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Re: (on the application of Khan) v GMC [2014] EWHC 591 Admin

Background

Dr Mohammed Irfan Khan appeared before a Fitness to Practise Panel (Panel) in relation to his conviction for three offences, one offence of making a false instrument and two offences of making false representation. The offences related to two occasions when Dr Khan took prescriptions, from a hospital where he was working, and completed them to enable him to obtain medication for his own use and forged the signature of a colleague.

Dr Khan appeared before the Panel on 30 October 2013 where he admitted the conviction and misconduct and he accepted that his misconduct did amount to impairment of his fitness to practise. The Panel determined to impose a period of suspension on his registration of four months.

Dr Khan appealed only against the sanction in accordance with Section 40 of the Medical Act 1983 (as amended).

Appeal

Dr Khan's appeal was considered by Mr Justice Lewis on 23 January 2014.

The Judge set out the factual background and details of the hearing (paragraphs 2-11). He noted that the Panel, in its determination, recorded the submissions of Counsel for the GMC and for Dr Khan and then recorded the Panel's approach, making reference to the Indicative Sanctions Guidance. He also noted the Panel considered the appropriate sanction starting with the least severe and moving up the scale accordingly.

The MPTS makes impartial decisions in doctors' fitness to practise hearings. The MPTS is part of the General Medical Council, but it is operationally separate and it is accountable to Parliament.

Mr Justice Lewis noted (paragraph 10) that there was a recognition that suspension was the appropriate sanction and the Panel did not need to move to consider the more serious sanction of erasure of Dr Khan's name from the register.

Having determined that a period of suspension would be sufficient to deal with the conduct that had occurred, the Panel then went on to consider the length of the suspension - details of their determination are set out in paragraph 11.

Mr Justice Lewis then turned to the legal framework (paragraph 12); the Indicative Sanctions Guidance (paragraph 13) and the principles governing the approach of the Court in the relation to an appeal (paragraphs 15-20).

The Judge particularly noted that when dealing with appeals against sanctions the Court in Rashid v GMC [2007] 1WLR 1460 identified two guiding considerations – the first is that the function of the Panel, in imposing sanctions, is concerned primarily with maintaining the reputation and standards of the profession rather than punishment of the individual doctor, the second is the fact that the Panel has special expertise and experience of what is appropriate and necessary to maintain the standing of the profession.

Against that background in relation to facts, legislation and case law Mr Justice Lewis then turned to the grounds of appeal.

The primary submission on behalf of Dr Khan was that the Panel's determination was wrong and should be quashed and either that no sanction should be imposed or a shorter period of suspension should be imposed (paragraph 21). Counsel for the doctor said that even if no additional sanction were imposed by the Panel, the message would be clear, from the period of interim suspension imposed and from the determination itself the conduct was unacceptable on the part of the doctor (Ground 1).

Alternatively Counsel for the doctor submitted (paragraph 22) that a shorter period of suspension should be ordered. He submitted that would both serve to ensure maintenance of professional standards but also avoid the effect on Dr Khan as there was a risk that he would be unable to complete his sub speciality training in cornea transplant and the public would therefore be deprived of a good surgeon in the field of corneal transplants (Grounds 2 and 3). Counsel contended that one of the reasons for imposing the sanction was to give Dr Khan the opportunity to reflect and he submitted this was not a valid reason for suspension (Ground 4) (paragraph 22).

Mr Justice Lewis then goes on to consider each of the Grounds. In relation to the first matter that the Panel fell into error by not taking the period of interim suspension into account the Judge considered that the Panel did have regard to the period of interim suspension and the consequences that resulted from that suspension (paragraph 24). He went on to state that he had read the decision of the Panel in such a way that Dr Khan

had had a lengthy period of interim suspension and there were consequences for him in terms of his employment and training. It was against that background the minimum 'sentence' that the Panel considered necessary, given the dishonesty was four months suspension (paragraph 25). In the circumstances Mr Justice Lewis confirmed the Panel did have regard to the period of interim suspension and there was no basis for saying they made a wrong assessment of the significance of that period and Ground 1 was therefore not made out (paragraph 26).

The Judge then goes on to consider Grounds 2 and 3: that the Panel did not give sufficient consideration to the consequences of the suspension for Dr Khan; and that the Panel failed to give sufficient weight to that strand of the public interest which enables a doctor whose practice is safe to exercise his professional skills for the public good.

