not being transparent in our decision making and may reduce public confidence that sufficient action has been taken to protect the public.

Our proposed approach

To improve transparency about case outcomes and to make sure that information on what has happened in a fitness to practise case is as clear and accessible as possible, we propose a number of changes to what we publish about appeals of fitness to practise panels' decisions. These changes involve information published on both the medical register and the MPTS recent decisions webpage.

Proposed changes

We set out below the current approach and our proposed changes to what is published on both the medical register and the MPTS recent decisions webpage, in the following six scenarios:

- A – Appeal is unsuccessful
- B – Appeal is successful
- C – Appeal is partly successful and is sent back to the GMC for a new hearing
- D – Appeal is partly successful and the original outcome is changed by the appeal court
- E – Appeal is withdrawn
- F – No appeal is made.

We also set out our proposed approach where a doctor judicially reviews a finding by a fitness to practise panel of impairment with no action, or a decision to give a warning to a doctor.

A – Appeal is unsuccessful

Current approach The original sanction, the date of the decision and a link to the decision are published on the doctor’s record on the medical register. All mention of the appeal is removed and the doctor’s record is amended to show that any sanction is now effective on the doctor’s registration. The decision of the panel hearing is published on the MPTS recent decisions webpage for 12 months.

New approach – the online medical register As now, the original sanction, the date of the decision and a link to the decision will be published on the doctor’s record. The fact that there was an appeal but that it was not successful will be noted on the doctor’s record for 12 months.

New approach – the MPTS recent decisions webpage No change – as now, the decision of the original panel hearing is published on the MPTS recent decisions webpage for 12 months.

10 Do you agree with the proposal in relation to appeals that are unsuccessful in scenario A?

Yes No Not sure

Do you have any comments on this proposal?

B – Appeal is successful

Current approach	The original sanction, the date of the decision, the link to the decision, all references to the appeal and any information on interim orders are removed from the doctor’s record on the medical register. The decision of the panel hearing is removed from the MPTS recent decisions webpage.
New approach – the online medical register	As now, the original sanction, the date of the decision and a link to the decision will be removed from the doctor’s record. Any information on interim orders will also be removed. A note will be added to the doctor’s record stating that the doctor was found not impaired on appeal, which will remain for 12 months.
New approach – MPTS recent decisions webpage	As now, the decision of the original panel hearing will be removed from the MPTS recent decisions webpage. This will be replaced with a note stating that there was a hearing, that there was an appeal against the decision of that hearing, and that the doctor was found not impaired on appeal. This will remain for 12 months. As now, guidance will continue to be issued to MPTS panel members through appeal circulars, which are publicly available elsewhere on the MPTS website.

11 Do you agree with the proposal in relation to appeals that are successful in scenario B?

Yes No Not sure

Do you have any comments on this proposal?

C – Appeal is partly successful and is sent back to the GMC for a new hearing

Current approach The outcome of the original hearing is removed from the doctor’s record on the medical register. The outcome of the new hearing is displayed on the medical register, and on the MPTS recent decisions webpage for 12 months. In some cases, where it is necessary to make sense of the decision, the appeal decision is published alongside the outcome of the further hearing with a brief explanatory note.

New approach – the online medical register As now, the outcome of the original hearing will be removed from the doctor’s record. A note will be added to the doctor’s record, stating that a hearing was held and that, on appeal by the doctor, the case was sent back to the GMC. This will remain until any new hearing has taken place. At the end of any new hearing, any sanction or warning will be published on the doctor’s record with a link to the decision.

New approach – the MPTS recent decisions webpage As now, the decision of the original panel hearing will be removed from the MPTS recent decisions webpage. This will be replaced with a note stating that there was a hearing, that there was an appeal against the decision of that hearing, and that the appeal was allowed in part and sent back to the GMC. At the end of any new hearing, the note will be removed and the outcome will be published as normal on the MPTS recent decisions webpage for 12 months. As now, where it is necessary to make sense of the decision, the appeal decision will be published alongside the outcome of the further hearing with a brief explanatory note.

