

# Joinder of allegations: Guidance for Decision Makers, Parties and Representatives

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# Introduction

- 1 This guidance is for decision makers, parties and representatives and covers the following areas:
  - ▶ making and responding to joinder applications regarding a single doctor;
  - ▶ making and responding to joinder applications regarding multiple doctors.
- 2 References to rules are to the General Medical Council (Fitness to Practise) Rules 2004 (as amended), unless otherwise stated.
- 3 The aim of this guidance is to promote consistency and transparency in both the making of joinder applications and in decision making.
- 4 If after considering this guidance, parties or representatives have any queries regarding making or responding to a joinder application, they should contact the MPTS Case Management team at [MPTSCaseManagementTeam@mpts-uk.org](mailto:MPTSCaseManagementTeam@mpts-uk.org).

## When is a joinder application required?

- 5 The MPTS arranges a medical practitioners tribunal hearing where GMC decision makers decide to refer an allegation of impaired fitness to practise to the MPTS for determination. In this guidance we call this a **referral decision**.
- 6 Referral decisions:
  - ▶ Relate to a single practitioner and may cover a single or several events, and may specify multiple categories of alleged impairment (for example, covering both a conviction and misconduct)
  - ▶ Are commonly made pursuant to Rule 8 but can also be made pursuant to Rule 5 (certain convictions), Rule 10 (breach of undertakings) or Rule 11 (Investigation Committee decision). For example, a Rule 5 decision relating to a conviction and a Rule 8 decision relating to health comprise separate referral decisions
  - ▶ Are made on the date specified in the decision. For example, two Rule 8 decisions made on separate dates comprise two separate referral decisions, even where they relate to the same practitioner and/or category of impairment.
- 7 Where all matters the tribunal will be asked to determine are contained within a single referral decision, a joinder application is not required.
- 8 Where GMC decision makers make **more than one referral decision relating to a single practitioner**, even if the same category of impairment, a joinder application is required for all matters to be joined and heard at the same hearing. The MPTS will not arrange for matters referred to the MPTS via separate referral decisions to be considered together unless an application has been made and an MPTS Case Manager has determined that the referrals ought to be joined.
- 9 Where GMC decision makers make **referral decisions relating to more than one practitioner**, a joinder decision is required in order for the allegations relating to multiple practitioners to be heard at a single hearing. The MPTS will not arrange for matters relating to multiple practitioners to be considered together unless there is an MPTS Case Manager decision that it is just to do so.

# Joinder application process

## Making applications

- 10 Any party may make an application for joinder. However, applications to join allegations to be heard together are generally made by the GMC as the party making referrals to the MPTS.
- 11 Once an application has been received by the MPTS Case Management team, we will review whether the responding party has already provided a response, or whether they need to be given time to do so. All responding parties will be given a reasonable opportunity to provide their position on the application before a decision is made.

## Timing of applications

- 12 Parties are strongly encouraged to make applications for joinder at the earliest opportunity and to seek input from the MPTS Case Management team if the position is unclear. All pre-hearing applications will be determined by an MPTS Case Manager. This ensures that the impact of joinder, if granted, is considered when allocating hearing time. For example:
  - ▶ Where the referral decisions have all been made before the listing process has commenced, the applying party must notify the MPTS Case Management team of the intention to make a joinder application and, wherever possible, make the application before the hearing is listed.
  - ▶ Where a hearing has been listed but a new referral decision has been made, the applying party must notify the MPTS Case Management team as soon as possible of the intention to make a joinder application, who will set a deadline for submitting a joinder application.
- 13 Where another referral decision is made shortly before a hearing is scheduled to commence, it would ordinarily be unfair for a joinder application to be made unless it is by agreement, the exceptional circumstances of the case mean it is in the public interest to do so, and/or where the practitioner intends to take no part in proceedings. In any event, an MPTS Case Manager will be unable to determine an application made after a Notice of Hearing has been issued.
- 14 In rare cases where it is not possible for a joinder application to be made in advance, it is possible for the tribunal to determine such an application.

However, we consider this scenario ought to be truly exceptional, as a joinder application at such a late stage may prejudice the ability of the hearing to fairly proceed or to conclude within the time allocated.

## **What are the relevant Rules relating to joinder applications?**

- 15 The decision-making power available to MPTS Case Managers is set out in Rule 16(6)(fa). This rule makes clear that MPTS Case Managers are entitled to determine joinder applications in accordance with Rule 32.
- 16 Rule 32 provides that a direction for joinder may be made where it would be just to do so.

## **Types of joinder applications**

- 17 There are two types of joinder application, which are addressed separately in this guidance:
  - ▶ Joinder applications concerning a **single practitioner** – see paragraphs 18 to 24 and [Form J1](#) for making an application;
  - ▶ Joinder applications concerning **multiple practitioners** – see paragraphs 25 to 33 and [Form J2](#) for making an application.

