

Zuber Bux v. General Medical Council **[2021] EWHC 762 (Admin): help I'm an expert, what are my duties?**

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Choosing the right expert can make or break a case. The worst experts are those that purport to understand their duties but fail to demonstrate their obligations to a Court. For all would be experts and lawyers looking to choose the right expert, help is at hand in *Zuber Bux v. GMC*.

In 2018, the GMC received complaints about Dr Bux who provided legal medico reports on holiday sickness claims through a firm of solicitors MS Solicitors Limited (“AMS”), in which his wife was a salaried partner. His wife was also a shareholder of a company into which he paid the income from generating those reports. The reports written were on an “*industrial scale*” and were described as “*superficial, unanalytical, devoid of any differential diagnoses, and were invariably supportive of the claim.*” Further concerns were raised about the Appellant’s conduct which led to GMC regulatory proceedings and ultimately led to his erasure from the Register.

Mr Justice Mostyn in dismissing the appeal made a number of interesting findings. He reaffirmed the duties of an expert witness as set out in CPR PD 35, *Whitehouse v Jordan* [1981] 1 WLR 246 and *The Ikarian Reefer* [1993] 2 Lloyds Rep 63, 81 that an “*expert should be independent, unbiased and objective*” [paragraph 17]. Additionally, the Court reminded us that an expert’s obligation to give an unbiased opinion included an obligation to disclose any actual or potential conflicts of interest. The Court set out the meaning of conflict of interest and highlighted that there were two types of conflict of interest namely when an expert’s opinions are 1) actually influenced or 2) capable of being influenced, by his personal interests [paragraph 23].

Applying the dicta in *Toth v Jarman* [2006] EWCA Civ 1028 and *Factortame (No 8)* [2002] 3 WLR 1104, the Court made clear that in the second type of conflict, “*there is a high duty of candid disclosure imposed on an expert witness who has any degree of belief (other than a*

belief which is unreasonable or de minimis) that he may be under a conflict of interest. He must disclose details of a potential conflict of interest at as early a stage in the proceedings as possible. He must disclose any associations or loyalties which might give rise to a conflict. He must disclose any material that is suggestive of a conflict of interests, and will not be pardoned, if he fails to do so, by a later finding that there is no conflict of interest” [paragraph 38]. It was further noted that the duty of disclosure as provided for in the GMC Codes of Guidance did not differ from the legal duty of disclosure.

The Court finally concluded that findings by a judge in civil proceedings are admissible in the regulatory proceeding but are not binding [paragraph 76].

Zuber Bux is a stark reminder of the critical duties and obligations placed on experts when giving evidence to a Court.

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