
Managing Medical Practitioners Tribunal hearings

Guidance for tribunal chairs

| | |
|---|----|
| Introduction..... | 3 |
| The role of the chair..... | 4 |
| Prior to the hearing..... | 7 |
| On receipt of papers via GMC Connect..... | 7 |
| Conflicts of interest..... | 7 |
| Preparation for the case..... | 8 |
| On the morning of the hearing..... | 8 |
| Start of the hearing..... | 10 |
| Some administrative matters..... | 11 |
| Constitution of tribunals/quorum..... | 11 |
| Hearing times..... | 11 |
| Adjourning a case part-heard..... | 12 |
| Weekend sittings..... | 13 |
| Post hearing responsibilities..... | 13 |
| Legal assessors..... | 14 |
| The legal assessor’s advice..... | 15 |
| Self-represented doctors..... | 16 |
| Handling preliminary issues..... | 17 |
| Service/non-attendance of the doctor..... | 17 |
| Public/private hearings..... | 17 |
| Adjournments..... | 19 |
| Standard of proof..... | 20 |
| A question of judgment..... | 21 |
| Review cases..... | 21 |
| Drafting a determination..... | 22 |

Introduction

- 1** The Medical Practitioners Tribunal Service (MPTS) is committed to discharging its adjudication function in an effective, fair and transparent way. We aim to list cases for hearing as soon as reasonably practical and so far as possible to ensure that cases are heard in line with the agreed service target. This involves ensuring that both parties have adequate time to prepare, that the time estimates for hearings are realistic, that there are effective channels of communication between the parties during the pre-hearing stage and that agreement is reached on a number of key issues e.g. whether there will be any preliminary arguments, whether any of the allegations are admitted, which witnesses are required to give evidence etc. The case management system is designed to do this. Nevertheless difficulties can, and do, arise.
- 2** Effective case management prior to a hearing is clearly important but it is equally important that hearings in progress are properly managed. Tribunal chairs have a vital role to play. This guidance has been prepared to assist them in fulfilling their role.
- 3** Chairs cannot, however, work alone. It is important that tribunal members, legal assessors and tribunal clerks understand the role of the chair and support him or her in the task. For that reason copies of the guidance have been sent to tribunal members, legal assessors and tribunal clerks.
- 4** In keeping with our commitment to openness and transparency, this document has also been sent to the medical defence organisations and GMC Legal and copies are available on the MPTS and GMC websites.
- 5** If you have any comments on the guidance, including suggestions as to how it might be improved please contact the Tribunal Development Section at tribunaldevelopmentsection@mpts-uk.org

The role of the chair

- 6** In open session to ensure that:
 - a** the proceedings are conducted within the Rules;
 - b** time is used effectively. If necessary, the chair should intervene if counsel / representative / or doctor (if self-representing) strays from the issue or repeats arguments previously made and understood by the tribunal. The chair might also discuss issues relating to time keeping, availability of witnesses etc with the parties and tribunal members, at appropriate points, during the hearing;
 - c** those appearing before the tribunal, including witnesses, are treated with courtesy and consideration. Where appropriate the chair should ensure that all those appearing before the tribunal engage with the process as effectively as possible e.g. by ensuring that any questions posed to them are capable of being understood, that cultural differences/gender issues are taken into consideration, that reasonable efforts are made to accommodate those who may be fasting, or have a disability etc.
 - d** The chair should consider intervening if a witness appears unduly stressed while giving evidence and, if appropriate, takes a short adjournment. Where the manner of the questioning of witnesses by either party is considered inappropriate (eg overly aggressive) the chair should ensure that the relevant party is reminded that these are professional proceedings and that their behaviour should be as such;
 - e** the doctor and all witnesses are informed, briefly, of the tribunal's role, who is in the room and that tribunal members are introduced if they ask questions;
 - f** the tribunal makes due inquiry into the matter(s) before them;
 - g** they take joint responsibility for ensuring that the digital recording is effective;
 - h** breaks are taken at appropriate times and for an appropriate length of time, taking into account the needs of all those involved in the proceedings;

Where a legal assessor has been appointed:

- i** the legal assessor is asked to provide advice on any points of law which may arise and at any point before the tribunal goes into camera;
- j** any advice given by the legal assessor while the tribunal is in camera is repeated before the parties so that they have an opportunity to respond if they wish to do so.

