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## **Dr Hayat v The General Medical Council [2017] EWHC 1899 (Admin)**

### **Learning Points**

- When considering whether to continue with a hearing in a practitioner's absence, a tribunal should make further enquiries where necessary and possible to obtain the most up-to date information to enable them to carefully consider whether a practitioner is well enough to conduct a disciplinary hearing, and whether and to what extent the practitioner's condition would affect his/her ability to take part in the proceedings.
- A tribunal should not disregard a GP's certificate that a practitioner is unfit for work merely because it does not also say that he/she is unfit to attend a hearing.

### **Background**

This is an appeal brought under s.40 of the Medical Act against the decision dated 15 February 2017 of a Medical Practitioners Tribunal ('MPT') to erase Dr Hayat's name from the Medical Register.

The allegations against Dr Hayat related to him acting dishonestly when taking out a critical illness insurance policy and, in October 2012, when submitting a claim under the policy, stating he had suffered a heart attack, and subsequently providing medical reports from the institution where he claimed to have been treated, in support of his claim. Dr Hayat's medical insurer had investigated his claim, concluded it was false and referred him to the GMC.

Dr Hayat unsuccessfully applied to postpone the hearing on 3 and 27 October 2016, on the basis that he had had insufficient time to prepare and insufficient funds to pay his lawyers, respectively.

On 31 October, the first day of the hearing, Dr Hayat applied to adjourn the hearing for one to two months on medical grounds and on the basis that he and his legal representatives were not sufficiently prepared for the hearing. Dr Hayat provided the MPT with a letter from A&E dated 30 October which stated that he needed to be "off work for seven days" due to back pain for which he required analgesia and diazepam. The MPT refused his application to adjourn because the letter did not contain any detail as to the potential impact the pain and discomfort or medication could have on Dr Hayat, it did not state he was unfit to instruct a representative or participate in the hearing and Dr Hayat had had sufficient time and opportunity to prepare for the hearing. The MPT was satisfied that it was in the interests of justice and in the public interest for the (15 day) hearing to proceed.

Later that day, the hearing was adjourned after Dr Hayat was found unresponsive in the hearing centre, treated by a paramedic and then taken to hospital, complaining of chest pains. He was admitted for cardiac monitoring and an angiography and echocardiogram were undertaken. Dr Hayat was discharged from hospital on 4 November and returned home. On 4 November, the GMC unsuccessfully applied to proceed in Dr Hayat's absence.

Following his discharge, two doctors from the treating hospital opined that Dr Hayat was fit to proceed with the hearing. They indicated that the angiography undertaken on Dr Hayat showed no evidence of significant coronary artery disease but noted that following the procedure there was "a complication of pain" at the arterial puncture site.

On 7 November, the MPT resumed but neither Dr Hayat nor his representatives were present. The GMC applied to proceed in Dr Hayat's absence. Dr Hayat provided a "fit note" from his GP who stated that he had assessed Dr Hayat on 7 November and that he was not fit for work. The note also noted "Developed post angiography right arm bruising infection.....Continue with antibiotics".

The MPT said that it considered the note indicated that Dr Hayat was not fit for work but there was no suggestion that he was not fit to fully participate in the proceedings. The MPT considered that the note essentially reiterated the medical information from during the hospital admission and that the evidence of the treating hospital doctors on 4 November stated that he could proceed. The MPT

considered that Dr Hayat had voluntarily absented himself from the hearing and acceded to the GMC's application to proceed in Dr Hayat's absence.

The MPT found Dr Hayat's actions were misleading and dishonest, amounted to misconduct and that his fitness to practise was impaired. The sanction imposed was erasure from the register.

### **Grounds of Appeal**

Dr Hayat appealed on a number of grounds including that:

1. it was procedurally unfair to proceed with the hearing in his absence, after refusing his applications for an adjournment;
2. the MPT conducted the proceedings in an unfair manner;
3. the MPT's findings of fact (including dishonesty), misconduct and impairment were wrong; and
4. the sanction imposed was disproportionate.

### **Judgment**

Mrs Justice Lang allowed the appeal on the basis that the MPT should not have allowed the hearing to proceed in Dr Hayat's absence (on 7 November 2016) and therefore he did not receive a fair hearing. The matter was referred back to a fresh MPT for hearing.

1. The Judge reiterated that the MPT's discretionary powers to adjourn hearings and to proceed in the absence of a practitioner were limited by the duty to act fairly [para 41].
2. She held that the MPT was entitled, in the exercise of its discretion, to refuse Dr Hayat's application for an adjournment on 31 October 2016 [paras 40-42].
3. In relation to the MPT's decision to proceed in Dr Hayat's absence on 7 November, the Judge said that the Legal Assessor had advised the MPT of the relevant legal principles on such applications including that, unless there are exceptional circumstances in the public interest, where there is unchallenged evidence of a medical condition that an individual is not fit to withstand the rigours of the disciplinary process, it must be wrong for a hearing threatening the individual's professional career to proceed [paras 43 – 46 and 53]. However, she did not consider that the Tribunal had applied those principles properly to the evidence which was before them [para 47].
4. The Judge said that the information in the GP's fit note was sufficient to require the MPT to conduct further investigations into Dr Hayat's condition, if

it was not prepared to adjourn the hearing on the basis of the fit note alone [para 50] and that the GMC's scepticism about the genuineness of Dr Hayat's ill-health could not justify the MPT in disregarding the evidence of a medical professional [para 51].

5. The Judge said that the MPT had before it "unchallenged evidence of a medical condition, as at 7 November 2016, of sufficient severity for a doctor to certify that he was unfit to work, based on a medical examination that very morning." The GP's evidence raised a new issue which had not been fully addressed in the evidence provided by the treating hospital doctors, as at 4 November, because it post-dated that evidence [para 52].
6. The Judge said that the MPT was "not entitled to disregard the GP's certificate that the Appellant was unfit for work merely because it did not also say that he was unfit to attend the hearing". She said that the MPT "ought to have given careful consideration to the question whether and to what extent [Dr Hayat's] condition would affect his ability to take part in the proceedings" and the fact that Dr Hayat's GP had certified him as unfit for work should have prompted the MPT "to consider whether that could also mean that he was not well enough to conduct a lengthy disciplinary hearing" [para 54].
7. The Judge also considered that when considering whether Dr Hayat was well enough to participate in the hearing, the MPT did not give any or any proper consideration to the following factors:-
  - a. attending the hearing would entail Dr Hayat spending a week away from his London home, in Manchester;
  - b. there was a real risk Dr Hayat would not be able to afford to instruct a representative for the full hearing, in which case he would have to represent himself, make submissions and cross-examine witnesses;
  - c. in any event, Dr Hayat would have to give oral evidence and be cross-examined, which was likely to be vigorous as in this case where there were allegations of dishonesty.
8. As the Judge ordered a re-hearing before a fresh MPT, she did not go on to express her views on the other grounds [para 57].

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