professional standards authority
for Health and Social Care

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Learning points Bulletin

Our twice-yearly bulletin providing a valuable overview of the volume of learning points we send and the themes we identify.

We share learning points with the aim of helping regulators to improve decision-making. By sharing learning from our scrutiny of decisions, we aim to improve the quality of the fitness to practise Panel outcomes and to drive up standards in decision-making. They are also considered by our Performance Review team in their regular assessments of a regulator's performance. We are in a unique position to see every relevant decision made by the 10 health and social care regulators, and so we're able to more easily highlight issues and identify themes.

Approach to sanction and sufficiency of reasons

Our previous bulletin focused on sexual misconduct, whereas this issue looks at issues with approach to sanction and sufficiency of reasons.

This bulletin will also focus on other themes we are seeing, including:

- failing to consider relevant parts of the Sanctions Guidance;
- failing to provide sufficient reasons where guidance has been departed from;
- decision on sanction cannot be reconciled with the Panel's earlier decision on facts and misconduct; and
- failing to properly explain why a particular sanction was not imposed, when it appears appropriate.

We will also highlight some particularly Good Practice we've identified.

Key statistics: January-June 2025

Determinations received	1,134
Learning points sent	98 (8.6%)
Cases appealed	9 (0.8%)

Statistics: January to June 2025

98
Learning points were sent during this period.

37%
33 related to insufficient reasons and sanction (**37%**) (of these: **10** related to a failure to consider sanctions guidance and **23** related to insufficient reasons).

66%
Of the **nine** appeals lodged during this period, **six** included a ground of appeal relating to insufficient reasons and sanction (**66%**)

Insufficient reasons and sanction

Regulators must provide clear reasons at each stage of the decision-making process, including providing sufficient detail about cases and how they are resolved.

Regulators should make decisions publicly available and include enough information so that a third party with no prior knowledge of the case would be able to fully understand both the basis of the concern and the rationale for the decision.

Historically, this has also been a reoccurring issue we have raised concerns about in our learning points or as a ground of appeal. As outlined above, 33 of the 98 learning points (37%) sent during the relevant period and six of our appeals (66%) have related to this issue.

Case law

The requirement to give clear reasons for regulatory decisions is underpinned by case law.

Proper reasons

In all cases, when setting out their decision, Panels must explain how they have applied the Sanctions Guidance and take particular care to explain any deviation from it. This is important to ensure that the public can understand why certain decisions have been reached.

PSA v GOC & Honey Rose [2021] EWHC 2888 [Admin] outlines a Panel's obligation to uphold public confidence by giving proper reasons for its decision.

The Court emphasised that a failure to provide adequate reasons can amount to a serious procedural irregularity, making a decision unjust and subject to being overturned. This principle is grounded in the need for transparency and accountability in professional regulatory decisions, especially where public trust is at stake.

In this case the Judge found that the panel's conclusion that the registrant no longer posed a risk to the public was not adequately explained and was inconsistent with its own findings of serious misconduct, including dishonesty and lack of insight. The panel were criticised for failing to reconcile its findings of a fundamental breach of duty, serious dishonesty, limited insight and attitudinal failure failings. The Judge stressed that such gaps in reasoning in the decision undermined public confidence and failed to do justice to the seriousness of the case.

PSA v GOC & Honey Rose: paragraph 41

"My task on this appeal is limited. [...] It is to consider whether the FTPC subsequently went wrong to the extent of reaching further determinations it was not properly entitled to reach at all. That might be because the decisions on FtP and sanction are internally illogical or cannot be reconciled with the FTPC's own decisions on facts and misconduct. Or it might be because procedural or other irregularity – error of principle or failures of approach or reasoning – mean the FTPC did not do the case proper justice."

PSA v GOC & Honey Rose: paragraph 81

"[...] the law concerns itself with the duties that expert tribunals have to the public – to ensure that the public can understand why certain decisions have been reached in its name; can be reassured that healthcare professionals on whom they must depend are well and fairly regulated; and can know that the overarching obligation professionals have to deserve the trust the public places in them, and to discharge their professional duties with the interests and safety of patients uppermost, has a secure foundation."

