

## Guidance on material placed before panels at substantive hearings

### Introduction

- 1 The material placed before a panel at a substantive hearing can have a significant impact on the decisions that are made but also on the smooth running of a hearing. If extraneous material is provided to a panel it can take time for it to cut away this material in order to focus on what is needed to assist in the decision making process.
- 2 At non-substantive hearings a bundle of documents is provided to all parties, including the panel, in advance. This does not happen at substantive hearings where usually the panel will have received no information about the case save for the name of the registrant and the charges that are to be determined.
- 3 There is some confusion among registrants, representatives and panellists as to what is meant by a substantive hearing bundle. It is sometimes mistakenly thought that this is a joint bundle of documents prepared by the NMC and the registrant together. Although this is something the NMC would like to work towards, subject to stakeholder co-operation, it is not the true nature of the substantive hearing bundle as it currently exists. The term 'hearing bundle' is therefore a misnomer. The bundle that is provided to a panel at the start of a substantive hearing is in fact the documents on which the NMC relies in order to prove its case.
- 4 The purpose of this guidance is to make clear the purpose of the bundle in a substantive hearing, how the content of the bundle is determined and what use should be made of it and other documentary material at the hearing.

### The purpose of the bundle

- 5 The purpose of a bundle in a substantive hearing is to assist with the smooth running of the hearing. It ensures that the parties know in advance what documents will definitely be adduced in evidence, and enables them to prepare on that basis. As the bundle will be paginated, it will provide everyone involved in the hearing with a single and consistent source of material that is easy to refer to.

### The content of the bundle

- 6 Careful consideration should be given by the case presenter to whether a hearing bundle is required and if so what it should contain. In cases involving very few documentary exhibits, it may not be necessary to prepare a paginated bundle. Instead, the exhibits may be adduced one by one.
- 7 Where a bundle would be desirable, it should not simply replicate all the exhibits attached to each witness statement. It should be borne in mind that the test as to

whether evidence should be admitted is whether it is 'fair and relevant' (Rule 31 Fitness to Practise rules 2004). Therefore the bundle should only contain material which is relevant to the charges the panel is being asked to determine.

- 8 What will be required in each case will of course vary enormously. However, the following are examples of material which will very often be fair and relevant to include in a hearing bundle:
  - 8.1 Registrant's job description
  - 8.2 Patient medical records
  - 8.3 Records of role specific induction
  - 8.4 Previous statements/admissions made by the registrant
- 9 And the following are examples of material which will rarely be fair and relevant to include:
  - 9.1 Statements given by witnesses to a local investigation, unless they are being relied upon as hearsay evidence
  - 9.2 Management investigation report
  - 9.3 Records of the outcome of a disciplinary hearing against the registrant
- 10 It should be noted, however, that it may be relevant to include extracts from material gathered as part of a local investigation if they contain admissions made by the registrant.

### **When will the content of the bundle be determined?**

- 11 After a case is referred to the Conduct and Competence Committee the lawyer with conduct of the case reviews all the evidence and the charges. At this stage a hearing bundle index is created listing all the documents the NMC intends to put before the panel at the substantive hearing.
- 12 As noted above, it is not necessary to include all of the documents exhibited to witness statements and served on the registrant as used material within the hearing bundle. However, consideration should be given to the legitimate expectation of the registrant, and therefore the registrant must be informed what the NMC is proposing to put before the panel, and given the opportunity to request that further material is also adduced.
- 13 Therefore, the hearing bundle index must be sent to the registrant and/or representative. The registrant can indicate whether a document is objected to. It is important to note that at this stage the registrant is simply being asked whether he/she objects to the document being put before the panel rather than whether the content of the document is accepted. The registrant can also indicate that he/she wants an exhibit which the NMC do not propose to include incorporated into the bundle.

- 14 Where an objection to a document is raised and agreement cannot be reached between the parties as to whether that document should be included in the bundle, the document will not be included. If, following argument before the panel, the document is admissible, it will be exhibited separately,
- 15 In the run up to the substantive hearing the proposed content of the bundle may change either on further review by the lawyer for the NMC or as a result of dialogue with the registrant and/or representative.

### **When will the panel see the bundle?**

- 16 If there is sufficient liaison between the parties before the substantive hearing there is no reason why an agreed bundle incorporating NMC documents and documents relied on by the registrant cannot be prepared and sent to the panel in advance of the hearing, and wherever possible, this should be done.
- 17 Where this is not possible, the bundle containing the documents relied upon by the NMC will be handed to the panel during the course of the substantive hearing.
- 18 It will not always be necessary for the panel to read all of the bundle before starting to hear the evidence from the witnesses. Instead, the panel can be taken to relevant documents at appropriate times during submissions or the evidence. The panel should be guided by the parties, with advice from the legal assessor, as to the most effective and efficient use of its time.

### **Documents not in the bundle**

- 19 Given that the bundle is simply a selection of the exhibits available it may well be the case that exhibits not originally included in the bundle become relevant during the course of the hearing – perhaps as a result of evidence given by a witness or an assertion made on behalf of a registrant. In these circumstances the exhibit will be handed up as a separate document.
- 20 Also, as noted above, where the parties were unable to agree on the inclusion of a document which the panel subsequently rules to be admissible, that document will be a separate exhibit

### **Statements**

- 21 The statements of witnesses who are being called to give live evidence will not normally be included in the hearing bundle.
- 22 If a witness's statement is going to stand as their evidence in chief, a copy will be handed up to the panel as the witness gives evidence. If there are substantial redactions required to a witness statement before it can be handed up it may be a more effective use of time to examine the witness in the normal way rather than to ask for the hearing to be adjourned while the statement is edited.