

Approved Judgment



Neutral Citation Number: [2018] EWHC 3503 (Admin)

Case No: CO/2449/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATION COURT

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 20 December 2018

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

Between :

BOZENA RAK-LATOS

Appellant

- and -

THE GENERAL DENTAL COUNCIL

Respondent

Julia Furley (instructed by **JFH Law LLP**) for the **Appellant**

Alexis Hearnden (instructed by **General Dental Council**) for the **Respondent**

Hearing date: 11 December

Approved Judgment

I direct that pursuant to CPR PD39A para. 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

MR JUSTICE PEPPERALL:

1. Bozena Rak-Latos is a dentist. She was registered and has practised in both Poland and the United Kingdom.
2. On 17 September 2015, Mrs Rak-Latos was convicted by the Kielce Regional Court in Poland of aiding and abetting fraud. The offending took place between 1 June 2007 and 1 March 2013, during which time Mrs Rak-Latos provided 44 blank prescriptions to her sister. The prescriptions were used to defraud the Polish National Health Fund out of 22,800 zloty, which is around £4,790. On 6 October 2015, Mrs Rak-Latos was sentenced by the Polish court to a term of one year's imprisonment. Her sentence was suspended for a period of two years.
3. Mrs Rak-Latos did not report her conviction to the General Dental Council (the "GDC") either at the time or when moving to England in December 2016 in order to work as a dentist in a London clinic. Once the GDC learnt of the Polish conviction, she was summoned to appear before its Professional Conduct Committee ("PCC"). On 25 May 2018, at the conclusion of a three-day hearing, the committee found that Mrs Rak-Latos's fitness to practise was impaired in that:
 - 3.1 first, on 17 September 2015, she had been convicted of aiding and abetting fraud;
 - 3.2 secondly, she had failed to inform the GDC immediately of such conviction; and
 - 3.3 thirdly, her failure so to inform the GDC had been "misleading."
4. The PCC cleared Mrs Rak-Latos of a more serious alternative to the third charge, namely of an allegation that her failure to inform the GDC immediately had been dishonest. After considering both the aggravating

and mitigating features of Mrs Rak-Latos's case, the PCC directed that her name should be erased from the register.

5. Mrs Rak-Latos now appeals pursuant to section 29 of the Dentists Act 1984. By her Appellant's Notice, she argues three grounds of appeal:
 - 5.1 First, that the PCC was wrong to find misconduct in her failure to report her conviction.
 - 5.2 Secondly, that the PCC was wrong to find that her fitness to practise was currently impaired by reason of her conviction.
 - 5.3 Thirdly, that the sanction of erasure was disproportionate.

THE LAW

6. Public protection is at the heart of the regulation of dentists. Section 1(1ZA) of the Dentists Act 1984 provides:

“The over-arching objective of the Council in exercising their functions under this Act is the protection of the public.”
7. Section 1(1ZB) adds:

“The pursuit by the Council of their over-arching objective involves the pursuit of the following objectives-

 - (a) to protect, promote and maintain the health, safety and well-being of the public;
 - (b) to promote and maintain public confidence in the professions regulated under this Act; and
 - (c) to promote and maintain proper professional standards and conduct for members of those professions.”
8. When allegations of professional misconduct are considered by the PCC, the central question is whether the dentist's fitness to practise is impaired: s.27(2) of the Dentists Act 1984. Misconduct was considered in the medical context by the Court of Appeal in R (Remedy UK Ltd) v. The General Medical Council [2010] EWCA Civ 1245. Elias LJ said, at

[37]:

“Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.”

9. In the event that some impairment is found, section 27B(6) of the Act provides that the PCC may, if it considers it appropriate, direct erasure, suspension for up to 12 months, the imposition of conditions for up to 3 years or the issue of a reprimand.
10. By section 29 of the Act, a dentist can appeal to the High Court against directions for erasure, suspension or the imposition of conditions. In Wasu v. The General Dental Council [2013] EWHC 3782 (Admin), Haddon-Cave J (as he then was) summarised the proper approach to appeals under the 1984 Act, at [16]-[17]:

“16. The approach to an appeal pursuant to s.29 of the Dentists Act 1984 can be summarised as follows:

- (1) An appeal pursuant to s.29 of the Dentists Act 1984 is by way of rehearing (CPR, Part 52, PD 22.3).
- (2) The Court has the power (a) to dismiss the appeal, (b) to allow the appeal and quash the decision appealed against, (c) to substitute for the decision appealed against any other decision which could have been made by the [PCC] or (d) remit the case to the [PCC] to dispose of the case in accordance with the directions of the court (Dentists Act 1984, s.29(3)).
- (3) The Court will allow an appeal where the decision of the lower tribunal was wrong or unjust because of a serious procedural, or other irregularity, in the proceedings before the lower tribunal (CPR, Part 52.11).

