



## Postponements, Adjournments and Proceeding in the Absence Practice Statement

### Introduction

This document provides guidance to Fitness to Teach Panels and Conveners when considering hearing postponement or adjournment requests from parties as well as whether or not to proceed with a hearing in the absence of a Teacher.

### **PART A - Procedure for dealing with postponements and adjournment applications**

#### **Background**

A formal written notice is issued to the parties in advance of a hearing in accordance with the terms of the Rules. The hearing notice must, amongst other things, set out the hearing date, time and location.

Where possible, hearing dates are set in consultation with the parties and they are advised of the dates well in advance. However, postponement and adjournment applications may still arise. The Rules set out the following:

- The Convener of a Panel may on his/her own initiative or on application, postpone a hearing before the hearing begins provided that he/she has given the parties an opportunity to make representations on the matter; and
- A Panel considering any matter may adjourn the proceedings at any stage provided that it –
  - (a) is satisfied that no injustice is caused; and
  - (b) has given the parties an opportunity to make representations on the matter.
- In considering whether or not to grant a request for either a postponement or an adjournment, regard will be had, amongst other things, to –
  - (a) the interests of the public and the Teacher in expeditious proceedings;
  - (b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
  - (c) fairness to the Teacher.

#### **(i) Postponement procedure**

A postponement application can be made at any point before a hearing starts. The following procedure applies:

- 1 An application should be made in writing to the Servicing Officer as soon as possible after an issue with the hearing timing has been identified. In order to reduce delay, the application should be sent via email if at all possible.

A postponement application must set out clearly why a postponement is sought and should be accompanied by any relevant supporting evidence. It should also set out how long the postponement is being requested for. If the application is being made on ill health grounds, please also refer to the additional information set out in Part C.

- 2 The Servicing Officer will provide the application (together with any supporting evidence) to the other party (via email) with a deadline for responding.
- 3 The Servicing Officer will provide the application together with any supporting evidence and any response from the other party received within the specified deadline to a Convener.
- 4 The Convener will carefully consider the application with reference to the provisions set out in the Rules and the guidance included in Part D. The Convener's decision (which will include reasons) will be shared (via email) with the parties by the Servicing Officer as soon as reasonably practicable.
- 5 If the postponement application is granted, the Servicing Officer will arrange for a new hearing date to be set.
- 6 If the postponement application is not granted, the hearing will proceed as arranged.

Note: Parties should always be ready to proceed as planned in the event that the application is not granted. It is important that the Teacher attends the hearing or has a representative attend on his/her behalf. If, however, the Teacher does not attend, the hearing may proceed in his/her absence (see Part B).

#### **(ii) Adjournment procedure**

Once a hearing has begun, an adjournment application may be made at any time during the hearing. The following procedure applies:

- 1 The party seeking the adjournment should indicate to the Convener/Panel at the hearing his/her wish to make an adjournment application as soon as this has been identified.
- 2 The party making the adjournment application will have the opportunity to make submissions to the Panel explaining his/her application. If any evidence is available to support the application, this should be provided at the hearing. If the application is being made on the basis of ill health, please refer to the additional information in Part C
- 3 The other party will have the opportunity to make submissions in response to the application, either agreeing to or opposing the application.
- 4 The party making the adjournment application will have the opportunity to make any further comments.
- 5 Note: If the application is made between hearing days, please ignore steps 1 to 4 described above. The application should instead be set out in writing and sent to the Servicing Officer together with any available supporting evidence as soon as possible. The Servicing Officer will contact the other party and forward the application, and response to it, to the Panel.
- 6 The Panel will carefully consider the application with reference to the provisions set out in the Rules and the guidance included in Part D.
- 7 Parties will be advised when it is time to reconvene to hear the Panel's decision. The reasons for the decision will usually not be read aloud at the hearing, but will feature in the final decision of the Panel when the case is concluded. Where an application has been made in writing, where possible, the decision will be made and issued via email in advance of the next scheduled hearing day.
- 8 If the adjournment application is granted, the date, time and location of the reconvened hearing will be confirmed by the Servicing Officer. Depending on the circumstances, it may be necessary for further case management to take place in order to reconvene the hearing.

