

Justice Committee
Apologies (Scotland) Bill

Written submission from the General Medical Council

1 The General Medical Council (GMC) is an independent organisation that helps to protect patients and improve medical education and practice across the UK.

- We decide which doctors are qualified to work here and we oversee UK medical education and training.
- We set the standards that doctors need to follow, and make sure that they continue to meet these standards throughout their careers.
- We take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk.

2 Every patient should receive a high standard of care. Our role is to help achieve that by working closely with doctors, their employers and patients, to make sure that the trust patients have in their doctors is fully justified.

Setting the standards for doctors

3 Our standards define what makes a good doctor by setting out the professional values, knowledge, skills and behaviours required of all doctors working in the UK. We consult with a wide range of people, including patients, doctors, employers and educators to develop our standards and guidance.

4 The core professional standards expected of all doctors are set out in *Good medical practice* which covers fundamental aspects of a doctor's role, including working in partnership with patients and treating them with respect. We provide detailed guidance on ethical principles that most doctors will use every day, such as consent and confidentiality, and specific guidance on a range of areas such as raising concerns about patient safety, doctors' child protection responsibilities, and providing care for people who are dying. We also develop case scenarios and tools that help apply the principles in their practice.

5 Our professional standards are all consistent with the laws of the four countries of the United Kingdom.

6 Serious or persistent failure to follow our guidance will put a doctor's registration at risk.

Investigating and acting on concerns about doctors

7 When a serious concern is raised about a doctor's behaviour, health or performance, we investigate to see if the doctor is putting the safety of patients, or the public's confidence in doctors, at risk.

8 We collect and review evidence, such as witness statements and reports from experts in clinical matters. Following the investigation, we may issue advice or a

warning to the doctor, or we may agree with the doctor that he or she will restrict their practice, retrain or work under supervision.

9 In some cases, we will refer the case to the Medical Practitioners Tribunal Service (MPTS) for a hearing. When action is needed to protect the public or to maintain public confidence in doctors, an MPTS panel can suspend a doctor's right to work, or restrict their practice – for example by requiring them to work under supervision, or undergo further training. If necessary, a panel can also suspend or restrict a doctor's right to work whilst the investigation is conducted.

10 In a few very serious cases, a doctor may be removed from the medical register – often this is described as being 'struck off' the register. This means they are no longer able to work as a doctor in the UK. We always inform other regulators around the world when this has happened.

Helping to raise standards through revalidation

11 It is important that every doctor practising in the UK is competent and that their knowledge and skills are up to date. We work with employers to make sure every doctor has an annual check or appraisal. Every five years, we ask for formal confirmation that each doctor is following the standards set out in *Good medical practice* – this covers knowledge, skills and performance; safety and quality; communications, partnership and teamwork; and maintaining trust. The system of checks is called revalidation. It gives doctors the opportunity to reflect on their practice, including feedback from colleagues and patients. Over time, revalidation should help to drive up the standards of care that doctors provide, by helping to identify problems earlier and by helping all doctors to reflect on their practice, understand what they do well and how they can improve.

The role of the Medical Practitioners Tribunal Service

12 The Medical Practitioners Tribunal Service (MPTS) is part of the GMC. However, it operates separately from the rest of the GMC's work.

13 The MPTS provides an adjudication service, which means it hears cases against doctors whose fitness to practise has been called into question by the GMC.

14 The MPTS has a duty to protect patients by making independent decisions about a doctor's fitness to practise, measured against the professional standards set by the GMC.

15 When action is needed to protect patients or to maintain public confidence in doctors, and MPTS panel can suspend a doctor's right to work, or restrict his or her practice – for example by requiring the m to work under supervision, or undergo further training. In the most serious cases the MPTS panel can remove a doctor from the register.

16 If necessary, an MPTS panel can also suspend or restrict a doctor's practice while the GMC investigates concerns.

Public confidence in the medical profession

17 It is important that the public's confidence in the medical profession is maintained and that patients can trust their doctors with their lives and health.

18 *Good medical practice* outlines the actions doctors must take to maintain patients' trust in the medical profession. Paragraph 55 states:

19 You must be open and honest with patients if things go wrong. If a patient under your care has suffered harm or distress, you should:

- a. put matters right (if possible)
- b. offer an apology
- c. explain fully and promptly what has happened and the likely short-term and long-term effects

20 In our 2014 *GMC Perceptions Study*, patients and public displayed high levels of confidence in the medical profession. 88% stated they had confidence in the profession, while 39% reported they were *very* confident. This mirrors the findings of the Ipsos MORI annual 'Trust in Professionals' poll (2014), wherein 90% of British adults stated that they trusted doctors to tell the truth.

