

19 February 2016

Medical Practitioners Tribunal Service
Seventh floor, St James's Buildings
79 Oxford Street
Manchester M1 6FQ

To: Medical Practitioner Tribunal members
Legal Assessors

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

Copy: Interim Orders Tribunal members
Tribunal Clerks
Medical Defence Organisations
Employer Liaison Advisers

**Re: Dr Ariyanayagam v The General Medical Council [2015] EWHC 3848
(Admin)**

Abstract

An appeal was brought pursuant to section 40 of the Medical Act 1983 against the direction of the Fitness to Practise Panel ('the Panel') to erase Dr Ariyanayagam from the medical register. Mr Justice Garnham dismissed the appeal.

Background

Dr Ariyanayagam is a consultant physician; since January 2007 he was employed to work full time at Peterborough City Hospital. From 2011 his role included managerial duties, which contractually obliged him to work to a 'job plan' and be present at PCH throughout the week, in particular on Mondays and Tuesdays. The FTP Panel (as it then was) heard a complaint, initially raised by a staff nurse, which related to his absence from the hospital on those days.

The Trust commissioned an external human resources consultant to investigate the facts. In so doing, 'access data' (computer records indicating when a swipe card had been used to access different parts of the hospital) was reviewed, along with documentary evidence and staff being interviewed. The conclusion was reached that there was an indication of a pattern of prolonged unauthorised absences by Dr Ariyanayagam.

Following this conclusion, the Trust proceeded to a disciplinary hearing, which Dr Ariyanayagam did not engage with. That Panel found there to have been prolonged unauthorised absences on Mondays and Tuesdays between October 2012 and April 2013.

On the basis of gross misconduct, Dr Ariyanayagam was dismissed and referred to the GMC.

After hearing from eight witnesses on behalf of the GMC, as well as Dr Ariyanayagam, the Panel found the case was not proven in respect of 18 dates – there were days when there was evidence that Dr Ariyanayagam had been working but when there were no access records showing him passing through doors governed by the swipe card – and was proven in respect of 91 dates – for these allegations, the Panel had heard witness evidence, combined with the lack of access data and lack of convincing explanation from Dr Ariyanayagam, the Panel concluded it was more likely than not that he had absented himself from the hospital. The Panel found impairment, following which erasure from the register was directed.

Appeal

On appeal, it was argued on behalf of Dr Ariyanayagam that the evidence given by the staff nurse was unreliable and the Panel had failed to adequately explain why it accepted it. It was further argued that the access data was unreliable and the reasons given in the determination were inadequate.

Garnham J identified what is required in the determination when a Panel gives its reasons, and cited the principles arising from *Southall v GMC [2010] EWCA Civ 407*. It was held that 'the question essentially was which witnesses were to be believed on a question of fact' (para 24) and that 'GMC Panels are not obliged to analyse and reach individual conclusions on every piece of evidence they hear...what matters is that the determination sets out the facts found proved and explains to the losing party why their case has failed' (para 28).

In relation to the access data, Garnham J considered there to be a 'perfectly proper approach to adopt to the access data evidence' and that the 'Panel had made it clear that it was not content to rely simply on the access data and wherever there was other evidence that pointed in a different direction they would rely on it'. It was held that this approach showed 'no unfairness or illogicality and no want of reasoning' (para 34).

It was held that this was a 'model determination by a Panel on the facts' having 'set out its conclusions on each of the paragraphs of the charge sheet, provided an adequate summary of the background to the allegation, summarised its view of the witness evidence and commented on the quality of the evidence provided by Dr Ariyanayagam. It

then explained in some detail why some allegations of absence were found not proved and others were found proven. As to the latter the Panel provided detailed explanations of why it reached the conclusion it did. There can be no doubt that Dr Ariyanayagam, and this Court, knew why he had lost' (para 36).

In relation to sanction, Garnham J opined that this was a 'case of serious dishonesty over a prolonged period' (para 40). The approach of the Panel was condoned, where each possible sanction was considered and where it was 'accepted that erasure is not necessarily inevitable simply because dishonest conduct has been substantiated' (para 41). However, because of the 'persistent and serious nature of this dishonesty', it was held that erasure was inevitable (para 42).

Salient points

- In drafting a determination, the Tribunal does not have to reach a conclusion on each piece of evidence. The key is to set out the facts found proved so that it explains to the losing party why their case has failed.
- A model determination will set out conclusions on each of the paragraphs of the charge sheet, provide an adequate summary of the background to the allegation, summarise its view of the witness evidence and comment on the quality of the evidence provided. It will also explain in some detail why some allegations of absence were found not proved and others were found proven, providing detailed explanations of why it reached the conclusion it did.
- Erasure is not an inevitable sanction in relation to cases of dishonesty; each possible sanction ought to be considered.

Tribunal Development Section
0161 240 7292
Tribunaldevelopmentsection@mpts-uk.org