

Medical Practitioners Tribunal Service

*Medical Practitioners Tribunal
Service Report to Parliament
2021*

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Medical Practitioners Tribunal Service Report to Parliament 2021

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Report to Parliament 2021





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Foreword

As Chair of the Medical Practitioners Tribunal Service (MPTS), I am pleased to introduce our Annual Report to Parliament for 2021.

The MPTS provides an adjudication service for doctors in the UK. We operate separately from the GMC's role in investigating complaints and presenting cases at hearings.

Our tribunals make independent decisions about doctors' fitness to practise based on our statutory over-arching objective to protect the public. Each of our hearings is conducted by three individuals, taken from a pool of around 300 tribunal members, all of whom are appointed and trained by the MPTS.

In 2021 our work continued to be dominated by the COVID-19 pandemic.

Restrictions impacted on how we were able to operate, requiring us to be flexible in how we ran hearings. We also had to work hard to hold all the hearings days that were lost when we closed our hearing centre during the first 2020 lockdown.

Throughout this period, we have run both socially-distanced hearings in Manchester and virtual hearings online, ensuring that decisions continued to be taken to protect the public.

We have listened carefully to the needs of those taking part in our hearings, particularly doctors and their representatives, so as to accommodate hearings in the most appropriate setting.

After increasing our resources, we now have the capacity to hold up to 17 hearings a day. This means that, assuming there are no unplanned disruptions to our operations, we are on course to return to pre-pandemic hearing levels by the end of 2022.

This is testament to the hard work of MPTS colleagues and our tribunal members as well as the co-operation and support of those appearing in our proceedings.

Foreword

This annual report will be my last as MPTS Chair, since I step down at the end of the current year. It therefore gives me the opportunity to look back at what the MPTS has achieved in the last five years.

I took over as Chair at the start of 2017, as the MPTS was implementing changes to the legislation that governs our hearings.

Since then, we have significantly expanded our pre-hearing case management capabilities. This means we can resolve more preliminary legal matters in advance of hearings, allowing our tribunals to focus on the case in front of them.

Our tribunals have been modernised, using legally qualified chairs in most hearings. We have adapted how we train and develop our tribunal members, making use of new technology.

We have improved the support we offer to witnesses and doctors taking part in our proceedings. We continue to offer information and wellbeing support to the minority of doctors who attend their hearing without legal representation.

I am also proud of the efforts we have made to work more efficiently – for example insisting on evidence bundles being provided to tribunals in advance of the hearing and spreading our hearings more evenly throughout the year.

That attitude to efficient and effective working was most evident in the way MPTS colleagues responded to the COVID-19 pandemic, introducing virtual hearings immediately and improving how they work ever since.

As I prepare to hand over to my successor at the end of 2022, I know the MPTS is well prepared to respond to the UK Government's proposed reforms of fitness to practise regulation.



Dame Caroline Swift

MPTS Chair

The MPTS, 2017 to 2022

As I prepare to step down as MPTS Chair at the end of 2022, this annual report is an opportunity to look back on what has been achieved during my time in post.

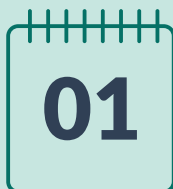
Since its inception in 2012, the MPTS has played an important role, making independent decisions in fitness to practise cases that protect patients and promote public confidence in the medical profession and professional standards.

I joined as Chair in January 2017, succeeding His Honour David Pearl who had overseen the establishment of the MPTS and various reforms to the legislation that governs our work. Changes agreed by the UK Parliament made the MPTS a statutory committee of the General Medical Council (GMC), with an overarching objective of protecting the public.

Some of these changes made our operational separation from the GMC's investigatory role clearer, while others allowed us to operate more efficiently as a tribunal service.

These legislative changes, along with other operational decisions we have taken ourselves, have improved the efficiency and effectiveness of our tribunal service in the last five years.

Case management



One of the most significant changes during my time as Chair has been the expansion of pre-hearing case management.

It is in everybody's interests that **tribunals can proceed with considering evidence from the first day of a hearing.**

In the past, far too much time was lost as parties had to bring preliminary legal matters before the tribunal at the start of the hearing.

The MPTS, 2017 to 2022

With new case management powers in place, we gradually expanded our case management capacity, with pre-hearing meetings held earlier in the process.

All new hearings now benefit from a pre-hearing case management meeting, regardless of the length of the hearing, giving parties more opportunity to resolve matters as necessary before the hearing begins.

Our case management powers are supported by powers for tribunals to award costs against a party who did not comply with a direction and acted unreasonably.

Pre-reading

A connected reform was the introduction of pre-hearing reading. Previously, tribunals would often spend time on the first day reading documents handed to them by the parties on the morning.

Our tribunal members are trained decision-makers, not jurors, so this needed to change. Parties are now required to submit their evidence bundles well in advance of the hearing, so that our tribunal members can arrive on the first day having already read up on the case and ready to hear the evidence.

Legally Qualified Chairs

Another significant change has been the use of legally qualified chairs (LQCs) in the majority of our hearings. Previously all of our three-person tribunals were supported by a legal assessor, who provided legal advice but played no part in decision-making.

