

PAs and AAs: ADM11 - Appeals to an internal Registration Appeal Panel

Introduction

- 1 This guidance sets out the factors that decision makers should consider when making decisions about appeals after permission to appeal has been granted.
- 2 This guidance aims to ensure consistency, fairness and proportionality in our approach to making decisions. Decision makers should read it in conjunction with the [Overarching principles for registration and revalidation decision makers](#) across all our registration and revalidation functions.
- 3 This guidance sits under the [PAs and AAs Internal Appeal Framework](#), which sets out how decisions within the internal appeal process will be considered and determined.

References in this guidance

- 4 References in this guidance to:
 - the **AAPAO** is [The Anaesthesia Associates and Physician Associates Order](#)
 - the **rules** are [The General Medical Council \(Internal Appeals\) \(Anaesthesia Associates and Physician Associates\) Rules 2024](#).
 - the **parties** are the appellant or GMC or their respective representatives.
 - the **Appeal Panel** is the panel appointed by us to consider and determine the appeal.
 - the **Appeals Team** are the team responsible for listing appeals, issuing directions, constituting panels and all other aspects of appeal administration and support.
 - **we** and **us** are the regulator.
 - **ADM** is the authorised decision maker.

Basis for appealing to an internal Appeal Panel

- 5 The AAPAO sets out the decisions that are appealable to an internal Appeal Panel¹.
- 6 The appeal rules set out the procedure for appeals.
- 7 An appellant who wishes to appeal must seek permission to do so within 28 days beginning with the date on which notice of the decision was served on them². This is known as the appellant's 'notice of appeal'.
- 8 Following receipt of the appellant's notice of appeal, an ADM, must grant permission, refuse permission or revise the decision where the rules as to revisions permit³. This must be done within 28 days beginning with the day on which notice of the appeal is treated as having been served⁴.
- 9 ADMs may grant permission to appeal only where the appeal would have a real prospect of success⁵. This means a realistic as opposed to a fanciful prospect of success.

Scope of the appeal

- 10 The appeal is limited to a review of the decision appealed⁶.
- 11 The Appeal Panel may only allow an appeal where the decision was⁷:
 - wrong; or
 - unjust because of a serious procedural or other irregularity in the making of the decision.

¹ AAPAO Article 16(1)

² AAPAO Article 16(2)

³ AAPAO Article 16(3)

⁴ Rule 4(1)

⁵ Rule 4(2)

⁶ Rule 5(1)

⁷ Rule 5(2)

12 Wrong may include, but is not limited to:

- an error of fact for example the ADM:
 - didn't take into consideration material information that they had in their possession
 - didn't take into consideration material information that existed but was not provided
 - had taken into consideration an irrelevant fact or didn't take into consideration a relevant one
 - misunderstood the facts.
- an error of law for example the ADM:
 - applied the wrong legal test
 - incorrectly applied the correct legal test
 - failed to exercise discretion appropriately.

13 A serious procedural or other irregularity occurs where something goes seriously wrong in the decision-making process which affects the decision, or where it may be difficult to tell if the decision is correct because of the serious error in the decision-making process.

14 Unjust because of a serious procedural or other irregularity could include, but is not limited to:

- departing from guidance where there was no compelling reason to do so
- failure to provide adequate reasons for a decision
- some other serious irregularity such as bias in decision making.

Format of the appeal

- 15** Appeals must be considered on the papers at a meeting ('written appeal') unless the appellant requests an oral hearing⁸. Meetings of the Appeal Panel to consider and determine a written appeal must be held in private⁹.
- 16** Oral hearings should be held remotely unless the appellant requests an in person oral hearing. Oral hearings must be in public unless¹⁰:
- the Appeal Panel is considering the physical or mental health of the appellant, or
 - the Internal Appeal Manager or the Appeal Panel determines that the public should be excluded from all, or part of, the proceedings where they consider the particular circumstances of the case outweigh the public interest in holding the hearing in public.
- 17** Where the Appeal Panel is considering the physical or mental health of the appellant, it must do so in private unless it considers it appropriate to sit in public, having regard to¹¹:
- the physical or mental health of the appellant
 - where relevant, the interests of any other person interested in the decision being appealed
 - whether a public hearing would be likely to adversely affect the health of the appellant, and
 - all the circumstances of the appeal.
- 18** Changes to the format of the appeal should only be considered where there has been a material change in circumstances and the change can be made without injustice or undue disruption. A request to change the format of the appeal must be made in writing at the earliest opportunity and should clearly identify the material change in circumstances.

