

The postponement of an Interim Orders Tribunal or a Medical Practitioners Tribunal hearing under Rule 29

Introduction

1. This guidance is for use by case managers when considering whether to postpone Interim Orders Tribunals or Medical Practitioners Tribunal hearings.
2. Case managers are legally qualified and are appointed to make decisions on matters relating to case management. They have no involvement with the investigation or presentation of the case.
3. This guidance will also be of assistance to:
 - Doctors whose cases are referred to an Interim Orders Tribunal or a Medical Practitioners Tribunal
 - Representatives of doctors or the GMC.
4. Rule 29(1)(b) provides that before the opening of a hearing, the case manager may postpone the hearing until such time and date as they think fit. The decision to postpone may result from the case manager on their own motion or on the application of a party to the proceedings.
5. Rule 29(3) provides that no hearing shall be postponed unless the parties have been given a reasonable opportunity to make representations on the matter.
6. This guidance sets out the factors that case managers should consider in deciding whether to postpone a hearing, either on application by one of the parties or on their own initiative. The aim of the guidance is to promote consistency and transparency in decision making relating to postponements.

Factors to be considered

7. Before making a decision to postpone a hearing, the Case Manager will take into account the circumstances of the case. This will include any written submissions the parties may have made and the effect of any delay on the fairness of the proceedings.
8. If there are relevant proceedings in other jurisdictions, their status will also be taken into account.

Application for a postponement of a Medical Practitioners Tribunal hearing

9. An application for a postponement of a Medical Practitioners Tribunal hearing may be made in respect of hearings scheduled to consider:
 - an allegation that a doctor's fitness to practise is impaired
 - a review of whether a restricted doctor is fit to resume practise
 - an application by a doctor who has been erased from the register to have his name restored to the register
 - information regarding a doctor's non-compliance with a GMC health, language or performance assessment, or with a statutory request for other information during a fitness to practise investigation.
10. When considering the written submissions for the postponement of a hearing and any representations received from the other party, the factors taken into account may include the following, non-exhaustive, examples:
 - whether a request based on the need to prepare or obtain evidence relevant to the allegation regarding the doctor's fitness to practise is supported by sufficient reasoning, taking into account the length of time since the event(s) complained of
 - whether the benefit of granting a postponement outweighs the resulting prolongation of uncertainty for the doctor regarding their fitness to practise. For example, the Case Manager will want to be satisfied that an application based on the party's unavailability is of sufficiently greater importance than the case before the Tribunal.
 - the availability of, and impact of a postponement on, witnesses (both lay and expert) who are required to attend to give oral evidence, which might impact on the efficiency of proceedings if rescheduled
 - whether the doctor is subject to an interim order.

In review cases, the expiry date of the existing sanction should be taken into consideration.

Own-initiative decision to postpone a medical practitioners tribunal

11. The circumstances in which the case manager might consider making an own-initiative decision to postpone a tribunal will be limited to practical case administration matters. These could include, for example, an unforeseen change in the availability of tribunal members or of any witnesses who have to provide oral evidence, or the availability of a hearing room. The case manager will consider whether postponement will be proportionate and in the interests of justice. For example, the impact of a delay on the length of the hearing may result in it going part-heard.

Application for a postponement of an interim orders tribunal

12. The purpose of a referral to an interim orders tribunal is to consider urgently whether a doctor's registration should be restricted or suspended on an interim basis pending the outcome of the investigation.
13. Three key and interdependent factors will be taken into account before making a decision on postponement of an interim orders tribunal. These are:
 - the need for urgency
 - risk to members of the public, the public interest and/or the doctor's own interest
 - remit of the interim orders tribunal
14. The fact that a case has been referred to the interim orders tribunal means that information has been received during the course of the GMC investigation that may indicate there is a risk to members of the public or to the public interest which requires an interim restriction or suspension of the doctor's registration. It is therefore vital that the interim orders tribunal considers the matter at the earliest opportunity. The fact that a doctor is unable to attend the hearing or has been unable to obtain legal representation does not necessarily mean that the hearing should be postponed, as the risk of the doctor remaining in unrestricted practice (i.e. the need to protect the public interest) may outweigh the doctor's interests.

Public protection, the public interest and the interests of the doctor

15. Cases are referred to an interim orders tribunal to assess urgently the risk to members of public and the public interest, as well as the interests of the doctor. The public interest is not just about the protection of the public - it includes the maintenance of public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.
16. In view of the seriousness of the identified risks which led to the decision to refer, the consultation of parties on postponement and any postponement decision will by necessity be carried out within a short timeframe.

The remit of an interim orders tribunal

17. The role of an interim orders tribunal is to assess the risk of the doctor remaining in unrestricted practice while an investigation is carried out. An interim orders tribunal can only do so on the basis of the information placed before it. The remit of an interim orders tribunal does not include making findings of fact or resolving disputes of fact.
18. An application for postponement or an own-initiative decision by the case manager should not be made based on the need for information which is not available to a tribunal on the day that it makes its decision on whether to impose an order. An interim orders tribunal does not have the power to defer its decision because, for example, the doctor needs to prepare a response to the referral decision by gathering information such as a report, or because of the need to await the outcome of another procedure, for example, criminal proceedings.
19. Should further information become available after an interim order has been imposed or maintained on the doctor's registration, this can be considered in the context of an application for an early review hearing.

Own-initiative decision to postpone an interim orders tribunal

20. An own-initiative decision to postpone an interim orders tribunal would be the exception, in view of the paramount need to safeguard urgently the public interest.