With an LQC sitting as one of the three tribunal members, they can provide the necessary legal advice. This is the norm in many other jurisdictions and has been a much more efficient way of working.

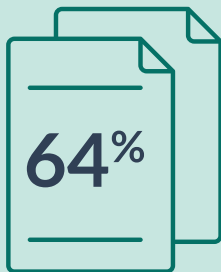
The MPTS, 2017 to 2022

As experienced legal professionals, LQCs are able to act confidently in a hearing when active case management is necessary.

Reviews on the papers

The introduction of reviews on the papers has resulted in a more efficient use of our time, and also has had a positive impact on doctors under investigation by the GMC.

Previously, every doctor subject to an interim order on their registration had to attend a review hearing at the MPTS at least every six months. Often, these hearings were simply for a tribunal to agree with the parties that an order should be revoked after an investigation had concluded, or to maintain an order because the investigation was ongoing.



Now, an LQC usually makes those decisions 'on the papers' after considering agreed submissions from the GMC and the doctor. Only cases where the outcome of the review is contested require a full hearing before a three-person tribunal. **In 2021, 64% of interim orders reviews were held on the papers.**

In 2018 we improved the presentation of our written determinations to make them easier for doctors and the wider public to understand. This included avoiding unnecessary repetition, providing a short summary of the issues at the start of the determination and moving the outcomes of preliminary legal arguments to separate annexes at the end of the document, giving greater clarity for the reader.

In the same year we launched an improved website that is focussed on making it easy to find decisions. It was clear from our own research that the majority of our website users go on to the website to find details of an individual doctor's case.

The MPTS, 2017 to 2022

Support

We took the opportunity of improving our website to update the online resources we provide for those attending a hearing. A priority for us is trying to lessen the isolation and stress that we recognise many doctors feel when appearing before a tribunal.

In 2018 we published new user-focussed guides to IOT and MPT hearings, *Resources for doctors*, written specifically for doctors without legal representation. These aim to guide doctors as clearly as possible through each stage of the hearing process.

The same year we also worked with our GMC colleagues to improve the facilities available for witnesses attending the MPTS. Along with new online resources to familiarise people with the hearing process, improved waiting facilities were installed at the hearing centre and communication lines were improved to keep witnesses informed of how a hearing is progressing.

Better signposting was introduced to the hearing centre, making our building easier to navigate for witnesses and other visitors.

We expanded our Doctor Contact Service, in which some of our staff spend a proportion of their working week offering support to doctors. A member of staff unconnected to the doctor's case can be available to talk to a doctor before or during their hearing. The aim of this service is to help lessen the isolation and stress doctors might encounter, signpost them to useful support material and services, and provide information about the hearing process.

Around 100 doctors each year access this service. We regularly receive positive feedback praising the help provided by our staff.

The MPTS, 2017 to 2022

Virtual hearings and recovering from the pandemic

Like all organisations in 2020, we changed how we operate in response to the COVID-19 pandemic.

We responded quickly in March 2020, holding a virtual hearing for the first time in the history of UK medical regulation only 48 hours after closing our hearing centre.

We have been using a mixture of virtual hearings and hearings in Manchester ever since. Feedback from those regularly appearing in our proceedings has greatly assisted us with improving our processes.

Throughout 2020 and 2021 we have increased our hearing capacity, to ensure the public are protected and that doctors and complainants see their cases resolved.

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Who we are

The MPTS runs hearings for doctors whose fitness to practise is called into question. We are independent in our decision-making and operate separately from the investigatory role of the GMC.

As a statutory committee of the GMC, we are accountable to the GMC Council and the UK Parliament.

Our governance

Our Chair, Dame Caroline Swift, provides jurisdictional leadership and management for the organisation. She chairs the MPTS Committee, which is required to report on its activities twice yearly to the GMC and annually to Parliament.

At the end of 2021 the MPTS Committee was composed of:

- ▶ Dame Caroline Swift, Chair
- ▶ Gill Edelman, lay member
- ▶ Joy Hamilton, lay tribunal member
- ▶ Professor Jacky Hayden, medical member
- ▶ Dr Tushar Vince, medical tribunal member

During the year two Committee members reached the end of their term of appointment. We are very grateful for their support of the MPTS over a number of years. They were:

- ▶ Dr Patricia Moultrie, medical tribunal member
- ▶ Judith Worthington, lay member

Who we are

Our leadership

The MPTS is managed by the Executive Manager, Gavin Brown, and his senior management team.

The Executive Manager takes day to day direction from the Chair of the MPTS in the operational management of the MPTS and is also accountable to the GMC's Director of Resources for the efficient and effective use of resources.

Our vision

The MPTS Committee sets the strategic vision for the MPTS.

Our vision is to provide a tribunal service that is effective, fair and impartial.

To provide a service that:



Makes high quality, well-reasoned, independent decisions to protect the public.



Treats all tribunal service users with respect and fairness.



Uses modern technology to enhance the efficiency and effectiveness of running hearings.



Shares its knowledge and makes a positive contribution to the future direction of adjudication.