⁸ Rule 12(1)

⁹ Rule 12(7)(a)

¹⁰ Rule 13(5)

¹¹ Rule 13(6)

Appeal case management

19 Case management is the process of managing the appeal once permission to appeal has been granted.

Case management directions

- 20** Standard directions will apply unless the power to amend or make new directions is exercised. These powers may be exercised by the Internal Appeal Manager, Appeal Panel or the Chair of an Appeal Panel¹². Standard directions are case management directions that apply to every appeal or type of appeal. For example, a direction covering the preparation of evidence for the meeting or hearing.
- 21** Where we have issued standard directions, a party may make a written request to amend those directions or make new directions within 10 business days beginning with the date on which standard directions were served on the party¹³. Written requests will be treated as representations.
- 22** Following receipt of a request to amend directions, the Internal Appeal Manager, Appeal Panel or Chair must invite representations from the other party. The Internal Appeal Manager, Appeal Panel or Chair must make such directions as they consider necessary for the just and expeditious management of the appeal, having regard to all material factors including the nature of the issues on appeal and any representations made by the parties¹⁴.
- 23** The Internal Appeal Manager, Appeal Panel or the Chair may at any time, where they consider it necessary for the just and expeditious management of the appeal, on their own initiative or on the application of a party to the appeal amend standard directions or make new directions. The Internal Appeal Manager, Appeal Panel or the Chair may make such directions as they consider necessary, having regard to all material factors including the nature of the issues on appeal and any representations made by the parties¹⁵.

¹² Rule 7(7)

¹³ Rule 7(2)

¹⁴ Rule 7(4)

¹⁵ Rule 7(5)

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- 24** In exceptional circumstances, the Internal Appeal Manager, Appeal Panel or the Chair may list the matter for an appeal case management meeting¹⁶.
- 25** Directions are binding on the parties and on the Appeal Panel, unless the Appeal Panel considers that there has been a material change in circumstances or it is not in the interests of justice for the directions to be binding¹⁷.

Failure to comply

- 26** If a party fails to comply with a rule or direction the Appeal Panel may in respect of that failure take the following actions¹⁸:
- draw adverse inferences; or
 - refuse to admit evidence where the failure relates to that evidence.
- 27** Before drawing an adverse inference or refusing to admit evidence, the Appeal Panel must first determine whether there is a rule or direction which has not been complied with.
- 28** In determining whether there is a rule or direction which has not been complied with the Appeal Panel should consider:
- was there a direction or rule which required a party to carry out a particular action by a particular date
 - was a record of the direction or rule served on the party
 - did that record set out the potential consequences of not complying with rules or directions
 - was the action carried out and was it done on time

¹⁶ Rule 7(6)

¹⁷ Rule 7(9)

¹⁸ Rule 8(1)

29 Where it is determined that there is a rule or direction which has not been complied with, the Appeal Panel must consider all the circumstances of the failure to comply, including relevant evidence, submissions or representations¹⁹, to establish if it amounts to a culpable failure.

Draw an adverse inference

30 An adverse inference is where, because of the absence of requested evidence that would have been available to the Appeal Panel had the party complied with a specific rule or direction, a conclusion is reached which is to the detriment of, or unfavourable to, the case of the party who did not comply.

31 In determining whether to draw an adverse inference, the Appeal Panel should consider:

- the nature and extent of the failure to comply
- who was responsible for the failure to comply
- what reasonable steps could the party have taken to avoid the failure to comply or minimise the impact. For example:
 - did the party notify the Appeal Panel of the problem
 - did the party make an application for a postponement or adjournment
- the impact of the failure to comply
 - has the failure disadvantaged the other party's ability to respond to the appeal
 - has the Appeal Panel been able to make a full assessment of the relevant issue(s) in the context of the appeal as a whole, or has the failure denied them access to potentially material evidence.
- the reason(s), if any, given for the failure. Is there a reasonable excuse for the failure, such that it would be unfair to draw an adverse inference from it? For example:
 - the appellant has provided objective evidence that their physical or mental health condition prevented compliance at the time but there is a realistic prospect of compliance within a reasonable timeframe,

¹⁹ Rule 8(2)

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- the information or evidence that the rule or direction required the party to provide is not available,
 - the party did not receive the notice served in accordance with the rule requiring them to supply information or produce a relevant document, or
 - not having legal representation. This does not justify a failure to comply. However, if an appellant does not have the benefit of legal advice, the Appeal Panel should be satisfied that reasonable efforts have been made to explain the consequences of a failure to comply to the appellant.

