

26 June 2014

To: Fitness to Practise Panel Panellists
Legal Assessors

Copy: Investigation Committee Panellists
Interim Orders Panel Panellists
Panel Secretaries
Medical Defence Organisations
Employer Liaison Advisers

Medical Practitioners Tribunal Service
Seventh floor, St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

**Re: Dr Goodchild-Simpson v General Medical Council [2013] EWHC 1343
(Admin)**

Background

Dr Goodchild-Simpson has been the subject of GMC regulatory intervention since 1994. During his period of registration he has been subject to periodic sanctions including a period of indefinite suspension in 1997.

In 2011 the GMC invited Dr Goodchild-Simpson to undergo a performance assessment. In the light of the assessment report Dr Goodchild-Simpson was referred to a Fitness to Practise Panel ('Panel') in relation to both health and performance concerns. These were considered during a 14 day hearing before the Panel between 5 - 22 August 2013. The Panel made findings of fact in relation to both performance and health issues and thereafter determined that the doctor's fitness to practise was impaired by reason of deficient professional performance and adverse physical and mental health and determined to impose a sanction of nine months suspension on his registration.

Dr Goodchild-Simpson appealed against the Panel's determination under Section 40 of the Medical Act 1983 (as amended).

Appeal

Dr Goodchild-Simpson's appeal was considered by Mr Justice Green on 4 April 2014 with judgment being given on 2 May 2014.

The Judge sets out the relevant background facts (paragraph 3-16).

He sets out, in summary, Dr Goodchild-Simpson's grounds of appeal (paragraph 18) as follows:

1. The fairness of the procedure used by the Assessors in relation to the selection of sample cases

2. The choice made by the Panel when it came to sanction as between suspension and the imposition of conditions.

Mr Justice Green then sets out the doctor's submissions (paragraph 19-23). The submissions in relation to the procedure adopted by the Assessors are set out in some detail and summarise the reasons as to why the cases used by the Assessors were unfair (paragraph 20).

In relation to the issue of sanction Counsel for Dr Goodchild-Simpson submitted that the Panel had erred in three principle ways (paragraph 21):

1. It misconstrued evidence provided from Dr Denman to the effect that the doctor needed a 'break'
2. It failed to pay sufficient attention to the interests of the doctor and his desire to return to work
3. It rejected the option of imposing conditions far too quickly and, in so doing, dismissed the clear evidence of the majority of experts who gave evidence that the imposition of conditions was sufficient.

Mr Justice Green then sets out the submissions relied upon in relation to those matters (paragraph 22-23).

Ground 1: the choice of sample/fairness (paragraphs 24-31)

Mr Justice Green set out that the context in which the challenge arose was in relation to the adequacy of the sample of 50 cases collected by the Assessors. He confirmed that this was an area where the High Court would start from the proposition that since it involved the exercise of medical judgment, which the experts were best placed to exercise, the Court would be '*loathe to second-guess that judgment in the absence of some clear and material error*' (paragraph 24).

The Judge noted that the selection exercise was conducted by the Assessment Team itself and it was plain from the qualifications of the team that they were experienced. He set out in some detail (paragraph 25) how the Assessment Team undertook the decisions in relation to the sample of cases.

In relation to this issue Mr Justice Green concluded (paragraph 26):

'In my judgment it is not possible to identify errors in this approach. The assessors had a clear discretion as to the evidence that they, as a group, considered to be relevant for the purposes of the assessment. In relation to the sample they focussed upon (i) the work the Appellant had personally undertaken and (ii) his "recent" experience. At the outset they actively sought out the best evidence (50 samples from between two sources). But this was not available so they obtained the next best evidence which was 50 samples from a single, recent source. There can be no conceivable criticism of the Assessors for rejecting Kettering.'

The Judge then went on to confirm that the Panel, as the ultimate decision making body, also had a discretion as to the selection of the evidence that it treated as admissible and persuasive. There could be no suggestion that the Panel simply adopted the Assessor's conclusions slavishly without forming its own judgment about the conclusions (paragraph 27). He then went on to deal with some certain specific criticisms made which he considered unsustainable (paragraph 28).

He confirmed (paragraph 29):

'Most fundamentally, the choice of sample and the conclusions drawn as to its adequacy were quintessentially matters of clinical judgment. To be admissible and probative a sampling exercise does not of course have to be perfect. It has to be the best it can be and no doubt at least meet a basic threshold of relevance. A less than optimal sample might still generate worthwhile results. It will then be for the Assessors to draw sensible inferences, taking into account limitations in the evidence.'

