

Appeals Circular A01/26a

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Learning points from recent appeals

Facts

- ▶ In cases involving allegations of dishonesty, when considering the Ivey¹ test: to first ascertain (subjectively) the actual state of the individual's knowledge or *genuine belief* as to the facts and then secondly consider whether the conduct was dishonest by the (objective) standards of ordinary decent people:
 - ▶ when considering the first step of the test:
 - ▶ it does not matter whether the understanding the individual holds is correct or incorrect – the point is whether or not that was their understanding. The tribunal should say whether it rejects or accepts the evidence of that understanding/the individual's state of mind. If it is rejecting the evidence as deliberately false, it ought to say so and explain why²;
 - ▶ in a case where the registrant believed that an action had been done, it was not a question of whether the registrant could be "confident" that the action had been done or whether it could be "guaranteed" that staff had followed instructions [regarding issuing the action]; it was a question of whether the registrant genuinely believed that it had been done/actioned. The absence of such a belief was for the GMC to prove on the balance of probabilities (rather than the tribunal only finding a 'genuine belief' when it found a reasonable foundation in the evidence for such a belief, which amounts to a reversal of the burden of proof);

¹ Ivey v Genting Casinos (UK) Ltd [2018] AC 391

² See for example Mostyn J in Kirschner v General Dental Council [2015] EWHC 1377 at paragraph 28

- ▶ once the tribunal has established the actual state of the individual's knowledge or *genuine belief* as to the facts, it must go on to consider whether, in light of that knowledge or genuine belief, the conduct was objectively dishonest by the standards of ordinary decent people.
- ▶ the burden of proof is on the regulator to prove dishonesty, not on the registrant to prove their innocence;
 - ▶ it amounts to a reversal of the burden of proof where in its introduction of the facts a tribunal suggests a starting point of deliberate conduct ie in this case referring to dates as 'deliberately manipulated' and states that the registrant could offer no other explanation other than administrative error. This approach casts onto the registrant the burden of proving their alternative explanation rather than the regulator of proving its case of deliberate conduct and dishonesty;
 - ▶ where the registrant suggests an alternative explanation (ie administrative error), the tribunal should consider that suggestion/the likelihood of that being the case and explain why that's being rejected as an explanation. In this case, the tribunal's failure to consider administrative error effectively required the registrant to produce a positive explanation for how the inappropriate claims had come to be submitted, in the absence of which the tribunal concluded they must have been submitted deliberately and dishonestly;
- ▶ it is not necessary to find motive for an allegation of dishonesty to be proved, however where the registrant contends that they did not have any motive the tribunal should go on to address that and consider any evidence relating to it; explain whether it rejected it and, if so, on what basis;
- ▶ when allegations of dishonesty are made, the tribunal's determination must refer to, and take into account, the registrant's good character and the subsequent inherent probability that the registrant acted dishonestly.

[Mobasseri v General Dental Council \[2025\] EWHC 3006 \(Admin\)](#) and [Alam v General Medical Council \[2025\] EWHC 2907 \(Admin\)](#)

- ▶ In cases involving hearsay evidence:
 - ▶ When considering whether it is "fair and relevant" to admit hearsay evidence, the tribunal should first identify what the issues in the case are and then, when assessing the reliability of the evidence (from person 'A'), should identify other material that supports or undermines A's account. When assessing the reliability of A's hearsay evidence, taking into account evidence or an admission from the registrant which supports A's account at this preliminary stage of a hearing does not amount to a reversal of the burden of proof;
 - ▶ when hearsay evidence is admitted, the prejudice to the registrant can be mitigated by the registrant making submissions to the tribunal, eg about the

questions which would have been asked of A to assist the tribunal in assessing the weight to give to that evidence.

[Lee v General Medical Council \[2025\] EWHC 3347 \(Admin\)](#)

- ▶ The right to cross-examine is not absolute and must be balanced against the need to protect witnesses who may be adversely affected by the process. The tribunal is entitled to intervene where questioning risks confusion, unnecessary distress or procedural unfairness³. [Sadiq v The General Medical Council \[2025\] EWHC 3062 \(Admin\)](#)
- ▶ In a case where unlawful discrimination⁴ is alleged, but the threshold is not reached (because the conduct did not have the purpose or effect of violating the person's dignity or creating an intimidating / hostile / degrading / offensive environment), the tribunal cannot be said to have erred where they didn't go on to find a breach of the Equality and Diversity Standard where this lesser alternative was not pleaded. The lawfulness of the tribunal's findings is to be judged by reference to how the case was put at the hearing before them. [The Commissioner of Police of the Metropolis, R \(on the application of\) v Police Misconduct Tribunal \[2025\] EWHC 3110 \(Admin\)](#)
- ▶ A registrant cannot be sanctioned for a charge which was not laid or amended or on facts which were not asserted in relation to that charge. A registrant should know the charges which they face and be given time to prepare to answer them. If any charge needs amending, an application can be made to do so. [Foy-Yamah v The General Medical Council \[2025\] EWHC 2846 \(Admin\)](#)
- ▶ Good Medical Practice⁵ sets out that registrants should "*Act with honesty and integrity: You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession*". Whilst it may appear this principle relates to trustworthiness in the sense of honesty and integrity, and does not say anything about violence, it is not a material error for a tribunal to consider this paragraph in the broader sense, as applying to offences of violence and other acts of misconduct⁶. [Haroon v General Medical Council \[2025\] EWHC 2619 \(Admin\)](#)

³ This is confirmed in the MPTS Guidance for Tribunals, Procedural matters relating to tribunal hearings; Part B; Witnesses: <https://www.mpts-uk.org/parties-and-representatives/guidance-for-tribunals/tribunal-guidance-for-doctors-hearings/procedural-matters-relating-to-tribunal-hearings/witnesses>

⁴ Sexual harassment under s26 Equality Act 2010 - Harassment requires unwanted conduct related to a person's protected characteristic or unwanted conduct of a sexual nature, and that conduct has the purpose or effect of violating the person's dignity or creating an intimidating / hostile / degrading / offensive environment.

