Neutral Citation Number: [2018] EWCA Civ 1898

Case No: C1/2017/3034

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
Queen's Bench Division (Administrative Court)
Mrs Justice Moulder
[2017] EWHC 2556 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/08/2018

Before:

Lord Justice McCombe
Lady Justice King
and
Lord Justice Flaux

Between:

The General Medical Council	**Appellant**
- and -	
Dr Shekhar Chandra	**Respondent**

Eleanor Grey QC (instructed by **GMC Legal**) for the **Appellant**
Mary O'Rourke QC and Nicola Newbegin (instructed by **Medical Defence Shield**) for the **Respondent**

Hearing date: 18 July 2018

Approved Judgment

Lady Justice King:

1. Doctors who have been erased from the medical register following a determination by a Fitness to Practise Panel ("FTPP"), now the Medical Practitioners' Tribunal, ("the MPT"), that their fitness to practise is impaired, may, after a period of five years, make an application to the Tribunal for his or her name to be restored to the medical register ("the register").

2. This is a second appeal by the appellant General Medical Council ("the GMC") from an order made by Mrs Justice Moulder on 19 October 2017 dismissing the first appeal of the GMC from a decision of the MPT to restore the name of the respondent (Dr Chandra) to the medical register.

3. The appeal raises two issues of importance:

   i) (a) Can there properly be said to be an analogy as between cases in relation to solicitors being restored to the roll and doctors being restored to the medical register?

   (b) In any event can it be said that a doctor can only be restored to the register if he or she can satisfy the MPT that there are "exceptional circumstances"?

   ii) What is the proper approach to be taken by the MPT to the over-arching objective of the GMC when considering an application for restoration to the medical register?

Background

4. A description of the misconduct on the part of Dr Chandra which led to his erasure from the medical register is best found in the determination of the FTPP on 18 May 2008. The history that follows is taken from their unchallenged findings of fact.

5. From February 2005 to 6 October 2005 Dr Chandra was working as a Senior House Officer in psychiatry. On 29 June 2005 he had a consultation with Ms A. This consultation was followed by a further consultation on 1 July 2005 when a follow-on appointment was made for 8 July 2005. Dr Chandra was aware that Ms A was a vulnerable patient.

6. Following the appointment on 1 July, Dr Chandra drove down the hospital driveway stopping adjacent to where Ms A was parked. A conversation took place between Dr Chandra and Ms A, initially through the passenger window and then, for an hour or so, in Dr Chandra's car. Dr Chandra suggested that they should go for something to eat together and it was agreed that he would follow Ms A to her home. On the way to Ms A's house, Dr Chandra stopped and bought a bottle of red wine. When he got to Ms A's home, Dr Chandra spent about two hours with her during which time they drank the bottle of wine and had a takeaway meal. The FTPP found that:

> "During this time there was physical contact between you, you put your hand on her leg, touched her hair, commented that her hair looked nice, stroked her hand and kissed Ms A. You then returned to the hospital."

7. Later, at 2.05am, Dr Chandra telephoned Ms A on her mobile phone. He arranged to return to her house. During this second visit Dr Chandra went to Ms A's bedroom where they engaged in consensual sexual contact including oral sex.

8. Dr Chandra made no record of his contacts with Ms A, although he told a night nursing manager that he had undertaken "a home visit".

9. Two days later, on 3 July 2005, Ms A was admitted to hospital following an alleged overdose. Dr Chandra knew that Ms A had been admitted, but he did not tell her treating clinicians about his visits or contact with her. On 8 July Dr Chandra told a superior that he had visited Ms A's home; he was instructed to make a record of the visits in her notes and keep a record for himself. Unsurprisingly, Dr Chandra was told that he was not to see Ms A again.

