

ENGLAND AND WALES / JUDGMENT

Lawrance v The General Medical Council

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Neutral Citation Number: [2016] EWHC 215 (Admin) IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION ADMINISTRATIVE COURT Case No: CO/4998/2015 Royal Courts of Justice Strand, London, WC2A 2LL Date: 12/02/2016 Before : MR JUSTICE HOLROYDE

- ----- Between : DR CATHERINE ANN LAWRANCE
- and - THE GENERAL MEDICAL COUNCIL Appellant Respondent
- -----
- ----- The Appellant appeared in person Mr Ivan Hare (instructed by GMC Legal) for the Respondent Hearing dates: 4th February, 2016
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Judgment

Mr Justice Holroyde : 1. 2. 3. 4. 5. 6. This is an appeal against the decision of a Fitness to Practise Panel of the Medical Practitioners' Tribunal Service which on 8th October 2015 found that the Appellant's fitness to practise had been impaired by reason of her serious misconduct and ordered that her name be erased from the Medical Register. I heard submissions from the Appellant Dr Lawrance in person and from Mr Ivan Hare on behalf of the General Medical Council. Dr Lawrance was understandably distressed, and clearly found the proceedings stressful, but was nonetheless able to make her submissions and to identify the reasons why she argued that the decision of the Panel should be overturned. It is necessary to summarise the long history of this matter. I do so as briefly as possible. Dr Lawrance was in general medical practice in Berkshire. For a time, she worked in a practice in which her husband – also a GP – was a partner. A bitter partnership dispute arose between her husband and the other partners in the practice. The other partners made a complaint about Dr Lawrance's husband to the relevant NHS Primary Care Trust. Complaints and counter-complaints were also made to the General Medical Council. Dr Lawrance made allegations to the PCT against one of the other partners. It is unnecessary to go into the details. Suffice to say that certain record books maintained by the practice were inspected by the Primary Care Trust. In March 2007 the PCT gave the record books to Dr Lawrance with a view to her returning them to the practice. She did not do so. The other partners commenced County Court proceedings against her claiming the return of the books and damages. In the course of those proceedings, an issue arose as to whether Dr Lawrance had done any work in the practice since August 2004. The County Court judge found that – save for two

occasions in March 2005 – she had not done so. In making that finding the judge accepted the evidence of the practice manager and one of the other partners, and did not accept Dr Lawrance's evidence. The judge accepted the possibility that between August 2004 and February 2007 Dr Lawrance had occasionally deputised for her husband in making a home visit or in some other task but concluded that, if that had happened, any work she had done was recorded by her husband in his own name. Overall, however, the judge rejected significant parts of Dr Lawrance's evidence. The consequence of the judge's findings in those County Court proceedings was that proceedings were brought against Dr Lawrance before a Fitness to Practise Panel. The essence of the case against her was that in the County Court proceedings she had given false and misleading evidence as to the nature of the work she did, the time period for which she worked and the date when she left the practice. The first of the specific allegations laid against Dr Lawrance was ultimately dismissed, and I therefore say no more about it. The other allegations, after certain amendments, were in the following terms: i) Allegation 2: "On or about 4 December 2009 you provided a statement to Reading County Court to the effect that (a) you worked at the Practice to a greater or lesser extent until your husband was purportedly compulsorily retired on 8 February 2007, (b) in the latter part of 2006 you became very concerned about problems at the Practice as a product of working there." Allegation 3: "On or about 28 January 2010 you provided a statement to Reading County Court to the effect that (a) you were providing on-call services to patients of the Practice until your husband was purportedly compulsorily retired on 8 February 2007, (b) you provided administrative services to the Practice until February 2007, (c) you provided these services at the request of the Practice." Allegation 4: "Between 16 May 2011 and 2 August 2011, you provided oral evidence to Reading County Court to the effect that you worked at the Practice from August 2004 until February 2007." Allegation 5: "You performed no clinical or administrative work at the Practice after 7 March 2005." Allegation 6: "Your conduct as described at paragraphs ... 2, 3 and 4 was (a) misleading, (b) dishonest." ii) iii) iv) v) Those charges were considered by a Fitness to Practise Panel in April 2014 ("the first Panel"). The first Panel heard oral evidence from two of the other partners, and received a witness statement from the practice manager. Dr Lawrance admitted allegations 2, 3 and 4, which were accordingly found proved. She denied allegations 5, 6(a) and 6(b), but they too were found proved. The first Panel accepted as reliable the evidence of the two partners and the practice manager: it bore in mind that Dr Lawrance had not felt able to cross-examine any of the witnesses, but observed that it had "sought to question the witnesses carefully on matters which it considered might have been raised by the doctor". The first Panel went on to find that Dr Lawrance was guilty of misconduct and that her fitness to practise was impaired because of her misconduct. It ordered that her name be erased from the Medical Register. All these decisions were made in the absence of Dr Lawrance, who had attended throughout the first day of the hearing but had left shortly after the start of the second day. Dr Lawrance appealed against that determination. In March 2015 Collins J allowed her appeal in part. He ruled that the first Panel had erred (a) in its approach to its finding of dishonesty and (b) in failing to invite Dr Lawrance to attend and to make representations before a decision was made as to sanction. Collins J did not however allow the appeal to any greater extent. In particular, he made it clear that the findings of the first Panel, that Dr Lawrance's statements and evidence were inaccurate, could not now be challenged. She could, however,