Where the chair is legally qualified and no legal assessor has been appointed:

- k** if the chair advises the tribunal on any points of law before the tribunal goes into camera, the chair provides the advice in the presence of the parties.
- l** if the chair advises the tribunal on any points of law while the tribunal is in camera, the chair includes the advice given in the tribunal decision, unless the chair considers it necessary to advise in the presence of the parties. The chair can therefore choose to bring the tribunal back into public session to seek submissions from the parties on such points of law on which s/he has provided advice to the other tribunal members where s/he considers it necessary to do so. An example would be where such a point of law has arisen for the first time during the tribunal's deliberations in camera and so upon which no submissions have been made by the parties, which is material to the outcome of the case and which the chair considers sufficiently open to debate that the tribunal should hear submissions also from the parties upon it before it can reach a properly considered view on that legal issue.

7 When the tribunal is in camera to ensure that:

- a** time is used effectively;
- b** tribunal members understand the issue(s) under consideration and remain focussed on it / them;
- c** there is first a general discussion of the issue(s) so that each tribunal member can express initial thoughts on what they consider important / not important;
- d** all tribunal members contribute to the discussions / decision making. If necessary, the chair should bring in any tribunal member who appears reticent and ask any tribunal member who appears to be dominating the discussion to allow others to speak;

- e** others normally express their views before the chair gives his / hers; this avoids any perception that the chair is influencing the views of others;
- f** tribunal members are aware:
 - i** they are not bound by their initial thoughts on the case; other tribunal members may have identified issues which the tribunal member had not previously considered or thought sufficiently important but which on reflection and having heard the views of others, places a different complexion on the case;
 - ii** they should not feel under pressure to change their views because they are in a minority;
 - iii** the purpose of the in camera discussion is to explore fully the aspects of the case e.g. the relevant evidence (both oral and documentary), the weight to be given to that evidence, the submissions made by both parties etc and, if possible, to reach a consensus. Tribunal members may be assisted by reference to their notes or, where exceptionally available, transcripts;
 - iv** any decision taken by the tribunal must be made in line with the overarching objective to protect the public, which includes pursuit of the following objectives:
 - a. to protect, promote and maintain the health, safety and well-being of the public;
 - b. to promote and maintain public confidence in the medical profession; and,
 - c. to promote and maintain proper professional standards and conduct for members of that profession.
 - v** if, having fully explored all the issues, it is clear that consensus cannot be reached a majority decision is acceptable. It is a matter for the chair's judgment (taking into consideration point a above) as to when to call a halt to the debate and to put the matter to a vote;
 - vi** the chair does not have a casting vote. Rules 38 (4) and (5) of The General Medical Council (Fitness to Practise) Rules 2004 (as amended) cover what happens when the votes are equal;

- 8 The determination reflects the decision(s) taken by the tribunal as a whole and the reasons for the decision(s). You should refer to the separate guidance on determination drafting.

Prior to the hearing

On receipt of papers via GMC Connect

- 9 Papers will typically be uploaded to GMC Connect at least a fortnight prior to the start of the hearing and additional items will be uploaded as they are received.
- 10 You will need to check GMC Connect regularly in advance of the hearing to ensure that you have received all relevant papers.
- 11 If you have not received any papers, contact the operations section.
- 12 Once the papers are received, read them as soon as possible.
- 13 Check whether there are any conflicts of interest for you.
- 14 Start preparing for the case.

Conflicts of interest

- 15 If you recognise a conflict of interest, or think there may be a conflict, contact the Empanelment Team¹ immediately. Failure to do so increases the risk that the hearing may not be effective.
- 16 The Empanelment Team will advise whether it is appropriate for you to sit on the case. Before providing that advice, they may need to seek views from others e.g. the parties to the proceedings. Medical Defence Organisations representing doctors will also routinely check conflicts between tribunals and witnesses and you will be advised accordingly if a potential conflict is identified.
- 17 If you have to stand down, the Empanelment Team will try to find another tribunal member to replace you. They will also seek to place you on another tribunal that is sitting at the same time, where possible.

¹ TheEmpanelmentTeam@mpts-uk.org

18 Conflicts of interest may also become apparent on the first morning of the hearing or during the course of a hearing. These should be dealt with as they arise. It is important that any issue of recusal is considered by a quorate tribunal. All tribunal members should remain present until a decision has been made. If the tribunal determines that recusal is appropriate, the tribunal is required to give its reasoned decision in writing. *The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015* allow for the substitution of a tribunal member during the course of a hearing without it affecting the validity of the hearing and case law confirms the powers in appointing a new tribunal member after procedures have begun if it is in the interests of justice to do so.

