

**To:** Tribunal Members  
Legal Assessors

**Copy:** Tribunal Clerks

**Date:** 16 December 2016

### **Quality Assurance Group (QAG) – Learning Points**

We would like to share with you some of the learning points the QAG members have identified in the second half of 2016, following their review of a selection of Medical Practitioners and Interim Orders Tribunals decisions.

#### *General Points*

#### **Drafting determinations**

Tribunals should avoid using the term 'defence' when referring to the doctor's representative as this is terminology used in the criminal and not civil jurisdiction. It is also important to ensure that reasoning in determinations is adequate; the use of the word 'considered' alone when stating what the tribunal have decided can appear ambiguous and should be avoided or where the tribunal states what they have 'considered' they should then add what was decided on the material that was considered.

#### **Documents in advance of a hearing**

We wish to remind all tribunal members and legal assessors that they should only receive material in advance of the hearing that is provided by the MPTS. Any material that is required to be read prior to a hearing will be uploaded to GMC Connect by the MPTS.

#### *Medical Practitioners Tribunals*

#### **Multi-factorial hearings**

S35D (6) Medical Act 1983 states that 'In a health case or language case....a Medical Practitioners Tribunal may give a direction in relation to a person whose registration has been suspended under this section extending his period of suspension

indefinitely where – 1 (a) the period of suspension will, on the date on which the direction takes effect, have lasted for at least two years'. We consider it implicit that this relates to health and/ or language only cases and does not apply to multi-factorial cases where the maximum suspension that can be imposed is 12 months.

### **Impairment based on serious misconduct**

When a tribunal makes a finding of impaired fitness to practise, this should be on the basis of *serious* misconduct. In the [QAG learning points circular](#) we issued on 8 July 2016 we highlighted to you the obiter comments of Beatson LJ in *Schodlok v General Medical Council* [2015] EWCA Civ 769 in relation to 'accumulated non-serious misconduct' and wish to remind you again to consider both the volume and the similarity of the non-serious misconduct before deciding whether a series of non-serious misconduct could amount to a finding of serious misconduct.

### **Postponements and Adjournments**

Rule 29 (1) General Medical Council (Fitness to Practise) Rules Order of Council 2004 sets out that prior to the commencement of a hearing an application to postpone a hearing can be made- operationally these applications are considered by a Case Manager. Rule 29 (2) provides that once the hearing has opened, either of its own motion or on an application the tribunal can adjourn proceedings. It is important that the correct terminology is used in accordance with the relevant rules.

### **Private Session**

We reminded you in the [QAG learning points circulars](#) issued on 12 February 2016 and 8 July 2016 of the need to provide clear and concise reasons in the determination for where a hearing, or part of a hearing, is held in private. Rule 41 sets out that the presumption is that MPT hearings are held in public subject to the exceptions outlined, further Section 35B(4) of the Medical Act 1983 is clear that the GMC has a statutory duty to publish, as deemed appropriate, a range of decisions including decisions relating to impairment made by medical practitioners tribunals and it is therefore important to be clear why a hearing -or part of- has been held in private.

### ***Interim Orders Tribunals***

#### **Cases where criminal proceedings have stopped**

In cases where criminal proceedings are not being pursued but the GMC is continuing with their investigation, tribunals should bear in mind that the remit of criminal proceedings is different and it does not automatically follow that there are no longer fitness to practise concerns when considering whether to impose, maintain or revoke an interim order.

This is of particular importance where an allegation of sexual misconduct is made; tribunals should consider the impact on public confidence if a doctor was allowed to practise unrestricted whilst a GMC investigation was on-going.

I hope that you will find this note useful, but please do contact us should you wish to discuss this further.

Kind regards

A handwritten signature in black ink, appearing to read 'D Pearl', written in a cursive style.

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His Honour David Pearl  
Chair of Medical Practitioners Tribunal Service