- 9 Parties should always be ready to proceed as planned in the event that the application is not granted. It is, however, possible for the hearing to continue in the Teacher's absence if he/she does not attend (see Part B).

### **PART B- Procedure to be followed when a Teacher does not attend the hearing**

GTC Scotland is committed to the principle that a Teacher has the right to be present and represented at a hearing and strongly encourages him/her to do so throughout the fitness to teach process. However, the Rules provide that if a Teacher fails to attend or to be represented at the time and place fixed for a hearing without any known good cause, the hearing may proceed in his/her absence if the Panel is satisfied that notice of the hearing has been served upon the Teacher in accordance with the Rules or that all reasonable efforts have been made so to do.

If the Teacher does not attend the hearing or is not represented at it, there are two options open to the Panel: 1) proceed with the hearing in the absence of the Teacher; or 2) adjourn proceedings to a later date.

The following procedure applies:

- 1 The Panel should consider whether the notice of the hearing has been properly served on the Teacher. Further explanatory information related to this is set out below.

GTC Scotland must serve notice of a hearing by:

- post in which delivery or receipt is recorded;
- personally delivering it; or
- Electronic communication.

The notice must be sent to, or delivered at, the postal, electronic mail or other address provided by the Teacher for entry in GTC Scotland's Register of Teachers. Alternatively, if the Teacher is represented by a solicitor or trade union/defence organisation (or other representative) and has informed GTC Scotland that they may be used as an address for communications, the notice may be served instead to the address provided for that party.

Registrants are required to update GTC Scotland if their address changes.

If the notice is returned to GTC Scotland as "not known at this address" (or similar), GTC Scotland should make reasonable inquiries to establish the whereabouts of the Teacher in order that the notice may be served.

GTC Scotland is only in a position to make reasonable inquiries, it is not in a position to take on the burden of searching for a Teacher or Appellant who has gone missing, is deliberately seeking to obstruct the GTC Scotland hearing process or has chosen to abandon his/her appeal. Reasonable inquiries must therefore be made being mindful of both fairness to the Teacher or Appellant as well as the wider public interest.

The "reasonable inquiries" that should be made are as follows:-

- Attempts should be made to contact him/her to confirm the appropriate address for service of notice using all other contact details that GTC Scotland may hold for them, for example via telephone.
- Where known, the employer, or last employer, should be contacted and asked to provide contact details for the individual.
- Where relevant, any other regulatory body should be contacted to provide contact details for the individual.

- Any other steps that it is reasonable to take in the particular case circumstances should also be taken.
- 2 If notice has not been properly served, or if it is identified that further steps should have been taken to achieve service of the notice, the hearing must be adjourned. The Servicing Officer will make appropriate arrangements for the hearing to be re-convened at a later date.
  - 3 If notice has been served in accordance with the Rules, or all reasonable steps have been taken to achieve service of the notice, the Panel will next need to decide whether or not to proceed with the hearing in the Teacher's absence. If any further information or clarification is required about the history of the case, the Servicing Officer or Presenting Officer will provide that to the Panel.
  - 4 If the hearing is to be adjourned, the Servicing Officer will make arrangements for the hearing to be re-convened at a later date. If necessary, further case management directions may also be issued by the Convener or a case management discussion may be arranged if this is considered appropriate.
  - 5 If the hearing is to proceed in the absence of the Teacher, the Panel must ensure that the hearing is conducted as fairly and in as balanced a way as the circumstances permit. A Panel must never draw any adverse inference from the fact that a Teacher does not attend.

### **PART C – Ill health issues**

If a postponement or adjournment application is made on the basis of ill health, a Panel/Convener should consult the separate Practice Statement on medical evidence for guidance on what should be expected by way of evidence in this context.

It is also important to bear in mind that a postponement or adjournment may not be the only way of addressing a health condition. GTC Scotland is committed to facilitating the full participation of parties and witnesses in the hearings process and will make reasonable adjustments to the process accordingly. This could mean, for example, arranging a shorter hearing day, having more frequent breaks or making use of video conferencing facilities. The Servicing Officer will be in a position to provide further advice on this based on the particular circumstances.

