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Doctors fail in equality claim case



A group of ethnic minority doctors failed to win a legal victory over alleged inequality in GP competency exams

10 April 2014

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But the doctors achieved "a moral success" when a leading judge warned the bodies responsible for GP training that they must take action over acknowledged problems involving discrimination or face being found guilty in the future of infringing Equality Act duties.

The British Association of Physicians of Indian Origin (Bapio) pointed to a "significant difference in pass rates" between UK and international graduates, including those of Indian origin.

Their lawyers applied for judicial review at London's High Court against the regulator, the General Medical Council (GMC), and standards body, the Royal College of General Practitioners (RCGP).

They claimed the test, which confirms a doctor has satisfactorily completed speciality training for general practice and is competent to enter independent practice - known as the MRCGP exam - was flawed and unlawfully discriminated against international GP trainees.

In particular, they focused on the Clinical Skills Assessment (CSA) component of the MRCGP and argued there was a "significant difference in pass rates which cannot be explained by a lack of any knowledge, skill or competency on the part of the International Medical Graduates (IMGs)".

Dismissing the claim, Mr Justice Mitting ruled: "I am satisfied that the CSA is proportionate in achieving a legitimate aim."

But he warned that the medical authorities had in recent years received reports and reviews showing that the CSA was not "culturally neutral" and there was the possibility of subjective bias by examiners.

The judge said the Royal College now needed to act and identify means "to eliminate discrimination".

The judge said: "The time to act on the information... has either arrived or will do so very soon."

He warned that, although he was satisfied that the medical authorities were not currently in breach of their Equality Act duties, they might well be held by a court to infringe them if they failed to act.

The judge said he was satisfied that Bapio had brought its application "in good faith" and had sought "to rectify anomalies acknowledged by all to exist."

"This claim has served useful purpose and achieved not a legal victory, but a moral success".

RCGP chair Dr Maureen Baker welcomed the court ruling that the operation of the CSA is lawful and fair.

Dr Baker said: "Patients have a right to expect safe care and it is our responsibility to ensure that all doctors who qualify as GPs meet the highest standards to ensure this safe care.

"That is the purpose of this exam, and the other requirements to become a practising GP.

"We agree that further action is needed, and we are already working hard to find the best way of supporting the small number of trainees who fail to pass the CSA component of the MRCGP licensing exam to give them every chance of passing the exam.

"The RCGP has been at the forefront of identifying the differences in pass rates for some time, including that international medical graduates do not do as well in the exam as those from UK medical schools.

"Indeed, we were the first of the Medical Royal Colleges to publicly raise this issue and have commissioned and supported extensive research to understand what is happening and to try and identify what the causes may be.

"We are already developing further web-based learning resources and publications to help trainees and their trainers prepare for the exam and are reviewing how to improve the quality of feedback that candidates receive from the exam so that they can target any areas of underperformance with their trainer.

"We are also committed to acting on recommendations made in recent reviews to ensure the MRCGP minimises any possible risks of unfairness and we are very keen to work with the GP training community to develop effective training strategies for those who might struggle with the exam.

"Overall, around 95% of candidates will pass the CSA. Of the College's 30,271 Fellows and Members, who have declared their ethnicity, 30% are from a black and minority ethnic (BME) background."

GMC chief executive Niall Dickson described today's ruling as "an important decision for medical education and regulation".

Mr Dickson said of the judge's decision: "He has recognised that we take seriously our responsibility to operate procedures that are fair and free from discrimination.

"At the same time, stringent checks for doctors, and high standards of medical education, are vital for the safety and quality of medical care in the UK.

"As part of our ongoing programme to maintain these standards, we have commissioned a review of the Professional & Linguistics Assessment Board (PLAB) examination and of the language skills required by doctors coming to work in the UK.

"As a result of the language review we have increased the score required for the second time in the last four years.

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"The UK benefits from the diversity of the medical profession. We will work to make sure that diversity and high standards go hand in hand."

Bapio's "moral success" came at a high price. As they were denied a formal legal victory they were ordered to pay a portion of the defendant's legal costs, amounting to £50,000.

The combined total RCGP and GMC legal bill is believed to have been almost £400,000.

The group was given permission to appeal to the Court of Appeal against the judge's ruling with regard to the RCGP.