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Summary of 2021

2021 was dominated by our work to recover from the COVID-19 pandemic. We have been very conscious of the need to conclude hearings as quickly as possible. Delays can be stressful for doctors, patients and others involved in our hearings.

When we took the decision to close our hearing centre at the start of the pandemic in March 2020, a large number of substantive hearings had to be postponed.

We have worked throughout 2020 and 2021 to hold the hearing days that were lost. By increasing the number of hearings we are able to hold we are on course to return to pre-pandemic hearing levels by the end of 2022.

Working through the pandemic

We began holding virtual interim orders tribunal hearings in March 2020, only two days after closing our Manchester hearing centre. This ensured the public remained protected, with urgent decisions taken on cases and interim restrictions imposed where necessary.

We began holding a limited number of socially distanced hearings at our Manchester hearing centre from August 2020 onwards, to make decisions in cases that were not suitable for a virtual hearing.

The UK Government introduced national restrictions in England in November 2020, with a further lockdown in England from January 2021.

We decided that throughout this period, all MPTS hearings would be held virtually unless the needs of the participants or the circumstances of the case made a hearing in Manchester essential.

Doctors, their representatives and the GMC were able to make relevant submissions to the MPTS on the most suitable venue for a hearing as part of our pre-hearing case management process.

We are grateful for the high level of co-operation we received from all parties on this. It meant we were able to keep our hearing centre open and avoid postponing hearings that were ready to proceed.

Increasing our capacity

Throughout the pandemic, we have worked collaboratively with the senior management of the GMC to ensure the MPTS has the necessary resources to deliver an effective and efficient adjudication service.

To deliver on our recovery and increase our hearing capacity, we recruited additional staff in 2020 and 2021 to support hearings.

Summary of 2021

We ensured appropriate and cost-effective line management arrangements for our new colleagues by reviewing and reorganising our staff structure within the MPTS, rather than by recruiting additional managers.

During 2021, we gradually increased the maximum number of hearings we could hold each day, both in Manchester and virtually.

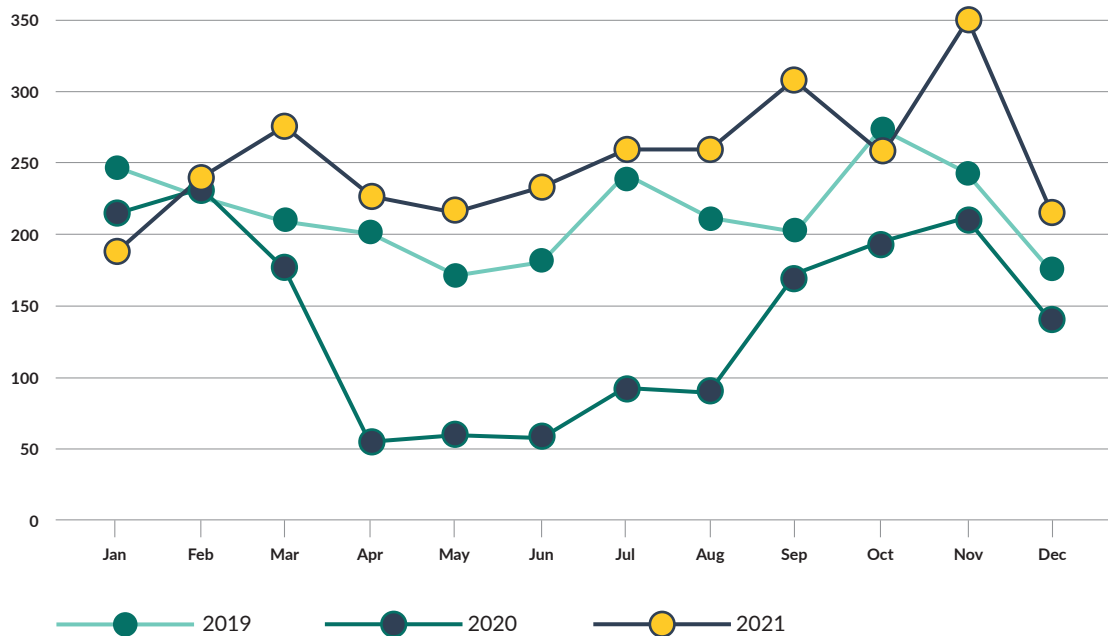
Hearing volumes

During 2021 the MPTS concluded 1,901 hearings (of all types), of which 1,027 were virtual, 777 were reviews on the papers and 97 took place at the hearing centre (including 21 hybrid hearings, where some participants attended remotely).

This was 17.6% more hearing days than in 2019 – our last ‘normal’ calendar year.

By October 2021 we had the capacity to run up to 17 hearings a day. As the table shows, over the course of 2021 we consistently held more hearing days than in both 2019 and 2020.

Comparison of hearing days per month (2019, 2020 & 2021)



Assuming there are no unplanned disruptions to our operations, we are on course to return to pre-pandemic hearing levels by the end of 2022.

Summary of 2021

Improving our virtual hearings

We introduced virtual hearings at speed in March 2020, and the feedback we received from those involved in our proceedings has helped us improve and fine-tune our processes.

We continued to listen to the views of all parties as we proceed with implementing our recovery plan.