Upon receipt of medical evidence, the Convener/Panel will assess it and decide whether a postponement or adjournment is appropriate in line with the guidance set out in part D.

### **PART D – Decision-making**

Panels/Conveners must always exercise their own judgement when deciding whether or not to grant a postponement or adjournment application, or to proceed in the absence of the Teacher, and must base their decision on the particular case circumstances. However, to ensure a general consistency of approach, decisions should be made with due regard to the guidance set out below.

The following factors should be considered and balanced:

- Fairness to the Teacher and his/her human rights;
- The interests of the public and the Teacher in cases being dealt with as quickly as possible;
- The reasons for (and circumstances surrounding) the application;
- The consequences of granting or refusing the application on those involved with the hearing (including witnesses);
- The general objective set out in Part 1 of the Rules: the need to deal with cases fairly and justly and in ways which are proportionate, informal and flexible, encourage participation, and avoid delay; and
- The wider public interest.

The Panel/Convener will identify which factors weigh most heavily in the case and reach their decision accordingly. In weighing up these factors, and whilst recognising that it is not an exhaustive list, the Panel/Convener may find it helpful to consider (as appropriate in the circumstances) the questions listed below. It should be noted that these factors are consistent with relevant case law in this area (a summary of which is set out in Appendix 1 for reference).

### **What is the reason for the application or absence?**

- Is the reason valid?
- Is the reason supported by any evidence?
- Is the evidence sufficient and satisfactory?
- Is the application opposed?

### **What are the circumstances surrounding the application or absence?**

- Have there been previous applications for postponements or adjournments (or other absences)? If so, in what context?
- How long has the case been ongoing?
- How long has the issue leading to the postponement/adjournment application or absence been known to the party making the application, and how did it come to light?
- Is there time for further investigations to be carried out?
- Does the history of the case give rise to any concerns that the Teacher may be seeking to put off or obstruct hearing proceedings?
- Can GTC Scotland put in place special arrangements to facilitate attendance, have these been explored?
- Is the Teacher able to instruct a representative or does the Teacher have a representative?
- How long would a postponement or adjournment likely be for?

#### Proceeding in the absence only:

- Has the Teacher indicated an intention to attend?
- Has the Teacher engaged with the process to date?
- Has the Teacher indicated that he/she denies the allegation(s)?
- If an adjournment is granted, is the Teacher likely to attend or engage appropriately with the process?

### **What are the consequences if the hearing proceeds as scheduled?**

- What would the impact be on the Teacher?
- What is the seriousness of the matter and what are the possible consequences for the Teacher?
- Could proceeding as scheduled lead to injustice?
- What would the impact be on others involved with the hearing?

#### Proceeding in the absence only:

- What is the extent of the disadvantage to the Teacher in not being able to give his/her account of events?
- Is there a risk that the Panel will reach wrong conclusions in the case if they proceed in the absence of the Teacher?

### **What are the consequences if the hearing is postponed or adjourned?**

- What is the impact on the Teacher?
- What is the impact on others involved with the hearing?
- What is the impact of the delay that would result?
- Are there public protection concerns that arise if the case is delayed (e.g. is there a temporary restriction in place)?

- Will there be a deterioration of evidence (e.g. is there a risk that witnesses will be less able to recall events)?
- What is the extent of the inconvenience that a postponement/adjournment would cause to parties and witnesses?

As a general rule:

- If the Convener is of the view that the application is justified (having weighed up all of the factors described above) then the postponement should be granted.
- An adjournment should normally only be granted by exception i.e. where there are significant and demonstrated reasons to support adjourning leading the Panel to the view that not granting an adjournment would lead to an injustice.
- It is not always sufficient to refuse an unsubstantiated application if the reason(s) would be valid were they substantiated. In this event, full and careful consideration should be given to the circumstances (especially around why no evidence has been provided) and consequences before a decision is reached.
- Less weight will attach to some factors as against others. For example, it would never normally be sufficient to grant or deny a postponement/adjournment in the interests of convenience alone.

#### Specific guidance for proceeding in the absence

The decision to proceed in the absence of the Teacher or Appellant is a matter within the Panel's discretion but it is a decision that must be exercised with the utmost care and caution.

