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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL
Wednesday, 29 February 2012

B e f o r e:
LADY JUSTICE HALLETT DBE
MR JUSTICE GRIFFITH WILLIAMS
MR JUSTICE SINGH
R E G I N A
v
ADIL RAZOQ

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(Official Shorthand Writers to the Court)

Mr J M Caplan QC appeared on behalf of the **Appellant**
Mr A Shaw appeared on behalf of the **Crown**

Judgment

As Approved by the Court

1.LADY JUSTICE HALLETT: After a trial lasting 12 days, on 27 May 2011 at the Ipswich Crown Court before His Honour Judge Holt the appellant was convicted of seven offences of fraud, namely dishonestly making a false representation to make a gain for himself contrary to section 1 of the Fraud Act 2006. On 25 July 2011 he was sentenced to two years' imprisonment on each count concurrent.

2.He appeals against conviction with leave of the Full Court and he renews his application for leave to appeal against sentence.

3.The appeal began before us this morning with Mr Caplan QC representing the appellant. Mr Caplan began his submissions and has provided us with very full written submissions. However, during the luncheon adjournment Dr Razoq decided to ask the court to consider hearing both Mr Caplan on legal matters and himself on additional matters. We declined to hear from both, explaining to Dr Razoq the consequences of dispensing with Mr Caplan's services. Nevertheless, that is what Dr Razoq decided to do and thereafter he made all oral submissions.

4.Dr Razoq is a Syrian national who qualified as a doctor before coming to this country in 2002. He was granted asylum in 2003.

5.In 2005 he passed the MRCS Part 1. Between August 2005 and December 2007 he worked in various medical positions. Between 2005 and March 2007 he attempted to pass the MRCS Part 2 examination so as to pursue a career in orthopaedic surgery.

6.At the beginning of 2007 he submitted an application for the General Practitioner Training Scheme. This is a national competition. In the application he stated that between September 2000 and September 2003 he had worked as a doctor in Syria. In fact between March 1999 and April 2002 he was in prison in Syria and between May 2002 and September 2003 he was in the United Kingdom making an application for asylum.

7.Stage 1 of the process of application for the training scheme was to assess the applicant's eligibility for GP training online. Stage 2 was a machine marked test. Stage 3 an assessment at the Deanery to which the applicant was allocated based on his score and ranking from Stage 2.

8.According to those responsible for the scheme:

> "Any application form found to contain false information would have been investigated at Deanery level and/or followed up with the GMC if known at the time."

9.In fact nothing did come to light. Dr Razoq was interviewed in April 2007 and obtained a place.

10.The prosecution alleged that he had lied in his application to improve his CV.

11.In December 2007 he started work at the Ipswich general hospital under the scheme.

12.On 1 October 2008 the hospital excluded him and suspended him on full pay pending disciplinary proceedings in respect of allegations concerning his conduct and clinical performance. The appellant denies that he ever received a letter in which reference was made to any clinical complaints. Mr Caplan whilst he still represented Dr Razoq was anxious to assure the court that nothing ever came of any allegations in respect of his clinical performance.

13.Under cover of a letter dated 2 October 2008 the hospital claimed that the appellant had been told that "during the period of exclusion you may not take other employment". It was said that he was written to in identical terms on 11 December 2008, 7 January 2009 and 4 February 2009.

14.The jury heard evidence from a senior member of the hospital's human resources team. She told the jury that doctors of the appellant's seniority were contracted to work for 40 hours a week but the rules allowed them to undertake an additional 16 hours per week of overtime or locum work. In no circumstances of could a doctor of the appellant's seniority work in excess of 56 hours a week. In addition, the hospital trust disciplinary policy and procedures and general rules of conduct for trust staff stated at paragraph 6.8:

> "The employee who has been suspended must not undertake paid employment or work for another employer during their normal working house for the trust including bank and locum work."

