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**Re: General Medical Council v Ankur Chopra [2017] EWHC 819
(Admin)**

Summary

This was an application by the General Medical Council (GMC) pursuant to s41A(6) and (7) of the Medical Act (the Act) to extend an interim order of suspension on Dr Chopra's registration for a period of 12 months up to and including 22 March 2018. The interim order would otherwise expire on 22 March 2017, which was also the date of the application. AC submitted that, had the order not been due to expire on the day of the hearing, he would have applied pursuant to s41A(10), for the Court to vary or dispense with the order on the basis that it was wrongly applied. The Court looked at the matter as if that application was also before it.

Mrs Justice Andrews DBE refused the GMC's application for an extension of the interim order, on the basis that it had been wrongly imposed, and the matter was referred back to the tribunal for reconsideration.

Case law

Both parties referred to *GMC v Hiew [2007] EWCA Civ 369* for guidance on the Court's approach to the exercise of its powers under s41A(7) and s41A(10). This case establishes that, pursuant to s41A(7), the Court has the power to determine that there should be no extension or to refuse the extension sought by the GMC after allowing the parties to be heard. There is also the power under s41A(10) to terminate the suspension or to decrease the period of suspension. The exercise of the power pursuant to s41A(7) is discretionary; the criteria being the protection of the public, the public interest, or the practitioner's own interests. The Court can

take into account the gravity of the allegations, nature of the evidence, seriousness of the risk of harm to patients, reasons why the case has not been concluded, and the prejudice to the practitioner if an interim order continues. The onus of satisfying the Court that the criteria have been met lies with the GMC as the applicant. There is no power to substitute conditions.

AC referred to the case of *Dr Tubonye Harry v GMC [2012] EWHC 2762* where a challenge was made to the reasons of the Interim Orders Panel [as it was then called] for imposing the interim order. The Court in that case decided that the Panel had been wrong, in part because the Panel members in imposing an interim order had not properly considered the impact on the doctor and his patients beyond the impact of the doctor being unable to practise.

Review of interim order – 9 March 2017

AC was subject to an order of conditions, including supervision, until 9 March 2017, when a Tribunal reviewed the order because further allegations had been made against AC, and imposed an order of suspension. The present application focused heavily on the reasoning and decision of the Tribunal at the review hearing on 9 March 2017.

Of the new matters that were raised at the review hearing, the Court found that two were significant, both of which involved new probity concerns. AC denied all of the new allegations and highlighted that some of the previous allegations had been found to be without foundation and accordingly had now been withdrawn by the GMC.

At the review hearing, the GMC submitted that the new information indicated on-going concerns about AC's clinical practice, and new probity concerns, despite his work being subject to conditions. The GMC further submitted that a reasonable and properly informed member of the public would be concerned to learn that AC had been permitted to practise medicine unrestricted whilst the GMC investigation was on-going. The GMC sought that the order be varied from conditions to suspension.

In its determination, the Tribunal said it had reflected on the original concerns and the additional information raising further concerns about AC's performance and probity, some of which arose whilst there was already an interim order imposing conditions on his registration. The Tribunal stated that: "*it considers that in the light of the number of concerns raised which are still under investigation, public confidence in the profession may be seriously undermined if no order were made.*"

The Tribunal in imposing an order of suspension stated that whilst it was aware that *"the order has removed [his] ability to practise medicine, it is satisfied that the order imposed is the proportionate response. The Tribunal has borne in mind that the numerous probity concerns over a range of behaviours suggest a pattern of dishonest behaviour. It first considered if conditions could be formulated to address the risks identified. While a higher level of supervision may address the performance concerns, no conditions could be formulated to address the wider probity issues. The Tribunal therefore determined that an order of suspension is now the proportionate and sufficient response to manage the risks identified."*

Reasoning of the Court

The Court accepted AC's submission that whilst the Tribunal recited in its determination the balancing exercise it needed to undertake under s41A(7), it did not appear to have done so by reference to all of the relevant factors and the related submissions. The Tribunal asked itself what members of the public would think if the allegations were proven and AC had been able to practise unrestricted. But there was no indication that it asked itself what would happen if he were suspended yet the allegations were unfounded. There was no indication that it had considered the impact on AC and his patients beyond that he would be unable to practise.

AC's counsel conceded that if the Court considered that the application of the correct legal test would have led to the same result, it would be appropriate to uphold the suspension. However the Court held that the suspension was disproportionate for the following reasons.

The Court was concerned by the fact that, having concluded that conditions *could* be formulated to address any risk to patients arising from the new allegations, the Tribunal did not properly think through its conclusion that no conditions could be formulated to address the wider probity issue. It was not clear that the Tribunal dealt with AC's submissions on the point that came out of *Harry*, namely that it would often be disproportionate to impose an interim order for conditions unless one was necessary in order to protect the public. The Tribunal also gave no explanation as to why enhanced conditions, to include more regular audits of the practice records, would not adequately deal with the probity concerns.

The Court could not say that had the Tribunal looked at the matter properly, it would necessarily have reached the same conclusion. Nor could the Court say that, applying the correct legal analysis, it would necessarily reach the same conclusion as the Tribunal did.

For the above reasons, the application for an extension of the interim order was unsuccessful and the matter was remitted back to the Tribunal for reconsideration.

Salient points

- This case acts as a salutary reminder to Tribunals not only to properly consider all relevant factors when considering interim orders, but also to carefully set out their decision making so that it is clear to the informed reader that the proper legal test has been applied.
- A reminder that suspension should only be ordered on an interim basis where the risk cannot be managed by way of conditions.

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