

Appeals from GMC and MPTS Decisions



GMC / MPTS
APPEALS AND
JUDICIAL
REVIEWS

Many doctors are dissatisfied with the outcomes of General Medical Council (GMC) / Medical Practitioners Tribunal Service (MPTS) proceedings and, in particular, the sanction imposed upon them. A number of doctors subsequently seek legal advice about the merits and prospects of success of appealing a decision of the GMC / MPTS.

Doctors Defence Service (DDS) provides legal advice and representation in the appeal courts to doctors where a doctor wishes to appeal. DDS lawyers give clear advice about the strengths of the doctors appeal case, the merits and demerits of an appeal, costs risks, and the overall prospects of success on appeal.

Appeals and Judicial Reviews: A doctor might choose to **Appeal** or, alternatively, issue judicial review proceedings in order to challenge a decision of the General Medical Council (GMC) or Medical Practitioners Tribunal Service (MPTS). Where there is a statutory right of appeal from a GMC / MPTS decision, the statutory instruments will set out the appeal route and judicial review will not be available in the alternative, in

most circumstances.

Judicial Review Where there is no statutory right of appeal the decision of the GMC/MPTS might be amenable to Judicial Review. Alternatively, where a GMC/MPTS case has reached a procedural stage, prior to the end of the hearing, a decision may be amenable to judicial review. A Judicial Review (JR) will often look at narrower issues than an appeal court can examine. A JR must be lodged in the shortest possible time after a public body (such as the GMC or MPTS) has made a decision and, in any event, within three months at the latest (in most JR cases). A JR has a different, narrower scope than appeals do, and a judge will sometimes be limited in the relief that can be granted. Further, relief is discretionary, even where a public body such as the GMC / MPTS has fallen into error. Judicial Reviews mostly look at whether a decision of a tribunal was unfair, illegal, unlawful, unreasonable, disproportionate, or irrational. Where there is a right of appeal, judicial review is often not open to an appellant. Even where it is, it is important for both the lawyers and the doctor to make a careful assessment as to when and if a judicial review is appropriate. Permission has to be sought to bring a judicial review, whereas an appeal is of right because no permission is needed under the statute. Note: judicial review is not an alternative to a statutory appeal. Where there is a statutory appeal provision in the legislation, governing the GMC, that is the route that must be followed, save in exceptional circumstances – at certain procedural stages within a GMC/MPTS hearing. See, by way of example, the case of [R \(Squier\) v GMC \[2015\] EWHC 299 \(Admin\)](#).

Also, the case of [GMC v Krishnan \[2017\] EWHC 2892 \(Admin\)](#) – confirming that **judicial review** is the correct approach to challenge facts found proved by a tribunal and a tribunal decision to impose a warning.

Challenging the Imposition of a Warning

As there is no statutory appeal provision where a doctor receives a **warning** from an MPTS panel, the only way of challenging the issuance of the warning is by way of Judicial Review, except where the GMC case examiners impose a warning at the investigatory Rule 7 stage. In such cases a doctor has a right to ask the GMC's Investigating Committee to convene in order to determine whether a warning should be imposed. In a sense, this is a type of appeal hearing. For more information on 'appealing' the case examiners' decision that a warning is appropriate, see our article: [How to Avoid a GMC Warning](#).

Appeals of Interim Orders: Appeals in relation to Interim Orders Tribunal (IOT) decisions are brought by way of [Part 8 of the Civil Procedure Rules \(CPR\)](#). This is a modified form of statutory appeal.

Statutory Appeals, Pursuant to s.40 of the Medical Act 1983 (as amended): The GMC / MPTS imposes sanctions on many doctors in Fitness to Practise (FTP) proceedings. A number of doctors feel that the MPTS sanctions are unfair, disproportionate and have a stigmatising element to them. In some cases, the doctor will be of the view that a tribunal panel has come to the wrong decision on the facts, misconduct, or impairment determinations, as well as the sanction determination. Some doctors therefore choose to bring an appeal, for these reasons. Grounds of appeal need to be identified and lodged within 28 days of the MPTS determination. A skeleton argument must also be lodged within a further 14 days. Bundles then need to be compiled, and a list of case law authorities needs to be provided, too.