GPs' exams disadvantage ethnic minority students, says high court judge

Judge rejects claim from Indian physicians that role-playing assessments are unlawful, but raises concerns about results

Haroon Siddique

The Guardian, Thursday 10 April 2014 19.20 BST



International medical graduates are nearly 15 times more likely to fail the CSA than white UK graduates. Photograph: Andrew Matthews/PA

A high court judge has warned the body responsible for conducting GPs' exams that it must change its assessment process after acknowledging that ethnic minority medical graduates were put at a disadvantage by the current system.

At a judicial review in central London, Mr Justice John Mitting rejected a claim by the British Association of Physicians of Indian Origin (Bapio) that the clinical skills assessment (CSA), which includes role-playing assessments, should be declared unlawful.

He said that the Royal College of General Practitioners (RCGP) was neither racially discriminatory nor in breach of its public sector equality duty. But he said that there was a disparity in results between different groups and the RCGP must take action.

"If it does not act and its failure to act is the subject of a further challenge in the future, it may well be that it will be held to have breached its duty," he said. "But, as of now, I am satisfied that it's not in breach of its duty."

The court heard that UK graduates from ethnic minority backgrounds were nearly four times more likely to fail the CSA, and international medical graduates were nearly 15 times more likely to fail than white UK graduates. The CSA was introduced in 2007 and is taken at the end of three years of vocational training.

Mitting said the RCGP had carried out numerous assessments that identified the disparity in performance between different groups and that it should now take action, including by selecting more representative examiners and role-players for the assessment.

He said he was satisfied that the CSA "put south Asians of both categories [UK-educated and those who studied overseas] at a disadvantage" but he described the assessment itself as "proportionate" and designed to achieve "legitimate ends".

Mitting said the relative performance of international medical graduates could be explained, at least in part, by inferior education systems overseas. He described the number of individuals who failed as very small.

Mitting said the claim had been brought in good faith and in the public interest, expressing hope that it would lead to progress. "The bringing of this claim is likely, in the end, to bring something of benefit to the medical profession," he said and concluded by describing the outcome for Bapio as "if not a legal victory then a moral success".

Bapio president Dr Ramesh Mehta was heartened by the judge's concluding remarks. "Although we may have lost the battle at this time, we feel we have won the war because the judge has also said to the RCGP that they must now take action," he said.

Bapio's lawyer, William O'Neill, from Linder Myers solicitors said it would appeal the verdict.

RCGP chair Dr Maureen Baker welcomed the verdict. "We have always been, and remain, concerned by this issue, and are determined to continue to work with all other interested stakeholders in both understanding it, and looking to remedy it," she said. Baker emphasised that the purpose of the CSA was to ensure "GPs meet the highest standards".

Mitting also dismissed a claim by Bapio against the General Medical Council for a breach of the public sector equality duty, ordering Bapio to pay costs capped at £50,000 to be shared between the RCGP and the GMC.



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High Court: GP exam for trainee must not discriminate against minorities





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A High Court judge has ruled that the exam trainee doctors must take to become a GP does not unlawfully discriminate against candidates from ethnic minorities.

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The British Association of Physicians of Indian Origin (Bapio) brought a judicial review against the Royal College of General Practitioners (RCGP) over a segment of their exam in which candidates are assessed on their performance in a mock consultation with an actor playing the patient. The doctors' regulator the General Medical Council was also included in the claim, which was wholly dismissed.

Pass rates for medical graduates trained overseas have been consistently much lower than for white UK graduates, who also have higher pass rates than black and Asian doctors trained in the UK.

Mr Justice Mitting ruled that the exam was a "proportional" way to assess candidates, but said the claim had been brought in "good faith" and that Bapio had won "if not a legal success, then a moral success". He said "the time has come" for the RCGP to address the issue, *Pulse* magazine reported.

Chair of the RCGP Maureen Baker said: "The RCGP has been at the forefront of identifying the differences in pass rates for some time... We have always been, and remain, concerned by this issue, and are determined to continue to work with all other interested stakeholders in both understanding it, and looking to remedy it."



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Courts

GP exams disadvantage minorities, says judge

A high court judge has warned the body responsible for conducting GPs' exams it must change its assessment process after acknowledging that ethnic minority medical graduates were put at a disadvantage by the current system.

At a judicial review in central London, Mr Justice John Mitting rejected a claim by the British Association of Physicians of Indian Origin that the clinical skills assessment, which includes role-playing tests, should be declared unlawful.

