

Preliminary Associates Tribunal Hearings

Guidance for Decision Makers, Parties and Representatives

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Introduction

1. This guidance is for parties, representatives and decision makers, and covers the following areas:
 - ▶ What a preliminary hearing is used for in MPTS proceedings
 - ▶ How parties can seek a preliminary hearing
 - ▶ Parties' preparations for preliminary hearings.
2. References to rules are to the GMC (Fitness to Practise) (Anaesthesia and Physician Associates) Rules 2024 unless otherwise stated.
3. If, after considering this guidance, parties or representatives have any queries regarding preliminary hearings they should contact the MPTS Case Management Team at MPTSCaseManagementTeam@mpts-uk.org.

What is a preliminary hearing?

4. A preliminary hearing is arranged by the MPTS to determine one or more preliminary issues that need to be determined before the substantive MPT hearing can proceed. Where preliminary issues are limited in scope and do not materially impact parties' ability to prepare, it may be possible for preliminary issues to be addressed at the start of the substantive hearing without a separate preliminary hearing.
5. Examples of issues that may warrant a preliminary hearing include:
 - ▶ Whether the substantive Tribunal hearing ought to take place in private
 - ▶ Where there is significant unresolved dispute about the admissibility of documents, including the extent of redactions
 - ▶ Whether a party ought to be directed to disclose additional material
 - ▶ Whether a party ought to be permitted to rely upon hearsay evidence at the substantive Tribunal hearing.

How is a preliminary hearing arranged?

6. Preliminary hearings are arranged at the discretion of an MPTS Case Manager. Parties may request a preliminary hearing either by raising the issue at a Pre-Hearing Meeting or by requesting a preliminary hearing in correspondence sent to the MPTS Case Management team.

7. If parties become aware of an issue which they consider requires a preliminary hearing, they should contact the MPTS Case Management team as soon as possible setting out the issue(s) in dispute, the parties' respective positions (and why it is considered that they cannot be resolved between them), an estimated hearing length for any preliminary hearing and dates of availability for a preliminary hearing to take place. The MPTS Case Management team will then seek comments from the responding party.
8. In deciding whether to direct a preliminary hearing, an MPTS Case Manager will consider the submissions from both parties as well as factors such including:
 - ▶ Capacity in the MPTS hearing calendar to hold a preliminary hearing ahead of the substantive hearing
 - ▶ The benefit to both parties and to the efficiency of the proceedings as a whole in the issues in dispute being resolved before the substantive hearing
 - ▶ The extent of potential delay at the beginning of the substantive hearing, if the issues in dispute were not resolved at an earlier stage.
9. Once an MPTS Case Manager has determined whether a preliminary hearing should be held, parties will be informed by the MPTS Case Management team of the decision and, if a preliminary hearing is to be held, the date(s) when it will take place.
10. The preliminary hearing will usually be allocated to heard by a differently constituted tribunal to that allocated to the substantive hearing, typically due to availability or to avoid the substantive tribunal members becoming aware of matters that may risk causing potential prejudice.

What will happen at a preliminary hearing?

11. A preliminary hearing will convene pursuant to Rule 46(1). Like other MPTS hearings, preliminary hearings are held in public, unless the Tribunal determines that it ought to proceed in private, pursuant to Rule 42.
12. The party making the relevant application ('the applying party') will begin the preliminary hearing by making submissions based on their skeleton argument and document bundle. The other party ('the responding party') will then make submissions in response. All submissions must be focused and concise, bearing in mind the efficient use of hearing time.

13. Once both parties have made their submissions, the Legally Qualified Chair or Legal Assessor (as applicable) will provide legal advice to the Tribunal on the issue(s) to be considered. Both the applying party and the responding party will then be able to comment upon this advice.
14. The Tribunal will then go *in camera* (into private session) in order to reach its decision. Once the Tribunal's decision has been made and drafted, both parties will return to the hearing and the decision will be announced by the Tribunal.

