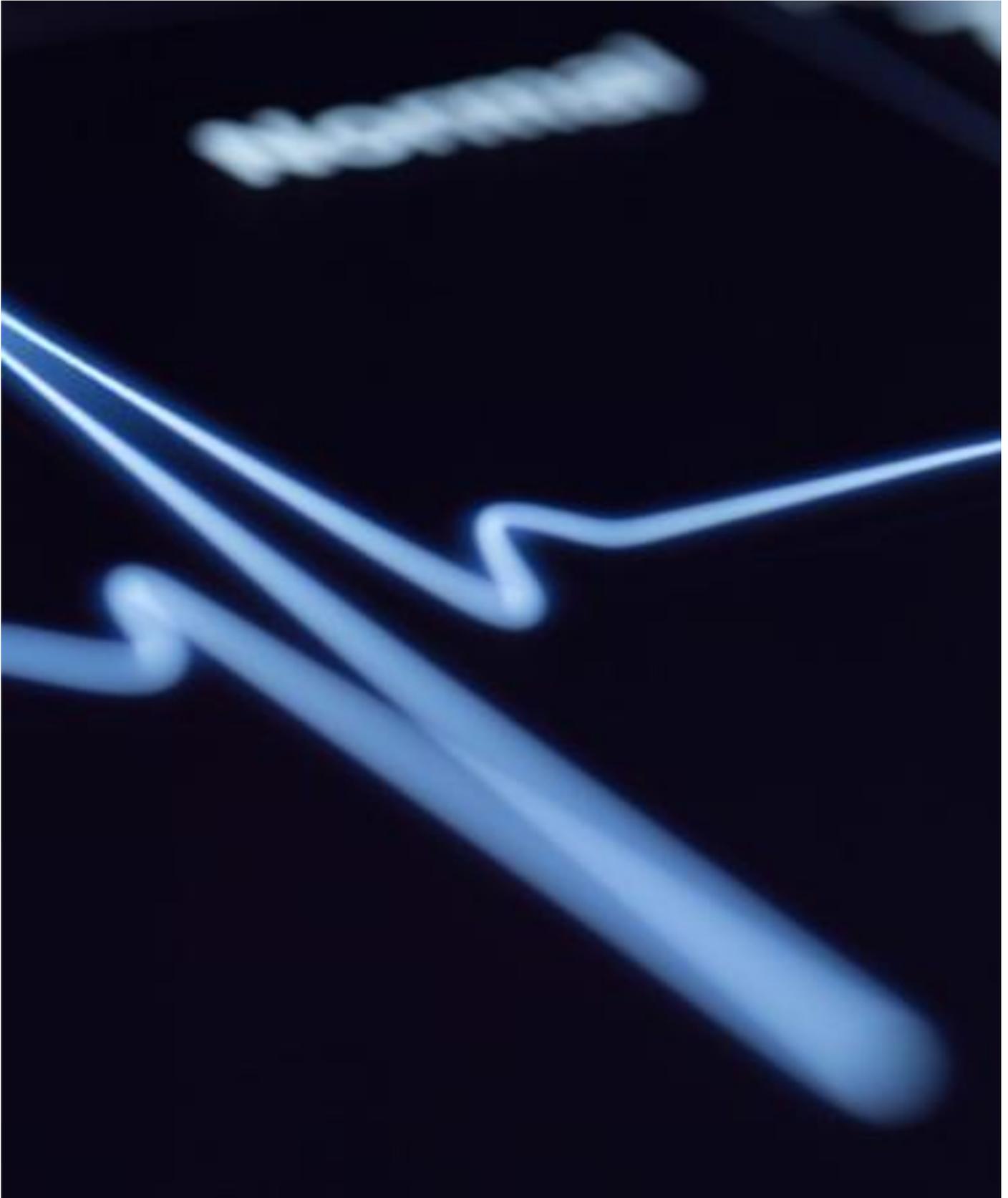

**A guide to GMC investigations
and fitness to practise
proceedings**



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Introduction

"Offers impressive regulatory strength as well as the resources to act on contentious issues."

Chambers UK, 2016, Healthcare

As a doctor, any complaint or concern which is raised by the General Medical Council can be confusing and stressful, particularly because the outcome may have an impact on your ability to earn a living. It is therefore crucial that you take specialist legal advice at an early stage in order to put you in the best possible position to respond to the allegation and to help you to navigate your way through the various stages of the disciplinary process.

Charles Russell Speechlys specialise in providing a full range of legal services to the healthcare sector. We have been representing healthcare professionals for over 50 years.