The Panel must have fairness to the Teacher central to their decision making and remember the Teacher's fundamental right to attend the hearing. The Panel must also have regard to the potential seriousness of the consequences for the Teacher.

In considering whether or not to proceed in the absence of the Teacher the crux of the matter is to determine whether or not his/her absence has been **voluntary or involuntary**. If, based on the circumstances, the Panel is of the view that the Teacher has voluntarily chosen not to attend and has therefore waived his/her right to attend, the hearing should usually proceed in their absence. Conversely, if the Panel is of the view that the Teacher's absence is involuntary, it would only be right to proceed with the hearing in very exceptional circumstances.

#### Indefinite postponements or adjournments

In the event that there is a long term and continuing issue (e.g. long term ill health), it is generally undesirable to postpone or adjourn proceedings indefinitely. A Convener/Panel will need to identify a tipping point at which the factors leading to the postponement or adjournment cease to outweigh the factors supporting the hearing continuing.

In these circumstances, if the Teacher or Appellant still did not attend the hearing, in considering whether or not to proceed in his/her absence, the Panel should carefully consider the following factors in particular:

- In what ways will it be detrimental to the public interest if the hearing is held off any longer?
- Have all avenues to facilitate the Teacher's attendance/participation been exhausted (e.g. use of video conferencing?)
- What is the impact on witnesses/is there a deterioration of evidence?
- What steps can/should be taken to ensure fairness to the Teacher?

#### Decision Writing

Written reasons must be provided to explain decisions. A decision on whether or not to postpone a hearing should be set out in writing to both parties. A decision on whether or not to adjourn proceedings

or proceed in the absence of the Teacher should feature in the Panel's final determination of the case. Each of these decisions should:

- State the decision clearly;
- Explain and address the reasons for the postponement/adjournment application or the Teacher's absence and describe how the panel assessed those reasons (and any supporting evidence) and what conclusions were reached about the reasons/evidence;
- Explain and address the circumstances of the postponement/adjournment application or the Teacher's absence and describe how these did/did not impact the decision reached
- Describe the consequences of proceeding or postponing/adjourning and explain the weight the Panel gave to the envisaged consequences
- Sum up overall why x factor(s) (e.g. fairness to the Teacher, expeditious proceedings etc) outweighed the other factors being balanced

The Servicing Officer should, where possible, take steps to inform the Teacher of the decision as soon as possible (and if, in circumstances where the matter is considered at a hearing, they are not in attendance at that hearing).

## Appendix 1 - Summary of Relevant Case Law

### **Brabazon-Drenning v United Kingdom Central Council for Nursing, Midwifery and Health Visiting**

The appellant appealed the decision to remove her name from the register on the grounds that (amongst other things) the hearing should have been adjourned instead of proceeding in her absence.

The hearing was scheduled for 30 November 1999. Before the hearing, three letters were sent to the Council about the appellant's health. One, dated 24 November 1999, was from the appellant's GP:

*'In my opinion, she is suffering from mixed anxiety/depression related to the closure of the Firs Nursing Home, and I do not think that in her present state she is able to withstand the rigors of a disciplinary hearing.'*

*'Although this is my current opinion I find myself in a slight quandary because although she was prescribed Paroxetine 20mg tablets in June this year she has not continued on this medication for more than a month. The second point is that I believe that her eventual recovery will depend on her getting the Inquiry out of the way so that she can start life afresh. I would think that a new date, reasonably early in the New Year, would be appropriate.'*

During the appeal, the appellant's representative submitted that none of these factors were taken into consideration by the Committee: it was the first adjournment application; it was for a relatively short period of time as evidenced by the letter from the appellant's GP; there was no apparent problem with having witnesses attend at a future date; and the appellant had no intention of practicing as a nurse in the interim.

