

## Appeals Circular A01/24

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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 PART B: IOT and Review hearings

#### IOT

- ▶ [Onwude v General Medical Council \[2023\] EWHC 2807 \(Admin\)](#) set out a useful general reminder in relation to IOTs - it is not the function of the IOT to make any findings of fact in relation to the underlying allegations. The only function of the IOT is to assess risk, assuming that the allegations were well-founded and to determine whether an interim order is necessary in accordance with the guidance given by the case of [General Medical Council v Hiew \[2007\] EWCA Civ 369](#).

#### Review hearings

- ▶ [Shah Shahin Ali v General Medical Council \[2023\] EWHC 2400 \(KB\)](#) reiterated that where a review hearing adjourns part-heard:
  - ▶ **Before a finding (of impairment, or failure to comply with a condition) has been made:** The tribunal *must* consider whether to extend the conditions or suspension (Rule 22 (5)(a)) of the Fitness to Practise Rules 2004);
  - ▶ **After a finding (of impairment, or failure to comply with a condition) has been made:** The tribunal *can* extend the conditions or suspension (*although there is no express provision requiring them to consider whether to do so*). In these circumstances, the tribunal has jurisdiction provided the facts warrant the exercise of that jurisdiction. It is not obligatory for a reviewing tribunal to hear further evidence or submissions on sanction before extending the period of suspension or conditions.

- ▶ [Shah Shahin Ali v General Medical Council \[2023\] EWHC 2400 \(KB\)](#) also provided a reiteration of some of the principles from the case of [Yusuff v GMC \[2018\] EWHC 13 \(Admin\)](#), that in review hearings:
  - ▶ the findings of fact are not to be re-opened;
  - ▶ a practitioner is entitled not to accept the findings of the tribunal. In the alternative, they are entitled to say that they have accepted the findings in the sense that they do not seek to go behind them, while still maintaining a denial of the conduct;
  - ▶ when considering whether a practitioner's fitness to practise remains impaired, it is relevant for the tribunal to know whether or not the practitioner now admits the misconduct, but admission is *not* required to establish that they understood the gravity of the offending and are unlikely to repeat it;
  - ▶ if it is made apparent that the practitioner did not accept the truth of the findings, questioning should not focus on the denials and the previous findings;
  - ▶ a want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in reviewing impairment.

Kind regards  
Tribunal Development Section  
0161 240 7292  
[tribunaldevelopmentsection@mpts-uk.org](mailto:tribunaldevelopmentsection@mpts-uk.org)