Medicolegal

First successful court challenge to GMC charges

CLARE DYER

The scope of judicial review—the use of the courts to challenge the decisions of public bodies—is constantly widening. Increasingly invoked against government departments and local councils, the procedure can be used whenever a public authority or a body set up by statute exceeds its powers or exercises them improperly.

A relatively new legal remedy—it originated in rules of court made in 1977 and was given statutory force in 1981—judicial review is likely to be considered more often by legal advisers when doctors face disciplinary proceedings, following the first successful court challenge to a General Medical Council charge in the case of Dr Sidney Gee (9 November, p 1358).

Since the case was unprecedented, Mr Justice Mann first had to decide whether the court had power to review the way in which the GMC had dealt with the charge against Dr Gee, a general practitioner who treats obese patients privately at Rochester, Kent, and in Harley Street. The judge said he had no doubt that this was a proper subject for judicial review and that there was no cause for reticence in approaching a threatened act or a threatened abuse of fairness.

The GMC set its disciplinary machinery in motion after complaints by Dr Clemency Mitchell (a general practitioner who was responsible for one of Dr Gee's patients and who was sued for libel over her comments about his slimming treatment repeated on the television programme *That's Life*), by Dr B K Atlee, another patient's general practitioner, and by Mr A L White, the husband of a patient who died.

Dr Gee was charged with prescribing drugs including dexamphetamine sulphate and thyroid extract to eight specified patients—several but not all of whom featured in his libel action against the BBC—without adequately examining the patients or seeking adequate information as to their medical history, consulting their general practitioners about the proposed treatment or notifying them of the details of drugs and dosages, making adequate inquiries about the effect of the treatment on the patients' health, and offering appropriate advice when a patient complained of harmful drug effects.

His solicitors, Beachcrofts, asked the GMC to amend the charge, which they complained was "duplicious," rolling up different allegations of professional misconduct relating to different patients into one charge instead of splitting them into separate charges. This, they said, would hamper Dr Gee in mounting his defence. They asked the president of the GMC to exercise his discretion to amend the charge, but he turned down the request. The council also refused to give further particulars of allegations about the harmful effects of the drugs and dosages requested by the solicitors.

The GMC, Mr Justice Mann ruled, had acted unlawfully on three counts. Under its own rules, its professional conduct committee could not consider cases unless they had previously been filtered through the preliminary proceedings committee. In this case, the

preliminary proceedings committee had looked at complaints relating to only four of the eight patients referred to in the charge.

The judge agreed that the charge was bad for duplicity. The rule against duplicity was a rule of the criminal law, he said, but it was a rule of elementary fairness that should apply to a charge before the professional conduct committee. If a person was found guilty he should know of what he had been found guilty. He could not know, if found guilty on a duplicious charge, whether he had been found guilty of one offence or many.

The professional conduct committee, he ruled, could not consider the allegations of professional misconduct until the charge had been amended so that it was no longer duplicious, and it must not consider any matter relating to the four patients whose cases had not gone before the preliminary proceedings committee until that committee had considered those cases.

The GMC must also give the further particulars sought by Dr Gee's solicitors, said the judge. Quoting the words of a judge in another case, he said that the council had the power to "close a man's professional life." If it would be appropriate to provide these particulars in a civil action for negligence, which counsel for the GMC had conceded, then it must be appropriate in a case with such serious consequences.

Mr Justice Mann said he was not concerned with an attempt to review the judgments of medical men on medical or ethical matters; he was concerned with jurisdiction and procedural fairness. Where the court was confronted with the threat of an *ultra vires* act (an act outside their powers) or of procedural unfairness in the area of public law it would intervene. He added, however, that he was reluctant to make a peremptory order against a body such as the GMC. Instead, Mr Raymond Sears QC, counsel for the GMC, gave an undertaking that the GMC would not proceed further with the charge against Dr Gee as presently formulated and particularised.

The ruling means a further delay for Dr Gee's disciplinary hearing, originally scheduled for July 1984, and a large bill for the GMC, who will have to pay Dr Gee's costs—likely to be in five figures—as well as its own.

A fit man in his early 70s had two to one heart block. A pacemaker was fitted and he was paced at a heart rate of 72 beats per minute. The pacing was later reduced to 58 beats per minute and he was advised to be active. A few days later he had a myocardial infarction. His pacing was increased to 72 and he seems better, though he has to be treated for left ventricular failure. Might the change in heart rate have caused his infarction and what treatment is advised?

Perfusion of the coronary arteries occurs in diastole and blood flow is adequate even with heart rates as low as 20 beats per minute. The patient's myocardial infarct would not therefore be attributed to a fall in heart rate to 58 beats per minute. Heart block may coexist with aortic stenosis, and poor coronary perfusion may occur in this condition, but the most likely explanation is that there was severe pre-existing coronary artery disease. The left ventricular failure is perhaps best treated with both a diuretic and a coronary vasodilator such as isosorbide dinitrate. Digoxin is not indicated and beta blocking drugs are contraindicated.—MARK HARRIES, consultant physician, London.

London NW1

CLARE DYER, BA, BLS, solicitor and legal journalist