

Panellist Circular



14 May 2013

To: Fitness to Practise Panel Panellists
Interim Orders Panellists
Legal Assessors

Copy: Panel Secretaries

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Quality Assurance Group (QAG) – Learning Points

As you are aware the QAG meets monthly to review decisions of the Fitness to Practise Panels and Interim Orders Panels. We felt it would be helpful to share some of the learning points we have identified in recent months, and also acknowledge that there have been a number of determinations reviewed to date this year that we have considered exemplary. We hope that in sharing this feedback it will assist you all in the drafting of determinations going forward.

Interim Order Panel Determinations

- Providing good reasons is key to all of our decisions. Panels should demonstrate that they have considered all options when determining whether to impose an interim order and, if so, what type of order and deciding on the period of the initial order. We have shared at this year's annual training a number of best practice examples that have recently been included in determinations and wish to acknowledge that the quality of reasoning is continuing to improve.
- Panels should ensure that where cases are adjourned, including where the adjournment is due to a lack of time, submissions are heard from both parties before any decision is made to adjourn. We consider that it is important that any decision to adjourn reflects the submissions made;
- Panels should ensure that undue weight is not given to testimonials while the investigation into a doctor's fitness to practise is still ongoing. Generally testimonials are more relevant at the impairment and sanction stages of a substantive Fitness to Practise Panel hearing;
- Panels should bear in mind that the remit for criminal investigations and GMC investigations differ. Where a police investigation has concluded, there may be reasons for a GMC investigation into the same matter to continue. Panels should be mindful of those differences in determining whether or not it is appropriate to impose or maintain an interim order.

The MPTS makes impartial decisions in doctors' fitness to practise hearings. The MPTS is part of the General Medical Council, but it is operationally separate and it is accountable to Parliament.

Fitness to Practise Panel Determinations

- When a panel has to adjourn until a later date, it is important that any extension to a current sanction is made for a specific period of time taking into consideration any delays that may impact the reconvened hearing. Open-ended extensions to sanctions are not appropriate;
- Panels should ensure that in each case where more than one element of impairment has been alleged, for example misconduct and deficient professional performance, findings are made in relation to each of the elements of impairment alleged. We suggest that it is helpful for the determination to record its findings relating to each element of impairment alleged;
- When a finding of no impairment has been made in relation to a doctor, it is important that the panel hears submissions on whether to impose a warning. Care should be given to ensure that panels do not indicate whether or not they are minded to impose a warning prior to hearing these submissions;
- We consider that, where appropriate, it is preferable for panels to cite recent judgments from our own jurisdiction. Judgments from other regulators, criminal matters or judgments from our own jurisdiction which have since been superseded by more recent law are rarely useful to be included in the panel determination.
- Panels should bear in mind that the purpose of any determination is to reflect the evidence and submissions heard, the law and guidance referred to and the reasons for the decision. We feel that it is not appropriate for determinations to be written in a style akin to the minutes of a meeting. We suggest that phrases such as, 'the panel now invites...' or 'the panel turned to...' should be avoided and determinations should focus on the outcomes of decisions made with reference to the evidence considered;
- As indicated, there have been a number of exemplary determinations this year which have been due to clear reasons being provided. We have particularly noted that the reasons given for the period of sanction have improved and have been particularly well explained with reference to any actions specific to the individual case.

General Point

- We wish to remind you of the issue of 'recusal' which was covered during 2012 annual training. Panellists should seek to identify any potential conflict of interest at the earliest possible stage, preferably prior to the commencement of the hearing so recusal is not required.

Where a panellist is either asked to recuse themselves or feels that they should consider recusal, this is a matter for the panel to decide and not for the panellist alone.

We advise you to consider the test as set out in the case of *Porter v Magill* [2002] 2 AC 357, 494H 'The question is whether the fair-minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.' See also Helow regarding who is considered to be the 'fair minded observer'

The panel should then proceed to make a formal written decision prior to any recusal decision being confirmed and where appropriate the panel, while still quorate, should also produce a written determination on adjournment where substitution has not been possible. As a legal assessor is not a decision maker it is rare that there will be a circumstance that would require a legal assessor to recuse themselves.

Thank you for your continued hard work and I hope that the above points assist in your future decision making.

Kind regards

A handwritten signature in black ink, appearing to read 'David Pearl', with a long horizontal flourish underneath.

His Honour David Pearl

Chair of Medical Practitioners Tribunal Service