

Tribunal Circular

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To: MPTS Tribunal Members

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Consideration of privacy and anonymity at Medical Practitioner Tribunal ('MPT') hearings: project review

This circular provides further clarification and additional considerations which have arisen from the six-month review following the conclusion of the collaborative project undertaken by the GMC and MPTS and should be read in conjunction with the previous circular [13/25: Tribunal circular on privacy and anonymisation](#).

Applications for anonymity under Rule 36¹ (vulnerable witnesses)

- ▶ When making an application to a case manager for anonymity as a special measure for a vulnerable witness, in addition to identifying the usual requirements of Rule 36(1), the applying party should make submissions as to why anonymity is required to be determined pre-hearing under the broad discretion of Rule 36(3), as anonymity would ordinarily be reserved to the tribunal under Rule 35(4).
- ▶ If the vulnerable witness application is due to complaints of witness intimidation², the evidence provided by the applying party must be persuasive and show that the complaint of intimidation is real and substantiated rather than speculative or based on a general concern³.

¹ Rule 36 of the Fitness to Practise Rules 2004 (as amended) ('the Rules')

² Pursuant to Rule 36(1)(f) of the Fitness to Practise Rules 2004 (as amended)

³ As per the principle derived from para 23 of R (on the application of Levett) v Health and Care Professions Council [2013] EWHC 3330 (Admin) which looks at whether the complaint of intimidation is genuine, having regard to the particular circumstances of the witness and the case.

Applications considered at a hearing

Where an application for anonymity of a witness under Rule 35(4) or for privacy under Rule 41 is made, it will need to be considered by a tribunal at a hearing.

- ▶ Where the application is:
 - ▶ uncontested, it will usually be appropriate for it to be heard at the outset of the substantive hearing. Tribunals should ensure that these applications are dealt with efficiently using an amount of time and resource proportionate to the nature of the application
 - ▶ opposed or is complex, the party making the application will need to request a separate preliminary hearing. However, at preliminary hearings the tribunal should only deal with the specific application(s) that have been made.
- ▶ When granting or rejecting an application for anonymity or privacy the tribunal should provide details of the parties' submissions when making the application and sufficient reasons for their decision, based on the specific circumstances of the individual or the case.
- ▶ Applications for anonymity and privacy should not be conflated and the reasons for making each of those applications should be considered separately.

Applications for anonymity of a witness (Rule 35(4))

- ▶ When making its decision on anonymity, the tribunal should have regard to information that has already been published either more widely (such as convictions) or in advance of the hearing in the website notice and in the hearing information sheet containing the GMC's allegations. Where information has already been published, granting anonymity at hearing may have a limited practical effect.
- ▶ Some applications for anonymity may be straight forward and can be dealt with expeditiously at the outset of the substantive hearing, for example:
 - ▶ applications for anonymity of patients, or where there is reference to a child/children within the evidence;
 - ▶ where the application for anonymity is being made because the witness is an alleged victim of a sexual offence to which the Sexual Offences Amendment Act 1992 ('SOAA') applies. This should be made clear in the party's application, as the witness is therefore entitled to lifelong anonymity within publication. Whilst anonymity under the SOAA does not automatically extend beyond publication, to within the hearing itself, the tribunal should consider granting the application to preserve anonymity for the witness more generally.
- ▶ In some cases, an alleged victim of a sexual offence may wish to waive their right to anonymity, therefore an application for anonymity at the hearing will not be necessary/be made. As there is no automatic right to anonymisation at a hearing, an application to waive the right to anonymity

does not need to be made. In these circumstances, the tribunal should not go behind the witness's decision but should be satisfied that they have appropriately waived their right to anonymity in publication, before naming them at the hearing.

- ▶ When granting an application the tribunal's reasons should be based on why anonymity is required in the specific circumstances of the individual or the case. Generic submissions from a party, for example that the witness is anonymised in the allegation, or that granting anonymity of the witness will not prejudice the tribunal or how the registrant presents the case, or that naming the witness may damage their career (with no further evidence of this), are unlikely, on their own, to be sufficient reasons for a tribunal to grant an application (anonymity) or materially add to the reasons why anonymity may be required in the specific circumstances.
- ▶ Where the tribunal grants an application for anonymity under Rule 35(4), this is not limited to disclosure of the witness' name. The "identity" of the witness should not be revealed in public, which means that the parties and tribunal should avoid disclosing any information in public that would result in members of the public being able to identify the witness through jigsaw identification eg job role, identifying features, ethnicity or religion etc. The tribunal should therefore ensure that when granting an application, anonymity is appropriately safeguarded in the hearing.