17. The general principles applicable to an appeal against a decision of a professional disciplinary committee of this sort can be summarised as follows:
 - (1) The Court will give appropriate weight to the fact that the Panel is a specialist tribunal, whose understanding of what the medical profession expects of its members in matters of medical practice deserves respect;
 - (2) The Court will have regard to the fact that the tribunal has had the advantage of hearing the evidence from live witnesses;
 - (3) The Court should accordingly to be slow to interfere with the decisions on matters of fact taken by the first instance body;
 - (4) Findings of primary fact of the first instance body, particularly if founded upon an assessment of the credibility of witnesses, are close to being unassailable, and must be shown with reasonable certainty to be wrong if they are to be departed from;
 - (5) Where what is concerned is a matter of judgment and evaluation of evidence which relates to areas outside the immediate focus of interest and professional experience of the body, the Court will moderate the degree of deference it will be prepared to accord, and will be more willing to conclude that an error has, or may have, been made, such that a conclusion to which the Panel has come is or may be ‘wrong’ or procedurally unfair.”
11. In this case, the PCC did not hear live evidence. There is therefore no question of having to accord deference to the committee’s assessment of credibility. Nevertheless, the decisions of the PCC involved the evaluation of written evidence and the exercise of judgment by a specialist professional body.
12. In the exceptional case of Bawa-Garba v. The General Medical Council [2018] EWCA Civ 1879, Dr Bawa-Garba had been convicted of gross negligence manslaughter following her failure to diagnose and treat septic shock secondary to pneumonia. The Medical Practitioners Tribunal

found that her fitness to practise was impaired and suspended her from practice for 12 months. Allowing the GMC's appeal, the Divisional Court quashed the suspension and directed that Dr Bawa-Garba's name should be erased from the medical register. The Court of Appeal (Lord Burnett CJ, Sir Terence Etherton MR and Rafferty LJ) allowed Dr Bawa-Garba's further appeal holding that the Divisional Court had been wrong to interfere with the sanction imposed by the specialist tribunal. In a joint judgment, the appeal court described, at [61], the tribunal's decision on sanction as "an evaluative decision based on many factors." There was, the court observed, "limited scope" for an appellate court to overturn such decisions. They added, at [67]:

"That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts ... An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide."

GROUND 1: THE FAILURE TO REPORT

13. Standard 9.3 in the Standards for the Dental Team states:

"You must inform the GDC immediately if you are subject to criminal proceedings ... anywhere in the world."

14. On 30 September 2013, the GDC published guidance to the profession on reporting criminal proceedings. It advised that immediate notification was required in the event that a dentist was charged with or convicted of a criminal offence (not being a minor road traffic or other minor offence) anywhere in the world.

15. Julia Furley, who appears for Mrs Rak-Latos, accepts that there was no excuse for failing to notify the GDC but contends that the PCC failed properly to take into account the following circumstances:

- 15.1 First, Mrs Rak-Latos's serious ill-health. She was treated for laryngeal cancer shortly after the Polish court case and remained off work in January 2016.
- 15.2 Secondly, Mrs Rak-Latos was at that time living and working in Poland.
- 15.3 Thirdly, the "very different" regulatory landscape in Poland. Ms Furley submitted that the question of reporting to the Polish regulator was a matter for the prosecution rather than the dentist and that prosecutor plainly had sympathy for Mrs Rak-Latos's position in deciding that no report was necessary in this case.
- 15.4 Fourthly, that the failing in this case was one of negligence rather than deliberate design.
16. As to the third point, Alexis Hearnden, who appeared for the GDC, pointed to inconsistencies in Mrs Rak-Latos's case on the issue of reporting the conviction to the Polish regulator:
- 16.1 In her September 2017 statement, Mrs Rak-Latos said, at paragraph 21:
- "I advised my professional dental body of this issue immediately, as I was obligated to do. After explaining the context of what had transpired, I faced no disciplinary or other sanction and it was accepted that I was negligent, rather than dishonest in my involvement in this matter."
- 16.2 By contrast, in her May 2018 statement, Mrs Rak-Latos said, at paragraph 10:
- (i) I was convicted on 17 September 2015. I was in Poland at that time. In Poland the decision to notify the Polish dental bodies is made by the Court Prosecutor, and not by me.
- (ii) In view of the surrounding circumstances concerning my conviction the prosecutor empathised with my predicament and as a result no complaint or notification was made to the Polish dental authorities ...
- (v) I accepted that I should have notified the GDC of my earlier conviction and that I did not do so. I am truly sorry that happened. However, at this time I was recovering from throat cancer, and I was setting up a new dental clinic in

North London. During this hectic time the issue of whether I should check whether (unlike in Poland) I needed to report myself to the GDC was overlooked.”

