

Listing reconvened hearings

Introduction

1. The MPTS expects that the case management (listings) process will ensure that the time allocated to a hearing will be sufficient to conclude the case. It should therefore be unnecessary (save in exceptional cases) for hearings to go part heard. However, whilst every effort is made to ensure that hearings are listed to conclude within one session, there will be occasions when it is necessary for a Medical Practitioners Tribunal ('Tribunal') to adjourn a case part heard. While this necessarily results in the final determination of the allegation of impaired fitness to practise against the practitioner being delayed, it is important, and in the interests of justice, that any delay is kept to a minimum. Unnecessary delay^{*} can be unfair not only to the practitioner, but to the complainant and to witnesses, and is contrary to the public interest. The aim of this guidance is to ensure a fair balance is met between concluding hearings at the earliest stage whilst balancing fairness to the parties.
2. The MPTS has reviewed the manner in which such cases are re-listed and has determined that the following guidelines should be applied so that any delay is confined to the minimum necessary in the circumstances of the particular case, taking into account points raised by the Court of Appeal.[†]

Identifying hearing dates

3. Where a case adjourns part heard, the expectation is that dates to reconvene will typically be set before parties are released and the hearing is adjourned. Where it is late in the evening or relevant individuals cannot be contacted this may not always be possible, therefore consideration of whether a hearing is on schedule should be kept under review and discussions about reconvened dates should be raised at the earliest

^{*} Unnecessary delay can be considered delay due to unavailability where other commitments should reasonably be expected to take lesser priority, where alternative individuals/ systems could facilitate an earlier date or a delay which could generally be considered excessive.

[†] In *Southall v GMC* [2010] EWCA Civ 407, the Court of Appeal indicated that a delay of a year when a hearing was part-heard was "utterly unacceptable and should not be permitted to happen again" [para 65]. The extent of the delay in that case was exceptional but the factors which contributed to the delay, in particular availability of Tribunal members and counsel, are common to many part heard cases.

stage. Arranging dates after the hearing is not effective and should only be carried out in exceptional circumstances.

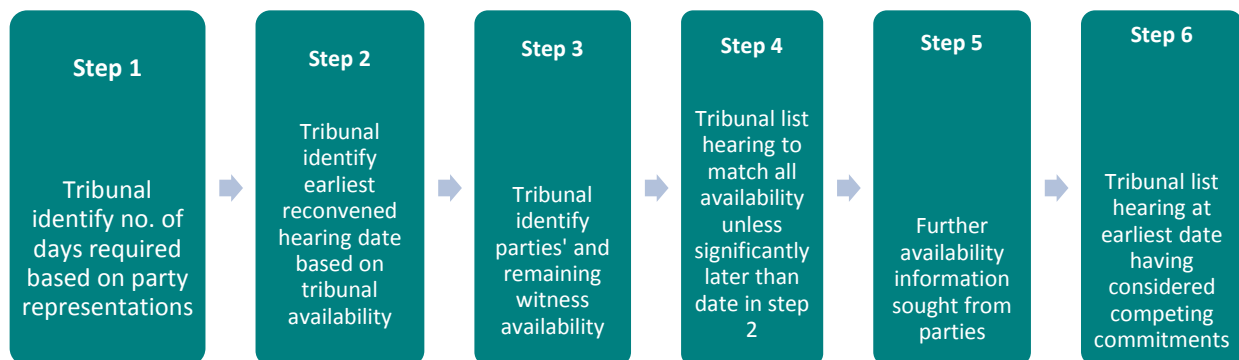
4. If, during the course of a hearing, it appears likely that an adjournment (for any reason) will be required, at the earliest stage the Tribunal Members should ascertain their own availability and ask the parties to make enquiries about their availability (including both practitioner and legal representatives as relevant) and that of any relevant witness who might have to attend the reconvened hearing. The Tribunal Clerk will support the Tribunal to enquire directly with both parties [through any instructing solicitor where present] about availability of Counsel and witnesses.
5. Potential dates should be identified in the following stages, and a record maintained by the Tribunal.
6. The Tribunal should consider the reasons why the hearing has had to adjourn and any relevant directions it has made regarding the adjournment period. Following discussions with the parties, the Tribunal must identify the number of days the hearing will need to reconvene. The Tribunal should then identify and note the earliest date upon which the hearing could reconvene. This date will be the starting point for determining the reconvened hearing date.
7. The Tribunal should ascertain the availability during the working week (Monday to Friday) of the Tribunal Members initially. Tribunal Members should ensure that priority is given to part heard cases and other external professional commitments may need to be reviewed in order to ensure the conclusion of the hearing at the earliest possible stage.
8. Availability of the parties and any remaining witnesses should then be identified.
9. The earliest date for reconvening based on the reasons for adjournment and any directions should be the starting point and the Tribunal should then record the earliest dates upon which the Tribunal, parties, and relevant witnesses can attend. Where dates identified in this manner are not significantly later* than the earliest date identified above, the Tribunal should re-list the hearing to reconvene on those dates. The Tribunal should consider, if necessary, the possibility of reconvening on more than one occasion if this will facilitate the hearing being concluded more promptly.
10. If the dates identified in paragraph 9 above are significantly later than the earliest date identified, the Tribunal must undertake a more detailed consideration of the nature of the competing commitments. All those (including Tribunal Members) who have indicated their unavailability on a

* Significantly later is likely to be more than two calendar months, subject to the particular facts of the case and the length of the reconvened hearing.

particular date should be asked to provide further detail about the nature of their competing commitment.

