

Part 6: Preparing for your medical practitioners tribunal hearing – disclosing evidence

Key points

- ▶ It is important to disclose all evidence in line with the preparation deadlines set.
- ▶ If you will instruct an expert witness or obtain witness statements, guidance is available to help ensure those documents meet the medical practitioners tribunal's requirements.

Disclosure of evidence

As explained in [Part 3](#), we will give you a deadline to send to the GMC copies of any evidence you wish to use at the medical practitioners tribunal hearing. The medical practitioners tribunal will expect that both you and the GMC have sent each other the evidence you wish to use at the hearing (known as disclosure) in good time and in line with the deadlines set. Failure to comply with the deadlines set can cause delays and may have important consequences – see [Part 11](#) – so it is in your best interests to make sure you disclose evidence on time.

Documents to be disclosed

You need to disclose to the GMC all documents which you want to refer to at the medical practitioners tribunal hearing. This might include:

- ▶ documents, including witness statements and expert reports
- ▶ relevant emails, letters and telephone notes
- ▶ medical records
- ▶ photographs

- ▶ recorded material, including audio and video clips.

If new information comes into your possession during the course of the hearing, you should let the GMC know about it, even if you don't intend to rely on it.

You do not have to disclose any correspondence, advice or recorded discussions between yourself and your legal representative – that is considered privileged information and you cannot be compelled to share it.

Expert evidence

Expert evidence is the independent opinion provided by an expert about the issues relevant to your case. For example, if your case involves allegations of inadequate clinical care, the GMC will obtain the opinion of an expert in that area of medicine about whether your actions met the expected standards.

In a health related case, expert opinion might be sought from an appropriate healthcare professional who undertakes an assessment of your health and advises the GMC about whether it affects your fitness to practise.

Expert witnesses give reports to the medical practitioners tribunal, and attend the hearing if required, to give further evidence in person and to answer any questions that you, the GMC or the medical practitioners tribunal may have.

Regardless of whether it is the GMC or you who commissioned the expert report, the expert witness's duty is solely to assist the medical practitioners tribunal in understanding the issues in question. Their role is not to champion the case of whoever instructed them.

Content and format of expert reports

Information about the duties of expert witnesses and what the medical practitioners tribunal will expect from them is available in our guidance, [Protocol for the instruction of experts to give evidence in medical practitioners tribunal hearings](#). We strongly recommend that you send a copy of this guidance to any expert witness you instruct, to make sure they know how to format their report and understand their legal obligations.

Do I need an expert witness?

In certain types of case the GMC will obtain the opinion of an expert in the relevant field. You will be given a copy of the expert's report during the GMC's investigation.

You might disagree with the expert's opinion, in which case you may wish to consider instructing your own expert, although it is not compulsory to do so. If you instruct an expert it must be someone with demonstrable, relevant qualifications and expertise in the area under consideration.

The GMC will not pay for you to get your own expert report. You are responsible for identifying an appropriate expert and paying for their report and their attendance at the medical practitioners tribunal hearing.

What will be included in an expert report?

The expert will provide an opinion based on all the information available, and will specify what they have taken into account in reaching their conclusions. They might be asked to respond to specific questions relating to the allegations, for example, their opinion on particular aspects of treatment and the overall standard of care provided. If you decide to instruct your own expert witness, you should ensure that you provide them with a copy of all relevant documents so that they can reach a well-informed opinion.

If the case relates to your health, the expert will be asked to provide a diagnosis and prognosis, together with details of any examination or testing they undertook or directed. If the expert identifies concerns about your health which may affect your ability to practise safely as a doctor they are likely to make recommendations about what they consider to be an appropriate outcome. For example, they could suggest that they believe you are fit to practise on a limited basis under certain restrictions, or they might recommend that you are not currently fit to practise at all.

Whatever recommendations an expert makes, the decisions at the hearing will be a matter for the medical practitioners tribunal. If the medical practitioners tribunal does not accept an expert's opinion it must explain its reasons.