17. This case involved a conviction for aiding and abetting prescription fraud which was dealt with by a suspended sentence of imprisonment. This was not a minor misdemeanour where a professional might reasonably conclude that there was no duty to report the conviction. In my judgment, the committee was plainly entitled to find that Mrs Rak-Latos’s failure to inform the GDC of her conviction was misconduct, even though it accepted that she had thereby acted in a misleading rather than a deliberately dishonest way. In so finding, the committee properly took into account Mrs Rak-Latos’s ill-health and the possibility of confusion as to the need to report the conviction to the English regulator. In view, however, of the conclusions that I have reached on grounds 2 and 3, this ground is in any event academic.

GROUND 2: FITNESS TO PRACTISE

18. Ms Furley realistically accepted that the PCC was entitled to take the conviction at face value but argued that it should nevertheless have taken Mrs Rak-Latos’s version of events into account.
19. The committee was provided with an English translation of the judgment of District Court Judge Gawrońska. Mrs Rak-Latos’s sister and co-accused, Barbara Zuraw, was a pharmacist. The charge against Mrs Rak-Latos alleged:

“Between June 2007 and March 2013 ... acting in short periods of time in a realisation of premeditated intent and for the purpose of financial gain for Barbara Zuraw and with the intent that Barbara Zuraw would commit a prohibited act involving an unlawful modification of prescriptions, i.e. writing names of drugs on and the misleading the Świętokrzyski Regional Branch of the Polish National Health Fund in Kielce with regard to the basis under which to receive (sic) reimbursements for the prescribed drugs CLEXANE and FRAXODIL, and by doing it causes (sic) the ... National Health Fund ... to dispose of their assets, acting as a dentist she gave [Zuraw] on numerous occasions 44 original blank prescriptions with her named stamp facilitating her committing this act, that led to ... the unduly

claimed refunds for prescribing the drugs ... by Barbara Zuraw, amounting to the total of 22,800.09 zł, ...”

20. Mrs Rak-Latos made three witness statements in defence of the fitness to practise proceedings. All three dealt with her conviction. By her statement dated 11 September 2017, Mrs Rak-Latos said:

“8. Unbeknown to me my sister was taking blank prescriptions from me and abusing them by prescribing medicines namely Clexane and Fraxodil. Both these drugs are blood thinners and would not be used by me in a dental context.

9. I did not know this was happening until my sister was formally investigated by the authorities in Kielce for allegations of fraud, namely claiming for medicines that had not been properly prescribed for patients.

10. Unsurprisingly my sister was prosecuted for fraud. The sums in issue were significant; some £100,000 of prescribed medicines.

11. I was also prosecuted for the actions my sister was responsible for.

12. I thought that the prosecution would be limited to negligence on my part in allowing too easy access to blank prescriptions, and in not safeguarding the blank prescription forms in a more secure manner.

13. To my surprise I was charged with the more serious charge of knowingly assisting my sister in this enterprise. Apparently, negligence is not a recognised offence in any Polish criminal court and criminal offences nearly always involve an element of knowledge.

14. The trial was conducted by Judge alone, and no jury members.

15. My sister faced a long trial which was affecting her mental and physical health.

I was worried about this and wanted to help her from harming herself any more.

16. To effect a closure of this matter I pleaded guilty to helping her but I wanted to stress that I did so on the basis that I was not aware of what she was up to.

17. I do not know how but the judgment that was later produced by the court published my admission as a deliberate one of knowingly assisting my sister.”

21. By her statement of 30 December 2017, Mrs Rak-Latos protested her innocence of fraud and pointed to the fact that her conviction was pursuant to Article 18.3 of the Polish Criminal Code. Article 18 deals with secondary liability. The relevant part of Article 18.3 provides:

“whoever, acting with an intent that another person should commit an offence, facilitates by his behaviour the commission of an offence, particularly by providing an instrument, means of transport, or giving advice or information, shall be liable for aiding and abetting.”

22. Finally, by her statement dated 18 May 2018, Mrs Rak-Latos explained that there were about twenty doctors and dentists involved in her sister’s offending but that she was the only one charged with aiding and abetting the fraud. She said that her sister was clinically depressed and that, to defend herself at trial, Mrs Rak-Latos would have needed to incriminate her sister in stealing the blank prescriptions from her dental practice. She feared that her sister might be imprisoned and therefore chose to accept responsibility to ameliorate her sister’s position.

23. By her appeal, Mrs Rak-Latos is effectively seeking to challenge her conviction. Ms Furley did not shrink from this difficulty and accepted that the appellant had asked the PCC to accept an account that was inconsistent with her guilty plea.

