

The established legal framework in professional disciplinary misconduct hearings

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[Sudheer Shabir v. General Medical Council \[2023\] EWHC 1772 \(Admin\)](#)

Reading any High Court decision is a powerful reminder of the core principles or established legal framework that will be applied in professional disciplinary misconduct hearings and/or at the appeal stage. Shabir is one such case in which the Doctor sought to overturn the Tribunal's findings of fact that he had touched the patient's breasts during two medical examinations and that this was sexually motivated.

The High Court usefully set out the legal principles relevant to an appeal of this kind at [10] with reference to the summary provided by Collins Rice J in *Sawati v. General Medical Council* [2022] EWHC 203 (Admin). It also provided a reminder to all concerned that even though an appeal is by way of a re-hearing, the appeal court will be slow to interfere with the primary findings of a Tribunal as expressed by Morris J in *Byrne v. General Medical Council* [2021] EWHC 2237 Admin at [13].

Most importantly for lawyers dealing routinely with misconduct hearings is the Court's re-affirmation of the principle of 'inherent probability'. Lord Hoffman's quote in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, that "*cogent evidence is generally required to satisfy a civil tribunal that a person has behaved in some other reprehensible manner*", reminds us that with a serious allegation a higher standard of proof is not required but "*the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.*" *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 [74].

Mr Shabir's appeal was dismissed on all grounds.

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