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Professional Standards Authority v (1) GMC & (2) Uppal [2015] EWHC 1304 Admin

Background

The Professional Standards Authority (PSA) referred a decision of the Fitness to Practise Panel of the Medical Practitioners Tribunal Service ('Panel') made on 19 September 2014 in respect of a medical practitioner, Dr Parvan Kaur Uppal.

The Panel found Dr Uppal's dishonesty (which was admitted) amounted to misconduct, but decided that her fitness to practise was not impaired and it was not appropriate to issue her with a warning.

Appeal

The PSA referred the case to the High Court under Section 29 of the National Health Service Reform and Health Care Professions Act 2002 on the ground that the Panel's decision was unduly lenient and wrong in particular:

- a. The Panel's findings and analysis of Dr Uppal's misconduct was inadequate (Ground 3);
- b. The Panel erred in concluding that Dr Uppal's fitness to practise was not impaired and it failed to adequately address her misconduct (Ground 4);
- c. In the alternative, the Panel ought to have issued a warning in respect of her misconduct (Ground 5);
- d. The Panel failed to give adequate reasons for its decision (Ground 6).

Initially the PSA also alleged, in its grounds 1 and 2, that the General Medical Council (GMC) had under prosecuted the charge, which contributed to the errors made by the Panel. However, shortly before the hearing the PSA withdrew those grounds and the GMC formally conceded the appeal on the other grounds. The GMC therefore played no further part in the appeal.

The appeal was considered by the Honourable Mrs Justice Lang DBE on 28 April 2015, judgment was given on 14 May 2015.

Mrs Justice Lang sets out the allegations and findings of the Panel (paragraphs 5 - 6).

She thereafter sets out the law relevant to the consideration of a referral under Section 29 (paragraphs 7 - 9).

Ground 3 – inadequate findings of misconduct (paragraphs 10-23)

Mrs Justice Lang noted that the Panel's found that Dr Uppal's conduct was a departure from the standards set out in paragraphs 56 and 57 of the GMC's guidance Good Medical Practice (2006) (paragraph 13).

She confirms that when assessing impairment, the Panel made a number of observations about the nature of the misconduct (paragraph 14):

'(a) The misconduct related to an isolated incident over a short period of time more than two years previously;

'(b) In terms of the seriousness of the misconduct, the dishonesty did not impact on patient care, was not for financial gain and did not seem to benefit her personally in any way;

'(c) When confronted with her behaviour, she admitted lying and immediately apologised to her GP Trainer and since then had always accepted full responsibility for her actions'.

The PSA submitted that the Panel failed to identify the true extent and nature of the misconduct and hence its seriousness in a number of respects (paragraphs 16 - 22). Mrs Justice Lang did not accept the arguments put forward by the PSA that the Panel failed to appreciate the extent and nature of the misconduct and hence its seriousness. She also confirmed that the section headed 'Ground 6 – Reasons' of her judgment was also relevant to her consideration of this issue (paragraph 23).

Ground 4 – impairment of fitness to practise (paragraphs 24-34)

Mrs Justice Lang noted that the PSA's submission that the Panel's conclusion that Dr Uppal's fitness to practise was not impaired was unduly lenient and therefore wrong. They argued that it was a decision which, having regard to the public interest in maintaining the

reputation of the profession and declaring appropriate standards of conduct, no Panel could reasonably have made (paragraph 24).

The PSA submitted in its review of the relevant law that *'the fitness to practise of a doctor who acts dishonestly is impaired by that dishonesty'* (paragraph 26).

Mrs Justice Lang disagreed with the PSA's submission as it did not accurately reflect the statutory scheme or the case law authorities, since even in cases of dishonesty, a separate assessment of impairment is required and not every act of dishonesty results in impairment (paragraph 27). She confirmed that the principles to apply were helpfully summarised by Cox J in CHRE v NMC & Grant [2011] EWHC 927 Admin at paragraphs 64-76.

Mrs Justice Lang also refers to further guidance given by Cranston J in Cheatle v General Medical Council [2009] EWHC 645 (Admin) at paragraph 21 and 22 (paragraph 28).

Mrs Justice Lang confirms that (paragraphs 29 - 30):

'Applying these principles, the Panel was correct to assess whether or not Dr Uppal's fitness to practise was currently impaired, having regard to her conduct since the misconduct occurred, as well as the nature and extent of her misconduct. Thus, her apology, insight and remediation were all relevant to that assessment, as was the extremely low risk of recurrence.

In my judgment, lying to senior colleagues about communications with patients and their families, is a very serious breach of trust and of professionalism, particularly where the doctor's handling of the case is under scrutiny. It would be likely to result in a finding of impairment of fitness to practise in many cases. However, on the evidence, this was an exceptional case'.

Mrs Justice Lang also confirmed that from the face of the decision the Panel had regard to the public interest factors (paragraphs 31-32).

