Section 9: Providing expert oral evidence to tribunals

Overview

9.1 In this section of our guidance, we set out what we expect from you when providing, and preparing to provide, oral evidence for us. We explain how we usually communicate with you at this stage in proceedings, and what happens at hearings.

Types of hearing

9.2 We may ask you to give evidence in two different types of hearing:

- Medical practitioners tribunal hearings at the MPTS
- Investigation Committee hearings at the GMC.

MPTS hearings

9.3 The MPTS is operationally independent in its decision making and separate from our investigatory role.

9.4 The MPTS runs hearings for cases referred by the Case Examiners where a doctor’s fitness to practise is called into question. They protect patients by making independent decisions about a doctor’s fitness to practise, measured against professional standards that we set. The MPTS is accountable to Parliament and the our Council.

9.5 All our medical practitioners tribunal hearings take place at the MPTS hearing centre in Manchester.

9.6 If the tribunal find a doctor’s fitness to practise to be impaired they have powers to impose sanctions on a doctor’s registration.
Investigation Committee hearings

9.8 The Investigation Committee (IC) is a committee at the GMC. Cases are referred to an IC for an oral hearing where the Case Examiners were minded to issue the doctor with a warning but one of the following occurred:

- the facts relating to the warning are disputed
- the doctor has requested an oral hearing before the IC
- the case examiners consider it appropriate for the IC to consider the case.

9.9 Usually IC hearings are based on documentary evidence and there is no need to call oral evidence. Occasionally you might be asked to attend to give evidence before an IC.

9.10 The IC can do any of the following:

- issue the doctor with a warning
- conclude the case with no further action
- refer the matter to a Medical practitioners tribunal
- adjourn the hearing to allow for further investigation to take place.

When will I need to attend a hearing?

9.11 For medical practitioners tribunal hearings, we will always contact you to arrange your attendance at the hearing. You will probably not need to give oral evidence at an IC hearing, but if you do we will let you know.

9.12 We will try to contact you before a hearing date is finalised with a window of time when the hearing is likely to be listed. We will ask for your availability during this window so that we can try to avoid dates when you are unavailable. To help us make sure the hearing is listed when you are free, please respond quickly.

9.13 Once the hearing is listed, we will give you a window of a few days that you will need to keep free. Nearer to the time of the hearing, we will do our best to confirm the exact dates and time we need you to attend. You will need to arrange leave with your employer or practice so that you can attend. Please do not book any other commitments on these days that would prevent you
from attending. You can contact us if you want to check whether you need to remain free on the dates we have told you about.

9.14 If the tribunal decide to postpone the hearing, we will let you know as soon as possible and check your availability for new dates for the hearing. This can sometimes happen very shortly before the hearing is due to start, or once it has started, and is often outside of our control. If this happens before you have attended the hearing, we will let you know.

9.15 If the doctor agrees to your written report being provided to the tribunal, you may not have to attend the hearing. If the tribunal still need you to answer their questions we can often apply for you to do this by video link or telephone. We may only find out that your evidence is agreed shortly before the hearing, but we will give you as much notice of this as we can.

What happens in advance of a hearing?

Allegations

9.16 We will draft factual allegations against the doctor, and may base some of these on your expert opinion. We will often ask you check parts of these allegations to make sure they accurately reflect your opinion. You will need to inform us if they do not, as we will seek to prove these allegations at the hearing.

9.17 You must also let us know, if for any reason, your expert opinion changes from any of your earlier report(s).

Conference with Counsel

9.18 We may ask you meet with the barrister who will present our case, where the barrister can ask you questions about your opinion and you can ask questions about what will happen. We need you to be available to attend such a conference with counsel, and to be familiar with your written report.

9.19 During or following the conference, we might ask you to prepare a supplemental report or update your existing report. This will be to clarify certain issues discussed at the meeting. You will need to do this as quickly as possible. Please see Section 3 of this guidance for more information about supplemental reports.

How can I prepare for the hearing?
Review your report and papers

9.20 At the hearing you will be asked questions and it may have been some time since you submitted your original report. You should read your report(s) so that you are familiar with the content, opinion and conclusion.

9.21 Please fully review all the materials you have used to form your opinion and any additional materials we may have sent to you before the hearing.

9.22 You will need to bring all the notes and materials you used to prepare your report and bring them with you to the hearing. The tribunal may ask to see these materials when they are considering your evidence.

Consider any equipment you might need

9.23 Please let us know if, when providing your oral evidence, you:

   a would like to use diagrams or models; or

   b will need to refer to x-rays or scans.

These can often be helpful ways of presenting your evidence. We will need to make sure any facilities you may need are available at the hearing.

Familiarise yourself with the hearing format

9.24 On the Medical Practitioners Tribunal Service (MPTS) website you can take the virtual tour of the MPTS hearing centre at St James’ Building. If you would like to visit the MPTS hearing centre and see a hearing room before you give evidence, please let us know.