We have a dedicated team of solicitors who specialise in advising and representing people who are subject to fitness to practise proceedings. Our particular expertise in this area means that we are not only able to assist in relation to proceedings brought by the GMC, but we are also able to advise regarding associated issues which may be ongoing at the same time, such as investigations by the CQC; helping to protect your practice as well as you.

This guide is intended as an overview of the GMC's fitness to practise process, and we hope that it will be of use to any medical professional concerned about fitness to practise proceedings, or who wants to know more about how the GMC regulates. It deals with the most common questions that our clients ask us when they are facing an investigation. The figures in this guide are taken from the GMC's Annual Report 2015 (the most recent available at the time of writing) and the GMC's website.



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What is the GMC's role?

The GMC is the body responsible for registering and regulating all doctors (both NHS and private) in the United Kingdom, including all GPs and specialists. It does not regulate other healthcare professionals, as they have their own regulatory bodies.

The GMC has 281,138 registrants

As of August 2016, 281,138 doctors were registered with the GMC.

The GMC's primary statutory duty is to protect the public. In order to do this, its core functions are to:

- **“Decide which doctors are qualified to work in the UK, oversee UK medical education and training.**
- **Set the standards that doctors need to follow, and make sure that they continue to meet these standards throughout their careers.**
- **Take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.”**

From time to time, the GMC may have concerns regarding whether a doctor is practising safely and effectively. If it does, it may carry out a 'fitness to practise' investigation.

The GMC may start a fitness to practise investigation after receiving a complaint from someone who may have spotted a concern with a doctor, for example, a patient, another healthcare professional, NHS England, an inspector from the CQC, or the police.

Many doctors will never have to face a fitness to practise hearing, but investigations by the GMC are not uncommon.

In 2015, the GMC received 9,418 fitness to practise enquiries

Between 2010 and 2015, the number of fitness to practise complaints against doctors increased by 32%, although the number of complaints slightly decreased between 2014 and 2015.

In 2015, the GMC received 9,418 fitness to practise concerns.

The GMC says that it aims to conclude fitness to practise cases within 12 months, which it achieved in 92% of cases in 2015. However, this may take longer depending on the seriousness and complexity of the case, which are often those cases referred to a fitness to practise hearing..

How does the GMC investigate concerns?

Most concerns do not result in an MPTS hearing

There are several stages to a fitness to practise investigation, and an investigation may conclude and be closed at any one of these stages.

Just because a concern has been raised does not mean that the concern will end up being considered at a MPTS hearing. In fact, the number of referrals to the MPTS in 2015 represented only 3% of the number of initial complaints received by the GMC that year.

We have set out the main stages of an investigation in the flow chart below and will then look at each stage in more detail.



Stage 1 – Initial complaint

The GMC will carry out an initial review of the concern, to consider whether it should investigate further. For example, a concern may be raised which falls outside the criteria for taking action because it does not raise a question about a doctor's fitness to practise.

Over two thirds of concerns raised in 2015 fell outside the GMC's remit

The first you may hear of a GMC investigation may be when you receive a letter from a GMC caseworker informing you that an issue has been brought to their attention. That letter might not give any more information. It may simply state that the GMC is investigating a concern and will write to you again when it has investigated further.

If the GMC considers that the complaint is outside its remit, it will close its file without further action. This occurs in the vast majority of cases – in 2015, 6,426 of the complaints received by the GMC were concluded at this stage. That was over two thirds (68%) of the total number of concerns it considered that year.

When closing a case, the GMC may also refer the concern to a doctor's responsible officer or employer.

The GMC cites the following examples as cases which are normally closed without any investigation:

- minor motoring offences not involving drugs or alcohol
- a delay of less than six months in providing a medical report
- a minor non-clinical matter
- a complaint about the cost of private medical treatment

The GMC may also make enquiries at this stage, for example checking with an employer to see if a complaint is part of a pattern of concerns.

The GMC cites the following examples of cases which have been closed after making a preliminary enquiry:

- complaints about the quality of treatment received where there is no indication of any risk to the patient or that the doctor acted significantly below appropriate standards
- complaints about doctors' poor attitudes to patients, or failing to take their preferences into account

Stage 2 – Formal investigation

If the complaint, combined with the outcome of any enquiries, potentially raises a serious issue about a doctor's fitness to practise, the GMC's Investigation Team will begin a formal investigation.

Once a formal investigation has commenced, the GMC will send a letter to the doctor notifying them of the investigation, as explained below

The GMC's investigation may be wide-ranging and take some time. The Investigation Team may obtain expert reports, statements from witnesses and undertake an assessment of a doctor's health, performance or knowledge or English. Depending on your role, the GMC may ask you to provide documents such as clinical records or treatment plans, or they might ask someone else at your place of work to provide them.

