The **GMC** arranges for a **Performance Assessment** of a doctor’s clinical practice to be carried out where there are concerns that a doctor may be under-performing or have caused accidental harm to a number of patients as a result of unrecognised diminishing competence. The findings of a Performance Assessment, where there is criticism of a doctor’s competence and insight, may lead the GMC to lay formal allegations of *seriously deficient performance*. A doctor who has been found to be under-performing will need to undertake remedial training, so as to demonstrate that their current fitness to practise is not impaired by reason of their seriously deficient performance.

A number of doctors each year undergo a performance Assessment. The assessment is usually conducted by two doctors and a lay person. One of the assessors will usually be drawn from a pool of doctors within the speciality of the doctor under scrutiny. The assessment will be wide-ranging, and not merely concentrate on the “problem areas”. Certain individuals may be invited to comment on the doctor’s practice and such evidence may then be incorporated into the Performance Assessment report, which identifies whether the doctor has any areas of inadequate competence or performance, whether historic or recent.

Some doctors feel that the assessment or a discrete element of the assessment was unfairly conducted or had an inadequate focus, lacking in some way. It is possible to raise challenges about the fairness of a Performance Assessment, in certain circumstances:  *Naguib v GMC [2011] EWHC 366 (Admin)*. It is fairly common for a doctor to challenge certain findings of
the performance assessors, during a Fitness to Practise hearing.

Doctors Defence Service provides legal advice to doctors who are going through the Performance Assessment process, or who wish to challenge the findings of a performance Assessment, or a particular element of a performance Assessment. Doctors Defence Service also advises doctors on legal remedies that may be available to them. On occasions, doctors feel that they will be stigmatised if they are found to be underperforming and fear for their future. Doctors Defence Service lawyers can guide doctors on how to minimise the impact of an adverse finding, and on the remediative steps that could be quickly taken to overcome any weaknesses in applied practise, skill or knowledge.

A doctor who declines to undergo a Performance Assessment risks being suspended. At the **GMC Investigatory Stage**, a doctor might be invited to undergo a Performance Assessment because of the nature of the complaint. A doctor who refuses will be referred to an Interim Orders Hearing for, and many doctors are suspended where they continue to refuse to undergo the Performance Assessment. Moreover, where the GMC has been scrutinising a doctor’s practice over a period of time and the doctor has entered into undertakings that they will agree to a **Performance Assessment**, or reassessment, and the doctor later declines to be assessed, in breach of the undertaking, a doctor may be suspended by a Fitness to Practise panel. A refusal to undergo a performance Assessment has been found to constitute professional misconduct, which will be sufficient to make a finding that the doctor’s fitness to practise is impaired: Depner v General Medical Council (GMC) [2012] EWHC (Admin).

A doctor who continually refuses to undergo Performance Assessments may be legitimately struck off by a GMC Fitness to Practise panel: Uruakpa v General Medical Council (GMC) [2012] EWHC (Admin) (10/5/12). See also an earlier appeal in which
the same doctor was unable to overturn an interim suspension for non-compliance with the performance assessment process: Uruakpa v General Medical Council [2010] EWHC 1302 (Admin) (May 2010). The periods of suspension on an interim basis had been lengthy, when one looks at the case history: General Medical Council (GMC) v Uruakpa [2007] EWHC 2057 (Admin) (July 2007), and General Medical Council (GMC) v Uruakpa [2007] EWHC 1454 (Admin) (April 2007).

Other Appeal Cases concerning GMC Performance Assessments:

In Fahad Ali v General Medical Council [2017] Lawtel (unreported) – a doctor who refused to undergo a performance assessment appealed a MPTS FTP tribunal’s decision to impose conditions of practice. Appeal dismissed. The appeal judge noted that the Medical Act was silent on the procedural route to appeal, and determined that CPR Part 52.21(3) applied. (January 2017)

In Sultan v The General Medical Council [2013] EWHC 1518 (Admin) the appeal court upheld an erasure order. The doctor had undergone a performance assessment and was found to have fallen below the threshold expected of a doctor in a number of domains. He also faced allegations of misconduct for breaches of confidentiality. (May 2013)

In Krippendorf v. The General Medical Council (General Medical Council) [2000] UKPC 45 – based on the then legislation, the Privy Council considered that the approach adopted by the GMC toward the doctor was flawed. the procedure adopted had been unfair to the doctor. The evidence of the doctor’s on the job record of clinical practice rather than a hypothetical performance connected with an assessment of hypothetical clinical or other cases. (November 2000)

See also Qureshi v GMC PC [2003] UKHL 56 (September 2003) in which it was opined that: ‘some skills are essential to the practice of virtually any branch of medicine and evidence of deficiencies in these respects in the practice of one form of
medicine may suggest that there have been similar deficiencies in the practice of other forms as well. Thus the nature of the complaint and the other materials considered by the [GMC] screener may suggest to him that the practitioner’s actual past performance in another branch of medicine may also have been seriously deficient. If so, their Lordships do not think that Krippendorf’s case prevents an assessment of performance in that other branch. Such an assessment may be particularly useful to the Committee of Professional Performance* in a case such as the present in which the practitioner declares an intention to specialise in that other branch.’

*The CPP process has since been replaced by the current FTP process, pursuant to the Medical Act 1983 (as amended). See also the GMC website for an updated (consolidated) version: [GMC’s Medical Act 1983 (with amendments)].

If you are a doctor who is going through or faces the prospect of a Performance Assessment and you seek legal advice or guidance about what you can expect, call us to speak to one of our specialist lawyers, on: 0800 10 88 739