**Appeals Circular A22/12**

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

Tel: 0161 923 6263
Fax: 0161 240 7199
Email: enquiries@mpts-uk.org

5 November 2012

To: Interim Orders Panel Panellists
Legal Assessors

Copy: Fitness to Practise Panel Panellists
Investigation Committee Panellists
Panel Secretaries
Medical Defence Organisations
Employer Liaison Advisers

**Re: Abdullah v General Medical Council [2012] EWHC 2506 Admin**

***Background***

On 10 July 2012 the Interim Orders Panel ("IOP") of the Medical Practitioners Tribunal Service (MPTS) of the defendant, General Medical Council ("GMC") determined to impose an interim order of suspension on Dr Abdullah's registration for a period of 18 months.

Dr Abdullah made an application under section 41A(10) of the Medical Act 1983 to terminate the order of the IOP.

***Appeal***

Dr Abdullah's appeal was considered by Mr Justice Lindblom on 13 August 2012 (judgment was handed down on 7 September 2012).

The Judge sets out Dr Abdullah's contention that the IOP's decision to make an interim order of suspension was wrong (paragraph 3) as follows:

1. It was neither necessary as a means of protecting patients nor otherwise in the public interest;

2. In view of the nature of the allegations and the effect the order of suspension would have on him, the order was disproportionate;

3. The IOP gave no reasons for reaching a decision on suspension different from those of the Primary Care Trust ("PCT") exercising it's powers under the National Health Service (Performers Lists) Regulations 2004.

The Judge thereafter sets out details of the background to the application in relation to Dr Abdullah (paragraph 5) and the complaint which was referred to the GMC in June 2012 as to one of his patients. Ms B made allegations of sexual misconduct against him (paragraphs 6 – 15) including details of the police investigation (paragraphs 11-14) and the PCT's investigation (paragraph 15).

Mr Justice Lindblom then sets out the GMC's guidance to panels referring to a substantial number of paragraphs in the guidance entitled 'Imposing interim orders: Guidance for the interim orders panel and the fitness to practise panel' (paragraphs 16 -25). The Judge also refers to the IOP conditions bank – which contains examples of restrictions and stipulations that an IOP can put in an interim order of conditions (paragraph 26).

In relation to the proceedings before the IOP the judge sets out matters as follows:

- Chairman's opening remarks (paragraphs 27 - 28);
- The case for the GMC (paragraph 29)
- Submissions on behalf of the doctor (paragraphs 30 - 43);
- Legal Assessor's advice (paragraphs 44 - 47);
- The IOP's determination (paragraphs 48 - 59).

Mr Justice Lindblom also sets out in some detail the legal framework to be followed by the interim orders panel and also the court when considering challenges against the orders made (paragraphs 60-75). The Judge also considers the relevant case law, in particular the judgment of Arden LJ in GMC v Dr Stephen Chee Cheung Hiew [2007] EWCA Civ 369 quoting Arden LJ in paragraph 65 as follows:

> *'The statutory scheme thus makes it clear that it is not the function of the judge under section 41A(7) to make the findings of primary fact about the events that have led to the suspension or to consider the merits of the case for suspension. There is, moreover, no express threshold test to be satisfied before the court can exercise its power under section 41A(7), such as a condition that the court should be satisfied that there is evidence showing that there is a case to answer to in respect of misconduct or any other matter. On the other hand, if the judge can clearly see that the case has little merit, he may take that factor into account in weighing his decision on the application. But this is to be done as part of the ordinary task of making a judicial decision, and a case where a statutory body*

*makes an application on obviously wholly unsupportable grounds is likely to be rare'.*

He goes on to confirm further Arden LJ's comments on the approach the court should take to the views of the GMC and the IOP (paragraph 66) as follows:

*'The evidence on the application will include evidence as to the opinion of the GMC, and the IOP or Fitness to Practise Panel, as to the need for an interim order. It is for the court to decide what weight to give to that opinion. It is certainly not bound to follow that opinion. Nor should it defer to that opinion. All that is required is that the court should give that opinion such weight as in the circumstances of the case it thinks fit. Weighting up the opinion of a body that has special statutory responsibilities and relevant experience and expertise is again part of the ordinary task of judicial decision-making.'*

Mr Justice Lindblom concludes that, where there is a conflict between the view of the IOP and that of the PCT, that the approach of the court is as follows (paragraph 68):

*'...[It] was open to the IOP to take a more serious view of the allegations against Dr Hiew than the PCT. It was not the function of the judge definitively to resolve this conflict. The judge merely had to consider whether it was appropriate for him to accept either and, if so, which opinion for the limited purposes of the application before him. The judge clearly accepted the view of the IOP for this purpose. He was entitled to do this provided that, expressly or by implication, he gave sufficient reasons. The judge did not in fact give express reasons in this case, but by implication his reasons must have been that when assessing the question of seriousness of the risk of harm to the public for the purposes of an interim order, he preferred the more cautious view of the IOP....'*

Mr Justice Lindblom confirms that this approach by the Court of Appeal in Hiew has consistently being followed by judges when considering applications under subsections (7) and (10) of section 41A of the Medical Act 1983. The Judge also considers the cases of Sandler v GMC [2010] EWHC 1029 Admin (paragraph 70); Sheikh v GMC [2007] EWHC 2972 Admin (paragraph 71); and Sosanya v GMC [2009] EWHC 2814 Admin (paragraph 72).

