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Mohannad Barakat v GMC [2013] EWHC 3427 Admin

Background

Dr Mohannad Barakat appeared before a Fitness to Practise Panel ('Panel') in August 2012. The Panel determined he had committed misconduct such as impaired his fitness to practise, in that he had been complicit in the production of a forged medical report and the submission of that report in the course of divorce proceedings being undertaken in a Sharia Court in Damascus in Syria.

The Panel determined to erase his name from the medical register.

Dr Barakat appealed the Panel's determination under Section 40 of the Medical Act 1983 (as amended).

Appeal

Dr Barakat's appeal was considered by His Honour Judge Stephen Davies on 18 September 2013.

The Judge sets out the background to the case in paragraphs 3 to 9 setting out in paragraph 8 the key questions which the Panel had to determine as follows;

- i) Whether during the course of matrimonial proceedings the forged medical report was submitted;
- ii) Whether the doctor allowed that report to be submitted on his behalf; and
- iii) Whether he had altered, or in the alternative, was aware the report had been altered on his behalf.

The Panel answered all three questions against the doctor.

HHJ Davies sets out the relevant principles applicable to the appeal under Section 40 (paragraphs 13 - 15).

The Judge thereafter deals with the detailed grounds of challenge.

He confirmed (paragraph 16) that there were two fundamental grounds of appeal:

- 1) The decision of the Panel was wrong in relation to each of the essential questions which is posed and answered;
- 2) The Panel failed to give proper reasons for its decision.

Evidence of the complainant (paragraphs 17 – 19)

The Judge accepted the GMC's submissions in relation to the complainant's evidence that it was not necessary to deal with each and every submission made by the doctor in relation to this evidence. He was satisfied that the reasons given by the Panel, although short and summary, were sufficient to enable the doctor to know the decision on this question had gone against him, namely that in relation to this issue the Panel had considered the complainant's evidence and had concluded that it was '*credible, reliable and consistent throughout, and also consistent with certain documents*'.

Whether or not the fraudulent report was submitted in the course of matrimonial proceedings (paragraphs 20 – 31)

The doctor's complaint in relation to this matter was that the Panel failed to deal with the fact that the copy of the fraudulent report which the complainant produced did not bear any indication on its face that it had ever been received by the Court in Syria and it failed to deal with the evidence of a Syrian lawyer in relation to this.

Having reviewed the evidence of the Syrian lawyer, Mr Tablieh, it was not so clear cut as the doctor invited the Judge to find. He was satisfied that since Mr Tablieh's evidence was not, contrary to the doctor's submission, diametrically in conflict with the complainant's evidence, it was not vital for the Panel to refer to and address that evidence to explain why they nonetheless accepted the complainant's evidence (paragraph 27).

He concluded the Panel were perfectly entitled to form the view that these were genuine documents, genuinely obtained by the complainant from the court, having been submitted to court by the doctor's lawyer. However, the Judge then turned to the complaint about the failure to refer to the documents produced by the doctor in his reply as they were not referred to or addressed by the Panel. This is dealt with in paragraphs 29-30 the Judge holding that the Panel gives sufficient reasons for their determination.

Which version of the fraudulent report had been submitted to the authorities for the process of the apostille process (paragraphs 32 – 36)

The question which the Judge considered was whether or not the Panel's failure specifically to refer to this matter was a material omission. He reminded himself that the Panel had simply said that they noted that it was not in dispute that the forged medical reports were apostilled and legalised by the doctor at the Foreign and Commonwealth Office and authenticated by the Syrian Embassy.

The Judge concluded he was satisfied it was not a material omission because he was satisfied it was not a vital issue in the case. He says (paragraph 36):-

'It was really no more than an unexplained oddity. Since the appellant agreed that he had submitted a false report to the FCO for authentication, it was not necessary in my judgment for the Panel, in order to decide the case, to resolve that oddity or to explain what their reasoning process was. Insofar as it was a relevant point, it seems to me that it could only have gone to an assessment of the complainant's overall credibility as a witness, and perhaps also to the appellant's credibility in relation to the circumstances in which he came to submit the reports for authentication'

He goes on to say:-

'It is clear in my judgment that insofar as they had to decide this question, they must have been satisfied that the answer lay in one or other of the suggestions put to the appellant in cross examination. That seems to me to be entirely consistent with the view they expressed generally in relation to the appellant's explanations about the events in question. They did not, I am satisfied, need to refer to each and every individual fact which led them to reach the conclusions which they did'

Why the appellant submitted false reports to the apostille (paragraphs 37 – 39)

The Panel was satisfied that the only credible and plausible explanation was for it to be submitted on the doctor's behalf in the course of the matrimonial proceedings in Syria. The Panel went on to say that they did not believe what they described as the doctor's *'incredible and extraordinary explanation as to why he had the document authenticated before sending it back to the complainant'* (paragraph 37). HHJ Davies goes on to confirm that the Panel made a clear finding against the doctor, rejecting his explanation and went on *'for good measure'* to give one reason why they reached that view which was a telephone conversation with the arbitrator (paragraph 38).

The Judge agreed with the GMC's submission that in relation to this issue one had to look at the context of the entire determination and all of the evidence and, in particular, the fact that the doctor's evidence had shifted quite dramatically in the course of the case as

to who was responsible for forgery and why it was undertaken and as to its submission to the court (paragraph 38).

The Judge found against the doctor on this ground. He concludes (paragraph 39):-

'There is, it seems to me, a perfectly clear and rational basis for the Panel to have reached the conclusion which they did in relation to the appellant's account and there is no need, in my judgment, for the Panel to have to set out in their determination what the appellant had said or to give more detailed reasons as to why they rejected it. They gave sufficient reasons for the appellant to understand why his account was being rejected. The decision cannot in anyway be categorised in my judgment as being wrong or insufficiently reason'ed

Part played by the doctor in the process of forging the report (paragraphs 40 – 42)

The doctor challenged the Panel's conclusion in relation to the part played by him in the process of forging the report. The doctor's submissions was that this was not a properly reasoned finding based on proper evidence because there was no positive evidence before the Panel that the doctor had actually collected the reports.

