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## **Pool v GMC [2014] EWHC 3791 Admin**

### **Background**

Dr Richard Pool, a psychiatrist, appeared before a Fitness to Practise Panel of the Medical Practitioners' Tribunal Service ('Panel') in relation to preparing a report about matters which were outside his field of expertise in June 2014. The Panel found certain allegations against Dr Pool proved and determined that they amounted to misconduct and made a finding of impairment as to his fitness to practise. The Panel imposed a sanction of suspension for a period of three months.

Dr Pool appealed the Panel's determination under section 40 Medical Act 1983.

### **Appeal**

The appeal was considered by Mr Justice Lewis on 17 October 2014 with judgment being given on 13 November 2014.

The Judge sets out the background, details of the charges and the hearing (paragraphs 4-13). He then considers in detail the Panel's determination (paragraphs 14-22).

Mr Justice Lewis sets out the legal framework in (paragraphs 23-26) and thereafter summarises the grounds of appeal (paragraph 27).

### **Ground one: the finding that Dr Pool was not an expert (paragraphs 28-39)**

Dr Pool's Counsel submitted that the Panel had applied the wrong test and that it was wrong to decide that Dr Pool was not an expert in general adult psychiatry and therefore failed to restrict his opinion to areas in which he had expert knowledge or direct experience (paragraph 28).

Mr Justice Lewis notes that the focus was whether Dr Pool was an expert (paragraph 29). Further, the Panel was well aware and accepted that a person might be equipped to act as an expert either by reason of training or by reason of day to day experience (paragraph 30).

He concluded (paragraph 31) that the Panel was not wrong in the conclusions they reached as to whether Dr Pool was an expert as he was not on the specialist register in the category of general psychiatry and had not completed any higher professional training, therefore the Panel was right to conclude that his qualifications and training did not equip him to be an expert.

The Judge also confirmed that the Panel accepted that Dr Pool had considerable experience in the treatment of women with personality disorders but that was in relation to clinical practice in the care of offenders and others with similar needs in secure units not the assessment of the fitness to practise of a health service professional, a paramedic.

He goes on to say that the Panel was right to say the experience that Dr Pool had was not in treating patients in community settings and therefore they were right to conclude that he was not '*an expert*' in the field of general adult psychiatry (paragraph 32); similarly he confirmed that the Panel was correct to say that Dr Pool did not have expert knowledge or '*direct experience in the area in which he was purporting to act as an expert.*'

In the circumstances Mr Justice Lewis confirmed (paragraph 33):

*'The judgment reached by the Panel was, in my judgment, correct. The question was not whether the Appellant had skills or experience in dealing with particular conditions which would enable him to carry out a risk assessment of a person with those conditions. The question was whether he could, legitimately, describe himself as an "expert" in the field of assessment of the fitness to practise of an individual carrying out a particular role in the workplace. The Appellant was, simply, not an expert in that area.'*

A further criticism by Dr Pool's Counsel was that the Panel had not given adequate reasons for its conclusions on this issue (paragraph 34).

Whilst Mr Justice Lewis confirmed that the Panel's reasons could be expressed more fully he goes on to say (paragraph 35):

*'The essential questions are, however, whether the determination tells the Appellant why the Panel reached the conclusions that it did and, in this context, the particular findings on expertise. In so far as there is a real intellectual dispute, with reasons and analysis advanced on either side, the Panel needed to address that dispute and explain why it preferred one case over the other.'*

In the circumstances he concluded that the reasons why the Panel found as it did appeared sufficient from the determination read fairly and as a whole (paragraph 36).

### **Ground Two: the adequacy of Dr Pool's reasons (paragraphs 40-41)**

Counsel for Dr Pool argued that the Panel was wrong to find that Dr Pool had failed adequately to explain his opinion whether A's fitness to practise was wholly or partially impaired.

Mr Justice Lewis noted that the Panel set out the reasons why it considered that the reasoning was inadequate in its determination (paragraph 41). He confirms:

*'The fact is that the Appellant was asked to provide expert evidence. He was specifically instructed to address particular questions, including whether A's fitness to practise was impaired and, if so, whether it was wholly or partially impaired and how long it was likely to last. The Appellant did not in his report provide adequate reasoning for his professional opinion that A's fitness to practise her occupation was wholly impaired nor do his comments... explain why that was likely to be for an indefinite period. The Panel was entitled to reach the conclusions that it did. They gave adequate reasons... Their findings that the Appellant did not give adequate reasons for his professional opinion on A's fitness to practise was wholly and indefinitely impaired are conclusions they were entitled to make. The Panel was not wrong to conclude that these allegations were proven.'*

### **Ground Three: the position where only one set of allegations proven (paragraph 42)**

The third ground of appeal was whether the Panel could find that Dr Pool's fitness to practise was impaired if only some of the allegations were proven. Mr Justice Lewis confirmed that the Panel was entitled to come to all factual findings that it did. In consequence, the third ground of appeal does not arise.

### **Ground Four: the Sanction (paragraphs 43-52)**

The doctor submitted that the sanction imposed by the Panel was either wrong or was such as to be unnecessary and disproportionate.

Mr Justice Lewis deals with the relevant principles and the determination of the Panel (paragraphs 45-47).

He confirms that the decision of the Panel that the imposition of a condition on registration was not sufficient and that suspension of his registration was necessary was flawed for two reasons (paragraphs 49-50).

The first matter related to the Panel's consideration that Dr Pool lacked insight into his misconduct. The Panel considered it was not possible to formulate appropriate, workable and measurable conditions on Dr Pool and which would remediate the lack of insight. However, when dealing with suspension, the Panel concluded that Dr Pool was a good doctor and his misconduct was not incompatible with his continued registration and "could be remediated by development of insight" (paragraph 49).

Mr Justice Lewis concluded there was an element of internal contradiction in those two parts of the Panel's determination. He confirms (paragraph 49):

*'On the one hand, the Panel considered that it was not possible to formulate conditions aimed at remedying the lack of insight but on the other hand, it considers that the Appellant could remedy this deficiency and could develop insight during a period of a three-month suspension. The Panel does not explain why a condition prohibiting the Appellant from acting as an expert at fitness to practise hearings for three months was not a practicable workable, condition given that that would achieve the same result in practice as suspension for that period.'*

He then goes on to say the second reason was that the period of suspension was disproportionate. The only area of concern was the fact that Dr Pool had, on one occasion, held himself out as an expert in relation to accessing the fitness to practise of healthcare professionals.

He confirms there's no criticism of the doctor's clinical practice and the sanction of suspension would result in him being unable to work as a clinician or to carry out duties as an expert in field where he was properly entitled to hold himself out as an expert with a period of suspension. He confirms (paragraph 50):

*'Proportionality requires that there is a reasonable relationship between the penalty imposed and the misconduct giving rise to the impairment. In the present case, the imposition of a sanction which not only addressed the need to ensure that doctors did not act in fields outside their professional competence, but also prevented them from acting in areas within their professional competence and from carrying on their clinical practice was disproportionate.'*

In the circumstances he directed that the order of suspension be replaced with one of conditions in that Dr Pool should not for three months accept instructions to act as an expert witness in fitness to practise proceedings.

### **Salient Points**

- Reminder that any decision on sanction must be reasoned so as to show a clear relationship between the sanction imposed and the misconduct found proven.

- Proportionality is a key consideration at the sanction stage which cannot be overlooked.

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