Counsel for the doctor submitted, in relation to Ground 3, this was of particular significance in Dr Khan's case (details of which are summarised in paragraph 28).

Mr Justice Lewis stated (paragraph 29) that it was for the practitioner concerned to produce evidence which he says is relevant before the Panel. If Dr Khan had wished to advance the argument that the effect on him of a particular sanction would be to lose all opportunity of completing subspecialty training in cornea work, then it was for him to produce that evidence before the Panel. The Judge noted he did not do so nor had he done so before him.

The Judge, however, considered in the circumstances that even if there were a real risk that Dr Khan would not be able to complete his sub speciality training if the suspension stood (paragraph 29), he confirmed that the Panel did have regard to the effects on Dr Khan and the consequences of ordering a suspension (paragraph 30). He confirmed that the Panel concluded that a period of four months suspension was the minimum necessary against that background to maintain public confidence in the profession. They went on to express the view that a finite period of suspension may enable the appropriate authorities to consider retaining Dr Khan on a training programme. But their decision, read properly was saying that four months suspension is the minimum necessary in the express hope that he may be able to continue training. But the implication is clear that they can't avoid the fact that a period of four months suspension would result in him not having the training, a period of four months suspension was still the minimum necessary to mark the fact that this conduct was unacceptable.

In relation to Ground 3 Mr Justice Lewis considered the essential question *'was the decision of the Panel that a minimum period of 4 months' suspension necessary to maintain public confidence in the profession wrong'*? Mr Justice Lewis confirmed there was no basis for concluding that no or lesser sanctions should be imposed as this was serious misconduct.

He also confirmed that he had to pay great regard to the decision of the Panel as to what the appropriate standards of profession are and what sanctions are necessary in cases of dishonesty to maintain those standards – following from the judgment in Raschid.

He concluded that the decision by the Panel was correct (paragraph 32) and there was no basis for concluding that four months suspension was wrong. He confirmed (paragraph 33):

'I bear in mind the central issue is what is necessary to maintain public confidence in the medical profession and the reputation of the profession. The Panel was entitled and in my view right to take the view that the forging of prescriptions by a doctor is unacceptable behaviour and called for an appropriate sanction. They had regard to the effect on Dr Khan, but as is clear from Raschid and from Bolton, the central issue is maintenance of public confidence and the reputation of the profession. Even if suspension has very serious consequences for an individual, that would not justify avoiding the imposition of sanctions that were necessary to maintain public confidence in the profession'.

Mr Justice Lewis confirmed he would pay great respect to the conclusions of the expert Panel in any event (paragraph 34) but in any event he agreed with the Panel that conduct of this kind, which involved dishonest behaviour needed to be accompanied by an appropriate sanction.

In his judgment four months suspension was the minimum sanction that could reasonably be imposed in the particular circumstances and for these reasons Grounds 2 and 3 did not succeed (paragraph 35).

For completeness Mr Justice Lewis dealt with Ground 4. The skeleton argument on behalf of Dr Khan says the Panel had noted that he had reflected on his conduct and its serious consequences and said that nevertheless the Panel went on to give, as one of its reasons for imposing a period of suspension that it would give him an opportunity to further reflect on the conduct.

Counsel for the doctor submitted that was not a valid reason because the Panel had heard and had not rejected evidence that the doctor had already taken positive steps to address his shortcomings and to develop insight (paragraph 36).

In relation to that issue Mr Justice Lewis said all that the Panel was saying was that it recognised that the sanction of a period of a four month suspension would give time for further reflection and that was not a reason for imposing the sanction. The Panel had already recognised that Dr Khan had taken steps to address his shortcomings and develop his insight. In his view the Panel was simply saying this is the sanction it considered

necessary and one of the consequences would be to allow further time for reflection. Therefore Ground 4 was not established.

For the reasons set out in his judgment the appeal was dismissed.

Salient Points

- Reminder that the function of the Panel, in imposing a sanction, is concerned primarily with maintaining the reputation and standards of the profession rather than the punishment of the individual doctor.
- If by imposing a period of suspension a doctor may be unable to complete a training programme then if this is the appropriate outcome to mark the fact that the conduct in question was unacceptable that would not be a basis for concluding that no or a lesser sanction should be imposed.
- Conduct which involves dishonest behaviour needs to be accompanied by an appropriate sanction.

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