“seek to show that at worst that conduct was misleading, not dishonest, and that erasure was too severe”. The learned judge recognised that there may be a degree of artificiality if before a fresh Panel Dr Lawrance maintained her case on the facts. 7. 8. 9. 10. 11. Collins J accordingly remitted the case to the Registrar of the General Medical Council so that it could be referred back to the Panel, in order for the Panel – “1. to receive evidence from the Appellant and hear submissions from both parties as to whether the Appellant’s conduct found proved as set out in allegations 2, 3, 4 and 5 was misleading or dishonest;

2. to make a fresh determination as to whether that conduct was misleading or dishonest;
3. to hear submissions from both parties on the issues of misconduct and impairment;
4. to make a fresh decision on misconduct and impairment;
5. to receive evidence from the Appellant and hear submissions from both parties in relation to sanction; and
6. make a fresh determination as to sanction.” 12. 13. 14. The matter then came back before the Panel (“the second Panel”) on 5 th October 2015. The second Panel comprised two of the three members of the first Panel, and a third member who had not previously sat on the case. The hearing took place over a total of 4 days, though it is relevant to note that they were for the most part short days, which allowed ample time for the parties to collect their thoughts and present their evidence and submissions. On 7th October 2015 the second Panel announced its findings as to conduct and impairment. It found no reason to depart from the determinations of fact made, after hearing evidence, by the first Panel. It therefore found that Dr Lawrance did not work at the practice after 7th March 2005. From that finding, it followed that the statements which she had provided to the County Court, and her oral evidence to that court, were untrue. Having directed themselves correctly in law as to the test to be applied, the second Panel determined that Dr Lawrance’s conduct, as described in allegations 2, 3, 4 and 5 was both misleading and dishonest. It went on to determine that she was thereby guilty of serious misconduct and that her fitness to practise was in consequence impaired. 15. In coming to that decision, the Panel noted that Dr Lawrance had made statements to the County Court in 2009 and 2010, and had given oral evidence in 2011. At paragraph 23 of its determination, it said – “The Panel considers this to be a prolonged time in which you maintained an untrue account of the duration of your employment, which was not corroborated by the evidence before this Panel. In the circumstances the Panel considered it implausible that you had made an innocent mistake or negligent error particularly given the significance attached to preparing a witness statement for County Court proceedings and giving oral evidence.
24. ... The Panel also had regard to the evidence that these events occurred against the background of a bitter partnership dispute. Whilst it accepts that this may have been a difficult time for you and, in such a situation, it is possible to act irrationally or lose perspective the Panel is not satisfied that this extends to making absolute assertions on three separate occasions in sworn statements or when giving evidence under oath over a

