MPTS Medical Practitioners Tribunal Service

Appeals Circular AO4/25

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Learning points from recent appeals

Facts

- In cases where a witness's account directly contradicts a registrant's, the tribunal should:
  - avoid considering each charge individually in a silo;
  - assess the overall reliability and credibility of the witness and whether there were factors present which should cause their evidence to be viewed with caution, eg where on the basis of contemporaneous objective evidence the tribunal found that a witness gave an incorrect account, this should not be ignored when the tribunal is considering whether it could rely on that witness's evidence in respect of the other allegations;
  - explain why it had preferred the account given by the witness to the account given by the registrant. The reasons given have to be rational and based on weighing up all legally relevant considerations, including the tribunal's assessment of the witness's general reliability and credibility, taking all relevant factors into account.

- Where a witness answers 'no comment', the tribunal chair should instruct the witness to either answer the question or make clear that they're claiming their right not to incriminate themselves.

- Whilst witness statements are produced earlier in time and therefore fresher in witnesses' memories, common law attaches a high value to cross-examination as the best available tool for revealing where the truth lies, especially in cases where a practitioner challenges the veracity of the evidence against them. Where in oral evidence, a witness directly contradicts and effectively abandons an allegation made

in their witness statement, it will generally be inappropriate for the tribunal to place any reliance on the relevant part of the [witness] statement.

Hindle v The Nursing and Midwifery Council [2025] EWHC 373 (Admin)

- A reminder that whilst the standard of proof is the 'balance of probabilities' this does not mean that a tribunal can properly find an allegation proved based on its own speculative guess as to what more probably happened[1]. Instead, it will be the duty of the tribunal to find an allegation 'not proved' unless the party making the allegation has produced cogent evidence which is sufficient to satisfy the tribunal, on the balance of probabilities and after having considered the totality of the evidence before it, via careful and thorough forensic analysis, that the alleged conduct occurred. Hindle v The Nursing and Midwifery Council [2025] EWHC 373 (Admin)

  - Case law[2] has stated that although there is a single civil standard of proof on the balance of probabilities, it is flexible in its application.

    - there is no authority for the proposition that a tribunal must direct itself on the flexible nature of the standard of proof when allegations of serious misconduct are made;
    - the flexibility is not in the standard of proof, but its application in certain circumstances, ie where serious allegations are made. The flexibility arises from the inherent improbability of the event or fact. It is that fact-specific improbability, not the mere fact of a serious allegation, that calls for a flexible approach;
    - the improbability shifts the position to which evidence must be applied in the process of proof, from a neutral or even starting point, down the sliding scale of likelihood to a position of inherent improbability. This may well require cogent or strong evidence to 'overcome' that fact-specific improbability.

  Demanya v The General Medical Council [2025] EWHC 247 (Admin)

- When a Legally Qualified Chair gives legal advice to the tribunal on how to approach analysis of evidence, there is no mandated set of directions or checklist of factors. Which factors are relevant is highly fact contingent. What is crucial is to be alive to the legal needs of the case before the tribunal and tailor the directions or self-directions accordingly. Demanya v The General Medical Council [2025] EWHC 247 (Admin)

- Article 8[3] and Article 9[4] of the ECHR are qualified rights. Where a practitioner alleges that, as a matter of religious belief and conviction, they should be able to administer non-criminal chastisement on their own children in the privacy of their own home, the interference with this is in the pursuit of legitimate aims pursued by the GMC, namely the interests of public safety and the protection of health and the protection of the rights of children.

[1] Re A (A Child) (Fact-finding: Disputed findings) [2011] EWCA Civ 12, at [26]
[2] R(N) v Mental Health Review Tribunal (Northern Region) [2006] QB 468 paras 62-63
[3] Right to respect for private and family life
[4] Freedom of thought, conscience and religion

- A tribunal is entitled to treat disgraceful or disreputable conduct as amounting to physical abuse and not fitting with professional practice, even if the conduct is not criminal.