He said the Royal College of General Practitioners was neither racially discriminatory nor in breach of its equality duty. But he said that there was a disparity in results between different groups and the RCGP must take action.

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Ethnic minority GPs lose inequality fight

• A group of ethnic minority doctors has failed to win a legal battle against the medical watchdog over alleged inequality in exams.

But the group achieved "a moral success" when a judge warned the bodies responsible for GP training that they must take action over discrimination issues or risk being found guilty of infringing the Equality Act.

The British Association of Physicians of Indian Origin pointed to a "significant difference in pass rates" between UK and international trainees taking GP exams.

Their lawyers applied for judicial review at London's High Court against the General Medical Council, the regulator, and the Royal College of General Practitioners, the standards body. They claimed the test, which confirms that a doctor has completed speciality training for general practice and is competent to enter independent practice, discriminated against international trainees.

Mr Justice Mitting dismissed the claim, but warned that there had in recent years been reviews showing that the Clinical Skills Assessment component of the test was not "culturally neutral". He said the Royal College needed to act "to eliminate discrimination".

Doctors fail in equality claim case

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5:39pm Thursday 10th April 2014 in [National News](#)

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RCGP chair Dr Maureen Baker welcomed the court ruling that the operation of the CSA is lawful and fair.

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The combined total RCGP and GMC legal bill is believed to have been almost £400,000.

The group was given permission to appeal to the Court of Appeal against the judge's ruling with regard to the RCGP.





High Court judge rules CSA is lawful and fair

By David Millett, 10 April 2014

The RCGP and GMC are not in breach of equality laws after a High Court ruling found British minority ethnic (BME) and international candidates were not discriminated against on account of their race or ethnicity in MRCGP assessments.



High Court: judicial review ruled on fairness of CSA test

The British Association of Physicians of Indian Origin (BAPIO), which took the RCGP and GMC to court for racial discrimination, failed to convince judge Mr Justice Mitting that international and BME candidates were subject to bias and at a disadvantage compared with their white UK peers.

The CSA is an essential step in becoming a fully-qualified GP in the UK, and involves trainees having to treat actor patients while under observation. Reports last year revealed significant discrepancies in the CSA pass rates of white British, BME and international graduates, which sparked allegations that the RCGP, which conducts the exam, was being racially discriminatory against BME and international candidates.

The judicial review began on Tuesday at the Royal Courts of Justice in London and lasted for three days.

In the hearing, BAPIO claimed that the requirements for membership of the RCGP, particularly the passing of the CSA, were unlawfully racially discriminatory.

It also argued that the RCGP was in breach of its Public Sector Equality Duty by 'failing and continuing to fail to undertake an Equality Impact Assessment of the requirements for membership of the RCGP'.

They said that both of these claims meant that the RCGP was failing to meet the lawful requirements set out by the Equality Act 2010.

The GMC, which BAPIO said was accountable for ensuring a fair process, also stood accused of failing to comply with its Public Sector Equality Duty under the Equality Act.

BAPIO launched the case against the RCGP and GMC in February 2013, claiming that aspects of the GP assessment process – in particular the clinical skills assessment (CSA) – were racially discriminatory.

The action came in response to reports last year which revealed that international candidates were 16 times more likely fail this test than white UK candidates, and BME candidates were four times more likely to fail compared to their white contemporaries.

Following the judgement against BAPIO, RCGP chair Dr Maureen Baker said: 'We welcome the verdict of the Court that the Clinical Skills Assessment (CSA), run by the RCGP, is lawful and fair.

'Patients have a right to expect safe care and it is our responsibility to ensure that all doctors who qualify as GPs meet the highest standards to ensure this safe care. That is the purpose of this exam, and the other requirements to become a practising GP.

'We hope that today's judgment means we can now draw a line under the events of the past year and concentrate on delivering a robust and fair exam for future generations of GPs and for the benefit of our patients.'

Niall Dickson, CEO of the GMC, said: 'Mr Justice Mitting's judgment is an important decision for medical education and regulation. He has recognised that we take seriously our responsibility to operate procedures that are fair and free from discrimination. At the same time, stringent checks for doctors, and high standards of medical education, are vital for the safety and quality of medical care in the UK.

'We do understand that there are serious and complex issues at play here. International medical graduates have made a huge contribution to healthcare in this country and we will continue to do whatever we can to support these doctors who provide so much frontline care in the UK. We will work to make sure that diversity and high standards go hand in hand.'



