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**General Medical Council v Dr Christopher Lamming [2017] EWHC 3309
(Admin)**

Learning Points

- Tribunals must ensure that their determinations address the substance of all of the key points submitted by the parties.
- Any tribunal reviewing or considering previous fitness to practise decisions, should:
 - consider and reach conclusions on any inconsistencies in evidence given about the misconduct which originally led to disciplinary action;
 - make clear in its determination the conclusion which it has reached about the inconsistencies;
 - in cases where the previous allegations included dishonesty, address the inconsistencies in terms of their potential relevance to both propensity to be dishonest as well as insight.

Although reviewing tribunals should not re-litigate the facts before the previous tribunal, it is open to a (new) tribunal to consider and reach conclusions about such inconsistencies in evidence and the reasons for them; to do so is not to act inconsistently with an acceptance of the previous tribunal's findings.

Background

This was an appeal by the General Medical Council ('the GMC') pursuant to section

40A of the Medical Act 1983 against a Medical Practitioners Tribunal's ('the Tribunal') decision dated 10 February 2017 to restore Dr Lamming's name to the medical register.

In 2004, Dr Lamming had been suspended for three months by a (then) Professional Conduct Committee of the GMC ('the Committee') in relation to concerns that in 2003 he had falsely claimed on a CV that he had a PhD from an American university, which he did not, and that (in 2002 and 2003) he made other false or misleading claims about his qualifications and experience.

Dr Lamming then appeared before a (then) Fitness to Practise Panel in December 2007 ('the Panel') in relation to an allegation of misconduct. The allegation was that he dishonestly kept his NHS salary, which was erroneously paid to him between January and November 2000, whilst he was on study leave in the United States of America (and was therefore not entitled to be paid these sums) and that his conduct once the overpayment had been discovered had been dishonest ('the 2007 allegations'). The Panel determined to erase Dr Lamming's name from the medical register. Following an unsuccessful appeal to the High Court, Dr Lamming's name was erased from the register in September 2008.

Dr Lamming applied to be restored to the medical register pursuant to section 41 of the Medical Act 1983. For the purposes of the restoration hearing in 2017, Dr Lamming submitted witness statements and gave oral evidence in which he stated that, in relation to the 2007 allegations, he had not paid much attention to his UK bank account and had only noticed the salary payments in November 2000. During the course of the 2007 hearing, he had stated that he had 'probably' learnt of the salary payments in January/February 2000.

The GMC submitted to the Tribunal that Dr Lamming's most recent account of events the subject of the 2007 allegations had changed significantly from that which he had submitted in 2007 and demonstrated a continuing propensity for dishonesty and a lack of insight into his proven dishonest conduct [para 36]. The Tribunal noted that dishonesty was difficult to remediate, however, it concluded that the dishonesty from both 2004 and 2007 had been remediated (on the basis of evidence submitted by Dr Lamming including that he had made changes to his personal life, had support networks in place and had undertaken relevant training) and was highly unlikely to be repeated.

Therefore, the Tribunal directed Dr Lamming's name be restored to the medical register.

Grounds of Appeal

The GMC appealed against the Tribunal's decision on the basis that its determination was inadequate and its approach flawed as it failed to properly address and/or reach proper conclusions upon the central basis upon which the GMC resisted Dr Lamming's application; that he had, and continued to have, a propensity to be dishonest, there was evidence which demonstrated a refusal to accept the earlier Committee's/Panel's conclusions that he had been dishonest and that he lacked insight into his dishonesty. The GMC said that:

- although the Tribunal accepted there were inconsistencies in the evidence given by Dr Lamming in 2007 and at the restoration hearing in 2017, they had not been addressed;
- the Tribunal had not addressed the GMC's submission that the inconsistencies in Dr Lamming's accounts showed that he had a propensity to be dishonest and that if Dr Lamming was dishonest in 2017, this affected the Tribunal's assessment of both his trustworthiness (in general and with regards to his evidence) and his insight into the nature and gravity of the misconduct which led to his erasure.