The Judge goes on to confirm that whether the decision of the Panel was unduly lenient, was ultimately one for the Court, applying the tests set out in Ruscillo v CHRE [2004] EWCA Civ 1356: whether, having regard to the material facts, the decision reached had due regard to the safety of the public and the reputation of the profession.

Mrs Justice Lang confirms (paragraph 34):

'In this case, the Panel had regard to all relevant factors in reaching its decision, including the public interest, and it correctly directed itself in law. I consider that the Panel was justified, in the exercise of its judgment, in concluding that Dr Uppal's fitness to practise was not impaired, on the basis of

the evidence before it, and for the reasons it gave. This was an exceptional case, on the facts’.

The Judge goes on to say:

‘..... I consider that the Panel was entitled to conclude that patients and the public were not at risk. Professional standards have been upheld and public confidence in the profession maintained, by the fact that Dr Uppal has undergone a rigorous disciplinary assessment of her fitness to practise, resulting in a finding of misconduct on her record, with the option of a warning, by way of sanction’.

Ground 5 – warning (paragraphs 35-41)

Mrs Justice Lang noted that the Panel decided it was not necessary, appropriate or proportionate to issue Dr Uppal with a warning either as a deterrent or in the wider public interest. In the light of the mitigating factors (her apology; the misconduct was an isolated incident at odds with her previous and subsequent good history; her insight remediation and the low risk of repetition) the Panel concluded it would be disproportionate to issue a warning which would remain on her record for five years (paragraph 36). The Judge then sets out details of the relevant paragraphs in the GMC’s guidance on warnings and confirmed (paragraph 39):

‘Applying paragraphs 16 and 20a of the Guidance on Warnings, this was a case in which a warning was appropriate because Dr Uppal was in clear breach of the standards in Good Medical Practice. Moreover both the Guidance on Warnings and the Indicative Sanctions Guidance emphasise the gravity of dishonesty in the course of professional practice. In this case, Dr Uppal lied to her senior colleagues about her communications with a patient’s family, and called into question the account given by Baby A’s mother, to deflect criticism of the care which she provided. The Panel was entitled to have regard to the mitigating factors, as identified in paragraph 33 of the Guidance on Warnings, to determine whether a warning was appropriate. However, I am unable to agree with the Panel that, in the circumstances of this case, a warning was not necessary, appropriate or proportionate’.

She concludes in relation to this ground of appeal (paragraph 41):

‘... in my view, the decision not to issue Dr Uppal with a warning for her misconduct was unduly lenient, given the nature of the misconduct. In particular, I consider that the failure to impose any sanction did not uphold standards in the profession and was capable of undermining public confidence in the profession’.

Ground 6 – failure to give reasons (paragraphs 42-44)

Mrs Justice Lang confirms she did not find the reasons to be inadequate, bearing in mind that they are the reasons of a regulatory panel (comprising of health practitioners and a lay member, with a legal assessor), which is not expected to give reasons to the same standard as a court.

She confirmed that she found the reasons *'intelligible and sufficient to enable the parties to know why they won or lost, and for the PSA to consider whether the decisions were too lenient'* (paragraph 43).

Mrs Justice Lang noted that the PSA at times embarked upon a *'forensic examination of the determination, seeking to identify ambiguities, omissions or infelicities of expression'*.

She confirms (paragraph 44):

'The Panel is comprised of lay members, not lawyers, and the determination is drafted under pressure of time during the hearing, so allowance must be made for imperfect drafting. Its reasons will be adequate if they summarise the Panel's findings on the principal important issues. The Panel need not record every point made to it in evidence and submissions in order to show that it has taken it into account. This is particularly so in fitness to practise hearings where the parties and the appeal Court has a full transcript of the hearing.'

In the circumstances, Mrs Justice Lang allowed the PSA's appeal on one ground only, namely that the failure to issue Dr Uppal with a warning was unduly lenient.

Salient Points

- Reminder that when assessing 'current' impairment the Panel must have regard to the practitioner's conduct since the misconduct occurred as well as the nature and extent of the proven misconduct and the public interest.
- Whether the decision of a Panel is unduly lenient is a matter for the court applying the tests set out in Ruscillo.
- Whilst a Panel is entitled to have regard to the mitigating factors to determine whether a warning is appropriate, a warning will be appropriate where there has been clear breach of Good Medical Practice in particular where the issue of misconduct relates to a finding of dishonesty.
- Reminder that the Panel is expected to give reasons which are intelligible and sufficient to enable the parties to know why they have won or lost and for the PSA to consider whether the decision was too lenient (paragraph 43).

- Reasons will be adequate if they summarise the Panel's findings on the principal important issues. The Panel need not record every point made to it in evidence and submissions in order to show that it has taken it into account (paragraph 44).

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