

Appeals Circular A04/20

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Learning points from recent appeals

Evidence

- ▶ Tribunals and Legal Assessors should ensure that an allegation of sexually motivated conduct is fully and squarely put to a practitioner and the practitioner has had an opportunity to respond to it. Tribunals should also ensure there is both an evidential foundation and clear reasoning in their determinations for serious findings, such as a pattern of sexually motivated behaviour. ***Sait v GMC* [2018] EWHC 3160 (Admin)**
- ▶ In a restoration hearing, the failure to receive new evidence of a practitioner's dishonesty was a serious procedural irregularity and warranted remittal. ***PSA v GDC (Hussain)* [2019] EWHC 2640 (Admin)**
- ▶ Tribunals who hear and see witnesses are better placed than appellate courts to form a view on the evidence. The Tribunal was entitled to conclude that the offer of a financial inducement to withdraw a complaint was dishonest. ***Tariqez-Zaman v GMC* [2019] EWHC 2927 (Admin)**
- ▶ It is not necessary for Tribunals to deal with every matter of evidence placed before it in determinations, provided that both parties know why they won or lost and an appellate court is able to understand how the decision was reached. ***Tariqez-Zaman v GMC* [2019] EWHC 2927 (Admin)**
- ▶ The approach taken in *R (Mahfouz) v GMC* [2004] EWCA Civ 233 on the use of recusals was correct: there is no absolute rule that potentially prejudicial material is fatal to the fairness of proceedings and Tribunals are commonly asked

to put such material out of their minds. *R (Short & others) v Police Misconduct Tribunal & others* [2020] EWHC 385 (Admin)

Facts

- ▶ A Tribunal had not reversed the burden of proof or erred in stating that, because it doubted the credibility of one part of a practitioner's case, it caused it to doubt the remaining part of their case. *Okpara v GMC* [2019] EWHC 2624 (Admin)
- ▶ Appellate courts will be slow to interfere with a Tribunal's assessment of sexual motivation unless it is wholly contrary to the weight of the evidence, or there is some fault in the decision-making process which renders the finding unsafe. *Sait v GMC* [2019] EWHC 3279 (Admin)
- ▶ A Tribunal had properly considered the *Ivey* dishonesty test regarding a practitioner dishonestly confirming to her employer she held indemnity insurance. Therefore, the Tribunal had been entitled to find the practitioner to be dishonest. *Uwen v GMC* [2019] EWHC 3483 (Admin)
- ▶ A Tribunal's interpretation of two factual allegations had been incorrect and those findings may have had an effect on subsequent decisions (e.g. sanction). Therefore, the matter had to be remitted back to the Tribunal. *GMC v Walton* [2019] EWHC 3537 (Admin)

Kind regards

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