MPTS Medical Practitioners Tribunal Service

Appeals Circular A05/26

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General Medical Council v Tripathi [2026] EWHC 1653 (Admin)

Learning points

- Tribunals should ensure that they are using and referring to the correct version[1] of the Guidance for MPTS Tribunals ('Guidance') in their determinations.
    - When a party refers to a section of the Guidance in their submissions, tribunals should reference this or give reasons why they consider that it does not apply.
- When assessing whether the registrant's behaviour caused serious harm[2] this is not limited to physical harm, and may be psychological.
- Even when a registrant demonstrates some or developing insight, the tribunal must still consider whether any remaining real risk of repetition is significant, in light of the seriousness of the conduct that may be repeated:
    - when assessing whether there is a significant risk of repetition[3], this requires consideration of both the likelihood of the conduct being repeated, but also the severity and impact if such conduct were to be repeated.

[1] Tribunal guidance version history - MPTS
[2] Which may be a factor pointing to erasure, as in 109 (c) of the February 2024 SG and Guidance for MPTS Tribunals, Section 3, Step 3, Paragraph 57(b)
[3] As in 97(g) of the February 2024 SG; this terminology is mirrored in the Guidance for MPTS Tribunals, Section 3, Step 2d,Paragraph 116

Background

This was an appeal brought by the General Medical Council ('the GMC') pursuant to section 40A of the Medical Act 1983 against a Medical Practitioners Tribunal's ('the tribunal's') decision dated 22 August 2025 to suspend Dr Tripathi's ('Dr T') registration for a period of ten months with immediate effect and to direct a review hearing.

Dr T worked as a locum GP. It was alleged that on 24 August 2023 he performed an examination of a patient ('Patient A') which was not clinically indicated and during the examination, whilst her seven-year-old son was present, he:

- displayed aggressive body language, turned off the light, failed to use a hygiene cover on the examination couch, failed to obtain consent, and locked the door;
- lifted Patient A's top, pulled down her bra exposing her right breast and nipple without explanation or consent, touched both breasts and nipples with his stethoscope, almost touched her pubic bone, pushed the top of her glutes instead of checking the kidney area where she reported pain, and attempted to lift her trousers without consent or explanation;
- did not use gloves, despite their availability and checked lymph nodes under Patient A's arms (without her top), at which point she refused further touching.

The GMC provided an expert report which found that an examination in this way was not clinically indicated.

At the tribunal hearing, Dr T accepted that he had examined Patient A's thyroid and abdomen but denied the alleged actions had occurred. The tribunal accepted Patient A's account of events as more plausible and found all of the allegations proved including that the examination was sexually motivated (and opportunistic) and amounted to sexual harassment under section 26 of the Equality Act 2010, as Patient A's dignity was violated, she felt degraded and his actions created an offensive and intimidating environment.

When making its finding of impairment, the tribunal accepted that the conduct was a one-off event that had not occurred before or since and noted that whilst remediation of the sexual misconduct was theoretically possible, it was difficult to demonstrate, especially since Dr T's conduct was attitudinal. The tribunal held that Dr T had limited insight and that there was therefore a real risk of repetition. The found that Dr T's fitness to practise was currently impaired on the ground of public protection, the need to maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for the members of the profession.

Grounds

The GMC appealed on the following four grounds and invited the Court to quash the sanction and substitute it for one of erasure:

- the Tribunal misdirected itself by referring to, and considering, a previous outdated version of the Sanctions Guidance (SG) and therefore failed to consider

the point that the conduct which they themselves had identified was difficult to remediate, was a factor pointing towards erasure (Ground One).

- the Tribunal failed to consider paragraph 109(c) of the SG regarding the gravity of the misconduct and whether it caused "serious harm to others" which was again, a factor pointing towards erasure (Ground Two).

- the Tribunal erred in its approach to the issue of “significant risk of repetition" under paragraph 97(g), considering only the likelihood of repetition rather than both likelihood and impact if such conduct were repeated (Ground Three).

- the Tribunal failed to give proper weight to maintaining public confidence and professional standards; erasure was the appropriate response to the facts and impairment findings (Ground Four).

Judgment

The appeal was heard by Mr Justice Richards.

- Ground One – The GMC submitted that the tribunal used the previous version of the SG[4], instead of the correct version, which had been in place since February 2024[5] and which was referred to by the GMC.

  - in its decision on sanction, the tribunal quoted the old versions of paragraphs 97(a) (suspension) and 109(a) (erasure), both of which refer to misconduct “fundamentally incompatible” with continued registration. The 2024 SG refers to conduct which is “difficult to remediate” [28]. The GMC alleged that this error was material, as the tribunal failed to give proper or adequate attention to the difficulties of remediating sexual misconduct and to the guidance offered about this.

  - Mr Justice Murray noted that whilst the “SG is only guidance and is not to be followed in the same way as a statute might be”, it was of concern that the tribunal referred to an outdated version of the test/guidance within their determination and that the “test has changed, and it cannot be said that the change is merely cosmetic or drafting” [33]. Whilst Dr T argued that from reading the determination as a whole, the tribunal had applied their minds to the correct questions and determined that Dr T’s misconduct was not incapable of being remedied (albeit such remediation was difficult to demonstrate) [32], the Judge concluded that as the tribunal applied the wrong test and had not demonstrated that they properly considered the correct questions, their decision was wrong and unjust [34] and therefore this ground succeeded.