12 Do you agree with the proposal in relation to appeals that are partly successful and sent back to the GMC for a new hearing in scenario C?

Yes No Not sure

Do you have any comments on this proposal?

D – Appeal is partly successful and the original outcome is changed by the appeal court

Current approach

Cases are dealt with on a case-by-case basis.

New approach – the online medical register

The outcome of the original hearing will be removed from the doctor’s record. Where the appeal results in a doctor’s fitness to practise being found impaired and/or the doctor receiving a sanction or warning, this will be published as usual on the doctor’s record. There will be a link to the appeal decision, and where it is necessary to make sense of the decision, the original decision will be published alongside, with a note making clear that the original decision has been superseded by the appeal.

New approach – MPTS recent decisions webpage

The outcome of the original hearing will be removed from the MPTS recent decisions webpage and replaced with the appeal decision, which will remain for 12 months from the date of appeal. Where it is necessary to make sense of the decision, the original decision will be published alongside the appeal decision. It will be made clear that the original decision has been superseded by the appeal.

13 Do you agree with the proposal in relation to appeals that are part successful and the original outcome is changed by the appeal court in scenario D?

Yes

No

Not sure

Do you have any comments on this proposal?

E – Appeal is withdrawn

Current approach The original sanction, the date of the decision and a link to the decision are published on the doctor’s record on the medical register. The decision is published on the MPTS recent decisions webpage for 12 months. All reference to the appeal is removed and the doctor’s record is amended to reflect that any sanction is now effective on the doctor’s registration.

New approach – the online medical register The original sanction, the date of the decision and a link to the decision will be published on the doctor’s record. An explanatory note will be added stating that an appeal was withdrawn by the doctor on a specified date. This will remain for 12 months.

New approach – the MPTS recent decisions webpage No change – the decision of the panel hearing will be published on the MPTS recent decisions webpage for 12 months.

14 Do you agree with the proposal in relation to appeals that are withdrawn in scenario E?

Yes No Not sure

Do you have any comments on this proposal?

F – No appeal is made

Current approach

The original sanction, the date of the decision and a link to the decision are published on the doctor’s record on the medical register. The decision is published on the MPTS recent decisions webpage for 12 months.

**New approach –
the online medical
register**

The original sanction, the date of the decision and a link to the decision will be published on the doctor’s record. A general comment will be added noting that all doctors have a 28-day period to appeal a decision before any sanction takes effect on their registration.

**New approach –
the MPTS recent
decisions webpage**

No change – the decision of the panel hearing will be published on the MPTS recent decisions webpage for 12 months.

15 Do you agree with the proposal in relation to cases where no appeal is made in scenario F?

Yes

No

Not sure

Do you have any comments on this proposal?

Judicial review of a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning

The situation with regard to judicial review differs from the right of appeal of a sanction decision in that the original panel decision is not put on hold but remains in place until such time as it is successfully overturned. We do not currently publish the fact that a judicial review is ongoing and any impact on publication and disclosure relates only therefore to situations where a judicial review is successful.

In so far as possible, we want to treat these cases in the same way as we treat successful appeals at scenario B above. We therefore propose that, as a general approach, where a panel's finding of impairment with no sanction, or a decision to give a warning, is overturned, all details of the original decision will be removed and a note will be added to the doctor's record for 12 months from the date of the judicial review outcome, stating that 'the doctor was found not impaired following a judicial review', or that 'the warning issued to the doctor was removed following a judicial review'.

It is not possible however, to predict every potential outcome from a judicial review decision, and we will need to consider these cases on a case-by-case basis, in line with the overarching principles of our publication and disclosure policy, of transparency, accessibility and proportionality.

16 Do you agree with our proposed general approach to situations where a fitness to practise panel's finding of impairment with no sanction, or a decision to give a warning, is overturned on judicial review?