The Court upheld the appeal stating;

*'Save in very exceptional cases where the public interest points strongly to the contrary, it must be wrong for a committee which has the livelihood and reputation of a professional individual in the palm of its hands, to go on with a hearing when there is unchallenged medical evidence that the individual is simply not fit to withstand the rigors of the disciplinary process.'*

### **R v Hayward [2001] EWCA Crim 168**

The appeal was on the basis that the retrial should not have proceeded in the appellant's absence. The appellant had been serving in prison after being convicted of Counts 1-5 out of a 9 count indictment. A retrial was due to take place on 4 May on Counts 6-9. In the October, the appellant left prison for home leave and left the UK on a false passport instead of returning to prison. As he had left the country, his representation withdrew. The retrial proceeded without further consideration of whether it was appropriate to do so.

The Court held that the appeal should succeed stating the following:

*'It appears simply to have been assumed that the trial would proceed in the appellant's absence and such an assumption cannot properly be made. As we have sought to indicate, the judge must, in the exercise of his discretion, consider and weight many factors before trial in absence can be permitted.'*

At paragraph 22, this case also sets out certain principles to guide decision makers in considering whether or not to proceed in the absence of the Teacher:

- 1 *'A defendant has, in general, a right to be present at his trial and a right to be legally represented.'*
- 2 *'Those rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing or having the means of knowledge as to, when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions to those representing him. They may be waived in part, if being present and represented at the outset, the defendant, during the course of the proceedings and/or withdraws his instructions from those representing him.'*

- 3 *The trial judge has discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.*
- 4 *The discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.*
- 5 *In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:*
  - (i) *The nature and circumstances of the defendant's behaviour in absenting himself for the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;*
  - (ii) *whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;*
  - (iii) *the likely length of such an adjournment*
  - (iv) *whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;*
  - (v) *whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;*
  - (vi) *the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;*
  - (vii) *the risk of the jury reaching an improper conclusion about the absence of the defendant;*
  - (viii) *the seriousness of the offence, which affects defendant, victim and public;*
  - (ix) *the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;*
  - (x) *the effect of delay on the memories of witnesses;*
  - (xi) *where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present.*
- 6 *If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and in the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits. In summing up he must warn the jury that absence is not an admission of guilt and adds nothing to the prosecution case.'*

### **R v Jones [2002] UKHL 5**

The House of Lords, on appeal from the Court of Appeal, considered the question, '*can the Crown Court conduct a trial in the absence, from its commencement, of the defendant?*'

A robbery had been committed and the appellant and his co-defendant were released on bail. They failed to appear at the trial on 1 June, which was then put off, and then failed to appear again on 5 October. The judge decided that the hearing should proceed: the defendants had deliberately attempted to frustrate the conclusion of proceedings. The judge explained that anything to the defendants' advantage in the evidence should be highlighted and the jury should draw no adverse inference from the defendants' failure to attend.

The House of Lords dismissed the appeal and decided that it was possible for a trial to proceed in the absence of the defendant and said:

*'the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution. If the absence of the defendant is attributable to involuntary illness or incapacity it would very rarely, if ever, be right to exercise the discretion in favour of commencing the trial, at any rate, unless the defendant is represented and asks that the trial should begin.'*

Furthermore, the case confirmed the value of approaching the matter of proceeding in the absence using the principles set out in R v Hayward.

### **Tait v Royal College of Veterinary Surgeons [2003] UKPC 34**

In this case, the grounds of appeal included that the Committee was wrong to refuse an adjournment and proceed in absence. The hearing was due to take place on 2 May 2002 but was adjourned to 27 June as the appellant did not attend. On 27 June, the appellant did not attend but applied in writing for an adjournment on the basis of ill health. No medical evidence was provided with the adjournment application. The application for the adjournment was rejected and the hearing proceeded in absence. The next day, the Committee was informed that the Appellant had been taken to hospital. Notwithstanding this new information, the Committee proceeded with the hearing up to making their findings in fact.

