

Professional Regulation Update: High Court Enforcement of Time Limits

Published 11 October 2016

The High Court in London has held that the time limits imposed by the Medical Act 1983 ("The Act") for appeals to the High Court should be strictly imposed and found that the Equality Act 2010 does not apply to cases of this nature.

The case involved Dr Fakhry Salah Fakhry El-Huseini who was the subject of a fitness to practice hearing before the Medical Practitioners Tribunal ("MPT") of the General Medical Council ("GMC") in the UK. Dr El-Huseini's fitness to practice was held to be impaired by the MPT and an order of the Tribunal was made to remove him from the register. This was communicated to Dr El-Huseini and he was informed of his right to appeal within 28 days from the effective date of service of the notice. Dr El-Huseini failed to file an appeal with the High Court within the required timeframe.

The appeal

Dr El-Huseini's appeal focused on 3 primary points:

- Fee remission on the basis that he would have been entitled to it had he filed the appeal in time;
- That the time limits imposed by the Act were not in compliance with the European Convention on Human Rights; and
- That the time limits imposed by the Act were not in compliance with the Equality Act 2010.

The decision

It is not intended to deal with the first ground for appeal as it is of no real consequence. In respect of the second ground, it was held by the High Court in London that the Court must have the power to determine the application of time limits in any given case where a refusal to so consider it would conflict with the right of access to an appeal process. It held however that such considerations would be very narrow and may include circumstances such as health difficulties, difficulties obtaining a transcript of hearing or difficulties with access to legal advice. These examples however must be the actual cause of the applicant's inability to file the appeal. The applicant must however do everything possible to bring the appeal in time.

The final ground focused on the Equality Act 2010 and specifically that the time limits imposed do not take consideration of disability being a factor in permitting a reasonable adjustment of the appeal limits. It was held by the court that the Act does not permit either the GMC or the Court to alter the time limits. Therefore, the Court held that it would be unreasonable to force the GMC to undertake an action which it had not power to do.

Implications for Irish regulators

While the decision is clearly not binding in an Irish context it is very interesting for regulators to note the approach being taken by the courts in such cases. It is quite possible that an Irish court may well view similar provisions in Ireland in a similar light. It would appear that the courts are generally unwilling to depart from statutorily provided time limits save for instances where strict adherence would result in a manifest injustice.

What is equally interesting is the application of the provisions of the Equality Act in relation to an appellant's ability to file an application for appeal. In the above case the court's decision to only permit the use of the Act where it has a direct impact on the appellant's actual ability to file an appeal application may well be followed by the courts in this jurisdiction in relation to Irish equality provisions.

What this case illustrates is the principle that courts in common law jurisdictions remain unwilling to infer obligations or powers for public bodies where there is no clear statutory basis for so doing.

DAC Beachcroft has an expanding regulatory and disciplinary practice and acts for public regulatory bodies, professional regulators and public bodies with regulatory functions. Our practice includes acting in all forms of contentious regulatory disputes including professional regulation and discipline, health and safety and financial regulation.

Authors

Aidan Healy



Dublin
+353 (0)123 19669
ahealy@dacbeachcroft.com

Gary Rice



Dublin
+353 (0)1 231 9654
grice@dacbeachcroft.com

DAC
DAC BEACHCROFT