10. Dr Chandra did not make an entry on the medical notes.

11. In September 2005, Ms A, during the course of a meeting with her care coordinator, disclosed some of the events of 1 and 2 July 2005. On 21 September, Ms A approached Dr Chandra in the car park of the hospital where they spoke. Dr Chandra then followed Ms A to a garage and from there on to a car park where Ms A got into Dr Chandra's car, they continued to talk and Dr Chandra "touched her".

12. The allegations subsequently made by Ms A led to a lengthy hearing before the FTPP. A serious aspect of the case was that both before the FTPP and throughout a subsequent High Court appeal, Dr Chandra maintained that Ms A was a "stalker" and that her evidence was dishonest and brought about by her own psychological ill health. As a consequence, Ms A was extensively cross-examined before the FTPP on this basis, which included detailed reference to her own private medical records.

13. The panel found that:

> "[Dr Chandra's] conduct and behaviour towards Ms A was inappropriate, unprofessional and not of the standard expected of a medical practitioner. Further the panel found that your conduct was sexually motivated, indecent and an abuse of your position of trust as a doctor."

14. The panel went on:

> "The panel has taken into account the public interest. The public interest includes the particular need to protect the individual patient, and the collective need to maintain the confidence of the public in their doctors...Doctors occupy a position of privilege and trust in society and are expected to act with integrity and uphold proper standards of conduct. That trust is not simply the trust that patients place in doctors, but also extends to colleagues and members of the public. This misconduct is serious as you abused a special position of trust, which you occupied, with a female patient whom you knew to be vulnerable. In particular while your first car park meeting with Ms A and subsequent visit to her house may have been

> initiated with some encouragement from Ms A, the second visit to her home after 2am was procured by you in the knowledge that you had already transgressed your professional boundaries. This was within the intention of continuing a relationship which the panel is satisfied you realised had become improper…
>
> …The panel is also concerned about your failure to disclose your contact with Ms A to her treating clinicians after her admission to hospital following an alleged overdose. This behaviour was misleading and placed this vulnerable patient at a particular risk. In addition you should not have subsequently met with Ms A in… the car park in September which placed you both at risk."

15. It was in those circumstances and against this background that Dr Chandra's name was erased from the register. A subsequent appeal to the High Court was dismissed.

The application to be restored to the Register

16. Eleven years later, on 22 August 2016, Dr Chandra made an application to restore his name to the medical register. The matter came before the MPT in March 2017 with a ruling dated 24 March 2017. The MPT directed that his name be restored to the Register.

17. The GMC appealed and on 19 October 2017, Mrs Justice Moulder dismissed the appeal.

18. On 16 March 2018, Lord Justice Singh determined that the issues satisfied the second appeal test and gave permission to appeal.

19. In the event, as this second appeal hearing progressed, it became clear that contrary to what appeared to be the case at an earlier stage, there is in fact little between counsel as to the proper test to be applied when considering an application to restore to the Register. The principal issue has become whether the MPT was wrong in that it made an error in principle in failing properly to apply the correct test when considering Dr Chandra's application to be restored to the Register and, whether Moulder J, therefore fell into error in dismissing the GMC's first appeal.

The Law

20. Before considering the approach and findings of either judge, it is useful to consider the law in relation to applications to restore a doctor to the medical register.

21. The Medical Act 1983 is the statute which created the GMC and provides for medical education, licensing and registration together with fitness to practise and professional conduct. Section 1(1) creates the GMC:

> "1. - The General Medical Council.
>
> (1) There shall continue to be a body corporate known as the General Medical Council (in this Act referred to as "the

> General Council") having the functions assigned to them by this Act."

22. In 2004, a section 1(1A) was added, which sets out the objectives of the GMC as follows:

> "(1A) The over-arching objective of the General Council in exercising their functions is to protect, promote and maintain the health and safety of the public."

23. In 2015, a section 1(1B) was added to flesh out this over-arching objective as follows:

> "(1B) The pursuit by the General Council of their over-arching objectives involves the pursuit of the following objectives-
>
> (a) to protect, promote and maintain the health, safety and well-being of the public,
>
> (b) to promote and maintain public confidence in the medical profession, and
>
> (c) to promote and maintain proper professional standards and conduct for members of that profession."