32 Where the Appeal Panel does draw an adverse inference, it will form only one part of the overall evidential picture to be considered in assessing the appeal. An adverse inference should not on its own be relied on to determine the appeal.

Refuse to admit evidence

33 The Appeal Panel may refuse to allow a party to rely on evidence where that party has failed to comply with a relevant rule or direction relating to the production of that evidence.

34 In deciding whether to refuse to admit evidence, the Appeal Panel should consider:

- the relevance of the evidence to the issues in the appeal for example will the Appeal Panel be able to make a full assessment of the relevant issue(s) in the context of the appeal without admitting the evidence
- whether there is any other mechanism, other than excluding the evidence, that would allow the appeal to proceed fairly
- the nature and extent of the failure to comply
- who was responsible for the failure to comply
- what reasonable steps could the party have taken to avoid the failure to comply or minimise the impact. For example:
 - did the party notify the Appeal Panel of the problem
 - did the party make an application for a postponement or adjournment
- the reason(s), if any, given for the failure. Is there a reasonable excuse for the failure, such that it would be unfair to refuse to admit the evidence? For example:

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- the appellant has provided objective evidence that their physical or mental health condition prevented compliance at the time but there is a realistic prospect of compliance within a reasonable timeframe,
 - the party did not receive the notice served in accordance with the rule requiring them to supply information or produce a relevant document, or
 - not having legal representation. This does not justify a failure to comply. However, if an appellant does not have the benefit of legal advice, the Appeal Panel should be satisfied that reasonable efforts have been made to explain the consequences of a failure to comply to the appellant.

Postponements

- 35** In this section, references to the hearing of an appeal are to be read as including the meeting of an Appeal Panel for the purposes of considering and determining a written appeal.
- 36** The Internal Appeal Manager may, on their own initiative or on the application of a party postpone the hearing of an appeal²⁰.
- 37** Before making a postponement decision, the Internal Appeal Manager must give the parties a reasonable opportunity to make representations²¹. Where a party makes an application to postpone, that application will be treated as representations.
- 38** In deciding whether to postpone the hearing, the Internal Appeal Manager should consider:
- the reasons for seeking a postponement
 - the length of the postponement requested
 - any supporting documents such as objective evidence of a physical or mental health condition
 - the impact of any postponement on the other party and the appeal.

²⁰ Rule 9(2)

²¹ Rule 9(4)

39 Where the Internal Appeal Manager decides not to postpone, they must not determine a further application to postpone unless there has been a material change in circumstances, or it is in the interests of justice to determine a further application to postpone²².

Adjournments

40 Where an oral hearing has commenced, or the Appeal Panel has met to consider and determine a written appeal, the Appeal Panel may, at any stage, whether on its own initiative or on the application of a party, adjourn the hearing or meeting²³.

41 Before making a decision to adjourn an oral hearing, the Appeal Panel must give the parties a reasonable opportunity to make representations. In the case of a written appeal, the Appeal Panel may invite representations²⁴ where it is appropriate to do so.

42 In deciding whether to adjourn the hearing, the Appeal Panel should consider:

- the reasons for seeking an adjournment
- the length of the adjournment
- any supporting documents such as objective evidence of a physical or mental health condition
- the impact of any adjournment on the other party and the appeal

43 Where an application to adjourn is made on the same grounds as a refused postponement the Appeal Panel must not determine the application unless there has been a material change in circumstances or it is in the interests of justice to do so²⁵.

²² Rule 9(6)

²³ Rule 10(1)

²⁴ Rule 10(2)

²⁵ Rule 10(4)

Evidence

- 44** The standard of proof in proceedings before the Appeal Panel is that applicable to civil proceedings²⁶.
- 45** The Appeal Panel may admit any evidence they consider fair and relevant to the case before them, whether or not that evidence would be admissible in a court of law²⁷.
- 46** The Appeal Panel must have regard to witness statements and evidence of witnesses at an oral hearing only to the extent that it relates to the issues on appeal²⁸.
- 47** The Appeal Panel must not admit evidence which was not available to the maker of the decision that is the subject of the appeal unless²⁹:
- such evidence is relevant to the issues in the appeal; and
 - it is fair to do so.

Such evidence is relevant to the issues in the appeal

- 48** Whether evidence is relevant will be fact specific and will need to be assessed against the nature and circumstances of the appeal and the reasons for appealing.
- 49** In determining whether the evidence is relevant to the issues in the appeal the Appeal Panel should consider whether:
- the evidence is likely to assist the Appeal Panel in determining whether the decision was wrong or unjust because of a serious procedural or other irregularity in the making of the decision
 - the evidence is significant and of probative value
 - the evidence could have made a real difference to the decision if it had been available.

