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**Re: Dr Uddin v General Medical Council [2012] EWHC 1763 (Admin)**

***Background***

Dr Uddin appeared before the Fitness to Practise Panel ('Panel') for a total of five days between 27 February 2010 and 29 October 2010.

Dr Uddin admitted all the facts and conceded that his fitness to practise was impaired by reason of misconduct. The Panel determined to erase his name from the medical register and directed that his registration should be suspended immediately.

Dr Uddin appealed the Panel's determination.

***Appeal***

Mr Justice Stadlen considered Mr Uddin's appeal on 2 February 2012.

He sets out the history of the matter in paragraph 3 and 4 of his judgment. He notes in paragraphs 5 and 6 that the two propositions which lay at the *'heart of the challenge'* to the Panel's decision that Dr Uddin's name be erased from the medical register were that:

1. the Panel failed to properly follow the three-stage process required by Protocol 1 Article 1 before interference with the peaceful enjoyment of possessions can be justified;
2. the Panel erred, both procedurally and substantively, by taking into account in reaching its conclusions on sanction certain findings which it made in its determination on impairment.

The two criticisms are thereafter set out (paragraphs 7 and 8), together with the particular findings which were the subject of challenge at paragraphs 9 and 10.

Counsel for the doctor, Mr Hay, conceded at the outset of the appeal, that if the Panel

(and indeed the Court) were entitled to take into account findings reached at the impairment stage and to which objection was taken then the conclusion that Dr Uddin's name should be erased from the medical register would be proportionate and there would be no complaint (paragraph 12).

However, at the end of his argument, on reflection, Mr Hay sought to withdraw the concession preferring the way in which he had put the submission in his skeleton argument. The findings are set out in paragraph 13.

Mr Justice Stadlen then sets out the procedure before the fitness to practise hearing in paragraphs 14 onwards dealing with each of the issues raised by Mr Hay on behalf of Dr Uddin. The Judge notes that Counsel that represented Dr Uddin at the Panel hearing, Mr Hockton, indicated that all facts were admitted and that on Dr Uddin's instructions fitness to practise was impaired by reason of the admissions made.

He also notes that when the matter was opened by Counsel for the GMC the evidence submitted in support comprised a number of witness statements and exhibits which included 51 inaccurate entries which had been forged by Dr Uddin about his own performance in the course of his general practitioner training course of which 37 (the large part) were contained in schedule 1 and were created between 22 October 2007 and 20 January 2009 in an e-portfolio — and the balance in the second schedule comprising entries in the much shorter period of a week between 20 and 27 May 2009 (paragraph 15).

Thereafter Dr Uddin gave evidence and it was in the course of that evidence that he said things which, in part, were relied on and/or led to the findings of the Panel to which objection was taken, on appeal that those findings should not have been relied on at the sanction stage. In particular, it was in the course of his evidence that he said things in relation to not having apologised to the individuals whose assessments he had forged and whether he intended by his false entries to assist himself in getting a general practitioner's qualification (paragraph 19).

In Mr Justice Stadlen's judgment so far as the first criticism of the Panel is concerned, namely that it was wrong for it to admit any evidence on impairment in the light of the indication on behalf of Dr Uddin at the outset that he was going to admit impairment, it is met with the *'insuperable obstacle'* that Mr Hockton on Dr Uddin's behalf expressly indicated that he was content with the procedure of there being evidence on impairment after the admissions had been made and after the evidence relied on by the GMC in support of the allegations had been led, and that he was content that not only should there be evidence but in particular that he should call Dr Uddin. In those circumstances the Judge considered that there was no scope for any complaint at the appeal stage for an argument that it was either procedurally unfair or beyond the jurisdiction of the Panel

to permit that evidence to be adduced. It was adduced with the consent of Dr Uddin with the benefit of legal advice (paragraph 20).