And paragraph 8.1.3 that employees:

> "... must not engage in employment in off-duty hours which in the view of the trust could conflict with or react detrimentally to the trust's interests."

15.The General Medical Council, which registers all practitioners in the United Kingdom, issues to them and makes available online a document entitled "Good Medical Practice". Paragraph 59 of that document reads that a doctor who is suspended from an organisation from a medical post must without delay inform any organisations for which you undertake medical work.

16.Although there was evidence before the court that the appellant had signed a document to the effect that he had read Good Medical Practice, he subsequently told the jury he had not read it because he had not needed to. He had begun

to read it but stopped because everything seemed like common sense within it.

17. In April 2009 the appellant was given a final written warning by Ipswich hospital in relation to his relationship with professional colleagues.

18. Meanwhile, he had signed up with a number of locum agencies. He did so to obtain work as a physician. In his CV he stated that he had passed his MRCS Part 2 exam when in fact he had only passed Part 1 and he had failed the MRCS Part 2 some four times. He also failed to disclose his exclusion. The prosecution alleged that he had lied and misled potential employers in order to improve his CV when deciding whether to select him for locum work.

19. He first registered with JCJ. All agencies, Dr Razoq informed us, work non-framework locum agencies, which means they do not have as high standards as the framework locum agencies or their criteria are not as high. JCJ's standard contract for services for locums states that the locum will:

> "... warrant to JCJ that the details supplied by him/her or on his/her behalf are complete and accurate in all material respects."

20. Further, the doctor was intended to acknowledge that they had:

> "... read and understood all guidelines set up by the GMC to raise standards within the health service throughout the United Kingdom and the GMC's Good Medical Practice (duties of a doctor) and paragraph 8.3. If either before or during the course of an assignment the locum becomes aware of any reason why he may not be suitable for an assignment s/he shall notify JCJ without delay."

21. The appellant denied receiving this document.

22. JCJ's Elizabeth Fendyke said of the appellant's exclusion from Ipswich hospital "We would have expected it to be brought to our attention."

23. The appellant also registered with Pulse Front Line in November 2007. Nanette Ryan, an employee of that organisation, produced a copy of their candidate registration form, paragraph 5 of which reads:

> "I understand that if I am subject to any disciplinary actions after signing this declaration I must inform Front Line."

24. The original form which should have been signed by the appellant was not produced. Miss Ryan told the jury that files are put into storage after a period of time. The appellant told the jury he had never received the form.

25. Similarly, the appellant was working for DRC, another locum agency, using a misleading CV.

26. Throughout 2008 he obtained 12 placements at seven different hospitals, four of which were prior to a suspension from Ipswich hospital. Each time DRC places a doctor in a locum position the jury was told that the doctor was sent one of DRC's standard confirmation of placement letters. At the bottom of these letters in bold type it reads:

> "Please note that although we continually monitor doctors' GMC registration should there be ANY change to your status or ANY pending investigation concerning yourself it is your legal obligation to notify us in writing immediately."

27. In respect of each of the four placements as set out the standard confirmation of placement letter was allegedly sent to the appellant. He again said he had never received any of the letters.

28. Richard Moses, the commercial director of DRC, told the jury:

> "If we had known of the exclusion on 1 October we would not have offered him any work. The interests of patients is foremost. Therefore we do not use a doctor even if he is allowed to work with conditions. We don't take the risk. We are a risk adverse company."

29. On 24 October 2008 the appellant submitted his CV to MERCO Recruitment Limited, describing himself in large bold type as "Dr Adil Razoq MD, MRCS Part 2, SSSE Part 3, degree in medicine". He asserted again that he had been working as a doctor in Syria when in fact he had been imprisoned.

30. The prosecution alleged that when making these allegations he was under a legal duty within the meaning in the Fraud Act to disclose any exclusion either as an express term in the contract, as an implied term in the contract, or because it was a contract of utmost good faith and it was a material matter to be disclosed.

