

Guidance on representation at hearings

Introduction

1. This document is intended to provide guidance for medical practitioners tribunals and interim orders tribunals (collectively referred to as ‘the Tribunal’) and the Investigation Committee (‘the Committee’) on matters relevant to representation at hearings and on how to assess the suitability of a person seeking to provide representation for a doctor.
2. It will also assist doctors and prospective representatives understand the requirements of the role and approach the Tribunal and / or the Committee will take in assessing suitability.

The legal framework

3. Doctors have the right to a fair hearing if a public authority is making a decision that has a decisive impact on their civil rights or obligations.* This may include the right to appoint appropriate representation at a hearing.
4. At a Tribunal or Committee hearing held under the General Medical Council (Fitness to Practise) Rules 2004 (‘the Rules’), a doctor may be represented by:
 - a. a solicitor or counsel[†] (‘legal representative’)
 - b. a representative from any professional organisation of which they are a member (‘professional organisation’); or
 - c. at the discretion of the Tribunal or the Committee, a member of their family or other suitable person (‘suitable individual’).[‡]

* See Article 6 of the European Convention of Human Rights, incorporated in Schedule 1 of the Human Rights Act 1998

[†] Also known as an ‘advocate’ and / or ‘barrister.’

[‡] Rule 33(1) of the Rules.

5. However, a person who is due to give evidence at the hearing cannot represent the doctor at that hearing* or accompany them in the hearing room prior to giving evidence.

Representation

6. Where a doctor is represented, the representative should be able to:
 - ▶ present the doctor's case to the Tribunal or the Committee with independence, honesty, integrity, and
 - ▶ understand the hearing procedure and carry out their role fairly and effectively, ensuring in doing so that they are mindful of the GMC's overarching objective to protect the public[†] and the obligation of the MPTS to deal with cases fairly and justly.

Legal Representatives

7. A solicitor or counsel who wants to represent a doctor before the Tribunal or the Committee as a legal representative must be registered to practise in England and Wales, Scotland or Northern Ireland. Annex A sets out the criteria for legal representatives to show they meet these requirements.
8. Where the Tribunal or the Committee is not satisfied that an individual meets the requirements in Annex A, an application can be made for that person to represent the doctor as a suitable individual (below).

Professional organisations

9. Relevant professional organisations who may represent a doctor before the Tribunal or the Committee include trade unions[‡] and established medical defence organisations. Annex B provides details of the professional organisations recognised by the MPTS and GMC for the purposes of this guidance.
10. Where a doctor wishes to be represented at a hearing by a person from a professional organisation not listed in Annex B, an application can be made for that person to represent the doctor as a suitable individual (below).

* Rule 33(2) of the Rules.

[†] Section 1(1A) of the Medical Act 1983 ('the Act').

[‡] As defined in in Section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Suitable individual

11. In all cases where the Tribunal or Committee allows a person to represent a doctor as a suitable individual, that individual will be expected to treat other hearing participants with respect, engage constructively in the hearing process and not behave in a way that obstructs or frustrates the Tribunal's or the Committee's ability to make progress.
12. If a person behaves in a manner contrary to the expectations of a suitable individual the Tribunal or the Committee is entitled to revisit its assessment of suitability and decide that the person is no longer a suitable individual and is no longer permitted to act as a representative in the proceedings.
13. Where a person has supported a doctor during a fitness to practise investigation, it does not necessarily follow they are a suitable individual to provide representation at a hearing.
14. The Tribunal or Committee can be asked to exercise their discretion to allow a person to represent a doctor as a suitable individual at any stage of the hearing. Any person who intends to apply to act as a suitable individual should familiarise themselves with the factors outlined in Annex C and declare any matters that would assist the Tribunal or the Committee reach a decision about their suitability.

Assessment of a suitable individual

15. In the absence of any factors indicating that a person may not be suitable, the MPTS and GMC will automatically recognise the following as being suitable individuals:
 - a. a chartered legal executive registered to practise in England and Wales
 - b. a solicitor or counsel registered to practise and regulated in specific jurisdictions outside of England and Wales, Scotland or Northern Ireland.
16. Annex C sets out the criteria for a person to show they meet these requirements, along with the factors that may indicate a person is not a suitable individual.
17. In all cases where a person does not meet the criteria to be automatically recognised as a suitable individual, the Tribunal or the Committee must balance the interests of the doctor in being represented by a person of their choice against the need to ensure that the hearing proceeds fairly and expeditiously.

18. They should check that the prospective suitable individual understands the requirements of this guidance and consider all the information available to satisfy themselves there are no issues with that person participating in a hearing before agreeing for them to act.

19. In making their decision, the Tribunal or the Committee must have regard to:
 - a. the importance of the hearing for the doctor

 - b. the complexity of the issues to be considered at the hearing

 - c. whether the person will be able to present the doctor's case with independence, honesty, and integrity

 - d. whether the person can understand the hearing procedure and is able to carry out their role fairly and effectively

 - e. the need to safeguard the efficient use of hearing resources.

20. The decision as to whether a person is a suitable individual is one for the Tribunal or the Committee's judgement alone. However, the existence of one or more of the factors at Annex C may indicate that a person is not a suitable individual.

Annex A: Legal representative* requirements

Solicitor and Counsel requirements in England and Wales

Under the Legal Services Act 2007, the Legal Services Board is responsible for overseeing the legal services approved regulators in England and Wales.