Hearing bundles

- ▶ In cases where there is an application to consider a person's anonymity, or anonymity has been granted, it is not necessary to redact the name of that person from the hearing bundle, and the tribunal should not make such a direction. Redaction of the bundle is a matter for the parties, who are responsible for ensuring that any personal data is appropriately redacted in accordance with [MPTS Guidance](#). With this in mind, tribunals and parties should be cautious not to inadvertently identify a witness who has been granted anonymity or is the subject of an anonymity application at the hearing (see also below in relation to Transcripts).
- ▶ Hearing bundles are not public documents. Tribunals should not provide copies of the bundle, or any documents within them, to any members of the public or make any directions in respect of providing those bundles/documents. Any requests for these documents will be managed in line with the Freedom of Information Act 2000.

Applications for privacy (Rule 41)

- ▶ A public hearing is always preferable, to maintain the public's confidence in the tribunal hearing process. However, in some cases, anonymisation will not suffice and a hearing may need to go fully or partly into private eg where the allegations involve domestic abuse. Even if the witness' identity is not revealed, it may not be possible to hear details of the allegation without identifying that the witness was, for example, in a domestic setting with the registrant, thereby revealing their

identity. The tribunal should consider whether only part of the hearing should be held in private eg a particular witness' evidence. If either party submits that the whole hearing should be in private, they should be clear why this is necessary and why holding the hearing partly in private will not suffice.

- ▶ When granting an application, the tribunal's reasons should be based on why it is necessary to hold the case partly or fully in private, in the specific circumstances of the case.
- ▶ Parties and the tribunal should note that:
 - ▶ in cases where an application to hold the hearing fully in private is granted, anonymity (for any witness or the registrant) will not be required
 - ▶ the MPTS will ensure that any necessary anonymisation or redaction is undertaken when considering publication of the website notice and Record of Determinations (RoD); tribunals should not make directions about any pre or post hearing publication matters.

Applications for anonymity of the registrant

In some cases, the registrant may apply to be anonymised. In line with the public interest, the starting point is that any departure from open justice must be kept to a minimum.

- ▶ In relation to post hearing publication, Section 2 of the Medical Act 1983, as amended, and the GMC's publication and disclosure policy applies; there is a legal duty to maintain the register and sanction linked to the registrant's record. Therefore, the registrant's name cannot be redacted. The tribunal should advise parties of this, should they be addressed on this issue.
- ▶ With this limited scope in mind, parties and tribunals should consider if anonymity for the registrant is required, or whether the issue(s) identified can be dealt with by hearing some or all of the matters in private, or is in fact a matter relating to publication. A decision to anonymise the registrant should only be made in rare cases and tribunals should note that any decision is only binding for the hearing itself; it does not bind the GMC or the MPTS on how the registrant is referred to outside of the hearing ie for internal/administrative /practical purposes or what is (or may be) published after the hearing has concluded⁴.
- ▶ Any applications in relation to pre-and post-hearing publication should be made separately to the MPTS and it is therefore inappropriate for a tribunal to give directions in respect of any of these matters. The MPTS may, on application, decide to redact sensitive personal information of concern to the registrant. This measure would mitigate any legitimate, identifiable risks while maintaining transparency, without unduly compromising the registrant's privacy.

- ▶ It should never be necessary for a tribunal to anonymise a registrant in order to prevent the jigsaw identification of a witness (eg in the domestic abuse scenario outlined in the 'Applications for privacy' section above). Instead, it would be preferable to hold the hearing partly or fully in private as this will still allow open justice by publication of the outcome and will allow any adverse outcome to be linked to the registrant's entry on the medical register.
- ▶ Where the request for anonymity is based on the impact on the registrant's health or a medical condition, the medical evidence relied upon by the registrant should be tested. The tribunal should consider whether special measures or other reasonable adjustments, including holding the hearing partly or wholly in private, could instead be made to address the concerns. Anonymisation of the registrant in a hearing should be the last resort.

Transcripts

- ▶ Transcripts are based exactly on how events occurred during the hearing i.e. matters held in public session are contained in the public version of the transcript, even where a mistake is realised or the tribunal make a retrospective decision that matters should have been held in private. Similarly, use of the names of anonymised individuals or other identifying features (such as continued reference to their relationship to a registrant) whether intentional or not, will be transcribed verbatim.
- ▶ Such errors will remain in the transcript provided to parties and witnesses (if it relates to their own data). In all other circumstances, the MPTS will decide what information to redact and whether to retrospectively anonymise individuals named during the hearing. This does not include placing matters held in public into a private transcript; instead, where we consider it necessary to do so, we will redact the content from the public version.
- ▶ Parties and tribunals should bear this in mind when exercising caution not to inadvertently identify a witness who has been granted anonymity or is the subject of an anonymity application at the hearing.

Kind regards

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