31. The total amount earned during the appellant's work as a locum was just under £100,000.

32. In relation to count 1 when interviewed the appellant first sought to justify the false representation that he had been working as a doctor in Syria when he had been imprisoned by reference to his desire not to alert the many Syrian and Arabian doctors who work in British hospitals to his status as a political asylum seeker. He later asserted that he had not made a deliberate false representation, rather the disputed entry was a typing error. His third account in interview was that the disputed entry was in fact correct.

33.Under cross-examination by Mr Shaw prosecuting it was said that the appellant admitted not only that the disputed entry was a lie, but also that he had made the false representation dishonestly. The matter was put before the court at that time on the basis that the issue was whether he had had a view to gain.

34.Before us during the course of submissions today Dr Razoq denied that he had ever made any admissions as to dishonesty and, even if he had done so, it would have been based on a misunderstanding of the English language. He understood the dishonest to be equivalent to the telling of a lie.

35.Eventually in cross-examination Mr Shaw pointed out that the appellant reverted to his initial answer in interview, that he had dishonestly made the false representation in order not to draw himself to the attention of the Syrian authorities via the many Syrian doctors believed to be working in the NHS.

36.At no stage during the course of his account to the jury did the appellant say that he did not appreciate that anybody would regard what he did as dishonest or raise this in any way, shape or form as an issue.

37.In relation to the MRCS exam he said that in 2006 he scored 112 marks with a pass mark of 114. He told the jury he did not think that claiming he had passed the exam would make any difference to his application or give him any advantage. References what were counted with locum agencies as he understood the position. The exam was not a requirement, certainly not an examination in surgery when applying for positions as a physician. He was sure that he had passed the exam, that a mistake had been made in the marking and he had appealed against his failure. He was confident his appeal would be granted and that is why he included the exam pass in his CV for his own satisfaction. Dr Razoq said much the same before us during the course of his oral submissions.

38.He told the jury he then decided to change his career and the CV was unused. He said he had updated it by adding his work experience but he did not review the whole of it.

39.He said that after his exclusion, which he also felt was unjustified, he believed he was entitled to do locum work within the limits of his contract. He had remained registered with the GMC and the exclusion was not reportable to that body so he did not declare it and he was insistent he was under no duty so to do.

40.On 4 September 2008 Ipswich hospital did notify the GMC. Yet he still remained registered, save for a very short period when his very qualification as a doctor was in doubt. Nevertheless, the locum agencies have continued to employ him.

41.The doctor maintained before the jury that none of the representations had affected his ability to do his work and were therefore not material. He was also insistent he had not received any documents in which there could be said to be an express contractual term as to disclosure. He insisted he was as aware of his duties as a doctor because he had studied ethics and professionalism, but he had not needed to read the General Medical Practice because he knew his professional ethics and he preferred to rely on his own judgment. He did, however, understand the duty of disclosure from his training.

42.As to paragraph 59, he would have reported an exclusion by a regulatory body but not an in-house exclusion. Again that was a point that Dr Razoq made before us during the course of his submissions. He argued that all the standard conditions and terms upon which the prosecution relied indicated that exclusion or suspension or disciplinary proceedings brought by the regulatory body the GMC must be disclosed but not those brought by an employer such as the Ipswich hospital. He insisted his claims in his CV were foolish but not fraud, inaccurate rather than dishonest.

43.He asked if he was expected to write about his time in Syria when his life and the lives of his family were in danger and he said that when he was answering questions in interview he was under stress and had suffered psychological torture. He became upset and therefore obstructive. He accepted at one point he had maintained in interview that all the contents of the CV were correct and that he had passed the exam.

44.As far as conviction is concerned, leave was granted on two grounds. First, that the judge failed to give any Ghosh or other direction on the meaning of dishonesty. It was asserted that the jury was never directed to consider the second and subjective limb of Ghosh, whether the appellant was aware that his conduct was dishonest and would be regarded as dishonest by reasonable and honest people.

