

# Character is, perhaps, destiny

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**Reliance on 'good character' is not limited to dishonesty allegations (although it is most often seen in that context). It is not a defence but remains a useful tool in the box.**

The Greek philosopher Heraclitus reputedly said, 'Character is Destiny'. On 11 February 2022, The Honourable Mrs Justice Collins Rice handed down Judgment which tended towards that view.

The case of [Sawati v The General Medical Council](#) considers the approach by the Medical Practitioners Tribunal ([MPT](#)) to 'good character' regarding allegations of dishonesty. This decision has general application across the regulatory arena, not solely to healthcare cases.

The appeal succeeded on the MPT's approach to insight following an unsuccessful defence (another interesting regulatory issue). The sanction of [erasure](#) was quashed and remitted to a differently constituted MPT for reconsideration. The appeal failed on the 'good character' ground however, and that's the focus for this article.

## Case background

Dr Sawati was in the second year of her foundation training when allegations of misconduct were reported to the GMC. In 2021, six allegations came before the MPT; four allegations were proven, including three with dishonesty.

On appeal, Dr Sawati asserted that the dishonesty findings were unsustainable. The MPT was wrong procedurally in making the first dishonesty finding because, on the face of its decision, only after it had proved dishonesty did it consider her good character and her problems with communication.

That mistake infected the subsequent two findings of dishonesty. The MPT should have directed itself expressly at the start of its analysis to take good character into account when considering Dr Sawati's credibility and propensity to be dishonest.

The argument goes that if your character has a clean bill of health, you are more believable as a witness and less likely to have behaved dishonestly.

## High Court findings

Paragraphs 53-56 of the Judgment include a useful detailed review of the case law:

- [Donkin v Law Society](#): cogent evidence of positive good character is relevant although the weight to be attached to that evidence is a matter for the tribunal.
- [Wisson v Health Professions Council](#): Relevance can go to credibility and to propensity.
- [Martin v Solicitors Regulation Authority](#): good character evidence should not detract from focus on evidence directly relevant to the alleged wrongdoing and decisions on weight are for the fact finder not the appeal court unless the decision is one that no reasonable tribunal could have reached.
- [Kahn v The General Medical Council](#): the appeal court can infer from all the material that the tribunal must have taken good character properly into account: it does not have to direct itself to do so explicitly.
- The MPT had received accurate written legal advice on the interrelated issues of witness credibility and memory; dishonesty; and good character.

- The MPT's decision must be 'read fairly, as a whole, in context and having regard to its structure'.
- The appeal court should 'decline invitations to narrow textual analysis quoting after misdirection'.
- It can be inferred from all the material that 'good character' has been properly considered. It does not have to be explicitly so stated in the decision.
- The MPT had clear, correct advice on good character which it reproduced in its decision.
- The MPT gave itself a self-direction, leaving little room for doubt on appeal. It was 'an invitation to narrow textual analysis' to suggest that the self-direction should have come a little earlier in the process or with explanation of the application of the self-direction to the facts found.
- The MPT maintained its 'primary focus' on the specific evidence directly relevant to the alleged wrongdoing.
- It was wrong to suggest that the MPT did not have good character in mind at all or that it failed to give enough explanation for its overall conclusions.
- The MPT was entitled to weigh specific factors concerning actual events more decisively than general factors relating to credibility and propensity.
- An unblemished record may properly carry less weight at an early stage of a career than where there is an established track record. Conversely, inexperience may carry more weight in understanding what happened.

- Decisions on weight are for the fact finder and ought not to be disturbed on appeal unless the decision is one that no reasonable tribunal could have reached.
- The MPT's decision on the first allegation (retrospective amendment of a patient's record) was at least open to it on the totality of the evidence.

Tribunals might consider giving clear directions during the case management process stating when 'good character' evidence is to be received and at what stage it will be shown to the tribunal.

This is a potentially important aspect of case preparation for those appearing in person or as advocates before professional disciplinary tribunals. My experience suggests that 'good character' evidence is often an afterthought. Precedent makes the case for giving it serious consideration, even if only to discount it as an option with reasons. It may be particularly useful where there is no clear motive for the misconduct alleged to have been committed by a previously blameless individual. Those cases where we read the reports and scratch our heads as to why the offender thought that what they were doing made any sense. Experience tells me that the 'good character' argument may succeed if thoroughly and realistically prepared. And in such a case, character is, indeed, destiny.

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