Witness statements

Any person who is called by you or the GMC to give factual evidence to the medical practitioners tribunal must first provide a witness statement. A witness must take an oath or affirmation, and answer questions from the GMC's representative, you or your representative, or the medical practitioners tribunal. If you choose to give evidence at your hearing, you'll become a witness and must provide a witness statement in advance.

A witness statement sets out a witness' recollection of the events in question, and attaches any documents the witness refers to. You should bear in mind that a witness's written statement (and your written statement) will normally stand as evidence-in-chief. This means that there will be no need for the witness to give oral evidence except in response to cross-examination, re-examination and questions from the medical practitioners tribunal.

Content and format of witness statements

Information about how to prepare witness statements is available in our [witness statement guidance](#), which also includes a template to use.

It is important that the statement is in the witness' own words, and is signed with a statement of truth, as shown in the template. You must not tell a witness what you want them to say or put words in their mouth.

Witness statements need to be clear and logical. It can often be helpful to set out information chronologically, or to use side headings to separate out different issues. When preparing your witness statement, you may also find it useful to refer back to the allegations you face, and address each paragraph in turn.

Support for witnesses

If you are going to have witnesses attend the hearing to give evidence on your behalf, you may wish to direct them to the Witness Service, which offers free, independent and confidential support for all witnesses giving evidence to hearings – both for the doctor and for the GMC. It is run by the charity Victim Support on behalf of, but independent of, the GMC.

Further information for witnesses, including contact details for the Witness Support Service is available in our [Witness guide to hearings](#).

Testimonial evidence

During the later stages of the hearing, you may wish to provide the medical practitioners tribunal with evidence to support your character. You can provide testimonials from fellow doctors or other healthcare professionals and patients, and you can call character witnesses to give evidence in person. These witnesses may be questioned by you, the GMC's representative and the medical practitioners tribunal.

It is important to arrange any testimonial evidence before the hearing, usually through asking your testimonial witnesses to provide a letter of support. The GMC will take steps to verify any testimonial evidence, using the process set out in its [published guidance](#). You should consider this guidance carefully, and make sure that your character witnesses are on standby to come to the hearing if necessary.

Preparing for cross-examination

Cross-examining GMC witnesses

At a hearing you can question witnesses called by the GMC. This is usually referred to as cross-examination. It is important to think in advance about the questions you have for the GMC's witnesses.

Where the complaint against you is sexual in nature and the witness is the alleged victim, you are not allowed to cross-examine the witness yourself. Instead, the MPTS will arrange for a barrister to attend the hearing to ask questions of that witness on your behalf.

When preparing your cross-examination, you may find it useful to consider the following points.

- ▶ Ask questions in a logical order.
 - ▶ You will find it useful to have previously written down a list of questions that you want to ask the witness.
 - ▶ Use a logical order, such as chronologically or in the order of the charges set out in the allegation.
 - ▶ Consider whether you want to ask closed questions, (those that can be answered with a single word, or short phrase) or open questions (such as 'How did...' or 'Can you tell me...'), which will generate a long answer.
- ▶ Ask one question at a time. It can be difficult for a witness to answer all parts of a multiple question and therefore you may only get an answer to part of it.
- ▶ Ask about inconsistencies, as a witness may have said something different at the hearing to what was set out in their witness statement.
- ▶ Don't argue with the witness.

- ▶ Although you are generally allowed to ask a witness questions which are relevant to the case, if you ask questions which are inappropriate or about irrelevant matters, then the medical practitioners tribunal or the GMC representative may ask you to stop and move on to another question.

Will I be cross-examined?

If you decide to give evidence at your hearing you will be cross examined by the GMC's representative and the medical practitioners tribunal will ask you questions. You should try to be familiar with your witness statement or any other documents you have given to the GMC and medical practitioners tribunal to consider on your behalf.

It is important to:

- ▶ listen carefully to the questions that you are being asked. Do not talk about matters which do not relate to the question
- ▶ take your time and give clear, considered answers
- ▶ if you do not remember something, say so
- ▶ do not argue with the person questioning you
- ▶ if a point of law is brought up that you do not understand, ask for an explanation.

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