

Extent to which reasons should be given

Sadaf Din considers the judgement in Phipps v General Medical Council [2006] EWCA Civ 396 and reflects on the implications for regulatory and disciplinary bodies. In the recent appeal the Court of Appeal said that in every case the tribunal had to ask itself whether what was decided was clear and explained in a way which meant that parties could understand why the decision which was reached had been reached.

In this case, Mr Phipps, a specialist consultant surgeon, appealed against the decision of the PCC in its finding of serious professional misconduct. The PCC suspended Mr Phipps from practice for a period of 12 months for misrepresentation of his training and relevant experience in his application for specialist accreditation. Amongst the grounds of appeal to the High Court of Justice, it was argued that the PCC had not given sufficient reasons for its decision, in particular on what factual basis Mr Phipps had been found guilty of serious professional misconduct.

The High Court applied the Privy Council decision in *Gupta v GMC [2002] 1 WLR 1691*, in finding there was no general duty on the PCC to give reasons for decisions on matters of fact, where these concerned issues of credibility and reliability of evidence in the case. Mr Phipps failed to establish the existence of an exceptional duty owed in his case and the appeal was dismissed. He sought leave to appeal to the Court of Appeal where the sufficiency of reasons provided by the PCC arose again for consideration.

The Court of Appeal concluded that Mr Phipps's application did not satisfy the requirements for permission to appeal to be granted. The reasons given by the PCC were clearly and cogently expressed and Mr Phipps could not have been left in any doubt as to why and on what factual basis he had been found guilty of serious professional misconduct. However, in an unusual step, Lord Justice Wall proceeded in his obiter comments to provide a useful and informative analysis on the alleged failure of the PCC to give reasons for its decision and the application of the principles in *Gupta*, which are of wider interest to regulatory and disciplinary tribunal bodies.

In obiter, Lord Justice Wall stated (at para 85) that:

“In every case, as it seems to me, every tribunal (including the PCC of the GMC) needs to ask itself the elementary questions:

- Is what we have decided clear?
- Have we explained our decision and how we reached it in such a way that parties before us can understand clearly why they have won or why they have lost?”

The requirements incumbent upon disciplinary and regulatory tribunals were summarised in *Gupta* by Lord Hope at paragraph 7:

“It is not to be expected of the committee that they should give detailed reasons for their findings of fact. A general explanation of the basis for their determination on the questions of serious professional misconduct and of penalty will be sufficient in most cases...there are no grounds for thinking that an appellant had suffered any prejudice due to the absence of reasons directed specifically to findings in fact”

In this passage, the Lords affirmed the existence of a duty to give a general explanation for the decision on questions of serious professional misconduct and penalty. By contrast, they rejected the existence of any such duty to give reasons for a decision on the matters of fact in the case alone. However, the Privy Council left open the question of the existence of an exceptional duty in cases where the principles of fairness might require reasons to be given even on matters of fact (para 14):

“The tribunal can always give reasons if it considers it appropriate to do so in a particular case. Their Lordships would go further: there may indeed be cases where the principle of fairness may require the committee to give reasons for their decision even on matters of fact”

For professional and disciplinary tribunal bodies tasked with performing any adjudicatory function, the duty to provide clear, and cogent reasons for decisions remains universal. The Court of Appeal’s view seems clear, that in applying the interests of fairness and justice, the need to give reasons for findings of fact will vary from case to case, and will depend on the subject matter under consideration. There may be cases where such reasons are unnecessary because they emerge from the findings itself. The test in every case, it appears that *“justice will not be done if it is not apparent to the parties why one has won and the other has lost.”* If it appears that the tribunal’s conclusion must explain the reasons for a particular finding, or findings in fact, then it should do so.

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