In August 2021 we successfully moved the operation of our virtual hearings to a new online platform. This involved testing, training and updating our operational processes. The new platform improved connections and the transition for parties between the virtual waiting room and the hearing itself.

Along with updated guidance for staff and tribunal members, we published a guide for parties and witnesses appearing in virtual hearings. This includes a new video guide on our website.

New ways of working

In summer 2021, all MPTS colleagues began working some of their time in our Manchester office again.

While many of our staff worked from our hearing centre throughout the pandemic, delivering and supporting hearings, others were asked to work from home throughout the various periods of national restrictions.

Working from home guidance was reintroduced in England in December 2021, but all colleagues were able to resume their new working arrangements from March 2022.

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How our hearings work

Prior to the COVID-19 pandemic, almost all cases were heard in our dedicated hearing centre in Manchester.

In 2021 we held 84 medical practitioners tribunal hearings, of all types, in our Manchester hearing centre. A further 185 hearings took place virtually. In each case, we liaised with the parties involved to agree the most appropriate venue.

All interim orders tribunal hearings took place virtually, or were reviewed on the papers.

As of 31 December 2021, we employed 122 full-time and part-time members of staff to support hearings directly as tribunal clerks and assistants, to list cases, to empanel tribunals, and to appoint, train and develop tribunal members.

Three tribunal members sit on each MPTS tribunal hearing. At least one tribunal member must be medically qualified and at least one must be a lay person who has never held a medical qualification.

In most cases, the tribunal includes an LQC, who will provide legal advice. If there are exceptional circumstances that make it necessary, a legal assessor will provide the tribunal with legal advice.

It is the chair's responsibility to manage the conduct of the case both inside the hearing room and during the private deliberations amongst tribunal members.

When making decisions on facts, our tribunals apply the civil standard of proof, i.e. the balance of probabilities.

Case management

The MPTS has powers to issue binding pre-hearing case management directions. We believe this is essential to make sure hearings are case-ready on the first day.

All new medical practitioner tribunal hearings are subject to pre-hearing case management, regardless of hearing length.

We have a dedicated team of legally qualified case managers who make decisions in advance of hearings on issues such as disclosure, arrangements for vulnerable witnesses and hearing venue.

Our tribunals have powers to award costs if either party (the doctor or the GMC) fails to comply with a direction and behaves unreasonably in the conduct of proceedings.

One award of costs was made in 2021, in favour of a doctor.

How our hearings work

Types of hearings

We run two main types of tribunal hearing – interim orders tribunal hearings and medical practitioners tribunal hearings.

Interim orders tribunal hearings – new cases

The GMC has the power to ask an interim orders tribunal to impose an interim restriction on a doctor's registration while concerns about their fitness to practise are being investigated.

Interim orders tribunals do not make findings of fact, but can make orders suspending a doctor's registration or imposing conditions for up to 18 months if they consider it necessary to protect patients, to protect the public interest or (usually in a case involving the doctor's health) in the interests of the doctor concerned.

From 19 March 2020 onwards, all new interim orders cases were considered in virtual hearings. These hearings are usually short, with no oral evidence, and are held with only a few weeks' notice, so a virtual hearing is usually convenient for all involved.

Legal professionals regularly involved in interim orders tribunal hearings have been positive in their feedback about virtual hearings. We therefore decided that, to aid our recovery work, all new interim orders tribunal hearings would be held virtually until the end of 2021. This has continued through into 2022.

Interim orders tribunal hearings – reviews

Interim orders must be reviewed at least every six months and can be extended beyond the initial order length only by the High Court. If an order is varied at review, a further review must be held within three months.

Review hearings can be decided on the papers by a LQC when both the GMC and the doctor agree on the proposed outcome, thus avoiding the need for a full hearing.

This is appropriate when both parties agree that an order should remain in place (because an investigation is ongoing) or should be revoked (because an investigation has concluded).

In 2021, 64% of interim orders tribunal reviews were carried out on the papers.

This was an efficient use of our resources, less stressful for those involved in the fitness to practise process and an appropriate response to the COVID-19 pandemic.

How our hearings work

Medical practitioners tribunal hearings – new cases

If the GMC considers that a doctor's fitness to practise may be impaired, it can refer the doctor's case to us for a medical practitioners tribunal hearing.

A medical practitioners tribunal hearing follows three stages:

- ▶ Facts – are each of the alleged facts proved?
- ▶ Impairment – do the facts found proved amount to impairment of the doctor's fitness to practise?
- ▶ Sanction – if impairment is found, what sanction is necessary to protect the public?

Both the GMC and the doctor may present written evidence and call witnesses to give oral evidence at the hearing.

Medical practitioners tribunals hear the evidence in the case, determine the facts and then decide, on the basis of the facts found proved, whether the doctor's fitness to practise is impaired.

If a tribunal concludes that a doctor's fitness to practise is impaired, it must consider the following options, taking into account the *Sanctions guidance*:

- ▶ take no action
- ▶ accept undertakings (voluntary conditions agreed between the GMC and the doctor)
- ▶ place conditions on the doctor's registration (for up to three years)
- ▶ suspend the doctor's registration (for up to one year)
- ▶ erase the doctor's name from the medical register.

