

Appeals Circular A06/22

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Learning points from recent appeals

The overarching objective

- ▶ The overarching objective is to protect the public. Public safety should not be equated with patient safety; the former includes the protection of patients, colleagues and visitors in the context of dental or medical practice. The case of [Arunachalam v General Medical Council \[2018\] EWHC 758 \(Admin\)](#) clearly reflects the importance of protection of work colleagues and the duties owed, which are like those imposed in respect of patients, albeit the relationship may not necessarily be the same. **Alberts v General Dental Council [2022] EWHC 2192 (Admin)**¹

Dis/honesty

- ▶ Honesty lies at the very heart of the profession of doctor. Repeated dishonesty carries with it the potential to undermine completely public confidence in the medical profession and is one of the grounds justifying erasure. [Professional Standards Authority for Health and Social Care v General Medical Council \(Austin\) \[2022\] CSIH 37, 2022 WL 03566683](#)
- ▶ The fact that an earlier reviewing tribunal found a practitioner had shown insight and remediation in relation to earlier dishonesty is of no real relevance where that decision was taken in ignorance of the practitioner's subsequent dishonesty. [Professional Standards Authority for Health and Social Care v General Medical Council \(Austin\) \[2022\] CSIH 37, 2022 WL 03566683](#)

¹ The link to the public judgment is not currently available.

- ▶ Where there is repeated or sustained dishonesty, it will be more difficult for a practitioner to show any real capacity for insight or remediation. A failure to have learned from previous disciplinary proceedings could make it impossible to find grounds for optimism about a practitioner's ability to comply with proper professional standards in the future. Other features which may add to the gravity of the dishonesty include where:
 - ▶ an episode of dishonest conduct took place as a direct response to findings of dishonesty by an earlier tribunal
 - ▶ the dishonesty was directed towards a regulatory body and/or an employer
 - ▶ the dishonesty involved a breach of a restriction imposed for the purpose of protecting the public for example continuing to practise while suspended or practising when a licence to practise has been withdrawn as a result of regulatory action ([General Medical Council v Dr Anthony Donadio \[2021\] EWHC 562 \(Admin\)](#)) which must be treated as being of the utmost gravity
 - ▶ others were implicated in the dishonesty.
 - [Professional Standards Authority for Health and Social Care v General Medical Council \(Austin\) \[2022\] CSIH 37, 2022 WL 03566683](#)

Impairment and Sanction

- ▶ The absence of aggravating factor(s) are considerations that a tribunal may be entitled to take into account. For example, 'malicious intention' would be an aggravating feature of any case, but the fact that 'malicious intention' is not alleged by the regulator does not mean that absence of malicious intention is an irrelevant consideration. [General Medical Council v Mok \[2022\] EWHC 1651 \(Admin\)](#)
- ▶ The Sanctions Guidance is a guide to decision-making by tribunals, not a tariff which prescribes the sanction to be imposed. Tribunals have a wide discretion and their decision on sanction involves a multi-factorial evaluative judgment, based on the evidence before them, including their assessment of the registrant. [General Medical Council v Mok \[2022\] EWHC 1651 \(Admin\)](#)
- ▶ Tribunals are not required to set out every relevant paragraph of the Sanctions Guidance. However, it should be clear that the tribunal has had regard to the factors/issues raised in the relevant paragraphs of the Sanctions Guidance and that the tribunal's reasons given on the matters are sufficient and intelligible. [General Medical Council v Mok \[2022\] EWHC 1651 \(Admin\)](#)

IOT

- ▶ When considering whether to grant or extend an interim order on the ground of public interest only:
 - ▶ the test to be applied is that: if the tribunal is satisfied in all the circumstances that there may be impairment of the doctor's fitness to practise which may adversely affect the public interest and, after balancing the interests of the doctor and the interests of the public, that an interim order is necessary to guard against such risk, the appropriate order should be made

- ▶ the threshold for making, or extending, an interim order is a high one; necessity would normally be the appropriate yardstick (following [R \(Shiekh\) v General Dental Council \[2007\] EWHC 2972 \(Admin\)](#)), and the same applies in relation to the imposition of suspension or conditions
- ▶ it is necessary to ask whether public confidence in the medical profession is likely to be seriously damaged if the doctor continues to hold unrestricted registration during the relevant period. The tribunal has to ask itself whether a reasonable and properly informed member of the public would be surprised and offended to learn that the doctor had been permitted to practise whilst under investigation (and the subject of criminal proceedings, if relevant)
- ▶ it is incumbent on a tribunal to consider the individual features of each case and where there are criminal charges to consider the particular facts of those charges. This does not mean that the charges should be subject to an evidential analysis: it is enough to look at the terms of the charges themselves and form a view as to their apparent severity.

B v General Medical Council [2022] 8 WLUK 128²

Kind regards

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² The link to the public judgment is not currently available.