In relation to this aspect of the appeal Mr Justice Green concluded (paragraph 30):

'... I should note that in in comparable cases which have come before the High Court the Court has indicated approval of the sorts of decisions taken by the Assessors in this case. For instance in Holton v GMC [2006] EWHC 2960 (Admin) the Court observed that the appropriate standard for measurement was that for which the doctor in issue "had been trained"... and that "to which he was appointed and the work he was carrying out" Deficiency was "... to be judged against the standard of his professional work that is reasonably to be expected of the practitioner" and as to the "standard applicable to that post in that speciality". This supports the Assessor's conclusion that it was sensible to find samples which reflected the Appellant's actual work, and of course that the more recent the better''.

In the circumstances Mr Justice Green concluded that ground 1 of appeal failed (paragraph 31).

Ground 2: Sanction – the choice between suspension and conditions (paragraphs 32 -42)

The Judge considered this issue a narrow one. The Panel did not consider that erasure was proportionate nor did it consider the imposition of no sanction at all was appropriate. There was no challenge to either of those conclusions from Dr Goodchild-Simpson.

Mr Justice Green noted (paragraph 33) that:

'In assessing the extent of the FPP's margin of appreciation in respect of sanction, it is appropriate to start by setting out some generic considerations and then some factors more specific to the facts of this case.'

He then went on to consider the generic considerations and identified the starting point to be '*public safety*'. He confirmed that many other considerations will play a part in the Panel's assessment but that they are not equal - public safety is the main consideration which is explicitly set out in Section 1(1A) of the Medical Act 1983 (paragraph 34-35).

He then went on to say, consistent with the first point, referencing the case of **Raschid v GMC [2007] EWCA Civ 46** and the judgment of Lord Justice Laws which identified two strands of principle (paragraph 36). He specifically confirmed the emphasis laid out by Lord Justice Laws that the Panel was not concerned with punishment and therefore matters '*prayed in aid by way of mitigation*' were not especially persuasive. Further that matters relating to reputational standing of the profession (especially in cases of misconduct) were important (paragraph 37).

Mr Justice Green also noted that the Panel had guidance on the issue of sanctions which made it clear that the purpose of sanctions included the protection of patients; maintenance of public confidence in the profession; and declaring and upholding proper standards of conduct and behaviour (paragraph 39).

The Judge then turned to the more specific considerations relevant to Dr Goodchild-Simpson's case.

He firstly confirmed that the Panel could not delegate the task of the appropriate sanction to the Assessors nor was it bound to accept the evidence or recommendations of any of the individual experts who gave evidence before it. In Dr Goodchild-Simpson's case, the Panel had before it a range of experts who gave evidence on different aspects of the case – some on health matters others on performance. He noted that the recommendations of any one expert were based only on part of the evidence which, whilst useful and valuable, clearly did not and did not serve to '*oust the judgment call*' that the Panel had to take for itself (paragraph 40).

He noted that the Panel expressed a view about the credibility of each of the experts before it and then made clear which expert's evidence it placed most weight upon. Whilst it was true that it was done relatively succinctly the Judge confirmed, in response to Dr Goodchild-Simpson's criticism that the Panel did not set out in detail which part of which expert's evidence it relied upon and which it did not,:

'There is no need to include a blow by blow, forensic analysis of the evidence. It suffices for the FPP to express a view without weight and credibility of witnesses and then to set out or refer briefly to the evidence relied upon.'

The Judge noted that in relation to the facts which the Panel did take into account these were fully set out in its determination that covered the full range of issues before it. He confirmed it was not possible to identify any material omissions or errors.

The Panel started by exercising its primary role in public protection and then set out a '*careful synthesis of the facts and matters relevant to whether it should impose conditions upon registration or suspension*'. The Judge set out the key matters which led the Panel to conclude the case by the imposition of a period of suspension (paragraph 41).

The Judge concluded that in the circumstances (paragraph 42):

'...the decision of the FPP fell four square within the centre of its area of expertise. It is in my judgment not credible that the High Court should interfere in that decision.'

In the circumstances the appeal failed.

Salient Points

- When expressing a view about the weight and credibility of witnesses it suffices for the Panel to set out or refer briefly to the evidence relied upon, it is not necessary to include *'a blow by blow, forensic analysis of the evidence'* (paragraph 40).
- In a performance assessment the choice of cases to be sampled is a matter for the Assessors, as a matter of clinical judgment. The fact that the sample is less than optimal does not mean that it is worthless (paragraph 29).

Panel Development Team

0161 240 7292

pandevteam@mpts-uk.org