MPTS Medical Practitioners Tribunal Service

Appeals Circular A04/22

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Learning points from recent appeals

Facts

- When considering the reliability and credibility of witnesses in determining factual allegations, a tribunal should give adequate reasons for its conclusions to enable the registrant to understand why they have won/lost and provide cogent explanations in relation to the evidence which was accepted and rejected which led to the factual allegation(s) having been found proved.

  - Whilst a tribunal should identify the consistent and inconsistent features of the evidence, its conclusion ought to be based on an assessment of the overall effect of the evidence including considering whether those in/consistencies go to the core allegations or not.
  - A limited allegation of sexual misconduct is not less likely to have occurred because it did not progress to a more serious assault. The absence of particular features of such conduct does not have any probative value in establishing that nothing untoward occurred. Srinivasan v General Medical Council [2022] EWHC 1606 (Admin)

Impairment and Sanction

- Where appropriate, a tribunal should consider whether a registrant demonstrates insight in relation to their personal failings, as opposed to their generic responsibility (for example as a consultant in charge) or reflecting only on the failings of the system and/or the failings of colleagues. Veeravalli v General Medical Council [2022] EWHC 747 (Admin)

- The questions of lack of insight and of the risk of repetition of the conduct in question are distinct questions, but those questions are closely related. The presence of lack of insight can be (often highly) relevant to the question of whether there is a risk of repetition and in particular to an assessment of the degree of that risk. In the case of *R (Bevan) v General Medical Council [2005] EWHC 174 (Admin)*, it was explained that it was "implicit" that "insight is most material to ensure that [the registrant] has realised that he has indeed gone wrong and therefore will not do anything similar in the future". Hawker v Health and Care Professions Council [2022] EWHC 1228 (Admin)

Where matters which are inherent in the findings of misconduct and impairment (particularly in terms of gravity) are also regarded as aggravating factors when a tribunal considers the question of sanction, it does not automatically mean that there has been unfair "double-counting" of those matters. The correct approach is to balance the aggravating and mitigating factors against each other when considering sanctions. Hawker v Health and Care Professions Council [2022] EWHC 1228 (Admin)

Kind regards
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