Preparing for a preliminary hearing

Notice

15. The practitioner will receive a Notice of Hearing from the MPTS for a preliminary hearing. The Notice of Hearing will:
 - ▶ Confirm the date, time and venue of the preliminary hearing
 - ▶ Confirm that the practitioner has the right to attend the preliminary hearing and be represented
 - ▶ Confirm that the preliminary hearing can proceed in the practitioner's absence if the Tribunal is satisfied that notice of the hearing has been given
 - ▶ Explain the Tribunal's role and powers in the preliminary hearing.
16. While the MPTS will seek to ensure that at least 28 days' notice is provided for the preliminary hearing, this may not be possible in circumstances where the need for a preliminary hearing arises at a late stage.

Case management directions

17. Parties will receive case management directions requiring the submission of skeleton arguments and relevant documents for the preliminary hearing. The preliminary hearing bundle must be focused on the preliminary issues to be determined, including any case law that the tribunal will be asked to consider.
18. When providing a preliminary hearing bundles, parties should ensure that they follow the requirements set out in the MPTS published [guidance on hearing bundles](#) on formatting, pagination and bundle size. A template skeleton

argument for self-represented practitioners can be found at Annex A of this guidance.

19. It is vital that parties comply with case management directions, liaise to narrow the issues and provide all relevant material in advance of the hearing. Failure to do so is likely to risk the preliminary hearing being unable to conclude in the time allocated, which may have an adverse impact on parties' ability to prepare for the substantive hearing.
20. Issues to be determined at preliminary hearings can be varied and/or complex in nature. It is essential that parties provide their skeleton arguments and all relevant material in advance in order to allow the Legally Qualified Chair or Legal Assessor (as applicable) to review the legal position ahead of the hearing in readiness to provide legal advice to the tribunal.
21. Parties are reminded of the consequences of non-compliance with case management directions, as set out in the above guidance. Tribunals will also be aware of their ability to explore the issue of non-compliance with parties and their power under Rule 32 to draw an adverse inference, refuse to admit evidence or award costs in accordance with Rule 33.

After the preliminary hearing

22. The outcome of a preliminary hearing is legally binding and parties will be expected to comply with any directions issued by the Tribunal. For example, if the applying party is successful in seeking the disclosure of further evidence from the responding party, the Tribunal may issue case management directions setting out a time frame by which this disclosure is to take place.
23. Parties will also be expected to continue their respective case preparations for the substantive hearing in the knowledge of the outcome of the preliminary hearing.
24. Any queries relating to the substantive hearing, should be raised with the MPTS Case Management team at: MPTSCaseManagementTeam@mpts-uk.org. It is not possible for an MPTS Case Manager to revoke, vary or redetermine case management directions or other decisions made at the preliminary hearing.
25. Rule 46(2) provides that the substantive tribunal will be bound by the decision(s) made at the preliminary hearing, unless the substantive tribunal considers that

there has been a material change in circumstances, or it is not in the interests of justice to be bound by that decision.

26. If either party intends to argue that the outcome of the preliminary hearing should not stand due to a material change in circumstances or due to the interests of justice, they must inform the MPTS Case Management team. An MPTS Case Manager will then review what actions, if any, need to be taken to ensure the efficient running of the proceedings. This may include scheduling a further Pre-Hearing Meeting or another preliminary hearing, or writing to the parties to clarify the position.

Preliminary hearing determinations

27. At the end of a preliminary hearing, the tribunal will provide parties with a written determination. Given the link and potential relevance between the matters raised at a preliminary hearing to a substantive hearing, it may be appropriate for the substantive tribunal to receive a copy of the preliminary hearing determination.
28. The non-exhaustive list below sets out the MPTS position on the provision of preliminary hearing determinations to the substantive Tribunal on a number of typical issues. However, the process allows parties to raise objections to the default position in individual cases, with such objections considered by an MPTS Case Manager.

Application type	If granted	If refused
Admissibility of evidence	Determination provided to substantive Tribunal	Determination not provided to Tribunal
Disclosure of evidence	Determination provided to substantive Tribunal	Determination not provided to Tribunal
Substantive hearing to proceed wholly or partly in private	Determination provided to substantive Tribunal	Determination provided to substantive Tribunal
Video link evidence	Determination provided to substantive Tribunal	Determination provided to substantive Tribunal
Stay of Tribunal proceedings	Determination provided to substantive Tribunal	Determination not provided to Tribunal

29. If multiple applications are made, the MPTS will consider whether redactions need to be made to ensure that the substantive tribunal receives information that is relevant but does not create a potential risk of prejudice.