Time Limits (Statutory Appeals pursuant to s.40 Medical Act 1983 (as amended): An appeal lies to the High Court or its

equivalent in the country of the United Kingdom (UK) where the doctor is registered with the GMC. An Appeal Notice must (usually) be lodged within 28 days of notice of a decision being served on a doctor. The time to lodge an appeal is very strict and a doctor who fails to lodge an appeal notice within the limitation period is unlikely to be able to advance an appeal at a later stage. A doctor who wishes to appeal must act quickly so as to protect their position. Case law has now made it clear the circumstances in which the appeal court will extend the time permitted for a doctor to appeal out of time (i.e. after the 28 days limitation period). For more details, read our Doctors Defence Service article: [Time Limit for Appeals from GMC/MPTS Decisions are Strict](#)

Where a doctor has attended a hearing and a GMC / MPTS panel has adjudicated upon a matter in many cases the Notice of Decision is served upon the doctor while they are at the hearing. The doctor is often asked to sign confirmation that they have received the determination of the panel. Alternatively, where the GMC / MPTS has not formally served notice of the decision, the decision will be posted and will be deemed to have been served within a couple of days of postage (or, in some circumstances, later, where a doctor can prove that they did not receive notice of the decision until a certain point in time).

View: [Section 40 of the Medical Act 1983](#)

Grounds of Appeal: Grounds of appeal must be identified and pleaded in a particular form. As the appeal is not a fresh hearing of the evidence, appeal grounds need to be identified and advanced with some care. Proportionality on its own is very difficult to win on, although it should be noted that our lawyers have had success in one case in persuading a judge to reduce a period of suspension by a few months, on grounds that the length of the suspension would cause significant hardship or loss of a business. A ground of appeal might be as follows: that the panel erred in giving too or too much little weight

to evidence to a witnesses; or that the panel misdirected themselves on the law; or that the regulator (the GMC) failed to disclose important evidence to the doctor; or that the proceedings were in some way unfair. This list is not exhaustive.

Where a doctor relies on new evidence it must usually pass the test as laid down in [Ladd v Marshall \[1954\] EWCA Civ 1](#). However, on grounds of fairness there may be exceptions to these rules that enable to appeal court to admit evidence that is favourable to the doctor; see by way of example the (November 2014) case of: [Jasinarachchi v General Medical Council \[2014\] EWCH 3570 \(Admin\)](#)

Citation of others MPTS FTP Cases on Appeal: It is important to note that the fact that other similar cases have led to a different sanction does not necessarily lend support to an appeal. See our article on [the citation of other GMC/MPTS fitness to practise decisions in appeal cases](#).

Lodging an Appeal Notice: The forum (court) for the case to be lodged and heard will usually depend on the part of the UK (England, Wales, Scotland, Northern Ireland, other Island territories) in which the doctor is resident or has practised. The doctor's registered address is usually the determining factor. The GMC should be consulted where it is not clear to the doctor where they should lodge their appeal.

Funding: In some circumstances a doctor may be entitled to legal aid. Where that is not the case, private fees will be payable to the lawyers that the doctor instructs. Legal aid is means-tested and most doctors have assets or income that take them over the qualifying threshold. Since April 2013 it has become very difficult to obtain legal aid for GMC appeals. There usually have to be prospects of success of at least 51% or greater. An opinion from Counsel will be needed if legal

aid is to be obtained. Doctors Defence Service will advise on funding options, on request. Some insurance products a doctor may hold might cover the costs of an appeal. Alternatively, a doctor's medical defence organisation may provide indemnity cover for an appeal. In the absence of a formal funding arrangement the doctor would have to pay their defence costs on a private basis.

Costs Risks: Where a doctor loses all or some of their appeal, they might (and usually would) additionally have to pay the costs of the GMC. If the doctor loses their appeal entirely, they are likely to have to pay all of the GMC's costs. If the doctor wins on some issues and loses on others they may be able to recover some of their costs but still have to pay some of the GMC's costs. If they win their appeal, they might recover all or some of their costs. The reasonableness of the parties' conduct can also be taken into account by the appeal courts, when assessing costs. Costs are solely at the discretion of the court, unless costs are agreed between the parties. In our experience (2015) an appeal will cost around £12,000 plus VAT to bring an appeal to a hearing. If the doctor loses their case they could end up paying the GMC their costs, which could be of a similar level. In simple cases an appeal may cost around £7000 plus VAT for each party (Appellant and GMC) but costs have been known to reach very significant levels, where there have been further appeals.

