

The GMC are reviewing their indicative sanctions guidance and the role of apologies and warnings

We are concerned that the consultation focusses only on sanctions against doctors, making those sanctions more rigorous, but does not look at the process which arrives at the judgement.

This consultation will run from Friday 22 August 2014 to Friday 14 November 2014.

(Texts in quotation marks are GMC statements. Text in italics highlights where the document raises concerns for us. Text in bold are our comments/concerns)

"The consultation is a major review of the guidance the GMC give to fitness to practise hearing panels run by the Medical Practitioners Tribunal Service (MPTS). These panels decide what action should be taken to deal with doctors who" **(in their opinion)** "do not meet their professional standards."

"We (the GMC) are consulting on a wide range of proposals to update this guidance to ensure that MPTS fitness to practise panels *continue to make decisions which are independent, fair and consistent.*" **We believe that the way the MPTS panels operate needs to be reviewed.** "This guidance is similar to the sentencing guidelines used by courts." **We believe that the effects of erasure on the life of a doctor and his/her family are equal to criminal standards and yet the testing of the evidence falls way below that level.**

"The sanctions imposed on doctors range in seriousness – from warnings.... through to erasure from the medical register. They are one of the ways we exercise our duty to protect the public from harm, maintain confidence in doctors and ensure high standards in the practice of medicine.

"We are also reviewing the role of apologies and warnings in our fitness to practise process."

To read the consultation document:

[Reviewing how we deal with concerns about doctors: A public consultation on changes to our sanctions guidance and on the role of apologies and warnings](#) (pdf)

"This document sets out proposed updates to our sanctions guidance, which MPTS panels use to decide the outcome of cases at fitness to practise hearings. The principles within this document will also help to inform our guidance for case examiners who make a decision on cases at the end of our initial investigation."

The GMC updated their guidance on Good medical practice in 2013:

"This edition reflects what doctors and patients think are the important values and principles of good care.

"The purpose of any action we take following *a serious or persistent breach of our guidance*" **(in the opinion of the MPTS panel)** "is to protect the public by helping to make sure doctors on our register provide safe care and to uphold public confidence in doctors. *It is not our role to punish or discipline doctors.*" **As we have stated above, erasure is the equivalent to a criminal punishment.**

“The MPTS was established in 2012 to separate our role in investigating concerns about doctors from the adjudication of cases, including holding hearings. At a hearing, a fitness to practise panel will *review* the evidence to decide whether the doctor’s fitness to practise is impaired. If it is, the panel will decide the appropriate action to take – it can take no action, agree undertakings with the doctor, impose conditions, or suspend or remove the doctor from the medical register.” **Reviewing the evidence is not good enough. The evidence needs to be properly tested, written evidence should not be accepted at face value without the opportunity for cross questioning.**

“We propose a range of changes to our sanctions guidance to make sure it reflects society’s values and expectations of doctors, which are set out in the updated edition of Good medical practice and supporting explanatory guidance, published in 2013. In particular, these changes *will better guide panels* on the types of concern where it may be appropriate to permanently remove a doctor’s registration.” **Will there be any opportunity for doctors already removed from the register to challenge the previous guidance which informed their erasure?**

“Our sanctions guidance

“To make sure *panel decisions are transparent, fair and consistent*, we provide guidance to help panels decide what sanction is appropriate. This is called our Indicative Sanctions Guidance for the Fitness to Practise Panel and it is published on our website at www.mpts-uk.org/sanctions_guidance” **We do not believe that this is always the case, looking back since the MPTS began to operate in 2012 we see great inconsistencies.**

“The sanctions guidance sets out the issues panels should take into account when making a decision, including *whether a doctor’s actions have fallen below the standards we expect, any mitigating or aggravating factors, the current risk that the doctor poses, and whether we need to take action in the public interest.*” **In the opinion of a panel of three who are not required to make their judgement beyond all reasonable doubt (criminal law) but only on the balance of probabilities (civil law)**

“Proposed change:

to introduce more detailed guidance on the factors that indicate a doctor has or lacks insight. A doctor is likely to have genuine insight if they: accept they should have behaved differently, consistently express insight, take steps to remediate and apologise at an early stage before the hearing.” **If the panel have not made the correct judgement, the doctor cannot have insight into what he/she did not do. It is imperative that the adjudication process is improved upon. A panel of three should not be responsible for making a decision which could not only ruin a career and damage a family, but also remove an excellent and exemplary doctor from being able to continue to serve a community where he is loved and appreciated.**

“Issue to consider: should panels be able to require doctors to apologise where patients have been harmed?

A doctor is likely to lack insight if they: refuse to apologise or accept their mistakes, do not consistently express insight, or fail to tell the truth during the hearing.

A doctor may also lack insight if they promise to remediate, but fail to take appropriate steps or only do so when prompted or immediately before or during the hearing.” **As above, if the wrong judgement is made an apology would look like an admission of guilt.**

“Verification checks on testimonials

“Proposed change: to introduce a *robust verification process to check the authenticity of testimonials* before they are accepted as evidence in a hearing. This would involve checking the identity of anyone who has written a testimonial to eliminate the possibility of fraud or misrepresentation. We also propose to check that those who write testimonials are aware of the concerns about the doctor, what their testimonials will be used for, and that they are willing to come to the hearing to answer any questions if a panel asks them to do so. To allow sufficient time for checks to take place, doctors will have to submit their testimonials before the hearing starts” **This rigorous *robust verification process to check the authenticity of testimonials* should also take place when verifying the authenticity of witness statements. As above, witness statements should be cross questioned.**

“Giving patients a voice

“We are exploring ways to enhance the role of patients in our fitness to practise procedures. We are already undertaking a pilot to involve patients and relatives who have complained about a doctor – this consists of a meeting with a member of GMC staff at the start and end of our processes. The aim is to ensure we fully understand the patient’s concerns, to explain our role and procedures and to explain the outcome of the case following a decision” **At present patients who believe their doctor has been wrongly erased from practising do not have a voice.**