

Appeals Circular A05/20

04 June 2020

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

General Medical Council v Saeed [2020] EWHC 830 (Admin)

Learning points

- ▶ Tribunals must have proper regard to the *Sanctions Guidance* and, if departing from it, must ensure that there are sound reasons for doing so, which are fully and clearly explained.
- ▶ Tribunals must ensure that their sanctions determinations address all relevant elements of *Sanctions Guidance*. It is insufficient to rely on a generalised assertion that erasure would be disproportionate where the Tribunal has identified factors pointing towards that outcome.
- ▶ The sanction imposed must reflect the seriousness of the Tribunal's findings. A lesser sanction or departure from the *Sanctions Guidance* on the basis that a review hearing is ordered, is not appropriate.

Background

S had been convicted in July 2018 of one count of controlling and coercive behaviour and one count of assault occasioning actual bodily harm. He was sentenced to 22 months' imprisonment (suspended for two years) and required to undertake 200 hours of unpaid work.

In June 2019, a MPT hearing took place to consider whether S's fitness to practise was impaired by reason of his convictions. The hearing bundle contained documents from S's criminal proceedings, including a pre-sentence report which noted that S continued to deny the offences he had been convicted of. S had also provided a

written statement in which he indicated that he had undergone a relationship building program, helping him to manage his emotions and conflicts.

S did not attend the MPT hearing. The MPT found impairment and went on to address what sanction ought to be imposed. The MPT determined that S had not demonstrated significant insight into his offending but, through his written statement and course on relationship building, had demonstrated an ability to identify and take steps to reflect upon and address his behaviour.

In its consideration of the *Sanctions Guidance*, the MPT referred to Paragraph 109 and identified the presence of six factors which may indicate erasure is an appropriate sanction. The MPT considered that one factor identified in Paragraph 109, namely a persistent lack of insight, was absent: S had completed the relationship building program and made assertions in his written statement which the MPT concluded gave a clear indication that he accepted these were issues he needed to address. The MPT therefore concluded that S's insight was a 'work in progress' and so erasure was not, at the present time, the proportionate outcome. A review hearing was directed.

Grounds

The GMC appealed against the MPT's decision on the basis that:

- ▶ The MPT failed to apply the *Sanctions Guidance* properly by failing to apply Paragraph 109, and failing to give reasons why any of the six factors identified in the *Guidance* were not sufficient to warrant erasure in S's case;
- ▶ The MPT failed to apply the *Sanctions Guidance* by erring in its consideration of Paragraph 119¹ in that S's sanction would expire one month before his suspended custodial sentence, therefore departing from the *Fleischmann*² principle;
- ▶ The sanction of suspension failed to reflect the true seriousness of S's convictions.

Judgment

The appeal was heard by Mr Justice Murray, who allowed the appeal on the first two grounds. Murray J declined to reach a definitive view on the third ground and remitted the matter to the MPT to determine sanction.

It was held that:

- ▶ The MPT had not given clear and express reasons why the *Sanctions Guidance* Paragraph 109 factors it had identified did not justify erasure in S's case; this ought to have been clearly dealt with in its sanction determination [para 75]. Murray J observed that the MPT is obliged to have proper regard to the *Sanctions*

¹ Paragraph 119: "As a general principle, where a doctor has been convicted of a serious criminal offence or offences, they should not be permitted to resume unrestricted practice until they have completed their sentence."

² *Council for the Regulation of Health Care Professionals v General Dental Council, Fleischmann* [2005] EWHC 87 (Admin).

Guidance and only depart from it for sound and clearly stated reasons, rather than on the basis of a generalised assertion that erasure would be disproportionate [para 77].

- ▶ Though the MPT had generally referred to mitigating factors when referring to the *Sanctions Guidance* Paragraph 109 factors it had identified, it failed to clarify the weight given to each point of mitigation and how each had the effect of justifying a period of suspension. Murray J also noted the established principle³ that matters of mitigation are likely to be of considerably less significance in regulatory proceedings [para 78] because of the overarching objective to protect the public.
- ▶ Although a review hearing had been directed by the MPT, case law⁴ had confirmed that the issue at review hearings is to review current fitness to practise, and not the underlying seriousness of the original conduct [para 82]. It was improper, in principle, for the MPT to depart from the provisions of Paragraph 119 of the *Sanctions Guidance* on the basis that a review hearing would be held and the reviewing tribunal had the power to extend the period of suspension. If the *Fleischmann* principle and provisions of Paragraph 119 were to be departed from, there must be sound and clearly stated reasons for doing so [para 83].

Kind regards

Tribunal Development Section

0161 240 7292

tribunaldevelopmentsection@mpts-uk.org

³ *General Medical Council v Jagjivan* [2017] EWHC 1247 (Admin)

⁴ *Khan v General Pharmaceutical Council* [2016] UKSC64.