A doctor's name cannot be erased from the medical register in cases relating solely to the doctor's adverse health or inadequate knowledge of the English language.

Where a tribunal finds a doctor's fitness to practise is not impaired, it may issue a warning to the doctor if there has been a significant departure from the standards set out in the GMC's professional guidance, *Good medical practice*.

Medical practitioners tribunal hearings – reviews

A tribunal can direct that a review hearing be held before a period of conditions or suspension expires. The GMC can also refer a matter to the MPTS to arrange a review hearing.

Where a review hearing has been directed, the doctor or the GMC can request that it is held earlier if the circumstances make it necessary.

How our hearings work

At a review hearing, a fresh tribunal will determine whether a doctor's fitness to practise remains impaired. If impairment is found, the full range of sanctions is available. As with interim orders tribunals, review hearings can be held on the papers when both parties agree on the proposed outcome, thus avoiding the need for a full hearing.

Medical practitioners tribunal hearings – non-compliance

As part of an investigation, the GMC may direct that a doctor has an assessment of their health, performance, or knowledge of the English language, or that a doctor must provide certain specific information.

If the GMC believes a doctor is consistently or explicitly refusing to comply with such a direction, it may refer them to the MPTS for a medical practitioners tribunal non-compliance hearing.

The tribunal will consider submissions from the GMC and the doctor and make a finding on the issue of non-compliance.

If non-compliance is found, the tribunal can impose a sanction of conditions or suspension. It does not have the power to erase the doctor's name from the medical register by reason of non-compliance.

Issues relating to non-compliance might also arise during a new medical practitioners tribunal hearing.

Medical practitioners tribunal hearings – restoration

If a doctor wishes to return to the medical register after being erased for disciplinary reasons, they may make an application for restoration to the GMC. A minimum of five years must have elapsed since the original erasure decision.

The GMC refers such applications to a medical practitioners tribunal, who must decide if the doctor is fit to practise and whether it is consistent with our over-arching objective of public protection to allow the doctor to regain their registration.

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Transparency

Public hearings

Medical practitioners tribunals sit in public, unless they are considering confidential information about a doctor's health, or there are exceptional circumstances.

We advertise upcoming public hearings on our website, with a short summary of the allegation that will be made against the doctor.

Anyone can attend a public hearing at the MPTS. In 2020 and 2021 we provided viewing galleries in our hearing centre so virtual hearings could be observed too.

We encourage those with an interest in our work to attend and observe, and are regularly visited by groups of medical and law students and members of other relevant organisations.

To assist public understanding of our decisions, we have facilities for journalists attending our hearings. All public decisions announced by tribunals are made available to journalists, on request.

The legislation states that interim orders tribunal hearings should be held in private unless the doctor specifically requests a public hearing.

Publishing decisions

After a medical practitioners tribunal hearing concludes, we publish a Record of Determinations which explains the reasons for any decisions taken by the tribunal. This is available on our website for 12 months.

If there has been a finding of impairment, or a warning issued, the same record will also appear on the doctor's entry on the GMC's medical register.

Details of interim orders to suspend or restrict a doctor's registration (pending the outcome of a GMC investigation) are published on our website for six weeks. We do not publish detailed records of decisions taken by interim orders tribunals, unless a doctor has requested their hearing be held publicly.

While the order remains in place, the doctor will appear on the medical register as suspended or subject to conditions.

Transparency

Register of interests – MPTS Committee

We publish a register of interests for the five members of the MPTS Committee, to support transparency and probity and confidence in our processes.

As a statutory committee of the GMC Council, our Committee members follow the guidance issued to GMC Council members on declarations of interest. You can find full details of MPTS Committee members' declared interests at www.mpts-uk.org/about/how-we-work/the-committee-and-their-interests

Register of interests – Tribunal members

We publish a register of interests for all tribunal members. This supports transparency, probity and confidence in our processes.

It also helps avoid any conflict of interests that might require a tribunal member to recuse themselves from a hearing. You can find full details of tribunal members' registered interests at www.mpts-uk.org/TribunalMembersRegister


Equality, diversity and inclusion

Equality, diversity and inclusion are integral to our work, as an adjudicator and an employer. We apply the equality, diversity and inclusion strategy and policies of the GMC.

We aim to be fair and objective in delivering our procedures, and to make sure our processes are free from unlawful discrimination and transparent.

We train our staff and tribunal members to understand how to treat people fairly in our work.

We will make reasonable adjustments for those attending hearings to make sure they can play a full part in the proceedings.



We believe it is important that tribunal members bring a range of diverse perspectives to the role. When appointing new tribunal members we take active steps to encourage applications from a wide range of backgrounds, by targeting advertising and utilising networks with diverse groups.

We undertake monitoring, quality assurance and analysis of the application of our processes as both an adjudicator and an employer to ensure we are meeting this aim and commitments.

Transparency

Liaison with users of the MPTS

The MPTS User Group exists to help us engage directly with all parties involved in our hearings. Meetings are held twice a year, at which users can raise operational matters of concern with our Chair and Executive Manager.

