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Re: Dr Inayat Inayatullah v GMC [2014] EWHC 3751 Admin

Background

Dr Inayatullah appeared before a Fitness to Practise Panel of the Medical Practitioners Tribunal Service (Panel) in September 2013 on the basis of various clinical failings alleged in respect of two false patients, and further, that he had inaccurately and dishonestly recorded in the medical notes that he had conducted a medical examination on one of the patients when video footage clearly showed that he had not.

The Panel found a number of the charges proved, that the doctor had acted dishonestly and as a result his fitness to practise was impaired by reason of misconduct. The Panel determined the appropriate sanction was erasure of his name from the Medical Register. The Panel also imposed an immediate order of suspension.

Dr Inayatullah brought an appeal against the decision to erase his name from the Medical Register under Section 40 of the Medical Act 1983, the immediate order of suspension under Section 38.

Appeal

The appeal was considered by Mr Justice Dove on 21 October 2014. Having dealt with a number of procedural matters Mr Justice Dove sets out the background facts (paragraphs 5 - 27).

He then considers the law applicable to consideration of an appeal under Section 40 (paragraphs 28 – 32). Against the background of the exposition of the relevant case law, Counsel for Dr Inayatullah raised questions about the advice which the Panel was given by the Legal Assessor, in particular in relation to the direction given by her on the standard of proof (paragraphs 33-35).

The Judge confirms that the standard to be applied is the 'balance of probabilities' – the correct approach is found in the case of Re B [2008] UKHL 35 (paragraph 33). In relation to the regulatory context he refers (paragraph 34) to the judgment of Mitting J in the case of R (Independent Police Complaints Commission) v Hayman [2008] EWHC 2191 where he assessed the issue in the context of a regulatory hearing (paragraphs 17-20 of his judgment) as follows:

'Of course in disciplinary proceedings the tribunal must look with the greatest care at accusations which could potentially give rise to serious consequences. But in determining whether or not they occurred, it applies a single unvarying standard, the balance of probabilities. If satisfied it is more likely than not that the facts occurred, then it must find them proved and draw appropriate conclusions as to sanction'.

Mr Justice Dove notes that Counsel for the doctor also placed reliance upon Sharma v GMC [2014] EWHC 1471 Admin which involved an allegation of dishonesty.

Mr Justice Dove also allowed Counsel for the doctor to raise the absence of a direction in relation to good character as an additional ground at the hearing (paragraphs 36-37).

Against the legal principles set out in his judgment Mr Justice Dove went on to consider the grounds of appeal raised by Dr Inayatullah.

The dishonesty findings (paragraphs 39-50)

The Judge confirmed that he would deal with two grounds under this heading. Ground two in relation to the direction which the Legal Assessor gave on the questions of probabilities and the standard of proof and ground five the absence of a 'good character' direction.

In relation to the ground which related to the approach to the standard of proof and the question of probabilities, Mr Justice Dove did not agree with Counsel for the doctor's submission that the Legal Assessor's direction did not go far enough and was insufficiently full in relation to the dishonesty allegation.

Mr Justice Dove confirms (paragraph 42):

'I am satisfied that, when read as a whole, the standard of proof and probabilities direction which was given in this case was both appropriate and also shaped for the specific circumstances of the case. The Assessor ... refers directly to the seriousness of the allegation of dishonesty which was in play before the Panel and that is related in the direction which the Assessor gave to the requirement for a heightened scrutiny of the strength and quality of the evidence in relation to this matter'.

The Judge also confirmed (paragraph 45):

'In my view the Assessor is not obliged to advise about every conceivable possibility or every potentially available conclusion that might be reached by the Panel and the summary of the Appellant's case, bearing in mind the passages of the transcript which I have set out ... was entirely fair. Therefore, the direction which she gave in relation to the standard of proof and the issues of probabilities dealt with the important points in the case and in my view provide the Panel with fair and proper guidance as to how they should reach their conclusions'.

Mr Justice Dove then turns to the complaint about the absence of any direction in relation to the doctor's good character.

