

14 October 2014

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](mailto:enquiries@mpts-uk.org)

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

**Re: Dr Kofi Adu [2014] EWHC 1946 Admin**

***Background***

Dr Kofi Adu appeared before a Fitness to Practise Panel (Panel) which heard evidence and submissions over a total of 13 days in May and December 2013. The Panel found Dr Adu's fitness to practise was impaired by reason of deficient professional performance and directed that his name be erased from the medical register.

Dr Adu lodged an appeal under section 40 of the Medical Act 1983, challenging the determinations made by the Panel.

***Appeal***

The appeal came before Mr Justice Warby on 12 June 2014 with judgment being given on 20 June 2014.

Dr Adu's arguments fell under two broad headings (paragraph 2):

- 1) That he did not receive a fair hearing before the panel; and
- 2) That the sanction imposed was 'manifestly excessive'.

The appeal was due to be heard by Mr Justice Warby on 12 June 2014 however on 12 June, after hearing an argument from Dr Adu and counsel for the General Medical Council (GMC), Mr Justice Warby determined to recuse himself. The hearing of the substantive appeal was adjourned to a date on or after 7 October 2014.

Mr Justice Warby sets out in his judgment how the issues arose and his reasons for recusing himself from considering the substantive appeal.

Among the grounds on which Dr Adu complained that the hearing before the Panel was unfair, set out in his written Skeleton Argument dated 31 January 2014, was in relation to the Legal Assessors' alleged partiality (paragraph 4). Dr Adu had made an application to the Panel for the Legal Assessor to recuse himself but it had determined that the circumstances were not such that the Legal Assessor should recuse himself and gave a reasoned decision referring to case authority and, in particular, the case of *R (Compton) v Wiltshire Primary Care Trust (No 2)* [2009] EWHC 1824 (Admin).

The Panel then proceeded to hear the case, receiving and relying on advice from the Legal Assessor. Dr Adu's case in relation to the appeal included a complaint about this decision as the Legal Assessor should have stepped down and the fact that he did not do so led to a hearing which was, or appeared to be, biased against Dr Adu (paragraph 5).

When the Judge commenced reading the papers in preparation for the hearing on 11 June 2014 it appeared to him that this was an issue which needed a resolution immediately as the Legal Assessor, whose actual or apparent, impartiality was being questioned was a person well known to the Judge as a fellow member of the set of barristers' chambers which he had until recently been a member (paragraph 6).

In the circumstances before and at the hearing on 12 June 2014, Mr Justice Warby disclosed to the parties the chambers connection between himself and the Legal Assessor and further additional information (paragraph 7).

The Judge noted the relevant legal principles (paragraph 9). On 12 June 2014 he heard submissions from both Dr Adu and counsel for the GMC (paragraphs 10 and 11-12 respectively).

Mr Justice Warby determined that he should recuse himself for reasons set out (paragraph 13) as follows:

*'The Porter test is satisfied if the informed fair-minded observer would see a real possibility of bias. Whilst fanciful or tenuous objections must be disregarded, the threshold is not an especially high one. It is not necessary to show a likelihood of bias, or a real danger, for instance. Here, the issues for decision involve complaints of actual and/or apparent partiality against an individual with whom I have a long, reasonably close professional association, and an association which is continuing at present albeit in a limited context. Those complaints form a significant plank of the appellant's case, in an appeal which is concerned with his right to work as a doctor and the public interest in ensuring that, if unfit to do so, he does not so work. If the complaint against the Assessor is, as it may be, one of actual bias then it seems clear to me that the links between me and the Assessor mean that I should not sit in judgment on the case. Even if the allegation made by Dr Adu is no graver than apparent bias in the FTTP proceedings I have*

*concluded that the fair-minded observer knowing the relevant facts would see a possibility that, in applying what should be an objective test, I would bring to bear my subjective impressions of the individual's character and personality.'*

The Judge considered it was a combination of all the above circumstances which lead him to recuse himself. However, he went on to state that if it was one fact that weighed more than the others it was the nature of the issues raised by this aspect of Dr Adu's appeal. He confirmed (paragraph 14):

*'If I had proceeded to hear and determine this appeal that would have involved me in ruling upon the propriety, or at least the apparent propriety, of the conduct as Legal Assessor of a person who is well known to me in the ways and contexts I have described above. The fair-minded observer, knowing those facts, would in my judgment conclude that there was a real possibility that I would approach my task with a predetermined view of whether a long-term associate would be biased, or could reasonably be seen as possibly biased.'*

Mr Justice Warby then goes on to deal with the relevant authorities, including *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 where the Court of Appeal gave guidance as to the circumstances in which a Judge should recuse himself, and the procedures and approach to be adopted identifying a number of key principles (paragraph 15). The Judge confirmed the approach he adopted in Dr Adu's case was in accordance with the guidance and those principles (paragraphs 16 – 24).

### ***Salient Point***

- The case summarises the position with regard to judicial recusal.
- The principles can be applied to applications for a panellist to recuse themselves in circumstances where the issues relate to the propriety (or apparent propriety) of someone who is well known to the panellist such that there is a 'real danger of bias'.

Panel Development Team

0161 240 7292

[PanelDevelopmentTeam@mpts-uk.org](mailto:PanelDevelopmentTeam@mpts-uk.org)