The GMC submitted that as a consequence, his name ought not to have been restored to the medical register [paras 6 and 69-75].

Judgment

Mr Justice Julian Knowles allowed the appeal.

1. He began by considering the reasons why Dr Lamming was erased from the medical register in 2007 [para 82]. He summarised that during the 2007 proceedings the Panel:
 - a. found that although Dr Lamming had some insight into his actions and their consequences, it was insufficient;
 - b. found that Dr Lamming had a propensity to be dishonest;
 - c. rejected much of Dr Lamming's evidence, which had changed on more than one occasion; and
 - d. was concerned that Dr Lamming's dishonest actions amounted to a serious and deep-seated behavioural problem, leading to a risk of recurrence.

In light of this, Mr Justice Knowles said that the principal question which the Tribunal should have had at the forefront of its mind, when considering whether to restore Dr Lamming to the medical register, was whether the evidence heard was sufficient to resolve each of these issues in his favour [para 83].

2. The Judge noted that the GMC's case in 2017 was based on what it said was Dr Lamming's "*continuing behaviour*" in 2017, his changed account of the circumstances surrounding the 2007 allegations and his minimisations of the seriousness of his actions [para 84]. He went on to say that "[G]iven the nature of the GMC's case, and because it involved an analysis of the very evidence which Dr Lamming gave in 2017 as compared to 2007, it seems to me that it was incumbent on the Tribunal to grapple with Dr Lamming's various accounts and come to a conclusion about what had changed and why it had changed" [para 85].
3. He said it was clear that the Tribunal understood and accepted that Dr Lamming's account had changed, but it did not consider or reach any conclusions on the inconsistencies or the reasons for them. The Judge said that only once the Tribunal had done this could it "have been able reliably to determine what impact on the question of propensity and insight that aspect of his conduct had" and that the Tribunal "simply could not avoid the issue, because it went to the heart of the case and the reason why the GMC said that Dr Lamming should not be restored to the medical register...." [para 86].
4. The Judge said that the Tribunal also needed to, but did not, consider and address some of the assertions in the witness statement Dr Lamming had prepared for the 2017 hearing which "could be regarded as having an important bearing on the question of his level of insight" [para 88].
5. The Judge held that the Tribunal's reasoning was "plainly inadequate" and "legally deficient", and that even when the transcript of evidence was analysed, "it is impossible to determine what the Tribunal had concluded in relation to the GMC's case that there were major inconsistencies and potential continuing dishonesty in the evidence heard by it, and that Dr Lamming inappropriately minimised the gravity of his past conduct so as to demonstrate lack of remediation and lack of insight". He said that consistent with legal principles¹, the GMC was entitled to know how the Tribunal had taken these matters into account when reaching its decision [para 89].

¹ Where there is a duty to give reasons, the reasons must be adequate. The reasons must be intelligible and must meet the substance of the arguments advanced [paras 63 and 64]

6. The Judge also commented that having decided it would not re-litigate the facts found proved in 2007, the Tribunal should have considered that the inconsistencies in Dr Lamming's evidence were also relevant to propensity, and not just insight, to which it had referred in paragraph 23 of its determination. The Judge said that "it would still have been open to the Tribunal to consider and reach conclusions about the changes in his evidence and the reasons for them. Indeed, as I have said, it was crucial that they did so. To have done so would not have been acting inconsistently with an acceptance of the 2007 Tribunal's findings" [para 92].

7. Lastly the Judge found much force in the GMC's submission that "before the Tribunal could begin to assess what weight could properly be given to Dr Lamming's evidence, and his answers about insight which so impressed them, it first had to engage with the issue of whether the inconsistencies that were apparent in his evidence demonstrated that he was not a trustworthy witness.....[the Tribunal's] failures to consider the other matters I have identified meant that that determination was undermined in a fundamental way" [para 93].

The Judge quashed the decision to restore Dr Lamming to the medical register and remitted the case back to a different Medical Practitioners Tribunal for re-determination.

Kind regards,

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