9.25 Most MPTS hearings take place in public. If you are interested in watching an unrelated hearing before you give evidence, please let us know.

MPTS protocol

9.26 The MPTS have published a protocol for the instruction of experts on their website which gives guidance on what MPTS expect of experts giving evidence to medical practitioners tribunal hearings. You should be familiar with the contents of this protocol before you attend the hearing.
Discussions between experts, joint statement and joint evidence

Discussions between experts

9.27 We may need you to meet or discuss a case with the doctor’s expert. There are two ways this can happen:

a the Case Manager can make a direction; or

b by mutual agreement between us and the doctor.

9.28 The purpose of discussions between experts is to:

- identify and discuss expert issues in the proceedings
- reach agreed opinions where possible, or at least narrow the issues in the case
- identify the issues where experts agree and disagree and summarise the reasons for any disagreement.

9.29 These discussions can take place either through an exchange of letters, telephone or face to face (including by video conferencing). Usually, legal representatives will not be present for this discussion.

9.30 An agenda for any discussion is usually prepared by us, with cooperation from the doctor and experts.

Joint statement

9.31 At the conclusion of the discussions between experts, you should jointly prepare a statement setting out:

- issues on which you agree, and the basis of agreement
- issues on which you do not agree, with reasons
- any further issues that were not included in the original agenda for discussion.

9.32 You should return the agreed statement to us as soon as practically possible.

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Joint evidence

9.33 The joint statement aims to reduce the time you spend at the hearing giving evidence. We may ask you to jointly present the outcomes of your discussion and statement to the tribunal. This evidence will be constrained to the areas of agreement and disagreement identified in a joint statement.

9.34 The way you give such oral evidence will probably be different in that:

- you might give oral evidence at the same time as another expert
- the tribunal will usually lead on the questions you are asked so that they can focus on the areas of disagreement.

What happens at a hearing?

Procedure

9.35 The functions of the MPTS, and the way they carry out those functions, are set out in law through the Medical Act 1983 and the GMC (Fitness to Practise) Rules 2004.

9.36 The powers of a Medical practitioners tribunal are set out in sections 35D and 35E of the Medical Act 1983. The procedures which are followed during medical practitioners tribunal hearings are set out in rules 17 (new hearings) and 22 (review hearings) of the Fitness to Practise Rules.

9.37 There are three stages to a new medical practitioners tribunal hearing:

i Stage one: the tribunal hear evidence and submissions from both parties and decide whether certain facts alleged by the GMC are proved or not. You will usually be giving your evidence at this stage of the hearing.

ii Stage two: if the tribunal find any facts proved at stage one, they can hear further evidence and submissions from both parties before deciding whether the doctor’s fitness to practise is impaired by reason of the facts found proved.

iii Stage three: if the tribunal found the doctor’s fitness to practise impaired at stage two, they can hear further evidence and submissions from both parties before deciding whether to impose a sanction on the doctor’s registration. Sanctions include:

- conditions on registration for up to three years

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- suspension of the doctor's registration for up to 12 months
- erasure of the doctor's name from the register.

9.38 If the tribunal found the doctor's fitness to practise not impaired at stage two, they can decide to give the doctor a warning.

Your role at the hearing

9.39 We will usually need you to attend the MPTS hearing centre in Manchester to give oral evidence during stage one of the hearing. In certain circumstances, the tribunal may agree to you giving evidence by video link or telephone; this agreement is on a case-by-case basis. We may also need you to assist the GMC barrister at other points in the hearing.

9.40 The duties of an expert set out at Section 1 of this Guidance also apply to your oral evidence.

9.41 Once the hearing begins the tribunal may request that you provide additional statements, declarations or further information relating to your report. We need you to respond to any such request as a matter of priority.

9.42 We may ask you to attend the hearing to listen to the evidence given by a patient, the doctor or another witness, usually where this evidence could affect your opinion.

9.43 You should not speak to anyone about the case or your evidence outside of the hearing room, unless:

- our barrister or solicitor is with you
- we ask you to discuss the case with someone else, for example the doctor's expert.

Arrival

9.44 When you arrive at the MPTS hearing centre, you will be shown to a witness room, where there is access to hot and cold drinks. We will come to meet you there and explain what will happen.

9.45 You should make sure that you arrive at the time we have asked you to attend and that you are fit to meet with us and give your evidence. It may delay the progress of the whole hearing if you are not ready for the time we have asked.
9.46 We will usually ask you to arrive before the hearing starts that day. This will give time for our barrister or solicitor to discuss the case with you. We may be able to tell you about the evidence that has been given and any admissions made by the doctor. This may mean that we can tell you that your evidence will be focused on certain issues.

Delays

9.47 We do our best to ensure that you give your evidence at the time we arrange with you. There are some occasions when hearings unfold in an unexpected way which may mean that your evidence is delayed. We try to make sure that any delays are minimal, and ask that you remain flexible in these circumstances. You should be prepared for potential delays when attending a hearing.

