

Tribunal Circular

22 January 2020

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To: Legally Qualified Chairs

CC: Tribunal Clerks, Tribunal Members

Learning points from 2019

In recent years there have been a number of developments arising from case law and from consideration of our own decisions. We thought it would be helpful to remind you of some key learning points identified in 2019 that as Legally Qualified Chairs you may find useful.

Preparation for hearings

If a Legally Qualified Chair (LQC) needs to clarify the approach for preparation with the Tribunal prior to the commencement of the hearing, the LQC can ask the MPTS to relay the relevant information to other members of the Tribunal. For example, this might relate to preparation to be undertaken before a hearing reconvenes. It will not usually be necessary or appropriate for LQCs to provide comments or queries for parties ahead of the hearing convening.

Legal Advice

Where a Legally Qualified Chair provides legal advice to the Tribunal, they should ensure the advice is relevant, appropriate and focused on the particular circumstances of the case.

Non-attendance

It is important that LQCs ensure that advice regarding [non-attendance](#) at a hearing of the doctor makes clear that non-attendance does not necessarily indicate non-engagement by the doctor. All the circumstances for the non-attendance should be considered, although the Tribunal should avoid speculation.

Dishonesty

The correct test for dishonesty is set out in *Ivey v Genting Casinos (t/a Crockfords)* [2017] UKSC 67 which states: *'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'* It is important that this test is clearly explained to ensure the correct approach to dishonesty is taken.

Requests for further information

Where, following a finding of impairment, the Tribunal is considering requesting further information before dealing with the stage, it should carefully consider how any further information it may request can be used at the subsequent stage. For example, health [assessments](#) directed once a finding of impairment on health grounds has been made, may have little value.

Kind regards

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