

Appeals Circular A08/20

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General Medical Council v Awan [2020] EWHC 1553 (Admin)

Learning Points

- ▶ A practitioner is entitled to advance a defence without any further charges or enhanced sanction resulting from them doing so. The nature of a practitioner's defence against an allegation which is subsequently found proved may be relevant to insight.
- ▶ While Tribunals must have regard to the *Sanctions Guidance* in reaching a determination on sanction, there is no duty to record and restate every relevant paragraph in determinations.

Background

The GMC appealed, pursuant to section 40A of the Medical Act 1983 (as amended), against the decision of a Medical Practitioners Tribunal in November 2019 to suspend Dr Awan (Dr A) for a period of nine months.

The GMC alleged that in January 2016 Dr A had, via online and text messaging services, engaged in sexually motivated conversations with a user who purported to be a 13-year old girl, but who was in fact an undercover police officer. In these messages, Dr A informed the user that he was a doctor and asked questions such as whether she used other forms of social media, what her telephone number was and what time she finished school. Dr A emigrated to Canada in October 2017.

At the Tribunal hearing, Dr A gave evidence that he believed that the user was an older female who was 'messaging' with him and he asked the questions he did in order to expose them. He also said that his messages were meaningless, were a normal

Internet conversation and that he realised afterwards that the user was probably a police officer.

The Tribunal found that Dr A believed he was contacting a 13-year old girl, that he made a number of inappropriate remarks to the user, that these acts were sexually motivated and that Dr A had also failed to report the purported 13-year old girl as potentially vulnerable to the relevant child protection agency. The Tribunal went on to find Dr A's fitness to practise to be impaired, noting that, while the risk of repetition was low, Dr A needed to develop greater insight in order to fully remediate his failings.

The Tribunal then considered the issue of sanction and determined to suspend Dr A's registration for nine months. The Tribunal determined that, while action had to be taken to maintain public confidence and maintain proper professional standards, the sexual misconduct in the case was at the lower end of the spectrum. It also found that the public interest would be best served by not depriving the public of an otherwise competent doctor.

Grounds of Appeal

The GMC appealed on the following grounds:

- ▶ The Tribunal failed to have regard to the manner in which Dr A gave his evidence
- ▶ The Tribunal had regard to an irrelevant factor in its decision making, namely the public interest in not depriving the public of an otherwise competent doctor
- ▶ The Tribunal made two significant failings in its application of the *Sanctions Guidance*, namely paragraph 109¹ and 150².

Judgment

The appeal was heard by Mr Justice Mostyn in June 2020.

In relation to the first ground of appeal, the Judge held that it was inconceivable that the Tribunal did not have in mind Dr A's '*...dogged, yet ridiculous, defence*' when making its findings at impairment on Dr A's insight and the risk of repetition [para 36]. On the issue of what can reasonably be expected from a practitioner who wishes to advance a defence against the allegations they face, the Judge observed:

'I think that it is too much to expect of an accused member of a profession who has doughtily defended an allegation on the ground that he did not do it suddenly to undergo a Damascene conversion in the impairment phase following a factual finding that he did do it. Indeed, it seems to me that to expect this of a registrant would be seriously to compromise his right of appeal against the factual findings and add very little, if anything, to the principal allegations of culpability to be determined [...]

¹ Paragraph 109 sets out relevant factors in cases where erasure is a possible sanction.

² Paragraph 150 confirms that sexual misconduct seriously undermines public trust in the profession and more serious action, such as erasure, is likely to be appropriate.

It seems to me that an accused professional has the right to advance any defence he or she wishes and is entitled to a fair trial of that defence without facing the jeopardy, if the defence is disbelieved, of further charges or enhanced sanctions. [paras 37-38 – emphasis added]

On the second ground of appeal, the Judge assessed that it was implicit in the wording of the Medical Act 1983 (as amended) that ‘the public’ was the UK public, but that there was no reason to suppose that Dr A’s decision to emigrate could not be reversed [para 42]. In any event, a single sentence in the Tribunal’s decision on this point was not a key element of the decision-making process and, if it did contain an error, it was not a material one.

On the third ground of appeal the Judge held that, while it was correct that certain sub-paragraphs of the *Sanctions Guidance* had not been expressly referenced in the determination, it was clear that the Tribunal had these factors at the forefront of its mind [para 44]. It was also noted that ‘...it is not the duty of the tribunal slavishly to restate the terms of the Guidance. This is especially so when...it is no more than non-binding advice’.

The Judge then proceeded to briefly consider the sanction imposed and whether it could be assessed as wrong [para 46]. While the conduct of Dr A had been serious and deplorable, the Tribunal’s decision on sanction had been carefully considered and judged sufficient to meet the overarching objective. It could not be said to be wrong [para 46].

Kind regards
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