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Re: Dr Devinder Luthra v General Medical Council [2013] EWHC 240 (Admin)

Background

Dr Luthra appeared before a Fitness to Practise Panel ("Panel") in August 2010 in relation to an allegation that his fitness to practise was impaired by reason of deficient professional performance.

The Panel found Dr Luthra’s fitness to practise impaired and determined to erase his name from the medical register.

Dr Luthra appealed against the sanction of erasure on the basis that it was disproportionate.

Appeal

Dr Luthra’s appeal was considered by Mr Justice Mostyn on 8 February 2013 with judgment being given on 18 February 2013.

The Judge sets out details of the governing principles in relation to an appeal under Section 40 in paragraphs 2-6.

He then sets out the background to the case (paragraphs 8-23) and details of the charges (paragraph 9) which Dr Luthra faced before the Panel hearing in August 2010.

Mr Justice Mostyn then goes on to consider the proceedings before the Panel and the determination which Dr Luthra appealed (paragraphs 24-33).
In relation to the proceedings which lasted 5 days the Judge says the following (paragraph 24):

“It is fair to say that the proceedings were exhaustive, and that no stone was left unturned. Of course when a man’s professional reputation, and ability to practice in the future, are on the line the disciplinary inquiry must be thorough and scrupulously fair. But I cannot help observing that an inquiry with this degree of elaboration, and at inevitably enormous expense to the profession, is perhaps a counsel of perfection, particularly in this age of austerity in which we live”.

The Judge then goes on to demonstrate this “elaborate approach” being exemplified by both the factual determination and that on impairment.

In relation to the factual determination (paragraph 25) as the doctor’s stance was that he neither admitted nor challenged the facts alleged the Judge thought, in those circumstances, that a written opening pointing to the relevant documentary material would have enabled an adjudication on the facts in almost summary form.

In relation to the impairment decision (paragraph 26) although Dr Luthra’s counsel did not resist a finding of impairment on the facts as found there was a lengthy opening and equally lengthy exposition of the principles relating to the findings of impairment from the legal assessor. Again the Judge considered that perhaps a short form summary may have been more apt in the circumstances.

The Judge then moves on to deal with the issue of sanction which was in his view in reality, “the inevitable sole issue which divided the appellant from the GMC”.

Mr Justice Mostyn considers the sanctions available and relevant sections of the Indicative Sanctions Guidance (paragraphs 27–29).

In relation to the issue of sanction Dr Luthra was recalled to give fairly extensive oral evidence (paragraph 30). Counsel for the GMC made submissions in support of erasure. While Counsel accepted that there was no suggestion that serious harm had “necessarily” been caused by Dr Luthra there was clear evidence of the risk of serious harm in the face of the examples, about which the Panel heard, in the performance assessments (paragraph 31).

The Panel determined that erasure was the only appropriate sanction. Details of the Panel’s determination are set out in paragraph 33.

Counsel on behalf of Dr Luthra at the appeal hearing set out nine submissions as to why the decision to erase Dr Luthra’s name from the Medical Register was wrong (paragraph 35) whereas Counsel for the GMC argued shortly that for the reasons given by the Panel,
erasure was the only realistic and appropriate outcome, given the fact that Dr Luthra’s performance had been deficient in two GMC assessments and he had failed three entry-point exams for remedial training. He was rationally considered not to have demonstrated either sufficient insight into his problems or any real potential for any improvement. It was a matter for the judgment of the Panel and it could not be said that the Panel’s decision was “clearly inappropriate” (paragraph 36).

Mr Justice Mostyn confirmed that whilst Counsel for Dr Luthra submissions were “eloquently and persuasively put” (paragraph 37) he did not agree with them. He agreed with Counsel for the GMC’s submissions although he would not adopt his description of the panel’s decision as “not clearly inappropriate”. Rather, that the decision was not wrong.

Mr Justice Mostyn noted that the argument of the GMC in support of erasure was based specifically on the risk to which patients would be exposed in the future were a sanction short of erasure be imposed. He noted that this approach was plainly accepted by the Panel in its findings.

He confirms (paragraph 38):

“In my judgment that proleptic assessment was a finding that the panel was entitled to make; indeed I would say that on the evidence it would have been doubtfully correct for the panel to have made any other assessment. Of course, some aspects of the appellant’s performance received approbation - it was not, ... “a universal picture of failure”. But the fact that in some respects the appellant performed positively does not inform at all an assessment as to whether he could recognise his deficiencies and respond to retraining in relation to those fields where he had failed. It seems to me that in that regard the key failings must be considered unto themselves, and here the appraisal of the assessors, particularly in the second phase, and of the panel, was that no amount of further opportunity for retraining would cure the appellant’s core deficiencies in knowledge, and defects in competence, so as to eliminate risk. That is a factual determination which was to be made, and which was in my judgment correctly made, irrespective of positive performance in other fields”.

Mr Mostyn also dismissed Counsel for the doctor’s argument that he was “the victim of a Catch-22”. Dr Luthra had never been able to undertake retraining following the first assessment because he had failed, three times, the multiple choice question exams. The Judge goes on (paragraph 39):

“It seems to me that passing those exams is a reasonable condition of entry into the scheme and that therefore the appellant is not the victim of a Catch-22;"
rather it was because of his own failings that he was not able to take up the training which the 2007 assessment recommended”.

He goes on (paragraph 40)

“I do not think that any light is shone on the appellant’s insight into, and ability to repair, his deficiencies by the fact that he engaged fully with the two assessments and the FTPP proceedings. In that regard he really had no choice if he were to have any chance of avoiding erasure”.

He goes on (paragraph 41):

“I do not consider that the decision not to afford the appellant any further opportunity to address issues of remediation and insight at a further review hearing was unreasonable. The history demonstrates that the appellant had been offered manifold opportunities. It can fairly be said that the GMC bent over backwards to afford him these opportunities, but that on account of core deficiencies in his knowledge and competence he was not able to avail himself of them”.

Mr Justice Mostyn concludes (paragraph 42):

“I have no doubt that the panel bore in mind the harsh personal impact of its decision on the appellant at this age, but for the reasons explained by Sir Thomas Bingham MR, which I have referred to above, the personal impact of the verdict is subservient to the wider interests of the protection of the public from risk and the reputation of the profession”.

In the circumstances Mr Justice Mostyn dismissed Dr Luthra’s appeal.

**Salient Points**

- This case confirms that the sentiments of Sir Thomas Bingham MR in *Bolton v Law Society* that the practical effects of a sanction must be ‘subservient’ to the wider interests of the protection of the public and the reputation of the profession, applied most frequently to in cases of misconduct, apply equally in cases of deficient professional performance.

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