

Appeals Circular A01/21

12 January 2021

Seventh floor
St James's Buildings
79 Oxford Street
Manchester
M1 6FQ

0161 923 6263
enquiries@mpts-uk.org
www.mpts-uk.org

To: MPTS Associates

CC: Tribunal Clerks
Medical Defence Organisations
Employer Liaison Advisers

Learning points from recent appeals

Evidence

- ▶ When considering submissions of no case to answer, the test is set out in the Court of Appeal decision in *Galbraith*: a tribunal needs to consider whether or not there is evidence, taken at its highest, which on one possible view could support the allegation being found proved. A tribunal should:
 - ▶ not simply dismiss evidence
 - ▶ not make findings of fact, particularly without asking whether a contrary conclusion is reasonably sustainable or when based on bare assertions in favour of the registrant's interests, when that individual could give evidence
 - ▶ look at the totality of the evidence and consider individual allegations in the context of the totality of the evidence.

***Solicitors Regulation Authority v Nabeel Amer Sheikh* [2020] EWHC 3062 (Admin)**

Facts

- ▶ When considering conduct within a registrant's personal/private life, tribunals should, on a case by case basis, ascertain which (if any) ethical standards are relevant to the registrant's conduct. The content of the obligation(s) to act within any applicable ethical standard (including the obligation to act with integrity) or to maintain trust in the profession, needs to be defined by reference to the rules of regulation/standards that are relevant to the alleged misconduct. ***Ryan Beckwith v Solicitors Regulation Authority***[2020] EWHC 3231 (Admin)

- ▶ For a tribunal to make adverse findings, any conduct in a registrant's private life must:
 - ▶ realistically touch on the practise of the profession, when considering integrity
 - ▶ realistically touch on the standing of the profession, when considering trust in the profession. There is a qualitative distinction between conduct which affects the registrant's own reputation and conduct that affects either their own reputation as a provider of regulated services or the reputation of their profession
 - ▶ engage one or other of the standards of behaviour which are set out in or necessarily implicit from the rules/standards of regulation in a way that's demonstrably relevant.

Ryan Beckwith v Solicitors Regulation Authority[2020] EWHC 3231 (Admin)

- ▶ In a conviction case, a registrant cannot relitigate the conviction as to the *facts*. A tribunal should form its own view of the gravity of the conviction and its relevance to the professional standing of the registrant and therefore their fitness to practise. *Wray v General Osteopathic Council* [2020] EWHC 3409 (QB)
- ▶ A conditional discharge is not a conviction and any case brought in respect of one should be brought as a misconduct case. In those cases, (even where there was a "guilty plea") a tribunal should first make findings as to the facts or actions by the registrant (beyond merely the charge, any plea and the sentence) and then stand back, take into account the whole of the circumstances and submissions, and reach an objective reasoned evaluation as to the whether the facts found proved amount to misconduct. *Wray v General Osteopathic Council*[2020] EWHC 3409 (QB)

Impairment and Sanction

- ▶ Tribunals should ensure consistency in their findings at each stage of the hearing; a finding that a registrant's lack of insight is "intractable" is inconsistent with the prospect of remediation. *PSA v GMC & Dighton* [2020] EWHC 3122 (Admin)
- ▶ Tribunals should ensure that they appropriately weigh any aggravating and mitigating factors, apply the Sanctions Guidance properly and ensure protection of the public:
 - ▶ conduct which puts patient safety at risk is a breach of an overriding duty of doctors in any branch of medicine and undermines public confidence in the profession. A tribunal's findings of deliberate, risky actions are inconsistent with continued registration as a doctor, as indicated by the Sanctions Guidance
 - ▶ a registrant's willingness to give up something which they should not have been doing in the first place cannot reasonably outweigh other findings which weigh in favour of erasure, rather than suspension.

PSA v GMC & Dighton [2020] EWHC 3122 (Admin)

- ▶ A registrant's failure to act in accordance with conditions or guidance in respect of health conditions, which are aimed at patient protection, can expose patients to a risk of harm. Even if the risk of harm was low and/or did not come about, a tribunal can erase a registrant on the basis of such failures, if appropriate when assessing the wider public interest and what is required to maintain confidence in

the profession and the regulatory process. *X v General Dental Council* [2020] 11 WLUK 461

Reviews

- ▶ The task for a reviewing tribunal is to assess the question of current impairment by forming its own independent judgement as to a registrant's fitness to practise as at the date of the review hearing, taking account of the decision reached by the previous tribunal and the concerns it had identified, together with the information before it. *Dhoorah v Nursing and Midwifery Council* [2020] EWHC 3356 (Admin)
- ▶ A reviewing tribunal should reassess risk at the time of the review hearing and that could lead to a finding of impairment on different or additional limbs of the overarching objective; that does not mean that the decision is not consistent with the previous tribunal's findings. *Dhoorah v Nursing and Midwifery Council* [2020] EWHC 3356 (Admin)

Kind regards

Tribunal Development Section

0161 240 7292

tribunaldevelopmentsection@mpts-uk.org