The meetings are attended by medical defence organisations, the legal firms they instruct, and staff from the GMC's Fitness to Practise directorate who investigate and prepare cases.

We appreciate the feedback we receive in these meetings and the constructive approach taken by those who attend. Hearing from those with experience of using our service is essential if we are to operate efficiently and effectively.

In 2021, User Group members provided helpful feedback on how we were operating with national restrictions in place, how virtual hearings were working and how we took decisions on whether hearings took place virtually or in the hearing centre.

Support for doctors and witnesses

We recognise that hearings can be stressful for anyone attending, whether as a doctor, as a witness or other interested party such as a bereaved family member.

To help people familiarise themselves with our hearing centre and processes, information is available in print and online to anyone preparing to attend a hearing.

Witnesses are called to our hearings by both the GMC and by doctors. At our hearing centre, we provide facilities to allow both parties to look after their witnesses, including a purpose-built waiting room and online resources.

In 2021, many doctors and witnesses continued to give evidence remotely, including in hybrid hearings. All those taking part in virtual hearings were offered test calls in advance, with the aim of ensuring that they were comfortable and familiar with the process and technology.

16.8% of doctors appearing before tribunals in all case types in 2021 did so without legal representation. This can be challenging for both tribunals and the doctors concerned.

We want doctors representing themselves to be as well prepared for their hearing as possible. This helps them give the best evidence they can and reduces the risk of a hearing adjourning part-heard.

We offer a range of support, including our online *Resources for doctors*, which is written specifically for doctors without legal representation. It aims to guide doctors as clearly as possible through each stage of the hearing process.

We also offer a telephone information service run by students from BPP University Law School Manchester, offering information on hearings procedure (but not legal advice).

Transparency

Our Doctor Contact Service is available to all doctors, both before and on the day of a hearing and is particularly aimed at those attending alone or without legal representation. Since closing our hearing centre in March 2020, we have offered this service remotely, by way of video calls.

A member of our staff unconnected to the doctor's case can be available to talk at any time. The aim of this service is to:

- ▶ help lessen the isolation and stress doctors might encounter and signpost them to useful support material and services
- ▶ provide information about the hearing process.

The service is accessed by around 100 doctors each year and we regularly receive positive feedback for the help provided by our staff.

Non-attendance of doctors

In 2021, 24.4% of doctors did not attend their hearing or send anyone to represent them. In some cases, those doctors ceased to engage with the GMC during the investigation process and, at other times, after referral to the MPTS.

Our tribunals always consider carefully the reasons for the doctor's absence to decide whether it is fair to proceed. Usually, in a case where the doctor has voluntarily absented themselves for no good reason, the tribunal will decide that it is in the public interest to continue with the hearing.

We continue to make efforts to convey to the medical profession the importance of engaging with the fitness to practise process at the earliest opportunity.

A failure actively to engage inevitably deprives the doctor of the opportunity of presenting their side of the case.

It will also make it difficult for the tribunal to conclude that the doctor has demonstrated the degree of insight and remediation necessary to avoid a finding of impairment of their fitness to practise and subsequent suspension or erasure.

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Decision-making

Tribunal members

We appoint all tribunal members by means of open competition and select them for their abilities against agreed competencies.

Some tribunal members, including legally qualified members, have been specially appointed and trained to act as tribunal chairs.

The majority of tribunals have an LQC. A legal assessor is usually appointed to advise a tribunal only if a case manager identifies exceptional circumstances that make it necessary.



As of 31 December 2021, we had 259 tribunal members, of whom **50.6% were medical members** and **49.4% lay members** (including LQCs).

No new tribunal members were appointed in 2021, but we launched an LQC appointment campaign at the start of 2022. 50 new LQCs were appointed.

Diversity of tribunal members

As of 31 December 2021, 47.1% of our 259 tribunal members were female and 21.2% identified as coming from ethnic minority backgrounds.

Each three-person tribunal is empanelled according to the availability of each tribunal member.

We monitor how often this produces a diverse tribunal. In 2021, our tribunals had both ethnicity and sex diversity on 33.1% of hearings. On 44.6% of hearings our tribunals had sex diversity only, while on 12.3% of hearings our tribunals had ethnicity diversity only. A tribunal without ethnicity or sex diversity sat on 10% of hearings.

We believe our tribunal members bring a wide range of perspectives to the role. We encourage applications from diverse backgrounds, by targeted advertising and utilisation of networks used by different groups.

Decision-making

Training of tribunal members

All new tribunal members receive several days of in-depth induction training. This is now delivered in a combination of face-to-face, virtual and online training.

Our training emphasises the legislation and rules that govern the process for our hearings, the key skills required for the role and practical application of these through a blended training programme.

Tribunal members must keep their skills and knowledge up to date via the regular circulars and updates to guidance that we send them. We also provide e-learning modules, videos and webinars.

Usually, all MPTS tribunal members and legal assessors attend an annual training day in our hearing centre, which is tailored to their role.

With social distancing rules in place throughout 2021, we took a blended approach to our annual training, with e-learning modules, webinars and an interactive online learning session. The essential elements of this training were equivalent to a full day of training.