PSA v GOC & Honey Rose: paragraph 83

"This determination discloses multiple and serious irregularities and errors of principle. These may be attributable to an overly disjunctive approach to the successive determinations of fact, misconduct and impairment; or possibly to a faulty understanding or application of the 'personal/public' approach as being distinctive, rather than complementary aspects of the overall public interest. In any event, the determination of impairment, so far is it relates to future public risk, is insufficiently reasoned to deal with what are otherwise gaps of logic and analysis, and internal inconsistencies. It does not make enough sense, on its own terms. So, it does not do justice to the case, and to the public it considered entitled to be 'extremely concerned' by the grave misconduct established."

Similarly in **PSA v GMC & Lingham** [2023] EWHC 967 (Admin) the Court quashed a finding of the Medical Practitioners Tribunal Service on the basis of serious procedural irregularity due to a failure by the panel to give cogent reasons for its decision.

PSA v GMC & Lingham: paragraph 81

A panel must "**expose the relevant analysis so the reader understands what the principal issues were, and what the Panel made of them. This is part and parcel of their function in protecting the public interest.**"

Sanctions Guidance

It is important that determinations give clear and cogent reasons which illustrate that the sanctions guidance has been considered. Where departing from the authoritative steer of the guidance, clear, careful and substantial case-specific justification must be given. A generalised assertion will not be adequate.

The case of **PSA v NMC & Jollah** [2023] EWHC 3331 (Admin) reminds Panels to provide clear case specific justification for why it has imposed a suspension over erasure in cases where factors for erasure were engaged. A generalised sentence stating that a specific sanction would be disproportionate is likely to be considered insufficient, especially in borderline cases. This is because it may suggest that the Panel has not properly understood the gravity of the case before it.

PSA v NMC & Jollah: paragraph 23(7)

"As regards the sanctions guidance provided by the professional body itself, it is an authoritative steer for tribunals as to what is required to protect the public, even if it does not dictate the outcome; it is an authoritative steer as to the application of the principle of proportionality. If the tribunal departs from the steer given by the Guidance, it must have careful and substantial case-specific justification. A generalised assertion that erasure or striking off would be disproportionate and that the conduct was not incompatible with continued registration will be inadequate and will justify the conclusion that the tribunal has not properly understood the gravity of the case before it: see Khetyar §§21 and 22."

Similarly in Honey Rose [2021], in relation to the Sanctions Guidance, paragraph 86, states:

"Any determination of sanction must be approached by regarding the ISG as giving an 'authoritative steer'. When a FTPC decides – as in an appropriate case it may – to depart from the ISG's steer, it has to give clear and case-specific reasons for doing so."

Panels are expected to undertake the following when drafting determinations:

1. **Application of Sanctions Guidance:** Panels must explain how they have applied the Sanctions Guidance and provide detailed reasons for any deviation from it. This ensures that the public can understand why certain decisions have been reached. When departing from Sanctions Guidance, panels must give clear and case-specific reasons for doing so.

2. **Clear Reasons for Decisions:** Panels must provide clear and comprehensive reasons for their decisions to ensure transparency and accountability. This is crucial for maintaining public trust in the regulatory process.

3. **Reconciliation of Findings:** Panels should ensure that their conclusions are consistent with their findings of fact, misconduct, and impairment. Any gaps in reasoning can undermine public confidence and fail to do justice to the seriousness of the case.

4. **Addressing Serious Misconduct:** Panels must adequately address serious misconduct and ensure that their reasoning reflects the gravity of the case. This includes providing clear case-specific justification for the sanctions imposed.

5. **Transparency and Accountability:** Panels must uphold transparency and accountability in their decisions, especially where public trust is at stake. This includes exposing the relevant analysis so that the reader understands the principal issues and the panel's conclusions.

Read through our previous learning points bulletins here

Our appeals

Whilst our nine current appeals are still ongoing, we have recently been successful at the High Court in two appealed cases where at least one of the grounds of appeal related to issues with sanction and insufficient reasons.

PSA v NMC & Shah [2025] EWHC 1215 (Admin)

This was an appeal against a Nursing and Midwifery Council (NMC) Panel decision to impose a 12-month suspension order with a review in respect of a nurse who engaged in sexually motivated harassment towards two female colleagues, which included physical touching and attempting to kiss a colleague on the lips. We were concerned that the Panel had erred in their assessment of the factors relevant to sanction, including failing to identify aggravating factors and wrongly identifying mitigating factors. We were also concerned that the Panel failed to correctly apply the NMC's sanction guidance and to give adequate reasons for why suspension was the appropriate sanction.

