



A presentation by

HILL DICKINSON

Sexual Misconduct Workshop

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GMC & PSA v Dugboyele [2024] EWHC 2651 (Admin)

- Sexual harassment of 7 junior colleagues over a sustained period: touching, stroking, kissing, hugging
- In plain sight and having been warned about his behaviour
- GMC charge: behaving inappropriately; abuse of position; sexual harassment contrary to the Equality Act 2010
- Misconduct; no impairment; warning

- GMC appealed: Panel had not paid proper regard to the public interest factors or the Sanctions Guidance and its decision that a finding of impairment was not necessary to fulfil the overarching objective was wrong
- PSA appealed: Panel had erred in not considering evidence of sexual motivation and its significance for seriousness and had failed to give adequate reasons
- GMC opposed the PSA's appeal and defended the decision to charge by reference to harassment, despite having changed its position on charging in the interim so as to emphasise the importance of charging motivation in cases of alleged sexual misconduct
- Both appeals allowed on all grounds; matter remitted
- Held (para 74): "There is, in short, no credible innocent explanation of Dr Dugboyele's conduct, given the factual findings of the Tribunal. The Tribunal was either wrong not to include a proper consideration of his motive in its deliberations and/or, by virtue of that omission's constituting a serious procedural irregularity, reached an unjust result, namely, that Dr Dugboyele's fitness to practise was not impaired."

PSA v (1) NMC & (2) Shah [2025] EWHC 1215 (Admin)

- NMC charged both sexual harassment and sexually motivated behaviour in relation to two colleagues during night shifts at a care home: both allegations found proved
- Misconduct; impairment; 12 month suspension with review
- PSA appealed: sanction was insufficient: despite its findings at the factual, misconduct, and impairment stages, the Panel failed at the sanction stage to grapple properly with the seriousness of the Registrant's sexually motivated misconduct, the evidence of deep-seated attitudinal issues, the lack of remorse or insight, and the risk of repetition. It failed to properly apply the Sanctions Guidance and had failed to give adequate reasons
- Appeal allowed; matter remitted
- Held: the Panel erred in its assessment of the aggravating and mitigating factors, gave undue weight to the mitigating factors present, failed to apply the Sanctions Guidance in accordance with its own findings at the misconduct and impairment stages and failed to explain its conclusion that striking off would be disproportionate

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

- Pharmacist faced allegations of inappropriate and sexually motivated behaviour towards a receptionist (X) – some allegations were admitted. X had initially engaged but engagement became sporadic
- Panel closed the case on grounds that there was no case for the registrant to answer and no prospect of finding his fitness to practise impaired
- PSA appealed: the Panel took a flawed approach to X's evidence: the issue of a witness summons had been dismissed on grounds that X was vulnerable, but there was no evidence that he was or considered himself to be, and a finding of no case to answer was not open to the Panel
- Appeal allowed; matter remitted
- The Panel had taken an erroneous approach to X's evidence. The fact that a witness was the alleged victim of a sexual act did not automatically mean that they were vulnerable, and vulnerability was only relevant to the issue of whether special measures should be employed in the hearing. The Panel could only make a finding of no case to answer after the GPhC had opened its case and it had failed to do so.

PSA v (1) GMC & (2) Garrard [2025] EWHC 318 (Admin)

- Doctor faced allegations made by two patients, A and B, of inappropriate and sexually motivated conduct towards them when they were patients in acute mental health units of two separate hospitals.
- The Tribunal declined to allow the evidence of A and B to be ‘cross-admitted’ on the basis of the legal advice received and found the allegations not proved
- PSA appealed: the Tribunal had identified the wrong test for cross-admissibility of evidence in regulatory proceedings and had applied the wrong test.
- Appeal allowed; matter remitted
- The legal advice given to the Tribunal had been deficient and the erroneous approach taken had constituted a serious procedural irregularity. The Tribunal had conflated the test for cross-admissibility to establish propensity with the test for cross-admissibility to rebut coincidence.
- Held (para 47):
- That there are two primary grounds on which evidence may be cross-admissible: where it may establish propensity or where it may rebut coincidence.

