

Introduction

1. This guidance note is intended to assist parties wishing to raise a health issue before the Scottish Solicitors' Discipline Tribunal. This guidance applies to all proceedings before the Tribunal commenced after 1 September 2024. It should be read alongside the Scottish Solicitors' Discipline Tribunal Rules 2024, in particular Rules 10 and 16.
2. This guidance note will be subject to review by the Tribunal from time to time.
3. Some health issues can have a significant impact on an individual's ability to participate in Tribunal proceedings. Relevant health issues should be raised with the Tribunal and the other parties to the proceedings at the earliest opportunity so that the Tribunal can make any appropriate arrangements.

Adjournments

4. If a party wishes to apply for an adjournment based on their own, or one of their witness's health issues, the Tribunal expects that application to be supported by a reasoned opinion of an appropriate medical practitioner. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient. The medical evidence should usually be on soul and conscience. It should detail the diagnosis, prognosis and any reasonable adjustments that could be considered to enable the individual to participate in the proceedings. If the application is based on capacity to participate in the proceedings the medical evidence provided should also address this specific issue.
5. Proceedings should be progressed in a timely and efficient manner and should be concluded as soon as possible, in a way that is fair to all parties and in accordance with the public interest. In deciding whether to adjourn a hearing on health grounds, the Tribunal will consider both its duty to protect the public and the importance of enabling a party to participate in the hearing.

Medical Reports

6. The Tribunal and/or the parties may identify a need for a medical report to assist in understanding any underlying health issues and the impact that these may have on (a) the alleged misconduct and (b) the proceedings.
7. The Tribunal does not make its own investigations and it does not instruct medical experts on its own behalf nor on behalf of any party.
8. If a party wishes to produce medical evidence, this should be obtained as soon as is reasonably practicable after the party becomes aware that their health issue may affect the proceedings or that a report may assist the Tribunal in its decision-making. It should be lodged with the Tribunal Office and intimated to the other parties as soon as possible after it is received.
9. The individual who is raising the health issue is usually expected to obtain the medical evidence. On occasions another party (normally the Law Society of Scotland) may wish to instruct its own expert and there may be cases where the parties wish to consider a joint expert. If the medical report is commissioned by the Law Society, then the Respondent is expected to consent to the reasonable disclosure of any medical records required by the medical expert for the purpose of preparing the report, and to co-operate with any reasonable request made by the medical expert, for example a request for an examination. In cases where more than one medical expert is instructed it is expected that each expert will be provided with the same access to medical records. The person being assessed will be expected to cooperate with all medical experts instructed in the proceedings.
10. It is for the Tribunal to decide what weight to give to any medical evidence. A report by a regulated and registered health care professional is likely to be given more weight than one by an individual who is not regulated and registered. Where a person has not co-operated with an assessment by another's party's medical expert, the Tribunal may consider that a relevant factor when deciding what weight to attribute to the available medical evidence.
11. When instructing a medical report, the following matters should be considered:
 - a. The experience, knowledge and qualifications of the expert;
 - b. Expertise in an appropriate and relevant field;
 - c. Verification of professional qualifications;

- d. That the author of the report understands that their duty is to the Tribunal and not to those instructing them and this is set out in the report; and
- e. That the author of the report is willing to attend the Tribunal hearing and be cross-examined on the contents of their report if required.

12. The report should address the following matters:

- a. Whether it is based on records and/or a consultation
- b. What material has been considered (e.g. GP records or occupational health reports);
- c. Whether the report is based on observation and treatment at the time of the alleged misconduct or is based on retrospective examinations and treatment;
- d. The international classification of diseases rating, if relevant;
- e. Any source material or reference relied on and where appropriate, that material or links to that material is attached;
- f. A prognosis and estimated timeframe for recovery;
- g. Any reasonable adjustments that could be recommended to assist with the progression of the proceedings;
- h. In relevant cases, an opinion on whether meaningful participation is likely to be possible.

13. The report should include:

- a. The author's professional qualifications;
- b. The substance of all material instructions (including a general description of the documents provided), whether written or oral; and
- c. A declaration that the expert understands and has complied with the duty to assist the Tribunal on matters within the expert's expertise and understands that this duty overrides any obligation to any party from whom the expert has received instructions or by whom they are paid.

14. The expert should receive clear instructions in a letter. Where possible, the letter of instruction should be agreed between the parties. The Tribunal is entitled to order disclosure of the instructions or material supplied with the instructions if it considers that there are grounds for believing that they are inaccurate or misleading.

15. If two or more parties wish to submit expert evidence on a particular issue, the Tribunal may direct that the evidence on that issue is given by a single joint expert. If more than one medical expert is instructed, the Tribunal will consider whether there should be a meeting between the experts for them to identify areas of agreement and disagreement.
16. Generally, medical evidence will be obtained by the individual who is raising a health issue before the Tribunal. However, there may be situations where the individual raising the health issue is unable to do that. In these situations, where the Law Society is a party to proceedings, the Tribunal may encourage it to give consideration, taking into account of all the relevant circumstances and any vulnerability of the party concerned, to whether it might be able to assist the Tribunal and other parties to the proceedings by obtaining relevant medical information with the consent of the person to whom the information relates.
17. Where a medical practitioner has stated that an individual is too unwell to arrange their own report, the medical practitioner should confirm this in writing to the Tribunal which can then consider the appropriate way forward.

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