

13 May 2019

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Nna v Health and Care Professions Council [2018] EWHC 2967 (Admin)

Learning Points

- In situations where a figure referred to in an allegation is disputed, Tribunals are entitled to reach a conclusion based on the evidence received.
- In any event, it is open to a Tribunal to amend or remove figures (in this case monetary figures) in an allegation if necessary, provided the amendment does not affect the substance of the question which the Tribunal is considering, is not unfair and does not cause any prejudice to the practitioner. There can be an adverse finding against the practitioner on the basis of such an amendment; the fact that there has been such an amendment will not in itself make the finding unfair.

Background

This was an appeal brought by Dr Nna ('N') against the decision dated 10 April 2018 of the Conduct and Competence Committee Panel of the Health and Care Professions Council ('CCCP') that N's fitness to practise was impaired and to strike his name from the Register of Biomedical Scientists.

The allegations against N were that N had made an agreement with a Nigerian researcher ('A') in which A would pay £12,000 to N in exchange for receiving 12 months of supervised training in N's company's research facility at a university and accommodation (£3,000 of which was to be paid in fees to the university). A complained that, after having negotiated the fee down to a total of £9,200, he had travelled to the UK and discovered that N's company did not have a research facility at the university.

The HCPC brought an allegation against N that he had entered into this agreement with A, for a fee of £9,200, knowing that the site did not have the relevant research facility, had not complied with the terms of the agreement, had not paid any money to the university and had not returned any of the money paid by A back to him when

the agreement was not fulfilled, and that all of N's actions were dishonest.

A CCCP hearing commenced in October 2017 and N was found to have acted in the manner alleged above (except in relation to the provision of accommodation) and that he was dishonest. In April 2018, the CCCP found N's fitness to practise was impaired and it determined that a striking off order should be imposed, in addition to an interim suspension order.

Grounds of Appeal

N appealed against the CCCP's determination to strike his name from the register on the basis that the CCCP had been wrong to conclude that the sum which A agreed to pay N was renegotiated to £9,200 rather than staying at £12,000. As the figure of £9,200 was, included within the 'stem' of the allegation faced by N, in error, this error meant that the whole of that and subsequent dependent allegations fell away.¹

The HCPC submitted that, whichever payment figure was used, there would have been similar consequences for N with regard to the question of dishonesty, that either figure would not affect the allegation and that, in any event, the CCCP could have amended the allegation to correct any error without causing prejudice to N.

Judgment

Mr Justice Butcher heard the appeal (in N's absence but taking into account the skeleton argument submitted on his behalf) and dismissed it.

The Judge firstly noted that, although an appeal hearing is a rehearing, '*it is a rehearing without hearing again the evidence*' as stated in *Fish v General Medical Council*.²

The Judge held that the conclusion which the CCCP drew that the payment figure had been renegotiated to a figure of £9,200 was a possible conclusion which could have been drawn from the evidence presented to it and that it could not be said that the CCCP was wrong or had been shown to be wrong in this respect [para 18].

Mr Justice Butcher also agreed with the HCPC's submission that there would have been similar consequences for N, whichever payment figure was used [para 19]. If the alternate explanation put forward by N that a £12,000 fee was agreed, this would not have made N's position any better: in oral evidence, N stated that a receipt for full payment of the £12,000 figure was produced in the knowledge that it would be

¹ The most important sub-paragraph of Allegation 1 was:

1(a) In doing so, you knew you could not fulfil the agreement because the site did not have any of the necessary facilities;....

² [2012] EWHC 1269 (Admin)

used to obtain A's visa to enter the UK. On N's evidence, that would have amounted to N having made a misleading statement to induce the UK visa authorities to grant a visa. Therefore, this would not have made N's position any better as regard a finding of dishonesty [paras 19 and 20].

In any event, Mr Justice Butcher found that whatever figure had been agreed between A and N:

1. the allegation that N knew he could not fulfil the agreement (Allegation 1(a)) would have been unaffected as it was "independent of the precise sum agreed" [para 21] and "in substance...was established by the evidence" [para 23];
2. even if Allegation 1(a) could not be considered independently from the stem (which contained the figure), the CCCP could have amended the allegation to "divorce" reference to the figure in the stem from Allegation 1(a) and either amended the allegation to refer to a different sum as having been agreed between A and N or to remove reference to the monetary figure altogether [paras 24-26]. The Judge said that there would have been no prejudice to N in doing so and the allegation would have been upheld as re-drafted [para 24];
3. the figure did not affect the CCCP's consideration of any of the substantive actions/knowledge in relation to the misconduct alleged [para 25] and the CCCP's decision could not be said to be wrong or unjust by any procedural reason or irregularity [para 26].

The Judge went on to consider the argument raised by N as to why he said the CCCP was wrong to find the further allegations proved. However, the Judge did not consider that the CCCP had been shown to be wrong in any respect and therefore the appeal was dismissed.

Kind regards

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