

This is the public version of the circular published on 23/12/2024 - all guidance to tribunal members is included below; only internal or administrative matters have been redacted.



Tribunal Circular

23 December 2024

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To: MPTS Tribunal Members
CC: Tribunal Clerks
Medical Defence Organisations

Conflicts of interest and recusals

This circular sets out a reminder of some key considerations for tribunals in considering Conflicts of Interest and recusal. It may be helpful to be read in conjunction with the previous circular '[Tribunal member conflicts](#)' which was issued earlier this year.

Timing is key

As set out in the above circular, it is crucial that potential conflicts of interest are raised at the earliest stage possible with the [Empanelment team](#). The team will consider whether it is appropriate for you to sit on the case and can consider the other options available regarding empanelment. If the conflict is not raised early enough this may lead to a delay or adjournment that could otherwise have been avoided. The Tribunal Members' Code of Conduct states that any conflicts (or perceived conflict) of your own and of others should be declared to the MPTS as soon as reasonably practicable.

As part of your preparation, you should familiarise yourself with the bundle and any other supporting documents in advance of a hearing. As such, issues of conflict arising from the bundle are expected to be declared and dealt with in advance of the

hearing. Whilst on some occasions, conflicts of interest may only become apparent on the morning of the hearing, it is expected that this will be infrequent.

Similarly, parties will receive details of the empanelled tribunal members in advance and can check the Register of Interests (publicly available on our website). This contains the experience and background of all MPTS tribunal members and any current paid and relevant voluntary positions held, including the year that the role was commenced. Its primary purpose is to inform parties to the proceedings, prior to attendance at a hearing, if there are any potential conflicts of interest with a tribunal member who has been empanelled on the hearing. For this reason, you are required to declare any potential or actual conflicts of interest on appointment and have a responsibility at all times to advise us of changes to your current role or responsibilities to ensure the accuracy of information publicly available.

Sitting on a practitioner's previous MPTS hearing(s): Does this present a conflict of interest?

Tribunal members are empanelled in accordance with The General Medical Council (Constitution of Panels, Tribunal and Investigation Committee) Rules Order of Council 2015 ('the Rules'). This makes clear that you cannot sit on a tribunal for the substantive hearing of a case that you previously considered or adjudicated upon in any other capacity¹. Therefore, if you previously sat on an IOT hearing, you would not be able to later sit on the substantive MPT hearing for the same registrant. The Empanelment Team will ensure that you are not empanelled on any such hearing.

- ▶ There is, however, nothing to prevent a tribunal member who sat on an MPT from sitting on a subsequent MPT in a MPT review hearing (including non-compliance reviews and reviews of indefinite suspension), breach of condition hearings and restoration hearings².
- ▶ Further, a tribunal member who sat on an IOT can sit on subsequent IOT review hearings.³ It is in fact usual practice for tribunal members to consider cases at IOT review hearings when they have already considered the case at previous IOT hearings.

There is therefore no conflict of interest in the above two scenarios and a recusal is not, on the face of it, appropriate. This remains the case even when a practitioner has an open court appeal or challenge to a previous determination made by a

¹ Rule 4 of the Rules

² Rule 5 (a) of the Rules

³ Rule 5 (b) of the Rules

tribunal. Tribunals should continue to look at the matter afresh, giving it a fair consideration and coming to a balanced decision.

The above position remains the same if the practitioner has not formally lodged an appeal/challenge but is unhappy with a decision that you previously made as a tribunal (ie if they allege that the decision was procedurally wrong or unfair). Review hearings are neither an appeal nor a judicial process and there are other routes available to a practitioner who disagrees with an earlier decision, ie appeals of MPT decisions and challenges of IOT decisions.

Similarly, receipt of vexatious communication or threats of personal liability should not be a deciding factor in determining whether you should recuse yourself from a hearing on which you have been empanelled, as this could potentially create a precedent that would prevent any tribunal member who may be approached in a similar way, sitting on that case.

If it is clear that there is a conflict of interest (actual or perceived) then it is important to recuse. However, when the position is not clear the matter must be properly considered including whether there is likely to be a perception of bias and the impact of that both on the hearing and the wider case (depending on the nature of the element of perceived bias that is being raised).

Reasons for recusal

If a recusal is deemed appropriate, it is important that a reasoned written decision is produced, explaining why and how the tribunal member'(s) judgment may be influenced or perceived to be influenced in carrying out their duties, and specifically whether and why a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased if they did not recuse¹.

Should you require any further support regarding conflicts of interest or recusals, please contact [us](#).

Kind regards

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¹ Ie consider the test under Porter v McGill 2002