

Appeals Circular A05/21

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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

Procedure/Bias

- ▶ Case management issues, such as when witnesses give evidence, are quintessentially matters for the tribunal to decide and it would be wholly invidious if, every time a court or tribunal took a decision on a matter of procedure that was adverse to a party, that party was able to say that this demonstrated apparent bias. [Reddy v General Medical Council \[2021\] EWHC 435 \(Admin\)](#)

Evidence

- ▶ Any difficulties or challenges to the evidence of a witness should be confronted and appropriately weighed in the balance when coming to conclusions about the witness' credibility, and which aspects of their evidence, if any, can be relied upon. However, issues with credibility do not prevent a tribunal from accepting the witness' evidence, particularly where essential elements are corroborated by documents. [Martin v Solicitors Regulation Authority \[2020\] EWHC 3525 \(Admin\)](#)
- ▶ Whilst evidence of good character is relevant to credibility and propensity in relation to allegations of dishonesty, the significance of such evidence ought not to be overstated and should not detract from the primary focus on the evidence directly relevant to the alleged wrongdoing. [Martin v Solicitors Regulation Authority \[2020\] EWHC 3525 \(Admin\)](#)
- ▶ Tribunals are entitled to take account of a registrant's evidence and assess the impact of that evidence on their credibility. [Reddy v General Medical Council](#)

Facts

- ▶ There is a distinction between ‘treatment’ and ‘a professional relationship’. The end of a treatment or a course of treatment is not necessarily the end of the professional relationship between a healthcare professional and a patient. This may be easier to establish where there is an ongoing relationship with a health practitioner that a patient sees on a regular basis – such as a GP and a dentist – rather than where a health practitioner sees a patient for a treatment in relation to a specific issue. [Sayer v General Osteopathic Council \[2021\] EWHC 370 \(Admin\)](#)

- ▶ Where a regulatory rule provides that a copy of a Certificate of Conviction, certified by a competent officer of the court, “is admissible as conclusive proof of that conviction *and the findings of fact on which it was based*” that means treating as conclusive, not only the “bare” facts to be found in the Certificate of Conviction, but also the broader factual matrix on which the convicted person has been sentenced, which can be found in the sentencing remarks of the judge. Whilst the GMC Fitness to Practise Rules 2004, as amended, do not include the latter part of the phrase referred to above, the background to a conviction is nevertheless important and it is wrong to permit a registrant to go behind the finding in a conviction, as to do so would endanger public confidence in the regulatory regime and the proper relationship between that regime and the criminal jurisdiction. [Achina v General Pharmaceutical Council \[2021\] EWHC 415 \(Admin\)](#)

Impairment and Sanction

- ▶ Tribunals need to consider the overall seriousness or gravity of the alleged conduct. A registrant who has engaged in conduct involving a calculated and deliberate abuse of power which foreseeably causes harm to a colleague, poses a danger to the “health, safety and well-being of the public” (which includes co-workers), unless there is a proper basis for concluding that the conduct is unlikely to be repeated. [Professional Standards Authority for Health and Social Care v General Medical Council and Hanson \[2021\] EWHC 588 \(Admin\)](#)

- ▶ It is possible for a registrant to demonstrate insight in a variety of ways, even where the conduct alleged is disputed. However, a complete lack of engagement with a tribunal means that there is nothing to demonstrate any insight or contrition at all and so a tribunal can have no proper basis for concluding that the behaviour will not be repeated. [Professional Standards Authority for Health and Social Care v General Medical Council and Hanson \[2021\] EWHC 588 \(Admin\)](#)

- ▶ When considering the relationship between a registrant denying or contesting the allegations and insight and sanction, the following principles apply:
 - ▶ insight is concerned with future risk of repetition. To this extent, it is to be distinguished from remorse for the past conduct
 - ▶ denial of misconduct is not a reason to increase sanction

- ▶ it is wrong to equate maintenance of innocence with lack of insight; denial of misconduct is not an absolute bar to a finding of insight and admitting misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it
- ▶ the registrant's understanding of and attitude towards the underlying allegation is properly to be taken into account when weighing up insight. Where a registrant continues to deny impropriety, that makes it more difficult for them to demonstrate insight. [*Sayer v General Osteopathic Council* \[2021\] EWHC 370 \(Admin\)](#)

- ▶ Tribunals should ensure that factors considered as mitigation are consistent with their actual findings on fact. [*Professional Standards Authority for Health and Social Care v General Medical Council and Hanson* \[2021\] EWHC 588 \(Admin\)](#)

Kind regards

Tribunal Development Section

0161 240 7292

tribunaldevelopmentsection@mpts-uk.org