MPTS Medical Practitioners Tribunal Service

Tribunal Circular

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

0161 240 7292
www.mpts-uk.org

To: MPTS Associates

CC: Tribunal Clerks

Adjournments in MPT and IOT hearings

This circular sets out a reminder of the key principles applicable when determining whether to adjourn a hearing.

Non-attendance by a practitioner

In *GMC v Adeogba; GMC v Visvardis*[*], the Court of Appeal provided guidance for situations where a practitioner does not attend a tribunal hearing:

- A regulated practitioner has a duty to engage with their regulator, including updating and maintaining the contact details they provide;
- When deciding whether to proceed in a practitioner's absence, fairness to the practitioner is a prime consideration but is not determinative. Fairness to the GMC and the public interest must also be taken into account;
- A culture of adjournments is to be deprecated and would be contrary to the efficient delivery of regulation.

[*] [2016] EWCA Civ 162

In *El-Huseini v GMC*[*], the High Court reiterated that a tribunal's decision must be guided by all three limbs of the overarching objective to protect the public.

The issue of deciding whether to proceed or continue in the absence of a practitioner was also considered in *Lovett v HCPC*[†], where the High Court held proceedings could continue, even if a practitioner was absent for health reasons and/or lacked capacity, as long as it was fair to do so. Among the factors which may be relevant to those considerations include:

- The stage the proceedings have reached;
- What evidence (if any) is still to be heard;
- Whether evidence and/or submissions can be given by other means;
- Whether the practitioner is or was previously able to engage with the proceedings.

Medical evidence

In *GMC v Hayat*[‡], the Court of Appeal held that, when considering medical evidence submitted in support of an adjournment application:

- Tribunals have a discretion to adjourn hearings, but must take into account the public interest in the fair, expeditious and efficient disposal of allegations;
- Evidence of being certified as unfit to work does not automatically mean that a person is unfit to participate in a tribunal hearing;
- Any medical evidence must identify the author, their familiarity with the practitioner's medical condition, why that condition prevents participation in the hearing and the prognosis and should be unchallenged. The tribunal must decide what weight to attach to that opinion and what arrangements (short of an adjournment) might be made;
- The tribunal may conduct further enquiries, but is not under a duty to do so;
- Medical evidence submitted should be weighed against other factors such as previous unsuccessful applications to adjourn and the public interest, given that adjournments cause disruption, inconvenience and additional costs.

Appointing and availability of legal representation

A practitioner is not automatically entitled to an adjournment to obtain legal representation, even where it is their first adjournment application. Granting such adjournments in the absence of compelling reasons can adversely affect public confidence in regulation of the profession. In *Nabili v GMC*[§], the High Court addressed how to approach scenarios where a practitioner seeks an adjournment to obtain legal representation:

[*] [2021] EWHC 2022 (Admin)
[†] [2018] EWHC 1024 (Admin)
[‡] [2018] EWCA Civ 2796
[§] [2018] EWHC 3331 (Admin)

- Tribunals must strike a proper balance between fairness to the practitioner and the public interest in the fair and efficient disposal of proceedings, including having regard to the history of the proceedings;
- It will also be relevant to consider: how long the practitioner has had to arrange representation; the adequacy of any explanation given for the lateness in arranging representation; whether there is evidence that the lack of representation has arisen through no fault of the practitioner; and whether the tribunal has confidence that an adjournment would result in the practitioner being represented and/or attending and participating in the hearing.

In *Jogula Ramaswamy v GMC*[*], the High Court reiterated that fairness to the practitioner is a prime consideration when deciding whether to adjourn due to a representative's availability. In such instances, tribunals must take into account the complexity of the case and the representative's prior involvement.

For example, in *Jogula Ramaswamy*, the practitioner's representative had been instructed for a significant period on a direct access basis and had appeared at previous hearings. By contrast, less weight might be given where a representative has not yet been instructed or is recently instructed with no prior involvement.

Adjournment at later stages of an MPT hearing

In *Sanusi v GMC*[†], the Court of Appeal confirmed that where a practitioner does not attend the hearing, tribunals are not under a general obligation to adjourn before the sanction stage to allow the practitioner to make submissions. The principles from *Adeogba* apply with equal, if not greater, force to adjournments part-way through a hearing and the regulatory system cannot operate on the basis that a failure to attend a hearing inevitably leads to an adjournment at later stages.

In *Lovett*, the High Court also provided guidance on factors for tribunals to consider when determining whether to continue with a hearing in the absence of a practitioner (as summarised above).

Kind regards

Tribunal Development Section
0161 240 7292
tribunaldevelopmentsection@mpts-uk.org

[*] [2021] EWHC 1619 (Admin)
[†] [2019] EWCA Civ 1172