Dr ABC v The General Medical Council [2025] EWHC 242 (Admin)

Impairment and Sanction

- The civil court's conclusion may be treated as prima facie proof of the matter alleged, but the practitioner must be permitted to challenge the correctness of the conclusion and to call evidence if desired[5]. Issues raised in civil court conclusions should have been explored with the practitioner before reliance is placed on this factor at the misconduct and impairment stage.
- It is wrong for a tribunal to rely upon their view that the majority of the public would not condone what a practitioner did. When assessing whether conduct amounts to statutory misconduct, it is for the tribunal to form their own evaluative judgment as to whether the practitioner's actions fell so far below the standards to be expected of a doctor as to amount to misconduct in the statutory sense. The correct question is whether a finding that the practitioner's fitness to practise is not impaired would undermine public confidence or undermine the maintenance of proper standards and conduct for members of the profession.
- It is important not to conflate a tribunal's respect for the underlying cause (ie climate emergency) with support for deliberate and unlawful misconduct (repeatedly defying a court order, resulting in imprisonment). The motivations that underpinned the practitioner's conduct undoubtedly have a significant role to play in considering whether the practitioner's fitness to practise is impaired, but they do not convert that which is otherwise obviously misconduct into something less.

Benn v The General Medical Council [2025] EWHC 87 (Admin)

- The seriousness of a criminal offence as measured by the sentence imposed by a Crown Court (and by analogy a Magistrates Court) is 'not necessarily a reliable guide to its gravity in terms of maintaining public confidence in a particular profession'.[6] A tribunal may therefore regard matters as a very serious offence, notwithstanding the suspended nature of the term of imprisonment. Adebayo v The Nursing and Midwifery Council [2025] EWHC 315 (Admin)

- Where a tribunal makes a material conclusion that there are ongoing concerns with lack of insight into dishonest behaviour because of inconsistencies between the practitioner's written submissions and what they say at the tribunal hearing, the tribunal must identify what those inconsistencies are. Sengupta v General Medical Council [2025] EWHC 123 (Admin)

- An accused professional has the right to advance any defence he or she wishes and is entitled to a fair trial without facing the jeopardy, if the defence is disbelieved, of further charges or enhanced sanction[7], however this cannot apply to giving false evidence on oath to a coroner. Those are inquisitorial proceedings convened to

[5] This is the position following GMC v Spackman [1943] AC 628

[6] Low v General Osteopathic Council [2007] EWHC 2839 (Admin) at [20].

[7] General Medical Council v Awan [2020] EWHC at paras 37-38

establish the facts about a person's death and by making false representations to the coroner, a practitioner is obstructing the determination of the truth about the death [of a patient]. Demanya v The General Medical Council [2025] EWHC 247 (Admin).

- In sexual misconduct cases, the notion that different attitudes and standards applied at the time of the conduct should play no part in the decision on outcome. The fact that the culture existing at that time may have allowed such conduct to go unchecked, in a way that it hopefully would not now, in no way mitigates what the registrant did. Greater recognition of the seriousness of such conduct today cannot and does not minimise the serious nature of the misconduct. The Commissioner of Police of the Metropolis, R (on the application of) v Police Misconduct Tribunal [2025] EWHC 93 (Admin) and O'Connor, R (on the application of) v Panel Chair (Police Misconduct Panel) [2025] EWCA Civ 27

- A Tribunal's statement that an outcome would be disproportionately harsh does little to assist an understanding of its reasoning as to the appropriateness of the sanction. O'Connor, R (on the application of) v Tribunal Chair (Police Misconduct Tribunal) [2025] EWCA Civ 27

Review hearings

A reminder that, in review hearings:

- When the order is extended[8], the extension period operates consecutively to the expiry of the previous order ie where an order expires on 13 December 2023, and at a review hearing on 1 December 2023 a 4-month extension is given, the order will expire on 13 April 2024, not 1 April 2024. Professional Standards Authority for Health and Social Care v Health and Care Professions Council & Anor [2025] EWHC 164 (Admin)

- The reviewing tribunal has no power to reopen or 'go behind' previous findings of fact on professional misconduct; it should take them into account and rely on them. If a practitioner seeks to disturb the findings of fact at the original hearing as 'unsound' and introduce fresh evidence in support of this, they must apply to the high court to admit this fresh evidence on appeal. Myhill v General Medical Council [2025] EWHC 474 (Admin)

Kind regards
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[8] Ie conditions to conditions (Medical Act 1983 s35D(12)(c)), suspension to conditions (s35D(5)(c), unless another date is ordered by the tribunal), or suspension to suspension (s35D(5)(a) and s35D (6)).