24. Ms Grey QC, on behalf of the GMC, emphasises that each of the three limbs are aspects of protection of the public and assist a tribunal in their analysis. She went on to clarify that section 1(1B) (a) ("to protect, promote and maintain the health, safety and well-being of the public") usually has as its focus issues of risk. Sections 1(1B) (b) and (c) ("to promote and maintain public confidence in the medical profession" and "to promote and maintain proper professional standards and conduct for members of that profession") broadens out to considerations as to what the public expect of its doctors and how public confidence can be maintained.

25. By section 35C (2):

> "A person's fitness to practice shall be regarded as "impaired" for the purposes of this Act by reason only of—
>
> (a) misconduct;
>
> (b) deficient professional performance;
>
> (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
>
> (d) adverse physical or mental health; or
>
> (e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a

> health or social care profession to the effect that his fitness to practice as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect."

26. In the present case, the FTPP found Dr Chandra's fitness to practise was impaired by reason of misconduct. By section 35D, where a tribunal has found that a person's fitness to practise is impaired, they may "if they think fit" direct that the person's name shall be erased from the register (for the purposes of this judgment referred to as the "sanctions" stage).

27. Section 41 MA 1983 governs the restoration of names to the register following erasure ("restoration applications").

> "41. - Restoration of names to the register
>
> (1) Subject to subsections (2) and (6) below, where the name of a person has been erased from the register under section 35D above, [or section 44B (4)(b) below,] a Medical Practitioners' Tribunal may, if they think fit, direct that his name be restored to the register.
>
> (2) No application for the restoration of a name to the register under this section shall be made[...]
>
> (a) before the expiration of five years from the date of erasure; or
>
> (3)...
>
> (3A)...
>
> (4)...
>
> (5)...
>
> (6) Before determining whether to give a direction under subsection (1) above, a Medical Practitioners' Tribunal shall require an applicant for restoration to provide such evidence as they direct as to his fitness to practise; and they shall not give such a direction if that evidence does not satisfy them.
>
> (6A)...
>
> (7)...
>
> (8)...
>
> (9)...
>
> (10)...

(11)...

(12)...In exercising a function under this section, a Medical Practitioners Tribunal must have regard to the over-arching objective."

28. It can be seen therefore, that a medical practitioner, having been erased from the register for a period of a minimum of five years, may apply to have his or her name restored to the register. The tribunal hearing the application may direct registration "if they think fit" but, specifically, must have regard to the "over-arching objective" and therefore each of its components.

29. Since December 2015, section 40A has given the GMC a right of appeal, (specifically, by section 40A(1)(e)) in respect of a decision made under section 41 by the MPT directing that a person's name be restored to the register.

30. Appeals pursuant to section 40A MA 1983 are governed by CPR 52.21(1) which provides that (subject to a number of exceptions) appeals covered by the rule are limited to a review of the decision.

31. The procedure to be adopted by the MPT upon application to restore to the register is found in the GMC's Fitness to Practice Rules 2004 at rule 24. Those rules are procedural only and contain no further assistance or guidance in relation to the principles governing the MPT's decision making process.

32. The GMC have also provided a document entitled *Guidance for Doctors on Restoration following erasure by a Medical Practitioners Tribunal* ("the guidance"). This document is, with respect to the GMC, framed in simplistic terms given the seriousness of the application. It is in effect, in the form of answers to "Frequently asked Questions", for example "Should I seek advice before applying?" and "Should I attend the hearing?"

33. Paragraph 10 says as follows:

> **"What factors do the medical practitioners tribunal take into account when considering the application for restoration?**
>
> 10. The tribunal will consider a number of factors, including the following:
>
> a. The circumstances that led to erasure.
>
> b. The reasons given by the previous tribunal (or committee) for the decision to direct erasure.
>
> c. Whether you have any insight into the matters that led to erasure.