45.The first thing we note is that counsel at trial, despite discussions on the meaning of dishonesty during the trial, did not spot the alleged failure. However, when Mr Caplan QC was representing the appellant, he insisted that the direction was essential. Before his services were dispensed with he helpfully provided not just oral submissions but very full written submissions. We consider it only fair that we should bear those written submissions in mind when considering the applicant's case.

46.Mr Caplan began his submissions on this ground with the statement that dishonesty remains under the Fraud Act one of the principal determinants of criminal liability. He helpfully summarised the various elements of the offences. The actus reus of an offence contrary to section 2 is making a false, i.e an untrue, or misleading representation.

47.The mens rea, however, is three-fold. First, it is making a representation that the accused knows is or might be untrue or misleading. The second is the accused intends to make a gain by the representation. The third is the question of dishonesty.

48.Similarly the actus reus of an offence contrary to section 3 is making a misleading, i.e incomplete, representation when under a legal duty to disclose. The mens rea is the same, save for the fact that a further issue might arise as to whether an accused knows of the existence of a legal duty to disclose.

49.Mr Caplan did not argue that it was necessary to prove that an accused knew of the existence of a legal duty, but he reminded the court properly that lack of knowledge of such legal duty would be relevant to dishonesty. The section 3 offence is, in effect, he submitted a narrower form of the section 2 offence.

50.The Fraud Act contains no definition as to what constitutes a legal duty. The question is one of law for the judge who should then direct the jury that if they find certain facts proved they could conclude that a duty to disclose existed in all the circumstances.

51.The appellant's case, Mr Caplan wrote on the section 2 offences, is that, whilst the representations were in fact untrue, the appellant did not believe them to be material to the training programme application or to the work from the locum services. He did not intend to gain as a result of the representations and he was not acting dishonestly.

52.Mr Caplan, not having been counsel at trial, was not in a position to assist us on what exactly Dr Razoq had said during the course of his evidence before the jury. It is plain from the summing-up, as confirmed by Mr Shaw before us today, that the court at the time was under the impression that he had expressly admitted not only that the representation was untrue but that it was dishonest.

53.We do not have a copy of the transcript and therefore we are not in a position to analyse what exactly Dr Razoq said. Nevertheless, Mr Caplan invited the court to be careful about jumping to conclusions. He submitted that whatever Dr Razoq had said on the issue of dishonesty it was not open to him to remove that element from the jury. It was still an essential element and it required full and proper directions. The appellant genuinely believed he could do the work involved properly, he intended to do the work and he did the work and the representations had no effect on the qualifications required by the organisations.

54.Mr Caplan summarised the appellant's case on the section 3 offences in that he did not believe he was under a legal duty to disclose his exclusion or that it was material to the work from the locum service because his GMC registration was unaffected. He did not intend to gain as a result and he was not acting dishonestly. He genuinely believed that he could do the work involved properly, he intended to do the work and he did the work. The failure to disclose had no effect on his qualifications or his capacity and intention to do the work.

55.Mr Caplan suggested that in many respects the appellant's beliefs were shown to be correct because of the good references he received.

56.Mr Caplan contended that on the issue of dishonesty, albeit the judge did direct the jury that it was an essential element of the offences, in some respects he virtually withdrew it. Mr Caplan was certainly critical of the failure to give the Ghosh direction.

57.Dr Razoq in his own oral submissions reinforced and echoed the submissions that Mr Caplan had made both orally and in writing.

58.As far as the section 2 offences are concerned, the judge directed the jury at page 8. He said that if the jury were sure that the defendant had made a representation which he knew to be true and did it intending to gain for himself:

> "You may conclude that dishonesty is also proved."

59.The only direction that he gave regarding section 3 was at pages 8 to 9 and page 25, where he said that they should consider whether the defendant was under a legal duty to disclose yet failed to do so, whether he intended to gain for himself and whether he was dishonest. Knowledge of a legal duty, or lack of it, was relevant. He argued that the jury was given no assistance with regard to how to assess dishonesty and the failure to give a Ghosh direction was therefore fatal.

