MPTS Medical Practitioners Tribunal Service

Appeals Circular A03/26

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Learning points from recent appeals

Facts

- Tribunals should make determinations on the allegations brought by the regulator. Where a registrant seeks to rely on material relating to matters outside the case brought against them by the regulator, the tribunal should consider relevance, fairness, and the appropriateness of embarking on satellite fact-finding. Semenenko v Nursing and Midwifery Council [2026] EWHC 530 (Admin)

- Tribunals should ensure that their questions are measured and structured in order to avoid confusing the registrant. Tribunals should avoid, where possible, returning to the same topic at different times, having previously given the impression that they had moved on from that issue, having been satisfied that the registrant's answers addressed those questions. Nurrish v Nursing and Midwifery Council [2026] EWHC 2 (Admin)

- Where a tribunal considers that there is an inconsistency in a witness's evidence on an issue[1], it is a procedural error and fundamentally unfair to rely on this distinction as the sole basis on which to assess the credibility and or reliability of the witness on the issue, without giving them a warning that this is in the tribunal's mind or giving them an opportunity to explain or clarify their evidence. Professional Standards Authority v Nursing and Midwifery Council (Budzichowska) [2026] EWHC 610 (Admin)

[1] In this case, the distinction between whether the registrant grabbed the resident's face, or squashed their cheeks

- When considering whether there is no case to answer, the tribunal should consider the evidence at the half time stage in its entirety. If a finding that there *is* a case to answer in respect of one allegation and a finding there is *not* a case to answer in respect of another allegation would not appear consistent, then the tribunal should step back and carefully consider whether the no case to answer position is correct before reaching its decision on whether there is a case to answer.

    - As to sexual misconduct cases generally:

        - the tribunal should consider that consent is an active matter, and a lack of an explicit statement of lack of consent (eg not explicitly conveying that they did not consent to being kissed) did not mean that the registrant would reasonably have believed that there was consent;
        - the fact that no clear or coherent recollection is given of an incident of sexual assault does not, of itself, indicate that the complainant's account is unreliable.

    The Professional Standards Authority v The Nursing and Midwifery Council (Ntow) [2026] EWHC 637 (Admin)

- A reminder that where a decision interferes with Article 10 rights to freedom of expression, it is important that the tribunal demonstrates (i) a legal basis for the interference ("prescribed by law"); (ii) pursuit of a legitimate aim within Article 10(2); (iii) that the interference responds to a "pressing social need" and is necessary in a democratic society; and (iv) that the interference is proportionate, including consideration of less restrictive alternatives. The tribunal must address all limbs of this structured analysis, especially where Article 10 formed a central and expressly pleaded issue [by the registrant] throughout. Richard James Prior & Anor, R (on the application of) v The Police Federation of England and Wales [2026] EWHC 124 (Admin)[2]

Impairment and Sanction

- In cases where a registrant has previous fitness to practise history and then commits another similar, escalated, act of misconduct:

    - the evidence of insight in respect of the new matter has to be considered in the light of any acceptance of insight on the previous matter, which proved to be unreliable, as they had already given assurances that the matter would not be repeated;

    - the fact that there has been repetition and escalation of the misconduct (contrary to previous assurances that there would not be) removes the basis for saying there is only a minimal risk of repetition. The decision should address the point that the registrant has made and broken a similar promise

[2] The Claimants were elected representatives exercising democratic functions, therefore this case engages a heightened level of protection than for registrants, however the matters as set out similarly apply to registrants at MPT hearings.

before, therefore the assurances are not a reliable indicator of risk of repetition.

Professional Standards Authority for Health and Social Care v Nursing and Midwifery Council (Tchampet) [2026] EWHC 141 (Admin)

- Misconduct can be described as both "sustained" and a "one off". It is not the case that in order for an act to be "sustained" it needs to be carried out over days. An act can be said to be "sustained", as opposed to fleeting, over a much shorter span of time (eg throughout the course of one evening);

  - When assessing harm to the complainant, the tribunal can take into account a delayed reaction, which is not untypical in sexual misconduct cases, ie where over time a complainant came to realise how improperly the registrant had conducted themselves, and this had caused [the complainant] emotional distress.

Sidhu v Bar Standards Board [2026] EWHC 25 (Admin)

- When assessing seriousness, there is a distinction between conduct capable of imperilling patient safety, and conduct which actually imperils patient safety. That distinction is not an artificial one and could rationally make a difference when deciding what sanction is necessary and proportionate for the protection of the public and maintenance of professional standards;

  - Paragraph 109 of the Sanctions Guidance[3] should not be approached as a "score sheet" against which the tribunal should place ticks or crosses and then count up the number of ticks; the decision should be based on an evaluation of the overall gravity of the matter. The substance of the conduct matters far more than any labels.

  General Medical Council & v Gilbert & and the Professional Standards Authority [2026] EWCA Civ 53

- At remitted tribunal hearings in cases where some of the findings of previous tribunals have been upheld by the court, these matters cannot be re-opened. However, this does not preclude the remittal tribunal from taking into account the findings of the earlier tribunal(s) as an indication of the registrant's state of mind (and in particular of their attitude and insight) at the time of the hearings before those tribunal(s). Ali v General Medical Council [2026] EWHC 444 (Admin)

Review hearings

- Before making a finding that the registrant was dishonest at the review tribunal hearing (and therefore remains impaired), a tribunal should consider the below:

  - where the regulator has not submitted that there has been any dishonesty, the tribunal should invite the registrant and the regulator to address the

[3] Paragraph 109 (a)-(j) lists ten factors which the MPT should consider when deciding whether to impose the sanction of erasure. The Guidance for MPT hearings has now replaced the Sanctions Guidance for new hearings starting on or after 24 November 2025, however the Sanctions Guidance remains in effect for cases that are in the transitional period.

possibility that the tribunal might conclude that the registrant's oral evidence to the tribunal had been dishonest;

- it should be put to registrant directly that they are at risk of the tribunal concluding that they were lying to them in their evidence and therefore suggested to the registrant that their closing submissions may wish to address the question of the truthfulness of their evidence and its relevance to the finding of impairment;
- it is a questionable approach to rely on references from witnesses as a basis for the conclusion that the registrant has been dishonest in their evidence, where those witnesses have not been called to give oral evidence to clarify, or confirm the inferences drawn by the tribunal;
- legal advice should address the test for determining whether actions were dishonest and the members of the tribunal should be advised as to the approach to be taken in assessing the oral evidence which they had heard;
- the reasons for dishonesty should set out the caution which is needed before a tribunal can safely conclude that a witness is giving deliberately dishonest evidence as opposed to being confused or mistaken, and should also take into account the inherent unlikelihood of the registrant being deliberately dishonest and of dishonesty rather than mistake or misunderstanding being the explanation for the discrepancies;
- the issue of motivation for the dishonesty should also be addressed in the decision and explored in the course of questions;
- factors mitigating against dishonesty should be considered.

Nurrish v Nursing and Midwifery Council [2026] EWHC 2 (Admin)

Kind regards
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