> d. What you have done since your name was erased from the register.
>
> e. The steps you have taken to keep your medical knowledge and skills up to date and the steps you have taken to rehabilitate yourself professionally and socially.

34. There is no mention of, or reference to, the over-arching objective and, essentially, the guidance sets out only those practical issues which need to be addressed evidentially by an applicant. No form of guidance is given as to how the discretion will be exercised, by reference to the over-arching objective or otherwise. The nearest the Guidance gets is at paragraph 13, which provides:

> "13. It is important to bear in mind that there is no right to be restored to the register. You will need to demonstrate why your name should be restored and that you are fit to practise."

35. The only reference to the matters which are in fact found in section 1 (1B) is Annex B to the Guidance which is headed *The procedure for considering applications for restoration to the register.*

36. By paragraph 12 of Annex B, the reader is informed that the GMC can appeal decisions made by tribunals including those to restore doctors. It goes on:

> "12. The GMC can appeal decisions made by tribunals, including those to restore doctors to the register. The GMC has the power to make an appeal where it considers that the decision to restore a doctor is not sufficient for the protection of the public, taking into account:
>
> • protecting the health, safety and well-being of the public;
>
> • maintaining public confidence in the medical profession; and/or
>
> • maintaining proper professional standards and conduct for members of that profession…"

37. The Guidance make no reference to any parallels with applications by solicitors to be restored to the roll (as to which see below).

38. Ms Grey, upon instructions, frankly accepted that the Guidance is inadequate and needs extensive revision as a matter of urgency.

39. It is not surprising, therefore, that the statement submitted by Dr Chandra in support of his application specifically addressed the factors itemised in paragraph 10 of the Guidance and no more.

40. The only other document the court was taken to is an *aide memoire* which is provided for the Chair of a MPT in restoration cases. This document provides no guidance for the Chair as to how the principles should be applied. Paragraph 24 of the *aide memoire* deals with restoration following disciplinary erasure. It provides as follows:

> "24. The application is governed by Rules 23 and 24 and s41 of the Medical Act.
>
> The tribunal may grant the application or refuse it. If the application is refused, the doctor may not make a further application within 12 months. The tribunal has no discretion to make this period longer or shorter unless the doctor has made two or more previous applications. If this is the case, the tribunal may consider whether the doctor's right to make an application for restoration should be suspended indefinitely.
>
> If the doctor is unsuccessful in their application for restoration, there is no statutory right of appeal, although the doctor may challenge the decision by way of judicial review.
>
> However, there is a statutory right of appeal against the tribunal's decision if it decides to suspend the doctor's right to re-apply indefinitely.
>
> The doctor may apply to the Registrar for the decision to suspend their right to reapply indefinitely to be reviewed by a tribunal after three years from the date of the decision."

41. There is no reference in the document to the over-arching objective or, importantly, to section 41 (12) MA 1983 which specifically requires the tribunal to have regard to the overriding objective in an application to restore.

The Judgments

42. The MPT heard extensive evidence, in particular from Dr Chandra's psychotherapist and psychiatrist. The Tribunal set out its approach in the following way.

> "22. In reaching its decision, the tribunal has given careful consideration to all the circumstances of your case, includes the following:
>
> - the circumstances which led to erasure;
> - reasons given by the FTPP for the decision to direct erasure;
> - whether you have now any insight into the matters that led to erasure;
> - what you have done since your name was erased from the Medical Register;
> - steps that you have taken to rehabilitate yourself.
>
> 23. The tribunal was mindful that it is for the applicant for restoration to demonstrate that he is fit to practise. The tribunal has also born in mind that, should it restore you to the Medical

> Register, that registration would be unrestricted. Therefore, it needs to be satisfied you are a fit and proper person to be restored to the Medical Register that this time.
>
> 24. The tribunal has borne in mind the statutory over-arching objective, which including protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the medical profession, and promoting and maintaining proper professional standards and conduct for the members of the profession."