60.Mr Caplan argued, as indeed did Dr Razoq himself, that the false representation as to his work experience in Syria was made as a matter of survival to protect himself from repercussions.

61.In the absence of a direction along the lines of the second limb ofGhosh, it was argued by both counsel and the appellant himself that the jury may well have failed to give proper weight to the appellant's case, as has been put before us in some detail, and to all the circumstances of the matter. The jury themselves, it is said, may have jumped to the conclusion that because the representation was untrue therefore the appellant must have been dishonest. Thereby Mr Caplan and Dr Razoq argued that the jury would have been hampered in their deliberations. Similar arguments applied to count 3.

62.Dr Razoq added that he would not have admitted to doing anything dishonestly and he certainly would not have admitted doing anything dishonestly according to the standards of ordinary people or appreciated that that is what he was doing. He submitted that the judge should have directed the jury in terms of whether or not he appreciated that what he was doing was dishonest by the standards of ordinary people and he should have directed the jury to put themselves in the shoes of the appellant having fled his native country after appalling treatment and fearing repercussions. He repeated the statement that his representation was a matter of survival.

63.He supplemented Mr Caplan's submissions that the directions of the judge were incomplete and that without fuller directions along the lines suggested the jury may not have considered all the circumstances put before them by the defence and the defence case as argued. He says that it goes without saying that he would not have appreciated that others would have considered what he did dishonest had he done so he would not have made the representations.

64.As far as ground 2 is concerned, Dr Razoq himself argued that he was under no legal duty to disclose because all the express terms relied upon by the Crown were related to a legal duty to disclose disciplinary proceedings and investigations by the GMC as we have already indicated.

65.As far as the legal duty was concerned, the judge, perhaps influenced by a number of commentaries in the textbooks about the effect of the Fraud Act, took a cautious approach. Having found as a matter of law on a submission of no case that a legal duty to disclose did exist via two routes, (1) as an implied term of the contract and the conditions under which the doctor was registered with the GMC and (2) because the contracts into which he entered were contracts of utmost good faith, having come to those conclusions as a matter of law, however he left the jury three possible routes as to how a legal duty might arise. He did not withdraw the issues of an implied term and contract of utmost good faith from them. He directed them that a legal duty might only be imputed by an express term if the express term had been brought to the doctor's attention. He therefore left to them the question of whether or not the contracts had been received by the doctor and he had been made aware of the express terms to disclose.

66.As we have indicated, he also left to them the question of whether or not there was an implied term, or whether or not the contracts were of utmost good faith.

67.Mr Caplan complained that having done this the judge did not explain the possible routes to the establishment of a legal duty. He complained that the judge failed to direct the jury as to the effect of the evidence regarding the contractual documents and any express or implied terms. He further complained that the judge failed to direct the jury that an ethical or professional duty that may well have arisen in this case was not necessarily sufficient to constitute a legal duty and thereby leaving the jury erroneously with the impression that the expectation of the GMC as to what a doctor should or should not do as a matter of best practice was sufficient.

68.Mr Caplan suggested that the important question as far as the locum services was concerned was whether the appellant's current registration with the GMC was valid. This was exclusively within the doctor's knowledge. He questioned, therefore, whether non-clinical disciplinary issues could be material to contracts with the locum agency.

69.Mr Caplan also in his submissions argued that the judge had failed properly to direct the jury as to the effect of the evidence regarding the contractual documents and any express or implied terms, in the sense that it appeared that no contract was produced by any of the agencies upon which a signature of the appellant appeared. This was a point that was echoed by Dr Razoq.

70.Accordingly, Mr Caplan argued it was neither clear or proved that any of the express terms of the standard contracts as were discussed in evidence were ever drawn to the appellant's attention and certainly it was never proven that they were agreed by him. He therefore disputed any factual basis for the imputation of a legal duty.