The appeal was allowed on all grounds, and the Panel decision on sanction quashed with a fresh decision on sanction remitted back to a new Panel to consider.

The full judgment can be found here

PSA v NMC & Cradock AC-2024-LON-001748 (by way of consent order)

This was an appeal of an NMC Panel decision to impose suspension for 12 months with review in relation to a nurse who locked a young vulnerable child patient in her room without clinical justification. We appealed because we were concerned the Panel did not apply the sanctions guidance, failed to accurately identify aggravating and mitigating factors, and failed to give adequate reasons for the decision. We were also concerned that the NMC did not bring dishonesty charges relating to the Registrant 's lack of candour during the trust investigation.

A Consent Order was agreed between parties with the original decision being quashed and substituted with a striking off order.

The Consent Order can be found here

Find out more about how our power to appeal contributes to public protection

Good practice

We believe it is important to highlight particularly good practice we identify from our review of cases.

Our hope is that our good practice feedback will highlight what the regulators and panels are doing particularly well and what we see as best practice. We hope that it will contribute to a culture of learning and development, continuing to improve the quality of fitness to practise outcomes and to drive up standards in decision-making.

During the period January–June 2025, we have fed back nine good practice points out of the 98 learning points sent. From these nine, five related to Panels providing thorough, well-reasoned explanations for their decisions at each stage of the proceedings. Reasons are a critical part of determinations and they should include enough information so that a third party with no prior knowledge of the case would be able to fully understand the concerns and the rationale for the decision at each stage of the process.

Examples of good practice feedback points we have sent relating to reasons, include:

"The determination went into detail surrounding the context that led to these allegations being made and gave the reader a thorough view of the background to these charges and a helpful basis on why the Panel came to the conclusions they did. We considered this to be a well-reasoned decision that would benefit those reading it."

"We did not have any concerns with the decision to suspend the Registrant and found the determination to be well-reasoned. Particularly, we found their reasons for misconduct and impairment to be succinctly laid out, conveying the seriousness of the misconduct and how this was a fundamental departure from the expected standards."

We have been seeing improvements made by a regulator after we sent learning points outlining our concerns as to panel decisions not providing sufficient background and contextual information to the allegations.

Another example of a good practice point we fed back related to a case where a Panel had adjourned proceedings for further relevant evidence to be obtained which ultimately assisted their decision-making and was important to an issue it had to decide.

Panels should be aware that as a panel of enquiry, they are able to adjourn proceedings if they believe there is evidence that is not before them that would be materially relevant to their decision-making and determination of the charges. Whilst this may cause delay to the case, it is important that panels consider the overarching objective to protect the public.

EDI good practice

We have also identified some cases that we have identified particularly good EDI (equality, diversity and inclusion) practice by panels and regulators.

In one case, a Panel adjourned a hearing following an application made by the Registrant's legal representative on the grounds that the Registrant may have an undiagnosed mental health condition and that this would impact on their ability to properly engage with the hearing. When the case resumed, a report from the Registrant's doctor confirmed that the Registrant had neurodivergent traits and also that this may have had an impact on their conduct. We considered this highlighted good practice as this allowed the Registrant to be properly supported during the hearing as well as providing the Panel with relevant contextual information which impacted on their decision-making.

In the second case, the Panel were referred to the Equal Treatment Bench Book (ETBB) by the Legal Assessor in relation to the consideration of the Registrant's diagnosis of dyslexia. We considered this to be good EDI practice. The ETBB gave an overview of the condition, the impact it may have on court/tribunal hearings and provided guidance on reasonable adjustments which may be made. Whilst it was not evident from the decision whether the Panel had made any reasonable adjustments, we considered that being directed to this information may have been helpful to the Panel in conducting this case.

In the third case, it was submitted that Person A, the alleged victim, had a disability in accordance with the Equality Act 2010. We were impressed with the Panel's sensitive handling of Person A during proceedings and noted the reasonable adjustments that were put in place, which included; that he be accompanied by a witness support officer during his evidence, with the officer seated beside him throughout; that he be checked on every 30 minutes and offered a short break every 30 minutes; that he be permitted to use laminated cards with his support officer to communicate how he was feeling or to request assistance had he felt unable to verbalise this. We considered this ensured fairness and integrity of the proceedings and assisted in facilitating reliable evidence from vulnerable witnesses.

