MPTS Medical Practitioners Tribunal Service

Appeals Circular A12/21

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Learning points from recent appeals

Applications to Adjourn

- A reminder of the principle in *GMC* v *Hayat* that a tribunal should consider whether the medical evidence relied on in support of an application to adjourn, is of the required standard:
  - there must be evidence of unfitness to participate in the hearing
  - the evidence must identify with proper particularity the individual's condition and explain why that condition prevented their participation in the hearing and
  - that evidence should be unchallenged.
  El-Huseini v General Medical Council [2021] EWHC 2022 (Admin)

Proceeding in absence

- A reminder of the principle in *GMC* v *Adeogba* (quoted in *GMC* v *Hayat*) that when considering whether to proceed in a practitioner's absence, a tribunal's decision must be guided by the context provided by (all three limbs of) the overarching objective to protect the public. However, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance; fairness includes fairness both to the medical practitioner and to the GMC. **El-Huseini v General Medical Council [2021] EWHC 2022 (Admin)**

Facts

- When making factual findings, a tribunal should have regard to a practitioner's case as expressed in the materials which exist, but they are under no obligation to

sift through large quantities of unindexed or uncategorised documentation to determine what, if any, relevance it might have. **El-Huseini v General Medical Council [2021] EWHC 2022 (Admin)**

- Where possible, factual findings should be based on objective facts as shown by contemporaneous documents. However, corroborating documentary evidence is not always required or available. Where the case turns upon which oral account to accept, the approach of first considering documentary evidence before assessing the credibility of a witness's oral account has less significance **Byrne v General Medical Council [2021] EWHC 2237 (Admin)**

- Quoting from *O* v *Secretary of State for Education* (which referred to/considered *Re B* and other relevant authorities), confirmation of the principle that there is only one standard of proof in civil and regulatory cases and that is proof that the fact in issue more probably occurred than not. The seriousness of an allegation does not of itself require more cogent evidence. The inherent probability of the relevant conduct is a matter which can be taken into account when weighing the probabilities and in deciding whether the event/conduct occurred; this goes to the quality of evidence. **Byrne v General Medical Council [2021] EWHC 2237 (Admin)**

- A reminder of the principle in *Southall* v *GMC*, that where cases are concerned with comparatively simple conflicts of evidence, tribunals should give adequate reasons, in general, as to whose evidence has been rejected and why. However, where the complexity or nuance of the factual issues arising require it, tribunals should ensure that they give sufficiently explicit and distinct reasons for rejecting the practitioner's evidence. **Byrne v General Medical Council [2021] EWHC 2237 (Admin)**

Impairment and Sanction

- Where a practitioner does not give any direct evidence to a tribunal of their insight into their failures, then there is nothing to prevent a tribunal reaching a conclusion that there is a lack of insight. **El-Huseini v General Medical Council [2021] EWHC 2022 (Admin)**

Kind regards
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