MPTS Medical Practitioners Tribunal Service

Appeals Circular A03/23

27 April 2023

Seventh floor
St James's Buildings
79 Oxford Street
Manchester
M1 6FQ

0161 923 6263
enquiries@mpts-uk.org
www.mpts-uk.org

To: MPTS Associates

CC: Tribunal Clerks
Medical Defence Organisations
Employer Liaison Advisers

Learning points from recent appeals

Adjournments

- Webberley v General Medical Council [2022] EWHC 3520 (Admin)[1] provided a reminder of the principles which tribunals should take into account when considering applications for an adjournment on medical grounds including:

  - the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance. (*General Medical Council v Hayat [2018] EWCA Civ 2796* and *General Medical Council v Adeogba [2016] EWCA Civ 162, [2016] 1 WLR 3867*).

  - the burden is on the practitioner to satisfy the tribunal of their diagnosis **and** the impact that this would have on their ability to participate in the hearing. Tribunals are entitled, indeed obliged, in the public interest to ascertain the *effect* of such symptoms as are reported, or such illnesses as are diagnosed, upon the ability of a practitioner to take part in a hearing.

  - no tribunal is bound to accept expert medical evidence – it falls to be considered as part of the material as a whole, including the conduct of the

[1] The judgment in the case of Webberley is not publicly available at this time.

The MPTS makes impartial decisions in doctors' fitness to practise hearings. The MPTS is part of the General Medical Council, but it is operationally separate and it is accountable to Parliament.
The GMC is a charity registered in England and Wales (1089278) and Scotland (SC037750)

case previously. Tribunals should consider what weight to attach to any medical evidence in support of the application. There must be evidence that the individual is not fit to participate in the hearing, and it must identify with proper particularity the condition and why that condition prevents participation in the hearing. (Levy v Ellis-Carr [2012] EWHC 63 (Ch).

Facts

- When a practitioner suggests that a medical condition may have a bearing on their alleged (mis)conduct, it is insufficient to rely on the mere diagnosis itself. The tribunal must consider whether it has information about the way the medical condition manifests itself in the practitioner and how that could contribute to the tribunal's assessment of the practitioner's evidence (if relevant), how that would bear on any conflicts of fact or in relation to the specific facts alleged Chowdhury v General Medical Council [2023] CSIH 13.

- Freeman v General Medical Council [2023] EWHC 45 (Admin) provided a reminder of the three key questions that a tribunal should consider when deciding whether to allow or exclude evidence from an absent witness (as previously set out in *Bonhoeffer v General Medical Council [2011] EWHC 1585 (Admin)*):

  - was there a good reason for non-attendance (and, consequently, for the admission of the absent witness's untested statements as evidence)?

    A tribunal is entitled to consider the witness' perception when considering this question; if a witness perceives that there was unfairness and bullying at and/or before the hearing, this may constitute a good reason for the witness absenting themselves. The tribunal does not have to agree that there was unfairness and bullying; just that there was an objective and understandable basis for that perception.

  - whether the evidence of the absent witness constitutes the sole or decisive basis for conviction or the factual finding(s) in regulatory proceedings?

  - are there sufficient counter-balancing factors to ensure a fair hearing?

- If a practitioner chooses not to engage with regulatory proceedings and does not therefore cross examine any witnesses/adduce any witness statements, tribunals are entitled to make decisions on the basis of the evidence before them Golden v Nursing and Midwifery Council [2023] EWHC 619 (Admin).

- When interpreting a regulatory condition that requires the practitioner to notify various entities, agencies and/or individuals that conditions have been imposed on their registration, tribunals should concentrate on the purpose of the condition. This may mean taking a broader rather than a restrictive approach to

the registrant's duty to notify others of the conditions, to ensure that any bodies or individuals with whom the practitioner was likely to be in contact with for the purposes of fulfilling their professional responsibilities are made aware that the practitioner's registration is not unrestricted, and that concerns had been noted in a regulatory process Kuzmin v General Medical Council [2023] EWHC 60 (Admin).

- Context is important in assessing whether words were sexually motivated. The use of certain words with friends is not the same as using the same word to a stranger, especially when other comments made have been found to be sexual and unwanted Chief Constable of the British Transport Police v Police Misconduct Panel [2023] EWHC 589 (Admin).

Impairment and sanction

- There is very limited scope for a tribunal to revisit a factual finding which has already been made. Tribunals should be alive to any attempts by a party to do so and should be cautious of admitting evidence at the impairment stage, which a party indicates is relevant to the facts that have already been proved and/or is to correct 'the clear errors' in the conclusions at the fact finding stage, as Kuzmin v General Medical Council [2023] EWHC 60 (Admin).

- It is important that tribunals do not use or display outdated and discredited attitudes to interpreting a complainant's demeanour and/or reaction to a stressful encounter (such as alleged sexual misconduct). Tribunals should not downplay the seriousness of an incident or the significance of its impact upon a complainant on the basis of their outward reaction for example where a complainant is capable of 'brushing off' the (mis)conduct or acted politely/did not challenge the registrant or their behaviour Chief Constable of the British Transport Police v Police Misconduct Panel [2023] EWHC 589 (Admin).

- Although not all cases of serious domestic violence will result in erasure (*Khan v General Pharmaceutical Council [2016]*), erasure may be appropriate even when the practitioner does not present a risk to patient safety Ibrahim v General Medical Council [2022] EWHC 2936 (Admin).

IOT

- Ramaswamy v General Medical Council [2023] EWHC 100 (Admin) set out some reminders in relation to IOTs:

  - the IOT does not need to make primary findings of fact, rather it should look at risk assessment, the sufficiency and quality of the evidence, necessity, and proportionality.

  - in exercising the function of risk assessment, this requires that tribunals pay attention to the nature of the allegations and the evidence which is relied upon

to support them (*Martinez v General Dental Council [2015] EWHC 1223 (Admin)*). The IOT does not need to quantify the risk; once a risk has been shown, that it sufficient, unless it can be seen to be a wholly fanciful risk (*Howells v General Medical Council [2015] EWHC 348 (Admin)*).

- when recognising risk and uncertainty in the context of public protection, the IOT is not obliged to wait until risk crystallises into harm, if it does, or until an assessment which clarifies the position is finally undertaken, if it is.

Kind regards
Tribunal Development Section
0161 240 7292
tribunaldevelopmentsection@mpts-uk.org