9.48 If there are any delays before you give your evidence, we will keep you updated and will let you know when the hearing breaks for lunch.

9.49 On rare occasions, we may ask you to come back on another day, for example if the hearing is adjourned for some unforeseen reason.

Giving your oral evidence

What will I need?

9.50 You will need a copy of your written report and any papers you relied on in your report. We will give you a copy of your report before you give evidence if you do not have one with you.

9.51 If you wish to refer to your report when you give evidence, you should tell the GMC barrister when you meet them, and ask the permission of the tribunal. We will confirm whether we have provided the tribunal with a copy of your report in advance of your evidence.

What happens when I give my evidence?

9.52 This is the usual sequence followed when you give your evidence:

- Examination in chief: our barrister will call you to give evidence, then ask you a number of questions to elicit your opinion or clarify points about your opinion

- Cross examination: the doctor or their representative can then ask you questions to test your opinion
- Re-examination: our barrister may then ask you further questions arising from the doctor’s questions
- Tribunal questions: members of the tribunal may ask you questions.

9.53 The length of time this takes will depend on the number of patients and issues you have considered. If some issues are agreed between the parties, questioning usually takes less time as the questions will focus on issues which remain contentious.

The doctor’s expert

9.54 The doctor may call their own expert to give evidence. They perform the same role for the doctor as you do for us. They will be called to give evidence at a later stage and will go through the same process of answering questions.

9.55 We might ask you to be present at the hearing when the doctor’s expert gives evidence to help us understand any issues arising.

What might I be asked?

9.56 When you give your evidence it will usually be based on your written report. Please ensure you are fully prepared to answer questions, from either party or the tribunal, on the following:

- the material you used to form your opinion
- any material you considered but did not use to form your opinion
- your opinion and your rationale
- where you provided qualified opinions, details of the qualifications
- your conclusions.

9.57 You should also be prepared to answer questions in relation to your qualifications, experience and expertise relevant to the case.

9.58 During stage one of the hearing, we may have narrowed, or resolved, any factual issues so that your evidence can be focused on your opinion and conclusions. For example, the doctor may have admitted certain factual allegations or a witness may have conceded certain points in their evidence. This may resolve any differences in factual accounts.

What should I think about?

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9.59 When answering questions please keep your audience in mind. Make sure:

- your evidence is clear and understandable – explain any technical medical terms or abbreviations you use
- everybody can understand your answers – the tribunal will contain lay and medical members. There may only be one medical member who will often practise in a different specialty
- you answer only the questions directed to you – do not volunteer evidence unless it is relevant to the case and to your speciality.

9.60 Your evidence should usually be consistent with your written report unless you receive new information which was not available when you prepared your report. If the new information changes your opinion you should say so and explain why it changes your opinion.

9.61 The way in which you give your evidence should help others reach their own conclusions. You should not be overly-assertive in expressing your own views.

9.62 You might be asked to give your opinion on additional evidence presented at or shortly before the hearing. You must be impartial when presented with further evidence and be willing to change your opinion if the new information supports this.

9.63 If the doctor presents evidence about any re-training or remediation completed, you can comment on this and whether it addresses any criticisms you have made.

The scope of your evidence

9.64 You should give evidence within your role as an expert witness.

9.65 You should only give evidence within the remit of your speciality. If you are asked questions which fall outside your area of expertise please make this clear when answering and be prepared to decline to answer if you think this is appropriate. If you cannot answer certain questions through a lack of knowledge or awareness you should make this clear.

9.66 Please limit your opinion to whether you think a doctor’s actions or treatment fell below the standard expected of a reasonably competent practitioner in the same specialty, how it fell below and how serious this was. Please do not express any opinion on whether the doctor’s treatment amounted to misconduct, whether the doctor’s fitness to practise is impaired or what sanction you think the doctor should face.
9.67 You may be asked to comment on what most practitioners in the specialty would have done in the circumstances or on whether a reasonable body of practitioners would have acted in the same way as the doctor.

9.68 Only make assumptions of fact when giving your evidence if you are asked to do so. If your opinion would differ depending on which factual account is accepted, you should explain this and give your differing opinions. For example the doctor’s factual account may differ from a witness’s account, or from entries in the medical records. You should not make assumptions about what may have happened based on what is/is not recorded in medical records.

**Once you have given your oral evidence**

9.69 When the tribunal tells you that your evidence is complete, you should return to the witness room where we will come to speak to you. We may need to wait for an appropriate time before coming to speak to you. We may be able to release you soon after you have given your evidence, or the tribunal may re-call you to give further evidence. You should leave the MPTS building only once we have released you.

9.70 Once you have left the MPTS building, we need you to remain contactable: we might need to contact you with queries that have arisen as the hearing progresses.

Occasionally, we may need you to either re-attend the hearing or to give further evidence by video or telephone link.

9.71 We can let you know the outcome of the hearing once it has concluded. We can also let you have feedback on your evidence to the hearing.