11. The Tribunal must then decide, taking account of the details provided, whether the hearing should reconvene at an earlier date, notwithstanding the competing commitments identified. In each case the Tribunal should identify and consider any prejudice to the doctor, witnesses and/or the public interest if the hearing is listed to reconvene on a particular date and, having balanced these interests, identify the appropriate date for the hearing to reconvene.

12. The process the Tribunal should follow is summarised below:



13. While the Tribunal's decision as to the appropriate reconvened listing date in each case will be dependent on the circumstances of each individual case, the following general principles should be applied:

- a. Listing of the part heard hearing should typically take priority over other professional commitments a Tribunal Member or legal representative has.
- b. It is recognised that other previously part heard cases will automatically take priority when identifying dates to reconvene.
- c. The Tribunal should not generally delay hearings in order to accommodate competing professional commitments of the parties' legal representatives. Parties' legal representatives should give careful consideration on when to prioritise the part heard case over other professional commitments. Where it would be reasonable [to all parties in each case] to hand back instructions or arrange for alternative representation, parties' legal representatives should consider such options if it could enable the hearing to reconvene more promptly.

The Guidance of the Bar Council on a clash of cases* may be helpful in this respect but the Tribunal will be expected to consider the specific facts of the clash.

- d. In the event that a legal representative informs the Tribunal that he or she is unable to give priority to the part heard hearing if listed on a particular date, the Tribunal must consider whether any prejudice is likely to be caused to the party by a change of legal representation and, if so, whether that prejudice outweighs prejudice to the other parties, witnesses and/or public interest as a result of the additional delay. The doctor's needs must be carefully balanced to ensure fairness to proceedings. Consideration should be given to the facts of the case and the stage of the adjournment.
- e. The extent of any additional delay if priority is to be given to any particular competing commitment must be assessed. The longer the period of additional delay, the less likely it is that the competing commitment should be prioritised.
- f. Where applicable, the availability of the Legal Assessor (LA) is not a consideration as there is no general requirement for the same LA to sit. In exceptional circumstances (eg the LA has already provided unusual and/or very complex legal advice) it may be agreed by Tribunal Members and parties that the same LA should be retained. In this case, the LA will be expected to follow the same principles as the Tribunal and parties to secure the earliest possible reconvened hearing date.
- g. Prejudice caused to a doctor who is subject to an interim order suspending or imposing conditions on his registration is highly relevant and in many cases will be an overriding consideration.
- h. Where a hearing might be further delayed as a result of a witness being unable to attend the hearing in person on any particular date, consideration should be given, further to submissions by the parties, as to whether the witness could give evidence by video-link or telephone in order to accommodate other commitments or where the evidence of that witness could be appropriately taken on another date without impeding the hearing process. If appropriate, case manager directions can be sought to facilitate outstanding witness evidence.
- i. In all but exceptional cases (eg where the extent of any additional delay is negligible) the hearing should not be delayed to take account of room availability. However, acceptance of the reconvened dates

* The General Council of the Bar "[Clash of cases and conducting two cases in court simultaneously](#)" good practice suggestions. See also The Bar Standards Board Handbook and The Bar Standards Board Handbook Guidance on Clash of Hearing Dates (listings).

must be confirmed by MPTS Listings before the reconvened dates are considered final.

14. In the event that detailed consideration of the nature of competing commitments fails to identify a reconvened hearing date within a timescale which the Tribunal considers to be appropriate, the Tribunal should consider whether there are any alternative means of securing an earlier date. In such truly exceptional circumstances the Tribunal can consider whether the case might be listed at the weekend, where there is agreement with all parties. All weekend sitting requests must be agreed by the MPTS and supported by a record of the consideration of weekday sitting dates as outlined above and will only be approved in exceptional circumstances.
15. Where availability of Tribunal Members presents an obstacle to listing, in exceptional circumstances and in the interests of justice, it might be appropriate for a single member of the Tribunal to be substituted, or for the hearing to recommence in front of a fresh Tribunal.*

* The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules SI 2015/1965 Note R (On the Application of Michalak) v General Medical Council [2011] EWHC2307 (Admin)