MPTS Medical Practitioners Tribunal Service

Appeals Circular A06/25

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Learning points from recent appeals

Facts

- In considering whether to make a finding of no case to answer[1], Galbraith[2] sets out a two-limbed test. Under the first limb, if there is no evidence that the [fact(s)] alleged took place, there is no difficulty; the case should be stopped. However, the difficulty arises under limb two, where there is some evidence, but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence. Under the second limb:
  - the tribunal is empowered to consider whether the [GMC]'s evidence is too inherently weak or vague for any sensible person to rely on it;
  - the tribunal must however, not fall into the trap of bringing forward the evaluative function which it would have at the end of all the evidence in the case. The task is to decide whether the charge *could*, not whether it *would*, be made out (*para 15 of R (Husband) v General Dental Council [2019] EWHC 2210 (Admin)*).

Metropolitan Police Commissioner, R (on the application of) v Police Misconduct Panel [2025] EWHC 1462 (Admin)

- There is no absolute rule that knowledge of prejudicial information is fatal to the fairness of proceedings. Rather, the test is whether the risk of prejudice is so

1 In accordance with Rule 17(2)(g) of the Fitness to Practise Rules 2004
2 R v Galbraith [1981] 1 WLR 1039.

grave that no direction [by the trial judge] could reasonably be expected to remove it (*Montgomery v. HM Advocate [2000] 1 A.C. 641; R (Mahfouz) v. General Medical Council [2004] EWCA Civ 233, at [22]).* Moodliar v General Medical Council [2025] EWHC 913 (Admin)

- In cases of harassment:
  - when determining whether a remark was racist, this is an objective test. A remark can be objectively racist even though the person to whom it is uttered may not take offence, or may not perceive it to be motivated by hostility or prejudice;
  - unlike under the Protection from Harassment Act 1997 (which requires a course of conduct), under the Equality Act 2010 (s26), harassment can be made out on a single instance of conduct.

General Medical Council & Professional Standards Authority v Gilbert [2025] EWHC 802 (Admin)

- Medical evidence might be such as to negate culpability (*see Bar Standards Board v Howd [2017] EWHC 210 (Admin)* where inappropriate and at times offensive behaviour was a consequence of a medical condition), but the condition needs to explain the conduct, ie there needs to be a link between the condition and the critical objectionable features of the conduct. Husain v Solicitors Regulation Authority [2025] EWHC 1170 (Admin)

Impairment and Sanction

- A tribunal should form its own view, within the bounds of reasonableness, as to whether fellow members of the public and wider profession would find the proven conduct deplorable (and consequently constituting serious misconduct). This is "a kind of jury question" about which reasonable people may reasonably disagree.

- There are degrees of misconduct in a spectrum and within that spectrum there must be some room for conduct that is not serious, even if it is sexual harassment. One must be careful not to overstate the relevance of the Equality Act 2010; it is not a trump card leading to an automatic finding of serious misconduct, even less so automatic erasure.

- As to risk of repetition:
  - it is acceptable for a tribunal to measure risk of repetition by, alongside other relevant considerations, the improbability that the practitioner would throw away their career or expose themselves/their family to shame. An absence of risk of repetition does not have to be driven wholly by remorse, shame or self-loathing about past conduct;

- assessment of risk of repetition, insight, and remediation are separate concepts, but they often overlap. There is no requirement for the assessment of risk to come last in the chain of reasoning.

General Medical Council v Shah [2025] EWHC 899 (Admin)

- When an individual appears before a tribunal and admits a breach of standards, it is also an acknowledgement of responsibility and should operate to the credit of the individual[3], it shows a recognition of the failure to meet the standards set to protect the public interest and maintain confidence in the profession. Such a recognition may therefore support the lack of future risk of repetition. Taylor v The Bar Standards Board [2025] EWHC 1029 (Admin)

- Where conduct is capable of imperilling patient safety (but does not in fact do so[4]), this capability is an aggravating feature and should be referred to by the tribunal in its determination on sanction. General Medical Council & Professional Standards Authority v Gilbert [2025] EWHC 802 (Admin)

