

23 January 2018

Court of Appeal Judgment 18 January 2018

Zahra Ali-Asghar Hussain
V

General Pharmaceutical Council
[2018] EWCA Civ 22

By Kenneth Hamer

This case arose from a BBC documentary into a number of pharmacies in London selling prescription-only medicines without a valid doctor's certificate. In December 2012, the BBC broadcast a television programme in which it was alleged that prescription-only medicines had been supplied in the absence of valid prescriptions by a number of pharmacies in London. One of the pharmacies was the Safer Pharmacy in Edgware Road, which was owned by a company of which the appellant, Mrs Zahra Hussain, was the superintendent pharmacist. The footage appeared to show that an undercover reporter had been able to buy Amoxicillin, a prescription-only medication, over the counter, without a prescription at a time when Mrs Hussain was the responsible pharmacist on duty. On 18 September 2015, the Fitness to Practise Committee of the General Pharmaceutical Council concluded that Mrs Hussain had been knowingly involved in the unlawful supply of Amoxicillin on the occasion depicted, that her fitness to practise was impaired by reason of that misconduct and that her name should be removed from the Register of Pharmacists. Mrs Hussain appeared in person before the Committee.

Mrs Hussain appealed with Leading Counsel to the High Court against the Committee's findings and sanction. Kenneth Hamer of Henderson Chambers was instructed to represent the General Pharmaceutical Council in the High Court and, on appeal, in the Court of Appeal. On 23 March 2016, Elisabeth Laing J dismissed the appeal: [2016] EWHC 656 (Admin). Mrs Hussain's further appeal to the Court of Appeal was dismissed on 18 January 2018: [2018] EWCA Civ 22.

Two main issues were argued, namely, whether the procedure that was adopted on 18 September 2015, the final day of the hearing before the Committee, was unfair, and whether the sanction of erasure was proportionate. The Court of Appeal (Lord Justices Peter Jackson, Newey and Singh) dismissed both grounds of appeal. Although Mrs Hussain did not have legal representation at the hearing before the Committee, she had had it up to about the end of July 2015 and she could have approached lawyers in the interval between 20 August, when the Committee heard the facts, and 18 September, when the Committee adjourned to complete the remaining issues in the case. She was not without

any assistance, since she had the help of her husband and she had received a copy of the Council's *Good decision making: fitness to practise hearings and sanctions guidance*. She was a professional woman who had been in the United Kingdom for some 16 years and had studied at and obtained a degree from a British university and was fully able to participate in the hearing. The procedural challenge failed. As to sanction, the Committee said that while she maintained that she had strengthened the standard operating procedures in the pharmacy they were not satisfied that she really understood the reasons behind the Human Medicines Regulations 2012, and the vital role entrusted to the profession as gatekeepers for the safe and lawful use of medicines. The Committee were not satisfied that she had any real understanding of the risk to patient safety or the public interest. There was little or no prospect of her developing true insight. In dismissing the appeal on sanction, the Court said that Mrs Hussain's conduct related to her professional performance and she had shown no insight and had compounded matters by the way in which she approached the disciplinary proceedings. While it cannot be decisive, it was not irrelevant to note that she continued to fight the misconduct finding (a) for over two years from early 2013, when she was first confronted, to September 2015, when the disciplinary proceedings ended, and (b) for another six months until March 2016, when her first appeal was refused. Even 18 months later at the hearing before the Court of Appeal there was no sign of acknowledgment of her misconduct or of insight. Had Mrs Hussain acted differently at a very early stage, the Committee would no doubt have taken a different view. Had she done so in the immediate aftermath of the disciplinary hearing, the Court might have been persuaded that the Committee's approach had been shown to be wrong.

The vital lesson to learn from this case is that professionals need to consider carefully how they respond to misconduct proceedings at all stages of the process, particularly as in the instant case the misconduct related to professional performance.

Kenneth Hamer

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Kenneth Hamer is an experienced barrister and member of Henderson Chambers, instructed in the Court of Appeal for the Respondent, General Pharmaceutical Council.

He is a Legally Qualified Chair at the General Medical Council/Medical Practitioners Tribunal Service, the author of *Professional Conduct Casebook*, published by Oxford University Press and joint editor of the Association of Regulatory and Disciplinary Lawyer's *Quarterly Bulletin*.