The role of apologies in Fitness to Practise investigations

21 A doctor's apology does not of itself mean that they are admitting legal liability for what has happened or for breach of standard set out in section 2 of the *Compensation Act 2006* (England and Wales).

22 In 2014 we conducted a review of our sanctions guidance. This has subsequently been updated and will be published later this year.

23 When a MPTS fitness to practise panel considers a case they will take into account whether a doctor has insight. We define insight as where a doctor is able with hindsight to stand back and accept that they should have behaved differently, and take steps to address their failings. We believe panels should remove doctors from the medical register if they have a persistent lack of insight into the seriousness of their actions or the consequences. An apology may be evidence of insight, but a range of factors can influence whether, or how, a doctor apologises – such as fear of legal action and personal circumstances (e.g. ill health).

24 As a result of our consultation, we have strengthened our guidance for panels on how to assess whether a doctor has insight, and the extent to which an apology is evidence of insight. In principle, we believe that where a patient has been harmed as a result of a doctor's actions or omissions, a doctor's failure to apologise is evidence that they lack insight. Conversely, where there is evidence that a doctor has apologised and has demonstrated insight, the panel may decide that the doctor does not represent a risk to patient safety or the public confidence in the medical profession, and therefore decide to take more lenient action.

The role of apologies in revalidation

25 When doctors are preparing for appraisal and collecting supporting information for revalidation, they should review their practice and consider how the supporting information can demonstrate that they are continuing to meet the principles and values set out in *Good medical practice*. Doctors are expected to collect and review information on significant events (any unintended or unexpected event, which could or did lead to harm of one or more patients).

26 During appraisal, the appraiser will be interested in what doctors did with the information they collected and their reflections on that information, not simply that they collected it and maintained it in a portfolio. The appraiser will want to know what the doctor thinks about the supporting information says about their practice and how they intend to develop or modify their practice as a result of that reflection.

27 Specifically with regards to significant events, appraisers will be interested in any actions the doctor took or any changes they implemented to prevent such events or incidents happening again.

Candour guidance

28 As part of our response to the inquiry chaired by Sir Robert Francis QC into the failures of care at Mid Staffordshire NHS Foundation Trust, we have committed to making explicitly clear the responsibility which all doctors have to be open, honest and transparent when things go wrong with the care and treatment they provide.

29 Between November 2014 and January 2015 we ran a consultation with the Nursing and Midwifery Council (NMC) on new joint explanatory guidance for doctors, nurses and midwives. We will shortly be publishing this new guidance, which will provide key health professionals with more information about how they should comply with their professional duty to be open and honest when they make mistakes.

30 Our joint guidance makes clear that apologising to a patient does not mean that you are admitting legal liability for what has happened. This is set out in the Compensation Act 2006 (England and Wales) and the NHS Litigation Authority also advises that saying sorry is the right thing to do. In addition, a fitness to practise panel may view an apology as evidence of insight. We also do not expect doctors to take personal responsibility when apologising for something going on that was not their fault (such as system errors or a colleague's mistake). But the patient has a right to receive an apology from the most appropriate team member, regardless of who or what may be responsible for what has happened.

Working with doctors

31 An important focus for the GMC is to work more closely with doctors as well as patients to improve patient safety and the public's confidence in the medical profession. This is reflected within our 2014-17 Corporate Strategy; our five strategic aims include:

- Improve the level of engagement and efficiency in the handling of complaints and concerns about patient safety.

- We will work with local partners to clarify where concerns should be tackled at the local level and when it is appropriate to involve us. This will help ensure that, where possible, concerns are addressed on the ground.
- Work more closely with doctors, medical students and patients on the frontline of care.
 - We will have more contact with doctors, medical students and patients so that we have a better understanding of their lives and work. More of them will be aware of our guidance and use it to help them maintain standards of patient care.

32 It is important that doctors have confidence in their regulator. Our Perceptions study demonstrated that 75% of doctors said they were confident in their regulator, a figure which is similar to the 2014 NatCen report (79%).

33 Our office in Scotland is working closely with doctors in the country with the aim of meeting these strategic aims; we believe working with doctors will help raise understanding of professional standards, help further improve practise, and help maintain the public's confidence in the medical profession. As part of our commitment to this, we have recruited a Liaison Advisor who will be in post from July 2015 and will be working closely with doctors, educators, trainees and patient and public members across Scotland.

34 We understand that fitness to practise investigations can be stressful for doctors. The GMC works with doctors going through fitness to practise investigations to offer them the support they need. We have commissioned BMA Doctors for Doctors to provide dedicated, confidential emotional support to any doctor involved in a fitness to practise case who would like it. The service is free of charge.

General Medical Council
22 June 2015