71.Mr Shaw for the Crown countered with the assertion that the issues on the two sets of counts were not the same. On counts 1, 2, 3 and 6 the appellant accepted he had made a false representation or told a lie. Mr Shaw insisted that he did in cross-examination clearly admit that he had been dishonest when he had done so and Mr Shaw maintained that it was the defence case at trial, when the appellant was represented by another experienced and able counsel, Mr Burton, that he was not guilty of fraud because his admittedly dishonest false representations had not been made with a view to gain. That explains why the judge left the case to the jury in the way that he did.

72.On counts 4, 5 and 7 the appellant's case was a denial of knowing he was under a legal duty to disclose his exclusion from the hospital, describing his exclusion as based on trivial grounds, and therefore he had not been dishonest in failing to disclose that information and he certainly had had no view to gain.

73.Mr Shaw argued that a direction in accordance with R v Ghosh [1982] QB 1053, 75 Cr App R 154 was unnecessary because the appellant did not raise the issue that he did not know that anyone would find what he did as dishonest. He relied on the decision in Roberts 89 Cr App R 117. Nor, Mr Shaw reminded the court, was it the appellant's case that he might have believed that what he was alleged to have done was in accordance with the ordinary person's idea of honesty. Here he relied upon R v Price (RW) 90 Cr App R 409.

74.Mr Shaw helpfully summarised how the judge directed the jury in relation to each count. In addition to his full directions on the elements of the offences in breach of sections 1, 2 and 3 of the Fraud Act. On count 1 the judge said this:

> "He says he told the lie because he was afraid that if the truth were known, it would come to the attention of the Syrian embassy, who would hunt him down. If that may be true, then you should acquit him. You must be sure that he told the lie intending to improve his chances of being selected. That is the issue and if you are sure as to that, you convict. If you are not sure, you acquit."

Count 2:

> "... He admits that he lied but he says crucially he did not make it for a gain. He says he did not believe that telling the lie would improve his chances of getting work. He says he put it on his CV for his own

satisfaction because he had nearly passed. If that was his state of mind, then he is not guilty. You must be sure that he put that information about the MRCS Part 2 on his CV and forwarded the CV intending to improve his chances of getting work with MERCO. If you are sure that that was his intention and sure that he was dishonest, then you should convict. If you are less than sure you acquit.

Counts 3 and 6:

"Are you sure then that he made this false clam on his CV, intending to improve his chances of getting work with the respective agencies. If you are not sure you acquit. If you are sure you convict."

75.In respect of counts 4, 5 and 7 the appellant's case was he had not acted dishonestly at all. This issue was clearly left to the jury. The judge reminded the jury that the accused said that he had been unaware of the existence of a legal duty to disclose his exclusion from Ipswich hospital, having regarded the decision whether to tell the local agencies as one entirely for himself. At Mr Shaw's express request the judge directed the jury that the appellant's knowledge as to the existence of a legal duty, or lack of knowledge, went directly to the issue whether he had acted dishonestly.

76.Each of the documents upon which the Crown relied establishing a legal duty to disclose was put before the jury and the jury reminded that they must be sure that the appellant had received the document concerned and had been acting dishonestly by failing to disclose his exclusion when aware of a legal duty to do so.

77.As Mr Shaw argued, these were all clear matters of evidence in relation to the question of an express term which were very properly left to the jury to consider. He argued the jury must have been sure it was inconceivable that the appellant, a doctor, did not receive or read any of the relevant documents or understand their contents. We have now had the benefit of hearing from Dr Razoq and we have no doubt he is a highly intelligent and articulate man. On that basis Mr Shaw argued the jury were entitled to conclude not only that there was a legal duty, but that the appellant must have known of it and his failure to disclose was dishonest, there being, Mr Shaw would argue, no other explanation.

