

## Tribunal Circular

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### *MPT Review hearings directed by the GMC*

In July 2020, the MPTS issued the Tribunal Circular [Directing reviews in medical practitioners tribunal \(MPT\) hearings](#) to assist MPT members. The circular focused on MPT decisions to direct that a review hearing is held prior to sanction expiry, but also confirmed that:

*“MPT members should also be aware that the GMC has the power to direct that a review hearing is held where an MPT has not done so. In such circumstances, the MPTS must arrange for a review hearing to be held. There is no power for either the MPTS or an individual MPT to re-examine whether or not to hold a review hearing once it has been directed.”*

### Relevant legislation

The Medical Act<sup>1</sup> provides express powers for the GMC to direct that a review hearing must be held prior to sanction expiry<sup>2</sup>. This power can be exercised where the MPT has (deliberately or otherwise) not exercised its own powers<sup>3</sup> to direct a review hearing.

Regardless of whether a review hearing is directed by the MPT or by the GMC, once a direction has been made, the Act places a duty on the MPTS to arrange for another MPT to conduct a review hearing. This duty is not discretionary. All MPT review hearings, however directed, must be treated equally, and be conducted in full.

<sup>1</sup> (1983) as amended, referred to as ‘the Act’

<sup>2</sup> Sections 35D(4B), (9A) and (11B) of the Act

<sup>3</sup> Sections 35D(4A) and (11A) of the Act

Where a MPT review hearing is not conducted as directed, this will amount to a failure of the individual MPT, and consequently the MPTS, to fulfil its statutory duty. The fact that a previous MPT chose not to direct a review hearing does not mitigate this failure to comply with the requirements of the Act.

### Case law regarding challenges to GMC decisions

In *R (Kashyap) v General Medical Council*<sup>4</sup>, on the question of whether the Fitness to Practise Panel (as it then was) could consider the lawfulness of a GMC decision maker's referral decision, Mitting J observed that:

*"The Panel decided, correctly, that it did not have jurisdiction to entertain such a challenge. Such a challenge could only be made by a claim for judicial review... The claimant had a choice of remedy: to seek to apply for judicial review [of the GMC decision] or to contest the allegations on their merits. He chose the latter. He must abide by his choice."* (paragraph 11)

Applying this principle to GMC decisions to direct that a review hearing must be held, neither the MPTS nor an individual MPT has the jurisdiction to examine that GMC decision or the reasons for it. Any preliminary argument regarding the decision to direct a review hearing must be properly viewed in this context.

### Sanctions guidance

Paragraph 165 of the *Sanctions Guidance* states:

*"Should there be a change in circumstances in the future and a review hasn't been directed, under section 35D (4B and 11B) of the Medical Act 1983, the registrar may, at any time before the expiry of the sanction, refer the case back to the MPTS for a review hearing. The reasons given for not directing a review might help inform any decision under this section."*

Reference in this paragraph to a 'change in circumstances' should not be taken to place a restriction on the GMC's power to direct that a review hearing is held. The legislation, which takes precedence over the *Sanctions Guidance*, places no such limitation on when a direction can be made.

Kind regards  
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<sup>4</sup> [2009] EWHC 2873 (Admin)