The appeal was upheld as the advice provided by the legal assessor about proceeding in the absence of the Appellant was insufficient as it did not properly comply with the decision of R v Jones. The Legal Assessor had advised the Committee that they had 'absolute discretion'. In fact, they did not, and the Legal Assessor should have provided more specific advice about the factors the panel must take into account. In particular:

*'the seriousness of the case against the defendant, the risk of the tribunal reaching a wrong conclusion about the reasons for the absence of the defendant, and the risk of reaching a wrong conclusion on the merits as a result of the appellant's account not being heard.'*

### **Baba v General Medical Council [2001] 62 BMLR 34**

The appeal was that the Committee should not have refused an application for an adjournment. On the day of the hearing, the appellant instructed counsel to apply for an adjournment of the hearing due to ill health. A letter from Dr Baba's medical practitioner was provided. It stated:

*'This is to certify that Dr Baba known Diabetic, Hypertensive and Asthma for the last four days suffering flu like symptoms. I understand he has to give evidence for an enquiry at the GMC. He has been advised 10 days rest. I am worried about hypoglycaemia with viral infection.'*

The adjournment was opposed the reasons for the opposition were: the length of time since the allegations and the inconvenience to the main witness (who was elderly and unwell).

The application was refused as the Committee found that there was no evidence to demonstrate that the appellant was unfit to give evidence or give instructions.

At the appeal, the appellant produced further medical evidence which had not been available to the Committee at the time they made their decision. The ground of appeal was rejected and the Board stated:

*'[the Board] could not criticise the Committee's decision to refuse an adjournment. The medical certificate of Dr Raju (which the Committee were well placed to evaluate) fell far short of what was needed to support an application at such a stage. The Committee were bound to have regard to the undesirability of requiring [the main witness] to attend on another occasion'.*

### **Yusuf v Royal Pharmaceutical Society of Great Britain [2009] EWHC (Admin)**

The grounds of appeal included: that the Chairman of the Committee was wrong to refuse an adjournment; that the Committee was wrong to proceed in his absence; and, that, having proceeded in his absence, the Committee did not examine one of the witnesses (Mr Cristal) sufficiently.

The appellant's case was due to be heard by the Disciplinary Committee on 14 May 2008. On 12 May 2008 the appellant's representative applied for an adjournment putting forward the following from the Appellant:

*'I will not be attending the above inquiry owing to the extenuating nature of my current circumstances. I have effectively been rendered homeless owing to the recent eviction and I am physically and mentally exhausted. I am not in a position to give an effective performance at this inquiry... I am in a terrible predicament & cannot attend the inquiry. My wife is also unwell owing to all this stress.'*

The application was not accompanied by any medical evidence. The above request was refused by the Committee Chairman on 13 May and the hearing called on 14 May.

#### Ground 1

The first ground put forward by the Appellant was that the Chairman should not have refused the adjournment and, if evidence was required to support an adjournment, the Chairman should have requested it.

This ground was rejected. The Court found that the adjournment application that had been made was 'devoid of merit': it was made late, it was not supported by any evidence and it was not the responsibility of the Chairman to request evidence.

#### Ground 2

The second ground was that the Committee was wrong to proceed in the absence of the Appellant.

The Court rejected this ground of appeal and found that the Committee had properly considered the relevant authorities (*R v Hayward*, *R v Jones* and *Tait v the Royal College of Veterinary Surgeons*). The main issue to be considered had been correctly identified by the Committee Chairman as whether or not the appellant had voluntarily chosen not to attend or whether his absence was involuntary. The Court found that the Committee had approached the matter with caution and was entitled to reach the conclusion that the appellant had voluntarily absented himself and voluntarily chosen not to be represented:

*'... the mere fact that a defendant claims to be ill plainly cannot, of itself and without more ado, require an adjournment. Absent medical evidence, and a fortiori where, as here, a defendant explicitly disavows reliance on medical evidence, a tribunal is entitled in an appropriate case to find, as the Committee found here, that the defendant has voluntarily chosen not to attend.'*

#### Ground 3

The third ground put forward by the appellant was that, having decided to proceed in his absence, the Committee should have examined one of the witnesses further. This ground of appeal was rejected. The Court found that it was not the responsibility of the Committee to cross examine the witness. The Committee had asked the witness questions and tested the evidence:

*'the fact that its probing of his evidence may have been less vigorous or searching than might have been expected if Mr Cristal had been cross examined either by the appellant or by some advocate instructed on his behalf is, in my judgement, neither here nor there.'*

