

[AL-OBAIDI v FRIMLEY HEALTH NHS FOUNDATION TRUST \(2018\)](#)

QBD (Martin Spencer J) 05/09/2018

EMPLOYMENT - PROFESSIONS - CIVIL PROCEDURE

DISCIPLINARY PROCEDURES : DOCTORS : EXCLUSION FROM WORK : INTERIM INJUNCTIONS : MUTUAL TRUST AND CONFIDENCE : RESTRICTIONS

A cardiologist was granted an interim injunction requiring his employer to lift the restrictions imposed on his practice and allow him to return to work. An interim investigation into his conduct had shown no gross misconduct or even misconduct, and the employer's actions in excluding him from work and then restricting his practice had been irrational.

The claimant doctor applied for an interim injunction requiring the defendant trust to lift the exclusion it had imposed on him and allow him to return to work.

The claimant had been an interventional cardiologist at the trust's hospital, carrying out coronary procedures and device implantations. He did outpatient work, supervised junior doctors, and did research. In January 2018, the trust's medical director informed him that he was being excluded from work and his conduct was under investigation. Allegations had been made about him discouraging colleagues from doing serious incident reports, failing to promote openness at mortality and morbidity meetings, fostering an us/them attitude regarding another hospital, engaging in intimidating behaviour with colleagues, and providing a deliberately misleading account of patient management by another doctor (B). The exclusion meant that the claimant could not enter the hospital or see patients. The director stated that the trust was concerned that the claimant would interfere with witnesses during the investigation. The exclusion was renewed several times despite the claimant's attempts to challenge it. In late April the trust lifted the full exclusion and allowed the claimant to partially return to work in a different hospital, two days a week and under supervision. Other restrictions were placed on his practice. The investigator's report dismissed some allegations and commented on the others. The trust refused to lift the restrictions until the disciplinary process was complete. In August, a disciplinary panel convened to examine B's conduct found that the claimant had been inaccurate in his statement regarding his own conduct at the time. The director indicated to the claimant that the trust wished to further investigate that finding.

HELD: Exclusion or restrictions on practice - After the claimant's partial return to work it was not appropriate to describe him as excluded. The exclusion had been lifted. However, the trust had an implied duty to consider whether the investigator's report supported a continuing case for restrictions on practice. The restrictions were a significant modification of the work of an interventional cardiologist in the claimant's position, who had practised at a high level. They were demeaning and humiliating, and affected his emotional well-being and relationships with colleagues. The court could grant an injunction requiring the lifting of an exclusion; that applied equally where there were restrictions on practice, [Mezey v South West London and St George's Mental Health NHS Trust \(Permission to Appeal\) \[2007\] EWCA Civ 106](#) applied.

Findings of report - The investigator had dismissed some allegations, and the rest were watered down or covered by caveats. The findings did not go to patient safety, but to aspects of the claimant's personality which could be addressed by mentoring or counselling. It found that most colleagues held him in high regard.

Relevance of B's disciplinary panel findings - The panel had made findings about the claimant without hearing from him. It defied belief that they could have made such findings and stated that they did not accept his account without hearing from him. If they had sought evidence from him, he could have shown powerful corroborative documentary evidence supporting his version of events. Although the trust was seeking further investigation, there was no realistic prospect of the investigator concluding that there was a case to answer regarding the allegations relating to B. The investigator had already concluded that the claimant had not been misleading, and that conclusion was unlikely to change based on the flawed panel findings.

Whether to grant injunction - The claimant submitted that the serious issue to be tried was whether the trust had breached the implied term of trust and confidence in his employment contract. It was not suggested that damages would be an adequate remedy for the claimant. The main issue was the balance of convenience. The trust's position was characterised by a failure to properly address the issues and make rational decisions. That had started with the exclusion decision: exclusion was a nuclear weapon for the trust, only to be used in the most serious and extreme cases. However, the trust had allowed the claimant to partially return to work before the investigator's report was concluded, which showed that exclusion had never been properly justified. The prospect that the claimant might

interfere with the investigation process was fanciful. The claimant had years of experience and a good reputation and could be trusted to conduct himself properly and abide by undertakings not to talk to witnesses, who would in any event have mentioned if he had spoken to them. He had not been given the opportunity to demonstrate his trustworthiness in that regard. Exclusion had been an unnecessarily extreme option, even based on the original allegations. After the report, when there was no gross misconduct or misconduct shown, and it was almost inevitable that the claimant would return to his old position, the trust should have carefully considered whether the restrictions remained necessary. If the status quo continued, a severe unmerited injustice would result. The trust's position was irrational in the public law sense, and the injunction was granted.

Application granted

Counsel:

For the claimant: Jeffrey Jupp

For the defendant: Simon Cheetham QC

Solicitors:

For the claimant: Irwin Mitchell Solicitors

For the defendant: Capsticks

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