Tribunal Circular

To: Tribunal Members

Legal Assessors

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Date: 8 July 2016

Quality Assurance Group (QAG) – Learning Points

As you know, the QAG members meet every month to review a selection of the decisions of Medical Practitioners and Interim Orders Tribunals. We would like to share some of the learning points we have identified in the early part of 2016.

Medical Practitioners Tribunals

Warnings

Rule 17(2)(m) General Medical Council (Fitness to Practise) Rules Order of Council 2004 provides that where a doctor is found not impaired the tribunal may hear submissions as to whether to issue a warning. Tribunals should have regard to the 'Guidance on Warnings' and in particular paragraph 16 which states;

'A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- *there has been a significant departure from Good Medical Practice, or*
- *there is a significant cause for concern following an assessment of the doctor's performance.'*

As the ability to impose a warning stems from section 35D(3) of the Medical Act 1983, we would consider that any application to prevent submissions on the subject of a warning are not merited and it is a matter for the tribunal to consider whether they 'may' wish to hear submissions on a warning.

Impairment based on serious misconduct

We wish to remind tribunals of Beatson LJs obiter comments, as set out in Schodlok v General Medical Council [2015] EWCA Civ 769 (Appeals Circular 19/15):

'My tentative and very preliminary view is that, provided it is clear from either the charge brought by the GMC or the way the case against the doctor is presented at the hearing, that any adverse findings by the panel on matters identified in the charges might be cumulated in this way, so that the doctor is aware this is a possibility, such an approach should in principle be open to the panel. I recognise that a small number of allegations of misconduct that individually are held not to be serious misconduct should normally not be regarded collectively as serious misconduct. Where, however, there are a large number of findings of non-serious misconduct, particularly where they are of the same or similar misconduct, I consider the position is different. In such a case, it should in principle be open for a Fitness to Practise Panel to find that, cumulatively, they are to be regarded as serious misconduct capable of impairing a doctor's fitness to practise.'

Tribunals should consider all of the circumstances of the particular case and be mindful that it is open for them to consider matters cumulatively when reaching decisions on serious misconduct.

Private Session

Rule 41(1) General Medical Council (Fitness to Practise) Rules Order of Council 2004 provides that hearings shall be heard in public save for the exceptions set out in subsections (2) and (3). In practise, this means that hearings which involve a number of elements will need to be managed so that the hearing is held in public apart from those aspects which should be heard in private.

In line with the GMC's *Publication and Disclosure Policy* it is important that we are transparent about our processes and decisions. With this in mind, and further to the reminder issued in Tribunal Circular 03/16, we would like to reiterate the importance of providing clear and concise reasons in the determination when deciding to hold the hearing, or parts of the hearing, in private.

Stand-alone determinations and reasoning

We consider that all determinations should 'stand-alone' and not require referencing of other documentation such as transcripts which are not automatically available. It is important that the reader can fully understand the determination and in particular the reasoning. As you will note from the feedback to IOT members, determinations should have thorough reasoning and a list of bullet points of issues considered is unlikely to be considered adequate reasoning. We also wish to remind tribunals that reasoning is required for the length of sanction imposed.

Concluding the hearing

We would like to remind tribunals of the importance of ensuring it is clear within the determination that a hearing has concluded. We would consider that simply stating '*and that concludes the hearing'* or words to that effect would be adequate.

Mohammed El-Hadi Abdul-Razzak v. General Pharmaceutical Council [2016] EWHC 1204 (Admin)

We wished to highlight this case which affirms the decision made by Eady J in Ujam v. General Medical Council [2012] EWHC 683 (Admin) and states;

'84. Mr. Hamer submitted that there should be no deduction in respect of that period on which the Appellant was subject to interim suspension and he relied on the decision of Eady J who decided in Ujam v. General Medical Council [2012] EWHC 683 (Admin), that when considering the period of suspension which should be imposed on a doctor, the fact that the appellant's registration had been suspended between July 2009 and February 2010 by the GMC's Interim Orders Panel "was part of the background circumstances, but it would be inappropriate to regard it as analogous to a period of imprisonment served while on remand (which would normally be deducted from any custodial term imposed by a sentencing court)" [5]. Eady J approved paragraph 22 of the GMC's Indicative Sanctions Guidance which stated:

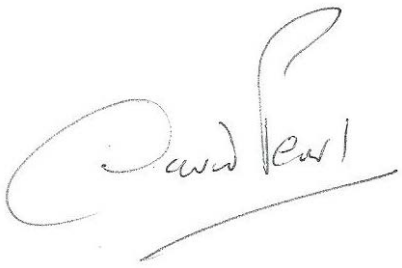
> *"[I]n making their decision on the appropriate sanction, panels need to be mindful that they do not give undue weight to whether or not a doctor has previously been subject to an interim order for conditions or suspension imposed by the Interim Orders Panel, or the period for which that Order was effected…An interim order and the length of that order are unlikely to be of much significance for panels."*

85. I respectfully agree with Mr. Hamer that I should adopt the same approach as Eady J because the task for the Committee when deciding on the appropriate sanction in a disciplinary case is radically different from that of a sentencing judge in criminal proceedings.'

Tribunals should therefore be aware of this judgment when considering sanctions where interim orders have been in place during the course of the investigation.

I hope that you will find this note useful, but please do contact us should you wish to discuss this further.

Kind regards



His Honour David Pearl
Chair of Medical Practitioners Tribunal Service