Yes

No

Not sure

Do you have any comments on this proposal?

Clarifying our policy on the information we publish when a doctor appeals an interim orders panel's decision

The current position

An interim orders panel hearing considers whether a doctor's registration should be temporarily restricted while allegations about their practice or conduct are investigated. The panel may suspend or impose conditions on a doctor's registration for up to 18 months, although this can be extended by applying to the High Court in England, Northern Ireland and Wales or to the Court of Session in Scotland.

Our approach to publishing information about appeals of interim orders is not currently set out in our publication and disclosure policy but we propose going forward to include it. The approach we take is as follows.

If a doctor appeals an interim order, we make no reference to the appeal before it is concluded. If the appeal is dismissed or withdrawn, the original order will continue to be published without amendment and with no reference to the appeal on either the medical register or the MPTS website. Decisions on what should be published in cases where an appeal is successful or successful in part depend on the nature of the decision taken by the appeal court. Depending on the circumstances, we adopt one of the following three approaches.

Appeal is successful and the court decides the decision should not have been made

The online medical register	The original order is removed from the doctor's record. The doctor's registration is shown with no restrictions unless imposed in a separate case. No reference is made to the appeal.
The MPTS recent decisions webpage	The original order and press release are removed from the MPTS recent decisions webpage.

Appeal is successful and the court does not decide that the original decision should not have been made, but decides that it should no longer have effect

The online medical register	The original order is removed from the doctor's record, but a reference to the order remains in the fitness to practise history section of the doctor's record.
The MPTS recent decisions webpage	The panel's decision will have been included in a press release published on the MPTS recent decisions webpage for six weeks and is likely to have been removed by the time an appeal is resolved. If it has not been, then the decision would be removed from the MPTS recent decisions webpage.

Appeal is partly successful and the period of the order or the conditions are changed

The online medical register	Where appropriate, the original order is removed from the doctor's record. Where the appeal results in a new order, this is published on the doctor's record.
The MPTS recent decisions webpage	The original order and the appeal decision are published for six weeks from the date of the appeal decision.

As with fitness to practise appeals, information on interim orders appeals is also published in appeal circulars to MPTS panel members to inform decisions in future cases. These are published elsewhere on the MPTS website.

Our proposed approach

We are not proposing any changes to the way in which we currently approach publishing interim orders, described above. However, in the interests of transparency and consistency, we believe we should set out our approach in our publication and disclosure policy.

It is worth highlighting that our approach to publishing interim orders differs from that proposed for appeals of fitness to practise panels' decisions

(consultation questions 10–15). This is because interim orders serve a different purpose to the decisions of fitness to practise panels. They aim to keep patients safe while we investigate concerns about the doctor's fitness to practise, and they are imposed before the panel finds whether the allegations against a doctor are proven. They come into effect immediately and there is no time limit for an appeal – they can be appealed at any point while they are in force.

17 Do you have any comments on our proposed approach to publishing information about appeals in interim orders cases, as set out in the section above?

**Providing greater
transparency and
detail in cases
where we agree
undertakings with
a doctor without a
fitness to practise
panel hearing**

The current position

Fitness to practise cases can conclude with doctors voluntarily agreeing undertakings to restrict their practice or to take specific action such as retraining. In these cases, we consider that a fitness to practise panel would be likely to find the doctor's fitness to practise impaired, but that we can resolve the issues without the need for a panel hearing.

The only note on the doctor's record on the medical register is the list of undertakings. There is no explanation of the concerns that the undertakings are intended to address or why they are considered to be a proportionate response. This differs from the approach to undertakings agreed or conditions imposed by a fitness to practise panel, as the panel's decision with accompanying reasoning is publicly available through the medical register. For doctors whose fitness to practise is not impaired but who are given a warning, we currently publish more about the reasoning for the decision than we do about doctors who agree undertakings.

Reason for change

It is important that the public can understand the decisions taken about a doctor's registration in response to serious concerns.