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High Court dismisses legal challenge to MRCGP exam

10 April 2014 | By [Jaimie Kaffash \(URL=/jaimie-kaffash/55.bio\)](/jaimie-kaffash/55.bio)

The High Court has declared that the MRCGP exam is lawful, but has warned that ‘the time has come’ for the RCGP to address differentials in the pass rates between white and non-white candidates.

Mr Justice Mitting found that the clinical skills assessment was a ‘proportional’ way of deciding who can practise as a GP, despite differences between the pass rates of white and non-white medical graduates.

The claims against the RCGP and the GMC were wholly dismissed.

However, the court did say that ‘the time has come’ for the RCGP to address the differentials in the pass rates.

He said that the claim – made by the British Association of Physicians of Indian Origin – was made in ‘good faith by an organisation acting in the best interests of the public’, adding that BAPIO had ‘achieved, if not a legal success, then a moral success’.

The court did find that the RCGP had a duty to carry out an equality assessment under the Public Sector Equality Duty, but was satisfied that the 18 reviews of the exam that have been undertaken so far have achieved this aim.

He said the reviews showed ‘unavoidable unconscious bias’ due to the nature of the assessment, and that some of the significant differences in pass rates between racial groups could be put down to education and cultural differences.

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[Dr Maureen Baker: ‘We agree that further action is necessary’ \(URL=http://www.pulsetoday.co.uk/your-practice/practice-topics/education/dr-maureen-baker-we-agree-that-further-action-is-necessary/20006413.article\)](http://www.pulsetoday.co.uk/your-practice/practice-topics/education/dr-maureen-baker-we-agree-that-further-action-is-necessary/20006413.article)

[Analysis: Embattled RCGP on back foot in exam racism row \(URL=http://www.pulsetoday.co.uk/views/analysis/analysis-embattled-rcgp-on-back-foot-in-exam-racism-row/20004838.article\)](http://www.pulsetoday.co.uk/views/analysis/analysis-embattled-rcgp-on-back-foot-in-exam-racism-row/20004838.article)

[The profession must take decisive action to address concerns over any potential racial discrimination in the CSA exam \(URL=http://www.pulsetoday.co.uk/views/opinion/the-profession-must-take-decisive-action-to-address-concerns-over-any-potential-racial-discrimination-in-the-csa-exam/20005187.article\)](http://www.pulsetoday.co.uk/views/opinion/the-profession-must-take-decisive-action-to-address-concerns-over-any-potential-racial-discrimination-in-the-csa-exam/20005187.article)

However, the judge added that the college must now act upon the recommendations of the various reviews, and added that any failure to do so would leave it open to a future legal challenge.

RCGP chair Dr Maureen Baker said: 'We hope that today's judgment means we can now draw a line under the events of the past year and concentrate on delivering a robust and fair exam for future generations of GPs and for the benefit of our patients.'

She added that they agreed with Mr Mitting's comments: 'We agree that further action is needed, and we are already working hard to find the best way of supporting the small number of trainees who fail to pass the CSA component of the MRCGP licensing exam to give them every chance of passing the exam.'

'We are already developing further web-based learning resources and publications to help trainees and their trainers prepare for the exam and are reviewing how to improve the quality of feedback that candidates receive from the exam so that they can target any areas of underperformance with their trainer.'

'We are also committed to acting on recommendations made in recent reviews to ensure the MRCGP minimises any possible risks of unfairness and we are very keen to work with the GP training community to develop effective training strategies for those who might struggle with the exam.'

Niall Dickson, chief executive of the GMC, said: 'Mr Justice Mitting's judgment is an important decision for medical education and regulation. He has recognised that we take seriously our responsibility to operate procedures that are fair and free from discrimination. At the same time, stringent checks for doctors, and high standards of medical education, are vital for the safety and quality of medical care in the UK.'

'These exams are important for ensuring the highest standards of general practice and it is right that they are rigorous, demanding and specific to the UK health system.'

'We will not compromise the standards needed to practise here, whether as a GP or as a consultant. That is what we were set up to deliver and it remains our central purpose today.'

'We do understand that there are serious and complex issues at play here. International medical graduates have made a huge contribution to healthcare in this country and we will continue to do whatever we can to support these doctors who provide so much frontline care in the UK.'

