

## Quarterly Appeals Circular A01/23

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### Learning points from recent appeals

#### Facts

- ▶ Tribunals should acknowledge the fluidity of memory, and should not assess a witness's credibility exclusively on their demeanour when giving evidence ([Dutta v GMC \[2020\] EWHC 1974 \(Admin\)](#)). However, in cases involving sexual misconduct where there is no other direct available evidence (i.e., where it is one party's word against the other's), it **may** be reasonable for a tribunal to take into account some aspects of a witness's demeanour, but the tribunal should consider the consistency over time and under cross-examination, in assessing truthfulness. Tribunals should note any gaps and discrepancies and give reasons for their evaluation and conclusions in relation to them, including reference to any discrepancies within the other witness' account. [Joseph v GMC \[2022\] EWHC 3345 \(Admin\)](#).

#### Impairment and Sanction

- ▶ It is not a pre-condition of erasure that either there is no chance of remediation or where the practitioner has shown no insight at all; it is possible for a practitioner to be erased from the register even when they have demonstrated some insight. This is particularly so in cases involving dishonesty, and several occasions of dishonesty in different contexts and where the behaviour of the practitioner is incompatible with registration on grounds of public interest. However, not every case of dishonesty will lead to erasure. [Ranga v General Medical Council \[2022\] EWHC 2595 \(Admin\)](#)
- ▶ Dishonesty is difficult to remediate (as set out in [Nkomo v General Medical Council \[2019\]](#)

[EWHC 2625 \(Admin\)](#)). Unlike with clinical errors, where further practice and/or teaching would likely show a practitioner the correct method of practice, the nature of dishonest behaviour goes more to the practitioner's *character* than learning. Clinical and personal mitigation therefore hold less weight in such cases. [Ranga v General Medical Council \[2022\] EWHC 2595 \(Admin\)](#)

- ▶ When considering the most appropriate sanction, tribunals should ensure that they consider the impact on or risk to each of the three limbs of the overarching objective:
  - ▶ *to protect, promote and maintain the health, safety and well-being of the public,*
  - ▶ *to promote and maintain public confidence in the medical profession, and*
  - ▶ *to promote and maintain proper professional standards and conduct for members of that profession.*
  
- ▶ Where a tribunal takes the view that the emphasis is on the seriousness of the misconduct and a strong public interest component, it may consider mitigating factors such as remediation, risk of repetition and lapse of time since the incident, are of lesser significance.

[Ranga v General Medical Council \[2022\] EWHC 2595 \(Admin\)](#)  
[W v Health and Care Professions Council \[2022\] CSIH 47, 2022 S.L.T. 1302](#)

Kind regards  
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