Preparation for the case

19 You should check:

- a** the type of case you will be considering (new, review, application for restoration etc.).
- b** whether there is a single issue (misconduct, deficient performance, conviction or caution, adverse physical or mental health, not having the necessary knowledge of English or a determination by another body) or whether the case raises two or more issues (or whether two or more doctors are involved).
- c** that all the papers received on GMC Connect are legible and paginated and whether any documents are obviously missing. If necessary, notify the office so that arrangements can be made to locate the missing documents before the hearing: this will save time on the first morning of the hearing.
- d** who is sitting on the tribunal and, where relevant, who the legal assessor will be.
- e** You should also note any pre-hearing listings instructions and/or directions issued by the case manager e.g. regarding evidence to be given by video link or postponement applications.

On the morning of the hearing

20 Arrive in good time.

21 Check with the tribunal clerk:

- a** whether there has been any change to the composition of the tribunal or, where relevant, to the legal assessor;
 - b** whether the doctor is present and/or represented;
 - c** if the doctor is not present, whether there are any issues relating to the service of the Notice of Hearing;
 - d** the names of the GMC and doctor's representatives;
 - e** the list of witnesses expected to be called;
 - f** whether any special arrangements have been made e.g. for vulnerable witnesses or others, video evidence/link etc;
 - g** whether there are likely to be members of the press, public or MPTS staff present;
 - h** whether there will be any preliminary arguments and if so the type of preliminary argument (e.g. application to adjourn, application to stay proceedings, application for voluntary erasure, abuse of process application etc);
 - i** whether there are any additional documents.
- 22** Read through the relevant chair's aide-memoire, which sets out the order of proceedings and the chair's responsibilities.
- 23** Identify any issues where it is clear that advice will be required e.g. service, non-attendance of the doctor, abuse of process, late submission of reports – to provide time to prepare the advice that will need to be given by you (as the legally qualified chair) or the legal assessor.
- 24** Speak to the other tribunal members - discuss the way in which you propose to manage the hearing to ensure that it is conducted fairly and on time. It will help to manage tribunal members' time during the hearing if you have made clear your expectations. It also provides an opportunity for tribunal members to ask questions or to raise any issues that may be of concern to them and to clarify matters such as potential conflicts of interest that might have arisen since the pre-reading was carried out.
- 25** If sitting with new tribunal members / a new legal assessor it will help them feel part of the proceedings from the outset if you:

- a introduce yourself;
- b introduce the other tribunal members / legal assessor;
- c show the tribunal member(s) / legal assessor around the hearing room and tribunal members' room;
- d be available to answer questions during the breaks in the proceedings;
- e ensure they are not isolated during tea, coffee or lunch breaks.

Start of the hearing

- 26** Start promptly at 09:30. The Notice of Hearing stipulates that the parties should attend at 09:00 for a 09:30 start. Where advised in advance, a later start time for parties may be scheduled if extensive pre-reading by the tribunal is required at the start of the hearing.
- 27** Ensure the parties are called to the hearing room and that the proceedings are ready to start at 09:30.
- 28** Should the parties indicate that they are not ready to start at 09:30:
- a call them to the hearing room at 09:30;
 - b the parties may, if they wish, ask for a short adjournment;
 - c if they do, ask:
 - i why they are not ready,
 - ii what the outstanding issues are, and
 - iii how long they will take to resolve.
 - d consider the application and, if appropriate, grant an adjournment to a convenient time. This may or may not be the time suggested by the parties as, depending on the circumstances, the tribunal may wish to be kept informed of progress and decide whether a stage has been reached where the proceedings may start while other outstanding issues are dealt with outside the main hearing;

- e** if the tribunal accedes to a request for an adjournment, ask whether there is anything useful the tribunal might do in the interim e.g. whether there are any papers to read;
 - f** where an application for adjournment is granted, ensure the hearing resumes at the time agreed;
 - g** should the parties then notify the tribunal that they require further time, ask what the outstanding issues are and how much more time is required to resolve them.
 - h** if appropriate, the tribunal should grant a further adjournment but state when the tribunal will resume.
- 29** The process outlined above ensures that the reason for the delay is explained and recorded and, unless the case is one to be heard entirely in private, ensures that the press and public are aware of what is happening rather than being left to speculate.

