

14 August 2015

Medical Practitioners Tribunal Service
Seventh floor, St James's Buildings
79 Oxford Street
Manchester M1 6FQ

To: Fitness to Practise Panel Panellists
Legal Assessors

Tel: 0161 923 6263

Fax: 0161 240 7199

Email: enquiries@mpts-uk.org

Copy: Interim Orders Panel Panellists
Panel Secretaries
Medical Defence Organisations
Employer Liaison Advisers

Re: Oluwashegun v General Medical Council [2015] EWHC 2146 (Admin)

Abstract

Dr Oluwashegun ("the appellant") appealed on various grounds (set out below) against the MPTS finding of serious misconduct and its decision to erase her name from the Medical Register.

The Administrative Court dismissed the appeal.

Background

The GMC allegations focussed on two job applications made by the appellant in or around October 2012; specifically that she had failed to disclose that her registration was subject to conditions imposed by an Interim Orders Panel (IOP) in January 2012.

The interim conditions required Dr Oluwashegun to inform "any prospective employer or contracting body (at the time of application) [that her] registration is subject to the conditions [in the 2012 Interim Order]".

The order was reviewed by the IOP at a hearing on 3 December 2012. At that hearing, the IOP determined that there might have been repeated breaches of the interim conditions imposed on the appellant's registration. This was following reports received from two prospective employers that Dr Oluwashegun had applied to, The Cambian Group and Ellern Mede Ridgeway, that the appellant had failed to disclose to them during her job application of the existence and the nature of the condition in the 2012 Interim Order. The

IOP in December 2012 decided to vary the 2012 Interim Order to one of suspension and this order was subsequently revoked in February 2013.

Appeal

The judgment first sets out the approach of the appellant court to the decision of a panel at paragraphs 8 and 9. Sir Stephen Silber then goes on to consider and to dismiss each of the seven issues relied upon by the appellant as grounds of appeal, as detailed in paragraphs 10 to 65 of the judgment.

i) She was not bound by the terms of the 2012 Interim Order during her application process with EMR and Cambian in October 2012 and therefore she was not obliged to tell them of the 2012 Interim Order;

In considering the effect of the 2012 Interim Order' (paragraphs 10 – 24) he reproduces the appellant's submissions in relation to the Interim Order at paragraph 15 and concludes that none of the matters raised by the appellant "*excused the appellant from complying with the terms of the 2012 Interim Order while it was in force.*"

ii) The Panel should not have accepted the evidence of Dr. Kalbania and of Dr. Al-Khairulla;

The credibility of the GMC witnesses is considered at paragraphs 25 – 31. In dismissing this ground of appeal Sir Stephen Silber is clear that he is "*unable to accept these criticisms of the Panel's conclusions on these two witnesses.*" and goes on to say,

"The Panel were the decision- makers who had the great advantage, which I did not have, of having seen the witnesses give evidence and how they stood up to cross-examination. In addition, the Panel gave sensible, cogent and clear reasons for accepting the evidence of these witnesses as I have explained and I accept their conclusions."

iii) The Panel failed to attach weight to the appellant's good character and should have accepted her evidence;

Paragraphs 32 – 39 deal with the credibility of the appellant. Sir Stephen Silber dismisses this ground of appeal. In dismissing the issues raised he emphasises that,

"the Panel as the specified fact-finder was entitled to conclude that the appellant's evidence could not be accepted as being credible."

He refers to the Court of Appeal judgment in *Southall V GMC* and emphasises that the panel is entitled to deference because it has heard the evidence and reached conclusions and provided reasons.

iv) The Panel should not have found the appellant to be dishonest;

The appellant's fourth issue is considered and dismissed at paragraphs 40 – 44 on the grounds that her submission was flawed in that she wrongly claimed to have been accused of committing an offence of dishonesty. The Judge also points out that in this case,

“The Panel was given a proper Ghosh direction as to the meaning of dishonesty in relation to count 4 and it was properly applied.”

v) The Panel ought not to have found that the her fitness to practice was impaired;

Issue 5 is considered at paragraphs 45 – 52. Sir Stephen Silber confirms that the panel followed the correct process and approach with regard to their decision on misconduct and impairment and confirms that the panel were entitled to make a finding of misconduct and impairment despite the appellant's claim that her particular form of dishonesty is not particularised in Good Medical Practice.

vi) The sanction of immediate erasure was disproportionate;

With regard to issue 6, (paragraphs 53-61), Sir Stephen Silber's view was that the panel had explained their *“thoughtful and persuasive”* reasons for erasing the doctor's name from the register, listing at paragraphs 57 and 58 the factors taken into account by the panel. He also confirms that the panel had adopted the correct approach

“that the purpose of sanctions was not to be punitive, but to protect the wider interest [which] included the protection of patients, maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour” (paragraph 54)

and considering *“the sanctions open to them starting with the most lenient course.”*, at paragraph 55.

vii) There are various other reasons why the appellant's appeal should be allowed.

Finally, the Court held at paragraphs 62-65 that the other 'sundry issues' raised by the appellant did not constitute valid grounds for allowing the appeal. The judgment refers in particular to the appellants' claim that her rights pursuant to Article 6 of the ECHR were infringed (paragraph 62), on the grounds that she did not receive a fair hearing. Sir Stephen Silber states that the panel set out *“clear and cogent”* reasons to justify its decision and was therefore compliant with Article 6. He also refers at paragraph 63 to the appellant's claim that under the Employment Act 1996 that Condition 8 c was not breached on the basis that the application was ongoing. This claim was rejected on the

grounds that the onus was on the appellant to inform the employers 'at the time of application' that she was subject to the Condition. This was when the interviews took place and she had not done so.

Salient Points

Appeals against findings of fact A reminder of the importance of [Southall v GMC \[2010\] EWCA Civ 407](#) (our circular on this case is [here](#)) that "findings of primary fact, particularly if founded upon as assessment of the credibility of witnesses are virtually unassailable"

Dishonesty The two stage Ghosh direction may be appropriate in a case where the doctor denies that he or she considered that his or her actions were dishonest. See also the Appeal Circular for [Hussain v GMC \[2014\] EWCA Civ 2246](#) and Singh J's observation in [Uddin v GMC \[2012\] EWHC 2669 Admin](#) (paragraph 31).

Panel Development Team

0161 240 7292

PanelDevelopmentTeam@mpts-uk.org