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- The tribunal will need to decide on which ground it is being asked to cross-admit the evidence and advise itself accordingly.
 - The tribunal will need to distinguish clearly between the grounds and not advise itself on the other ground if only one is applicable.
 - The tribunal will need to consider whether the evidence in question is capable of being cross-admitted, by evaluating whether there is a sufficient connection and similarity between the facts of the allegations.
 - Where the evidence is cross-admitted to prove propensity in a case involving two allegations, before attaching weight to the evidence the tribunal will need to be satisfied to the required standard that the first allegation took place before relying on evidence in respect of the first allegation to deduce propensity in relation to the second allegation.

- Where the evidence is cross-admitted to rebut coincidence, before attaching weight to the evidence the tribunal will need to advise itself that a) it must exclude collusion or contamination as an explanation for the similarity before it can assess the force of the argument that the allegations are unlikely to be the product of coincidence, b) if collusion or contamination are excluded, considering the evidence as a whole, the fact of two patients making such allegations reduces the likelihood of there being an innocent explanation for them and c) it is not necessary to find one allegation to be proved before relying on that allegation in support of the other allegation concerning the other patient.
- In the case to which the appeal related, it was noted that the GMC had made plain that it sought to rely on the similarity of the allegations made by the two patients as rebutting coincidence rather than demonstrating propensity. The Tribunal should therefore have advised itself only on the principles that applied where evidence is sought to be cross-admitted to rebut coincidence. Instead, the Tribunal advised itself on both bases for cross-admissibility, which the Judge held had risked conflating and confusing the two bases in the minds of the Tribunal. Further, the advice that was given meant that the Tribunal was not given clear direction as to the proper approach to be taken. It then went on to wrongly interpret and apply the law with respect to cross-admissibility.



Questions

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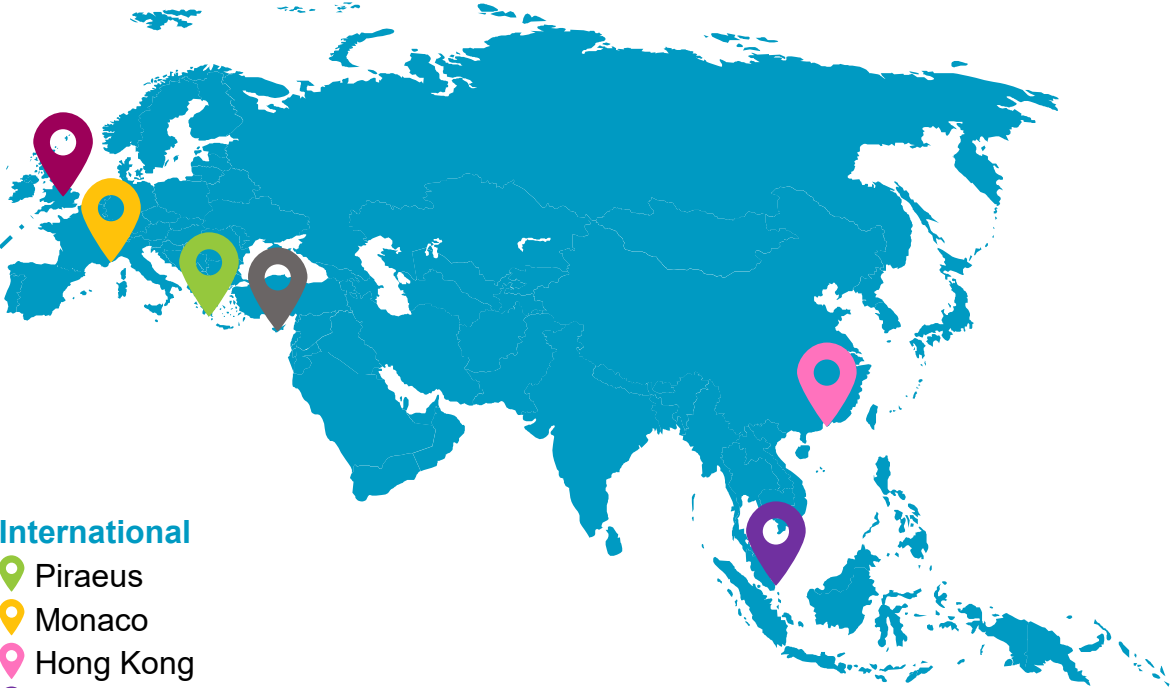


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