

Decision making

In 2018, our training included case law refreshers through e-learning and discussion, clarifying MPTS processes and guidance and updates on policy developments. It also included exercises where tribunal chairs (including LQCs) played the role of self-represented doctors or vulnerable witnesses, to highlight those perspectives and the ways in which tribunal members should manage challenging hearings both fairly and effectively.

Appraisal

So that standards are maintained, tribunal members are also subject to regular appraisal. This includes 360 degree feedback from other tribunal members with whom they have sat in hearings, and observations of their performance during hearings carried out by appropriately trained members of MPTS staff.

Quality assurance of tribunal decision making

The Quality Assurance Group (QAG) is chaired by our Chair and meets monthly to review a proportion of written tribunal determinations.

The purpose of these reviews is to identify learning points that can assist us to ensure determinations are clear, well-reasoned and compliant with the relevant case law and guidance and to identify any issues which could usefully be incorporated into future tribunal training sessions.

In 2018, the QAG reviewed 473 tribunal decisions. The most common issues identified were the need to ensure the correct legal tests and case law were applied and to provide more detailed reasons for a decision. The QAG also reviews tribunal decisions which have been the subject of appeals, including appeals by, or of learning points raised by, the Professional Standards Authority (PSA). During 2018, the PSA raised learning points in 11 cases.

Learning points issued by the Quality Assurance Group

In 2018, the QAG issued learning points to tribunal members on a variety of topics. These included:

- ▶ Giving clear reasons for deciding if a doctor's fitness to practice is impaired by reason of misconduct, and setting out if the misconduct found was serious.
- ▶ The introduction of the Occupational English Test as an additional test that can be routinely and automatically accepted by the GMC.
- ▶ Changes to the Publication and Disclosure policy.
- ▶ The need to consider all three limbs of the statutory overarching objective when making decisions.
- ▶ The need to take account of both emotional and physical harm, when deciding whether a patient has been harmed by the actions of a doctor.

Decision making

- ▶ Explaining and demonstrating how any case law and guidance referred to in a determination support the tribunal's reasoning.
- ▶ Clearly explaining the level of supervision ('close' or 'direct') required when imposing conditions.
- ▶ Reminder of the '*Guidance on drafting*' guidance available to tribunals.
- ▶ Indicating whether the doctor can or cannot make further applications to be restored to the register following a restoration application being refused.

You can view all learning points issued to tribunal members at www.mpts-uk.org/learning_points.

Updates to tribunal guidance

During 2018, we issued new guidance to tribunal members on:

- ▶ Matters to consider when an individual shows signs of struggling or being unwell during a hearing.
- ▶ Listing reconvened hearings when a case has to adjourn part-heard.

Cases referred to us

Number of cases referred to a medical practitioners tribunal

- ▶ Following an investigation, the GMC can refer a doctor to us for a medical practitioners tribunal hearing.

	2016	2017	2018
Decisions to refer a doctor to a medical practitioners tribunal hearing	232	250*	310
Decisions to refer a doctor to a non-compliance hearing	16	19	8

- ▶ Some GMC referrals are cancelled before a hearing commences. This might be because information has become available which means the threshold for referral is no longer met, or because of other exceptional circumstances.
- ▶ Sometimes a doctor is referred more than once, if the GMC receives additional information before a hearing is listed.¹

Types of cases referred to the MPTS

- ▶ When referring cases to us, the GMC may allege that a doctor's fitness to practise is impaired by reason of one of more of the following grounds:
 - ▶ misconduct
 - ▶ deficient professional performance
 - ▶ a conviction, or caution, for a criminal offence
 - ▶ adverse physical or mental health
 - ▶ not having the necessary knowledge of English
 - ▶ a determination made by another regulatory body.
- ▶ The allegation being made against the doctor by the GMC may cover more than one category of impairment. For example, a criminal conviction might be accompanied by further allegations of misconduct or adverse health.

*This figure differs from the 240 listed in the GMC's 2017 Annual Report, as it includes ten referrals that resulted from a doctor's decision not to agree undertakings.

