

Tribunal Circular 12/25

8 September 2025

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To: MPTS Tribunal Members

CC: Tribunal Clerks
Medical Defence Organisations**Service and proceeding in absence**

This circular sets out some clarification and reminders of key issues to consider when determining whether notices or Notices of Hearing have been effectively served and when making decisions on proceeding in the absence of a registrant.

Shortly ahead of a hearing the registrant will receive notifications from the MPTS and the GMC, which vary depending on the hearing type:

Hearing type	Notices served by the MPTS	Notifications served by the GMC
Interim Orders Tribunal	Notice of Hearing	Information letter
Interim Measures Tribunal	Notice of Hearing	Notification of Referral
Medical Practitioners Tribunal	Notice of Hearing	Notice of Allegation (for New MPT hearings) or Details of Non-Compliance (for Non-Compliance hearings)
Associates Tribunal	Notice of Hearing (which will include the allegation)	N/A – although the registrant will receive various notifications from the GMC at earlier stages that are not relevant to this circular.

Notice of Hearing ('NoHs')

As detailed in previous circular [Tribunal circular 02/23](#), NoHs for MPT and IOTs must be served by the MPTS in accordance with Schedule 4, Paragraph 8 of the Medical Act 1983. For ATs and IMTs, the NoHs must be served in accordance with Rule 36 of

Proceeding in Absence

► Notice of Hearing

When deciding whether to proceed in the absence of the registrant, the tribunal must be satisfied that the registrant has been served with the NoH, or reasonable efforts have been made to serve them with the NoH¹. The relevant Rules do **not** indicate that the tribunal must be satisfied that the registrant has been served with any GMC notifications (although as noted below, this *may* become a relevant consideration when deciding whether to proceed in the absence of the registrant after the tribunal has determined whether service of the NoH has been effected).

In all types of case, when determining whether service of NoHs has been effected it may sometimes be necessary to consider the wider circumstances of service (including for example in cases where the notice has been served on the last known address²) and take a pragmatic approach eg where minor details (such as the name of an organisation) have been omitted from the address, but there is a signed for proof of service to the appropriate postal address or there is other correspondence from the registrant which confirms that they have received the NoH. In these circumstances, it may still be appropriate for the tribunal to find service effected and go on to consider whether to proceed with the case in the absence of the registrant.

► Decision on proceeding in absence

After finding that service of the NoH has been effected, or reasonable efforts have been made to serve the NoH, the tribunal should then consider whether to proceed in the absence of a registrant. Consideration should be given to the cases of *GMC v Adeogba and GMC v Visvardis*³ and *R v Jones*⁴, details of which were also included in [Tribunal Circular dated 17 March 2022](#).

The tribunal must consider whether, in all of the circumstances, it is fair to proceed in the absence of a registrant. Whilst the tribunal must consider fairness to all parties and the public interest (including the overarching objective), fairness to the registrant remains of prime importance. However, registrants have a duty to engage with their regulator, including updating and maintaining the contact details they provide⁵ and the differences in context between criminal and regulatory cases must

¹ For doctors, Rule 31 of General Medical Council (Fitness to Practise) Rules 2004 and for PAs and AAs Rule 40 of the General Medical Council (Fitness to Practise) (Anaesthesia and Physicians Associates) Rules 2024

² pursuant to Schedule 4 Para 8(4) of the Medical Act 1983 (for doctors) or Rule 74(3)(iii) of the General Medical Council (Fitness to Practise) (Anaesthesia and Physicians Associates) Rules 2024 (for PAs and AAs)

³ Combined appeals General Medical Council v Adeogba; General Medical Council v Visvardis EWCA Civ 162 [2016]

⁴ R v Jones (Anthony) [2003] AC 1, HL

⁵ Para 23 General Medical Council v Adeogba; General Medical Council v Visvardis EWCA Civ 162 [2016]

also be considered⁶. The regulator is not expected to make enquiries to locate a registrant who is believed to no longer be residing at the address they have provided⁷. Where there is **good reason** not to proceed, the case should be adjourned; otherwise it is only right that it should proceed⁸.

