

Medical Practitioners Tribunals – Guidance to staff on assessing suitability of cases for a review on papers (ROP)

Introduction

- 1 This document is intended to provide guidance to GMC staff on the factors they should consider when assessing whether it is appropriate to carry out a review on the papers (ROP) in a case where a review hearing has been directed.
- 2 The Medical Act 1983 (as amended) allows cases to be reviewed on the papers as an alternative to holding an oral hearing. 'On the papers' means the review of a case by a tribunal or tribunal chair without the attendance of parties (i.e. the doctor and the GMC).
- 3 In order for a matter to be determined on the papers, the doctor and GMC must first agree on the appropriate outcome. A ROP can take place once an agreement form signed by both parties is received by the MPTS. Although a tribunal can carry out ROPs, in most instances they'll be carried out by a legally qualified chair (LQC).
- 4 Under section 35D(5), (6), (8), (10) or (12) of the Medical Act, the tribunal or LQC can make a direction, variation or revocation of a sanction. Sanctions are imposed to protect the public, maintain public confidence in the profession and promote and maintain proper professional standards and conduct for members of the profession. The principles in the [Sanctions guidance](#) apply to ROPs.
- 5 Unlike in an oral hearing, if a ROP takes place the LQC or tribunal has no power to:
 - impose an immediate sanction
 - direct a review hearing
 - consider undertakings agreed between the doctor and GMC when deciding whether to make an order

There is a right of appeal against the outcome of a ROP but it is anticipated this will be used very rarely as the outcome will have been agreed beforehand by the doctor and GMC.

Purpose of a review hearing

- 6 The purpose of a review hearing is to determine whether the doctor is fit to resume unrestricted practice, whether current restrictions should be maintained or whether further restrictions might be required. Paragraph 158 of the Sanctions Guidance states that 'in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice - either unrestricted or with conditions or further conditions.'
- 7 A review hearing is intended to allow the doctor to demonstrate, by producing objective evidence where appropriate, that:
 - a they fully appreciate the gravity of their actions
 - b they have not repeated the behaviour which led to referral to the tribunal and have taken steps to avoid repetition in the future
 - c they have maintained their skills and knowledge
 - d patients will not be placed at risk by resumption of practice or by the imposition of conditional registration
 - e they have sought appropriate treatment and their health has improved [in cases involving health]
 - f they have taken steps to remediate the concerns about their professional knowledge and skills [in cases involving performance]

The list above is a guide and not intended to be exhaustive.

Role of Case Review Manager in assessing ROP suitability

- 8 In cases where a review hearing has been directed, a Case Review Manager (CRM) in the Case Review Team (CRT) will consider whether this can be done on paper at two stages:
 - 13 weeks before the hearing – an initial decision confirming whether or not a case is eligible for a ROP based on the available evidence of the doctor's compliance/progress and the doctor's capacity to agree to a ROP
 - At least four weeks before the hearing - a final decision confirming whether or not the ROP will go ahead based on the doctor's response to our sanction proposal

There is some flexibility however and a CRM can consider ROP suitability later than 13 weeks before the hearing depending on the circumstances of the hearing and the sanction sought. In certain types of case, the CRM will be able to make a judgement

on ROP suitability as soon as the case is transferred to the CRT. For example, some types of case are out of scope for a ROP and this can be determined immediately by the CRM upon receipt of the case.

The CRM will also need to consider the suitability of a ROP if one is requested by the doctor.

Cases suitable for a ROP

- 9 ROPs are designed to streamline the review hearings process, to improve efficiency, and at the same time reduce the impact on the doctor. Where a ROP will effectively achieve the purpose of a review hearing in deciding whether sanctions should be maintained, varied or revoked, attempts should be made to agree with the doctor to conduct the review by means of a ROP. Set out below are the types of cases that are likely to be eligible for a ROP.

Maintaining an existing sanction or a minor variation of conditions that does not significantly relax the safeguards they provide

- 10 The majority of cases where we are seeking to maintain the existing sanction are suitable for a ROP.
- 11 Cases where we are seeking to vary existing conditions and the variation is a minor technical change or the variation is a practical change without which a doctor might be unable to comply with conditions are likely to be suitable for a ROP, if it does not involve a material relaxation of the safeguards currently in place.

Any other case where the nature of the evidence to be considered at the review hearing can be objectively demonstrated on the papers

- 12 In all other cases including those where are seeking to revoke or relax the existing sanction, the CRM must review the circumstances carefully. Significant variations of conditions or a relaxation of the sanction can be dealt with by a ROP as long as there's objective evidence to support the proposed outcome, and a ROP will effectively achieve the purpose of a review hearing in deciding whether sanctions should be maintained, varied or revoked.

In particular, the CRM will need to consider the specific nature of the evidence to be considered at the review hearing that was requested by the previous tribunal. This typically can include:

- evidence of remediation particularly in relation to specific clinical failings or deficiencies in knowledge
- evidence that the doctor's conduct in the review period has been appropriate, professional and in adherence to Good Medical Practice

- evidence that the doctor has maintained their medical skills and knowledge, including evidence of CPD.
 - evidence of insight into the extent of the doctor's failings and the impact on patients and the public.
- 13** The key consideration is whether the doctor can objectively demonstrate their remediation and compliance with the information requested by the previous tribunal on the papers. If this is the case, then a ROP can proceed. Examples of such evidence is listed below (although this list is not exhaustive):
- In cases involving health, reports from the doctor's medical supervisor and the health examiners in relation to their fitness to practise and/or reports from the doctor's treating doctors confirming they are complying with their treatment
 - In cases involving performance, a further GMC performance assessment report confirming that the doctor's professional performance is no longer deficient
 - In performance or clinical conduct cases, objective evidence that the doctor has remediated the deficiencies in their performance and/or clinical skills identified by the previous tribunal. This could include certificates confirming CPD activities, attendance at training courses or evidence showing the doctor has taken specific steps to prevent any repetition e.g shadowing a more experienced colleague
 - In cases relating to knowledge of English, proof of a satisfactory IELTS test result