Following a public consultation in 2011, (a report on the outcome of which can be found at www.gmc-uk.org/ftpreformsreport), we are taking steps to make sure that we refer cases for a fitness to practise panel hearing only where necessary, reducing delay and stress for doctors and witnesses involved. Going forward we would like to resolve more cases consensually, including more serious cases where a fitness to practise panel might impose a suspension or erasure. We received support for this approach when we consulted in 2011. We will require legislative changes to implement it and are seeking those changes from the Department of Health.

As increasing numbers of cases conclude without a hearing, we believe that transparency is critical to maintaining public confidence about the action we take to respond to serious concerns.

Proposed change

In addition to the list of undertakings we currently publish on a doctor's record on the medical register, we propose to publish a short summary of the concerns and the reasoning behind our decision to resolve the case consensually in cases where we agree undertakings with a doctor (similar to our current approach to warnings). The proposed summary will include:

- an overview of the concerns
- an explanation of why we consider undertakings are a proportionate outcome
- a note of any aggravating or mitigating factors taken into account in the decision.

The summary will be published as a link on the medical register for as long as the undertakings are effective on the doctor's registration. Once the undertakings are revoked, they will remain in the doctor's fitness to practise history according to the time limits decided in response to question 1 of this consultation. As with panels' decisions, health information will not be published (unless it is at the request of the doctor).

If we go ahead with this proposal, when proposing to doctors that they accept undertakings, we will send the doctor both the list of proposed undertakings and the proposed summary.

18 Do you agree that we should give greater explanation of the background and reasons for resolving the case consensually when we agree undertakings with a doctor and conclude the case without a fitness to practise panel hearing?

Yes

No

Not sure

Do you have any comments on this proposal?

Equality

We have carefully considered the aims of the equality duty in developing our proposals.

The *Equality Act 2010* identifies nine characteristics that are protected by the legislation: age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

19 Do you think that any of our proposals will affect people with protected characteristics that are covered by equality legislation? This could include doctors, patients and members of the public.

Yes No Not sure

If you have answered 'yes' to this question, please tell us which proposals and what you think the impact might be.

About you

Finally, we'd appreciate it if you could give some information about yourself to help us analyse the consultation responses.

Your details

Name

Job title (if responding as an organisation)

Organisation (if responding as an organisation)

Address

Email

Contact telephone (optional)

Would you like to be contacted about our future consultations?

Yes

No

If you would like to know about our upcoming consultations, please let us know which of the areas of our work interest you:

Education

Standards and ethics

Fitness to practise

Registration

Licensing and revalidation

Data protection

The information you supply will be stored and processed by the GMC in accordance with the *Data Protection Act 1998* and will be used to analyse the consultation responses, check the analysis is fair and accurate, and help us to consult more effectively in the future. Any reports published using this information will not contain any personally identifiable information. We may provide anonymised responses to the consultation to third parties for quality assurance or approved research projects on request.

The information you provide in your response may be subject to disclosure under the *Freedom of Information Act 2000* which allows public access to information held by the GMC. This does not necessarily mean that your response will be made available to the public as there are exemptions relating to information provided in confidence and information to which the *Data Protection Act 1998* applies. Please tick if you want us to treat your response as confidential.

Responding as an individual

Are you responding as an individual?

- Yes No

If yes, please complete the following questions. **If not, please complete the 'responding as an organisation' section on page 37.**

Which of the following categories best describes you?

- Doctor Medical educator (teaching, delivering or administering)
 Medical student Member of the public
 Other healthcare professional
 Other (please give details) _____

Doctors

For the purposes of analysis, it would be helpful for us to know a bit more about the doctors who respond to the consultation. If you are responding as an individual doctor, could you please tick the box below that most closely reflects your role?

- General practitioner Consultant
 Other hospital doctor Doctor in training
 Medical director Other medical manager
 Staff and associate grade (SAS) doctor
 Sessional or locum doctor Medical student
 Other (please give details) _____

What is your current practice setting? (Please tick all that apply)

- NHS Independent or voluntary Other

What is your country of residence?