Care should be taken when corresponding with the case investigator

As part of the investigation, the GMC may also ask you to answer questions. This is usually done in correspondence. Again, you should seek legal advice before answering any questions. Whilst the case investigator may explain that doctors have a duty to co-operate with formal inquiries and complaints procedures, careful thought must be given to replies.

Any letter asking you to answer questions should contain:

- A summary of the allegation and particulars of the allegation;
- Copies of the documents held by the GMC which relate to the allegation; and
- An invitation to respond in writing to the allegation and evidence obtained by the GMC.

Even though the GMC may have taken many months to conclude its investigation, you will be given only 28 days to respond.

At this stage you will have to consider whether to respond and, if so, what you should say. Care must be taken with any response you give and any representations or documents sent to the GMC on your behalf as these may be shown to the complainant for their comment.

You may be invited to a meeting with the GMC

You may also be invited, at this or at an earlier stage of the investigation, to a meeting with a case examiner where you will be informed of the allegations and evidence the GMC are seeking. You should seek legal advice at this stage if you have not already, and may wish to be accompanied at such a meeting.

You may need to consider whether steps should be taken to protect your business

If you own a practice either as an individual or in partnership, you will also need to consider at this stage whether steps should be taken to protect your business. You will also need to consider what steps to take if you are a shareholder in a company which owns a GMS or PMS contract

Stage 3 – Conclusion of investigation

At the end of the investigation, two case examiners (one medical and one non-medical) will then decide how to proceed considering the evidence obtained, including any representations made on behalf of the doctor.

The case examiners may:

- Take no further action and close the case;
- Give a letter of advice;
- Issue a warning;
- Agree undertakings with the doctor; or
- Refer the case to the a Fitness to Practise Panel .

64% of investigations concluded with no further action being taken in 2015

If the Registrar considers it may be appropriate to issue a warning or refer for a hearing, they will provide the doctor with details of the allegations and a copy of the evidence gathered and invite the doctor to submit representations.

In 2015, 64% of investigations considered by case examiners concluded with no further action being taken.

The case examiners must agree. If they cannot agree, a complaint will be referred to the Investigating Committee (“the IC”). The IC will also hear complaints if a warning is proposed but the doctor disputes the facts or requests such a hearing.

The IC may:

- Take no further action and close the case;
- Confirm that a warning may be issued; or
- Refer the case to the Medical Practitioners Tribunal Service for a hearing where new evidence has arisen during the hearing.

If the complaint is referred to the IC, a hearing will usually be scheduled. You will be provided with notice of the hearing and will be invited to attend. IC hearings are usually held in public and are similar in operation to full fitness to practise hearings as described below, although usually consist of only one stage and do not ordinarily involve additional witnesses.

The case examiners and the IC may also refer the matter to an Interim Orders Tribunal to decide whether to suspend or apply conditions on registration, if this is considered appropriate.

Stage 4 – The Medical Practitioners Tribunal

Case examiners can refer the case to the Medical Practitioners Tribunal Service (“MPTS”) for a fitness to practice hearing. Practically, this occurs only where the examiners consider that there is a realistic prospect of the facts establishing that a doctor’s fitness to practise is impaired to a degree justifying a restriction to their registration. Cases can also be referred to the MPTS by the IC.

11% of formal investigations concluded in 2015 were referred to the MPTS

In 2015, only 11% of cases which were considered by the case examiners were referred to the MPTS.

Before the final hearing takes place, formal allegations and documentary evidence will be sent to you by the GMC or its lawyers and a case management hearing will usually occur, which is often attended by telephone.

You will have to serve any documents and witness statements upon which you intend to rely at the hearing on the GMC before the hearing. There are time limits and formalities that apply to these procedures. Careful thought must be given to the preparation of your evidence because it may have a significant impact on the outcome.

99% of cases referred to an MPTS fitness to practise Tribunal in 2015 resulted in a hearing within nine months of referral.

The MPTS panel secretary (or ‘tribunal clerk’) will give formal notice of the date and time of the final hearing. Depending on the complexity of the case, the hearing may last several days or more.

You will have the opportunity to attend the hearing and ask questions

When the hearing takes place, the Tribunal will consider the allegations. You will have the opportunity to attend the hearing, ask questions of the GMC’s witnesses, give evidence, and address the Tribunal. Whilst it is possible to attend a formal hearing without a lawyer, it is recommended that you instruct an experienced lawyer who understands medical practice and will know what questions to ask, what points should be drawn to the Tribunal’s attention and the best way to present your case.