Cases not suitable for a ROP

- 14** Where a ROP will not effectively achieve the purpose of a review hearing in deciding whether sanctions should be maintained, varied or revoked, a ROP will not be appropriate. This may be because the tribunal has specifically requested evidence that cannot be effectively established on the papers or because the action needed to be taken on review involves a level of risk that can most effectively be managed by the tribunal seeing the doctor in person.
- 15** Set out below are the types of cases that will not be eligible for a ROP.

Cases where the existing sanction needs to be tightened

- 16** There will occasionally be specific aggravating factors which mean that we no longer consider that the existing sanction is sufficient to protect the public and/or maintain public confidence in the profession. Examples include cases where the doctor has shown a complete failure to comply with the requirements of the previous tribunal and the available evidence suggests their level of insight has deteriorated since the

previous hearing. If a ROP takes place, the LQC and tribunal has no power to impose an immediate order which may be required in these cases and so they are not suitable for a ROP.

Cases where revocation or a relaxation of the existing sanction is being proposed and the previous tribunal requested evidence of insight or the criminal sentence is still in force

- 17** The vast majority of cases involving health and performance, where we are seeking to revoke the sanction or lessen the doctor's conditions, can be reviewed on paper without the need for an oral hearing. Certain types of revocation cases involving misconduct are also suitable for a ROP particularly where they relate to a single clinical incident or concern and the doctor is able to demonstrate they have met the previous tribunal's requirements through the submission of written evidence.
- 18** The following two categories of case are not suitable for a ROP when we are seeking to revoke the sanction or significantly lessen it e.g. moving from suspension to conditions. They should proceed as normal to an oral review hearing.

Conviction cases where the sentence is still in force

- 19** Any case where the doctor was found impaired by a conviction/caution and where the criminal sentence is still in place at the point of the scheduled expiry of the sanction should also be excluded from the ROP process, unless we are seeking to maintain the existing sanction or make a technical or minor variation to the doctor's conditions. Public confidence is likely to be undermined if a doctor is allowed to return to unrestricted practice while they are still the subject of a prison sentence whether it be custodial or suspended.

Any other case where the nature of the evidence to be considered at the review hearing cannot be objectively demonstrated on the papers (usually evidence of insight and reflection)

- 20** All cases where the review may involve a material variation or revocation of the sanction and the previous tribunal directed that a doctor provide evidence that cannot be objectively demonstrated on the papers, are not suitable for a ROP. This will usually be evidence of personal reflection and insight into the events which led to a finding of impairment. This is most likely to apply to misconduct, determination and conviction cases but, on occasion, may include cases involving performance, health and language. As the tribunal specifically requested evidence of personal reflection, an oral hearing is necessary to enable the tribunal to hear from the doctor in person and make a fully informed decision about their level of insight and the extent to which they have reflected on the gravity of their actions.
- 21** Evidence of insight is usually a requirement in cases relating primarily to a doctor's behaviour or attitude rather than their clinical skills. The tribunal is seeking reassurance that the doctor has appreciated the gravity of their actions so they can make an informed decision as to whether the doctor is safe to resume unrestricted practice as the risk of repetition is low or if a further period of conditional registration is required. The following types of case (where a change of sanction on review is

contemplated) are therefore likely to be excluded from the ROP process although this is not an exhaustive list:

- cases involving sexual misconduct
- cases where the doctor had an inappropriate emotional relationship with a patient or committed a serious abuse of trust
- cases involving dishonesty
- cases where the doctor demonstrated a callous disregard for patient safety arising from an attitudinal issue
- cases where the doctor has discriminated against a patient/colleague on the basis of a protected characteristic
- cases where the doctor has bullied or harassed a colleague or other party
- cases where the doctor received a conviction or police caution and the MPT requested evidence that the doctor has shown insight and reflected on the underlying events leading to the conviction or caution
- cases where the doctor was the subject of a determination either in the UK or overseas and the MPT requested evidence that the doctor has shown insight and reflected on the underlying events leading to the determination
- multi-factorial cases that include one of the allegations above or where the tribunal has requested evidence of personal reflection and insight in relation to all or any one element of the allegations.

22 An early decision will need to be made by the CRM in the above two categories of case as to whether we will seek to maintain the existing sanction at the review hearing. A ROP would then be suitable but enough time would need to be allowed for the process to be completed.

Exceptions

23 Due to the unique circumstances surrounding each case, there may on occasion be exceptions to the guidance which mean that a case is suitable for a ROP when it would normally be excluded from the process. One example would be where the tribunal requested evidence of further reflection and acceptance by the doctor of the seriousness of their misconduct but specifically stated that this could take the form of a reflective statement. These cases should be discussed with the Legal team and/or the Director of Fitness to Practise on an individual basis. The Legal team will be able to advise on whether there is enough written evidence to make a judgement that the doctor has complied with the requirements of the previous tribunal and a ROP is appropriate.

Capacity

- 24** For all cases, the CRM must consider whether we have received any evidence that the doctor does not have sufficient mental capacity to agree to a ROP. If this is the case then an oral hearing must be arranged. The CRM is not required to proactively seek any evidence about the doctor's mental capacity if this is not already on file.