- England Northern Ireland Scotland Wales
 Other – European Economic Area
 Other – rest of the world (please say where) _____

To help make sure our consultations reflect the views of the diverse UK population, we aim to monitor the types of responses we receive to each consultation and over a series of consultations. Although we will use this information in the analysis of the consultation response, it will not be linked to your response in the reporting process.

What is your age?

- 0–18 19–24 25–34 35–44
 45–54 55–64 65 or over

What is your gender?

- Female Male

Do you have a disability, long-term illness or health condition?

- Yes No Prefer not to say

The *Equality Act 2010* defines a person as disabled if they have a physical or mental impairment, which has a substantial and long-term (ie has lasted or is expected to last at least 12 months) and adverse effect on the person's ability to carry out normal day-to-day activities.

What is your ethnic group? (Please tick one)

Asian or Asian British

- Bangladeshi Chinese Indian Pakistani
- Any other Asian background (please specify) _____

Black, African, Caribbean, black British

- African Caribbean
- Any other black, African or Caribbean background (please specify) _____

Mixed or multiple ethnic groups

- White and Asian White and black African White and black Caribbean
- Any other mixed or multiple ethnic background (please specify) _____

Other ethnic group

- Arab
- Any other ethnic group (please specify) _____

White

- British, English, Northern Irish, Scottish or Welsh
- Irish Gypsy or Irish traveller
- Any other white background (please specify) _____

Responding as an organisation

Are you responding on behalf of an organisation?

- Yes No

If yes, please complete the following questions. **If not, please complete the 'responding as an individual' section on page 34.**

Which of the following categories best describes your organisation?

- | | |
|--|---|
| <input type="checkbox"/> Body representing doctors | <input type="checkbox"/> Body representing patients or the public |
| <input type="checkbox"/> Government department | <input type="checkbox"/> Independent healthcare provider |
| <input type="checkbox"/> Medical school (undergraduate) | <input type="checkbox"/> Postgraduate medical institution |
| <input type="checkbox"/> NHS or HSC organisation | <input type="checkbox"/> Regulatory body |
| <input type="checkbox"/> Other (please give details) _____ | |

In which country is your organisation based?

- | | | |
|---|----------------------------------|---|
| <input type="checkbox"/> UK wide | <input type="checkbox"/> England | <input type="checkbox"/> Northern Ireland |
| <input type="checkbox"/> Scotland | <input type="checkbox"/> Wales | |
| <input type="checkbox"/> Other – European Economic Area | | |
| <input type="checkbox"/> Other – rest of the world (please say where) _____ | | |

Annex

Publication and disclosure policy

October 2013 | Date for review: May 2017

- We are committed to transparency about our processes and decisions.
- We believe openness about our decisions is of benefit to all parties involved.
- We are committed to publishing information about a doctor's registration in a format which is easily accessible to all enquirers.

The legislative context

- 1** The GMC has a statutory duty under Section 35B(4) of the *Medical Act 1983* to publish, in such a manner as we see fit, a range of decisions by fitness to practise panels, interim orders panel, the Investigation Committee, and undertakings agreed with doctors. We have a discretionary power to withhold any information concerning the physical or mental health of a person which we consider to be confidential.
- 2** We also have a discretionary power to publish or disclose any information about a doctor, to any enquirer, where we consider it to be in the public interest. The power to disclose information where we consider it to be in the public interest is not subject to any statutory requirement to consider the public interest in relation to individual doctors or cases. This means we are able to agree and implement policies which apply to the disclosure of general categories of information, in the public interest.
- 3** The GMC is subject to a range of legislative duties in relation to information governance including the *Data Protection Act 1998*, *Human Rights Act 1998*, and the *Freedom of Information Act 2000*. The *Data Protection Act* and *Freedom of Information Act* impose a particular set of duties in respect of information disclosure. This document outlines our policy in relation to the routine publication and disclosure of fitness to practise information.