The Judge notes that whilst it may not have been inappropriate to give such a direction, the real question is whether it is fair to have required it in this case. It is clear from the principles in the cases set out that the analogy with criminal proceedings is not one which is close-fitting. Fitness to practise proceedings are not identical to criminal proceedings and do not raise the same issues as to legal soundness which a Judge's direction to a jury may. He confirms (paragraph 46):

'Whilst it would be wrong to say that good character would not be an issue in all cases that come before the Respondent, it is a reasonable observation to say that in far more cases than might be the case in a criminal context, those who appear before the Respondent will have a good and unblemished character which is being impeached by those proceedings'.

In the circumstances Mr Justice Dove confirms (paragraph 47) that:

'In my view, the fact that the Appellant presented to the Panel as a recognised medical practitioner and, subject to the charges, fit to practise, is an obvious part of the backdrop of the proceedings in this case. The two limbs of the criminal good character direction, namely the impact of good character on the credibility of his evidence and its impact on his propensity as a qualified doctor to commit the offence in this case, namely to lie, would be both clear and obvious to the Panel without the formality or necessity of a direction to render the proceedings fair'.

In the circumstances, Mr Justice Dove was satisfied that the absence, of such, of a good character direction in this case was not a legal error. He did not consider there was any obligation on the Legal Assessor to give it.

Mr Justice Dove concluded (paragraph 49):

'The Panel were correctly directed, in my view, as to how to approach that matter. True it is strong cogent evidence would be required to prove what was a serious allegation, but here the Panel had the unequivocal evidence of the record which was made in the patient's notes by the Appellant and also the unequivocal evidence of the film. The Appellant has upped the stakes in relation to that latter material by claiming that the film had been in some way fabricated. His evidence from the transcript was, as the Panel properly characterised it, evasive, repetitive and, as a result, unreliable and lacking credibility in relation to this issue.'

In the circumstances, Mr Justice Dove could find no basis upon which the finding of dishonesty could be properly questioned.

Clinical findings (paragraphs 51-54)

Mr Justice Dove confirms that in light of conclusions he reached about the dishonesty findings, the clinical findings are necessarily of diminished significance in the overall assessment that might be reached in relation to impairment. Nevertheless, he considered it necessary to reach some conclusions on ground one.

This ground related to Counsel for the doctor's submissions that the Panel should have grappled with why they rejected Dr Bennett's evidence and why his view did not reflect the view of a reasonable body of medical opinion.

Mr Justice Dove confirms that both experts framed their reports expressly against the bracket of the reasonable body of medical opinion and they had, therefore, both taken that issue into account in the formulation of their evidence.

What was clear was that the Panel rejected Dr Bennett's evidence. They concluded, as set out in their reasons, that his evidence was not always underpinned by the impartiality and independence which they would have expected of a reliable opinion in this case. The Panel could not accept his reliance on intuition, in relation to some of the charges, as a substitute for taking a proper medical history.

In addition, Mr Justice Dove confirmed that many of the allegations related to matters about which the Panel were entitled to form their own opinions, having had the benefit of viewing the films of the consultation and seeing the witnesses being involved in those consultations. He confirmed that they were matters of judgment which were properly within the province of the Panel (paragraph 54).

He concluded that the Panel's findings were entirely reliable and there was no substance in the ground of appeal.

Sanction (paragraph 55)

Ground four related to the sanction. Mr Justice Dove confirms that in light of the conclusions he had reached the ground was unarguable. Once the findings of dishonesty and failings of clinical practice stood then it was clear, having reviewed as the Panel did the relevant guidelines, the conclusion that erasure was an appropriate approach is unimpeachable.

In the circumstances the appeal was dismissed.

Salient Points

- Reminder that the correct approach to the standard of proof i.e. the balance of probabilities is found in Re B.
- A Legal Assessor in giving advice to the panel on the standard of proof is not obliged to advise the panel on all possible conclusions and that a summary dealing with the important points is all that is required.
- Absence of a good character direction by a Legal Assessor is not a legal error as they are not obliged to do so. In most cases involving a doctor no direction is necessary as the two limbs of the good character direction, namely its impact and the doctor's credibility, are obvious.

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