



'Power to Suspend Doctors' Pensions Before Conviction Ruled Unlawful'

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On 21 November 2019, the High Court was faced with judicial review proceedings brought by the British Medical Association (BMA) against the Secretary of State for Health and Social Care. The BMA were challenging the lawfulness of the forfeiture provisions, which had recently been amended in the National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (the '2019 Regulations').

Preceding these amendments, which came into force on 1 April 2019, the Health Secretary had the ability to forfeit the pension of a member who had been convicted of certain criminal offences which had been committed before the pension benefit became payable. This is in line with most public sector pension schemes, including the fire and rescue service and the police force.

The amendments to the Regulations came in response to a case relating to a former NHS GP. The GP had been convicted of sexual assault offences and had received a 12 year prison sentence. Following conviction, the GP sought a large lump sum payment from his pension, which he was entitled to receive, before a forfeiture decision had been made. The Health Secretary at the time was concerned that he had no power to freeze pension payments before a forfeiture decision had been made, so an investigation was undertaken to determine whether such a power could be introduced. It is clear that the decision to amend the Regulations was taken with the public purse in mind. However, the amendments to the Regulations enabled the Health Secretary to suspend payment of pension benefits where an NHS professional is *charged* with an offence, before any criminal trial has even taken place.

The BMA, dismayed by this decision, had several concerns about NHS professionals' pensions and brought judicial review proceedings on several grounds. It is not difficult to see why so many were outraged by these amendments. Mrs Justice Andrews makes it perfectly clear in her judgment that this is an infringement on one of the longest standing and fundamental legal principles, '*innocent until proven guilty*'. Aside from this, there was no provision to appeal the state's decision and no compensation if the individual was found to be innocent following trial. This meant that under the Regulations implemented by the Health Secretary, a member could have their pension, which is likely to provide them with their entire livelihood, torn away before their trial commences and any wrongdoing is proved. This is a clear breach of the rules of natural justice, which the High Court was clearly unwilling to tolerate.

After some consideration, the Judge found that the Health Secretary's decision breached several elements of the European Convention on Human Rights as well as other statutes. The Judge found that the Health Secretary had indeed gone beyond the scope of his powers, she said: *"The vested interest of the Secretary of State in seeking to avoid payment of such sums makes him inappropriate to be the sole arbiter of whether the factors favouring suspension, such as savings to the public purse, outweigh any hardship in an individual case."*

She further stated that the amendments came *"uncomfortably close to requiring someone to prove their innocence"*.

The Judge clearly accepted that the amendments placed health professionals at risk of serious financial and reputational damage. This is a great result for the BMA and most importantly, for NHS healthcare professionals, who could have been at risk of being unlawfully deprived of their pension.

If you would like more information, please contact our [healthcare lawyers](#) by emailing online.enquiries@la-law.com or calling 01202786132.