Dr Ramesh Metha, president of BAPIO, said the result was 'disappointing', but there were positive elements for BAPIO.

He said: 'We need to think about what our priorities are... We will be seeking a meeting with the college to see how we can move forward from here.'

'We have to do what is good for the medical profession and the public, and we need to work together to find a solution to a problem - everyone has accepted there is a problem.'

He added BAPIO is considering an appeal.

Readers' comments (29)

NO PHOTO



Anonymous | 10 April 2014 4:27pm

How much did that vague outcome cost both parties?

NO PHOTO



Anonymous | 10 April 2014 4:46pm

Was anyone realistically expecting anything different?
I was NOT



NO PHOTO

Anonymous | 10 April 2014 4:55pm

It didn't cost the two parties anything. We, the members, have paid for it!



(URL=<http://www.pulsetoday.co.uk/mustapha-tahir/4579.publicprofile>)

Mustapha Tahir (URL=<http://www.pulsetoday.co.uk/mustapha-tahir/4579.publicprofile>) | 10 April 2014 5:17pm

I totally agree with Chair of the RCGP Dr Baker. Time to draw a line and move forward. The college has amassed a lot of recommendations to address the issues. It's time for things to change for the better for all parties involved in this.

Simon Braybrook (URL=<http://www.pulsetoday.co.uk/simon-braybrook/43551.publicprofile>) | 10 April 2014 5:32pm

Yes, indeed it has cost both RCGP and BAPIO a lot of money, but its also started the ball rolling to help make the MRCGP the fairest post-graduate exam of all the Royal Colleges. We are not there yet and there is lots of work to do. I am certain the work will continue and the other Royal Colleges follow suit by placing their postgraduate exams under a similar level of scrutiny and transparency.

If that happens, it will be money well spent.



NO PHOTO

Anonymous | 10 April 2014 5:40pm

Transparency??



NO PHOTO

Anonymous | 10 April 2014 5:43pm

It is disgraceful that the BAPIO cried racism when it should have been addressing the inadequacies of some of it's members who were unable to pass the exam. I hope they have to pay the costs of the RCGP and the GMC, otherwise it will be the rest of us paying.



NO PHOTO

Anonymous | 10 April 2014 5:44pm

Does BAPIO have a right of appeal? I suspect this is not the end of it. Don't count your chickens yet RCGP.

• Editor's comments

This comment has been moderated.



NO PHOTO

• Anonymous | 10 April 2014 5:55pm

I think the BAPIO should be paying the costs of the RGCP/ GMC etc - I think it is unfair to ask the GMC/ RCGP members to fund this process.

Furthermore I think the BAPIO should be using their vast resources to actually improve things for their members, rather than trying to do something in the public eye to boost it's own profile.

Time for the BAPIO to think about providing direct education to it's members - organising education events that are focussed on the needs of it's ethnic mix (therefore cannot be provided fairly by an organisation that has to focus equally on all ethnic groups).

They should be looking to narrow the gap by improving the education of it's members rather than trying to get free bonus marks for it's members so more of them pass.



NO PHOTO

• Anonymous | 10 April 2014 6:13pm

This is an exam that will not be accepted in any other developed country due to lack of objectivity and transparency. Most GP trainees irrespective of colour/race will agree with me on this point.

Client: General Medical Council
Source: The Daily Telegraph (Scotland) (Main)
Date: 11 April 2014
Page: 16
Reach: 550023
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Value: 1896.26

Ethnic minority GPs lose inequality fight

● A group of ethnic minority doctors has failed to win a legal battle against the medical watchdog over alleged inequality in exams.

But the group achieved "a moral success" when a judge warned the bodies responsible for GP training that they must take action over discrimination issues or risk being found guilty of infringing the Equality Act.

The British Association of Physicians of Indian Origin pointed to a "significant difference in pass rates" between UK and international trainees taking GP exams.

Their lawyers applied for judicial review at London's High Court against the General Medical Council, the regulator, and the Royal College of General Practitioners, the standards body. They claimed the test, which confirms that a doctor has completed speciality training for general practice and is competent to enter independent practice, discriminated against international trainees.

Mr Justice Mitting dismissed the claim, but warned that there had in recent years been reviews showing that the Clinical Skills Assessment component of the test was not "culturally neutral". He said the Royal College needed to act "to eliminate discrimination".