► GMC notifications and other correspondence

In some cases, the tribunal may consider it necessary to consider the content of other correspondence between the parties, for example to ascertain the extent to which the registrant is aware of the case against them or whether certain documents have been sent or received. If, in the particular circumstances of the case, the tribunal considers that service of the GMC notification is a relevant factor to consider when making its decision on whether it is fair to proceed in the absence of the practitioner, the tribunal should note that:

- Information letters (IOT) must be served in accordance with paragraph 8 of Schedule 4 to the Medical Act 1983.
- The Notice of Allegation (MPT) must be served in accordance with Rule 40(2) of the General Medical Council (Fitness to Practise) Rules 2004
- Notification of Referrals (IMT) must be served in accordance with Rule with Rule 74(3) of the General Medical Council (Fitness to Practise) (Anaesthesia and Physicians Associates) Rules 2024.

As with NoHs, there is no requirement to prove that the registrant is aware of the contents of the GMC notification to find that service has been properly effected.

Timeframes

The timeframes for service of the NoH vary depending on the type of hearing:

- MPTs/ATs - At least 28 days before the hearing (unless the registrant consents to a lesser period or the tribunal considers it in the public interest⁹/ in the interests of justice¹⁰ for there to be such a lesser period).
- IOTs/IMTs – Within such a time before the hearing as is reasonable in the circumstances.¹¹ In practice, this will be at least seven days' notice of the hearing, but in cases of exceptional urgency the period of notice may be shorter.

For IOTs/IMTs, when considering whether 'reasonable' notice has been provided, it may be necessary for tribunals to take a pragmatic approach and consider what

⁶ Para 17 General Medical Council v Adeogba; General Medical Council v Visvardis EWCA Civ 162 [2016]

⁷ Para 59 General Medical Council v Adeogba; General Medical Council v Visvardis EWCA Civ 162 [2016]

⁸ Para 19 General Medical Council v Adeogba; General Medical Council v Visvardis EWCA Civ 162 [2016]

⁹ Rule 15(2) of General Medical Council (Fitness to Practise) Rules 2004

¹⁰ Rule 36(4) of the General Medical Council (Fitness to Practise) (Anaesthesia and Physicians Associates) Rules 2024

¹¹ Rule 26 of General Medical Council (Fitness to Practise) Rules 2004 and Rule 36(4)(b) of the General Medical Council (Fitness to Practise) (Anaesthesia and Physicians Associates) Rules 2024

is reasonable in all of the circumstances. For example, in cases where the hearing has been postponed/adjourned more than once:

- ▶ the registrant will previously have been served with the NoH/information letter/notification of referral, and will have been sent details of the case against them. Therefore, a tribunal should consider the time period in providing notice as a whole (rather than just from when the latest notice/letter is sent).
- ▶ where the hearing is a review hearing, the registrant will have previously been informed that the tribunal will review the order within a certain time period. Although the registrant will have been sent details of the case against them before, tribunals should still consider the extent of any new material and what is reasonable notice in light of that and any other circumstances.

New and review hearings

In new and review hearings, where the registrant is absent from the start of the hearing, the GMC should provide a single bundle relating to service and proceeding in absence in relation to the new matter. It is not necessary for the tribunal to be addressed on service matters again once the review stage has been reached. There is no requirement in the Rules¹² to revisit earlier determinations on service and proceeding in absence, or to make a separate determination on the issue, once the review stage is reached.

It may be appropriate to revisit service and proceeding in absence during the hearing (new or review stage) where a registrant is present for the one part of the hearing (eg the new/facts stage) but is later absent (eg at the review stage).

Kind regards

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¹² Rule 21A and 17(2) of General Medical Council (Fitness to Practise) Rules 2004 and Rule 73 of the General Medical Council (Fitness to Practise) (Anaesthesia and Physicians Associates) Rules 2024