43. The tribunal was unhesitating in its condemnation of the misconduct which had led Dr Chandra's erasure from the register:

> "26. The tribunal was in no doubt that your actions between 2005 and 2009 were very serious and fundamentally incompatible with registration. Your sexual misconduct involving Miss A and your subsequent dishonest denial of your actions in sworn evidence to the FTPP in 2007 and 2008 were entirely reprehensible. Your actions forced Miss A, who was a vulnerable patient, to endure extensive cross-examination questioning her mental health, and regarding the events which had occurred, making her out to be a liar when you knew that she was telling the truth. The tribunal considered that you had compounded these actions with a continuation of this deceit in pursuing an appeal against the erasure decision of the FTPP, in the full knowledge that it was you that was giving an untruthful account of events, not Miss A, prolonging her ordeal."

44. The MPT considered in detail the evidence before it and concluded that Dr Chandra was a credible witness who was deeply ashamed of "both your sexual misconduct and the protracted deceit which followed in your attempts to cover it up". The MPT found that Dr Chandra showed genuine remorse for his behaviour and was satisfied that there was a very low risk that he would repeat his sexual misconduct or his dishonestly. They considered that Dr Chandra had "sufficiently remediated the conduct which led to your erasure, and your subsequent sustained dishonesty, including before the FtP (sic) Panel" [35]. The MPT were of the view that, faced with a situation in which his boundaries were tested in a similar way, Dr Chandra would now be well equipped to deal with such a situation appropriately.

45. The MPT was satisfied that Dr Chandra had taken sufficient steps to keep his medical knowledge and skills up to date and had in mind that it had no power to impose restrictions on his registration. Having set out the evidence and their findings in relation to Dr Chandra's remediation, the MPT reached its decision and overall evaluation in one paragraph at the conclusion of its judgment:

> "38. In all the circumstances, the tribunal considered that the over-arching objective, and in particular the public interest, would not be compromised through the restoration of your name to the Medical Register. It was of the view that you have accepted your wrongdoing, you have reflected appropriately,

> significantly gained in maturity and insight, and gained substantial understanding in regard to the proper boundaries and relationships with patients, and the central role of honesty and probity in the medical profession. It found that you have made sufficient progress such that you have demonstrated that you are now fit to practise, that you are a fit and proper person to be restored and that taking such a course would be an appropriate and proportionate response."

46. The appeal came before Moulder J who gave judgment on 19 October 2017. Having considered each of the grounds of appeal and various cases in relation to the appropriate test in cases involving dishonesty by solicitors, she dismissed the appeal.

The Grounds of Appeal

47. Ground 1 of the Grounds of Appeal is that Moulder J erred in rejecting the parallel between the restoration of doctors to the medical register and the test applicable to the restoration of solicitors to the roll.

48. The authorities upon which the GMC rely in support of this ground of appeal were not before the MPT. They were raised for the first time on appeal before Moulder J. After some preliminary skirmishes between Ms O'Rourke QC, on behalf of Dr Chandra and Ms Grey QC on behalf of the GMC, to the effect that the court should not consider this ground as it was not argued before the MPT, Ms O'Rourke accepted that, Singh LJ having given permission, the matter was now properly before the court.

49. The GMC's case has been further refined since the hearing of the appeal. Ms Grey's submission remains that there is a parallel as between solicitors and doctors which should have been adopted by the MPT. However, contrary to the way it was put before Moulder J, the GMC now say that it is neither necessary nor appropriate, to go so far as to say that the restoration of doctors should only be directed by the MPT in 'exceptional circumstances'. There is, she now submits, no need to go so far.