Related material

Tackling sexual misconduct in healthcare

More dates are being added to our series of webinars. Find out more

Lessons from meeting our EDI Standard for regulators

Read examples of good practice identified through the PSA's 2023/24 performance reviews highlighting a range of work the regulators are undertaking to embed equality, diversity and inclusion across their regulatory functions.
Find out more

Section 29 process and guidelines

Read through details of our process and guidelines. Find out more

Sexual misconduct cases

Ros Foster, Partner at Hill Dickinson and one of the solicitor firms we regularly instruct, has prepared **a blog** on some of our recent sexual misconduct appeals and legal principles established. Read the blog here or see page 10.

Fitness to practise appeals update

A round-up of recent appeals and their outcomes covering the period from March to July 2025. Find out more

You might also be interested in

Barriers and enablers to make a complaint to a health or social care regulator

Research commisisoned and recently published to help us better understand the experiences of people who want to complain or who have complained and the potential barriers or enablers they may face.
Find out more

Doctors' sexual misconduct - a turn in the tide?

A guest blog from Dr Emma Yapp and Allegra Boka-Mawete Read the blog

Contact information

Next bulletin due Early 2026

We would welcome any feedback on this publication. If you would like more information, please get in touch with Georgina Tait by email: Georgina.Tait@professionalstandards.org.uk

HILL DICKINSON

Sexual misconduct cases

The last year has seen a series of successful High Court challenges to the way in which regulators and fitness to practise panels have dealt with cases involving sexual misconduct targeted at colleagues of the perpetrator. These cases have considered every stage of the 'prosecution' process, from the handling of non-engaging witnesses to the correct treatment of evidence where allegations have been made by more than one witness and the need for proper consideration of the motivation for the behaviour and identification of the aggravating and mitigating factors.

Learning point 1 – dealing with non-engaging witnesses

The judgment in the case of *Ahmed*[1] was concerned with the regulator's approach to non-engagement by the witness who had been the subject of the behaviour to which the allegation related. The registrant is a pharmacist and the witness was a junior colleague. An incident occurred between them one lunchtime that led the witness to make a complaint about the registrant's behaviour. That complaint was the subject of two investigations and there was evidence by way of text messages exchanged between the two men about the incident. The witness' engagement with the regulator was sporadic but tailed off and he stopped responding. He was not sent the notice of hearing. At the hearing the regulator argued, and the Panel agreed, that it would be "wholly inappropriate" to issue a witness summons in respect of the witness as he was vulnerable. The regulator did not properly open its case but offered no further evidence in respect of the allegations were admitted. The Committee closed the case with no further action. The PSA referred the case to the High Court on the basis that there had been serious procedural irregularities. The appeal was allowed and the matter was remitted for reconsideration.

The judgment tells us that the following steps should have been taken:

1. The Judge commented at the hearing of the appeal that sending a notice of hearing to a non-engaging person may encourage their attendance. In this case the hearing was to be conducted remotely which may have persuaded the witness to participate.
2. Proper consideration should have been given by the regulator and the Committee to the issue of a witness summons. That a witness was the victim of an alleged sexual misconduct did not automatically mean either that they were vulnerable or that summonsing them was inappropriate.
3. Vulnerability should be considered separately and was only relevant to the issue of whether special measures should be taken in relation to the witness.
4. The other evidence should be considered. Even where there are only two witnesses of fact to the actual incident there may be other evidence, such as contemporaneous communications and that generated by any investigations that were conducted.
5. Panels should consider whether to admit any of the evidence of a non-engaging witness as hearsay and not take a blanket approach.
6. Regulators intending to offer no evidence must properly open their case first and take the Committee through the evidence available in order that the Committee may make an informed decision.

At a remitted hearing, the junior colleague gave evidence and the Fitness to Practise Committee imposed a removal order.

