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Re: Dr Jasinarachchi v GMC [2014] EWHC 3570 Admin

Background

Dr Jasinarachchi appeared before a Fitness to Practise Panel of the Medical Practitioner's Tribunal Service ('Panel') in March 2014 when the Panel determined that allegations of misconduct were found to amount to misconduct and the doctor's fitness to practise was impaired. The Panel determined to impose an order of suspension on the doctor's registration for a period of six months.

Dr Jasinarachchi appealed the Panel's determination under Section 40 of the Medical Act 1983.

Appeal

Dr Jasinarachchi's appeal came before Mr Justice Stewart on 23 October 2014 with judgment being given on 31 October 2014.

The bases of the appeal were as follows:

1. On the evidence and information before the Panel the sanction imposed was excessive and disproportionate.
2. Since the Panel's decision, matters have come to light concerning the practical consequences of suspending a trainee doctor's registration which casts a fresh light on the determination, making it unduly harsh and disproportionate and this could not have been envisaged by the Panel.

The Judge sets out the relevant procedure Rules and legal principles at paragraphs 9 to 12.

He sets out the background facts (paragraphs 13-17).

1. Sanction imposed with excessive and disproportionate (paragraphs 18-26).

The Judge sets out a detailed analysis of the Panel's determination including the fact that they noted the pressure of time significantly influenced the doctor's approach in dealing with the cremation form, that it was a single episode, that the Panel received positive evidence revealing Dr Jasinarachchi to be a 'promising doctor' (paragraph 19).

They also noted that the GMC investigation and Panel hearing had had a salutary effect on the doctor thereby militating against a likelihood of him acting dishonestly in the future, although the Panel was *'unsure whether in similar circumstances you may not again put your own interests above that of your patients and colleagues'*.

Against those positive matters set out by the Panel in its determination Dr Jasinarachchi made a number of specific additional points (paragraph 21). The final point being that the Panel ought to have concluded it was an exceptional case and that no further action was needed (paragraph 22). In light of the doctor's submissions a number of extracts are cited by Mr Justice Stewart as being as important (paragraphs 23 and 24).

He concludes (paragraph 26):

'In short the FTTP fell into no error in my judgment. They weighed all the factors in favour of and against A carefully. Dishonesty on the part of a doctor is clearly an important finding of impairment. They were fully entitled on the information before them to decide that this was not an exceptional case warranting no action'.

2. Matters arising subsequent to the Panel's decision (paragraphs 27-38).

The first part of the judgment relates to the request to adduce further evidence and the relevant Ladd v Marshall principles (paragraph 31). Having considered the particular circumstances Mr Justice Stewart ruled in favour of allowing additional evidence and sets out his reasons at paragraph 37.

He considers it one of the rare cases where notwithstanding one of the Ladd v Marshall principles had not been complied with, justice required the fresh evidence to be admitted and for the matter to be reconsidered by the Panel. As both parties agreed the Judge confirmed that this would not be a rehearing of the case but merely a hearing which takes into account the fresh evidence so as to decide what if any difference it makes to sanction (paragraph 37 (iv)).

In the circumstances Mr Justice Stewart dismissed the appeal on ground 1 but allowed the appeal on ground 2 and the case was remitted for further consideration on the issue of sanction.

Salient Points

- Reminder that the factors a Panel has to address on sanction are much wider than the effect on the individual doctor.

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