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The General Medical Council v Dr Narayan [2017] EWHC 2695 (Admin)

Learning Points

- If a Tribunal departs from the Sanctions Guidance, the relevant paragraph should be referenced and clear reasons given for doing so.
- Tribunal's should consider all three limbs of the tripartite public interest test in the over-arching objective¹, considering the purpose as a whole and not give excessive weight to any one limb (in particular the first).

Background

This was an appeal brought by the General Medical Council ('the GMC'), pursuant to section 40A of the Medical Act 1983, against a Medical Practitioners Tribunal ('the Tribunal') decision dated 5 October 2016 imposing conditions on the registration of Dr Narayan for a period of 12 months.

Dr Narayan was a consultant psychiatrist and also a clinical and undergraduate tutor for the Mersey Deanery. As part of the latter role he acted as a supervisor for medical students and trainees. The allegations against Dr Narayan were that whilst acting as a supervisor, over the course of 12 months he had inappropriate sexual contact with three of his female students at the University of Liverpool. The contact included inappropriate text messages, inviting one student to meet

¹ Section 1(1A) and (1B) of the Medical Act 1983, as amended:

- (a) to protect, promote and maintain the health, safety and well-being of the public
- (b) to promote and maintain public confidence in the medical profession and
- (c) to promote and maintain proper professional standards and conduct for the medical profession.

him at home, asking personal questions, some inappropriate physical contact (including touching one student's hair and brushing the side of another student's cheek with his lips) and suggesting that the state of his mood would or might affect the mark he would give one student and that spending time together with another student could be the difference between a good and an excellent mark.

Dr Narayan did not dispute the evidence of the three students and he accepted the impact his behaviour had had and was continuing to have on the three young women. He gave evidence at both the impairment and sanction stage.

The Tribunal concluded that Dr Narayan had failed to maintain professional boundaries and that his behaviour constituted a pattern of inappropriate conduct. In addition the Tribunal found that the pursuit of a sexual relationship with his students amounted to an abuse of authority as an educational supervisor and as a consultant psychiatrist. The Tribunal found that Dr Narayan's actions amounted to misconduct, that his fitness to practise was impaired and imposed conditions for a period of 12 months.

In deciding to impose conditions the Tribunal took account of Dr Narayan's evidence and submissions that at the time of the hearing he was a consultant psychiatrist working with adults in the community and that there was only one other consultant in the team and over 1,000 patients. He also said that if he were suspended, the care of all of these patients would have to be transferred to his colleague which would create an administrative burden for the Trust and could also present a risk to patients due to switching doctors.

The Tribunal also concluded that any period of suspension would be disproportionate in view of the likely effects on the service and the wider public referred to above.

Preliminary issue

Dr Narayan submitted that the GMC had issued its appeal out of time. After considering the appropriate sanction, the Tribunal handed down to the parties "a full reasoned draft" on 5 September 2016, but as no amendments were made it became the determination itself. On 6 September 2016 the MPTS sent a letter to Dr Narayan notifying him of the outcome of the Tribunal hearing and indicating that the notification would be deemed served on 8 September 2017 and his right of appeal therefore had to be exercised on or before 5 October 2017.

Dr Narayan submitted that service of the notification of the determination was effected on 5 September 2017 when the clerk to the Tribunal handed the decision document to the doctor.

Mr Justice Jay did not accept that submission confirming that the MPTS and MPT are distinct committees² and that the obligation under s35E(1) of the Medical Act 1983, as amended ('the Act'), to serve notification of a relevant direction under s35D, was an obligation of the MPTS, not of the Tribunal itself. Under the Act "there is no obligation or power in the MPT to serve any notification of the relevant determination or decision on the registrant" [para 40 and generally paras 26-46].

Grounds of Appeal

The GMC appealed on the following grounds:

1. Dr Narayan's' conduct was of the utmost seriousness and that sexual misconduct involves a breach of trust and usually attracts the sanction of, at the very least, suspension;
2. the only reason advanced by the Tribunal for not imposing suspension was the disruption to medical services provided by the Trust for whom Dr Narayan worked, if he were to be suspended. This placed undue weight on indirect consequences rather than the matters set out in the Sanctions Guidance³;
3. the conditions imposed by the Tribunal were directed to Dr Narayan's clinical practice rather than his teaching and did not therefore address the gravamen of the charge. If necessary, the GMC submitted that conditions preventing Dr Narayan from applying for a new teaching post or restricting his contact with female students should be imposed.

