

Guidance for decision makers on fit and proper persons to provide representation at medical practitioners tribunals, interim orders tribunals and Investigation Committee hearings

Introduction

1. This document is intended to provide guidance for tribunals and the Investigation Committee on persons who may be considered appropriate to provide representation for doctors at medical practitioners tribunal hearings.

Right to a fair trial

2. Article 6 of the ECHR in Schedule 1 of the Human Rights Act 1998 gives everyone the right to a fair and public hearing (or trial) 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 appropriate representation at a hearing.
3. The GMC (Fitness to Practise) Rules 2004 (Rule 33) state that a doctor may be represented by: (a) a solicitor or counsel; (b) a representative from any professional organisation of which he is a member; or (c) at the discretion of the Committee or Tribunal, a member of his family or other suitable person. A person who gives evidence at a hearing is not entitled to represent or accompany the doctor at that hearing.
4. Doctors are also entitled to be heard by the Committee or Tribunal in person and every effort should be made to ensure that they understand their rights and are provided with a clear explanation of our procedures. However, we believe that it is in a doctor's best interests to engage legal representation during any investigation into their fitness to practise. Doctors are required by *Good medical practice* (paragraph 63) to have adequate indemnity and insurance cover.

Legal representation

5. Doctors are entitled to be represented by a solicitor or counsel in our fitness to practise process, if they wish to make arrangements for this. The GMC has jurisdiction over doctors registered to practise in England, Wales, Scotland and

Northern Ireland and solicitors and counsel representing doctors in our hearings must be registered to practise in one of those jurisdictions.

England and Wales

6. Under the Legal Services Act 2007, the Legal Services Board is responsible for overseeing the regulation of lawyers in England and Wales. Two separate bodies are responsible for ensuring only fit and proper persons practise as solicitors and barristers.
7. The Solicitors Regulation Authority is 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.
8. The Bar Standards Board is the independent regulatory arm of the Bar Council and is responsible for regulating barristers in England and Wales. In order to be authorised to practise as a barrister the Code of Conduct requires persons to obtain an annual practising certificate.

Scotland

9. The Law Society of Scotland is the professional body which regulates solicitors in Scotland and is responsible for issuing certificates to practise for appropriately qualified members under the Solicitors (Scotland) Act 1980.
10. The Faculty of Advocates is a body of independent lawyers who have been admitted to practise as advocates before the Courts in Scotland.

Northern Ireland

11. The Law Society in Northern Ireland is responsible for the regulation of solicitors in Northern Ireland and 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 (Amendment) Regulations 2011.
12. The Bar Standards Board, established by the Bar Council of Northern Ireland is responsible for regulating barristers in Northern Ireland.

Legal representatives qualified outside the UK

13. If a doctor wishes to be represented by a legal representative qualified outside the UK they will need to apply to the Tribunal or Committee for permission. The Tribunal or Committee will consider whether they are a fit and proper person to represent the doctor.

Professional bodies

14. The doctor may be represented by a professional body of which he/she is a member and our guidance specifies which organisations we recognise.
15. Relevant professional bodies include established medical defence organisations and trade unions.
16. For the purpose of clarity the relevant trade unions are as follows: the British Medical Association, Unison, Unite, Public Services and Commercial Services Union, the Hospital Consultant and Specialists Association, the Society of Radiographers, the Professional Trades Union for Prison, Correctional and Senior Psychiatric Workers (POA), the GMB and the FDA.
17. The relevant medical defence organisations are as follows: the Medical Defence Union, the Medical Protection Society, the Medical and Dental Defence Union of Scotland.

Family members and other persons

18. Doctors have the right to make representations to Tribunals and Committees to consider allowing a family member or other person to represent them at a hearing. In considering these representations, the Tribunal or Committee will wish to balance the interests of the doctor in being represented by a person of his choice against the need to ensure that the hearing proceeds expeditiously and with due regard to the need to safeguard the resources of the Tribunal or Committee. In striking this balance, the Tribunal or Committee will also have regard to the importance of the hearing for the doctor and the complexity of the issues it raises.
19. The Tribunal or Committee will assess if the family member or other person is a fit and proper person to represent the doctor.

Fit and proper persons

20. In determining a person's honesty, integrity and reputation, decision makers will have regard, but are not limited, to the matters set out at paragraph 18 which may have arisen in the United Kingdom or elsewhere.
21. There are a number of factors which may be a strong indicator that someone is not fit and proper to represent doctors at a hearing:
 - a. If a person has been removed, or suspended, from a professional register (or their registration is subject to conditions) due to concerns about their fitness to practise.
 - b. If a person has 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.

- c. If a person has been barred from working with vulnerable adults and or children by the Independent Safeguarding Authority or Disclosure Scotland or equivalent overseas body.
 - d. If a person has been the subject of any adverse finding or settlement in civil proceedings, particularly in connection with misconduct, fraud, or clinical or medical negligence.
 - e. If a person has been found guilty of a serious criminal offence; this must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Offences which may be considered particularly serious include fraud or dishonesty, blackmail, sexual or violent offences, human trafficking and hate crime.
 - f. If a person is subject to any form of civil restraint order or has been found to be a vexatious litigant.
22. Decision makers may also take into account whether the person has been subject to any other justified complaint relating to regulated activities; or is currently the subject of any proceedings of a regulatory or criminal nature, or has been notified of any potential proceedings or any investigation which may lead to those proceedings.
23. Where a person has supported a doctor during an investigation, it does not follow that they are a fit and proper person to provide representation at a hearing. The Tribunal should take into account all the evidence available to them, in all the circumstances, when considering an application