Publication of fitness to practise information

- 4** Since 11 June 2012 the adjudication function of the GMC has been administered by the Medical Practitioners Tribunal Service (MPTS). The MPTS follows the same principles as the GMC in relation to publication and disclosure. The MPTS has its own website which publishes information relating to fitness to practise and interim order panel hearings. All fitness to practise panel and interim order panel hearings are heard by independent panels at the MPTS. Investigation Committee hearings are not part of the MPTS and are run by the GMC's investigation function.
- 5** Fitness to practise information is published in three places:
 - a** The List of Registered Medical Practitioners on the GMC website.
 - b** The 'Recent Decisions' page on the MPTS website.
 - c** The 'Investigation Committee' page on the GMC website.

The List of Registered Medical Practitioners

- 6 The List of Registered Medical Practitioners (LRMP) is an online database of all doctors registered with the GMC. All sanctions currently attached to a doctor's registration are displayed on their individual record, together with relevant hearing decisions.
- 7 The LRMP also displays details of a doctor's fitness to practise history from 20 October 2005 (which is when we started keeping electronic records). This includes historical information about all restrictions previously imposed on a doctor's registration which no longer apply. (Details of any sanctions effective on a doctor's registration prior to October 2005 can be obtained via enquiry to our Contact Centre.)
- 8 All sanctions on a doctor's registration, imposed by either a fitness to practise panel or interim orders panel, including erasure, suspension and conditions and any undertakings agreed with a doctor remain on their fitness to practise history on the LRMP indefinitely. The only exceptions to this are information solely relating to a doctor's health, and interim orders where a case is closed with no finding of impairment or no warning.
- 9 Warnings are published on our website on a doctor's record on the LRMP for a period of five years and disclosed to any enquirers. After five years, warnings cease to be published on the LRMP or disclosed to general enquirers. However, they are kept on record and disclosed to employers on request indefinitely. This approach seeks to achieve an appropriate balance between the need to be transparent and open with the public, with our duty to be fair to the doctor.

Investigation Committee hearing decisions

- 10 Decisions of all Investigation Committee hearings which conclude in a warning are published on the 'Investigation Committee' page on the GMC's website for one year from the end of the hearing, and on the LRMP for five years.
- 11 Decisions of Investigation Committee hearings which do not conclude in a warning are not published on either the 'Investigation Committee' page of the GMC website or on the LRMP.

MPTS fitness to practise and interim order panel hearing decisions

- 12 Decisions of all fitness to practise hearings where there is a finding of fact are published on the 'Recent Decisions' page of the MPTS website.
- 13 Decisions of all fitness to practise hearings where there is a finding of impairment are published on the LRMP as a permanent record.
- 14 Decisions of all fitness to practise hearings where there is no finding of impairment, but a warning is issued are published on the LRMP for a period of five years.
- 15 Decisions of fitness to practise hearings where there is no finding of impairment or warning issued are not published on the LRMP.

-
- 16 Detailed decisions of interim orders panel hearings are not published. However, interim orders to suspend a doctor or impose conditions on their registration pending the outcome of an investigation are published via a press release on the 'Recent Decisions' page of the MPTS website for six weeks. They are also published on the LRMP indefinitely, except where a case is closed with no finding of impairment and no warning.
 - 17 Decisions of all panel hearings to consider an application for voluntary erasure are published on the 'Recent Decisions' page of the MPTS website. If voluntary erasure is granted after a finding of impaired fitness to practise the decisions are also published on the LRMP.
 - 18 Review hearing decisions are published on the 'Recent Decisions' page of the MPTS website and on LRMP regardless of the outcome of the hearing.
 - 19 Decisions of fitness to practise hearings to consider an application for restoration of doctors previously found to be impaired are published on the 'Recent Decisions' page of the MPTS website and the LRMP. Decisions of panel hearings to consider an application for restoration where there is no previous finding of impaired fitness to practise are published on the 'Recent Decisions' page of the MPTS website only.