50. By section 41 MA 1983, the MPT has a very broad discretion. Whilst it may be, Ms Grey says, that the balance between remediation and the over-arching objective will often tip the scales against restoration to the register in cases of sexual misconduct or dishonesty which are of a nature that go to the very heart and essence of being a doctor, it is not necessary to categorise such cases as ones requiring "exceptional circumstances" before restoration can be directed.

51. Ms O'Rourke too has significantly shifted her position. She now feels able to accept that the law in relation to solicitors (and in particular *Bolton v Law Society* [1994] 1 WLR 512 ("*Bolton*"), see below) should properly be read across to apply to doctors, but she too submits there is no room for the gloss and limitation that the expression 'exceptional circumstances' would have upon the MPT's wide discretion to restore a doctor to practice "if they think fit".

52. The focus of Ms O'Rourke's submissions has therefore been substantially in respect of Ground 2 and her submission that the judgment of the judge (and therefore of MPT) should be upheld. If however it is held by this court in the light of the *Bolton*

line of cases, that the MPT applied the wrong test, then the proper outcome is, Ms O' Rourke submits, for the matter to be remitted to the MPT for a fresh determination.

53. Before turning to Ground 2 it is necessary to consider those authorities which have resulted in this concession, as only by doing so can the court then properly consider if the MPT was wrong in its approach to the decision they had to make.

54. The paradigm case in relation to solicitors is *Bolton* and, in particular, the judgment of Sir Thomas Bingham MR at p518C:

> "Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust..."

55. The Master of the Rolls continued at p 519H:

> "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.
>
> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in

> mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

56. The Privy Council has, on two occasions, subsequently adopted the words of the Master of the Rolls in *Bolton* when considering sanction cases in respect of doctors who had been guilty of serious professional misconduct.

57. In *Gupta v General Medical Council* [2002] 1 WLR 1691, Lord Rodger referred [21] to Lord Bingham's judgment in *Bolton* as "set(ting) out the general approach which has to be adopted". A little later in *Patel v The General Medical Council,* Privy Council Appeal No. 48 of 2002, Lord Steyn said:

> "Their Lordships consider that the Professional Conduct Committee was right to be guided by the judgment in *Bolton v Law Society*...It is true that in that case misconduct of a solicitor was at stake. But the approach there outlined applies to all professional men. There can be no lower standard applied to doctors: *Gupta v General Medical Council*...For all professional persons including doctors a finding of dishonesty lies at the top end in the spectrum of gravity of misconduct..."

58. Finally, as recently as this year in *General Medical Council v Bawa-Garba* [2018] EWHC 76 (Admin), [2018] 4 WLT 44; Ouseley J said in a sanctions case in relation to clinical negligence:

> 10...contrary to a suggestion from Mr Larkin QC for Dr Bawa-Garba, [that] the comments of Sir Thomas Bingham MR in *Bolton* apply to doctors as much as to solicitors".

59. In my judgment not only do the *Bolton* principles apply equally to doctors as solicitors, but the same principles and approach apply equally to both sanctions and restoration. I do not accept Miss O'Rourke's attempt to distinguish those cases which are adverse to her argument by reference only to the fact that they were 'sanctions' cases and not 'restoration' cases; the over-arching objective applies to both. The question in each case is the same namely, having regard to the over-arching objective, is the doctor/applicant fit to practise? (see for example s41 (6) MA 1983 which requires an applicant for restoration to file evidence as to his or her fitness to practise).

60. The emphasis may well be different and the various factors may be weighed up with differing emphasis depending upon whether the MPT is concerned with the sanction stage or, over 5 years later, at the restoration stage. Equally in my judgment, the approach is likely to be different (and may be completely different) in clinical error/negligence cases as opposed to those cases in which the offending behaviour is central to the function of the applicant as a doctor, such as in cases of dishonesty or sexual misconduct.