²⁶ Rule 11(1)

²⁷ Rule 11(2)

²⁸ Rule 12(5), 13(1)(f), 15(2)(h) and 15(2)(i)

²⁹ Rule 11(3)

It is fair to do so

- 50** Whether it would be fair to admit the evidence will require consideration of fairness to both parties and the overall fairness of the proceedings.
- 51** In determining whether it would be fair to admit the evidence the Appeal Panel should consider whether:
- the evidence could have been obtained prior to the decision being made. If so, is there a reasonable explanation why it wasn't
 - it would be in the public interest to admit the evidence
 - it would be unduly prejudicial to the other party to admit the evidence
 - admitting the evidence would have an adverse effect on the efficient progress of the appeal.

Representation at an oral hearing

- 52** At an oral hearing, the appellant may be represented by a solicitor or counsel³⁰.
- 53** The Internal Appeal Manager or Appeal Panel may allow the appellant to be represented by any other person. This includes, but is not limited to, a representative of a professional organisation of which the appellant is a member³¹.
- 54** A witness may not represent the appellant at an oral hearing³².
- 55** In determining whether to allow the appellant to be represented by any other person, the Internal Appeal Manager or Appeal Panel should balance the interests of the appellant being represented by a person of their choice against the need to ensure the hearing proceeds fairly and expeditiously. The Appeal Panel should consider:

³⁰ Rule 16(1)(a)

³¹ Rule 16(1)(b)

³² Rule 16(2)

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- the complexity of the issues on appeal
 - whether the person can understand the hearing procedure and is able to carry out their role fairly and effectively
 - whether the person will be able to present the appellant's case with independence, honesty and integrity.

Appeal Panel decisions

56 The Appeal Panel's decision takes effect on the date on which notice of the decision is deemed to have been served on the appellant³³.

57 The Appeal Panel may³⁴:

- dismiss the appeal
- quash the decision under appeal
- substitute for the decision under appeal a decision that could have been made
- remit the matter to be disposed of in accordance with directions.

Dismiss the appeal

58 Where the Appeal Panel doesn't consider the decision was wrong or unjust because of a serious procedural or other irregularity in the making of the decision it should dismiss the appeal.

59 Where the Appeal Panel considers the decision was wrong or unjust because of a serious procedural or other irregularity in the making of the decision, it may exercise its discretion and dismiss the appeal. This is likely to be limited to appeals against a decision to remove

³³ Rule 18(8)

³⁴ AAPAO Article 16(5)

where allowing the appeal would create an immediate and significant risk to public protection that could not be addressed by other means.

Quash the decision under appeal

- 60** Where the Appeal Panel considers the decision was wrong or unjust because of a serious procedural or other irregularity in the making of the decision, it should quash the decision under appeal.
- 61** The effect of quashing a decision to remove an entry from the register is the appellant is returned to the register³⁵.
- 62** The effect of quashing a decision to refuse an application for entry or re-entry to the register, doesn't lead to entry or re-entry to the register.
- 63** The effect of quashing a decision to refuse an application for voluntary removal, doesn't lead to removing an entry from the register.
- 64** For application-based decisions, a new decision is usually needed. The power to substitute or remit provide routes to arriving at a new decision, where the Appeal Panel considers one is needed.

Substitute for the decision under appeal a decision that could have been made

- 65** Where the Appeal Panel allows the appeal, it may substitute what it considers is the 'correct' decision. This is likely to be limited to circumstances where:
- the issues on appeal are specific and narrow,

³⁵ subject to the notification of decision rules

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- the decision was wrong and without the error there would have only been one decision which the ADM could have reached.

66 When making the substitution decision the Appeal Panel must have regard to the following guidance:

- [PAs and AAs – ADM7 – Decisions on registration](#)
- [PAs and AAs – Removals policy](#)

67 Time-limited information and evidence submitted as part of any registration or re-entry application may become invalid during the appeal process. Where the Appeal Panel is making a substitution decision, the validity of any information and evidence set out in the relevant guidance should be assessed by reference to the point at which it was submitted to us.

Remit the matter to be disposed of in accordance with directions

68 Where the Appeal Panel allows the appeal, it may remit the matter to be disposed of in accordance with directions. This would also allow the matter to be re-considered and determined in accordance with the relevant legislation, guidance and process.

69 This is likely to be most appropriate in circumstances where:

- there are multiple aspects on appeal that need to be assessed.
- it's not completely clear whether the guidance has been met or what outcome should have been reached because something has gone wrong in the decision-making process.

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