

Learning Points Bulletin

Issue 2 | February 2025

Welcome to the second edition of the twice-yearly **Learning Points Bulletin**. This bulletin covers the period from April 2024-December 2024.

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 taken into account 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.

We understand that regulators may not agree with all of the learning points that we share but we hope that, in the majority of cases, you find them helpful and informative. We hope our regular bulletin will provide you with a valuable overview of the volume of learning points we send and regular issues we are identifying.

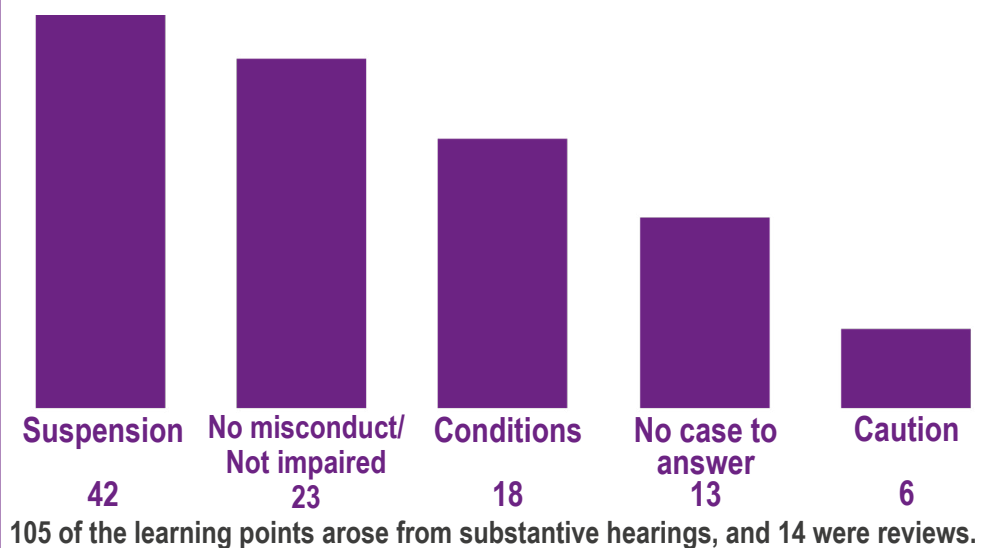
Key statistics April-December 2024

Determinations received	1,663
Learning points sent during period	119
Cases appealed	18

Suspension was the sanction that we fed back on the most

42

Most common sanctions fed back on



Our first Learning points bulletin focused on sexual misconduct. Given the increase in the volume of cases relating to sexual misconduct, we will continue to focus on this theme and the learning we continue to identify. This bulletin will cover:

- ▶ Common themes arising from our grounds of appeal in sexual misconduct cases.
- ▶ Themes arising from learning points in sexual misconduct cases.
- ▶ An overview of recent successful appeals and cases settled by consent in this area.

Year	Cases with a charge that we have identified as relating to sexual misconduct	% increase of sexual misconduct cases received	Appeals with a charge that we have identified as relating to sexual misconduct	LP with a charge that we have identified as relating to sexual misconduct	% of learning points identified in sexual misconduct cases
2020/21	124	6.1%	2	0*	N/A
2021/22	150	7.0%	2	0*	N/A
2022/23	215	9.2%	3	8	5.6%
2023/24	249	10.4%	9	21	18.10%
2024/25**	170	10.2%	6	22	18.48%

* We did not collate data on this prior to 2022/23

** This is financial year 2024/25 but covers April-December 2024

| Common themes

Grounds of appeal in sexual misconduct cases

Common themes arising from our grounds of appeal in sexual misconduct cases. This data relates to appeals/consent orders handed down/agreed between April and December 2024:

- ▶ A failure to consider the full seriousness of the misconduct at the impairment and sanction stage leading to a sanction which is insufficient to protect the public (4 cases out of 6).
- ▶ Inadequate reasons for decisions, particularly at the sanction stage (4 cases out of 6).
- ▶ Sanctions guidance not adequately considered and applied (3 cases out of 6).
- ▶ Excessive weight given to mitigating factors (2 cases out of 6).