Role of the Appeal Judge in a Statutory Appeal (pursuant to the Medical Act 1983): Under Part 52.11(3) [Civil Procedure Rules \(CPR\)](#) the appeal court may interfere with the decision of a lower court or tribunal (such as the GMC) where the decision is (a) wrong, or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court. However, guidance from the higher appeal courts makes it plain that it is only significant errors that may lead to such a judgment by an appeal court. In R (M) v Criminal Injuries Compensation Panel [2001] EWHC (Admin) 720

[44], Hooper J (as he then was) stated: “It is well established that a[n appeal] court when considering reasons given by a decision-maker, must be careful not to construe them “in a pedantic and nit-picking spirit“. The court should be careful “not to seize on occasional omission and infelicities” as a ground for granting judicial review or allowing an appeal (see Lord Bingham CJ also in paragraph 46 of R (Oyston) v The Parole Board and Others)” [Read Full [Law Report](#) (External Link)].

The scope of an appeal of a GMC decision is set out in the case of [Gosalakkal v General Medical Council \[2015\] EWHC 2445](#).

Merits of an Appeal: An appeal must have sufficient merit to succeed. Appeal courts will not easily interfere with a decision of the MPTS. In [Brew v General Medical Council \[2014\] EWHC 2927 \(Admin\)](#) a doctor appealed an MPTS erasure order. The doctor argued that the sanction of erasure was manifestly excessive. The appeal court judge dismissed the appeal, holding that:

“30. I suspect that this decision was finely balanced. On the one hand the doctor was a man of good character with an otherwise exemplary clinical record. On the other hand, these were serious allegations of professional misconduct and the panel were well conscious of the need to uphold the robust standards of medical training and protect the reputation of the profession. My reading of the transcript of the tribunal hearing revealed that the panel had gone to great lengths to investigate this case thoroughly. They asked a number of telling questions which were particularly well-directed to the important issues in this case and I was impressed with the thoroughness with which they approached their task. They gave the appellant every opportunity to impress them but, as I have found, their decision that he did not show full insight into his wrongdoing cannot be impugned. It is possible to argue that this case could qualify on its facts for either suspension or erasure applying the considerations set out in

the Indicative Sanctions document. Which side of the line it falls is a matter of judgment for the tribunal concerned having considered all the facts and their experience of applying professional standards to those facts.

“31. The fact that this decision was, in my view, finely balanced makes it much more difficult for the appeal to succeed. Where a case falls truly on the cusp of two alternative results it is very difficult for an appellate court to say that the original tribunal was wrong to reach either decision. In my view the decision to erase the appellant from the Medical Register was one which the panel was entitled to reach on the evidence before them even if another panel might possibly have reached a different view. For myself I cannot find that the decision was wrong and so I am bound to dismiss the appeal although not without expressing some personal sympathy for Dr B.” (Read the [full law report](#).)

Further Appeals: A doctor or the GMC can appeal a decision of the High Court to the Court of Appeal and [Supreme Court](#), but only with permission. In some cases it may be possible to appeal to the [European Court of Human Rights in Strasbourg](#).

Appeals Brought by the GMC: The GMC (since December 2015) pursuant to [s.40A of the Medical Act](#), being a party to proceedings before an independent tribunal (the MPTS) now has the power to appeal a decision of a tribunal (pursuant to s.40 A (3 and 4) as follows:

(3) The General Council may appeal against a relevant decision to the relevant court if they consider that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

(4) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—

- (a) to protect the health, safety and well-being of the public;*
- (b) to maintain public confidence in the medical profession; and*
- (c) to maintain proper professional standards and conduct for members of that profession.*

Appeals that have been brought by the GMC include:

[General Medical Council v Jagjivan \[2017\] EWHC 1247 \(Admin\)](#) – the finding by the panel that touching of a patient by a doctor was not sexually motivated was overturned and a new hearing was ordered (May 2017).