Some administrative matters

Constitution of tribunals/quorum

- 30** There have been challenges to the constitution of tribunals e.g. that the tribunal members are inexperienced or do not include a doctor from a particular speciality - case law supports our approach to the constitution of tribunals.
- 31** Rule 6 of the The General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015, provides that the quorum is three tribunal members, including the chair, of whom:
- a** at least one must be a medical tribunal member, and
 - b** at least one must be a lay tribunal member.

Hearing times

- 32** In the normal course of events tribunals should expect to start the hearing day at 09:30 and conclude the day's business at about 17:00.

- 33** It may be appropriate to start later on certain days, e.g. due to witness scheduling or to enable time for reading documentation but best use of time should be made for the fairness of proceedings.
- 34** It may be necessary to sit later to conclude the evidence of a particular witness, or on the final scheduled day of a case to conclude the case, however the tribunal clerk and the parties to the hearing should be asked whether they are able to stay and the time that they are able to stay until.
- 35** Remember, long sitting days may give rise to an appeal on the ground that the tribunal was tired and did not give adequate consideration to all the evidence or submissions made.
- 36** Adequate breaks should be taken throughout the day to ensure fairness to all parties. What is adequate is dependent on the parties involved in proceedings and the chair should be able to accommodate reasonable adjustments that become known during the proceedings.
- 37** At the end of a hearing day all tribunal members should leave the room promptly to enable the tribunal clerk to secure the hearing room.

Adjourning a case part-heard

- 38** If it is clear that the tribunal cannot conclude business within a reasonable time, it may be necessary to adjourn the proceedings to a later date.
- 39** Seek to resume within a reasonable period of time; it is unfair to the doctor, the complainant and other witnesses to leave matters outstanding for long periods of time.
- 40** The priority for all tribunal members is to conclude the part-heard case. Should a tribunal member be due to sit on another case on dates when it is proposed that the part-heard case be resumed, the tribunal member should sit on the part-heard case and notify the Empanelment Team or the other relevant body that they will be unavailable for the other case. The Empanelment Team will then find another tribunal member to replace them on that other case. It will not usually be necessary to retain the same legal assessor for the purpose of reconvened hearings, so availability should firstly be considered in respect of the tribunal members.
- 41** Tribunal members should ensure that they have their diaries available when discussions regarding dates to reconvene are made so that, subject to the adjudication office confirmation, dates can be fixed at the earliest stage. You

may wish to refer to the guidance on part-heard hearings for further points to consider.

- 42** Chairs should also ensure that both parties place appropriate importance in prioritising a reconvened hearing.

Weekend sittings

- 43** Weekend sittings should only be considered if it is not possible to find an alternative date during the working week. They will be approved on an exception-only basis.
- 44** Do not assume that access to the building and hearing room will be available; there are a number of maintenance tasks carried out over weekends and access to the building or hearing rooms may not be available.
- 45** Written requests for weekend sittings should be made by the chair to a senior member of MPTS staff, for approval. The request should set out the reasons for the request in full, including why the hearing cannot reconvene on a weekday.

Post hearing responsibilities

- 46** The chair should ensure that they check and sign the record of determination before leaving the hearing room.
- 47** The chair is responsible for completion of the Tribunal Report which provides the MPTS with relevant feedback from the hearing.
- 48** As this is the tribunal report, feedback should be obtained from the tribunal prior to completion of the report and views of the tribunal should be reflected in the report. In addition to the tribunal members, the chair will wish to clarify with the legal assessor/ tribunal clerk as appropriate if they have any points that this wish to include in the tribunal report in relation to feedback regarding the tribunal clerk/ legal assessor respectively. Time may be built into the final in-camera discussion to obtain views from fellow tribunal members, or if not appropriate, contact details can be exchanged to ensure all views are captured.
- 49** If matters arise during the course of the hearing raising concerns which are not the subject of proceedings, then the chair should complete the 'Raising Concerns' form and submit this to the Tribunal Development Team (tribunaldevelopmentsection@mpts-uk.org) for them to consider the action required.

