

# Guide to the role of the chair of the panel

This guide has been produced by the former consultant contract implementation team (CCIT) and the British Medical Association (BMA).

This document summarises the role of the chair in a consultant appeal panel.

The chair has overall responsibility for the conduct of proceedings before, during and after the hearing. The chair is nominated by the appellant consultant's employing organisation (see Schedule 4.5 of the terms and conditions of service (TCS)) and will be notified of the hearing date and the names of the other panel members.

All three members are expected to approach the appeal with an open mind and to arrive at a recommendation that reflects the evidence heard and the merits of the case.

There are a number of preliminary matters that should be organised in order to ensure that the appeal hearing runs smoothly. Firstly, the chair

should be satisfied that the following housekeeping matters have been attended to:

- A suitable room is booked for the anticipated duration of the hearing, with refreshments arranged (for example, tea, coffee water and glasses on the table).
- A suitable waiting room or area is available for the appellant, their representative and any witnesses, for use immediately before the hearing and in the event of any adjournments.
- A person is available to take notes during the hearing, for example, human resources adviser or other minute taker (we strongly advise this).
- The other panel members and parties, as well as any witnesses have been notified of the date, time and venue for the hearing and have confirmed attendance.
- The likely attendance of any witnesses is known in advance, so this can be factored into the timetable for the hearing.
- If a group or collective appeal, the lead for the appellants has been identified.

The parties to the appeal are required to submit a written statement of case to be received by a week before the hearing date (see Schedule 4.6). At this stage, consideration should be given to the content of the appeal and the issue(s) on which a recommendation needs to be made. The chair and panel members may seek to form a preliminary view as to the scope of the appeal panel's enquiry and the specific points on which the panel is required to make a recommendation. This could include defining the specific paragraphs in the terms and conditions, or any published guidance of relevance to the issues under appeal. This could also involve excluding parts of the appeal on the basis that they are not permissible under Schedule 4 TCS.

At the outset of the hearing the chair will be responsible for introductions, including identifying the other panel members as

'consultant nominee' or 'third member', and explaining the presence and role of anyone else in the room for example, a human resources adviser or a note taker. Any necessary housekeeping arrangements should be explained including how any requests for breaks and brief adjournments should be made. The running order for the day should be explained to the parties. This will include the order in which evidence and witnesses will be taken (the management case will be heard first - see Schedule 4.6), when questions from the panel will be taken (usually at the end of evidence from an appellant, respondent or witness) and the order of closing statements or summing up by the parties (the appellant goes last).

Before proceeding to hear the case, the chair may find it helpful to summarise on behalf of the panel, the issues within the appellant's statement of case on which the panel are required to make a recommendation. Any matters that have been excluded by the panel as inadmissible under Schedule 4 TCS will be identified, and reasons given for the decision to exclude the matter. Any comments or objections raised by the appellant (or their representative) at this point arising from the chair's summary of the issues should be considered and dealt with.

An important function of the chair is to try, as far as possible, to ensure that the parties to the appeal, particularly the appellant, feel they have had a fair hearing of the issues, even if, ultimately, they disagree with the recommendation of the panel. It is likely that one or other of the parties will feel they have 'lost' the case but if the hearing is 'felt fair' this is likely to help to achieve a sense of finality. Allowing enough time for the parties to make their case without feeling hurried or pressured, and by keeping interruptions (both from the panel and the other party) to a minimum, will help to establish the sense of a fair hearing. When the appellant or their representative has concluded his or her summing up, the chair should explain the next steps. The panel is required to make a recommendation in writing to the employing organisation normally within two weeks of the appeal hearing, copied to the consultant (see Schedule 4.10). The chair may wish to establish immediately after the hearing whether the panel has enough information and advice to arrive at a recommendation the same day. If the panel believes it can proceed to a recommendation straight away,

the chair may invite the parties to stay on so that the recommendation can be communicated to them verbally before it is formally communicated to the employing organisation in writing. On the other hand, if the panel's deliberations are likely to take some time or if further advice is needed, for example from human resources or a medically qualified adviser, the chair may decide to release the parties and to notify them in writing of the panel's recommendation within two weeks.

The appellant should be advised clearly that the appeal panel is only able to make a recommendation to the employing organisation; the final decision rests with the board of that organisation (see Schedule 4.10). However, Schedule 4.10 also says that the decision will normally be accepted by the board.

The chair is responsible for co-ordinating the panel's discussions and, in conjunction with the other panel members, for drafting the letter containing the panel's recommendation to the employing organisation. Our advice is that the letter to the employing organisation should include reasons for the panel's recommendation.