

Fitness to Practise Committee -16 February 2011

Practice Note: Adjournments and Postponements

Executive summary and recommendations

Introduction

The Adjournments and Postponements Practice Note sets provides guidance on the procedure to follow when an application for a postponement or adjournment request of a final hearing is made. It is has reviewed and updated accordingly to reference the process in relation to applying for a postponement or adjournment of a substantive review hearing or an interim order hearing.

Decision

The Committee is asked to discuss the practice note and recommend that the Council approve the Practice Note – Adjournments and Postponements

Background information

All practice notes are placed on the HPC website and provided to stakeholders where required. Reference to the appropriate practice notes is provided in standard correspondence.

Resource implications

None

Financial implications

None

Appendices

Practice Note- Adjournments and Postponements

Date of paper

4 February 2011

PRACTICE NOTE

Postponement and Adjournment of Proceedings

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

Introduction

Article 32(3) of the Health Professions Order 2001¹ (the **Order**) requires Panels to conduct fitness to practise proceedings expeditiously 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.

Panels proceedings should not be postponed or adjourned unless it is shown that failing to do so will create a potential injustice. Requests for postponements or adjournment which are made without sufficient and demonstrated reasons to justify them should not be granted.

Postponements and adjournments

In relation to HPC fitness to practice proceedings, a distinction is made between a postponement and an adjournment in that:

- **postponement** is an administrative action which may be taken on behalf of a Practice Committee by HPC's Head of Adjudication² at any time up to 14 days before the date on which a hearing is due to begin; and
- **adjournment** is a decision for the Panel or the Panel Chair, taken at any time after that 14 day limit has passed or once the proceedings have begun or are part heard.

Postponements

An application for a postponement should be made in writing (letter, email or fax) to the Head of Adjudication at the HPC at least days 14 before the hearing date. The application should set out the background to and reasons for the request and be supported by relevant evidence.

¹ SI 2002/254

² or in the Head of Adjudication's absence, any person nominated by the Head of Adjudication (other than a person who has been involved in the investigation of the case)

In considering postponement requests, the Head of Adjudication will consider whether, in all the circumstances the request is reasonable, taking into account:

- the reasons for the request;
- the length of notice that was given for the hearing;
- the time remaining before the hearing is due to commence; and
- whether the case has previously been postponed.

If a postponement application is refused, the Head of Adjudication will advise the applicant to attend the hearing. The applicant and any representative must do so ready to proceed, but subject to the right to apply to the Panel for an adjournment.

Where a postponement is granted, the Head of Adjudication will seek to agree with the parties suitable alternative dates for the hearing or, where that is not possible, to agree the arrangements which need to be put in place in order for the case to be re-listed for hearing.

Postponements should NOT be granted for hearings in respect of:

- **an application for an interim order under Article 31 of the Order (which inevitably take place at short notice); or**
- **the review of a Practice Committee order made under Article 30 of the Order, where the effect of postponement would be to permit the order to expire without it being reviewed.**

Adjournments

Applications for adjournment should be made in writing as early as possible and, other than in exceptional circumstances, no later than seven days prior to the scheduled date for the hearing. The application must specify the reasons why the adjournment is sought and be accompanied by supporting evidence, such as medical certificates.

Where time permits, adjournment applications should be put before the Panel prior to the scheduled hearing date, together with any submissions from the HPC on the application. The Panel's decision should then be communicated to the parties in writing.

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 to be considered by the Panel until that scheduled hearing date.

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* (2006) EWHC 1108:

- the general need for expedition in the conduct of proceedings;

- where an adjournment is sought by HPC, the interest of the registrant in having the matter dealt with balanced with the public interest;
- where an adjournment is sought by the registrant, if not granted, whether the registrant will be able fully to present his or her defence and, if not, the degree to which the ability to do so is compromised;
- the likely consequences of the proposed adjournment, in particular its likely length and the need to decide the facts while recollections are fresh;
- 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;
- the history of the case, and whether there have been earlier adjournments and at whose request and why;

The factors to be considered cannot be comprehensively stated but will depend upon the particular circumstances of each case, and they will often overlap. The crucial factor is that the registrant is entitled to a fair hearing.

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

Unless advised by the Panel that an adjournment has been granted, the parties and their representatives must attend the Panel ready to proceed.

Communication

So far as possible, communications relating to postponements and adjournments should be provided in electronic form in order to ensure that they are dealt with as expeditiously as possible.

Supporting evidence

Applications for postponements or adjournments must be supported by proper evidence and both the Head of Adjudication and Panels should adopt a strict approach to evaluating such evidence.

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.

March 2011