

Should sanctions for dishonesty be harmonised?

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Reading the recent Judgment of Mr Justice Julian Knowles in [Simawi v General Medical Council](#) provokes thought, not for the first time, about the apparent disparity between sanctions imposed for dishonesty within healthcare and legal services.

The disparity between sanctions

Healthcare services

A doctor is less likely to be erased from the register for misconduct involving dishonesty.

The focus is on how doctors can be rehabilitated and remediated, which permits them to return to their profession after periods of suspension relatively smoothly.

This disparity crosses professions and can also be spotted in financial services misconduct cases.

The case

Dr Simawi appealed against the sanction of nine months suspension imposed by a Tribunal for two findings of dishonesty. The maximum period of suspension permitted by statute is 12 months.

Dr Simawi did not dispute the Tribunal's findings of fact or misconduct, or that his fitness to practise was impaired. He simply argued that the suspension was too long. The [General Medical Council](#) had sought the sanction of Dr

Legal services

A lawyer found to have been dishonest will be struck off, save for in 'exceptional circumstances' which are not clearly defined.

Once struck off for dishonesty, it is unlikely that a lawyer will be readmitted to their profession.

Simawi's erasure from the medical register, equivalent to being struck off as a solicitor.

The findings of dishonesty related to:

- the creation and submission of a conference attendance application; the conference did not exist; and
- the misreport and amendment of a document by Dr Simawi to achieve a start date for employment convenient to him.

The Tribunal referred to the seminal 1994 decision of [Bolton v Law Society](#). The main reason for imposing sanctions was to protect the public, not to punish or discipline doctors, even though sanctions may have a punitive effect. Proportionality required Dr Simawi's interests to be balanced with the public interest.

Mr Justice Knowles expressed initial concern that the suspension was 'excessive and disproportionate'. Many charges were made against Dr Simawi and few were proven. The Tribunal accepted the strong mitigation on Dr Simawi's behalf. The Judge ultimately decided that the length of the suspension was proportionate, and said:

'Reading the Tribunal's findings as a whole, it was clearly of the view that [Dr Simawi] had further work to do in order to gain full insight into his behaviour and to remediate it, and the period of suspension had to be sufficient to allow that work to be completed and to be presented at a review hearing.'

Further, the Tribunal formed its decision by reference to its experience, and the work required by Dr Simawi would ensure that the public and the profession were fully protected. Mr Justice Knowles therefore dismissed Dr Simawi's appeal. He accepted that the suspension would

have an impact on the doctor's career and to that extent represented a punishment.

Interesting points

Solicitors, often juniors within their firms, are usually struck off for similar misconduct to that found proved against Dr Simawi. There have been several high-profile cases on the point, including the [Solicitors Regulation Authority v James and Others](#).

Solicitors must be capable of being 'trusted to the ends of the earth' as per Sir Thomas Bingham MR in [Bolton v Law Society](#). This is a high standard. A standard that dates as far back as 1993. The world of regulation in 2020 is a different, unrecognisable place. All professions have faced new challenges working under demanding conditions during the pandemic. Those circumstances will result in regulatory issues for regulators to grapple with over the two years. We now know much more about the mental health issues, often undiagnosed, arising from stress and anxiety in the workplace. This knowledge may be directly relevant to the causes of uncharacteristic misconduct leading to investigation and disciplinary proceedings by the regulator.

The cost to the country of training doctors is high and the pandemic has emphasised the need for more trained medical professionals. This explains in part the emphasis placed on remediation and rehabilitation in cases involving doctors. However, there is scope for increased weight to be given to the value of rehabilitation and remediation when considering sanction in cases involving other professions.

The time has now come to review sanctions for dishonesty across professions, to reflect society's greater understanding of mental health issues, the cost of training professionals whether they work in financial services, healthcare, legal services, etc., to achieve greater consistency, and to allow for more nuanced outcomes.

Susan Humble is a regulatory partner at RIAA Barker Gillette with an acute understanding of regulators and disciplinary boards. Susan helps professionals to pre-empt regulatory intervention and to navigate investigations. Contact Susan Humble today.

Susan Humble
07506 148 804
susan.humble@riaabg.com
www.riaabarkergillette.com



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