[4] https://www.mpts-uk.org/cdn/mpts-documents/06_-dc4198-sanctions-guidance---16th-november-2020_pdf-84606971.pdf - old incorrect version
[5] https://www.mpts-uk.org/cdn/mpts-documents/07_-dc4198-sanctions-guidance-5-february-2024_pdf-104619554.pdf - correct version

- Ground Two – the GMC submitted that the tribunal failed to consider paragraph 109 (c) of the SG which states that erasure may be appropriate where the registrant does "serious harm to others (patients or otherwise)".

  - the tribunal found that Dr T's actions made Patient A feel that her dignity was violated, she felt degraded and it created an offensive and intimating environment. At the impairment stage, it concluded that the actions deeply affected Patient A, leaving her traumatised and reluctant to seek medical help even from other practitioners [37]. Despite this, and the GMC expressly relying on it in its submissions, the tribunal failed to refer to paragraph 109 (c) or give any reasons why they considered that it did not apply.

  - Mr Justice Richards stated that the SG is not limited to physical harm; serious harm can include psychological harm. He also disagreed with Dr T's submission that the findings of the tribunal as to the violation and degradation felt by Patient A were incapable of justifying finding of serious harm [41]. He noted that the tribunal did not demonstrate why they concluded that the harm in this case was not serious and there was no reason why they omitted paragraph 109 (c) from their determination [42]. This was a serious procedural irregularity, therefore this ground also succeeded.

- Ground Three - the GMC argued that the tribunal did not correctly consider and apply paragraph 97(g) of the SG which states that suspension (as opposed to erasure) may be appropriate where the doctor has insight *and* does not pose a "significant risk" of repeating behaviour.

  - At the impairment stage, the tribunal determined that Dr T had "limited insight". However, at the sanction stage, it determined that having "some insight" was sufficient for the purposes of paragraph 97 (g) and noted that Dr T "would have the opportunity to reflect on the decision with a view to developing further insight" The GMC argued that this was insufficient to support a finding that Dr T had insight [45].

    Dr T submitted that nothing in 97(g) requires full insight, and that the tribunal had already found that Dr T had developing insight [49].

  - As to significant risk of repetition referred to in paragraph 97(g), at the impairment stage the tribunal found that there was a "real risk of repetition" and that the likelihood of repetition was not found to be sufficiently low so as to be described as "highly unlikely". However, at the sanction stage the tribunal decided that there was not a "significant risk" of repetition [46].

  - The GMC referred to the case of GMC v Khetyar[6] [47], in which the Judge stated that there are two limbs of this risk assessment:

    - the probability of repetition *and*
    - the gravity of the harm which may result

[6] General Medical Council v Khetyar [2018] EWHC 813 (Admin) at Para 52.

and that "*depending on the seriousness of the conduct in question, a quantitatively small but nonetheless real (not fanciful) chance of recurrence might be significant*". The GMC submitted that the tribunal had only considered the likelihood of the conduct being repeated, and not the severity and impact if it were to be repeated.

- The case of Khetyar was later considered by Mr Justice Mould in Konathala[7], and Mr Justice Mould agreed with the judge's analysis in Khetyar, stating that any real risk of repetition found by the tribunal must in this case be regarded as significant, and the fact that the behaviour was opportunistic is immaterial [48].

  Mr Justice Richards noted that in the present case, that there was nothing within the tribunal's determination to suggest that it had considered "the severity of the repeated behaviour if it were to be repeated, together with its impact". He said that "a real risk might be significant, depending on of what that risk is". He concluded that he could "see no reason why a real risk of the repetition of such conduct might not be regarded as significant by the Tribunal" and if the tribunal's finding was that the risk wasn't significant, they should have demonstrated that and their consideration of it through their determination [50]. For the above reasons, Ground Three also succeeded.

- Ground Four - the GMC submitted that the tribunal failed to give proper and adequate weight to the need to maintain public confidence and/or professional standards and that the only appropriate sanction should have been one of erasure [52].

  - The GMC pointed to the parallels of Dr T's case and the case of Konathala; both were opportunistic but a one-off sexually motivated and clinically unwarranted examination of a patient, with no previous complaints and a registrant of good character. In Konathala, the Judge substituted the sanction of suspension for one of erasure [52].

  - However, Mr Justice Richards noted that each case needs to be determined on its own facts [59] and that whilst there were serious irregularities as outlined above, he could not say that the tribunal erred in finding that erasure was not justified [60].

As grounds one to three succeeded, Mr Justice Richards allowed the appeal, quashed the decision on sanction and remitted the case back to a differently constituted tribunal to consider the issue of sanction.

Kind regards

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[7] GMC v Konathala [2025] EWHC 1550 (Admin) at paras 91-94 (covered in quarterly circular A06/2025)