MPTS Medical Practitioners Tribunal Service

Appeals Circular A07/25

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Learning points from recent appeals

Facts

- When assessing an allegation of unlawful direct discrimination[1], the tribunal should clearly set out the two stages of the test[2]:
  - **Stage one:** where, on the balance of probabilities, there are facts from which the tribunal could conclude that an unlawful act of discrimination has taken place, in the absence of an adequate explanation, the tribunal should make the finding of unlawful discrimination. If the person alleging discrimination cannot discharge that burden, the claim of discrimination is bound to fail;
  - **Stage two:** the burden then moves to the person defending the allegation to explain the alleged discriminatory treatment and satisfy the tribunal that the protected characteristic played no part.

  Agoe & Ali v General Medical Council [2025] EWHC 2075 (Admin)

- Whilst the tribunal is not required to determine every satellite issue, and is entitled to focus on the central issue (in this case, whether a registrant slapped a patient), it should set out which of the disputed facts it has found proven and should attempt to resolve or make findings on the key sub issues in the allegation eg how many times the patient was slapped and where on the body this was. It should also explain which of the various accounts it accepted and why. The tribunal should give an explanation for why it disbelieved the registrant on the

[1] that "A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others", pursuant to s13 of the Equality Act 2010.
[2] Pursuant to s136 of the Equality Act 2010.

crucial issue of the alleged assault, namely the basis on which they found them unreliable or incredible. James v General Medical Council [2025] EWHC 2049 (Admin)

- Where the tribunal record legal advice, for example that it could take into account the registrant's good character both in considering whether it is more likely than not that they were telling the truth (credibility) and whether they were likely to have behaved in the manner alleged (propensity), the tribunal should consider these issues, and confirm what weight they were afforded, when it assesses the evidence on the allegation. There should be an explanation in the determination as to what, if any, weight the tribunal placed on this and why it nonetheless rejected the registrant's evidence. James v General Medical Council [2025] EWHC 2049 (Admin)

Impairment and Sanction

- In cases where a registrant expresses a desire to be erased from the registers, the tribunal should still consider whether erasure is a necessary step and may still conclude that a period of suspension could adequately promote the aims of the overarching objective. Myhill v General Medical Council [2025] EWHC 1744 (Admin)

Review hearings

- A registrant may call witnesses in support of their case[3], however this is not without limitation – the witness evidence must relate to the "practitioner's fitness to practise…[4]", and it is for the tribunal conducting the review hearing to determine whether the proposed evidence is admissible; that is, whether it would be fair and relevant to the case to be decided[5]. At a review hearing, the question to be determined is whether the registrant's fitness to practise "is impaired". Where the registrant wants to question the witnesses about the fairness of the original hearing, these are not questions relevant to the review that the tribunal has to determine.

- Where there was a previous finding of clinical misconduct and the registrant perceives difficulty in accepting the earlier findings in order to then demonstrate the required insight, reflection and remediation:

    - this may reveal an inability on the registrant's part to allow that there might be a different view as to how they can exercise what they describe as their 'freedom of clinical opinion', and to appreciate that merely deploying the arguments of those who agree with them might not demonstrate insight and reflection;

[3] Pursuant to Rule 22(d) of the GMC (Fitness to Practise Rules) 2004
[4] Rule 22(c) (ii) of the GMC (Fitness to Practise Rules) 2004
[5] Rule 34(1) of the GMC (Fitness to Practise Rules) 2004

- it does not amount to a disproportionate interference with their right to freedom of expression for a tribunal, having considered the overarching objective, to impose a [further] period of suspension during which the registrant might reflect on their views in the light of other opinions, or consider whether there might be a need to provide information about limitations or risks of certain treatment.

Myhill v General Medical Council [2025] EWHC 1744 (Admin)

Kind regards
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