So far as the evidence relied on this is dealt with by Mr Justice Stadlen in paragraph 21 to 25. He concludes (paragraph 25):

*'So far as that aspect of the matter is concerned, in its impairment determination the FTPP found that Dr Uddin engaged in a sustained course of dishonest behaviour in order to help him to obtain a professional qualification by deception. It found that his behaviour amounted to flagrant disregard for the process of qualification and that if his deceptions had not been discovered, 51 false reports which he submitted could have led to his being accepted as having satisfactorily and appropriately completed that component of his qualification as a general practitioner when he had not properly done so.'*

However the Judge then goes on to deal with the Panel's determination on sanction (paragraphs 27 to 40). The Panel set out examples of the false entries (paragraphs 27 to 29).

The Judge notes that with regard to Dr Uddin's contention he did not recognise the importance of the e-portfolio, as part of the assessment for his suitability for general practice, the Panel found that that was either incredible or represented a serious failure to understand the importance of general and objective assessment.

The Judge also notes (paragraph 32) that the Panel noted that even when Dr Uddin knew how important the e-portfolio was as part of his assessment, he continued to place himself above the system. He embellished assertions to deflect scrutiny and to give authenticity to the falsifications.

In the circumstances, he concludes (paragraph 33):

*'In my judgment it cannot be said that the finding, both at the impairment stage and then at the sanction stage, that the intention in falsifying the entries was to assist Dr Uddin in obtaining a general practitioner qualification was unfair either in the sense that it arose out of evidence given by him at the impairment stage, which ought never to have been required to be given in the light of his admissions as to impairment, or in the sense that it went beyond the initial allegations.'*

The Judge also confirms (paragraph 34) that so far as the criticism that the finding went beyond what was alleged, in his judgment there is nothing to that point.

He therefore concludes (paragraph 35) there was no unfairness in the Panel relying on

that finding at the impairment stage and relying on it at the sanction stage. It seemed to him a finding that was, on the facts, inevitable.

Mr Justice Stadlen then goes on to deal with the findings as to insight (paragraphs 36 to 40). The Panel set out their findings in relation to Dr Uddin's limited insight (paragraphs 36 and 37).

It was suggested by Mr Hay that the finding went beyond the allegations against Dr Uddin. Mr Justice Stadlen's considered this suggestion to be misconceived. He goes on (paragraph 39):

*'It is not a necessary part of an allegation of dishonest creation of false entries against a doctor that he has only limited or no insight into the extent of his dishonest conduct in the sense that, without such an allegation it is not open to the FTTP or this court to conclude that, when considering whether nothing short of erasure is necessary in order to protect the public and promote the objectives for which the sanctions are available, there has been a lack of sufficient insight.'*

In the circumstances, there was nothing in the point raised. The Judge confirms that, if the matter had not arisen in the course of evidence at the impairment stage and even though the question of lack of insight was not part of the charge against him, Dr Uddin, in the evidence which, he undoubtedly would have given at the sanction stage in order to persuade the Panel not to erase his name from the medical register, would have given evidence of apology precisely for the purpose of seeking to persuade the Panel that he did have a sufficient insight. Once that evidence had been given at that stage, as distinct from the impairment stage, it would then have been open to the Panel to reach a conclusion on insight and its adequacy or inadequacy (paragraph 40).

Mr Justice Stadlen then turns to the remaining matters complained of (referred to by the judge in paragraph 13 as 'extraneous matters') in paragraphs 41 to 49. The first matter raised by Mr Hay was that the Panel should not have been entitled to consider the issue as to whether Dr Uddin's conduct was unlikely to be repeated (paragraph 41). Mr Justice Stadlen confirms that in his judgment:

*'That is precisely the kind of matter that the FTTP was entitled to consider in assessing whether nothing short of erasure would be sufficient. If it had considered that this was an aberration, a one-off event, or out of character then it might well have taken the view that this was something that was unlikely to happen again and it might have taken the view that suspension would have been a sufficient sanction to meet the legitimate aim for which these sanctions are available.'*

The Judge confirms that the conclusion reached by the Panel, that it was unable to conclude that this is conduct which was unlikely to be repeated and that it could not be certain that if given the opportunity Dr Uddin would not act in a similar manner in the future, was a conclusion which was open to it to reach and the Judge confirmed with regret, that he himself would have reached the same conclusion on the material available to him.