1 *PSA -v- (1) GPhC & (2) Ahmed* [2024] EWHC 3335 (Admin)

Learning point 2 – charging practices and the importance of motivation

In *Dugboyele*[2], an Obstetrics and Gynaecology Registrar faced 48 allegations of sexual harassment in relation to 7 junior midwifery colleagues over a period of years. He admitted a charge of harassment on grounds of sex contrary to the Equality Act 2010 on the basis that the GMC did not promulgate a charge that the conduct was sexually motivated. The panel preferred the evidence of the witnesses over that of the doctor and found a number of allegations proved. Notwithstanding these findings the panel found that Dr Dugboyele's fitness to practise was not impaired and he was issued with a warning.

The GMC and the PSA referred this decision to the High Court. Both appeals were successful on all grounds. Mr Justice Murray substituted a finding of impairment and remitted the matter for sanction. A six month suspension was imposed in June 2025.

This case emphasises the importance of motivation in assessing the seriousness of misconduct, particularly in cases of alleged sexual misconduct. In Dr Dugboyele's case, the harassment charge meant that there was sufficient evidence before the panel to evaluate motivation and the PSA's appeal was not premised on under-charging. Had there been no harassment charge it would have been necessary to appeal on grounds of under-charging. A specific charge of sexual motivation (where supported by the evidence) is always preferable and the GMC had changed its charging guidance in relation to cases involving sexual misconduct between colleagues by the time the appeal was heard.

Learning point 3 – cross-admissibility

The case against Dr Garrard involved allegations brought by two young female patients in acute mental health units. They were distinct in place and time but the behaviour complained about bore similarities such that the allegations were heard together. Having heard live evidence from both women and expert evidence from the defence, the Tribunal did not find any of the substantive allegations proved. The PSA referred the case to the High Court on the basis that the Tribunal's approach to the 'cross-admissibility' of the evidence of the two women – ie the extent to which the evidence of one could be considered in relation to the allegations about the other – had been wrong. The appeal was allowed and the matter was remitted for reconsideration[3].

The judgment[4] sets out the approach to be taken to cross-admissibility in disciplinary proceedings as follows:

1. Different principles apply according to whether the cross-admissibility is being sought to rebut coincidence OR establish a propensity.
2. The panel must first identify the purpose for which cross-admissibility is sought and then apply the correct test.
3. If cross-admissibility is being sought to rebut coincidence, as was the case in relation to Dr Garrard, the panel must advise itself as follows:
   a. It must exclude collusion or contamination as the explanation for the similarity before it can decide whether the allegations are unlikely to be the product of coincidence.
   b. If collusion/contamination can be excluded, the fact of two patients making similar allegations reduces the likelihood of there being an innocent explanation.
   c. It is not necessary to find an allegation in relation to one patient proved before relying on that allegation in support of an allegation in relation to the other patient.
4. By contrast, if cross-admissibility is being sought to establish propensity, before attaching weight to the evidence the panel will need to be satisfied to the requisite standard that the allegations in relation to the first patient took place before relying on evidence in respect of that allegation to deduce propensity in relation to allegations relating to the second patient.

Learning point 4 – aggravating and mitigating factors

In *Shah*[5], the PSA successfully argued that the panel had failed to identify a series of aggravating factors that could have made a material difference to sanction. Mr Shah had subjected two colleagues to sexually motivated behaviour while a) in a position of authority over them and b) during the Covid restrictions when they were particularly isolated. Charges of harassment on grounds of sex and sexually motivated conduct were brought and found proved. A 12 month suspension with review was imposed. The PSA referred the decision to Court. The appeal was allowed and the matter remitted for reconsideration of sanction.

The judgment makes clear that panels must:

1. Consider the aggravating and mitigating factors afresh at sanction stage even where they have been the subject of findings at the fact or misconduct/impairment stage.
2. Apply the Sanctions Guidance to the findings made at the misconduct/impairment stage.
3. Properly explain conclusions that striking off would be disproportionate.

Key contacts

Find out how we can make a difference to your organisation, please contact:

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2 *GMC & PSA -v- Dugboyele* [2024] EWHC 2651 (Admin)
3 Our attempts to persuade the Judge to remit with a direction that the new panel consider the evidence of the witnesses from the transcripts, to avoid them having to give evidence again, were unsuccessful
4 PSA -v- (1) GMC & (2) Garrard [2025] EWHC 318 (Admin)
5 *PSA -v- NMC & Shah* [2005] EWHC 1215 (Admin)