Appeals

- 20 Doctors are given 28 days to appeal a decision on sanction before it becomes effective on their registration. The appeal period is published on the doctor's record on the LRMP.
- 21 If a decision is appealed, we publish the fact the sanction is not effective pending the outcome of the appeal. Where the appeal is partly or fully upheld we cease publication of the original decision which is replaced by the outcome of any further hearing. This information is published on the LRMP.
- 22 We notify interested parties of appeals and their outcome. We do not publish appeal decisions, but these may be available from the relevant court.
- 23 An immediate suspension will be effective on the doctor's registration until the date that the substantive sanction takes effect, unless a doctor successfully appeals the substantive sanction, in which case the immediate suspension will cease from the date that the appeal decision is made. In either case, the immediate suspension will remain on the doctor's LRMP record indefinitely unless the immediate suspension order has itself been separately successfully appealed.

Information about a doctor's health

- 24 We do not publish any information relating solely to a doctor's health. We treat this information as confidential regardless of whether the case is heard under 'old rules' (the Fitness to Practise Rules which we used before 2004) or under the Fitness to Practise Rules 2004 (our current Rules have been in use since 2004).

-
- 25** This means we do not publish the details of conditions or undertakings that directly relate to a doctor's health.
- 26** Where details regarding a doctor's health are disclosed during any part of a hearing which is held in public, by any party, this information is redacted from the published decisions.

Multi-factorial cases

- 27** Sometimes, concerns about a doctor relate to a variety of factors, for example conduct, performance, and health (called multi-factorial cases). In multifactorial cases, panels are expected to hold as much of the hearing as possible in public, while entering into private session only for those parts of a hearing which relate to a doctor's health.
- 28** If, in exceptional circumstances, a panel holds the whole of a multi-factorial case in private, the doctor will be notified at the hearing before evidence is presented that only information relating directly to the doctor's health will be redacted from the published decisions.

Disclosure to employers

- 29** Where we decide to progress an initial investigation into concerns raised and have considered consent requirements for relevant data subjects, we will disclose:
- details of the concerns and the place of the incident to the doctor's current employer.
 - the fact we have received a complaint about the doctor, but not the details to their previous employers up to a maximum of four in order to check they have no further concerns we should be aware of.

- 30** Where we decide to progress a full investigation into concerns raised and have considered consent requirements for relevant data subjects, we will disclose details of the concerns including the place of the incident to the doctor's current and relevant previous employers.

Witnesses

- 31** The names of all witnesses are redacted from the published decisions.
- 32** In exceptional circumstances, vulnerable witnesses may be allowed to give evidence in private. The legal definition of a vulnerable witness is anyone who may have a serious mental health condition or learning difficulties, young people under the age of 17, people with physical disabilities who require assistance to give evidence at a hearing, witnesses who complain of intimidation, and witnesses who are the victim of sexual assault. However their evidence will be published in the record of the decision in accordance with this publication policy. The witness will be notified of this at the hearing before evidence is presented.
- 33** In particular, vulnerable witnesses will be made aware of the extent to which we can redact the record of the decision to protect their anonymity, for example, by removing the name of the witness. In exceptional circumstances, it may also be possible to remove other identifying details such as the address and name of a health centre, or broadening the scope of the doctor's practice (for example, the South East rather than London).

The decisions circular

- 34** The MPTS issues a decisions circular each month to a range of UK organisations responsible for healthcare provisions and regulation. The circular includes all hearing decisions made in the preceding month, which affect a doctor's registration, including sanctions imposed on the doctor's registration, interim orders, warnings and cases where administrative or voluntary erasure have been granted in a fitness to practise case. This excludes information about a doctor's health.
- 35** The MPTS also share details of fitness to practise decisions with a range of international medical regulators via the decisions circular. While sanctions on a doctor's registration are only applicable to the UK, overseas healthcare regulators may take this information into consideration as part of their regulatory processes.