period of almost two years, which were untrue. Furthermore, there is no evidence before the Panel to support any loss of perspective at the material times. On the contrary the Panel considers that you had a motive to act in the way that you did.” 16. 17. 18. The Panel had regard to the guidance given by the GMC in “Good Medical Practice”, the relevant edition of which was published in 2006. Paragraph 56 emphasised the need for a doctor to be honest and trustworthy and to act with integrity; paragraph 57 directed a doctor to “make sure that your conduct at all times justifies ... the public’s trust in the profession”; paragraph 63 required a doctor to be honest and trustworthy when completing or signing documents; and paragraph required a doctor to “make sure that any documents you write or sign are not false or misleading”. The Panel concluded that Dr Lawrance was guilty of a serious departure from those core principles and the standards expected of a registered medical practitioner. The Panel then heard the Respondent’s submissions as to sanction, which were to the effect that nothing less than removal of Dr Lawrance from practice would suffice to maintain confidence in the medical profession. The Panel thereafter adjourned until the following day so that Dr Lawrance could reflect and prepare her submissions. It should be noted that the usual sitting time was 0930. The Chair of the Panel however said to Dr Lawrance – “I am wondering, in fact, if we should start, say, at 10 o’clock and that would give you a bit of time in the morning as well as some time tonight ... Then hopefully we can hear from you or alternatively if you want to produce a written document then the Secretary will arrange to have that photocopied ... ” On the following morning, Thursday 8th October, Dr Lawrance did not attend at the due time. Nor did she send any written submissions to the Panel. It appears that the legal assessor to the Panel tried to call her mobile phone, received no answer, but left a message saying that the Panel would start at 1030. The Respondent’s solicitor also tried to contact Dr Lawrance: I was shown an e mail from the Respondent’s solicitor which it appears was sent to Dr Lawrance soon after 1000. It said “Can you confirm whether you will be attending the hearing today. The hearing was meant to reconvene at 10am today and the Panel are waiting for you. I have called the mobile number that we have on record for you but this number does not appear to be active.” 19. Nothing was heard from Dr Lawrance. The Panel waited until 1100, and then heard submissions as to whether it should proceed in her absence. It decided that it should do so, and went on to consider sanction. Having considered the less serious forms of sanction, and rejected them all as inadequate in the circumstances of case, the second Panel determined that the appropriate sanction was erasure from the Medical Register. 20. In coming to that decision, the Panel reminded itself that the purpose of the sanction was not to be punitive but rather to protect patients and the public interest. It indicated that Dr Lawrance’s continuing failure to accept responsibility for her actions gave rise to a risk of repetition in the future. It took into account by way of mitigation the stressful and difficult circumstances in which Dr Lawrance had been at the relevant times, and noted that there was no challenge to her clinical competence and no allegation of any dishonest conduct either before or after the relevant events. It also had regard to the GMC’s published “Indicative Sanctions Guidance for the Fitness to Practise Panel”, which at paragraph 82 (2009 edition) listed factors which may make the sanction of erasure appropriate. With reference to some of those factors, the Panel