Learning points in sexual misconduct cases

Common themes arising from learning points in sexual misconduct cases between April and December 2024:

- ▶ A failure to provide sufficient reasons, particularly at impairment and sanction stage (7 out of 22).
- ▶ A failure to obtain all relevant evidence (5 out of 22).
- ▶ We had concerns in several cases with how the Panel assessed witness evidence, particularly the evidence of complainants (4 cases out of 22). An example learning point included: We considered it unreasonable to justify or seek to minimise the Registrant's conduct on the basis that Witness A was "*a person of robust character who would undoubtedly have stopped the conversation if she wanted to do so*".
- ▶ Failure to identify all relevant aggravating and mitigating factors and/or identifying irrelevant mitigating factors (4 out of 22).
- ▶ Poor drafting of charges such as the charges not fully reflecting the full seriousness of the conduct (3 out of 22).

Related material

Read the write up from our Research Conference. Held on 17 October 2024, the conference opened with a keynote speech from Professor Louise Stone from Adelaide Medical School, University of Adelaide, Australia on sexual harassment in medicine. During the day, there were also presentations and discussions on the Witness to Harm project, sexual misconduct and improving fitness to practise. [Read the summary of the day on our website.](#)

We are also holding a series of webinars on sexual misconduct in health and care. The next one will take place on Friday, 28 February. [Find out more about the series as well as how to sign up for future webinars on our website.](#)

[Read our previous research and reports on crossing professional boundaries/sexual misconduct.](#)

Find out more

- ▶ [sign up to receive the PSA's e-newsletter](#)
- ▶ [our power to check and appeal final fitness to practise decisions](#)
- ▶ [the value our power to appeal adds to public protection](#)

Get in touch

We would welcome any feedback on this publication. If you would like more information, please get in touch with Georgina by email.



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Successful appeals/consent orders in sexual misconduct cases

This data relates to appeals/consent orders handed down/agreed between April and December 2024:

1 Cross-Admissibility

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

This case involved two vulnerable women patients, whom the Registrant had treated on different days in different Accident and Emergency Departments. It was alleged that he had behaved sexually inappropriately towards them. The Tribunal heard both patients' allegations at the same hearing. The Tribunal determined that the General Medical Council (GMC) had not discharged the burden of proof to the required standard in relation to the allegations. The Tribunal therefore concluded that the Registrant's fitness to practise was not impaired.

We appealed the case on the following grounds:

- a. The Tribunal wrongly directed itself as to the test for the cross admissibility of evidence;
- b. The Tribunal wrongly interpreted and/or applied the test for the cross admissibility of evidence to the patients' evidence.

We argued that the decision was insufficient to protect the public as had the Tribunal correctly directed itself, interpreted and/or applied the test for cross admissibility of evidence, it would have come to a different determination as to the allegations, whether the facts found proved amounted to misconduct, and, if so, whether the Registrant's fitness to practise was impaired.

The appeal was heard at the High Court on 28 January 2025 and the judgment was handed down on 14 February 2025. The PSA were successful on both grounds. The judgment gives a comprehensive analysis of the law in this area and helpfully sets out (at paragraph 47), several matters a Tribunal will need to consider when determining an issue of cross-admissibility in regulatory cases:

- i.** There are two primary grounds on which evidence may be cross-admissible. Namely, (a) where it may establish propensity to commit that kind of conduct and/or (b) where it may rebut coincidence (*Freeman* [2008] EWCA Crim 1863 at [14] and [15]).
- ii.** The Tribunal will need to decide on which ground or grounds it is being asked to cross admit the evidence and advise itself accordingly, in terms that are relevant to and reflect the particular circumstances in which the questions of cross-admissibility arise (*Brennand* [2023] EWCA Crim 1384).
- iii.** The Tribunal will need to take care to distinguish clearly between the grounds and to not advise itself on the other ground if only one ground is applicable, in order to avoid confusion (*Nicholson* [2012] EWCA Crim 1568 and *BQC* [2021] EWCA Crim 1944).
- iv.** 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 (*Chopra* [2006] EWCA Crim 2133).

1 Cross-Admissibility (continued)

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

- v.** 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 from the second allegation (Adams [2019] EWCA Crim 1363 at [14] and R v Mitchell [2016] UKSC at [43])
- vi.** Where the evidence is 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 of the complainants' evidence 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 is 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 (R v H [2011] EWCA Crim 2344 at [24]) and (c) it is not necessary to find one allegation to be proved before relying upon the evidence in respect of that allegation in support of the other allegation concerning the other patient (Adams [2019] EWCA Crim 1363 at [15]).



