

20 August 2014

To: Fitness to Practise Panel Panellists
Interim Orders Panellists
Legal Assessors

Copy: Panel Secretaries

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Quality Assurance Group (QAG) – Learning Points

As you know the QAG meets monthly to review decisions of the Fitness to Practise Panels and Interim Orders Panels and we would like to share some of the learning points we have identified this year. We are reassured by the high standard of a number of the determinations which we have reviewed and hope that sharing this feedback will assist you all in the drafting of decisions.

Fitness to Practise

- Where a doctor has been found not impaired at a fitness to practise review hearing following a period of conditional registration, we would anticipate that the parties would make submissions on whether the conditions should be revoked with immediate effect or remain in place until their expiry date. We wish to remind panels that if submissions on this matter are not made, then these should be requested.
- While it is a matter for the panel to consider when it is necessary to include the legal advice provided by the legal assessor within the decision, where legal advice is referred to in the decision, particularly when this is with reference to interpretation of legislation or case law, it is important to explain the advice provided so that any reader can understand the relevance of the advice to the decision.
- In circumstances where a doctor is being investigated in relation to fitness to practise matters which are not matters under consideration at the hearing, we would suggest that reference to this should not be included within the written decision.
- In the recent appeal decision, *Sharma v GMC* 2014 EWHC 1471 (Admin), the judge referred to the approach taken in *Re H (Minors) (Sexual Abuse: Standard of proof)* [1996] AC 563. This approach was firmly dissented in the case of *Re B (Children)* [2008] UKHL 35 where Baroness Hale said 'the standard of proof in finding the facts necessary to establish the threshold criteria.....is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied...The inherent probabilities are simply something to be taken

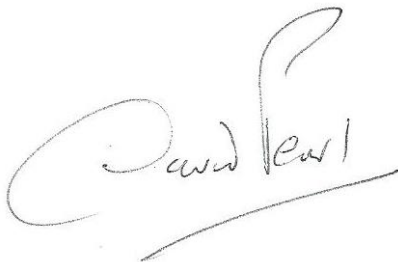
The MPTS makes impartial decisions in doctors' fitness to practise hearings. The MPTS is part of the General Medical Council, but it is operationally separate and it is accountable to Parliament.

into account, where relevant, in deciding where the truth lies'. We therefore feel that the approach taken in Re B should be that referred to where required.

Interim Orders

- Where a doctor has been convicted of a serious criminal offence, particularly one resulting in a custodial sentence, panels should have regard to the guidance 'Imposing interims orders' and carefully consider the order required to maintain public confidence in the profession or the medical regulator.
- While we acknowledge that decisions need not be elaborate or lengthy, we do feel that it is best practise to refer to the submissions of both parties within the determination.

Kind regards

A handwritten signature in black ink, appearing to read 'David Pearl', with a long horizontal flourish underneath.

His Honour David Pearl
Chair of Medical Practitioners Tribunal Service