concluded – “The Panel considers that Dr Lawrance’s persistent dishonest conduct represents a serious departure from the relevant professional standards. Furthermore, she has demonstrated a persistent lack of insight into the seriousness of her actions. The Panel considers that her behaviour is likely to undermine public confidence in the profession, bring the standing of the profession into disrepute and is fundamentally incompatible with her continuing to be a registered medical practitioner.” 21. Dr Lawrance sent an e mail to the Respondent’s solicitor at 1359 that day, which said – “I am very sorry, I have been trying to come but I can’t enter the building. I cannot give anymore at this stage. Please inform the panel.” 22. Dr Lawrance told me that she did not receive any further communication that day, and therefore was not aware that the hearing had been concluded in her absence. At 0915 on Friday 9th October she sent a further e mail to the Respondent’s solicitor, which she asked the solicitor to show to the panel. It read in part – “I am very sorry that I could not attend the hearing yesterday. I was in a state of emotional breakdown and was in fear for my life. I felt that someone was going to attack me and could not get into the building. I would be grateful if I could communicate with the panel by e mail today, which I have already mentioned to you and the Legal Assessor. If the panel really wants me to attend in person, I will try to make arrangements to attend on Monday morning.” 23. 24. Dr Lawrance thereafter learned of the Panel’s decision, and gave notice of appeal. Section 40 of the Medical Act 1983 gives Dr Lawrance the right to appeal. The provisions of CPR52, and CPR PD 52D, paragraph 19 apply to the appeal, which accordingly is by way of a rehearing. That does not however mean that the court re- hears the evidence, or re-tries the case: see eg *Goodchild-Simpson v GMC* [2014] 25. 26. 27. 28. EWHC 1343 (Admin). By CPR 52.11 the court has the power to allow an appeal where the decision of the Panel was wrong, or was unjust because of a serious procedural or other irregularity. Dr Lawrance’s written grounds of appeal were, with respect, uninformative. It was however clear from her oral submissions that she challenged the decision of the first Panel which found allegation 5 proved; the decision of the second Panel affirming that finding; the decision of the second Panel to consider sanction in her absence; and the decision of the second Panel to impose the sanction of erasure, which she argued was far too severe. Dr Lawrance’s position was as follows. She maintained that she had always told the truth, and that all findings to the contrary were wrong and unjust. She therefore expressly rejected any suggestions that she might, for example, have given false information due to the pressures of the very difficult situation in which she and her husband were placed at the material time. Although she acknowledged that Collins J had not interfered with the first Panel’s findings as to conduct, she pointed out that she was in consequence in an impossible position: her case was that the finding that she had not worked in the practice after March 2005 was wrong, but she was not able to advance her submissions on that basis. It should be noted that in relation to the issue of impairment, Dr Lawrance had handed to the Panel a handwritten document in which she had said that the allegations related to “a very difficult time”; that “the doctor in the determination is not who I am now”; and that the allegations related to “an exceptional time in my life which I cannot ever see being repeated. I believe that my fitness to practise is not impaired today”. It would appear that the Panel, entirely understandably, took that

document to be advancing matters of mitigation. Dr Lawrance however denied that her document was intended to imply any acceptance that she had done anything wrong: she repeated that she had always told the truth, and maintained her assertion that she had worked in the practice after March 2005. Developing her submissions, Dr Lawrance made the following points. She said she had always acted in the best interests of the patients of the practice, and had always told the truth. She had worked without pay. She now regretted the trust which she had placed in her husband's former partners. Before the first Panel she had wanted to give evidence but did not feel able to do so. She said she had been told she would not be permitted to give evidence unless she first cross-examined the witnesses against her, which she did not feel able to do (this, I think, must reflect a misunderstanding on Dr Lawrance's part of the conventional procedure whereby a challenge to a witness' evidence must be put in cross-examination so that the witness can respond to it: the transcript does not support her account). The first Panel had her written evidence, which she said was all true but which she now felt could have dealt with more matters than it did. She did not understand why neither the Respondent nor the first Panel had asked any questions of her husband, who was present during the hearing and was the only person apart from herself with a full understanding of all that had happened. When I enquired why Dr Lawrance had not herself called her husband as a witness, she replied that she did not feel able to do so, and added that she did not know what he would say. In the event, she said, the first Panel only heard evidence from "three people who hate us". She felt it unfair that proceedings should be determined on the evidence of persons who were personally hostile to her and her husband. 29. 30. 31. Dr Lawrance argued that, as a result of the way the hearing proceeded before the first Panel, Collins J did not have the full background before him. In particular, she said, he did not know that one or more of the witnesses who gave evidence to the first Panel had previously given inconsistent statements in the proceedings against her husband. Dr Lawrance was not able to give me any details of the suggested inconsistencies or of how they might have affected the outcome of the proceedings before the first Panel. No oral evidence was given to the second Panel. Dr Lawrance sought to maintain her argument, notwithstanding Collins J's order, that the second Panel ought to have reconsidered the factual findings of the first Panel, and overturned them. She argued that the decisions of the second Panel were wrong because the underlying findings of fact (made by the first Panel) were wrong. By this, I think she really meant the finding of the first Panel as to when she had last worked at the practice, since the other factual allegations against her had been admitted by her. As to sanction, Dr Lawrance told me that as the breadwinner of the family, the ending of her ability to practise as a doctor will hit her and her family very hard. She understood that the sanction was not primarily intended as a punishment, but said that was the effect in her case. She challenged the logic of the second Panel's view that there was a risk that she would act dishonestly in the future, pointing out that as a doctor she frequently encountered stressful situations but that there had been no suggestion of any dishonesty on her part in the long period since the original allegations against her. She said she was a good doctor, who had served the community well for many years. She emphasised that her clinical performance has not been the subject of any criticism, and that erasure in her case

