

Dr Dutta v General Medical Council – *challenging a tribunal’s findings of fact*

Eleanor Grey QC

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What's it all about?

– the allegations heard by the MPTS

- Series of allegations about the practise of a cosmetic surgeon, relating to 2009 – 2015
- Patient A operation: April 2009, scan 2010
- 2015: procedures on Patients C, D and E
- Key Allegations:
 - Patient A: inappropriate pressure for surgery by offer of a financial discount, lack of informed consent, false information about implants to be used (2009);
 - Patients C, D and E: lack of informed consent, inadequate records of treatment (2015).

What's it all about?

– the procedural steps

- 2014: police inform GMC of some remarks by Patient A;
- 2015: referral by the CQC, investigation opened, statement by Patient A to GMC;
- 2016: Decision that Rule 4(5) was not engaged – events 2009 – 2010 were one course of treatment, within 5 years of police conversation;
- 12 September 2019: Dr D told of Rule 4 decision
- 28 October 2019: start of MPTS hearing.

The outcome – the High Court challenge

- Two elements to challenge:
 - Judicial Review of Rule 4 decision (out of time);
 - Section 40 appeal against MPTS decisions on the facts and subsequent Stage 2 and 3 determinations, including 9 month suspension.
- Held:
 - Findings on ‘discount charges’ procedurally flawed and untenable;
 - Other factual findings adequate, but
 - 2009 charges should have been barred under Rule 4(5) and should never have been referred;
 - Fresh Stage 2 (and 3) decisions to be made on 2015 allegations, as well as further 2014 matters relating to Patient A.

Questions and Contributions