[General Medical Council v Theodoropoulos \[2017\] EWHC 1984 \(Admin\)](#) – the appeal court upheld the appeal brought by the GMC and ordered that the doctor's name should be erased from the register. The tribunal had determined that that suspension was a suitably proportionate sanction to impose on a doctor who had been found to have been dishonest in amending an online certificate, held by the GMC, and they using a copy of the amended certificate for the purposes of obtaining work. (July 2017)

[General Medical Council v Dr Robert Stone \[2017\] EWHC 2534 \(Admin\)](#) – A suspension order of 12 months was quashed and substituted with an erasure order, where a doctor had entered into a lengthy relationship (of around two and a half years) with a vulnerable patient. (October 2017)

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Fresh Evidence:

In [General Medical Council v Adeogba \[2016\] EWCA Civ 162](#) (at

para 24) the Court of Appeal examined Fresh Evidence principles in the context of GMC/MPTS regulatory proceedings, with discussion of the well established case of those principles elucidated in [Ladd v Marshall \[1954\] 1 WLR 1489](#), quoting Lord Denning:

“[F]irst, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;

secondly, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive;

thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.”

The appeal court in [Adeogba](#) also examined the legal concept of admitting medical evidence for non-attendance, opining that such evidence would not inevitably enable new evidence to be admitted that should have been used at the hearing. The merits would have to be examined. The opinion was summarised as follows:

(At Para 35):

“It is clear that evidence as to the reasons why, in any case, a medical practitioner does not appear or engage in a disciplinary hearing is likely to constitute fresh evidence and will require consideration, at least de bene esse. Thus, if a practitioner was taken ill or involved in an accident or had suffered some unforeseen and unforeseeable disaster, that fact would be very relevant to the exercise of discretion whether or not to adjourn and would not have been available at the hearing because, by definition, the practitioner would not have been able to be present to advance it. If there is a good reason for non-attendance, however, it would not

necessarily extend to fresh evidence going to the merits of the disciplinary complaint which would have been available to be deployed at the time of the hearing.”

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Remittal:

[Soni v The General Medical Council \[2015\] EWHC 364](#) – Where an appeal court is of the view that an appeal should succeed, it will remit the case back to the GMC to be reconsidered, unless the appeal court considers there would be no value in that. In the appeal judge determined that it would not be appropriate to remit an appealed case back to the GMC, where he had quashed the findings of the panel/tribunal. He did so on the basis that (para 70):

“the determination of this appeal does not involve any departure from the Panel’s assessment of the credibility of the witnesses, all of whose evidence was accepted by the Panel. It does not turn on matters which engage the Panel’s specialist knowledge of medical matters. This court is in as good a position as the Panel was to assess the sufficiency of the evidence; and if the evidence is insufficient, then the public interest cannot be served by a further hearing of it. I conclude not only that the Panel was wrong in the decision which it made, but also that if the case were to be remitted, no future panel could be in any different position.”

Contrast [Southall v GMC \[2010\] EWCA Civ 484](#), (quoted in [Soni](#), also at para 70)

“in which Leveson LJ (as he then was) expressed doubt as to whether the public interest was served by a rehearing of an allegation relating to matters some 12 years earlier, but nonetheless concluded that protection of the public interest was primarily a matter for the GMC and that it would not be appropriate to remove the responsibility of making that

decision from them: see paragraph 8 of his judgment.”.
(Holroyde J, February 2015)

Professional Standards Authority Appeals

There is a super-regulator called the Professional Standards Authority. It regulates the regulators, to varying degrees. It has amongst its powers the right to challenge the outcome of a fitness to practise panel/tribunal outcome. The original legislation enabled the Professional Standards Authority (PSA) to appeal decisions of the MPTS to the High Court, where the PSA was of the view that the MPTS tribunal was **unduly lenient** in the sanctioning of a doctor. (For an example of a Professional Standards appeal see: [Professional Standards Authority for Health And Social Care v General Medical Council & Anor \[2015\] EWHC 1304](#))

The PSA pursuant to new legislation (of 2015) enjoys a remit to appeal GMC decisions that are considered in their opinion to not be sufficient for the protection of the public. The powers are contained in [s.29 of the National Health Service Reform and Healthcare Professions Act 2002](#), as amended by the [Professional Standards Authority for Health and Social Care \(References to Court\) Order 2015](#).

