

# PAAs and AAs: ADM10 - Permission to appeal – real prospect of success

## Introduction

- 1 This guidance is for authorised decision makers (ADMs) asked to consider whether permission to appeal should be granted.
- 2 This guidance aims to ensure consistency, fairness and proportionality in our approach to making decisions. ADMs should read it in conjunction with the [Principles which apply to decision making](#) across all our registration and revalidation functions.
- 3 This guidance sits under our [Internal Appeal Framework](#), which sets out the overarching approach for appealing decisions to an Appeal Panel.

## Basis for permission to appeal

- 4 An appellant who wishes to appeal must seek permission to do so within 28 days beginning with the date on which the decision was notified to them<sup>1</sup>. This is known as the appellant's 'notice of appeal'.
- 5 [The General Medical Council \(Internal Appeals\) \(Anaesthesia Associates and Physician Associates\) Rules 2024](#) (the rules) set out the procedure for appeals. The appellant's notice of appeal must be in writing and include certain information<sup>2</sup>.
- 6 Following receipt of the appellant's notice of appeal, the ADM must grant permission, refuse permission or where the rules as to revisions permit, revise the decision<sup>3</sup>. This must be done within 28 days beginning with the day on which notice of the appeal is treated as having been served<sup>4</sup>.
- 7 ADMs should consider whether to grant permission to appeal after it has been determined that the decision can't or shouldn't be revised.

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<sup>1</sup> AAPAO Article 16(2).

<sup>2</sup> Rule 3(1).

<sup>3</sup> AAPAO Article 16(3).

<sup>4</sup> Rule 4(1).

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## Granting permission to appeal

### Real prospect of success

- 8 Permission to appeal may be granted only where the appeal would have a real prospect of success<sup>5</sup>. This means a realistic as opposed to fanciful prospect of success. It does not mean that the appeal would be more likely than not to succeed.
- 9 When considering whether the appeal would have a real prospect of success the ADM will need to have regard to the approach which the Appeal Panel will take in determining the appeal and the grounds on which they may allow an appeal:
  - an appeal is limited to a review of the decision appealed<sup>6</sup> and whether that decision was<sup>7</sup>:
    - wrong, or
    - unjust because of a serious procedural or other irregularity in the making of that decision.

## Factors to consider

### Does the information and evidence suggest the decision *may* have been wrong?

- 10 Wrong could include, but is not limited to:
  - an error of fact for example, the decision maker:
    - 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 decision maker:
    - applied the wrong legal test

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<sup>5</sup> Rule 4(2).

<sup>6</sup> Rule 5(1).

<sup>7</sup> Rule 5(2).

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- incorrectly applied the correct legal test
  - failed to exercise discretion appropriately.

## Does the information and evidence suggest the decision *may* have been unjust because of a serious procedural or other irregularity in the making of the decision?

- 11** 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.
- 12** Unjust because of a serious procedural or other irregularity in the making of the decision 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.

## Evidence not available to the ADM of the decision

- 13** As part of their notice of appeal and supporting information the appellant may provide evidence that was not available to the ADM of the decision under appeal. This is sometimes referred to as 'fresh evidence'. Where the appellant provides fresh evidence, the ADM should not try and predict whether such evidence would be admitted by the Appeal Panel in the future. The ADM should only consider whether the fresh evidence suggests the decision *may* have been wrong or unjust because of a serious procedural or other irregularity in the making of the decision, and whether the appeal would have a real prospect of success.

## Permission to appeal decision

- 14** In all cases, the decision should be based on the:
  - information provided in the appellant's notice of appeal and supporting information, and
  - information considered by the ADM at the time of the original decision and the reasoning for their decision.
- 15** Following consideration of all the information the ADM must decide:
  - to grant permission to appeal on the basis that the appeal would have a real prospect of success, or

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- to refuse permission to appeal on the basis that the appeal would not have a real prospect of success.

**Published 13 December 2024**