Mr Justice Stadlen accepts that it is *'hard not to feel a great deal of sympathy for Dr Uddin given his background and how far he had gone in his career path as a doctor'* (paragraph 44). However, he goes on as follows:

*'But it does not alter the fact, as it seems to me, that the essence of the findings of the FTTP — which were that this was a calculated, protracted course of dishonest conduct plainly designed to assist Dr Uddin in becoming a general practitioner, particularly when coupled with the cover-up in respect of which he had plenty of time to think about it — were all such as to justify the conclusion that it could not be said that one is satisfied that this is unlikely to happen again.'*

The next point raised by Mr Hay that the finding that Dr Uddin presented a risk to patient safety and his behaviour could have put patient safety at risk was not a justified finding.

Mr Justice Stadlen confirms that there is nothing in the point (paragraph 46):

*'The whole point about qualifications is that if you do not have qualifications you may not be sufficiently trained not to present a risk to patients. If, instead of obtaining a qualification on the objective independent assessment of professional doctors and nurses, a doctor sets about embellishing and creating false assessments of his own qualities and/or embellishing assessments that have already been made and improving them beyond the opinions actually expressed, in my judgment, it follows that were such a person to become qualified on that basis there is a risk to patients, the risk being that they would be looked after by a general practitioner who, in fact, has obtained his qualification by deception.'*

The next issue raised by Mr Hay was that the Panel had not accepted Dr Uddin's contention that although the assessments were falsified they were a fair reflection of his ability and experience (paragraph 47).

Mr Justice Stadlen considers that there could be no legitimate complaint about the finding which seemed to him was a fair reflection of the evidence before the Panel and before him.

He also confirmed that it was hard to disagree with the conclusion of the Panel that it made a mockery of the assessment process and undermined the integrity of the process of qualification (paragraph 48). In the circumstances, there was no substance in the criticisms of the conclusions reached by the Panel insofar as they were based in part on reliance on those allegedly '*extraneous matters*' referred to in paragraph 13. He said that looking at the matter, even without the benefit of the Panel's conclusions those are matters which he himself would have concluded (paragraph 49).

Mr Hay submitted, based on a number of authorities, the advent of the incorporation of the European Convention on Human Rights into English domestic law the old authorities were no longer correct and that it is not appropriate for this court to give any deference to the findings of the Panel on sanction.

Mr Justice Stadlen confirms (paragraph 51) that the proposition was incorrect. He gives a brief citation of a number of authorities (paragraph 52) but he confirms that he was far from satisfied that the decision to erase was clearly inappropriate (paragraph 53).

He confirms (paragraph 55) that when one looks at the Panel's determination on sanction, it adopted the proper approach and concluded that in having taken all the matters into account, including all mitigating factors and evidence put forward on behalf of Dr Uddin, that nothing short of erasure was appropriate, gave sufficient protection to members of the public and sufficiently satisfied the aim of maintaining confidence of the public in the profession.

Mr Justice Stadlen confirms that the Panel reached not only a conclusion that was open to it but the right conclusion. Notwithstanding the considerable sympathy expressed to Dr Uddin there is nothing in the appeal which was accordingly dismissed.

### ***Salient Points***

- Reminder that when the court is reviewing sanctions imposed by the Panel, the position is that, absent any error of law, the court would defer to the views of the Panel, although the court was not bound by them.
- Whilst there are 3 stages to be followed in fitness to practise proceedings by the Panel, the courts have recognised that there are elements of the evidence, e.g. insight, which are relevant to more than one stage.

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