

# Guidance on drawing adverse inferences in medical practitioners tribunal hearings

## Purpose

1. This guidance is intended to assist tribunals in deciding whether it is appropriate to draw an adverse inference during a medical practitioners tribunal (MPT) hearing from the failure of a doctor to give evidence or to attend the hearing.
2. It does not cover adverse inferences which can apply where a party has failed to comply with a Rule or case management direction. In those circumstances, tribunals should refer to the [Guidance for medical practitioners tribunals on case management and exercising powers under Rule 16A](#).

## What is an inference?

3. An inference is a conclusion that a tribunal reaches by a process of reasoning (including drawing on common experience) from primary facts, ie facts which the tribunal has accepted on the basis of documentary or witness evidence. As a general rule, a tribunal may draw such inferences as it considers appropriate from the primary facts.
4. Examples of drawing inferences from primary facts include:
  - a. Having accepted witness evidence regarding features of a doctor's actions and statements made during an intimate examination, a tribunal draws the inference that the doctor's actions were sexually motivated.
  - b. Having accepted documentary evidence regarding the risks of surgery recorded on a patient's consent form, a tribunal draws the inference that risks not recorded did not form part of discussion with the patient.

## Adverse inferences

5. An adverse inference is where, because of the absence of certain evidence, a conclusion is reached which is to the detriment of, or unfavourable to, the case of the party which could have provided that evidence. For example, where a doctor chooses not to give evidence or to provide relevant documents in answer to an allegation made against them, an adverse inference may be drawn which would be unfavourable to the doctor's defence.
6. When determining allegations during a medical practitioners tribunal hearing, a tribunal may draw adverse inferences from:
  - ▶ the failure of a doctor to attend the hearing\* and / or
  - ▶ the failure of a doctor to give evidence or answer a particular question<sup>†</sup> ('provide relevant evidence')
7. Where the general principles below apply, it is open to the tribunal to draw an adverse inference that a doctor who fails to attend the hearing or to provide relevant evidence has no innocent explanation for some, or all, of the primary facts alleged against them.
8. If a tribunal does decide to draw an adverse inference, it will form only one part of the overall evidential picture to be considered by the tribunal. An adverse inference alone cannot amount to determinative proof of an allegation without other evidence.

## General principles

9. The tribunal's decision whether to draw an adverse inference will depend on the facts of the individual case.
10. An adverse inference should not be drawn unless:

\* *Kearsey v NMC [2016] EWHC 1603 (Admin); Wiszniewski v Central Manchester Health Authority [1997] PIQR 324*

† *Wiszniewski v Central Manchester Health Authority [1997] PIQR 324; R (Kuzmin) v GMC [2019] EWHC 2129 (Admin), General Medical Council v Udoe [2021] EWHC 1511 (Admin)*

- a. A *prima facie* case against the doctor has been established. This means that the GMC has presented sufficient evidence to establish the relevant fact(s) unless it / they are disproved or rebutted: the fact a doctor or their representative does not accept that there is a *prima facie* case is not a sufficient reason for them not attending the hearing, giving evidence or providing a witness statement.
  - b. The doctor has been given appropriate notice and warning that, if they do not attend and / or provide relevant evidence, an adverse inference may be drawn. A letter sent to the doctor in advance of the hearing will usually be sufficient. However, it is open to the tribunal to repeat or reiterate the warning during the hearing if the doctor attends.
  - c. The doctor has been given an opportunity to attend and / or provide relevant evidence or explain why it would not be reasonable for them to do so. Where a doctor does not attend, valid proof of service of the Notice of Allegation and Notice of Hearing will usually be considered to provide sufficient opportunity to attend or explain why it would not be reasonable for them to do so. Where the doctor is present or represented at the hearing, is invited to give evidence and declines, this will usually be considered to provide a sufficient opportunity to provide relevant evidence or explain why it would not be reasonable for them to do so.
  - d. The tribunal finds there is no reasonable explanation for the doctor not to attend and / or provide relevant evidence. If either no explanation or no reasonable explanation on behalf of the doctor is provided, the tribunal should not speculate as to any possible reasonable explanation.
  - e. There are no other circumstances specific to the case which would make it unfair to draw an adverse inference. For example, where it is evident from the information available to the tribunal that a doctor has a health condition that impacts on their ability to attend a hearing (with or without reasonable adjustments), it may be unfair to draw an adverse inference from the doctor's non-attendance.
11. Where information is available to the tribunal which suggests that cultural or contextual factors are likely to be relevant to a doctor's decision not to attend the hearing or provide relevant evidence, the tribunal should take those factors into account.

## The tribunal's decision

### Failure of a doctor to attend the hearing

12. Where a doctor fails to attend the hearing and the tribunal comes to make its determination on the facts, the tribunal may wish to consider whether to draw an adverse inference, depending on the totality of the evidence.
13. Having considered the principles set out above, if the tribunal concludes it will draw an adverse inference from the doctor's failure to attend, it should make clear its reasons.

### Failure of a doctor to provide relevant evidence

14. Where a doctor is present and / or represented at the hearing and the tribunal has considered the principles set out above, the tribunal should make clear its decision, and the reasons for it, that either:
  - a. it would not be appropriate to draw an adverse inference from the doctor's failure to provide relevant evidence; or
  - b. it may be appropriate to draw an adverse inference from the doctor's failure to provide relevant evidence. In doing so, the tribunal should make clear that it is not obliged to draw an adverse inference and the final decision as to whether it will draw such an inference will depend on the totality of the evidence when the tribunal comes to make its determination on the facts.
15. If the tribunal concludes that it may be appropriate to draw an adverse inference and the doctor is present, the doctor should be given a further opportunity to provide relevant evidence.

### Drawing an adverse inference

16. Where a tribunal concludes that it will draw an adverse inference from a doctor's failure to attend the hearing and / or provide relevant evidence, the tribunal should make clear in its determination on the facts what adverse inference has been drawn and why.
17. It is for the tribunal to decide what weight to attach to the adverse inference being drawn. However, if a credible explanation for a doctor's failure to attend the hearing and / or provide relevant evidence was given, but fell short of

amounting to a reasonable explanation, this may reduce the weight the tribunal attaches to the adverse inference.

*Last reviewed: July 2024*