## Joinder applications concerning a single practitioner

- 18 Where GMC decision makers make **more than one referral decision relating to a single practitioner**, a joinder application is required for all matters to be joined and heard at the same hearing. If an application is not successfully made, the referral decisions will be considered at separate hearings.
- 19 The application can be decided by an MPTS Case Manager in advance of the hearing either:
- ▶ at a pre-hearing meeting (**PHM**). Applications will only be decided at PHMs where the application is submitted in advance, with sufficient notice for the responding party to consider the application and confirm it is not opposed;
  - ▶ in writing, with written reasons for the decision made. All opposed applications will be determined in writing.
- 20 The application must be made at the earliest opportunity, depending on the circumstances (see the examples at paragraph 12).

### Making a pre-hearing application

- 21 The following information must be provided on [Form J1](#) and supplied by email to [MPTSCaseManagementTeam@mpts-uk.org](mailto:MPTSCaseManagementTeam@mpts-uk.org) – incomplete applications will likely result in a delay in a decision being taken.

Party applying	Party responding
<ul style="list-style-type: none"> <li>▶ Written explanation of why the application is in the interests of justice and any other factors in support of the application, bearing in mind the factors at paragraph 23.</li> <li>▶ Copies of the referral decisions, including reasons and the referred allegations;</li> <li>▶ Comments from the responding party if obtained.</li> </ul>	<ul style="list-style-type: none"> <li>▶ If not previously provided, written explanation of whether the application is agreed or opposed, to address any relevant factors as outlined below.</li> <li>▶ Such comments should specifically address the application made by the applying party and provide sufficient detail to allow a decision to be taken on the application</li> </ul>

## Guidance for decision makers

- 22 Both parties must be given the opportunity to make representations. Before the decision maker reaches a decision on an application for joinder, the decision maker must take into account the circumstances of the case. This will include written submissions provided by the parties and the effect joinder may have on the fairness of the proceedings.
- 23 The decision maker must decide whether it is just to join the allegations. The following non-exhaustive list of factors may be relevant to consider:
- ▶ the desirability of assessing an individual practitioner’s fitness to practise as a whole, to enable a tribunal to make an informed decision on all matters
  - ▶ the extent of any factual and/or temporal connection between the allegations
  - ▶ the extent of overlap in evidence to be relied upon by either party
  - ▶ the extent of any time or costs to be saved by matters being considered together, including any potential saving in hearing time and/or any potential delay caused if joinder is permitted
  - ▶ the extent of any impact on fairness caused or likely to be caused by joining matters to be heard together or hearing them separately
  - ▶ whether there are practical benefits or challenges in presenting all matters at a single hearing, including the impact a single or multiple hearings may have on hearing participants
  - ▶ any other relevant consideration.
- 24 Directions made by an MPTS Case Manager are legally binding: the tribunal must proceed in accordance with and need not revisit directions unless the tribunal is persuaded there is a material change in circumstances, or it is otherwise in the interests of justice to proceed differently. When considering whether to make a different decision, the tribunal must bear in mind that the parties will have prepared their respective cases based on directions given. Any subsequent change must be clearly justified as it may result in delay, an adverse impact or inconvenience for witnesses and possibly unfairness to at least one, if not both, parties.



## Joinder applications concerning multiple practitioners

- 25 Where GMC decision makers make **referral decisions relating to more than one practitioner**, a joinder decision is required in order for the allegations relating to multiple practitioners to be heard at the same hearing. In this section we refer to these types of applications as **multi-practitioner applications**.
- 26 Multi-practitioner applications must be decided by an MPTS Case Manager in advance of the hearing. These applications will be determined in writing, with written reasons for the decision made. If a multi-practitioner application is not successfully made, the referral decisions regarding each practitioner will be considered at separate hearings.

### Making a pre-hearing application

- 27 The application must be made at the earliest opportunity, which will almost always arise before the listing process begins. On identifying the intention to make a multi-practitioner application, the GMC must inform the MPTS Case Management team, who will provide timescales for making and responding to the application.
- 28 It is essential that multi-doctor applications are made in a fair and transparent way, with each responding party being able to fully respond to the application. For this reason, multi-doctor applications will only be progressed where the applying party confirms that each responding party has been:
- ▶ made aware of the identity of each other responding party
  - ▶ provided with disclosure of the referral decisions and referred allegations relating to each other responding party.
- 29 It is a matter for the applying party to consider whether, in the circumstances of the case, the requirements of paragraph 28 can be lawfully met. If not, the MPTS Case Manager will be unable to determine a multi-doctor application in such circumstances as it would be procedurally unfair for the decision maker to receive information that cannot lawfully be made available to responding parties. If an application is submitted without confirmation that the requirements of paragraph 28 have been met, the application will be returned to the applying party with no decision being taken.