However, the Judge says that what the Panel concluded was something which was clearly open to them from the documentary evidence, namely the GP records, which were not, nor could they have been, the subject of challenge. It was not necessary for the Panel to have direct evidence that it was the doctor who collected the original report from the surgery (paragraph 42).

HHJ Davies stated (paragraph 42):-

'The evidence, in my judgment, fully justified the conclusion that although the appellant may well have been assisted in the forgery, so that a female, whether his mother or Ms Clark, made the call, nonetheless he played a central and fundamental role in the collection of the original report and its subsequent alteration'

In the circumstances he rejected that part of the challenge.

The evidence of Ms Clark (paragraphs 43 – 46)

The complaints by the doctor in relation to Ms Clark were that the Panel failed to engage with her evidence as to how she had come to produce the report without involvement by the doctor, and failed to give a proper explanation of her evidence and explain why these were not accepted.

HHJ Davies confirmed that it was quite clear the Panel did give sufficient reasons to explain why they did not accept Ms Clark's evidence and that was a decision which was well open for them to reach and he rejected that complaint as well.

Telephone call from the arbitrator

The doctor's complaint in relation to this matter was that the Panel was not entitled to refer to, and rely on, his evidence about the telephone call in a manner adverse to him either accepting his evidence about what it was about or at least alternatively providing reasons as to why they did not accept his evidence as to what it was about.

The Judge agreed with the GMC's submissions that the Panel was not obliged in this context to give reasons for doing so when it was all part and parcel of their overall assessment of the credibility of the explanations given by the doctor. It seemed to the Judge that the Panel was perfectly entitled to reach a conclusion about the timing of the call, in the context of everything else that was going on and in the context of the documentary evidence which was before them. It was consistent with the doctor becoming aware that, in order to rely upon that report in the Syrian proceedings, it would need to be authenticated, and this provided the explanation why the complainant said she had first seen it in around October 2009, whereas the authenticated version, so it appeared, was not produced until sometime later in November 2009. In the circumstances he considered there was no criticism of the Panel's decision in that respect.

Evidence about the disputed document (paragraph 48)

This related to a written submission to the court which the complainant said had been written by the doctor himself and which also made reference to, and enclosed, the forged report. The Panel had referred to this and noted the complainant's evidence about this was consistent with what was in her submission and the report itself. The Judge found that the Panel was entitled to find, and gave adequate reasons for finding, that it was a genuine document which supported the complainant's credibility.

Findings of the Syrian Court (paragraphs 49 – 51)

The Judge confirmed there could be no challenge to the first part of the argument in which the Panel noted the doctor had accepted that if the Syrian Court found that a wife was at fault in some way for the breakdown of the marriage then it would reduce the dowry otherwise payable to her. The complaint appears to be in relation to the Panel's view that the principal beneficiary of such a report being submitted was the doctor.

HHJ Davies did not accept that the second matter could be read as a factual finding that the doctor actually benefitted from the report being submitted. It did no more than make the obvious point that this would have been a motive for the doctor producing the forged report in the terms that it was to the divorce court.

Evidence of Mr Tablieh (paragraph 52)

The complaint made was that the Panel failed to consider Mr Tablieh's connections with the complainant's English solicitors and that they ought to have evaluated his evidence in that context. The Judge acknowledged this was not a case in which the Panel was being asked to decide whether or not to accept or to reject hotly contested expert evidence on a crucial issue in the case. He noted Counsel for the GMC's submission that the reality was that Mr Tablieh's evidence was eminently fair and balanced so much so that the doctor sought to rely on part of it in his appeal so that there was no need for the Panel to engage in a detailed analysis of his evidence or indeed to make a positive finding as to whether or not his evidence could be accepted as genuinely independent.

The Judge considered his evidence was independent and there was no suggestion or basis for a contrary suggestion.

Conclusion (paragraph 53 – 55)

In conclusion HHJ Davies found against the doctor on all of his grounds of appeal. He was satisfied from the facts of the case that, even if, contrary to what he had already said, there was some lack of reasoning, it could only be a limited omission not such as to cause serious injustice as suggested by either allowing an appeal which he was satisfied would be quite wrong on the findings actually made by the Panel or remitting the case for a rehearing in circumstances where that would involve effectively a full rehearing of the case given the clear conclusions already reached. In the circumstances he dismissed the appeal on those substantive grounds.

The Judge went on to note that the appeal notice and the skeleton invited the Court to consider the question of sanction but no positive grounds had been put forward either in the original grounds of the original skeleton, Counsel's hearing skeleton or in her oral submissions in support of such an argument.

HHJ Davies considered this simply reflected the fact that the reality was that there was no maintainable basis of appeal in relation to sanction given the Panel's determination of substantive issues (paragraph 56). He therefore concludes (paragraph 57):-

'I see no reason whatsoever to conclude that the decision is anything other than entirely correct on the basis of the Panel's findings. Therefore it does not seem to me that insofar as this ground is pursued, there is any merit in it'

In the circumstances he dismissed the appeal on that basis as well.

Salient Points

- Reminder that the court would be slow to interfere with the decisions on matters of fact taken by the Panel, which was a specialist tribunal and had had the advantage of hearing the evidence from live witnesses.
- The Panel's reasons would be adequate if they made it apparent to the parties why one had won and the other had lost and enabled an appellate court to understand why the Panel had reached its decision. It is not necessary to deal with each and every submission made.

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