

Fitness to practise: insight and denials

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Introduction

- What is insight?
- The dilemma: insight vs denial
- The court's approach- two recent cases:
 - *Motala v GMC* [2017] EWHC 2923 (Admin)
 - *Yusuff v GMC* [2018] EWHC 13 (Admin)

What is insight?

- Expressing insight involves demonstrating reflection and remediation
- Indicators of insight:
 - Accepting should have behaved differently (showing empathy and understanding);
 - Taking timely steps to remediate and apologise;
 - Demonstrating timely development of insight during a hearing or investigation.

(see *MPTS Sanctions Guidance (February 2018)* at §45-46)

Relevance of insight?

“Insight is most material to ensure that the doctor has realised that he has indeed gone wrong and therefore will not do anything similar in the future. That is the purpose behind a need to recognise insight. Insight does not seem to me to be really an appropriate way of looking at a situation where there is no danger of any recurrence but there is a concern that there has not been necessarily a full acceptance of the facts which have been alleged against the doctor.”

(per Colins J in *R (Bevan) v GMC* [2005] EWHC 174 (Admin) at [39])

The dilemma

- Acceptance of culpability is not a “*condition precedent*” for insight (see *Karwal v GMC* [2011] EWHC 826 (Admin))

BUT

- A tribunal can, and should, take into account denial when assessing risk of repetition (see, eg., *Irvine v GMC* [2017] EWHC 2038 (Admin))

Recent cases: Motala

*“The central concern about Dr Motala is that he has previously been found to have committed sexual misconduct towards a female patient. The fact that he continues to deny impropriety makes it more difficult for him to demonstrate his insight. But the tribunal should not equate maintenance of innocence with lack of insight. The tribunal were referred to *Karwell v General Medical Council* [2011] EWHC 826 and *Amao v Nursing and Midwifery Council* [2014] EWHC 147 . In my judgment, they acted properly and in accordance with those authorities. As Holroyde J found in [Irvine v General Medical Council \[2017\] EWHC 2038 \(Admin\)](#) , it would have been quite illogical for the tribunal to ignore the fact that the appellant continued to deny the sexual misconduct when weighing up his insight. The fact that they did not regard that as a total bar to demonstrating insight is clear from their reasoning generally.”*

(per Mrs Justice Yip in *Motala v GMC* 2017 EWHC 2923 (Admin) at §[34])

Recent cases: Yusuff

1. The findings of fact are not to be reopened;
2. The registrant is entitled not to accept the findings of the Tribunal;
3. In the alternative, the registrant is entitled to say that he accepts the findings in the sense that he does not seek to go behind them while still maintaining a denial of the conduct underpinning the findings;
4. When considering whether fitness to practise remains impaired, it is relevant for the Tribunal to know whether or not the registrant now admits the misconduct;
5. Admitting the misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it;
6. If it is made apparent that the registrant does not accept the truth of the findings, questioning should not focus on the denials and the previous findings;
7. A want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in looking at impairment.

(per Mrs Justice Yip in *Yusuff v GMC* [2018] EWHC 13 (Admin) at §[20])

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