- It is not beyond the bounds of reasonable judgment for a tribunal to regard a registrant's breach of provisions in the relevant professional standards of practice[5] as increasing the seriousness of misconduct and being seen as an aggravating feature. Mitchell v Nursing and Midwifery Council [2025] EWHC 1496 (Admin)

- The fact that a registrant was subject to interim conditions is of no evidential value to the tribunal when considering whether substantive conditions are workable and would protect the public. This factor therefore should not inform or comprise any part of the tribunal's reasoning[6]. Banks v Social Work England [2025] EWHC 1086 (Admin)

- Tribunals should be cautious of 'unsupported wishful thinking that given more time the registrant might develop insight'.[7] For example, it may be contradictory to state that the misconduct is capable of remediation, where the tribunal has previously stated that it has concerns regarding the registrant's underlying attitudinal issues and there is no evidence to suggest that meaningful insight or

3 See also Para 25(a) of the SG: "The following are examples of mitigating factors. a) Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it. This could include the doctor admitting facts relating to the case"
4 ie where the misconduct took place during the course of operations or other clinical activities where the (colleague) victim may have been distracted from patient care due to the conduct.
5 In this case the NMC Code but for doctors, physician associates and anaesthesia associates, Good Medical Practice.
6 This is in line with Para 22 of the SG: "The doctor may have had an interim order to restrict or remove their registration while the GMC investigated the concerns. However, the tribunal should not give undue weight to whether a doctor has had an interim order and how long the order was in place. This is because an interim orders tribunal makes no findings of fact, and its test for considering whether to impose an interim order is entirely different from the criteria that medical practitioners tribunals use when considering an appropriate sanction on a doctor's registration"
7 Para 40 of Professional Standards Authority v NMC & Judge [2017] EWHC 817 (Admin)

remediation was likely to develop Professional Standards Authority for Health and Social Care v Nursing and Midwifery Council (Shah) [2025] EWHC 1215 (Admin)

- When considering whether suspension is an appropriate sanction, Paragraph 97 of the Sanctions Guidance ('SG')[8] identifies factors that may indicate that suspension may be appropriate.

  - However, Paragraph 97(g) is concerned with whether the registrant can reasonably and properly be said to have gained insight into the behaviour which constitutes their misconduct. Where the tribunal has already made a finding that a registrant has shown only limited insight into their misconduct, that tribunal then stating that they could not discount the possibility of the development of further and full insight does not provide a reasonable and proper basis for concluding that Paragraph 97(g) of the SG is present

  - As to the second question (significant risk of repetition) – any real risk of repetition must, on any proper and reasonable assessment, be regarded as significant in a case where very serious misconduct has been found. This reiterates *General Medical Council v Khetyar [2018] EWHC 813 (Admin) at [52]*: "Depending on the seriousness of the conduct in question, a quantitatively small but nonetheless real (not fanciful) chance of recurrence might be significant";

  - when assessing risk of repetition of sexually motivated behaviour, it is immaterial that the actions were found to be opportunistic as opposed to predatory. Where there is a lack of any innocent explanation for the behaviour and no real insight, it is wrong for the tribunal to attach weight to the fact that the behaviour had been opportunistic in nature.

General Medical Council v Konathala [2025] EWHC 1550 (Admin)

- In deciding whether to take into account a previous period of interim [or immediate] suspension when considering duration of sanction, there are two kinds of [substantive] suspension[9]: 1) Where the period of suspension is required to mark the gravity of the misconduct 2) Where the period of suspension is required to return the practitioner to fitness to practise.

  - If the case falls into the first category, it may be appropriate to take into account the periods of 'interim' suspension, but these periods of interim suspension have little or no relevance where a case falls into the second category;

8 97(g):"The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour"

[9] Identified in the case of Adil v GMC [2023] EWHC 797 (Admin) – this case concerns a previous interim order, but the judge in Ahmedsowida has applied the principles to an immediate order.

- where a case falls into both categories, no credit should be given to the period of immediate suspension, as this would undermine the public interest due to the second category being present.

Ahmedsowida v General Medical Council [2025] EWHC 823 (Admin)

Kind regards
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