

## Health and Care Professions Tribunal Service

# PRACTICE NOTE

## Postponement and Adjournment of Proceedings

This Practice Note has been issued for the guidance of Panels and to assist those appearing before them.

### Introduction

1. Panels have a statutory obligation to conduct fitness to practise proceedings expeditiously<sup>1</sup> and it is in the interest of all parties, and the wider public interest, that allegations are heard and resolved as quickly as possible. Where a time and venue for a hearing have been set, Panels should always aim to proceed as scheduled. Accordingly, the parties and their representatives should also be ready to proceed.
2. Adjournments and postponement requests should be subjected to rigorous scrutiny and should not be granted without good and compelling reasons. Panel proceedings should not be postponed or adjourned unless it is shown that failing to do so will create a potential injustice.

### Postponements and adjournments

3. In relation to fitness to practice proceedings, a distinction is made between:

- i. **Postponement**

This is an administrative action that may be taken on behalf of a Panel<sup>2</sup>:

- a. at any time up to 28 days before the date on which a hearing is due to begin
    - b. at any time within 28 days of the date on which a hearing is due to begin and/or after the Notice of Hearing has been sent **and** the parties agree that the hearing should not go ahead on the scheduled date.

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<sup>1</sup>Health Professions Order 2001, Art. 32(3)

<sup>2</sup> by the Operational Manager - Hearing or their nom

and

ii. **Adjournment**

Which is a decision for the Panel or the Panel Chair, taken at any time after that 28-day limit has passed and the parties do not agree that the hearing should not go ahead, or once the proceedings have begun or are part heard.

**Postponements**

4. An application for a postponement must be made in writing (by letter or email) to the Operational Manager - Hearings at least 28 days before the hearing date. The application should set out the background to and reasons for the request and be supported by relevant evidence.
5. In considering postponement requests, the Operational Manager - Hearings will consider whether, in all the circumstances the request is reasonable, taking into account:
  - a. the reasons for the request;
  - b. the length of notice that was given for the hearing;
  - c. the time remaining before the hearing is due to commence; and
  - d. whether the case has previously been postponed.
6. When considering the reasonableness of the request, they should have regard to the impact of their decision on all parties, including the registrant, the HCPC, referrers, complainants, witnesses and other people with an interest in the matter. The fairness of the proceedings is paramount.
7. When considering the length of notice that was given for the hearing, the Operational Manager – Hearings may take into account the following factors:
  - a. the method by which the notice was sent;
  - b. any other steps taken by the HCPC to bring the hearing to the attention of the registrant and/or their representative;
  - c. the date on which notice would be deemed to be have been served under the Civil Procedure Rules, as set out at Annexe A. While the Civil Procedure Rules do not apply to HCPTS proceedings, they provide a useful benchmark; and
  - d. the date on which notice was received by the registrant and/or their representative.
8. If a postponement application is refused, the applicant will be advised to attend

the hearing on the scheduled date. The applicant and any representative must do so ready to proceed, but subject to the right to apply to the Panel for an adjournment.

## Adjournments

9. Applications for adjournment must be made in writing as early as possible and, other than in exceptional circumstances, no later than 14 days prior to the scheduled date for the hearing. An application must specify the reasons why the adjournment is sought and be accompanied by supporting evidence, such as medical certificates.
10. Where, due to exceptional circumstances, an application for an adjournment is made less than five working days prior to the date for the hearing, it is unlikely that the Panel will be able to consider it before the scheduled hearing date.
11. Unless advised by the Panel that an adjournment has been granted, the parties and their representatives must attend the hearing on the scheduled date ready to proceed.
12. Panels should control and decide all requests for adjournments. In determining whether to grant an adjournment, Panels should have regard to the following factors, derived from the decision in *CPS v Picton*<sup>3</sup>:
  - a. the general need for expedition in the conduct of proceedings;
  - b. where an adjournment is sought by the HCPC, the interest of the registrant in having the matter dealt with balanced with the public interest;
  - c. where an adjournment is sought by the registrant, if not granted, whether the registrant will be able fully to present his or her case and, if not, the degree to which the ability to do so is compromised;
  - d. the likely consequences of the proposed adjournment, in particular its likely length and the need to decide the facts while recollections are fresh;
  - e. the reason that the adjournment is required. If it arises through the fault of the party asking for the adjournment, that is a factor against granting the adjournment, carrying weight in accordance with the gravity of the fault. If that party was not at fault, that may favour an adjournment. Likewise if the party opposing the adjournment has been at fault, that will favour an adjournment; and
  - f. the history of the case, and whether there have been earlier adjournments, at whose request and why.
13. The factors to be considered cannot be comprehensively stated but will depend

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<sup>3</sup> (2006) EWHC 1108

upon the particular circumstances of each case, and they will often overlap.

14. A Panel must exercise its discretion judicially. The crucial factor is that the registrant is entitled to a fair hearing, but the convenience of the parties or their representatives is not sufficient reason for an adjournment.

### **New dates**

15. Where a postponement or adjournment is granted, a new date or alternative dates for the hearing should be agreed at that time. Where that is not possible, arrangements need to be put in place in order for the case to be re-listed for hearing. If necessary, Panels should issue Directions for this purpose.

### **Communication**

16. So far as possible, communications relating to postponements and adjournments should be sent electronically, in order to ensure that they are dealt with as expeditiously as possible.

### **Supporting evidence**

17. Applications for postponements or adjournments must be supported by proper evidence and a strict approach should be adopted in evaluating that evidence.
18. For example, claims that a person is unfit to attend a hearing should be supported by specific medical evidence to that effect. Medical certificates which simply state that a person is “off work” or “unfit to work” should generally be regarded as insufficient to establish that a person is too ill to attend a hearing. An application for a postponement or adjournment on medical grounds should normally be supported by a letter from a doctor which expressly states that the person concerned is too ill to attend a hearing.

## Annexe A: Civil procedure rules on deemed service<sup>4</sup>

Method of service	Deemed day of service
First class post (or other service which provides for delivery on the next business day)	<ul style="list-style-type: none"> <li>• The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or</li> <li>• If not, the next business day after that</li> </ul>
Document exchange	<ul style="list-style-type: none"> <li>• The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or</li> </ul> <p>If not, the next business day after that day.</p>
Delivering the document to or leaving it at a permitted address	<ul style="list-style-type: none"> <li>• If it is delivered to or left at the permitted address on a business day before 4.30pm, on that day; or</li> <li>• In any other case, on the next business day after that day.</li> </ul>
Other electronic method	<ul style="list-style-type: none"> <li>• If the email or other electronic transmission is sent on a business day before 4.30pm, on that day; or</li> <li>• In any other case, on the next business day after the day on which it was sent.</li> </ul>
Personal Service	<ul style="list-style-type: none"> <li>• If the document is served personally before 4.30pm on a business day, on that day; or</li> <li>• In any other case, on the next business day after that day.</li> </ul>

For this purpose ‘business day’ means any day except Saturday, Sunday or a bank holiday in the relevant part of the United Kingdom and ‘bank holiday’ includes Christmas Day and Good Friday.

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<sup>4</sup> CPR 6.26