#### **Chaudri v The General Pharmaceutical Council [2011] EWHC 3433 (Admin)**

One aspect of the appeal was that the Committee were wrong to refuse to adjourn on the grounds of ill health and proceed in her absence. The Court considered each of the adjournment applications in turn and dismissed the appeal:

#### 10<sup>th</sup> February adjournment refusal:

On the 9 February 2009 the Appellant raised the issue of ill health in relation to the hearing. On the day of the hearing, a standard medical certificate for statutory sick pay purposes was provided detailing 'degenerative changes to the shoulder and cervical spine':

The Committee noted that the Appellant had previously been made aware of the standard of medical evidence expected. The Committee also noted that the condition described does not seem to be one which would impact upon her ability to attend; at the hearing she would be sitting down and could be given extra brakes or other support to facilitate attendance. The Committee also noted that the lateness of the provision of the certificate meant that it was not possible for further investigations to be carried out. The Committee then decided to refuse the adjournment and proceed in her absence as it determined that the application to adjourn was a 'manoeuvre to put off the evil day.'

#### 11 February adjournment refusal

A further adjournment application was received with two further documents: a diagnostic report of an MRI scan of the appellant's left shoulder; report from Clayhall Osteopathic Clinic. The Committee considered the evidence and refused the application. The Committee again found that the medical evidence was insufficient and did not demonstrate that the appellant was unable to attend the hearing for medical reasons.

#### 14 February adjournment refusal

On 13 February the appellant sent in an email with a medical certificate from her GP dated 22 January 2009 and a letter from her solicitor. The Committee considered the evidence and rejected the application as the medical evidence failed to demonstrate why she could not attend the hearing on that day and had been received at a point when it was not possible for further investigations to be carried out despite the fact that the report was dated 3 weeks' previously.

#### **Preedy v General Optical Council [2012] EWHC 1316 (Admin)**

The appellant appealed a decision of the Fitness to Practice Committee to remove his name from the Register. The case was considered at a hearing commenced on 12 April 2012. The appellant did not attend the hearing but was represented at it. At the start of the hearing a further application for an adjournment was made. As part of the application a note written by the appellant's GP the day before the hearing was provided:

*'I have seen Mr Preedy today. He has had long term Domestic Problems. He's very depressed and unable to think + comprehend. He's been referred to PTPC local. Psychologist. Today I have started him on antidepressants. He's going to see me 2/52.'*

The Committee were not satisfied with the level of detail that was provided in the doctor's note. Some time was given throughout the day for the appellant's representative to follow up with the doctor and further correspondence was received from him.

The Committee was still not satisfied with the evidence that had been provided. In particular, it did not state that the appellant was unfit to attend the hearing. The matter of the adjournment was one within the Committee's discretion and they considered the matter having regard to the authorities of *R v Jones and Tait v Royal College of Veterinary Surgeons*. The Committee balanced the interests of the appellant and the interest of the interests of the public and of the witness (who had attended twice already), and also fairness to the Council. The Committee decided in the circumstances that the adjournment should not be granted. The Court agreed that, in the circumstances, the Committee was entitled to refuse the adjournment application and proceed in the absence of the appellant.

#### **Ward v Nursing and Midwifery Council [2014] EXHC 1158 (Admin)**

One of the grounds put forward in this case was that the hearing should not have proceeded in her absence. She argued that the Committee had failed to take into account her specific circumstances and had not approached the decision to proceed with caution. The hearing was scheduled for 5 August 2013, proper Notice had been served and she was aware of the hearing. On 1 August, she phoned NMC and said that she had an MRI scan scheduled for the 5 August. She also sent a copy of the appointment letter. When she did not attend the hearing, the Presenting Officer invited the Panel to proceed.

As the only reason provided for Miss Ward's non-attendance was the MRI scan, the Committee decided to adjourn the hearing to the next day. Miss Ward phoned later and was told of this position but said that she was 'fitting' and would not attend. She was told to send in medical evidence or, if she wanted, to provide written submissions for consideration.

The Court upheld the Committee's decision to proceed. Mr Justice Hickenbottom said at paragraph 19:

*'[The committee] were entitled to conclude that, if the Appellant did not attend on the second day, then, absent further medical evidence as to her health, she was voluntarily absenting herself.'*