Cases referred to us

Type of alleged impairment in medical practitioners tribunal hearings	2016	2017	2018
Misconduct	150	121	164
Conviction	20	35	33
Performance	5	4	7
Health	8	1	5
Determination by another regulator	0	2	0
Language	2	0	1
Misconduct and performance	13	3	9
Misconduct and conviction	5	9	11
Misconduct and health	6	4	5
Conviction and health	5	8	4
Other combinations of the above	15	8	7
Total	229	195	246

Case management

- ▶ The MPTS has powers to issue binding pre-hearing case management directions. We believe this is essential to make sure hearings are case-ready on the first day.
- ▶ In 2018 we took steps to increase our in-house case management support. Our two case managers are supported by a small team of experienced staff. Cases are subject to robust, active pre-hearing case management.
- ▶ We held 261 pre-hearing meetings in 2018 (some of which were for the same case).
- ▶ Our tribunals have powers to award costs if either party (the doctor or the GMC) fails to comply with a direction and behaves unreasonably in the conduct of proceedings. Tribunals awarded no costs in 2018.
- ▶ Since March 2018, parties have been required to submit a hearing bundle in advance in medical practitioners tribunal (MPT) hearings, unless there are exceptional circumstances.
- ▶ Providing bundles in advance improves the ability of parties to timetable witness evidence, by removing the uncertainty around the amount of reading time a tribunal will require.

Hearing days and service targets

- ▶ The number of hearing days is an important figure for our budgeting and workforce planning. We look at this alongside the number of cases currently being referred by the GMC in order to plan the best use of our resources for the future.

Cases referred to us

- ▶ We have service targets to:
 - ▶ begin 90% of medical practitioners tribunal hearings within nine months of a referral.
 - ▶ begin 100% of interim orders tribunal hearings within three weeks of a referral.
 - ▶ We met both targets in most periods in 2018. In two months of the year, we missed our target to begin 90% of MPT hearings within nine months of a referral. On a single occasion, we missed our three week target for holding an IOT hearing.

- ▶ The reasons for those targets being missed included:
 - ▶ delays in the GMC investigation, or with disclosure of evidence to the doctor.
 - ▶ delays caused due to the doctor's health or lack of representation.
 - ▶ delays in securing a quorate tribunal.

- ▶ In 2019 we will be implementing changes to our pre-hearing case management processes that we believe will allow us to list many cases for a hearing sooner, and ensure that more hearings are ready to proceed on the first day.

- ▶ We used 76% of our hearing rooms per working day for all medical practitioners tribunal (MPT) and interim orders tribunal (IOT) hearings, against our target of 80%.

Hearing days	2016	2017	2018
Medical practitioners tribunals	2,431	2,007	2,204
Interim orders tribunals	354	266	258
Total	2,785	2,273	2,462

Hearing outcomes

Medical practitioners tribunal hearings – new cases

- ▶ Medical practitioners tribunals made decisions in new cases involving 246 doctors in 2018, a higher number than in 2017.
- ▶ To put that figure in context, there are approximately 300,000 doctors on the UK medical register, and the GMC considers around 8,000 complaints about doctors each year.
- ▶ In 2018, just over three quarters of new cases brought before medical practitioners tribunals resulted in a sanction being imposed (of conditions, suspension or erasure), a similar proportion to previous years.
- ▶ Our tribunals found doctors' fitness to practise not to be impaired in just over 20% of new cases. In some of those cases, the tribunal felt it necessary to issue a warning on the doctor's registration.
- ▶ Three cases concluded last year with the tribunal accepting an application from the doctor for voluntary erasure from the medical register.

Medical practitioners tribunal hearing outcomes	2016	2017	2018
Impaired: Erasure	70	62	65
Impaired: Suspension	93	76	101
Impaired: Conditions	17	13	25
Impaired: No action	2	4	2
Not impaired: Warning	11	13	10
Not impaired	34	27	41
Voluntary erasure	2	0	3
Total	229	195	247

Medical practitioners tribunal hearings – non-compliance

- ▶ Non-compliance hearings have been held since 2016, following changes to the Medical Act.
- ▶ If non-compliance is found, a tribunal can impose a sanction of conditions or suspension.

Hearing outcomes

Outcomes in non-compliance hearings	2016	2017	2018
Suspension	2	8	7
Conditions	5	0	0
Non-compliance not found	0	1	3
Total	7	9	10

Medical practitioners tribunal hearings – restoration

- Five doctors were restored to the medical register in 2018, while ten applications were refused.