The Judge then considers the General Medical Council (Fitness to Practise) Rules 2004 and the giving of reasons (paragraphs 73-75).

Mr Justice Lindblom then considers the submissions which were made on behalf of Dr Abdullah which are set out in paragraphs 78-81 as follows:

1. The details of the allegations about the doctor's conduct were vague and vary as to the most basic detail – dates, the nature of the sexual activity alleged, and whether or not Ms B consented or complied with what the doctor was said to have done to her. Counsel for the doctor submitted this was an *'exceptionally flawed'* complaint. But when deciding whether the IOP should suspend the doctor from practice while the allegations are investigated, they had failed to consider the fatal weaknesses in them.

2. The IOP failed to give proper and adequate reasons for its decision. Although the IOP had prefaced their determination by saying it contained *'a lot of reasoning'*, much of it was composed of narrative, recitation of the arguments presented and a summary of the tests and guidance applied.

3. The IOP misdirected itself in considering whether an order for interim conditional registration would suffice, and failed to explain adequately why they chosen not to impose such an order rather an interim suspension order.

4. That the IOP was wrong not to arrive at the same conclusion as the PCT, which was that the doctor's suspension from practice at that stage was unjustified.

The Judge then goes on to set out the submissions made on behalf of the GMC (paragraphs 82- 85). He summarises the submissions in response to those made by Counsel for the doctor as follows:

1. The first and fundamental submission was that the decision of the IOP was not wrong. The IOP was right to conclude as it did.

2. None of the criticism levelled at the IOP's decision-making was valid.

3. The IOP's decision was not only necessary but also proportionate.

4. The IOP was entitled to come to a different conclusion from the PCT's, and the reasons it gave for doing so were adequate.

In paragraphs 87 – 108 Mr Justice Lindblom sets out his discussion and conclusion. On the principle of the doctor's interim suspension he rejected the submissions made by the doctor's Counsel and accepted those of the GMC. In his judgment the imposition of an

interim suspension order was, and remains, both necessary and proportionate (paragraph 92).

He considered that the IOP had based their decision to make such an order on two distinct conclusions (paragraph 93):

> *'The first was that such an order was necessary for the protection of members of the public. The second was that it was in the public interest for such an order to be made. Both of these were proper reasons for making an interim suspension order, within the ambit of section 41A(1). In the circumstances of this case, and in the light of the GMC's guidance on the handling of allegations of sexual misconduct, I am in no doubt that each of these conclusions was not only reasonable but also right.'*

The Judge goes on (paragraph 94) to say that the IOP would have been justified in making an interim order in Dr Abdullah's case only in the public interest. He considers that the IOP were *'obviously and, I think, rightly anxious about the impact that a decision not to suspend the claimant at this stage could have on 'the trust that members of the public are entitled to place in the medical profession and its practitioners'.* He goes on, however, to say that it did not stand on its own as the IOP was also concerned about the risk to which patients might be exposed if the doctor was not prevented from practising while Ms B's allegations were examined. If those allegations were true, the risk was real and the harm would be great. He concludes:

> *'Acting as the IOP did to preclude that harm was prudent and, in my view, just. They did so only after balancing the claimant's interests with the public interest. Implicit in their conclusion that he must be suspended was an answer – and in my view the right one – to the twofold questions posed by Davis J in paragraph 26 of his judgment in Sosanya.'*

In the circumstances he considered the IOP's decision to suspend was sound and its rationale cogent. He however goes on to say (paragraph 96):

> *'This is not to say that in every case where an allegation of sexual misconduct is made against a doctor, he or she must automatically be suspended while the investigation of the complaint runs it course. That notion would be misconceived. It would find no support in relevant authority or in the GMC's guidance. Had it come into the IOP's thinking when they made their decision to suspend the claimant, they would have misdirected themselves. But there is no hint of it in their determination'.*

The Judge then goes on to deal with Counsel for the doctor's argument that the allegations raised by Ms B were '*patently flawed'*. He confirms that he does not think that the allegations faced by Dr Abdullah were so vague and inconsistent that his suspension from practice was not justified. He could understand why the submissions were made by Dr Abdullah's representative at the IOP hearing (paragraph 99) but the IOP did not regard the evident weaknesses in the case against the doctor as fatal to the GMC's request for interim suspension. In the Judge's view the IOP was right. He was satisfied, as was the IOP, that the substance of the allegations made were such as to make an interim suspension order necessary for the protection of the public, and also that such an order was required in the public interest (paragraph 99).