would not protect the public: it would in fact achieve the opposite, since the protection of her patients had been her motivation from the outset. She felt that the second Panel should have adjourned the decision as to sanction until the next sitting day, which would still have been within the initial estimate as to the overall length of the proceedings. She explained that she had not felt able to contact the Panel or the Respondent on the 8 th October. She did not give any clear reason why she could not have asked her husband to contact them on her behalf.

32. Mr Hare in his submissions on behalf of the Respondent dealt first with the procedural matters raised by Dr Lawrance. He argued that the criticisms which Dr Lawrance made of the procedure before the second Panel could not be said to amount to a serious irregularity which rendered the decision of the Panel unjust. He pointed out, correctly, that proceedings before a Fitness to Practise Panel are essentially adversarial, and submitted that there was therefore no obligation upon the second Panel to make enquiries of Dr Lawrance's husband if Dr Lawrance herself did not seek to adduce any evidence from him. In any event, he argued, Dr Lawrance had been unable to identify anything which her husband could have said which would have assisted her case. He submitted that the second Panel had proceeded with appropriate caution before deciding to continue the hearing in Dr Lawrance's absence, that they were entitled to reach the decision they did, and that their decision as to sanction could not be challenged on that ground. He pointed out that Dr Lawrance knew what submission as to sanction had been made on behalf of the GMC, knew of the Panel's power to proceed in her absence, and yet had made no communication with the Panel either at the start of the day or even in the course of the morning. 33. 34. 35. 36. 37. As to Dr Lawrance's substantive challenges to the findings of fact, Mr Hare submitted that there was no power in the second Panel to go behind the findings of the first Panel, which had been upheld by Collins J. As to sanction, Mr Hare submitted that the Panel gave proper consideration to proportionality, and that the interests of the public must take priority over the impact of the sanction on an individual doctor. I have reflected on these submissions. My conclusions are as follows. This is in many ways a sad case, but I must decide it in accordance with the law rather than on the basis of sympathy with one side or the other. It is not possible in this appeal for Dr Lawrance to go behind the findings of fact which were made by the first Panel: those findings were expressly left undisturbed by the order of Collins J. I understand of course her insistence that she had been truthful throughout, but that assertion cannot avail her at this stage of the proceedings. It follows that the second Panel had to make its determination on the basis that Dr Lawrance has been proved to have made false statements but was still not prepared to make any admission of having done so. The second Panel was in my judgment clearly entitled to determine that the false statements proved against Dr Lawrance were not only misleading but also dishonest. They correctly directed themselves as to the two-stage approach to be taken in determining an issue of dishonesty (see *R v Ghosh* [1982] QB 1053) and so did not repeat the error made by the first Panel. The stark finding of fact was that Dr Lawrance had not worked in the practice after March 2005, even though she said that she did. That finding was made by the first Panel after hearing and

accepting the evidence of the witnesses against Dr Lawrance: this court has not had the advantage of seeing and hearing the witnesses, and it must therefore be accepted that the first panel was in a better position than I am to assess their credibility and reliability. Given that Dr Lawrance's false statements were made over a period of some two years, in two separate solemn written statements and in oral testimony, it was difficult to attribute the false statements to innocent mistake or misunderstanding, and in my view there was only limited scope for any explanation other than dishonesty. Dr Lawrance expressly rejected any explanation based on, for example, the stress which she was under at the relevant time, and in maintaining her insistence that she had told the truth, she left the Panel without any innocent explanation for what were found to be untrue statements. In those circumstances there is in my judgment no basis on which the finding of dishonesty could be said to be wrong.

