

To: Medical Defence Organisations

Copy:

Date: 12 February 2016

Quality Assurance Group (QAG) – Learning Points

As you know, the QAG members meet every month to review a selection of the decisions of Medical Practitioners and Interim Orders Tribunals. We would like to share some of the learning points we have identified in the latter part of 2015.

During 2015, the MPTS held 2507 hearing in total, of which the group reviewed 478 MPT decisions and 394 IOT decisions. The number of decisions reviewed equates to an average of 42% of new MPT decisions, 39% of MPT review decisions, 27% of IOT decisions and 3% of IOT review decisions. We continue to be reassured by the high standard of a large number of the determinations reviewed and hope that sharing this feedback will assist you in making decisions which meet our obligation in regard to the overarching objective of protecting the public.

Medical Practitioners Tribunals

Postponements vs adjournments

Tribunals do not have power to consider postponement applications under Rule 29(1) of the General Medical Council (Fitness to Practise) Rules 2004 (as amended). Rule 29(1)(a) relates solely to hearings before the Investigation Committee. Rule 29(1)(b) provides that, for tribunal hearings, a postponement application is a matter for a Case Manager to consider. A postponement application may be made after a notice of hearing has been issued and prior to the hearing opening (being the point when the doctor has confirmed his or her name and UID). While tribunals cannot consider postponements, they are empowered to consider applications for adjournment under Rule 29(2). An adjournment can be ordered at any stage of the proceedings once the hearing has commenced. A hearing has commenced once the tribunal has convened.

The Case Manager's power to consider a postponement request up until the hearing opens overlaps with the tribunal's power to consider adjournment at any time once

they have convened. However, where a doctor or representative applies for a postponement after the tribunal have convened but before the hearing has opened, the tribunal should note that the appropriate application for the party to make is an adjournment application.

Private session

When drafting the response to any applications under rule 41(3) to hear the case in private, we recommend that the determination notes clearly and concisely why the tribunal have arrived at their decision. We wished to share with you an example of best practice identified by QAG at a recent meeting:

'The Panel did not accede to the application. The Panel determined that the press and public should be excluded from those parts of the hearing which related to [your] health but that in relation to matters relating to [your] alleged misconduct the hearing would be conducted in public. Hearings should, where possible, be held in public and the circumstances of this case do not outweigh the public interest in holding the hearing public.'

We considered this to be a thorough and succinct way to summarise the decision.

'Heightened examination of the evidence'

We wished to remind tribunals, as explained in circular [20/14](#), in the case of *Re B (Children)* [2008] UKHL 35 Baroness Hale said:

"... the standard of proof in finding the facts necessary to establish the threshold criteria....is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied...The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies."

We therefore feel that the approach taken in *Re B* should be that referred to where required and that reference to 'heightened examination of the evidence', which we have seen in some recent determinations, is not applicable.

Directing review hearings

There have been some instances where the group has noted that tribunals have imposed a period of conditional registration or suspension in order to allow the doctor to remediate, or to demonstrate competent practise, but then have not directed a review hearing. In the absence of a review hearing it may not be possible to confirm if the doctor has remediated. As from 31 December 2015 an Assistant Registrar of the GMC now has the power to refer a doctor for an MPT review hearing if the initial tribunal did not direct a review. The Assistant Registrar may do so if

they believe that the possibility of impairment remains at the end of the sanction period. The [Sanctions Guidance](#)¹ (2015) provides further details to consider at paragraph 142 which tribunals may find useful.

Imposing immediate orders

When considering whether to impose an immediate order on a doctor's registration the tribunal should have regard to our statutory overarching objective, which makes clear that we are responsible for protecting the public. Where the tribunal's findings are of a serious nature, and particularly where there is a risk of repetition, the potential difficulties a doctor's employer or patients may face as a result of an immediate order being imposed, are of little relevance when balanced against the risk to patient safety and the public confidence in the profession if the doctor is allowed to practise unrestricted until the substantive sanction comes into effect.

'Stay of proceedings'

There have been occasions where the 'summary of outcome' on the Record of Determination has been noted as 'Stay Proceedings' which we do not consider to be the appropriate terminology for this jurisdiction. Alternatively, if tribunals do not go on to make a finding of facts, we would recommend use of the phrase 'the matter has been concluded' or words to such effect.

Sanctions Guidance

We would like to remind you that the 'Sanctions Guidance' is a jointly owned MPTS/GMC document and should therefore be referred to as simply 'Sanctions Guidance' and the version, without reference to the GMC.

Interim Orders Tribunals

Public hearings

Whilst this is relatively unusual, we wished to remind tribunals that if a doctor or their representative requests to have the hearing held in public, under Rule 41(5) the tribunal must accede to that request.

Transfer of cases between tribunals

Where necessary and appropriate, there may be transfer of IOT cases between tribunals; as such we would like to remind tribunal members that they should not discuss cases during breaks or outside of the hearing room. This is to adhere to confidentiality and information security policies and also to avoid the possibility of prejudicing any case which may need to be transferred. In addition, decisions to move cases to other tribunals should be made by the office based IOT team and not

by tribunals themselves, to minimise delays to tribunals and parties. It is preferable for cases to be considered, as scheduled, by the tribunal which has had the opportunity to read the papers in advance. Cases will only be transferred when operationally necessary for the conclusion of cases. As it is important that all scheduled cases are heard, we ask that where a tribunal concludes their allocated cases early, members do not leave the hearing centre until the IOT office based team have confirmed there will be no requirement to transfer cases.

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 'David Pearl', with a long horizontal flourish underneath.

His Honour David Pearl
Chair of Medical Practitioners Tribunal Service

¹ Sanctions Guidance (2016) will launch on 1 March 2016 – see paragraph 157