The PSA's cases to date (as of September 2017) are as follows:-

- PSA v GMC & Jagjivan
- PSA v HCPC & Doree Court of Appeal
- PSA v NMC & Judge
- PSA v NMC & Dalton
- PSA v HCPC & Geary
- PSA v GDC & AB
- PSA v GDC and Todd
- [PSA v HCPC and Ajeneye](#) [2016] EWHC 1237 (Admin)
- [PSA v NMC and Silva](#)

- [PSA v GMC & Igwilo](#)
- PSA v HCPC & Williamson
- PSA v NMC & Wilson
- [PSA v GMC & Uppal](#)
- [PSA v HCPC & Doree](#)
- PSA v NMC & Jozi
- [PSA v NMC & Macleod](#)
- PSA v NMC & Chawo-Banda
- [PSA v GPhC & Onwughalu](#)
- [PSA v GCC & Briggs](#)
- PSA v HCPC & Gaffer
- [CHRE v NMC & Harley](#)
- [CHRE v NMC & Grant](#)
- [CRHP v GMC & Khanna](#)
- CRHP v NMC & Kingdom
- [CRHP v GMC & Biswas](#)
- [CRHP v HPC & Harrison](#)
- [CRHP v GDC & Marshall](#)
- [CRHP v GMC & Rajeshwar](#)
- [CRHP v NMC & McDonnell](#)
- [CRHP v GMC & Southall](#)
- [CRHP v GDC & Fleischmann](#)
- [CRHP v GMC & Mulhem](#)
- [CRHP v GMC & Leeper](#)
- [CRHP v GMC & Solanke](#)
- [CRHP v NMC & Truscott](#);
- [Ruscillo v CHRP & GMC](#)

The PSA's predecessor was the CHRE: the Commission for Healthcare Regulatory Excellence. For more information about PSA appeals, see the [PSA Webpage on Appeals](#)

Discussion about Appeals Generally: Many doctors will be of the view that their case warrants interference by an appeal court. However, numerous appeals (by far the majority, in our view) are unsuccessful where appellant doctors have such a view, whatever the competence and skill of the advocate who is

instructed to represent the doctor. Appeal grounds therefore must be chosen with care. They should be arguable and have merit, and be likely to lead to some form of relief (such as the matter being remitted back to the GMC / MPTS for further consideration or a rehearing of parts of all of the case; or for a sanction to be substituted). When it comes to appealing a sanction, such as an erasure order, we must bear in mind that we live in a pluralist society where members of the public will have a difference of opinion as to when a doctor should be struck off. MPTS panels are given a wide ambit in decision making, as a consequence, because they are members of the public. An MPTS panel decision may seem harsh to some but that does not mean that the decision is manifestly excessive, such that the appeal court should interfere with the sanction by substituting a lower sanction. The GMC will, most of the time, robustly defend the decision of the MPTS panel in appeal proceedings. If a doctor loses their appeal (if the 'appeal is dismissed') they would usually be liable to pay the GMC's costs of defending the appeal, as well as any defence costs, that the doctor has incurred, in bringing the appeal. Doctors Defence Service can advise on all of these matters. Note that a GMC/MPTS warning can only be challenged by way of Judicial Review.

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A large number of appeals are brought each year by doctors against decisions of the GMC/MPTS. Only a few of those appeals are successful. Identifying the strengths and weaknesses of an appeal (weighing up the merits) is an important step in bringing an appeal. Often, a notice of appeal has to be lodged (as a safeguarding measure, so as not to be out of time) without all of the information being available to Counsel. Later, a full merits assessment will need to be undertaken, once the transcripts of the hearing become available, along with any other evidence that needs to be considered.

Some Example Appeal Decisions:

In [Abbas v General Medical Council \[2017\] EWHC 51 \(Admin\)](#) the appeal court upheld a GMC/MPTS strike off order where the doctor had been found to have committed misconduct in clinical setting. (January 2017)

In [R \(El-Baroudy\) v General Medical Council \[2013\] EWHC 2894 \(Admin\)](#) – a doctor's name was erased from the register for failures to properly examine a patient in custody, who later died. The panel misdirected itself by finding causation of death (as a consequence of the doctor's failures) when causation had been alleged. The case was remitted back for a re-hearing, with a direction that the panel was not to engage in an assessment of causation, in the particular circumstances of the case. (August 2013)

To discuss your potential GMC appeal or appeal options, call **Doctors Defence Service** on: **0800 10 88 739** or use our [Contact Form](#) to receive a call back.

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