

IN THE HIGH COURT OF JUSTICE IN NORTHERNIRELAND

DR LEO JOSEPH CASEY

Appellant;

-v-

THE GENERAL MEDICAL COUNCIL

Respondent.

GIRVAN LJ

[1] This morning I gave my judgment in relation to the main issues in the case and I have heard submissions in relation to the proper relief that should be granted consequent on my decision. The powers of the court are set out in Section 40(7) of the Medical Act 1983. The court may dismiss the appeal which I have not done. It may allow the appeal and quash the direction or variation appealed against. It may substitute for the direction appealed against any other direction which could have been given or made by the Panel concerned or it may remit the matter to a fresh panel to dispose of the case in accordance with the directions of the court.

[2] On behalf of the doctor appellant Mr Forde has argued by reference to his submissions and the authorities that he has opened that the court should simply quash the decision of the Panel and the determination of the Panel on all issues and that would then mean that the appeal would be brought to a complete finality.

[3] On the other hand Ms Gray on behalf of the GMC argues that this is a case in which the court should properly remit the matter to a fresh Panel for reconsideration in the light of the judgment of the court. I am satisfied that in this instance the court has a discretion to be exercised, on a proper basis of course, as to what relief should be granted in the circumstances and it is clear from the authorities which have been opened that that is a discretion that has to take account of all the circumstances of the case and the interests of justice. That emerges clearly, for example, from the judgment of Stadlen J in the case of Khann v GMC.

[4] I am satisfied this is a case in which the court should simply allow the appeal and quash the determination of the Panel rather than have the matter remitted to a fresh Panel for re-consideration. There are a number of reasons why I have come to

that conclusion. The situation in this case has been hanging over the doctor's head for a considerable period of time. The events giving rise to the allegations occurred as long ago as 2005 and if the matter goes back for re-consideration we will be talking about looking at events six years ago.

[5] A more telling point in relation to the matter is that the case made out by the General Medical Council before the Panel in the first instance is a case which now lies in tatters in that the witness, patient A, having made a number of serious allegations of sexual impropriety withdrew most of them, indeed nearly all of them, leaving one allegation relating to the examination of her chest. In the judgment I have set out the reasons why the Panel could not have logically come to the conclusion that she should be treated as a consistent and credible witness having regard to the inconsistencies in the version of events that she gave in relation to the examination. The changing version of events pointed to a picture of a witness who on key points could not be regarded as consistent and reliable. That will remain the position in respect of any return to a fresh Panel. The re-hearing would be premised upon the proposition that there was a history of inconsistency, as found by the court, that other allegations, serious allegations of sexual impropriety had been made and persisted for a considerable period of time and then withdrawn without explanation in the course of the actual evidence in the case. That would present, to say the least of it, a very odd case for the GMC to be putting before a Panel with a request that the Panel should make adverse findings against the doctor on the basis of the evidence of that individual. It seems to me that it would be an unfair situation to remit this matter to a fresh Panel having regard to the fact that the witness concerned has presented her case, such as it was, before the original Panel. Her evidence in relation to the allegations in respect of the nipples gives rise to a form of rehearsal in relation to that serious allegation. The court has also indicated that one of the matters that would have to be considered by a Panel was the question of whether, having regard to past inconsistencies, the witness was someone who might in the circumstances seek to stand over one remaining allegation having withdrawn the rest of her allegations in order to justify herself. That problem becomes accentuated in relation to a rehearing in front of a fresh Panel in relation to that one remaining allegation that remains extant. The witness would have every motive to persist in maintaining that version of events in order to justify the stance that she took before the previous Panel which had led to adverse findings against the doctor. There would be a very real risk that she would persist in maintaining a version of events to give justification to her continuation of the complaint. There is a real risk accordingly that because there has been a hearing on the merits already this witness would be rehearsed to the point of causing a problem in relation to the interests of justice. For those reasons, I conclude that the proper course to take is to simply quash the determination of the Panel and allow the appeal. Accordingly there will not be a remittal. I will hear counsel on the questions of costs.