78.He submitted that had the appellant's case been "I knew of the duty to disclose but decided not to because nobody would regard it as necessary and therefore dishonest not to do", then arguably a Ghosh direction might have been appropriate but that was not his defence. Finally, Mr Shaw submitted that even if in a perfect world a full direction in accordance with Ghosh should have been given the failure to do so here did not render the conviction unsafe.

79.We have read the submissions in full and with care. We have also considered all of Mr Caplan's submission put before us before his services were dispensed with and Dr Razoq's submissions also.

80.Despite the fact that the usual directions on the law, which these days take up so much of a judge's time in directing a jury, His Honour Judge Holt managed to sum up a not entirely straight forward case of alleged fraud inside less than 60 pages. In our view he is to be commended for so doing. He directed the jury in the clearest, simplest possible terms what the issues were and the law in relation to each count. He directed the jury that the Crown must prove in relation to each count the three-fold elements of _mens rea_ as described by Mr Caplan: that the accused knew that the representation was false, that he acted dishonestly and with an intent to gain. The jury, in our view, could have been in no doubt that they could only convict if they were satisfied that the appellant had acted dishonestly and with a view to gain. The judge repeatedly told them so.

81.In our judgment there was simply no need in a case as straight forward as this to muddy the waters with a Ghosh direction. A Ghosh direction is intended to help and to avoid injustice. In this case it could possibly have hindered and no injustice has been caused. The impact of the Ghosh direction is to ensure that the defendant's defence is put before the jury fully and fairly. In this case the judge plainly reminded the jury in the clearest possible terms of the substance of the accused's defence.

82.Even if we were wrong about whether or not aGhosh direction should be given, in our judgment, the evidence was simply overwhelming. Again we comment that the judge reminded the jury in the clearest possible terms of the defence and the issues that they had to try. We would not doubt the safety of the conviction on that score.

83.As far as the directions on the legal duty were concerned, here, again, we are satisfied that the evidence was overwhelming that the appellant was legally bound to inform the various bodies of his exclusion. It might have been open to the judge to withdraw from the jury the issue of whether or not it was necessary for the Crown to rely upon an implied term or a contract of utmost good faith. The judge decided to act perhaps somewhat generously towards the accused and he left those two issues to the jury. Arguably it was not necessary that the evidence was clear that the issue for the jury was a question of fact, which was whether or not the appellant had received the documents in which the express terms appeared.

84.As Mr Shaw observed, the appellant must have received the vast majority of all the documents, if not all of them. It was plainly open to the jury to conclude that the express terms were brought to his attention and he was contractually and legally bound to disclose his suspension. To lose one document in the post is always a possibility. To lose as many as the appellant claims to have lost would be, the jury may have thought, nigh on impossible.

85.Thus, albeit we understand why the Full Court considered it appropriate to grant leave and put the matter before us, particularly given the consequences for the appellant to which we shall now come, we are driven to the conclusion that the appeal against conviction must fail.

(**Submissions made in relation to an appeal against sentence**)

86.LADY JUSTICE HALLETT: We turn to the application for leave to appeal sentence.

87.The applicant, as he is in this respect, is now aged 38. He has no previous convictions. A pre-sentence report upon him indicated that he remained adamant that no patients had been placed at risk because of his actions and he had offered a number of explanations. The author of the report was unable to assess his motivation and questioned whether he was being deliberately obstructive. The author mentioned the fact that he had been diagnosed with depression, and his inter-personal skills, as they were described, were a factor in the difficulty in assessing him.

88.A psychiatric report had been prepared for an appeal to the Secretary of State in relation to his asylum application. The psychiatrist had reported that the applicant became distressed during interview, described sleep disturbance, poor appetite, lack of energy, lack of libido, inability to concentrate and recurrent memories of his imprisonment. He had expressed concern that the Syrian government would track him down. He was diagnosed at that time as suffering from severe post-traumatic stress disorder. He had been referred to the local psychiatric services. There are references in our papers to an up-to-date psychiatric report. Unfortunately we do not have it but we shall assume that those symptoms continue given the severity of their causes.