The Interim Orders Tribunal

At any stage of the proceedings, the case may be referred to the Interim Orders Tribunal for interim steps to be taken to restrict the doctor's ability to practise before the end of the final hearing. This referral could be made by the case examiners or Investigating Committee.

No order was made in 22% of IOT hearings

The process of the hearing will involve the IOT inviting submissions from the GMC and then the doctor's representatives. After hearing the submissions, the IOT will withdraw to make its decision and will then return to announce what it has decided. The default position is that IOT hearings are held in private.

The IOT does not investigate the allegations or conduct a fact finding exercise, but will make an order restricting registration where it believes this is necessary to protect the public or is otherwise in the interests of either the public or the individual themselves.

522 IOT hearings were heard in 2015. In 22% of these cases, no order affecting registration was made.

An interim order will involve a doctor being suspended from practice or having conditions imposed on their registration until the final hearing has ended (for a maximum of 18 months). The IOT must normally review an interim order every six months.

IOT hearings are usually held in private

If you receive a notification from the GMC that they are going to apply for an interim order you need to take urgent legal advice as you may only receive a few days' notice before the application is heard. In 2015, all 239 IOT hearings commenced within three weeks of referral.

Following the hearing, the matter will continue through the remainder of the fitness to practise process as normal.

Three stages of an MPTS fitness to practise hearing

The MPTS fitness to practise Tribunal will consider the allegations in three stages. These are set out below.

At each stage you will have the opportunity to address the Tribunal. It will then consider its decision in relation to each stage in private. It can take some time between stages for the Tribunal to make its decision.

If the Tribunal has ordered the imposition of conditions, suspension or removal, after announcing its decision at the sanction stage (if the case is not concluded earlier), the Tribunal will revoke any existing interim order and decide whether to impose an order of immediate suspension or conditions, after hearing submissions from both parties. This is because sanctions will otherwise take effect only after the 28 day appeal period has expired.

Findings of fact

Having regard to the evidence, which, if any, of the facts alleged are found proved?

Impairment

Do the facts proved amount to serious misconduct, and does the identified failure or breach impair the doctor's fitness to practise?

Sanction

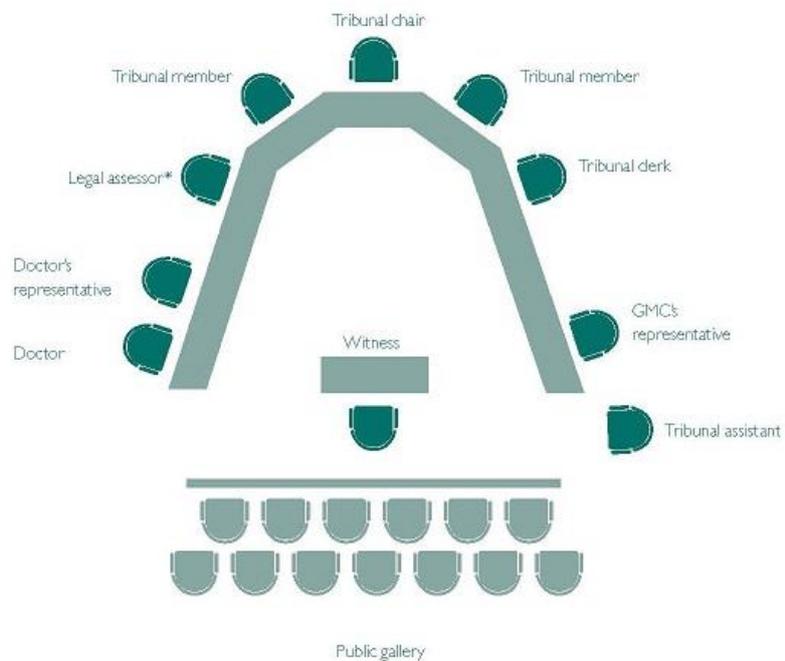
If fitness to practise is impaired, what sanction should be imposed?

What does the hearing room look like?

The MPTS Tribunal usually has between three and five members: a Chair, and at least one doctor member and one lay member. The Chair may be legally qualified, but if he or she is not, a legal assessor will also be present to assist the Tribunal on matters of law and procedure.

The Tribunal will hear evidence and submissions in the hearing room. The hearings usually take place in public (unless the allegations are based on ill health) and may be reported.

The hearing room is usually arranged as set out below



* In some hearings there will be a legally qualified chair, instead of a legal assessor.

<http://www.mpts-uk.org/2926.asp>

What sanction can the Tribunal impose at a Fitness to Practice hearing?

