The parliamentary scene

Struck off!

One of the first tasks for the new Secretary of State for Social Services, Mr Norman Fowler, will be to sort out the muddled legal position of doctors suspended from the *Medical Register* – a complicated problem with a history stretching back to the 1960s.

At the start of the NHS – and, indeed for the whole of this century – doctors were registered and their professional behaviour was controlled by the General Medical Council with a dignity and consistency that gave the impression that its rules were carved on stone. Doctors fell foul of the GMC's disciplinary committee for four main reasons – adultery, abortion, advertising, and alcohol. For anyone found 'guilty of infamous conduct in a professional respect' there was only one sentence: erasure from the *Medical Register* – and once a doctor had been struck off his chances of having his name restored were slim.

The harshness and inflexibility of this system was widely criticised and in 1969 Parliament passed a Medical Act which changed the language, so that the offence became 'serious professional misconduct' and gave the GMC the power to impose lesser sentences of suspension from the register for periods of up to 12 months.

One of the first doctors to benefit from the change in the law was Dr Herman Tarnesby, who had had his name erased from the *Register*, in 1969 as a result of an investigation by the GMC into articles in a German magazine. These articles described Dr Tarnesby's London practice and his performance of abortions under the 1967 Abortion Act. On appeal, the Privy Council reduced Dr Tarnesby's sentence from erasure to the lesser penalty of suspension for 12 months.

Then – as happens all too frequently when Parliament seeks to amend legislation – the lawyers found that the Medical Act of 1969 was not consistent with the earlier Medical Act of 1956 which had laid down that no one could hold an appointment as a hospital doctor unless fully registered. So Dr Tarnesby found himself sacked from his hospital appointment; the area health authority believed it had no choice in the matter.

Should suspension for 12 months mean, inevitably loss of the doctor's job? Could not the employer hold the job open by suspending him from duty (without pay) and employing a locum? That, surely, must have been what all concerned had expected when the lesser penalty of suspension had been brought in.

Dr Tarnesby asked these questions in the courts – and only now, 11 years later, has he been given the final answer as his case has worked its way through the slow, ponderous machinery of British justice. In June 1981 the House of Lords confirmed the earlier majority decision of the Court of Appeal. The employing authority was right: any sentence of suspension by the GMC's professional conduct committee must lead to termination of the offender's hospital contract. What is more, said the House of Lords, the regulations introduced in 1970 which had apparently given employing authorities power to suspend doctors from duty in these circumstances were void in law and so could have no legal effect.

So matters stood at the end of the summer. Fortunately the GMC does not have too many doctors appearing before its professional conduct committee, for the clock seems to have been turned back over ten years, with – in effect – professional ruin now facing any doctor even suspended from the *Register*. The judges in the House of Lords urged the Government to introduce legislation quickly to sort out the conflict between the various Acts. Just before the House of Commons rose for the summer recess the Minister of Health, Dr Gerard Vaughan, told questioners that the Government wanted to change the law governing the pay of doctors suspended because of ill health; he also implied swift action to rectify the anomaly disclosed by the Tarnesby case. In practice, however, the pressure on the Government's timetable is such that the necessary legislation may be delayed until well into the next session.

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