Legal assessors

50 The role of the legal assessor is set out in the General Medical Council (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015 which states:

2. Legal assessors shall have the following functions

(a) advising the Committee or a Tribunal on questions of law as to evidence or procedure arising in proceedings before them, and in particular a legal assessor shall, in such proceedings—

(i) advise the Committee or the Tribunal on any question of law as to evidence or procedure that is referred to him by the Committee or the Tribunal, and

(ii) intervene to advise the Committee or the Tribunal on an issue of law as to evidence or procedure where it appears to him that, without his intervention, there is the possibility of a mistake of law being made, and

(iii) intervene to advise the Committee or the Tribunal of any irregularity in the conduct of the proceedings which comes to his knowledge; and

(b) advising on the drafting of decisions of the Committee or a Tribunal (notwithstanding that legal assessors will not themselves be parties to those decisions).

51 There have also been a number of judgments, which clarify the role of the legal assessor.

52 The legal assessor is an adviser, not a decision maker. It is for the tribunal to decide whether to accept the legal advice given. If it does not accept the advice, reasons must be given.

53 Where there is an unrepresented doctor and a legal assessor has been appointed, the legal assessor:

- a** can assist the tribunal by explaining the procedures to the doctor;
- b** cannot represent the doctor i.e. put questions on behalf of the doctor or make submissions on his or her behalf;

- c should **never** be asked to see the doctor alone. This could be perceived as biased by the other party or there could be an allegation by an unrepresented doctor about what a legal assessor did or did not say. The GMC's representative should be present if the legal assessor speaks to an unrepresented doctor and the tribunal clerk should, where possible, be present also (It is not the role of the tribunal clerk to take notes of any such meeting or provide an account of the meeting subsequently).

The legal assessor's advice

- 54 Where a legal assessor has been appointed, ensure that before going into camera the legal assessor provides his or her advice.
- 55 That advice should remind the tribunal of its task; it should **not** be a summary of the evidence. The advice must be given orally to the hearing and not in writing.
- 56 At sanction stage, it should also include reference to the Sanctions Guidance but should not quote large sections of it.
- 57 The legal assessor should also remind the tribunal that the decision is theirs and theirs alone taking into account all they have heard and the relevant guidance.

Self-represented doctors

- 58** Self-represented doctors may have little understanding of the proceedings and what they can or cannot say at each stage. Chairs (and tribunal members) should familiarise themselves with the support available for self-represented doctors which is available on the [MPTS website](#).²
- 59** In addition to the assistance a legal assessor can provide (see above), the GMC's representative may also draw the tribunal's attention to evidence favourable to the doctor.
- 60** The chair should explain at various points in the hearing the particular stage reached and ensure, as far as possible, that the doctor understands the position.
- 61** Additional breaks may be required to ensure that the doctor has time to prepare his case as the hearing proceeds and the chair will need to appropriately balance facilitating this with ensuring that the hearing schedule is managed. Additional time is built into the hearing listing to account for additional time that may be required where it is known that a doctor may be self-represented.
- 62** In cases where there is a legally qualified chair and no legal assessor, the chair should take extra care to ensure that the doctor understands the procedure. As for legal assessors the chair should not give the doctor advice or see the doctor alone.

² A range of material is available on our procedures that may assist the self-represented doctor <http://www.mpts-uk.org/hearing/7432.asp>

Handling preliminary issues

Service/non-attendance of the doctor

- 63** If the doctor is not present, a two stage process must be followed:
- i** the tribunal must first decide whether the Notice of Hearing has been correctly served and, if so, then
 - ii** whether to proceed in the absence of the doctor.
- 64** Further details on the process and the rules are provided in the relevant aide-memoires.
- 65** In deciding whether or not to proceed the tribunal should consider:
- a** the need to protect patients and have regard to the public interest and the interests of the practitioner;
 - b** the seriousness of the case;
 - c** the risk of reaching the wrong conclusion about the reasons for the doctor's absence;
 - d** the risk of reaching the wrong decision on the merits, as a result of not hearing the doctor's account;
 - e** any medical evidence about the doctor's health, and any challenges to such evidence.

Public/private hearings

- 66** Rule 41 of the General Medical Council (Fitness to Practise) Rules (as amended) provides that hearings shall be heard in public, except when the tribunal is considering whether to make or review an interim order or where it is considering the physical or mental health of the practitioner.
- 67** In multi-factorial cases, where health is one of the issues under consideration, the tribunal should hear all parts of the evidence which do not relate to the doctor's health in public; and hear those parts of the evidence which relate to the doctor's health in private.