24. Rules 57(5)-(6) of The General Dental Council (Fitness to Practise) Rules Order of Council 2006 provide:

“(5) Where a respondent has been convicted of a criminal offence—

 - (a) a copy of the certificate of conviction, certified by a competent officer of a court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
 - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

- (6) The only evidence which may be presented by the respondent in rebuttal of a conviction certified or extracted in accordance with paragraph (5)(a) is evidence for the purpose of proving that the respondent is not the person referred to in the certificate or extract.”
25. In Shepherd v. The Law Society [1996] EWCA Civ 977, a solicitor who had been convicted of fifteen offences of dishonesty and sentenced to three years’ imprisonment appealed against the decision of the Solicitors Disciplinary Tribunal to strike him off the roll. He argued that the tribunal had been wrong to refuse to allow him to adduce evidence to prove that he was not in fact guilty of the offences. Giving the judgment of the Divisional Court, Lord Taylor CJ considered the well-known case of Hunter v. Chief Constable of West Midlands Police [1982] A.C. 529 in which it was held to be an abuse of process to mount a collateral challenge to a conviction in a civil action. So, equally, Lord Taylor held that it would have been an abuse of process to have allowed Mr Shepherd in his disciplinary hearing to mount a collateral challenge to his convictions.
26. Similarly, Lord Hoffmann said in Kirk v. The Royal College of Veterinary Surgeons [2004] UKPC 4, at [6] that the effect of comparable provisions in the Veterinary Surgeons Act 1966 was “to preclude the practitioner from denying the truth of any facts necessarily implied in the conviction.” In that connection, Lord Hoffmann cited the observation of Viscount Simon LC in The General Medical Council v. Spackman [1943] A.C. 627, at pages 634-635, that:
- “... the decision of the council is properly based on the facts of the conviction, and the practitioner cannot go behind it and endeavour to show that he was innocent of the charge and should have been acquitted.”
27. Here, rules 57(5)-(6) were not engaged since the conviction was not in a UK court. Nevertheless, in my judgment, the PCC was right to take the conviction at face value and to reject evidence in which Mrs Rak-Latos sought to present an account of events that was inconsistent with her conviction. Further, it was right to characterise Mrs Rak-Latos’s approach

to the case as an attempt to minimise her involvement and to identify her clear lack of insight into the seriousness of her conviction.

28. This was therefore a case in which a dentist had been convicted of an offence of aiding and abetting prescription fraud, not by mere negligence but with intent, over a period of 6 years. Given the nature and seriousness of that conviction, the failure to report the conviction and Mrs Rak-Latos's lack of insight into her own offending, the PCC was right, even after taking into account the personal mitigation in this case, to find that the appellant's fitness to practise was currently impaired.

GROUND 3: THE SANCTION

29. The GDC has issued guidance for the PCC on the appropriate sanctions to be imposed upon a finding of impairment. Paragraph 7.30 of the guidance explains:

“The ability to erase exists because certain behaviours are so damaging to a registrant's fitness to practise and to public confidence in the dental profession that removal of their professional status is the only appropriate outcome. Erasure is the most severe sanction that can be applied by the PCC and should be used only where there is no other means of protecting the public and/or maintaining confidence in the profession. Erasure from the register is not intended to last for a particular or specified term of time. However, a registrant may apply for restoration only after the expiry of five years from the date of erasure.”

30. Paragraph 7.34 gives more specific guidance:

“Erasure will be appropriate when the behaviour is fundamentally incompatible with being a dental professional: any of the following factors, or a combination of them, may point to such a conclusion:

- Serious departure(s) from the relevant professional standards;
- Where serious harm to patients or other persons has occurred, either deliberately or through incompetence;
- Where a continuing risk of serious harm to patients or other persons is identified;

- The abuse of a position of trust or violation of the rights of patients, particularly if involving vulnerable persons;
- Convictions or findings of a sexual nature, including involvement in any form of child pornography;
- Serious dishonesty, particularly where persistent or covered up;
- A persistent lack of insight into the seriousness of actions or their consequences.”

31. Ms Furley argues that there is no evidence here of deep-seated personality, professional or attitudinal problems. Taking into account Mrs Rak-Latos’s version of events, the fact that she only received a suspended sentence of imprisonment and the fact that, under Polish law, her conviction is now expunged from her record, Ms Furley submits that the proper sanction in this case was suspension for a period of 12 months.

32. In my judgment, the PCC was plainly entitled to take the view that this case involved a serious departure from professional standards, a serious abuse of the trust placed in any medical or dental professional issued with blank prescription forms and that the case involved serious and persistent dishonesty. The PCC’s decision to direct erasure was an evaluative judgment by a specialist committee with which the court should be reluctant to interfere: Bawa-Garba (supra). In my judgment, erasure was warranted and there is no merit in ground 3.

CONCLUSION

33. This appeal is therefore dismissed. Finally, I should like to pay tribute to both Ms Furley and Ms Hearnden for the quality of their focused and concise submissions on this appeal.