MPTS Medical Practitioners Tribunal Service

Appeals Circular A11/19

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Sanusi v General Medical Council *[2019] EWCA Civ 1172*

Learning Points

- Where a practitioner chooses not to attend a hearing, Tribunals are under no general obligation to adjourn, prior to considering sanction, to allow the practitioner to make submissions.

Background

This was an appeal brought by a practitioner, Dr Sanusi ('S'), against the decision of the High Court dated 20 April 2018[1], refusing S's appeal against a Medical Practitioners Tribunal decision of October 2017 that his fitness to practise was impaired and that his name ought to be erased from the medical register.

Medical Practitioners Tribunal hearing

S worked at Friarage Hospital in Northallerton and concerns were raised about his clinical conduct in relation to three patients treated in 2012 and 2014. S faced disciplinary proceedings brought by his employer in relation to three patients and was ultimately dismissed with notice. S left his employment early and, in July 2015, he applied for a position with Rotherham NHS Foundation Trust. S was interviewed for the role and, in both his application and interview, S failed to disclose that he had been dismissed as a result of clinical concerns.

[1] [2018] EWHC 1388 Admin.

At the hearing, which S did not attend, the Tribunal found the majority of clinical concerns regarding the three patients proved and that S had been dishonest in his interview. The Tribunal also found that, in light of these findings, S's fitness to practise was impaired. It was concluded that the only appropriate sanction was to erase S's name from the medical register: it was stated that there was no evidence of insight, acknowledgement of fault or remediation by S.

High Court

S appealed against the Tribunal's decision on sanction on the following grounds:

1. While the Tribunal was justified in proceeding with the hearing in S's absence, it should have paused before starting the sanction stage to contact S and enquire whether he wished to attend before deciding to erase his name from the medical register;

2. That the GMC had failed to provide the Tribunal with additional mitigation documents sent by S and that they ought to have been read in conjunction with S's statement prepared for the hearing.

Mr Justice Kerr heard the appeal and dismissed S's appeal.

In relation to the first ground, he held that, in the context of tribunal hearings, it would rarely be unfair for a tribunal to proceed directly to the issue of sanction, rather than pausing to invite attendance from a practitioner who had voluntarily absented themselves from the hearing up until then.

With regards to the second ground of appeal, Mr Justice Kerr held that, although there had been a procedural irregularity, the additional material, which the Tribunal had not been aware of, was not capable of affecting the outcome. The charges found proved were very serious, S had shown a 'remarkable lack of acceptance of responsibility' and the material was mostly peripheral and unrelated to the allegation against S.

Court of Appeal

S appealed to the Court of Appeal on the same two grounds and argued that the High Court had been wrong in its conclusions.

In relation to the first ground of appeal, the Court of Appeal noted that there was no general obligation on a Tribunal to adjourn to provide a practitioner with an opportunity to make submissions prior to sanction. It was held that the guidance previously given by the Court of Appeal in *Adeogba v General Medical Council* [2016] EWCA Civ 162[2] applied with equal, if not greater, force to adjournments part-way through a hearing [para 68]. It was said that the regulatory system could not operate

[2] Once a tribunal is satisfied that adequate notice has been served, discretion about whether to proceed in a practitioner's absence had to be exercised having due regard to all the circumstances. While fairness to the practitioner was a prime consideration, fairness to the GMC and to the public interest should also be taken into account.

on the basis that a failure to attend a hearing should inevitably lead to an adjournment before the issue of sanction is considered [para 69] and that:

'*It seems to me that in a case where a registrant chooses not to attend a tribunal hearing (for good or bad reason) he or she must be taken to appreciate that if adverse findings are made, they will not be in a position to address the Medical Practitioners Tribunal on matters of mitigation in any changed circumstances flowing from those adverse findings and will be entirely reliant on any written submissions or representations made by the registrant in advance of the hearing.*' [para 70]

In S's case, he had been given notice of the hearing, was aware of the allegations, and responded to them in full, and S elected not to attend the Tribunal hearing in favour of continuing his GP training [paras 72 & 73]. The Court of Appeal also noted that an adjournment would have been highly disruptive and potentially costly and would have run counter to the need to ensure the fair, economical and efficient disposal of the allegations against S [para 76].

Therefore, there was no good reason for the Tribunal not to have proceeded to consider the issue of sanction and there was nothing wrong with the way in which the Tribunal had proceeded in S's absence [para 77].

With regard to the second ground of appeal, the Court of Appeal concluded that, when dealing with cases of serious misconduct, both the GMC and tribunals should take reasonable steps to ensure that all relevant mitigation material provided by an absent practitioner is available for consideration on the issue of sanction [para 84]. However, it was held that:

'*That obligation is not however unlimited. It does not require extensive trawls through the archives, nor extend to sifting through large quantities of unindexed or uncategorised documentation provided by a registrant to determine what if any relevance it may have. The obligation extends only to reasonable searches for material that is objectively viewed as relevant. It must not be forgotten that doctors have their own obligations under the Code of Conduct to cooperate with their regulator.*' [para 84]

The Court of Appeal considered that there was nothing in the additional material submitted by S which would have led the Tribunal to impose a different sanction. In light of the conclusions reached by the Tribunal regarding S's conduct, the sanction of erasure was inevitable and his dishonest conduct had affected the integrity of the system of job applications, which was fundamental to the protection of the public [para 96].

Therefore, S's appeal was dismissed.

Kind regards
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