

GUIDANCE NOTE: HEALTH ISSUES

1. This Guidance Note is intended to assist parties wishing to rely on health issues before the Solicitors Disciplinary Tribunal (“the Tribunal”). It applies to all proceedings before the Tribunal. It is issued as guidance and is not intended to replace or vary any of the Tribunal’s Rules.
2. **APPLICATIONS FOR AN ADJOURNMENT ON THE BASIS OF HEALTH ISSUES**
 - 2.1 For adjournment applications, this Guidance Note should be read in conjunction with the Tribunal’s [Guidance Note on Adjournments](#).
 - 2.2 In accordance with the Tribunal’s overriding objective, proceedings must be progressed in a timely and efficient manner, in order to ensure fairness to all parties. When determining applications to adjourn on the grounds of health issues, the Tribunal will consider both its duty to protect the public and the importance of ensuring that parties are able to participate effectively in the hearing.
 - 2.3 If any party wishes to apply for an adjournment on the basis of their own or one of their witness’s health issues, the application must 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 focus on why a person is unable to attend the Tribunal to give oral evidence and/or participate in the proceedings, and provide a prognosis as to when it is, in the professional opinion of the medical practitioner, likely that the person will be able to attend and give evidence, as set out in more detail below.
 - 2.4 If a party wishes to produce medical evidence this should be obtained as soon as is reasonably practicable after the party becomes aware that the health issue may affect the proceedings and/or hearing of the matter. Any medical evidence on which the party intends to rely as part of the Tribunal proceedings must be filed with the Tribunal and served on every other party forthwith.
3. **WHO SHOULD INSTRUCT A MEDICAL EXPERT**
 - 3.1 The Tribunal does not instruct medical experts on its own behalf or on behalf of any party. If a medical report is required, the individual who is raising the health issue is expected to obtain the medical evidence. On receipt of the medical report, the other party may wish to instruct its own expert. Where a medical report is commissioned by the other party, the

individual 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, each expert must be provided with access to the same information. The person being assessed must cooperate with all medical experts instructed in the proceedings.

3.2 Medical experts should be instructed by way of a letter of instruction which must be disclosed to all parties to the proceedings and the Tribunal.

3.3 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.

4. **THE REQUIRED CONTENT OF AN EXPERT MEDICAL REPORT**

4.1 Whilst the required content of an expert medical report will be fact specific, the report must contain the following information as regards the health issue(s):

- 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 diagnosis, prognosis and likely time frame for recovery;
- whether the health issue(s) raised will affect the witness's ability to give evidence at any hearing;
- 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
- an opinion on whether meaningful participation is or is likely to be possible in the proceedings before the Tribunal.

4.2 The report must contain the following information as regards the medical expert:

- the experience, knowledge and professional 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;
- 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; 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.

4.3 The medical expert must also detail the following matters in the report:

- whether it is based on records and/or a consultation (and whether in person or by video);
- what relevant material has been considered;
- 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); and
- any source material or references relied on and where appropriate that material or links to that material is attached.

5. **RELIANCE ON EXPERT MEDICAL EVIDENCE DURING THE COURSE OF A HEARING**

5.1 Should a party wish to rely on expert medical evidence during the course of the proceedings, the party must make an application in accordance with Rule 30 of the [Solicitors \(Disciplinary Proceedings\) Rules 2019](#).

- 5.2 A medical report must be from a regulated and registered practitioner.
- 5.3 If there is conflicting medical evidence before the Tribunal, the Tribunal will consider it and set out its reasons in relation to its decisions in its written Judgment or Memorandum of Hearing.