38. Making every allowance for the stress of the proceedings and for the difficulty faced by a litigant acting in person, it seems to me that Dr Lawrance cannot complain about the decision of the Panel to proceed to consider sanction in her absence. She knew what was at stake, and she knew that the Panel had the power to proceed in her absence. I accept of course that she was very distressed; but she had been able to reflect on her position overnight, and she could have contacted the Panel and/or the Respondent if she wished to be allowed to defer her submissions until after the weekend. She did not do so, nor did she ask her husband to do so, nor did she send in any written submission or request. The Panel were therefore left in a state of ignorance as to why Dr Lawrance had not attended or when (if at all) she might be intending to return. Even when she sent her e mail at 1359 – which was in any event 39. 40. too late to achieve anything - she gave no indication that she hoped to return to the hearing at some later time. In those circumstances there is in my judgment no basis on which it could be said that the Panel were wrong to continue and conclude the hearing in her absence. As to sanction, the approach which I must take is clearly established. As was said by Lord Millett at paragraph 34 of his speech in *Ghosh v GMC* [2001] 1 WLR 1915, an appropriate measure of respect must be afforded to the GMC's judgment as to whether a medical practitioner's failings amount to serious professional misconduct and as to "the measures necessary to maintain professional standards and provide adequate protection to the public". Similarly, Auld LJ at paragraph 197 of his judgment in *Meadow v GMC* [2007] QB 462 stated that the court must have in mind and give such weight as is appropriate in the circumstances to the fact that the Panel is a specialist tribunal whose understanding of what the medical profession expects from its members in matters of medical practice deserves respect. It is also necessary to bear in mind, as Sir Thomas Bingham MR made clear in *Bolton v Law Society* [1994] 1 WLR 512, that in matters of professional discipline the relevant body is not concerned primarily with punishment of the practitioner but rather with the reputation and standing of, and public confidence in, the profession: in consequence, matters of mitigation have less effect than they do when the purpose of a sanction is purely punitive. Mr Hare rightly drew to my attention the summary of these principles given in the judgment of Laws LJ in *Raschid v GMC* [2007] 1 WLR 1460 at

paragraphs 16 – 20, concluding with these words: “... the High Court will correct material errors of fact and of course of law and it will exercise a judgment, though distinctly and firmly a secondary judgment, as to the application of the principles to the facts of the case.” It is therefore not permissible for me to substitute my own view of the merits for that which was taken by the second panel, or to embark upon an exercise in resentencing. I am very conscious of the consequences for Dr Lawrance of the Panel’s decision that her name must be erased from the register. It is sad to see a doctor whose clinical competence is not the subject of any criticism being unable to practise. But the fact that Dr Lawrance maintains she has done nothing wrong placed the Panel in a difficult position. I agree with Mr Hare that, realistically, the sanctions which needed to be considered were suspension and erasure. The Panel – with the advantage of its specialist knowledge of what the profession expects of a registered medical practitioner - concluded that suspension would not be sufficient to maintain public confidence in the profession, and I am unable to say they were wrong to reach that conclusion. I bear in mind the point made by Dr Lawrance, that any suspension would be followed by her needing to be assessed before returning to practice. But this is not a case in which the misconduct proved against her can be remedied by retraining or by a period of supervision. Dr Lawrance continues to maintain that she has done nothing wrong. If she were to return to practice she would be doing so as a medical practitioner who had been found by a judge in the County Court proceedings to have made false statements in court proceedings and found and by a Fitness to Practise Panel of her profession to have been dishonest, but who had refused to acknowledge that she had done anything wrong. In my judgment, it is impossible to say that the second Panel was wrong to conclude that erasure was necessary and proportionate. Their decision was in line with the published Indicative Sanctions Guidance, and I think it impossible to argue against their conclusion that public confidence in the profession would be damaged if Dr Lawrance returned to practice. 41. For those reasons, I conclude that this appeal must fail. It is accordingly dismissed.

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