Two separate bodies are responsible for regulating solicitors and barristers:

- ▶ The Solicitors Regulation Authority ('SRA') - an independent body established by the Law Society of England and Wales to provide regulation of solicitors and law firms in England and Wales. Solicitors must have a practising certificate issued by the SRA in order to be authorised to provide legal advice.
- ▶ The Bar Standards Board ('BSB') - the independent regulatory arm of the Bar Council, responsible for regulating barristers in England and Wales. In order to be authorised to practise as a barrister the BSB Handbook requires persons to obtain an annual practising certificate.

Solicitor and Counsel requirements in Scotland

Two bodies are responsible for solicitors and advocates:

- ▶ The Law Society of Scotland - the professional body regulating solicitors in Scotland. It is responsible for issuing practising certificates for appropriately qualified members under the Solicitors (Scotland) Act 1980.
- ▶ The Faculty of Advocates - a professional body to which qualified lawyers who have been admitted to the office of 'advocate' in Scotland belong. The Faculty of Advocates regulates advocates under powers delegated to it by the Court of Session under the Legal Services (Scotland) Act 2010

Solicitor and Counsel requirements in Northern Ireland

Two bodies are responsible for solicitors and barristers:

- ▶ The Law Society of Northern Ireland – the professional body responsible for the regulation of solicitors in Northern Ireland. It is responsible for issuing certificates to practise for appropriately qualified members. This role is enshrined in law under the Solicitors (Northern Ireland) Order 1976 and Solicitors Practice Regulations 1987 (as amended).

* Definition includes references to 'solicitor', 'counsel', 'barrister' and 'advocate' dependant on the legal framework in each country

- ▶ The Professional Conduct Committee – the professional body responsible for regulating barristers in Northern Ireland, established by the Bar Council of Northern Ireland. It is responsible for setting the standard of conduct for barristers, through the Bar Code of Conduct, and regulating barristers in Northern Ireland.

Annex B: Professional Bodies recognised by the MPTS and GMC

Trade Unions

Section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992 empowers a Certification Officer to keep a list containing the names of all independent trade unions that meet the statutory definition of a trade union and have applied to be listed. This list is available [here](#).

Any trade union on this list is recognised as a relevant professional organisation for the purpose of this guidance. This includes the British Medical Association.

Medical Defence Organisations

There is no statutory definition of a medical defence organisation ('MDO'). However, the MPTS and GMC automatically recognises several MDOs as professional bodies. These are:

- ▶ The Medical Defence Union
- ▶ The Medical Protection Society
- ▶ The Medical and Dental Defence Union of Scotland

Each of these organisations are mutual organisations* who provide indemnity and advice on medico-legal matters.

* This means the organisation is owned by, and run for, the benefit of its members, who are actively and directly involved in the business.

Annex C: Suitable individuals

Suitable individuals recognised by the MPTS and GMC

Chartered Legal Executives

Chartered legal executives are trained legal professionals who specialise in a particular area of law. They are regulated in England and Wales by the Chartered Institute of Legal Executives, a body set up under the Legal Service Act 2007. For the purposes of this guidance, possessing the qualifications and experience of being a chartered legal executive is sufficient to be considered suitable for representing a doctor.

A solicitor or counsel registered to practise and regulated in specific jurisdictions outside of England and Wales, Scotland or Northern Ireland

When considering whether a solicitor or counsel registered to practise and regulated outside of England and Wales, Scotland or Northern Ireland can be automatically recognised as being a suitable individual under this guidance, Section 89 of the Courts and Legal Services Act 1990 provides a useful starting point. The Act uses the term 'foreign lawyer' and defines such a lawyer as "a person who is not a solicitor of England or Wales or a barrister but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside of England and Wales." However, for the purpose of this guidance, the references made to England and Wales should be read as including Scotland and Northern Ireland.

An individual who does not meet the legal representative requirements set out in Annex A, and who wishes to rely on the above definition to act as a suitable individual, must be able to provide confirmation from the appropriate regulator that they are entitled to practise as a solicitor or counsel and that they are a member of a legal profession regulated within the relevant jurisdiction.

The Tribunal or the Committee may be assisted by [the list of jurisdictions and professions](#) recognised by the SRA as meeting the criteria for registration with them as a registered 'foreign lawyer'. It is expected that a lawyer within the professions listed here ought to be able to provide the required proof.

If the jurisdiction and/or profession are not on this list, and the Tribunal or the Committee is not satisfied that the person meets these requirements, then a full

application can be made for that person to represent the doctor as a suitable individual.

Factors that may indicate that a person is not a suitable individual

- a. They have been removed, or suspended, from a professional register (or their registration is subject to conditions) due to concerns about their fitness to practise which may impact on their ability to provide suitable representation.
- b. They have been refused restoration to a professional register or had their licence revoked or refused for a professional activity, due to concerns about their fitness to practise which may impact on their ability to provide suitable representation.
- c. They have been barred from working with vulnerable adults and or children by the Independent Safeguarding Authority or Disclosure Scotland or equivalent overseas body.
- d. They have been the subject of an adverse finding (including in civil or criminal proceedings) that raises a question about their honesty and / or integrity.
- e. They have been subject to any form of civil restraint order or have been found to be a vexatious litigant.
- f. They have been subject to any other justified complaint relating to regulated activities or are currently the subject of proceedings of a regulatory or criminal nature (or have been notified of any potential proceedings or any investigation which may lead to those proceedings) where the allegation is serious* and likely to impact on their ability to provide suitable representation.
- g. They have previously had their right to represent a doctor at a Tribunal or Committee hearing withdrawn due to having disrupted the proceedings.
- h. They have had a previous application to act as a suitable individual for the same doctor refused and the circumstances leading to that assessment have not materially changed.

* Serious allegations include, but are not limited to, dishonesty, blackmail, sexual or violent offences, human trafficking and hate crime.