- 68** If a submission is made to hear the whole of the hearing in private e.g. because it is submitted that the issues are inextricably linked, the tribunal should:
- a** consider the arguments advanced and any challenges to it;
 - b** have regard to the wording of Rule 41 which starts with the premise that hearings shall be held in public except in certain limited circumstances. This ensures openness and transparency and that the process is accountable;
 - c** consider how much of the information is already in the public domain e.g. in cases involving a conviction for drink driving the court hearing and all the evidence relating to it will have been heard in public;
 - d** bear in mind that, under the GMC's publication policy, the tribunal's decisions will be published, with the exception of confidential issues relating to the doctor's physical or mental health. Difficulties can arise if tribunals decide to hold the whole or part of hearings in private when issues other than the doctor's health are being considered.
- 69** Rule 41(2) gives the tribunal discretion to exclude the public from the whole or part of proceedings, where it considers it appropriate to do so. Such circumstances are rare but have occurred where it is necessary to protect the rights of third parties. For example:
- a** a tribunal sat in private in order to protect the identity of an abused wife whose identity had been protected in the court proceedings that resulted in her husband's appearance before the tribunal;
 - b** another tribunal sat in private to ensure that the identity of a doctor's children was protected; the doctor was alleged to be abusing his children.
- 70** There have been occasions where tribunals were asked to hear applications from third parties as to whether the press and public should be excluded:
- a** in one case a tribunal heard an application from the wife of a doctor who was not named in the allegations who was not a GMC witness but who may have been called as a witness for the doctor. She had no standing to make an application and should not have been permitted to do so. Had it been the intention of the doctor to call her as a witness she could have been protected by the provisions relating to vulnerable witnesses;
 - b** in another case, a member of the press made an application for a hearing to be heard in public. Although the press have no standing to make such

applications, the criminal courts allow such applications to be made. It may therefore be appropriate in such circumstances to consider the application. It is, however, unlikely that a tribunal would conclude that a hearing, which the Rules prescribe should be in private in certain circumstances, should be heard in public on the basis of an application by the press claiming it was in the public interest to hear the matter in public.

- 71** When sitting in private, ensure that only those parts of the hearing that need to be discussed in the absence of the press and public are raised.
- 72** While the tribunal shall sit in private when considering an interim order, if the practitioner requests that the tribunal sits in public then the tribunal should do so in accordance with rule 41(5).
- 73** Irrespective of whether any members of the press or public are present, proper consideration should be given to whether a hearing should be held in private or public as this information will be used for the production of transcripts and publication.

Adjournments

- 74** In dealing with applications to adjourn, tribunals should take into account the effect of any delay on the fairness of the proceedings, and **all** material circumstances, including the length of the adjournment and any likely inconvenience to the witnesses.
- 75** Ask relevant questions to ensure that:
 - a** the time lines are correct;
 - b** reasons put forward for an application are challenged and supporting evidence produced.
- 76** If an application is made on the basis of non-disclosure of documents, remember that disclosure is not usually carried out on one occasion but is a continuous process. Check:
 - a** what has already been disclosed and when
 - b** what remains to be disclosed
 - c** how relevant the undisclosed documents are to the case

- d** whether it is possible for the party making the application to consider the documentation as the case progresses.
- 77** Consider what time is needed to resolve the issue (10 minutes, an hour, half a day, a day, etc).
- 78** Tribunals should also consider whether any prior application for postponement/ adjournment has been made and have regard to the reasons for the decisions made at that time and any new information available since that decision was taken.
- 79** If the tribunal concludes that it is necessary to adjourn the case to a later date, consider:
 - a** whether an interim order should be imposed and/or
 - b** whether directions should be given e.g. whether any assessments are to be carried out, the date by which reports/documents are to be disclosed etc.
 - c** how the length of the adjournment will affect the hearing and, if appropriate, issue directions on how the reconvened hearing should proceed e.g. if a tribunal member needs to be substituted, the stage at which the hearing should be resumed and any special procedure which must be followed [see *Substitution of tribunal members at Medical Practitioners Tribunal hearings* guidance³]
- 80** It may be submitted that there is no risk to patient safety and the public interest in granting an application for adjournment because the doctor is subject to an interim order however due consideration should be given to the purpose of interim orders and that these should not remain in place longer than necessary. Applications should only be granted if the merits of the application require it.
- 81** Applications for adjournment can arise at any stage of the proceedings. The approach to such requests made at other stages of the proceedings should, in broad terms, reflect the points outlined above.