Outcomes in restoration hearings	2016	2017	2018
Application granted	6	8	5
Application refused	9	13	10
Total	15	21	15

Interim orders tribunal hearings – new cases

- Interim orders tribunals considered 388 new cases in 2018, slightly more than in 2017.

Outcomes in interim orders tribunal hearings	2016	2017	2018
Suspension	58	43	48
Conditions	233	238	247
No action	48	71	93
Total	339	352	388

Review hearings

- Reviews on the papers were first introduced in 2016, following changes to the Medical Act.

In 2018, more interim orders reviews were conducted on the papers than in hearings. This is an efficient use of our resources and less stressful for those involved.

Hearing outcomes

Medical practitioners tribunal review hearings	2016	2017	2018
Medical practitioners tribunal review	171	148	151
Medical practitioners tribunal review on the papers	4	12	6
Total	175	160	157

Interim orders tribunal review hearings	2016	2017	2018
Interim orders tribunal review	860	524	417
Interim orders tribunal review on the papers	277	351	462
Total	1,137	875	879

Non-compliance review hearings	2016	2017	2018
Non-compliance review	-	7	13
Non-compliance review on the papers	-	0	0
Total		7	13

Appeals

After a medical practitioners tribunal hearing, there is a right of appeal against the final decision for the doctor, the GMC and the PSA.

Appeals are heard by the Court of Session in Scotland, the High Court of Justice of Northern Ireland, or the High Court of Justice in England and Wales.

If a case proceeds to a court hearing, the judge can:

- ▶ dismiss the appeal,
- ▶ allow the appeal, in whole or in part, and
 - ▶ quash the relevant tribunal decision,
 - ▶ substitute the tribunal's decision for another the tribunal could have given or
 - ▶ refer the case back for a new MPT tribunal decision.

Any **doctor** who has been found impaired by a medical practitioners tribunal can appeal against the decision within 28 days of being notified of the decision of the tribunal.

If a doctor wishes to challenge any other decision made by a tribunal, for example the issuing of a warning, this is done by way of judicial review.

The **GMC** can appeal against decisions made by medical practitioners tribunals where it believes the relevant decision (including a tribunal sanction, decision to restore a doctor to the register or an order in response to a doctor's non-compliance with a fitness to practise investigation) is not sufficient to protect the public.

The **PSA** reviews the decisions of the fitness to practise tribunals or panels of nine healthcare regulators in the UK. It has the right to refer a medical practitioners tribunal's decision to the relevant court if it believes it is not sufficient for the protection of the public. Also, the PSA has a power to join a GMC appeal, and to take over the conduct of an appeal that the GMC decides to withdraw.

How we respond to appeal judgments

Judgments in appeals or in challenges brought by all parties can be helpful in clarifying matters of law and in providing learning points that we can use to improve future decision-making by MPTS tribunals.

We communicate any such learning points to our tribunal members in a number of ways:

- ▶ Publishing appeal circulars, which summarise the key information from the judgment and identify any learning points or good practice
- ▶ At our annual training for tribunal members
- ▶ Providing updates on the outcomes of appeals directly to tribunal members involved in the appealed hearing (and of the outcome of any remitted hearing following the appeal).

Appeals

- ▶ By providing direct feedback to individual tribunal members, if necessary, as part of their annual appraisal and continuous professional development.

A summary of learning points issued in 2018 is provided on page 17 of this report.

Appeal outcomes

- ▶ Year columns refer to the date tribunal hearings concluded, not when appeals were heard.

Doctor appeals	2016	2017	2018
Successful	3	5	2
Dismissed	25	13	12
Struck out	0	0	0
Stayed	0	0	4
Withdrawn	3	6	4
Date set	0	1	0
Remitted to MPT	-	-	2
Total	31	25	24

GMC appeals	2016	2017	2018
Successful	4	13	3
Unsuccessful	0	2	2
Withdrawn	0	4	0
Date set	0	0	0
Total	4	19	5

PSA appeals	2016	2017	2018
Successful	1	1	0
To be heard	-	-	2
Total	1	1	2

Report to Parliament 2019

Our next report

We will deliver our fourth report to Parliament in 2020, reporting on our activity in 2019.

We will report on progress on the actions set out in the foreword to this report, and the impact any changes have had on the efficiency and effectiveness of our tribunal service.

Further information

If you require more information about the MPTS, please contact enquiries@mpts-uk.org.





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