89.The mitigation as advanced by Mr Caplan at trial (he was brought in for the purposes of sentence) were that the offences were at the lowest end of the spectrum for such offences. He had not applied for surgical posts by claiming to have passed the surgical qualification. It was therefore irrelevant. He also reminded the court how close the applicant had been to passing the exam.

90.We were referred to references from consultants with whom the appellant worked, stating that they would recommend him for the position of medical registrar.

91.We were also reminded of the fact that the appellant had worked and earned his fees. Indeed, this was a recurrent theme. The applicant, when we asked him if he wished to make any oral submissions on the question of leave to appeal sentence, he said quite simply and movingly "I did the job." Mr Caplan submitted that this was a case that could and should have been dealt with solely by the GMC.

92.We were also referred to the psychiatric and psychological assessments. It seems that the appellant's wife was called to give evidence before the sentencing judge and we have a transcript of what she said. She described their life together. They now have a young baby. She also described the trauma that the applicant had suffered at home in Syria.

93.Mr Caplan's written submissions were that the sentence was excessive because the judge had failed properly to assess the issue of culpability.

94.A number of the matters he had put before us during the course of his submissions in the appeal against conviction he repeated, namely that the matters alleged were peripheral to his employment. The references demonstrated his ability and his promise and the consequences of the conviction will for him be severe.

95.Mr Caplan submitted that the judge gave no reasons to support his conclusion that he would be failing in his duty if he did not impose a sentence of two years' imprisonment. He informed us that at the sentencing hearing on 25 July 2011 there had been a discussion about the difficulty in fitting these offences within the Sentencing Guidelines Council Definitive Guideline for Statutory Fraud.

96.Prosecuting counsel, Mr Shaw, had submitted that the offences were akin to obtaining credit through fraud, for example, for a mortgage, a credit card or overdraft, and it seems that the judge had tended to agree, albeit he accepted there was no obvious fit.

97.The amount obtained was just under £100,000. Mr Caplan pointed out that this was the starting point for a fraud over a significant period of time within the bracket of more than £20,000 and less than £100,000. He submitted it was wrong for the judge in any way to squeeze the circumstances of these offences into the definitive guideline. He invited the court particularly to bear in mind all the consequences of the conviction and the imposition of a significant term of imprisonment, the confiscation proceedings that might follow and the question of whether or not deportation will also follow. Additionally he submitted we should very much bear in mind all the circumstances of the offences.

98.In our judgment, the applicant undoubtedly had the benefit of very powerful mitigation put before us both by Mr Caplan and by the applicant himself.

99.However, we remind ourselves that the sentence imposed was imposed by the judge who had presided over the trial. He was therefore far better placed to assess the culpability of the applicant than we are. We have no doubt that he would have been acutely conscious of all the matters urged on his behalf by Mr Caplan.

100.This was a persistent and blatant course of dishonesty, designed to improve the applicant's employment prospects on the labour market. It is true that the applicant did give some value for his services. However, he obtained the money in a position which was, in our judgment, akin to a breach of trust. Organisations such as NHS trusts, locum agencies and, indeed, the GP training scheme must be entitled to rely upon the assertions made by professional and educated people in the position of the applicant.

101.As far as the definitive guideline is concerned, we take Mr Caplan's well made points that here we do not have some innocent victim who has received nothing for the money of which they have been deprived. Here the NHS and the public have received the applicant's able services as a doctor.

102.However, for all the aspects of the definitive guideline for fraud which do not apply here, there are, in our judgment, the aggravating features to which we have referred, which is that these offences are akin to offences in breach of trust and a considerable sum of public money was obtained.

103.For all those reasons, albeit we accept that the sentence was a stern one and at the upper end of the available bracket, in all the circumstances we are driven to the conclusion that it cannot be described as manifestly excessive. Accordingly, we refuse the application for leave to appeal against sentence.