

11 October 2012

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**Re: Dr Chikwendu Uruakpa v General Medical Council [2012] EWHC 1960  
(Admin)**

***Background***

Dr Uruakpa appeared before a Fitness to Practise Panel ("Panel") in relation to a review hearing which concluded on 9 July 2011 when the Panel determined that Dr Uruakpa's fitness to practise was impaired by reason of deficient professional performance and erased his name from the Medical Register. The Panel's determinations were made at the conclusion of the review hearing conducted at the end of a period of twelve months suspension, which had been imposed by a previous Panel in August 2009 (that decision having been appealed by Dr Uruakpa unsuccessfully).

Dr Uruakpa appealed the Panel's determination pursuant to section 40 of the Medical Act 1983 (MA).

***Appeal***

Dr Uruakpa's appeal was heard by Mr Justice Eder on 10 May 2012. The Judge summarises the substantial background to the case in paragraphs 2 – 21 (taken from General Medical Council (GMC) Counsel's skeleton argument which was not in dispute). He included at paragraphs 19 - 21 key passages from the Panel's determination.

In his oral submissions before the Judge, Dr Uruakpa raised four main issues (paragraph 22). The first related to the applicability of section 35D of the MA (set out in paragraph 21). He submitted that section 1 of the Medical Professional Performance Act 1995 continued to apply. Although the Judge accepts there was some confusion regarding whether the 1995 Act was still in force, he considers the position is relatively straight

forward and sets out (paragraphs 23 and 24) the various amendments to the 1995 Act which confirms that although the 1995 Act is, or may still be, in force in a technical sense section 36A of the Medical Act 1983, which was inserted into that Act by section 1 of the 1995 Act, had been repealed and was no longer in force and in those circumstances the new section 35D which had been brought into effect by the 2002 Amendment Order was in effect (paragraph 25).

The Judge sets out the nature of the appeal under section 40 of the Medical Act 1983 and the relevant case law (paragraphs 26 and 27). He then goes on to consider Dr Uruakpa's arguments. He notes that Dr Uruakpa had served a lengthy and detailed skeleton argument but that many of the matters raised by the doctor could not, in the Judge's view, conceivably amount to grounds of appeal and other points were difficult, if not impossible, to understand. In addition, there were numerous general complaints of bad faith for which there was no basis whatsoever (paragraph 29).

In the circumstances Mr Justice Eder confirms that he did not propose to address each and every assertion contained in Dr Uruakpa's skeleton argument, or made in the course of oral submissions, but rather focus on the arguments which appeared properly to relate to the Panel proceedings and the determination against which he had a right of appeal.

The Judge concludes in broad terms, these fell under two main heads:

1. Complaints about the substance of the Panel's decision;
2. Allegations related to the conduct of the hearing (paragraphs 29 and 30).

Although the Judge had already dealt with the arguments in relation to the 1995 Act he goes on to confirm that whilst the 1995 Act may still, theoretically, be in force, the effect was that the Panel had available to them not only powers of suspension or the imposition of conditions but also to erase Dr Uruakpa's name from the Medical Register (paragraphs 31 – 35).

The Judge concludes that, on this basis, the first ground necessarily fails because the Panel has the relevant powers. On the basis of the Panel's conclusion that Dr Uruakpa's fitness to practise was impaired it was open to them, at least as a matter of jurisdiction, to direct erasure (paragraph 36).

The second main point under that heading concerned the standards set by the Postgraduate Medical Education Board (PMETB). At the hearing before the Panel Dr Uruakpa sought to rely on certain documents emanating from PMETB but the Panel concluded those documents should be excluded on the grounds of inadmissibility. In particular, the Panel concluded that many of the documents predated Dr Uruakpa's original fitness to practise hearing and many of the matters to which they referred had already been determined by that Panel and endorsed by the High Court. Therefore, the

documents had no relevance to the issues which were before the review Panel (paragraphs 37-38).

Dr Uruakpa, however, disagreed and thought the documents may have related to an earlier stage but nevertheless they became relevant again, in a way not considered by the Judge at the earlier Appeal Hearing, which was prior to the GMC and PMETB merger (paragraph 39).

Whether or not that was the case the Panel dealt with it in its determination in that the additional responsibility given to the GMC by the takeover of the powers and functions of PMETB was unconnected with the GMC's performance procedures. The GMC's fitness to practise proceedings are commenced when doubts arise as to a doctor's conduct, competence or health which are such as to raise questions about his or her fitness to practise.

The Panel confirmed that the GMC had long had a role in setting the standards of training and education and a separate role in ensuring that registered doctors are fit to practise. The Judge considers that this last matter was "*important and correct*" (paragraph 40).

He confirms that the questions that the Panel had to consider went beyond ordinary standards of training and education and were directed at considering whether or not Dr Uruakpa's fitness to practise was, or was not, impaired in the wider sense of that term. In the circumstances, it did not seem to him that the second main ground was valid.

The third ground advanced before the Judge and referred to in Dr Uruakpa's skeleton argument related to criticisms of the content of the proposed performance assessment. In summary, Dr Uruakpa submitted he had been set up to fail and that therefore the GMC had, in effect, acted unfairly and indeed unlawfully (paragraph 41).

The Judge did not accept the criticisms as, in his view, the GMC had made plain the basis of the assessment and whilst it might be the case that the doctor was unhappy with that he could not see that the GMC had acted in breach of any duty such that it could be said that they had acted unlawfully (paragraph 42).

A number of other matters were raised by Dr Uruakpa in his skeleton argument which the Judge sets out in summary (paragraph 43) but confirms that he did not propose to say anything about those matters save the failure, or alleged failure, to comply with rule 21A of the General Medical Council (Fitness to Practise) Rules 2004 (Rules) (paragraphs 43 and 44).

In summary, Dr Uruakpa submitted that there had been a '*failure of notification*' and that when he came to the Panel hearing he did not know what he was up against and to that extent the hearing was flawed because the Panel had, in effect, acted unfairly and therefore unlawfully (paragraph 45).

Whilst the Judge agreed with the principle that proper notice should be given he did not agree that Dr Uruakpa had any legitimate complaint in that context (paragraph 46).

The Judge confirms that the letter sent to the doctor together with the notice of the previous determination amounted to proper notice as it gave not only the direction made at previous hearing but the grounds for the same. In addition, Dr Uruakpa had been given further information in relation to the purpose of the review which was to reassure the Panel that Dr Uruakpa was fit to resume practice either unrestricted or with conditions, so the Panel would be able to satisfy itself that the doctor had maintained his skills and knowledge and that patients would not be placed at risk by resumption of practice or by the imposition of conditional registration (paragraph 49).

In Mr Justice Eder's judgment therefore Dr Uruakpa *"knew full well what he was up against and that in those circumstances he cannot properly complain that the Panel hearing was in any way unfair"* (paragraph 50).

The Judge refers to other arguments raised in relation to the conduct of the hearing but he considers that they were without merit.

In all the circumstances Mr Justice Eder confirms that the appeal must fail. In his view (paragraph 51) the Panel conducted the hearing in *"an entirely lawful and fair manner and the conduct of the GMC has throughout been impeccable."*

### ***Salient Point***

- A Panel may erase a doctor's name from the Medical Register where there has been an ongoing failure to comply with conditions requiring the doctor to undergo a performance assessment.

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