Development of tribunal members

So that standards are maintained, tribunal members participate in a number of processes to assist their development.

This includes 360-degree feedback where comments are received from other tribunal members with whom they have sat, and observations of their competencies displayed during hearings are carried out by appropriately trained members of MPTS staff.

Quality assurance of tribunal decision-making

The Quality Assurance Group (QAG) is chaired by our Chair and meets monthly to review a proportion of written tribunal determinations.

The purpose of these reviews is to identify learning points that can assist us to ensure determinations are clear, well-reasoned and compliant with the relevant case law and guidance and to identify any issues which could usefully be incorporated into future tribunal training sessions.

In 2021, the QAG reviewed **336 tribunal decisions**, including 25% of all medical practitioners tribunal decisions and 23% of new interim orders tribunal decisions.

Decision-making

The QAG also reviews tribunal decisions which have been the subject of appeals, including appeals by, or learning points raised by, the Professional Standards Authority (PSA). During 2021, the PSA raised learning points for both the MPTS and GMC in 16 cases.

Learning points issued by the Quality Assurance Group

In 2021, the QAG issued learning points to tribunal members on a variety of topics. These included:

- ▶ A reminder in January of the various learning points circulated in 2020.
- ▶ When a doctor has been refused restoration by an MPT, no further applications can be made until 12 months have elapsed since the date of the last application.
- ▶ LQCs and legal assessors should reference the most recent and relevant case law and avoid giving historical case law references unless they add value to the advice.
- ▶ A tribunal should give sufficient reasons for the length of order imposed and where applicable, fully explain why an order imposed is longer or shorter than that submitted as appropriate by either party.
- ▶ A reminder that it isn't necessary to include lengthy quotes from case law in the determination, and that, where included, their relevance should be explained.
- ▶ Testimonials provided by colleagues of the doctor are not representative of the profession as a whole, but are views expressed by individuals who speak only of their personal experience of the doctor.
- ▶ Restoration applications following voluntary or administrative erasure are not considered under s41 of the Medical Act, as this deals with applications following disciplinary erasure only.
- ▶ Careful consideration should be given to the impact an adjournment will have on all parties and the tribunal should balance that against the reasons given for the adjournment.
- ▶ Where a doctor makes submissions referring to their role supporting the pandemic as mitigation, the tribunal should apply the overarching objective when considering whether the doctor is impaired and what sanction to impose.

You can view all learning points issued to tribunal members at www.mpts-uk.org/learning_points.

Decision-making

Updates to tribunal guidance

During 2021, we issued new guidance to tribunal members:

- ▶ MPTS Slip Rule Guidance
- ▶ Guidance on drawing adverse inferences in medical practitioners tribunal hearings

We also updated tribunal members on updates to GMC guidance:

- ▶ Prescribing guidance
- ▶ Warnings guidance

Hearing outcomes

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Hearing outcomes

Interim orders tribunal hearings – new cases

New interim orders cases were held virtually throughout 2021.

Interim orders tribunals considered 308 new cases in 2021, fewer than in recent years.

Outcomes in interim orders tribunal hearings	2019	2020	2021
Suspension	52	40	35
Conditions	225	234	217
No action	82	78	56
Total	359	352	308

Medical practitioners tribunal referrals

We received 301 referrals to a medical practitioners tribunal from the GMC in 2021.

This included cases referred:

- ▶ for a decision on the doctor's fitness to practise (new medical practitioners tribunal hearings)
- ▶ for a decision on non-compliance with a GMC direction (non-compliance hearing)
- ▶ for a decision on a doctor's application for restoration (restoration hearing).

These different types of hearings are explained in more detail in the *How our hearings work* section.

Referral for a new medical practitioners tribunal hearing	268
Referral for non-compliance hearing	7
Referral for a restoration hearing	26
Total referrals for medical practitioners tribunal hearings	301

The number of referrals is greater than the number of hearings actually held because referrals are sometimes cancelled. This might be because information has become available which means the threshold for referral is no longer met, or because of other circumstances.

Some referrals may include more than one doctor.

Hearing outcomes

Types of cases referred

At a new medical practitioners tribunal hearing, the GMC may allege that a doctor’s fitness to practise is impaired by reason of one or more of the following grounds:

- ▶ misconduct
- ▶ deficient professional performance
- ▶ a conviction, or caution, for a criminal offence
- ▶ adverse physical or mental health
- ▶ not having the necessary knowledge of English
- ▶ a determination made by another regulatory body.

The allegation being made against the doctor by the GMC may cover more than one category of impairment. For example, a criminal conviction might be accompanied by further allegations of misconduct or adverse health.

Type of alleged impairment in new medical practitioners tribunal hearings	2021
Misconduct	196
Conviction	25
Performance	5
Health	1
Determination by another regulator	1
Language	1
Misconduct and conviction	14
Misconduct and performance	5
Misconduct and health	5
Misconduct and determination by another regulator	1
Conviction and health	5
Health and performance	1
Other combinations of the above	9
Total	269

Hearing outcomes

New medical practitioners tribunal hearings

Medical practitioners tribunals made decisions in 269 doctors' cases in 2021.