30. If a party intends to argue that the decision of the preliminary tribunal should not be binding, the preliminary determination will be provided to the substantive tribunal to allow the substantive tribunal to understand the reasons for the decision.

Raising objections

31. When a preliminary hearing is scheduled, the MPTS Case Management team will advise the parties of the default position on the provision of the determination to the substantive Tribunal, as set out above. A deadline will also be given for any objections to this default position to be raised. Any such objections will be considered by an MPTS Case Manager.

Timetabling of hearings	Deadline for parties to raise an objection	Deadline for responding comments from other party
4 or more working days between preliminary hearing and substantive Tribunal	17:00, 2 working days following conclusion of the preliminary hearing	17:00 on the following working day
1-3 working days between preliminary hearing and substantive Tribunal	12:00 on the working day immediately following conclusion of the preliminary hearing	17:00 on the working day immediately following conclusion of the preliminary hearing
Substantive Tribunal on next working day following preliminary hearing	N/A – parties are to try and reach agreement between themselves before the substantive Tribunal commences. If they are unable to do so, they should raise this as a preliminary argument before the substantive Tribunal.	

Redactions

32. Following the conclusion of the preliminary hearing, either or both parties may consider that redactions need to be made to the determination before it is provided to the substantive Tribunal. Parties should raise this as an issue with the MPTS Case Management team and the time required for parties to propose and potentially agree redactions will need to be factored into the above timescales.

Frequently asked questions

Who can I contact about requesting a preliminary hearing or if one is no longer required?

33. The MPTS Case Management team are responsible for arranging and setting up preliminary hearings. They can be contacted at MPTSCaseManagementTeam@mpts-uk.org or by telephone on 0161 240 7240.
34. It is the responsibility of parties to ensure that the MPTS Case Management team is informed as soon as the potential need for a preliminary hearing is known. If there are any changes to parties' circumstances, including the preliminary hearing being needed for longer than originally expected or no longer needed at all, the MPTS Case Management team should be updated as soon as possible regarding this.

Are hearing bundles required in preliminary hearings?

35. Typically, a preliminary hearing bundle containing only documents that the preliminary tribunal will need to consider (including case law where relevant) will be required in advance, in line with case management directions.
36. An MPTS Case Manager may, at their discretion, decide not to direct that a hearing bundle be submitted in advance of the hearing where there are exceptional circumstances identified and/or that providing a hearing bundle in advance of the hearing is unworkable. If such a decision is taken not to direct that a hearing bundle be submitted in advance of the hearing, both parties will receive confirmation of this from the MPTS Case Management team.

What does the outcome of a preliminary hearing mean for the substantive hearing?

37. The preliminary hearing is designed to resolve an issue or dispute between the parties in advance of the hearing, so that parties are able to continue their pre-hearing preparations more effectively and to ensure that the substantive hearing can convene and proceed as scheduled without having to resolve these issues then.

38. The preliminary hearing will not reach a decision on the allegation to be faced by the practitioner at the substantive hearing or whether that practitioner's fitness to practise is impaired.

39. A decision reached by a Tribunal in a preliminary hearing is binding upon the Tribunal in the substantive hearing unless there is a material change in circumstances or it is otherwise in the interests of justice to proceed differently.

Annex A – Skeleton Argument template

In the fitness to practice procedures of the General Medical Council

GENERAL MEDICAL COUNCIL vs _____

SKELETON ARGUMENT OF _____

Background (set out a brief summary of the case)

- ▶ *This section should only contain information that is brief, concise and will assist the tribunal*
-

Submissions (outline your main arguments)

- ▶ *You should refer to anything that is relevant and relates to the issues you want to put before the tribunal, making reference to documents in the hearing bundle.*
 - ▶ *You should also set out any legal authorities or guidance you are relying on to support your arguments.*
-

Summary

- ▶ *You should set out exactly what you are asking the tribunal to do.*
-

Skeleton argument prepared by (your name) _____ acting in-person.

Signed _____

Dated ___/___/___