The Panel has a range of sanctions available to it

The Tribunal has a range of sanctions available to it. When considering sanction, the Tribunal must impose only the minimum sanction which is necessary to address the findings that it has reached. A Tribunal may do one of the following (statistics relate to final hearings in 2015):

- Take no further action. This was the outcome in 16% of final hearings.
- Issue a warning where it finds that fitness to practise is not impaired, but there is nonetheless cause for concern. This was the outcome in only 2.5% of hearings.
- Accept undertakings by the doctor. .
- Impose conditions upon the doctor's registration for up to three years. The conditions should be designed to address the failings that have been identified, be for a fixed period and may be reviewed at the end of that period at a review hearing, where they can be renewed for a further three years. Conditions were imposed in 10% of final hearings.
- Impose a period of suspension. The suspension must be for a fixed period of up to 12 months, and will usually be reviewed at a hearing before the end of that period. The Tribunal directed that the doctor should be suspended from practice in 40% of cases.
- Erasure from the register. A doctor whose name is erased from the register can apply to be restored once a period of five years has expired. Erasure was the eventual outcome in 30% of hearings.

Where a party has acted unreasonably, the Panel can order the GMC to pay some or all of a doctor's legal costs, or it can order that a doctor pays some or all of the GMC's legal costs. However, in practice, costs orders are rarely made.

There is a right of appeal against a Panel decision

There is a right of appeal against a Tribunal decision. The appeal must be made within 28 days of the decision, so if you intend to appeal, you must act quickly. The GMC also has the power to make an appeal within 28 days where it considers that the decision of the fitness to practise Tribunal is not sufficient for the protection of the public.

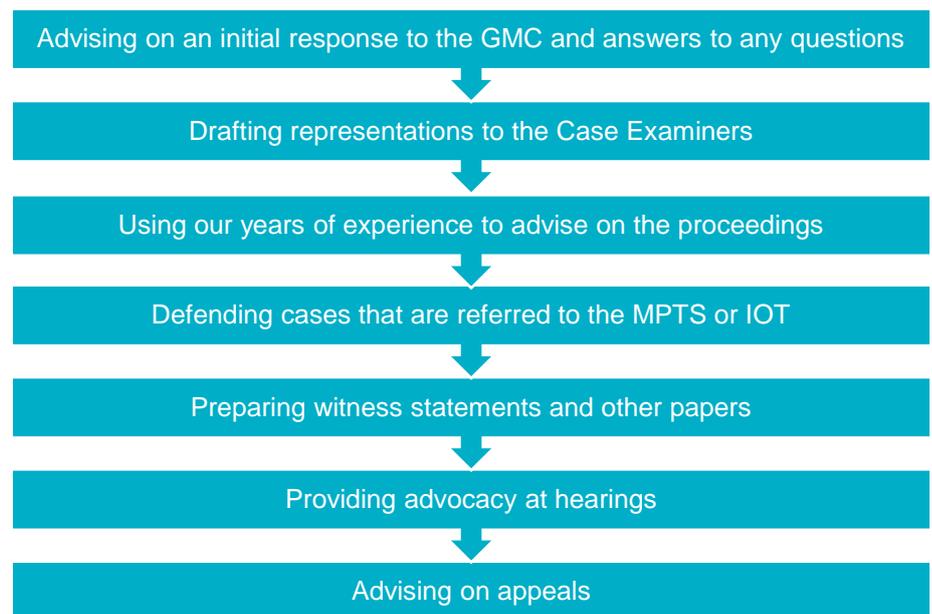
A body called the Professional Standards Authority also has the power to appeal to the High Court against a decision of the Tribunal which it considers to be too lenient.

Conclusion

We won't charge you for an initial call to discuss your case

If there is anything raised in this Guide that you would like to discuss, or if you are currently the subject of an investigation and would like to speak to one of our team then please do not hesitate to contact us. We won't charge for the call. We will usually give you a written estimate of fees in advance of doing any work for you.

We would typically assist doctors with:



Having many years' experience with investigations, we can advise you during any of the above stages on the process and can offer time and cost-effective solutions.

Our team



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"Noel Wardle is described as "very approachable and commercial and his judgement is clearly trusted by clients." He handles some of the team's most complex contentious instructions, including judicial reviews and disciplinary hearings."

Chambers UK, 2016, Healthcare



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Chambers UK, 2016, Professional Discipline



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"Rachel Warren has 'impeccable judgement and is worth listening to in terms of judgement. She is a delight to work with'."

Chambers UK, 2014, Professional Discipline



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