To put these figures in context, there were around 315,000 doctors on the UK medical register last year (not including those with temporary emergency registration) and the GMC considers around 8,000 complaints about doctors each year.

Medical practitioners tribunal hearing outcomes	2019	2020	2021
Impaired: Erasure	55	43	58
Impaired: Suspension	120	52	91
Impaired: Conditions	14	14	14
Impaired: No action	4	0	2
Not impaired: Warning	17	17	28
Not impaired	44	16	71
Voluntary erasure	3	2	4
Undertaking	0	0	1
Total	257	144	269

Non-compliance hearings

When a tribunal makes a finding of non-compliance, it can impose a sanction of conditions or suspension.

Outcomes in non-compliance hearings	2019	2020	2021
Suspension	5	4	8
Conditions	0	0	1
Non-compliance not found	0	2	0
Total	5	6	9

Hearing outcomes

Restoration hearings

Six doctors were restored to the medical register in 2021, while 15 applications were refused.

Outcomes in restoration hearings	2019	2020	2021
Application granted	2	8	6
Application refused	11	10	15
Total	13	18	21

Review hearings

Since 2016, the MPTS has been able to hold review hearings on the papers. We do this when both parties agree on the proposed outcome.

This is an efficient use of our resources and less stressful for those involved.

In 2021, the MPTS continued the practice of carrying out a high number of interim orders tribunal reviews on the papers.

Medical practitioners tribunal review hearings	2019	2020	2021
Medical practitioners tribunal review	134	130	96
Medical practitioners tribunal review on the papers	7	26	14
Total	141	156	110

Interim orders tribunal review hearings	2019	2020	2021
Interim orders tribunal review	466	428	422
Interim orders tribunal review on the papers	461	626	762
Total	927	1054	1184

Non-compliance review hearings	2019	2020	2021
Non-compliance review	13	11	8
Non-compliance review on the papers	0	0	1
Total	13	11	9

Appeals

How we respond to appeal judgments

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Appeal outcomes

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Appeals

After a medical practitioners tribunal hearing, there is a right of appeal against the final decision for the doctor, the GMC and the PSA.

Appeals are heard by the Court of Session in Scotland, the High Court of Justice of Northern Ireland, or the High Court of Justice in England and Wales.

If a case proceeds to a court hearing, the judge can:

- ▶ dismiss the appeal,
- ▶ allow the appeal, in whole or in part, and
 - ▶ quash the relevant tribunal's decision,
 - ▶ substitute the tribunal's decision for another the tribunal could have given or
 - ▶ refer the case back for a new medical practitioners tribunal decision.

Any **doctor** who has been found impaired by a medical practitioners tribunal can appeal against the decision within 28 days of being notified of the decision of the tribunal.

If a doctor wishes to challenge any other decision made by a tribunal, for example the issuing of a warning, this can be done by way of judicial review.

The **GMC** can appeal against decisions made by medical practitioners tribunals where it believes the relevant decision (including a tribunal sanction, decision to restore a doctor to the medical register or an order in response to a doctor's non-compliance with a fitness to practise investigation) is not sufficient to protect the public.

The **PSA** reviews the decisions of the fitness to practise tribunals or panels of nine healthcare regulators in the UK. It has the right to refer a medical practitioners tribunal's decision to the relevant court if it believes it is not sufficient for the protection of the public. Also, the PSA has a power to join a GMC appeal, and to take over the conduct of an appeal that the GMC decides to withdraw.

How we respond to appeal judgments

Judgments in appeals or in challenges brought by all parties can be helpful in clarifying matters of law and in providing learning points that we can use to improve future decision-making by MPTS tribunals.

We communicate any such learning points to our tribunal members in a number of ways:

- ▶ publishing appeal circulars, which summarise the key information from the judgment and identify any learning points or good practice
- ▶ at our annual training for tribunal members
- ▶ providing updates on the outcomes of appeals directly to tribunal members involved in the appealed hearing (and of the outcome of any remitted hearing following the appeal)
- ▶ providing direct feedback to individual tribunal members, if necessary, as part of their continuous professional development.

Appeals

A summary of learning points issued in 2021 can be seen in the *Decision-making* section of this report.

Appeal outcomes

- ▶ Year columns refer to the date tribunal hearings concluded, not when appeals were heard.
- ▶ Some appeal hearings were postponed or adjourned in 2021 because of the pandemic.

Doctor appeals	2019	2020	2021
Successful	1	1	1
Dismissed	15	13	2
Struck out	0	1	0
Stayed	0	0	0
Withdrawn	2	1	1
To be heard	2	0	9
Remitted to MPT	3	2	3
Total	23	18	16

GMC appeals	2019	2020	2021
Successful	4	4	0
Unsuccessful	1	0	0
To be heard	0	1	10
Total	5	5	10

PSA appeals	2019	2020	2021
Successful	1	1	1
To be heard	0	1	2
Total	1	2	3

Report to Parliament 2022

We will deliver our next report to Parliament in 2023, reporting on our activity in 2022.

This will include an update on our recovery work and how we have adapted our use of virtual hearings to maintain an efficient and effective tribunal service.





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