- 30 The following information must be supplied provided on [Form J2](#) and by email to [MPTSCaseManagementTeam@mpts-uk.org](mailto:MPTSCaseManagementTeam@mpts-uk.org) – incomplete applications will likely result in a delay in a decision being taken.

Party applying	Parties responding
<ul style="list-style-type: none"> <li>▶ Written explanation of why the application is in the interests of justice and any other factors in support of the application, bearing in mind the factors at paragraph 32.</li> <li>▶ Copies of the referral decisions including reasons and the referred allegations;</li> <li>▶ Comments from the responding parties, if obtained;</li> <li>▶ Confirmation that the requirements of paragraph 28 of this guidance regarding disclosure to responding parties has been met.</li> </ul>	<ul style="list-style-type: none"> <li>▶ If not previously provided, written explanation of whether the application is agreed or opposed, and why.</li> <li>▶ Such comments should specifically address the application made by the applying party and provide sufficient detail to allow a decision to be taken on the application</li> </ul>

## Guidance for decision makers

- 31 All parties must be given the opportunity to make representations. Before the decision maker reaches a decision on an application for joinder, the decision maker must take into account the circumstances of the case. This will include written submissions provided by the parties and the effect joinder may have on the fairness of the proceedings.
- 32 The decision maker must decide whether it is just to join the allegations. The following non-exhaustive list of factors may be relevant to consider:
- ▶ the extent of any factual and/or temporal connection between the allegations
  - ▶ the extent of overlap in evidence to be relied upon by either party

- ▶ the extent of any time or cost to be saved by matters being considered together, including any potential saving in hearing time and/or any potential delay caused if joinder is permitted
- ▶ the extent of any impact on fairness caused or likely to be caused by joining matters to be heard together or hearing them separately
- ▶ whether there are practical benefits or challenges in presenting all matters at a single hearing, including the impact a single or multiple hearings may have on hearing participants
- ▶ any other relevant consideration.

**33** Directions made by an MPTS Case Manager are legally binding: the tribunal must proceed in accordance with and need not revisit directions unless the tribunal is persuaded there is a material change in circumstances, or it is otherwise in the interests of justice to proceed differently. When considering whether to make a different decision, the tribunal must bear in mind that the parties will have prepared their respective cases based on directions given by a MPTS Case Manager. Any subsequent change must be clearly justified as it may result in delay, an adverse impact or inconvenience for witnesses and possibly unfairness to some or all parties.

## Frequently asked questions

### **I am a responding party, but I need more information before I can respond. What should I do?**

- 34** If a responding party intends to provide comments on a joinder application but believes they are unable to do so due to needing more information, they should inform the MPTS Case Management team and the applying party as soon as possible. The responding party must set out the reasons why they are unable to respond and (if known) what information is needed. Where necessary, a MPTS Case Manager may provide comments and case management directions for progression of the application.

### **What happens if I don't respond to a joinder application?**

- 35** If a responding party fails to provide a response by the deadline provided, then a MPTS Case Manager may still make a decision on the application. The responding party will be informed of the decision made.

### **What happens if joinder is granted?**

- 36** Where an application concerning a single practitioner is granted, the next steps will depend on the stage of the case management process reached. If hearing dates are yet to be allocated, the matter will be scheduled to be discussed at a first listing telephone conference or a PHM. Both parties and their representatives will be invited to attend to discuss pre-hearing preparation.
- 37** Where a multi-practitioner application is granted, the matter will be scheduled to be discussed at a first listing telephone conference or a PHM, where hearing dates will be allocated. All parties and their representatives will be invited to attend to discuss their respective pre-hearing preparations.

### **What happens if a joinder application is refused?**

- 38** Where a joinder application is unsuccessful, the referral decisions will be dealt with separately by the MPTS Case Management team. This means that separate hearings will be listed to consider each matter individually. The MPTS Case Manager will consider the circumstances of each individual case and the reasons for the joinder application being refused when deciding when each hearing ought to proceed.

## How quickly will a decision be made?

- 39 The MPTS Case Management team aims to deal with all applications as soon as possible once all relevant information has been received from parties. If a party does not respond within the time specified, the application may be decided in the absence of any response. Failure to follow the guidance set out above (such as failing to provide all required documents) will likely result in delay.

## A joinder application was successful, but circumstances have now materially changed. Can the decision be revisited?

- 40 Where circumstances have materially changed, or it is in the interests of justice to do so, an MPTS Case Manager can reconsider the decision to grant joinder. If you believe this applies, please set out the reasons in writing and send them to the MPTS Case Management team at [MPTSCaseManagementTeam@mpts-uk.org](mailto:MPTSCaseManagementTeam@mpts-uk.org).
- 41 If the MPTS Case Manager is unable to identify any reason to revisit the decision to grant joinder, they may decline to do so. Where the MPTS Case Manager is prepared to reconsider the decision, the other party/parties will be given an opportunity to respond before any new decision is taken.