⁵ January 2024, Paragraph 81.

⁶ As confirmed in the MPTS Guidance for Tribunals, Guidance Introduction; as applying to Case Type 1: Sexual misconduct, paragraph [58](#) and Case Type 3: Violent or abusive behaviour, paragraph [106](#).

Impairment and Sanction

- ▶ In cases of sexual misconduct:
 - ▶ where the misconduct occurred in the registrant's private life, not in respect of a current patient, this is a relevant factor in assessing seriousness;
 - ▶ where there are proven findings of sexual misconduct, the registrant's excellence at work does not go to risk of future repetition, it goes to clinical competence;
 - ▶ if, following a finding of sexual misconduct, a tribunal is to conclude that a registrant presents no risk to [women] in the future, it should ensure that this finding is made with logical foundation, with sufficient evidential foundation. The tribunal should take into account conduct, insight (or lack of) and remediation (or lack of);
 - ▶ where a tribunal conclude that sexual misconduct is an 'isolated incident', it should ensure that this assertion is made with reference to the facts. For example in this case, the incident was isolated only because the practitioner had not raped anyone before. He had however, twice before become aroused with the complainant and backed off. Therefore whilst the exact act [of rape] was not repeated, similar but less serious sexual misconduct could mean that the sexual misconduct is not 'isolated'.

[Foy-Yamah v The General Medical Council \[2025\] EWHC 2846 \(Admin\)](#)

- ▶ The absence of matters which would, if present, aggravate the misconduct, are not in of themselves mitigating and tribunals should avoid falling into the trap of listing them as mitigating factors. [Chief Constable of Greater Manchester Police, R \(on the application of\) v Police Misconduct Panel \[2025\] EWHC 3018 \(Admin\)](#)
- ▶ Denial of misconduct is not an absolute bar to a finding of insight, but where the misconduct was intentional, consisting of repeated and malicious dishonesty - it is very difficult to remediate and to show that what motivated and triggered the misconduct has been identified and understood, without an acceptance that what happened did happen;
 - ▶ an abstract understanding that dishonesty is wrong is to be expected of any registrant: in and of itself it does not show insight on the registrant's part regarding their dishonesty.

[Safdar v General Medical Council \[2025\] EWHC 3176 \(Admin\)](#)

- ▶ Tribunals should not only refer to the guidance on sanctions, rather they should also apply that guidance as an ‘authoritative steer’⁷. Tribunals should be cautious of reaching conclusions that are contrary to the guidance, eg where factors indicative of erasure are all acknowledged to be present, but despite this, the tribunal come to a contrary conclusion, further, without reasoning for the departure⁸. [Professional Standards Authority for Health and Social Care v Nursing and Midwifery Council & Anor \[2025\] EWHC 3132 \(Admin\)](#)

IOT

- ▶ An IOT may make an interim order where they are satisfied that it is necessary for the protection of members of the public or is otherwise desirable in the public interest, or is in the interests of a fully registered person. In an IOT case involving allegations of discriminatory remarks:
 - ▶ tribunals should be cautious of acting in a way in which the Court in Persand⁹ said it could not. In a case where there is no substantial or substantive risk to patient safety, when considering whether to impose an order on public interest grounds only, simply stating that not imposing restrictions may raise concerns in the minds of a member of the public is insufficient. The IOT should consider the particular facts of the case and consider whether there are features of the case which mean that the matters are so serious that it is justifiable to restrain the exercise of professional skills at a stage when the allegations are unproven.
 - ▶ an interim order may still be desirable in the public interest, but finding a risk of harm because the attitudes expressed in the remarks raise a risk of differential treatment of patients who may fall within particular groups may not be justified if there is no evidence in the lengthy previous practice of the practitioner of that sort of behaviour and if the remarks were not made to a patient or in the context of patient care.

Nursing and Midwifery Council v Richmond [2025] EWHC 1828 (Admin)¹⁰

Restoration hearings

⁷ As noted in the case of GMC v Khetyar [2018] EWHC 813 (Admin) – this case referred to the GMC Sanctions Guidance, but the same principles apply to the MPTS Guidance for Tribunals, Medical Practitioners tribunal hearings; [Part C: stage three - sanction - MPTS](#) for hearings post 24 November 2025.

⁸ Paragraph 9 of the MPTS Guidance for Tribunals, MPT guidance [Step 3: decide on sanction - MPTS](#) states that “*The MPT will always need to record reasons for their decision on sanction. Where the MPT’s decision departs from the principles in this part of the guidance, which includes the sanctions bandings, the MPT must carefully explain how this is justified, given the specific circumstances of the case. They must also explain how the decision relates to any submissions made by the parties*”.

⁹ NMC v Persand [2023] EWHC 3356 (Admin)

¹⁰ This case is not currently publicly published or available and the exact alleged discriminatory remarks which were made and how widely each of them were broadcast is not included in the judgment.

- ▶ A reminder that it is not the job of the restoration tribunal to review or rehear the original tribunal proceedings. The restoration tribunal is solely concerned with whether the criteria for reinstating the registrant to the register had been met. [Jerry v The Nursing and Midwifery Council \[2025\] EWHC 2814 \(Admin\)](#)

Kind regards

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