He concludes (paragraph 100) that there was no force in Counsel for doctor's submissions about the fairness of the hearing or the way in which the IOP process was conducted. He also did not accept that the IOP had misunderstood or misapplied the GMC's guidance and the determination betrays no such error (paragraph 101). He goes on:

> *'The main principles relevant in this case, including those germane to allegations of sexual misconduct, had been referred to by the Legal Assessor. The IOP did not have to mention every part of the document they had considered in coming to their decision. They were familiar with the guidance. They were not bound to follow it. But in this case they had no need to depart from it. Their decision was entirely consistent with it.'*

Mr Justice Lindblom goes on (paragraph 102) to confirm that he does not accept that the reasons given by the IOP were inadequate or unclear. He notes that paragraph 41 of the GMC's guidance discourages the giving of '*long detailed reasons'*. He confirms:

> *'What the IOP had to do – no more and no less – was to explain why their decision was the one they had announced'. In most cases, probably in every case, this can be done briefly. The IOP were exercising a statutory power framed in simple terms. Three interests are embraced in that provision: first, 'the protection of members of the public', second, 'the public interest', and third, 'the interests of a fully registered person'. The IOP had to exercise their judgment within those statutory parameters. And it is in this context that the adequacy of their reasons much be assessed. The parties knew what the contentious issues had been. They could expect to be told how those issues had been resolved and why the decision went the way it did. The losing side could expect to learn why it had lost. But the IOP did not have to provide an elaborate explanation of their decision. Reasons were required, but not reasons for reasons.'*

He continues (paragraph 103) that because, in this case, the IOP decided an interim suspension order was required, it had to identify in their determination the interest or interests which an order was considered necessary, referring specifically to the *'distinct features and particular facts'* of the case. The Judge concludes that IOP made clear why it had concluded as it did on the issues it had to resolve. The doctor was told why he was being suspended on an interim basis. Far from being deficient, the reasons given by the IOP in its determination were complete and made perfectly good sense.

The Judge then goes on to consider the final matter raised by Counsel for the doctor in that the IOP failed to give reasons differing from the PCT (paragraph 104). This confirms that the IOP gave ample reasons for differing from the PCT. Those reasons encapsulating its own independent judgment on the doctor's status as a registered person during the investigation of Ms B's complaint.

He notes that the IOP's decision was the outcome of a different process from the PCT, conducted in a different way, with different information before them. He notes that although the PCT and IOP were working under different statutory regimes, both bodies had to consider the protection of members of the public and the public interest but that did not mean they had to reach the same conclusions.

As the Judge notes from the Court of Appeal in Hiew, the IOP was free to take a more serious view of the allegations than the PCT had done. Having considered the PCT's preliminary report, they did. The Judge said he did not have to adjudicate on this disagreement but confirms it was the *'more cautious view of the IOP'* that he prefers.

He does say, because he agrees with the IOP, that in the particular circumstances of the case, suspension was necessary for the protection of the public, and that a decision not to suspend the doctor while Ms B's allegations were investigated, would be damaging to public confidence in the medical profession.

The final matter which the Judge considers is whether the interim order of suspension was a proportionate measure. Having considered the issues in relation to this matter (paragraph 108) he thought a period of 18 months was excessive. He concludes:

> *'…I can see no reason why the investigation of Ms B's allegations, serious as they are, cannot be completed in a shorter time than that. With a due sense of urgency and without jeopardizing the fairness of the proceedings, this can surely be done within 12 months of the date when the interim suspension order was made, that is to say by 9 July 2013. The effect of an interim suspension order on*

*a doctor's livelihood and reputation will always be grave. Here I must bear in mind the situation in which the claimant now finds himself, as the sole principal in his practice, unable to carry on his profession, and without any funding available to him to maintain care of his patients until the decision on his fitness to practise is made. I think that to suspend him for longer than 12 months at this stage would be disproportionate'.*

In the circumstances he confirms that the interim order of suspension for 18 months should not be terminated but be substituted for an order for 12 months (paragraph 109).

### ***Salient Points***

- Whilst not every case of sexual misconduct against a doctor will automatically result in suspension during the investigation, it is right that serious and weighty consideration be given to the impact failure to suspend would have on the trust that the public is entitled to place in the medical profession
- It is not the function of the IOP to subject the evidence to scrutiny – conflicts and inconsistencies in evidence will be dealt with in due course
- Reminder that, in giving reasons, the IOP must explain why its decision was the one it announced in relation to the relevant statutory provision or provisions (paragraph 102):
    - Protection of members of the public; or
    - Public interest; or
    - Interests of the doctor.

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