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R (on the application of Jackson) v GMC [2013] EWHC 2595 Admin

Background

Mr Jackson made an application for voluntary erasure in July 2012. The application was refused by a Fitness to Practise Panel ('Panel'). He pursued a claim for Judicial Review against that decision which was considered by Mr Justice Dingemans on 26 July 2013.

Application

Mr Justice Dingemans sets out the background to the complaint, the issues and the details of the Panel hearing including excerpts of a previous determination which refused the application for voluntary erasure (paragraphs 2-29).

The Judge then goes on to deal with each of the issues as they had been crystallised before him.

No material error of fact about giving instructions (paragraphs 31-32)

Mr Jackson contended that there was an error of fact by the Panel in concluding that he could give instructions. Whilst the Judge recognised there were difficulties in setting out in a public judgment the full nature of the disagreement before the experts he was able to record the following (paragraph 32):

'First of all, it is plain that the expert determination of his ability to give instructions has varied over time ...Secondly, it was plain that there was common ground that Mr Jackson could deal with the general nature of allegations. Thirdly, it was plain that there would be difficulties in Mr Jackson descending into particulars and there may be an effect of his medication on his ability to provide detailed instructions. Be that as it may, it seems to me that the panel's determination given in private, sets out the material that was before

them in a fair manner and that their judgment about that was a judgment that was lawful for them to form'.

According with the expert evidence (paragraphs 33-35)

Having looked at all the evidence it seemed to Mr Justice Dingemans that the Panel would have been entitled to say that Mr Jackson could not attend a 45 day hearing. However, if he gave instructions, the hearing might have been shorter because there might have been admissions..

The Judge concludes in relation to this issue there was no unlawfulness in the Panel's determining that Mr Jackson should be refused voluntary erasure simply on the basis of the expert evidence.

Not irrational (paragraph 36)

On the basis of what the Judge had stated in relation to the first two grounds above not being made out there was no reason to hold that this was an unlawful or irrational decision by the Panel.

Insufficient reasons (paragraphs 37-49)

Mr Justice Dingemans' conclusions in relation to this issue (paragraph 38) were that the Panel had not explained exactly how they came to the conclusion that Mr Jackson was fit to take part in the fitness to practise proceedings. The Panel said that the public interest in the hearing outweighed Mr Jackson's interests.

If the Panel were not going to follow paragraph 16 of the GMC's Guidance on making voluntary erasure applications it seemed to Mr Justice Dingemans on this 'critical point' and given that so much expert evidence had been directed to it, as a matter of lawful decision making Mr Jackson had to be told what the Panel's decision on this was.

He goes on to say (paragraph 45):

'It was simply not sufficient to say that health issues may impact on his ability to instruct legal representatives without actually saying we either accept or reject that evidence, or are in a state of unknowing about it and will revisit the issue once that has been determined, or, notwithstanding our acceptance of all that, consider that, exceptionally, this is a case that should go ahead and explain why that exceptional situation occurred.'

The Judge therefore concluded that there was a failure to give sufficient reasons to Mr Jackson as to why the Panel had failed to take into account or follow the last sentence of paragraph 16 in the guidance (paragraph 46).

He concluded (paragraph 49) that because of the failure to deal with the ability to give instructions in the context of paragraph 16 and the ability to attend and participate in the hearing this was a decision where the reasons were inadequate and therefore unlawful.

By way of relief the Judge quashed the decision so that a Panel would be required to reconsider the matter.

Salient Points

- A Panel must give reasons if they are not going to follow the guidance set out in paragraph 16 of the GMC's Guidance on making voluntary erasure applications.
- In relation to health issues it is not sufficient to say that they may impact on a doctor's ability to instruct legal representatives without actually saying:
 - They accept/reject that evidence; or
 - They are in a state of unknowing about it and will revisit the issue once it has been determined; or
 - They consider exceptionally that the case should proceed and explain why the exceptional situation has occurred

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