Accessibility

- 36** We are committed to a publication policy that is accessible to people with sensory impairment. Our websites contain an accessibility section with tips and guidance on how to resize the text, ways to change the text and background colour together with other accessibility features. The website works with a number of screen readers to offer users the option to have web pages and PDFs read to them (this is available at no cost via Browsealoud). The sites perform well on a Vischeck (colour blindness simulator) test, and have high contrast and scalable text options which can be chosen from the home page.

Complainant confidentiality

- 37** When a concern is raised by a complainant we may ask for their consent to disclose it to the doctor in order for us to take forward an investigation. However, we will notify a complainant at this stage that, in view of our public protection role, we may progress our investigation even if they refuse consent in order to establish if there is any risk to patients or to public confidence in the profession. However, our preference is to do so by agreement with the complainant.

Disclosure at initial enquiry stage

- 38** Once we have contacted the complainant, we will disclose the complaint to the doctor without delay. At this stage, we will also fulfil our statutory duty to notify the doctor's employers and the Department of Health (England), Scottish Ministers, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales. If the doctor's responsible officer is not the doctor's employer we will also notify the responsible officer about the complaint at this stage. Concerns about a doctor which are the subject of an investigation will not be disclosed to general enquirers (apart from current or prospective employers/responsible officers) or the media unless or until a warning is issued, undertakings are agreed or a hearing takes place, except where it is necessary for the MPTS to impose an interim order to restrict the doctor's practice as a precautionary measure.

Employer checks

- 39** NHS Employers and others are expected to check registration with us when first employing a doctor. In consultation with the Department of Health, NHS Employers has developed mandatory standards for pre and post-employment checks for all persons working in the NHS in England. The NHS Employment Check Standards 2010 directs prospective employers to submit a request to our Contact Centre. The contact centre can disclose to any enquirer sanctions on a doctor's registration including interim and historical sanction, and warnings that are less than five years old.
- 40** In addition to the information published on the LRMP, we may provide current employers with a summary of any fitness to practise concerns which are currently under investigation but are not subject to an interim order and information about any warnings which are more than five years old.

Public interest disclosure

- 41** We receive requests to share information with a range of public authorities including the Police, Crown Prosecution Service (CPS) or other regulatory bodies seeking information about a doctor's fitness to practise history or matters currently under investigation. We seek to co-operate with such requests where it is reasonable and in the public interest to do so.

Vetting and barring scheme

- 42** Information about decisions by the Independent Safeguarding Authority or Disclosure Scotland to bar someone from working with vulnerable adults or children is not disclosed by the GMC.

Transcripts at the end of a hearing

- 43** The parties to the hearing, that is the doctor who is the subject of the hearing and the GMC (or their representatives), can ask for a copy of the hearing transcript, free of charge, at the end of a hearing. If the hearing was held in public the person who made the complaint can also ask for a copy free of charge, at the end of a hearing. A charge will apply to requests for copies from other enquirers. For further detail, please see our publication scheme on our website at www.gmc-uk.org/publications/right_to_know/publications_scheme.asp.

Media enquiries

- 44** All media enquiries are dealt with by our press office.

Press releases

- 45** A press release will be published on the MPTS website before all fitness to practise hearings held in public and will be removed no later than three months after the hearing takes place. If a doctor chooses to have their interim order hearing in public, a press release will be published in the same way.
- 46** A press release will be published on the GMC website before an Investigation Committee hearing and will be removed no later than three months after the hearing takes place.

Email: gmc@gmc-uk.org
Website: www.gmc-uk.org
Telephone: **0161 923 6602**

Fitness to Practise Policy team, General Medical Council, 350 Euston Road, London NW1 3JN.

Textphone: **please dial the prefix 18001** then
0161 923 6602 to use the Text Relay service

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