Ros Foster at Hill Dickinson solicitors, who acted for the PSA in this case, has written a blog which you can find it [here](#)

2 Charging Sexual Motivation

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

This was a GMC Section 40A appeal which the PSA joined. It related to a doctor who behaved inappropriately and sexually harassed seven colleagues between May 2017 and September 2020, including stroking and rubbing various colleagues body parts, hugging and holding them, pressing his genitals against them, kissing their necks, as well as blocking colleagues from leaving rooms when they tried to leave. This was despite colleagues objecting to such behaviour and telling the registrant to stop, which he failed to do. The MPTS found no current impairment but imposed a warning. We joined the GMC's appeal to raise additional concerns about the panel's failure to adequately address the registrant's motivation for his behaviour and the failure to give adequate reasons for the not impaired decision. The appeal was heard on 24 April 2024 and the GMC and PSA grounds of appeal were upheld, but decision was reserved.

3 Police Registration & Sanction

PSA v GMC & Ray

This was an appeal against a GMC panel decision to not find the registrant impaired at a review hearing despite the registrant continuing to be under a requirement to be registered with the police for five years following his conviction for of an offence under the Sexual Offences Act 2003.

We were concerned that the Tribunal erred in its application of the GMC's sanction guidance, which stated that no doctor registered as a sex offender should have unrestricted registration, and that the Tribunal failed to give adequate reasons for its departure from the sanctions guidance. A Consent Order was agreed with the GMC. This means that the original panel decision is quashed and substituted with a finding that the registrant's fitness to practise is currently impaired, and the matter be remitted back to a differently constituted panel.

4 Witness Summons & ONE/NCTA

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

This was an appeal of a GPhC panel decision to find no case to answer in respect of allegations that the registrant touched a male colleague's genitals, despite the registrant's admissions. We appealed because we considered the GPhC did not make adequate efforts to secure the colleague's attendance at the hearing, the panel was wrong not to take account of the colleague's hearsay evidence and the GPhC, in offering no evidence, did not provide an adequate basis for the panel to determine the application of no case to answer. The appeal was upheld and the panel's original decision was quashed and remitted back to a new panel.

5 Stay for Abuse of Process

PSA v GPhC & R2 [2024] EWHC 3005 (Admin)

This was an appeal of a GPhC panel decision to grant a stay of proceedings on grounds of an abuse of process because a case worker recommended the case against the registrant be closed. This was despite the case worker not having authority to close the case and a GPhC lawyer confirming the referral. We appealed because we were concerned that the panel did not direct itself appropriately to the GPhC's statutory process, closure of the case or the legal test for an abuse of process. The appeal hearing took place on 22 October 2024. The appeal was upheld and the panel's original decision was quashed

The High Court found Ground 1 proved on the basis that the Professional Regulation Manager ("PRM") did have authority to close the case against the registrant, but did not actually close the case. There was therefore a "*fundamental mistake of fact*" as to whether the case had been closed or not. The court found that public bodies have power to correct decisions which they have made based on a fundamental mistake of fact applies here: see *R (Chaudhuri) v General Medical Council* [2015] EWHC 6621 (Admin) at [43-51]

The Court concluded as follows at [105-106]: "*A stay for abuse of process is an exceptional step. [...] The public interest in the overarching statutory objectives of protecting the public and maintaining professional standards and public confidence in the profession has to be weighed in the balance, together with the public interest in the integrity of the disciplinary process.*"

***On a fair reading of the decision, I do not consider that this experienced Committee misdirected itself on the legal principles to be applied, or overlooked the overarching statutory objectives, but the legitimate expectation must have weighed heavily in the balance in the mind of the Committee. On re-considering the matter on the basis that a public authority may resile from a legitimate expectation in circumstances where it is fair to do so, I do not consider that the exceptional step of a stay can be justified, as the competing public interests can be fairly met by alternative measures, namely a full reconsideration of his case. I acknowledge that this will be stressful and difficult for R2, but I consider that expedition will mitigate the burden of the further proceedings.*"**



39 Essex Chambers barrister Nyasha Weinberg represented the PSA in this case and you can find her blog on this [here](#)