



14 December 2016

PRESS SUMMARY

Habib Khan (Respondent) v General Pharmaceutical Council (Appellant) (Scotland)
[2016] UKSC 64
On appeal from [2014] CSIH 61

JUSTICES: Lord Neuberger (President), Lord Wilson, Lord Reed, Lord Carnwath, Lord Hodge

BACKGROUND TO THE APPEAL

In 2002 Mr Khan was registered as a pharmacist. Between 2010 and 2012 Mr Khan pleaded guilty to three incidents of domestic violence. In 2012 the General Pharmaceutical Council referred to its Fitness to Practise Committee (“original committee”) an allegation that Mr Khan’s fitness to practise as a pharmacist was impaired by reason of his misconduct.

On 27 June 2013 the original committee found that the impairment of his fitness to practise was established. When it turned to identify the sanction in article 54(2)(d) of the Pharmacy Order 2010 (“the Order”) which would properly reflect the gravity of Mr Khan’s misconduct, the original committee rejected the option of suspending his right to practise for 12 months on the basis that this sanction would be insufficient to mark the degree of gravity of Mr Khan’s misconduct. Instead it directed that his entry in the register of pharmacists be altogether removed.

The Extra Division of the Court of Session allowed Mr Khan’s appeal against the direction for removal and remitted the case to the original committee for it to determine the appropriate sanction in light of its Opinion. It found that the original committee had made no mention of its power under article 54(3)(a)(ii) of the Order to conduct a review following a direction for suspension and to direct that “the suspension of the entry be extended for such further period not exceeding 12 months as may be specified in the direction”. In its view there was therefore “a middle way” between suspension for 12 months, which the original committee has considered to be insufficient, and removal, which the original committee had acknowledged perhaps appeared harsh. In light of the original committee’s power to conduct later reviews, it had been reasonably incidental to its power of suspension for 12 months for it “to indicate that it considered that the suspension should be extended thereafter, for a further 12 months or longer”. Although this indication would not bind the review committee, the Extra Division reasoned that it must be assumed that “the later committee will be obliged to respect the indication and if it departs from it will be expected to give reasons for doing so”.

The General Pharmaceutical Council appealed the decision of the Extra Division. Its appeal concerns whether a review committee may impose a further suspension to reflect the original committee’s conclusion that the gravity of the registrant’s misconduct demanded a longer period of suspension than the 12 months it was permitted to impose. Mr Khan cross-appealed against the Extra Division’s implicit rejection of his argument that in any event his removal from the register was disproportionate.

JUDGMENT

The Supreme Court unanimously allows both the General Pharmaceutical Council’s appeal and Mr Khan’s cross-appeal. Lord Wilson gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

The Appeal

The powers of the review committee following the original committee's direction for a registrant's suspension are set out in article 54(3)(a) of the 2010 Order. That article does not indicate how the powers should be exercised, and only limited assistance may be derived from the General Pharmaceutical Council (Fitness to Practise and Disqualification etc) Rules 2010. Rule 34(4) requires the representative of the council to inform the review committee of the background to the case and sanction previously imposed and to direct its attention to any relevant evidence. Rule 34(4) and (5) permit both parties to adduce evidence "in relation to the person concern's fitness to practice". Rule 34(6) provides that, following a direction for suspension, the review committee "must receive further evidence" although the subject of it is not identified. It certainly seems that the reference to the registrant's fitness to practise relates to his fitness at the time of the review hearing [24].

Greater assistance is collected from the Indicative Sanctions Guidance which makes clear that the focus of the review is upon the current fitness of the registrant to resume practice, judged in the light of what he has, or has not, achieved since the date of suspension. The review committee asks: does his fitness to practise *remain* impaired [27]. The recent work of the three UK Law Commissions in this area proposes that the review committee should address changes relevant to impairment which have – or have not – occurred since the date of the original committee's direction [28]. It is also noteworthy that in the fifth report of the Shipman Inquiry, the Chairman stated that review hearings "should focus the doctor's mind on the need to undertake any necessary remediation" [29].

The Extra Division's conception is alien to the generally accepted conception of a review as a vehicle for monitoring the steps taken by the registrant towards securing professional rehabilitation [31]. *Taylor v General Medical Council* [1990] 2 AC 539, not cited to the Extra Division, expressly holds that the conception favoured by the Extra Division is misplaced [32]. In *Taylor* the court held that "it can never be a proper ground for the exercise of the power to extend the period of suspension that the period originally directed was insufficient to reflect the gravity of the original offence" [33]. The Extra Division was too ingenious. There was no middle way. It was wrong to remit the case to the committee on that basis [35].

The Cross-Appeal

The original committee itself acknowledged that its direction for removal might appear harsh. Serious though Mr Khan's misconduct certainly was, the sanction appropriate to the disrepute into which Mr Khan's conduct had brought, or was likely to bring, the profession of pharmacy was suspension of his registration, which, at the time of the committee's determination, should no doubt have been for a period of a year [40].

A direction for suspension should be substituted in place of the original committee's direction for removal from the register. In light of Mr Khan's interim suspension since the date of the original committee's direction, the period of his suspension should be four months and a review committee should conduct a review prior to the expiry of this period [41].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>