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**Re: Kamberova v Nursing and Midwifery Council [2016] EWHC 2955
(Admin)**

Learning Points

- If a tribunal determines that a sanction of suspension is appropriate, the fact there has been an interim period of suspension (actual or in effect) *may* be a relevant factor when determining the proportionate sanction including any period of suspension. However, whether it is relevant is for the tribunal to determine.
- A tribunal should take care to make clear in its written determination that it has taken into account any interim period of suspension as a relevant factor when considering what is the appropriate and proportionate sanction and/or period of sanction.

Background

This was an appeal by a nurse, Ms Kamberova, against the decision dated 18 December 2015 of the Conduct and Competence Committee ('the Committee') of the Nursing and Midwifery Council ('NMC') suspending her registration for 12 months, to be reviewed before the date of expiry.

The allegations against Ms Kamberova arose whilst she was working in a children's accident and emergency department. The Committee found proved three instances of dishonesty and misconduct in April 2013 where Ms Kamberova falsely recorded the temperature of a patient, without having taken a temperature. It also found proved two competence charges; one in connection with the application of a dressing to a wound in April 2014 and one in connection

with the recording of a patient's respiration rate before giving a paediatric early warning score in May 2014.

Ms Kamberova was subject to an Interim Suspension Order ('ISO') between 7 July and August 2014 and subsequently subject to restrictions on her practice from April 2015, the net effect of which meant she was unable to work with agencies she had previously worked with and she had not worked since.

Grounds of Appeal

Ms Kamberova argued that:-

1. the Committee erred in its findings on the misconduct and competence charges;
2. there should not have been an adjournment to allow the attendance of a witness; and
3. when determining the appropriate sanction, the Committee failed to take into account the fact that she had been suspended prior to the Committee hearing.

Judgement

Mr Justice Dingemans allowed the appeal against sanction only and remitted the issue of sanction back to the Committee.

1. In relation to the findings on the misconduct and competence charges, the Judge said that there were no grounds of appeal which could justify the setting aside of the Committee's findings [para 26]. He referred to previous admissions made by Ms Kamberova in relation to the misconduct charges, which could not be ignored, and contemporaneous notes and witness evidence in relation to the competence charges. In light of this the Judge found that there were no grounds on which he could say that the Committee's acceptance of the evidence was wrong [paras 9-26].
2. The Judge found that the Committee had been entitled to adjourn the proceedings to hear the evidence of the witness [paras 10-11].
3. In considering the sanction imposed, the Judge said that, when imposing sanctions, a regulatory body had a number of roles to perform, including maintaining the public confidence in the regulatory body itself and declaring and upholding proper standards of conduct and behaviour. The principal function of sanctions is not punitive, but they can have a punitive effect, and any sanction has to be proportionate [para 32].

The Judge referred to *Okeke v Nursing and Midwifery Council [2013] EWHC 714 (Admin)*, in which the Court found that an ISO could not count as a relevant period of suspension for the purposes of determining what was a relevant suspension for the purposes of Article 29(6) of the Nursing and Midwifery Order 2001 (which restricts the circumstances in which a registrant may be struck off). It was noted that this finding was made when considering the circumstances in which a striking off order could be imposed. . However, he noted that *Okele* said “nothing about whether a committee should take into account the period of time spent subject to an ISO when considering what sanction was proportionate” [para 29].

He also noted that there was nothing in the NMC's Indicative Sanctions Guidance ('the Guidance') to suggest that registrants who might have spent up to or over 18 months suspended before their disciplinary hearing should not have that period of time taken into account as a relevant factor by the Committee when determining the proportionate sanction [para 31].

The Judge indicated that the Guidance said “that an interim order and the length of any such order will be of limited or no significance to panels determining sanction in the light of the finding of impaired fitness to practise” but pointed out that that guidance was directed to “ensuring panels did not take an unduly harsh view of a registrant simply because they had been subject of an interim order”.

The Judge indicated that it was “not apparent that the effect of the interim orders or restrictions on [Ms Kamberova's] practice were taken into account by the Committee in assessing the proportionality of any sanction” and that it was “no more than common fairness dictates” that the Committee should take account of any interim order and its effect on the registrant when deciding whether any sanction is proportionate.

He went on to say:

“If proceedings are long delayed and a person is subject to suspension in the interim period, that period of suspension may affect the proportionality of the length of the subsequent period of suspension. Whether it has that effect is for the Committee to determine. If the appropriate sanction is one of striking off, then the fact that there has been an ISO may be of no relevant effect. However, if the appropriate sanction is a short period of suspension, the fact that there has been an interim period of suspension may be relevant. This is particularly the case given the number of cases before this court in which ISOs of considerable length have, because of delays in arranging hearings, had to be extended.”

The Judge indicated that it “was apparent that the Committee intended that Ms Kamberova should have time to reflect on her shortcomings in the light of its judgment, meaning that some period of suspension was plainly intended to be prospective”. However, he said that it was not apparent that the Committee had considered that it might have regard to the period of interim suspension when determining the period of future suspension.

In the circumstances, the Judge set aside the 12-month suspension and remitted the issue of sanction back to the Committee [paras 32-43].

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