Judgment

Mr Justice Jay allowed the appeal albeit not directly on the grounds brought by the GMC:

² S1(3) of the Medical Act 1983, as amended

³ References to the Sanction Guidance in the judgment are references to the Sanction Guidance in force as at the date of the Tribunal hearing in October 2016.

1. The Judge said that the Tribunal's determination in this case is, "generally speaking, impressive: clear, well reasoned and comprehensive". He said that it is not right to say that the only reason given for not imposing suspension was the disruption it would cause. The main reasons for not imposing suspension and for imposing conditions was the Tribunal's finding that there was no risk of repetition of this misconduct, Dr Narayan had been engaging with an occupational psychologist, and as the Tribunal had said, "the imposition of conditions requiring [Dr Narayan] to engage with a mentor and a workplace reporter would enable you to embed your reflections and learning. It would also address your misconduct appropriately" [para 51]. The Judge concluded that the Tribunal was entitled to give weight to these matters, particularly after seeing and hearing Dr Narayan give evidence.
2. The Judge reiterated that s40A requires the court to intervene if satisfied that the decision on sanction is insufficient to protect the public, "but this is always subject to the well-known jurisprudence on this topic and the meaning of "wrong" in CPR Part 52. It needs to be emphasised that this court exercises a secondary judgment in its review function and must proceed with caution... and that the test is not the exercise of a primary judgment or assessment" [para 53]. However, he went on to say that although this is a case involving sexual misconduct, and therefore more familiar (to an appeal court) in terms of its subject matter than a technical medical case, "appropriate regard must still be paid to the sovereign function of the expert panel".
3. The Judge indicated that the paragraphs of the Sanction Guidance which the GMC relied upon in its grounds of appeal, which referred to abuse of professional position (paragraphs 141 and 144), were principally to "cater for abuse of the doctor/patient relationship". He found that the chapter in the Sanctions Guidance headed "Cases that indicate more serious action is likely to be required" and in particular paragraph 132⁴, was applicable [para 56]:

"132. More serious outcomes are likely to be appropriate if there are serious findings that involve:

...(b) sexual harassment."

⁴Which is the equivalent to Paragraph 138 of the Sanctions Guidance in use at the time of writing this Appeal Circular

4. The Judge found that this case “did entail serious findings involving sexual harassment” and that Dr Narayan was “in a senior dominant position vis-à-vis these three students and his offer to improve their grades made on two separate occasions was entirely reprehensible. He said that this was not a case of the “utmost seriousness”...but it was a serious case” [para 57]. As a result he said that “on my reading of para 132 of the Sanctions Guidance, read in context, the sanction of suspension or even erasure would usually apply in such circumstances” [para 58]. The GMC had contended for a period of suspension.
5. The Judge found that paragraph 132 had not specifically been referenced in the Tribunal’s determination or reasons on sanction and the Tribunal had “not explained why a more serious outcome has not resulted in the instant case”, even though it had been referred to that paragraph by GMC Counsel during the hearing [para 59].
6. The Judge said that, “as soon as it may be demonstrated, as in this case it can, that the MPT failed to consider a relevant factor in reaching its overall conclusion as to the public interest, it becomes so much easier for an appellant accurately to submit that the decision reached was “wrong”. It also becomes so much easier to submit that the MPT gave excessive weight to the first limb of the tripartite public interest and subordinated the second and third limbs. In my judgment, this is what may well have occurred here” [para 60].
7. In addition he said “ultimately I am also driven to conclude that the MPT gave excessive weight to the Trust’s difficulties in covering for the respondent in the event that he should be suspended” [para 61].
8. When summing up, the Judge said that “in short, the MPT’s failure properly to grapple with paragraph 132 distorts the whole balance of the case in relation to its assessment of the public interest within the overarching objective” [para 62].

The Judge allowed the appeal and quashed the Tribunal’s determination on sanction and remitted the case for reconsideration of the sanction [para 63].

He also indicated that the Tribunal should be provided with a copy of his judgment and to pay particular attention to paragraph 132 of the Sanctions Guidance in the light of further submissions and, if necessary, evidence [para 64].

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