MPTS Medical Practitioners Tribunal Service

Appeals Circular A04/26

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Learning points from recent appeals

Facts

- Tribunals are entitled to adopt common sense and objectively rational descriptions of allegations and are not confined to the express words used by the registrant[1], where the allegation reflects what the registrant said and amounts to the same thing. Stenhouse v The Bar Standards Board [2026] EWHC 1117 (Admin)

- When there is an allegation that a registrant failed to disclose a determination by a regulatory body elsewhere (in this case Australia), the fact they were no longer registered as a doctor in Australia when that tribunal made its decision is irrelevant, as the allegation related to a period when they were registered. The doctor remained obliged under Paragraph 75 of Good Medical Practice to report the finding against their registration to the GMC. General Medical Council & PSA v Grajn - [2026] EWHC 1157 (Admin)

- In cases where a patient makes allegations of misconduct against a registrant, the tribunal must not reverse the burden of proof by considering whether the registrant has proved a motive for the patient's allegations. The registrant bears no burden of establishing a motive or explanation for the patient's complaints. The decision should not suggest that it was the registrant's task to persuade the tribunal that the patient's evidence is not credible, rather than the regulator's that it was:

[1] In this case, although the registrant had not used the word "conspiracy", the allegation that he had alleged a conspiracy was upheld because his 'baseless assertions' amounted to an allegation of conspiracy.

- elimination of 'fabrication' as a satisfactory account for the patient's evidence does not by itself entitle the tribunal to proceed on the basis the patient should be regarded as credible, nor absolve it of its duty to assess the weight that could properly be given to their evidence in all the circumstances;
- tribunals must engage with material inconsistencies in the patient's evidence, the inherent improbability of unwitnessed misconduct and alternative explanations for the allegations. Tribunals should also apply any good character direction that has been given (in this case a 40-year unblemished record) or explain why it gave this no weight in assessing credibility or objective probabilities.

Davies v The Nursing and Midwifery Council [2026] EWHC 1139 (Admin)

- In cases involving allegations of repeated sexual/discriminatory comments[2]
  - when considering whether remarks can be characterised as sexual or sexually motivated:
    - the tribunal should not consider the individual allegations in a compartmentalised way. The remark[3] must be considered in its proper context alongside the wider pattern of conduct (sexualised comments towards female colleagues). When viewed alongside this wider pattern of conduct it is likely that the only reasonable inference was that the comment formed part of that same pattern of sexualised behaviour;
    - the tribunal is required to assess sexual motivation from the totality of the evidence, ie where the conduct in question consisted of repeated, unsolicited and explicitly sexual interactions which had no conceivable professional justification, the inference of sexual motivation is a strong one and the only reasonable one in the circumstances;
      - it is insufficient for the tribunal to rely on an alternative explanation of the registrant trying to provoke a reaction and this fails to engage with its inherently sexual nature. The two are not mutually exclusive (ie the conduct could be sexually motivated and intended to provoke a reaction).
  - tribunals should not underestimate the seriousness of this misconduct and its implications for public protection and the public interest. Tribunals should:
    - consider the cumulative gravity of the conduct that it finds proved, and its reasoning at sanction stage should reflect the breadth and persistence of the misconduct;

[2] in this case repeated unsolicited sexualised interactions with junior colleagues (at least one of which was found to be sexually motivated) and discriminatory/offensive remarks, over a sustained period.
[3] in this case the registrant made a remark about the size of a woman's chest, but the tribunal concluded that there was nothing to suggest it was sexual in nature

- when recognising that the behaviour is "attitudinal", adequately evaluate the nature and significance of that attitudinal failing when determining the appropriate sanction;
- ensure that the weight accorded to insight and remediation at the sanction stage is appropriately calibrated to its earlier findings on those matters and risk of repetition.

Professional Standards Authority for Health and Social Care v The General Dental Council (Rahman)

Impairment and Sanction

- When assessing impairment and sanction, the tribunal should take into account the underlying determination of professional misconduct by the regulatory body, not merely the failure to disclose it. General Medical Council & PSA v Grajn - [2026] EWHC 1157 (Admin)

- Tribunals should be cautious of stating that a complainant suffered from "psychological harm" [as a result of the registrant's actions] in cases where there was no such allegation before them, no expert evidence or relevant reasoning to support the conclusion and the registrant was unfairly denied the opportunity to respond in evidence and submissions. Thampi v General Medical Council [2026] EWHC 1036 (Admin)

- Where a tribunal finds that the registrant made racially motivated comments which connote a deep seated and harmful personality or professional attitudinal issue (which is a feature of a case that can make the conduct more difficult to remediate[4]), it does not necessarily follow that any such attitudinal concern is irremediable. A tribunal should go on to examine whether the attitudinal concern is in fact entrenched, longstanding, or irremediable. Grzelczak v General Dental Council [2026] EWHC 890 (Admin)

- When a tribunal loses sight of the broader context in treating incidents as self-contained this can undermine its evaluation of seriousness and ultimately its decision on sanction. The tribunal should assess the cumulative gravity of the conduct it found proved. The reasoning at sanction stage should reflect the breadth and persistence of the misconduct. Professional Standards Authority for Health and Social Care v The General Dental Council (Rahman)

- The Guidance[5] states that "*there may be exceptional circumstances to justify a tribunal taking no action*", however, this does not provide a threshold of exceptional circumstances to justify a decision not to take any action; it should simply be used as a reminder that such an outcome is unusual following a finding of impairment. The tribunal must reach its own view on the facts of each case

[4] Guidance for MPTS Tribunals, Section three: MPT hearings: Paragraph 109
[5] Guidance for MPTS Tribunals, Section three: MPT hearings: Paragraph 13

and should be careful not to put exceptionality at the forefront of its reasoning[6] Thampi v General Medical Council [2026] EWHC 1036 (Admin)

- In cases where there is unambiguous evidence that suspension will result in the registrant's employment being terminated, the tribunal should recognise the clarity of this evidence in weighing the registrant's interests and the public's interest. Failure to do this means that proportionality is weighed against a hypothetical not actual situation and constitutes a failure to properly apply the principle of proportionality. Thampi v General Medical Council [2026] EWHC 1036 (Admin)

IOTs

- A reiteration of the learning points from the case of *NMC v Persand*[7]:
  - When a tribunal is considering an interim order for protection of the public:
    - before an order is imposed, there must be evidence of risk that enables the tribunal properly to reach that conclusion;
    - if protection of the public can be achieved by conditions, then it's difficult to see how it will be necessary to suspend. Tribunals should clearly set out why, and based on what evidence, conditions will not provide the necessary protection the public;
    - the evidence whether a registrant has or has not been working in their professional life without issue (and for what length of time) is likely to be a significant factor when determining whether suspension is "necessary" for the "protection of the public".
  - When a tribunal is considering an interim order in the public interest:
    - a reminder that the threshold is also high;
    - the tribunal should assume that the public have knowledge of the full facts of the case and will form balanced and carefully considered opinions, taking into account the arguments and evidence put forward by both parties;
    - the tribunal should again explain why conditions would not be sufficient and why on public interest grounds there should be a suspension;
    - written reasons should be an objective description rather than emotive descriptions of disputed facts.

Nursing And Midwifery Council v Pestano [2026] EWHC 1412 (Admin)

Kind regards
Tribunal Development

[6] ie in this case the tribunal's opening sentence of their rationale stated that "the tribunal did not consider there to be exceptional circumstances in this case that justified it taking no action"

[7] Nursing and Midwifery Council v Persand [2023] EWHC 3356 (Admin): in Appeals Circular A04/24

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