

SOLICITORS DISCIPLINARY TRIBUNAL

Guidance Note: Health Issues

1. This Guidance Note is intended to assist applicants and respondents wishing to raise a health issue before the Solicitors Disciplinary Tribunal (“the Tribunal”). This Guidance applies to all proceedings before the Tribunal. It is issued as guidance (not as a Practice Direction) by the Policy Committee of the Tribunal. It is not intended to replace or vary the [Solicitors \(Disciplinary Proceedings\) Rules 2007](#) (SDPR 2007), the [Solicitors \(Disciplinary Proceedings\) Rules 2019](#) (SDPR 2019) or the [Solicitors Disciplinary Tribunal \(Appeals and Amendment\) Rules 2011](#).
2. This Guidance Note will be subject to review by the Tribunal from time to time. For applications for adjournments under the SDPR 2019 it should be read in conjunction with the [Tribunal’s Guidance Note \(Adjournments\) \(November 2019\)](#). For applications for adjournments under the SDPR 2007 it should be read in conjunction with the [Tribunal’s Policy/Practice Note – Adjournments \(October 2002\)](#).
3. The Tribunal recognises that there are a wide spectrum of health issues and that health issues can have a significant impact on an individual’s ability to participate in proceedings before the Tribunal. The Tribunal would encourage any individual affected by health issues to raise them with the Tribunal and the other parties to the proceedings at the earliest opportunity. Health issues can be relevant to many aspects of Tribunal proceedings including requests for extra time to comply with the Tribunal’s directions, a request for an adjournment and requests for reasonable adjustments. If reasonable adjustments are required, the Tribunal will carefully consider how these may be accommodated to assist individuals to fully participate in the proceedings.
4. If any party wishes to apply for an adjournment on the basis of 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. It would assist the Tribunal if the medical evidence provided in support of the application detailed the diagnosis, prognosis and any reasonable adjustments that could be considered to enable the individual to participate in the proceedings. If the individual’s application is based on their capacity to participate in the proceedings or a witness’s ability to give evidence the medical evidence provided should also address this specific issue.

5. The Tribunal's role in protecting the public interest means that proceedings should be progressed in a timely and efficient manner and should be concluded as soon as possible, whilst ensuring fairness to all parties. In deciding whether or not 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.
6. During the course of proceedings before the Tribunal, the Tribunal and/or the parties may identify the need for a medical report to be prepared in order to assist in understanding any underlying health issues and the impact that they may have on (a) the alleged misconduct; and (b) the proceedings.
7. Medical reports can assist the Tribunal where some medical evidence has been produced but it is considered that further evidence is required either to address issues not covered in the medical evidence provided or because medical evidence from an expert with particular expertise/specialism will assist the Tribunal and the parties. The production of a medical report may give rise to a request from one or more parties for another medical expert to provide an opinion.
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 and/or hearing of the matter. Any medical evidence on which the party intends to rely on as part of the Tribunal proceedings must be served upon the Tribunal and the other parties as soon as possible after being received.
9. It is important to note that 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.
10. The required contents of any medical report will always be fact and case specific but the areas that the Tribunal considers it should address include:
 - whether the health issue(s) raised mean that the individual lacks capacity to instruct solicitors;
 - whether the health issue(s) raised mean that the individual is not well enough to comply with the Tribunal's directions, and/or attend a hearing before the Tribunal;
 - the likely impact of any health issues or other relevant factors on the proceedings before the Tribunal;
 - any reasonable adjustments that can be made in order to mitigate the effects of the health issues; and
 - the diagnosis, prognosis and likely time frame for recovery.

11. If a medical report is required the individual who is raising the health issue is usually expected to obtain the medical evidence. On occasions the other party (normally the SRA Applicant) 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 other party, 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 co-operate with all medical experts instructed in the proceedings.

12. Where medical evidence is submitted to the Tribunal it is for the Tribunal to decide what weight to give to that evidence. A report by a regulated and registered health care professional is likely to be given more weight than a report by an individual who is not regulated and registered. The weight to be afforded to a medical report is not determined by which party has produced the report but to its provenance and the experience and expertise of the practitioner who drafted it. Where there is conflicting medical evidence before the Tribunal the Tribunal will assess the evidence and set out its reasons in relation to its decisions or in relation to the conflicting evidence in its written Judgment or Memorandum of Hearing. Where a person has not co-operated with an assessment by another party's medical expert the Tribunal may consider this as a relevant factor when deciding what weight should be attributed to the medical evidence before it.

13. When a party is requesting a medical expert to prepare a medical report for consideration by the Tribunal the party instructing the expert should consider the following issues:
 - the experience, knowledge and qualifications of the expert;
 - that the proposed expert is a medical practitioner in an appropriate and relevant field given the particular health issue(s);
 - that their professional qualifications can be verified;
 - that the author of any report understands that their duty is to the Tribunal and not to those instructing them and sets this out in the report; and
 - that the person providing the report is willing to attend the Tribunal and be cross examined on the contents of their report if required.

14. The Tribunal would expect any medical report directed to be prepared in the Tribunal proceedings to address:
- whether it is based on records and/or a consultation;
 - what relevant material has been considered (such as GP records or occupational health reports);
 - whether the report is based on observation and treatment at the time of the events giving rise to the alleged misconduct or is based on retrospective examinations and treatment;
 - the international classification of diseases (ICD) rating if relevant;
 - any source material or references relied on and where appropriate that material or links to that material is attached;
 - a prognosis and estimated timeframe for recovery;
 - any reasonable adjustments that could be recommended to assist with the progression of the proceedings before the Tribunal; and
 - in relevant cases, an opinion on whether meaningful participation is or is likely to be possible in the proceedings before the Tribunal.
15. In accordance with Rule 30 of the SDPR 2019 any expert evidence must be in the form of a Statement and must set out:
- the expert's professional qualifications;
 - the substance of all material instructions (including a general description of the documents provided), whether written or oral, on the basis of which the Statement was written; and
 - a declaration that the expert understands and has complied with the expert's 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.
16. It is important that the medical expert receives clear instructions on the issues that need to be considered by them. These should be set out in a letter of instruction. 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 the instructions are inaccurate or misleading.
17. 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 in proceedings the Tribunal will consider whether or

not there should be a meeting between the experts for them to identify areas of agreement and disagreement.

18. As stated above, the Tribunal's general expectation is that medical evidence will usually be obtained by the individual who is raising the issue of health before the Tribunal. However, there may be situations where the individual raising the health issue is unable to obtain evidence for themselves. In these situations, where the Applicant is the SRA, the Tribunal would encourage the SRA 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.
19. Where a medical practitioner has stated that an individual is particularly vulnerable and too unwell to arrange to obtain their own report the medical practitioner should confirm this in writing addressed to the Tribunal which can then consider the appropriate way forward.
20. Where a medical report has been directed by the Tribunal, it expects the relevant party to progress the production of that report in a timely manner and for the individual who is being assessed to attend the appointments offered by the expert.

Signed



Edward Nally
President of the Solicitors Disciplinary Tribunal

On behalf of the SDT Policy Committee

Dated

23rd July 2021