

Substitution of tribunal members at Medical Practitioners Tribunal hearings

Introduction

- 1** This guidance is for use at Medical Practitioners Tribunal hearings when a tribunal member is substituted during the course of the proceedings.
- 2** The need for substitution may arise because a tribunal member is no longer available (e.g., due to ill health) or is no longer eligible to remain on the tribunal (e.g., because of a conflict of interest which has arisen).
- 3** Substitution of a tribunal member has the potential to cause injustice to the parties. The resulting disruption risks affecting how evidence is heard and the efficient use of time and hearing resources. Whatever steps are taken to mitigate these negative effects, there is a need to balance competing considerations in order to arrive at a fair and proportionate outcome.
- 4** This guidance sets out the factors which should be considered when deciding how to continue with the hearing. It will also be of assistance to tribunals when considering the nature of any directions to issue.
- 5** Rule 29(5) of the Fitness to Practise Rules 2004 (as amended) requires that, when a hearing is resumed following an adjournment, if there has been substitution of a tribunal member, the tribunal may, having taken into account representations from the parties, issue directions which it considers necessary in the interests of justice, about:
 - the stage at which the hearing is to be resumed
 - any special procedure which must be followed (including varying an existing direction or the order of proceedings).
- 6** When the tribunal reconvenes, but before the hearing of the allegation is resumed, the parties' submissions will be considered as to whether:
 - the hearing should be abandoned and restarted, or

- the stage at which the hearing should restart.
- 7** An adjournment of the hearing to enable a substitute tribunal member to be appointed should be kept as short as possible. Uncertainty from delay will be unfair to the parties and may cause difficulties for witnesses.

Factors to be considered

- 8** The factors which the tribunal will take into consideration when deciding how to continue with the hearing will include, but are not limited to:
- the stage the hearing of the allegation(s) has reached
 - fairness to the parties if there is further delay due to resuming at a particular point
 - complexity of the allegation(s) and facts upon which they are based
 - written or oral evidence already given
 - ability to recall witnesses, if appropriate
 - whether the tribunal can use transcripts as an alternative to rehearing evidence.
- 9** The tribunal will provide a reasoned determination. The determination will set out, for example:
- the stage at which the hearing will resume and directions as to the procedure to be adopted to enable the hearing to be concluded with the substituted tribunal member; or,
 - that the hearing with the currently constituted tribunal should be abandoned and rescheduled to start afresh with either a completely new tribunal, or the original and substituted tribunal members, on a date and time to be notified to the parties.
- 10** Where a hearing has reached the impairment or sanction stage, the tribunal may decide to go back to the beginning of those submissions to the point immediately after the decision was made either on the facts or impairment. Commencing a new hearing would be relatively unusual given the time and resource implications and disrupting for the parties and the witnesses.

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