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Teasdale v General Osteopathic Council [2018] EWHC 1679 (Admin)

Learning Points

- When making a determination on the facts charged, Tribunals must consider all of the evidence in the case and ensure that they:
 - make a clear finding of each fact on which their decision is based;
 - provide an adequate basis or explanation to confirm how they have reached that finding; and
 - address any explanation put forward by a registrant and, if that explanation is rejected, explain why that is the case.

Background

This was an appeal by a registered osteopath ('T') against a decision of the General Osteopathic Council's Professional Conduct Committee ('PCC') dated 24 October 2017. The PCC had found proved allegations against T of unacceptable professional misconduct and had made her registration subject to a conditions of practice order for 12 months.

The allegations against T which were found proved concerned her treatment of four patients:

- Patient A who was seen by T on one occasion in November 2015 when it was alleged that T failed to obtain valid consent for the treatment provided and did not communicate adequately with Patient A or his mother.
- Patient B who was seen by T on two occasions in December 2015 and January

2016 when it was alleged that, on both occasions, T failed to obtain valid consent for the treatment provided and failed to explain what treatment would be provided.

- Baby C who was seen by T on one occasion in February 2016 after which it was alleged that T failed to provide Baby C's mother with appropriate aftercare advice or to seek medical attention.
- Patient E who was seen by T on two occasions in March 2016 when it was alleged that, on both occasions, T failed to obtain valid consent for the treatment provided and failed to explain what treatment would be provided.

After the PCC found allegations proved in relation to all four patients and that T's conduct constituted unacceptable professional conduct, it determined to impose a conditions of practice order for 12 months. This included a requirement that T was supervised by another osteopath, to undertake consent and communication training and to submit two items of reflective work before a review hearing.

Grounds

T appealed against the findings of fact made by the PCC in relation to all four patients (both generally on the basis that the PCC failed to give appropriate weight to the evidence of T and her expert witness, and in relation to each of the specific, individual facts), the finding of unacceptable professional conduct and submitted that the sanction imposed was excessive.

Judgment

The appeal was heard by Mr Justice Martin Spencer in May 2018. After the High Court dealt with additional legal arguments relating to whether it could 'rehear' the case and whether further evidence could be considered, the substantive appeal was addressed.

The Judge held that the factual findings made by the PCC in relation to Patients A, B and E were inadequate [para 34]. He said:

1. In relation to Patient A:

- a. "In my judgment, these findings by the PCC failed to get to grips in any kind of adequate way with the fundamental dispute of fact between the Registrant and Patient A's mother as to the treatment that was actually provided.....the PCC needed to make a clear finding of fact as to what treatment had in fact been given" [para 40];
- b. "...It is difficult to understand how the PCC could properly have married

up the evidence from Patient A's mother that her son was not even touched by the Registrant with acceptance of the evidence from the Registrant that some explanation of proposed treatment was given which must, by definition, have included the touching of the patient. In the end, the evidence of the patient's mother, because of its extreme nature, could not have formed the basis for a finding by the PCC that the explanation given by the Registrant was inadequate" [para 41];

- c. that it was necessary for the PCC to have made findings of fact as to exactly what explanation had been given by T and then consider the ways in which it was inadequate. As no such findings of fact could be found in the PCC's decision, then its decision was fundamentally flawed [para 41];
- d. the PCC's finding that some explanation was given by T (albeit an inadequate one) was impossible to square with the PCC's finding that A's mother "was anything other than a credible and reliable witness" and the PCC did not recognise this and the inconsistency with other findings [para 42];

2. In relation to Patient B, the Judge found that:

- a. the PCC should not have taken into account its findings on T's communication with Patient A, for the purposes of considering T's communication with Patient B (for the reasons above). This meant that the latter decision was fundamentally flawed [para 47];
- b. the PCC failed to make any factual finding as to the explanation given to B [para 47];
- c. the PCC was clearly influenced by the fact it considered that T had been unable to demonstrate in layman's terms the explanation she had provided to the patient [para 48]. However, the Judge considered that T had been unfairly treated when the PCC asked her to provide an explanation of cranial treatment as each patient is different and the treatment is adapted for the particular patients; it is therefore difficult to explain in general terms what explanation they would give to any patient: "In circumstances where the Registrant could not be expected to remember the precise explanation which she gave to the patient given the passage of time, she could do no better than speak in generalities and in so far as this came over as unconvincing to the Committee, the difficulty faced by the Registrant in giving evidence under those circumstances should have been taken into account" [para

49];

- d. the PCC had been wrong to have made the findings of fact it did and the basis of the findings of fact were inadequate [para 51];
3. In relation to Patient E (concerning adequate communication) the PCC's findings/reasoning was identical to those made for Patient A and Patient B. This meant that these findings were also flawed and that the PCC's finding and decision that T's omissions in relation to communication and consent amounted to unacceptable professional conduct was wrong [paras 53-54].

The Judge did, however, find that the PCC's findings in relation to Baby C were justified and did amount to unacceptable professional conduct [para 63].

When considering sanction, the Judge said that as a result of the above the only allegation found proved was one incident where T failed to give appropriate advice to Baby C's mother. The Judge said that he was entitled to take into account two additional matters: that T had recognised her failings (in the course of her evidence and cross examination) and that no harm had come to Baby C [para 66].

The Judge stated that "I have no doubt that the process of going through the hearing before the PCC, as well as the hearing before me, will have had a salutary effect on the Registrant and will have made her aware that, on this one occasion, her conduct fell below that to be expected of a registered osteopath...In my judgment, this is one of those rare occasions when a court can substitute its own sanction for that which was imposed by the PCC and the sanction substituted is one of admonishment" [para 67].

Accordingly, T's appeal was allowed to the extent identified above.

Kind regards

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