

5 November 2012

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

Uddin v GMC [2012] EWHC 2669 Admin

Background

Dr Uddin appeared before a Fitness to Practise Panel ("Panel") which concluded on 20 March 2011 when Dr Uddin's name was erased from the Medical Register.

Appeal

Dr Uddin appealed five findings of dishonesty which had been made against her. The appeal came before Mr Justice Singh on 17 July 2012 (judgment handed down on 23 July 2012). Although the grounds of appeal ranged over a wide area, Dr Uddin focussed on five findings of dishonesty made by the Panel.

On her behalf it was submitted that if those findings of dishonesty, or at least a substantial number of them, could be successfully challenged, then the appeal should be allowed. It was further submitted that even if the findings of the Panel were upheld, the sanction of erasure from the register was too severe and a lesser sanction of a period of suspension would have sufficed.

Mr Justice Singh sets out the court's role in an appeal under Section 40 in paragraphs 4-8, referring to the helpful summary of the approach which the Court should take with citation of relevant authorities in the judgment of Langstaff J in Bhatt v General Medical Council [2011] EWHC 783 Admin.

Mr Justice Singh then sets out in some detail the factual background to Dr Uddin's case in paragraphs 9 -23 and thereafter the decision, which was the subject of the appeal, before turning to consider each of the individual findings of dishonesty which has been the focus of the submissions before him (paragraphs 24 -37).

Of note (paragraph 30) Mr Justice Singh confirms that the advice of the legal assessor, and the Panel's acceptance of it, were not the subject of any challenge, but it was submitted that it might be helpful for the court to make any observations which might be considered by the General Medical Council ("GMC"), in the future, in relation to its approach to cases that raise issues of dishonesty. Although he had not had full argument on the issues he made two observations:

1. That care needs to be taken about applying a test which was devised in the context of criminal law;
2. That even in the criminal context it is not general practice to give the so called Ghosh two-part direction.

He goes on (paragraph 31):

'In many cases, the advice which is given now by the Judicial College to judges who sit in the Crown Court is that no direction is required on the meaning of dishonesty. One context in which the twofold Ghosh direction may be required is where, on behalf of the defendant in criminal proceedings, an issue is raised whether he or she realised that the conduct charged was dishonest by the standards of reasonable and honest people. In many cases, there will be no such issue of fact raised. It will be perfectly apparent that if the conduct alleged did take place then it clearly was dishonest. The real issue in many cases may be whether the conduct took place and with what state of mind. For example, was there a false representation made? But even if it was, was it done knowing that it was false or may it have been, for example, innocent or even a negligent mistake?'

Before turning in detail to Dr Uddin's specific grounds of charge to finding of dishonesty, Mr Justice Singh made a number of general observations as to the approach which it is right to take in her case (paragraph 36) as follows:

1. He had very much in mind the statements of principle as to the court's approach, in particular cases of Bhatt and Southall;
2. Having those principles in mind he considers that the issues in Dr Uddin's case concern questions of evaluation rather than primary fact;

3. He accepts the doctor's submission that the questions that the Panel had to consider were not particularly within the knowledge, expertise and experience of the GMC Panel;
4. He had in mind that in scrutinising the reasoning given by the Panel he was not construing a statute or a contract;
5. He had to bear in mind that there were serious findings made against a professional person of previous good character;
6. Although he did not have the advantage of seeing and hearing the witnesses as the Panel did he was nevertheless able to assess the reasoning given. The doctor was entitled to reasons which are '*proper, adequate and intelligible*'.

The Judge then turned to each of the findings of dishonesty which had been the focus of the appeal:

- Paragraph 7(d) – paragraphs 38 - 40;
- Paragraph 10 – paragraphs 41 - 44;
- Paragraph 11 – paragraphs 45 - 50;
- Paragraphs 12(a) and (c) – paragraphs 51 - 59

In relation to each matter he sets out the specific charges and the Panel's reasoning and thereafter why in his judgment that Panel's findings were flawed.

He concludes that for the reasons he had given he had come to the '*clear conclusion*' that the five findings of dishonesty made by the Panel could not stand. In the circumstances it was not necessary to explore other aspects of the appeal, for example in relation to sanction. In the circumstances the case was remitted back to a fresh Panel for consideration at Stage 2 such as the decision as to misconduct and impairment could be determined again in the light of the Judge's findings.

Salient Points

- When considering issues of dishonesty there is no requirement, in all cases, for the legal assessor to give the Panel a Ghosh direction as
 - the direction was devised in the context of criminal law and the Panels apply the civil standard of proof
 - in many cases it will be apparent that if the conduct alleged did take place then it was clearly dishonest – the real issue therefore is whether the conduct took place and with what state of mind.

Panel Development Team
0161 240 7292
pandevteam@mpts-uk.org