



Medical Practitioners Tribunal Service
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To: Tribunal Members

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Quality Assurance Group (QAG) – MPT Learning Points

Happy New Year to you all. In 2018, I wish to continue our work to learn and reflect from our review of appeal outcomes and from our review of determinations within the Quality Assurance Group. I therefore wish to share with you the learning points that we have identified from the latter half of 2017.

Medical Practitioners Tribunals

Impairment based on serious misconduct

Tribunals should be mindful of the two step process when determining whether a doctor's fitness to practise is impaired by reason of misconduct and ensure that it is clearly set out within the determination that they have considered whether the misconduct found is serious.

As a further reminder, in the [Tribunal Circular](#) issued on 8 July 2016 and the [Tribunal Circular](#) issued on 16 December 2016 we highlighted to you the obiter comments of Beatson LJ in *Schodlok v General Medical Council* [2015] EWCA Civ 769 paragraph 72 in relation to accumulated findings of non-serious misconduct and the need to consider both the volume and similarity of the findings of non-serious misconduct before deciding whether a series of non-serious misconduct could amount to a finding of serious misconduct.

Restoration applications

[S41\(2\) of the Medical Act](#) sets out that any doctor who has been erased from the register by a Medical Practitioners Tribunal has the right to apply to be restored after a period of five years has elapsed since the date his or her name was erased from the register. A doctor has the right to apply at the earliest opportunity following the five year period.

When drafting a determination on a restoration application, tribunals may wish to refer to the 'Guidance on drafting Medical Practitioners Tribunal determinations'.

Case-law and guidance

It is important that reference to case law is followed by an explanation as to why it is relevant and how it is being followed or distinguished. Similarly, where paragraphs of guidance are referred to, it is important that the correct version is referred to and the relevance is clearly set out within the determination. Simply listing case law or paragraph numbers from guidance does not add to the reasoning of the determination.

Proceeding in the absence of a doctor

Where a doctor is not present or represented, a Tribunal should make appropriate enquiries about any documentation received from the doctor by the GMC which could assist them with their decision making.

'Heightened examination of the evidence'

We wished to remind tribunals, as explained in the [Tribunal Circular](#) issued on 20 August 2014 and clarified in the [Tribunal Circular](#) issued on 12 February 2016, that in the case of *Re B (Children) [2008] UKHL 35* 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 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 and that phrases such as 'heightened examination of the evidence' or 'critical and anxious scrutiny [of the evidence]'

 are best avoided.

Imposing conditions

Where a Tribunal determines that conditions are the appropriate sanction, care should be taken to ensure that the conditions imposed fully address the deficiencies identified and provide for the appropriate level of supervision and support. They should also ensure that no obligation is placed on a third party eg mentor/ clinical supervisor to interpret or identify deficiencies.

I hope that these learning points are helpful and would welcome any discussion on matters that are contained within them.

Yours sincerely

Caroline Swift

Dame Caroline Swift
MPTS Chair