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Cc: Tribunal Clerks

Learning points from 2019

As we start 2020 with more hearings forecast for this year than last, it is important to reflect on learning points from 2019. While often learning points highlight opportunities for improvement, it is important to note that learning can also be derived from cases where our Tribunal's approach has been praised as good practice. Below are two recent examples where this happened.

Earlier this year in the case of *Nkomo v GMC EWHC 2625 (Admin) 2019*, Mr Justice Julian Knowles said;

'The Tribunal correctly stated...that matters of personal mitigation carry less weight in the regulatory context.....the submission that there is a meaningful distinction between 'sustained' and 'persistent' dishonesty was rightly rejected by the Tribunal.'

And going even further in confirming another Tribunal's approach was Mr Justice Mostyn in *Sait v GMC EWHC 3279 (Admin) 2019* who said;

'They [the tribunal] made a very clear finding as to credibility, which underpinned its factual findings and its ultimate evaluation of the key question. The findings cannot be said to be wholly contrary to the weight of the evidence. In my judgment the reasons of the Tribunal were impeccably formulated and expressed and there is no basis to impugn them.'

Directing reviews

Where a Tribunal determines that a review is required, they may indicate to the doctor what actions may be helpful to be carried out in the intervening period, in order to assist the Tribunal at the review hearing. However, these indications are only suggestions and should not be treated by the reviewing Tribunal as conditions (if a sanction of suspension has been imposed) or additional conditions (if a sanction of conditions has been imposed).

Revisions were made to the Sanctions Guidance in September 2019 to ensure it is clear that reflective statements that may be made by doctors for their own personal

reflection will not be sought by the GMC during investigation or MPTS hearing proceedings. Paragraphs 57-60 of the Sanctions Guidance cover the approach for considering statements from responsible officers and Tribunals should carefully consider these when making the suggestions they make to doctors as to the evidence that might be presented to a reviewing Tribunal.

Review hearings

A Tribunal hearing a review should remember that their role is not to act as an appellant body for the original Tribunal decision. The focus for the reviewing Tribunal is to consider what has been done since the original decision and whether the doctor's fitness to practise remains impaired.

Kind regards

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