Standard of proof

- 82** The standard of proof when considering findings of fact is the civil standard.

³ <http://www.mpts-uk.org/guidance>

A question of judgment

83 It is for the tribunal to decide, exercising its judgment, whether the doctor's fitness to practise is impaired based on the facts found proved.

Review cases

84 The GMC does **not** have to prove impairment. Consider:

- a** the previous findings of fact that led to a finding of impairment;
- b** the previous tribunal's reasons for finding impairment and the reasons for the sanction imposed
- c** what the doctor has done during the period of conditions or suspension to demonstrate that his/her fitness to practise is not impaired.

85 It is for the doctor to demonstrate that he or she is fit to resume unrestricted practice.

86 Where a doctor's fitness to practise was found to be deficient whilst working in one specialty but the doctor now wishes to change specialty:

- a** it is implicit, if the doctor has not remedied the deficiencies in his or her practice, his or her practice remains deficient and that is not safe to resume **unrestricted** practice, albeit in a different specialty;
- b** ensure that the tribunal understands that if it accepts any assurances from the doctor that he or she will no longer practice in the specialty where deficiencies were identified, and on that basis conclude that the doctor's fitness to practise is not impaired and is allowed to resume unrestricted practice, there is nothing to prevent the doctor returning to the specialty in which deficiencies were identified at a later date.
- c** consider whether the protection of the public and the wider public interest would best be served by finding the doctor's fitness to practise impaired in relation to the particular aspect of his or her practice by **either**:

- i allowing the doctor and the GMC to agree an undertaking which must be in writing and offered by the doctor that he or she will practise only in the speciality in which no concerns have been raised⁴, **or**
- ii imposing a condition on the doctor's registration to the same effect for the maximum period of three years and directing a review hearing before the end of that three year period

Drafting a determination

- 87** (Many of the points below also apply to drafting determinations at other stages of the proceedings.)
- 88** Ensure that all tribunal members are involved in agreeing an outline of the determination i.e. the structure it should follow the issues to be identified, the points to be stressed etc.
- 89** If the tribunal wishes to refer to any case law, ensure that it is correct in the context of the case under consideration and appropriate and explain the relevance.
- 90** Once the outline of the determination is agreed:
- a** you should take responsibility for producing the first draft. Remember, the determination is the tribunal's determination and must reflect the views of the tribunal as a whole, dissenting views will not be reflected in the determination;
 - b** it is not appropriate for the legal assessor to draft the determination, although he/she can check it and ensure that it does not include that which is irrelevant or incorrect;
 - c** the tribunal clerk's role is to assist the chair and tribunal and may work with the chair to produce the first draft;
 - d** ensure that all tribunal members have an opportunity to read and comment on the initial draft that the chair has produced;
 - e** ensure the tribunal members are focussed on the task; it is important to get the draft right but do not allow tribunal members to spend undue time over

⁴ You should refer to the guidance on *Undertakings at Medical Practitioners Tribunals* www.mpts-uk.org/guidance

the drafting and ensure they do not attempt to revisit issues that have previously been discussed and agreed;

- f** ensure the determination is clear and reasoned;
 - g** in terms of sanction imposed everyone should be able to understand why the tribunal imposed the sanction it did, including why other sanctions were dismissed;
 - h** if a period of conditions or suspension has been imposed, ensure clear reasons are given for the period chosen;
 - i** in relation to a direction for a review hearing, ensure that it is clear what is expected of the doctor in the interim and what information he/she should produce at that review hearing. Where a period of suspension is imposed, the tribunal should take care to ensure that any suggestions as to what the doctor should provide for a review hearing is not akin to a list of conditions;
 - j** if the tribunal has imposed a period of conditions or suspension but not directed a review hearing, ensure that it is clear why the tribunal is satisfied that the doctor will be fit to resume unrestricted practice at the end of the period imposed.
- 91** Once you have an agreed draft, read it through to check that it flows and that the reasons for the decisions reached are clear. The legal assessor might be used as a sounding board as the 'objective' observer for the last read through.
- 92** The chair may find it helpful to refer to the drafting determination guidance that is available.