

12 June 2018

Seventh floor  
St James's Buildings  
79 Oxford Street  
Manchester M1 6FQ

To: MPTS Associates

Email: [enquiries@mpts-uk.org](mailto:enquiries@mpts-uk.org)  
Website: [www.mpts-uk.org](http://www.mpts-uk.org)  
Telephone: 0161 923 6263  
Fax: 0161 240 7199

Cc: Tribunal Clerks  
Medical Defence Organisations

## **Adjourning hearings as a result of a doctor's health and considering non-compliance with a tribunal directed assessment**

This circular is to provide:

- a reminder for tribunals to put themselves into the best position when considering whether to:
  - adjourn a hearing as a result of concerns arising in relation to the doctor's health; or
  - direct a health assessment;
- practical guidance when considering a doctor's alleged non-compliance with a tribunal directed assessment.

Guidance for tribunals has been provided on this area, including:

- [Guidance for Medical Practitioners Tribunals on adjourning to direct an assessment or for further information or reports to be obtained](#) dated February 2018 ('the adjournment Guidance'); and
- [Appeal circular A14/17: Dr Hayat v The General Medical Council](#).

### **Adjourning a hearing as a result of a doctor's health**

1. Where a tribunal has concerns about the health of a doctor and is considering adjourning a hearing as a result of those concerns, the tribunal should consider whether it has sufficient information which allows the tribunal to understand the nature and extent of the health condition, and its impact on the doctor's ability to participate in the proceedings. The tribunal should:

- a. not disregard a GP's certificate that a practitioner is unfit for work merely because it does not also say that s/he is unfit to attend a hearing. However, it should not automatically accept such a GP's certificate as indicating that s/he is unable to participate in the proceedings;
- b. be mindful that the tribunal may need to direct further enquiries to be made, where necessary and possible, to obtain the most up-to date information about the doctor's health, to put itself in the best position to carefully consider:
  - i. whether the doctor is well enough to participate in the tribunal proceedings, if he/she wishes to do so;
  - ii. to what extent the doctor's condition would affect his/her ability to take part in the proceedings, including whether any reasonable adjustments could/ought to be made to assist;
  - iii. depending on the length of the adjournment which is being sought or considered, whether or not the concerns about the doctor's health will be resolved during that period or how his/her position would be different after the adjournment;
  - iv. whether or not to adjourn to obtain a health assessment where there are concerns about the doctor's ability to participate in the proceedings. In such instances, the tribunal must make clear that the health assessment report(s) ought to address that specific issue as far as it is possible;
- c. consider exercising its power to make case management directions to assist in the future management of the hearing. These might include:
  - i. setting deadlines for the practitioner or their representatives to obtain and disclose further information to the GMC;
  - ii. setting deadlines for the GMC to consider and respond to any further information disclosed;
  - iii. where the tribunal believes the hearing requires further case management outside of the tribunal hearing (for example, if the hearing is to be relisted or hearing reconvene duration is to be reviewed), directions requiring the parties to provide what further information the tribunal considers is necessary for a Case Manager to make further decisions about the progress of the hearing, and when that information should be provided;
  - iv. where the tribunal is unable to identify specific, workable case

- management directions but believes further case management outside of the tribunal hearing, a general direction that the matter be listed for a pre-hearing meeting; and
- v. any other directions to assist with the efficient running of the hearing, when it does resume.

### **Considering non-compliance with a tribunal directed assessment**

2. Where a doctor fails to undertake an assessment in accordance with the direction of a tribunal, Schedule 4 paragraphs 5A(3C) and 5C(3C) of the Medical Act 1983 (as amended), state that the tribunal must consider the non-compliance when the hearing resumes.
3. The adjournment Guidance<sup>1</sup> suggests that if the tribunal makes a finding and an order of non-compliance, then it cannot go on to consider the original allegation at that time. However, the Guidance does not specifically differentiate between a situation where the assessment concerns the allegation of impairment already before the tribunal (**'same category of impairment cases'**), or where it concerns or would constitute a new or different allegation of impairment (**'different category of impairment cases'**)
4. In **same category of impairment cases**, the tribunal may find that without the assessment it is unable to go on to consider the allegation. Therefore, if a non-compliance order is made, it would not be appropriate to consider the allegation.
5. In **different category of impairment cases**, the tribunal could:
  - a. make an order in relation to the non-compliance. If so, then it is unlikely to be appropriate or possible to go on to consider the original allegation;
  - b. alternatively, make no order in relation to the non-compliance and:
    - i. refer the concerns which led to the assessment being directed to the GMC asking them to ensure that they are considered as soon as possible;
    - ii. therefore, continue to consider the original allegation(s).

---

<sup>1</sup> Paragraph 71 - *Where a tribunal takes action under rule 17ZA and makes a non-compliance order, it cannot then go on to consider the original allegations. The tribunal should direct a review of the non-compliance order; this will be considered before a non-compliance review tribunal.*

Kind regards

Tribunal Development Section

0161 240 7292

[Tribunaldevelopmentsection@mpts-uk.org](mailto:Tribunaldevelopmentsection@mpts-uk.org)