61. Ms O'Rourke does not disagree with Ouseley J's conclusion in *Bawa-Garba* that the comments of Sir Thomas Bingham MR in *Bolton* apply as much to doctors as solicitors. Ms O'Rourke's submission was rather that not only should there be no test of 'exceptional circumstances' applied prior to a doctor being restored to the register, but, that the full weight of *Bolton* should not in any event be transported to the world of doctors. She submits that the reference of the Master of the Rolls in *Bolton* to 'integrity, probity and trust' (p518B & 519C) do not relate "at the same level to doctors as solicitors" and accordingly, she says, the passage relating to the undoubted challenges faced by a dishonest solicitor in achieving restoration to the roll, should not, Ms O'Rourke suggests, have the same impact when considering whether a doctor is in future fit to practise.

62. As Ms Grey immediately pointed out, the GMC's own "Good Medical Practice" document has a specific section entitled: "*Act with honesty and Integrity*" and the published Sanctions Guidance says in terms:

> "103 Any of the following factors being present may indicate that erasure is appropriate:
>
> ...
>
> h. Dishonesty, especially where persistent and/or covered up"

63. Notwithstanding this obvious inclusion of characteristics which it may be thought are intrinsic to the proper functioning of a doctor, such an attempt by Ms O'Rourke to

water down the implications of *Bolton* do not sit comfortably with her concession that she accepts its adoption as a principle by Ouseley J in *Bawa-Garba.*

64. In *Solicitors Regulation Authority v Simon Kaberry* [2012] EWHC 388 (Admin), Elias LJ summarised, what was accepted by the parties to be, the law in relation to the restoration of dishonest solicitors to the Roll:

> "26. The principles laid down in the cases for determining whether or not somebody should be restored to the Roll of Solicitors are not in dispute. They have recently been summarised by Burnett J in *Thobani v the Solicitors Regulation Authority* [2011] EWHC 3783 at paragraph 6:
>
> > "The approach in Bolton has to a degree been adjusted in the way set out in paragraph 14 of *Langford v the Law Society* [2002] EWHC 2802 (Admin):
> >
> > > "14. Before examining the substance of these submissions, it is necessary to identify, briefly, the approach which this court should, as it seems to me, adopt to an appeal of this kind. The classic authority as to the approach of this court is *Bolton v Law Society [1994] 1 WLR 512* ... As to the approach, in general, which this court should adopt, it is not contested to the contrary by Mr Williams, on behalf of the Law Society, that Mr Foster's submission, based in particular on *Ghosh v General Medical Council [2001] 1 WLR 1915* and *MacMahon v Council of the Law Society of Scotland* SLR 36 , is appropriate. That is to say, in dealing with an appeal of this kind, a greater flexibility is now appropriate than was suggested in Bolton which was decided before the coming in to force of the Human Rights Act. In *Ghosh*, at 1923, Lord Millett, giving the judgment of the Privy Council, in an appeal under the Medical Act 1983 ... said this:
> >
> > > 'The Board's jurisdiction is appellate, not supervisory. The appeal is by way of a rehearing in which the Board is fully entitled to substitute its own decision for that of the committee. The fact that the appeal is on paper and that witnesses are not called makes it incumbent upon the appellant to demonstrate that some error has occurred in the proceedings before the committee or in its decision, but this is true of most appellate processes ...'
> >
> > Lord Millett went on to refer to *Evans v General Medical Council* (unreported) and just above G said this:

> 'For these reasons the Board will accord an appropriate measure of respect to the judgment of the committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the committee's judgment more than is warranted by the circumstances …'"

27 To similar effect is the following observation of the Master of the Rolls, Sir Anthony Clarke MR, in the case of *Jideofo v the Law* Society (No 06 of 2006), when he said this:

> "The decision in *Bolton*, which has been followed on many occasions, establishes that where a solicitor has committed proven acts of dishonesty he will almost always be struck off the roll. Where there has been serious dishonesty, such as fraud or theft, only after a number of years during which the individual has redeemed his reputation will he be able to seek re-admission. Even then, only in rare cases will such a person be re-admitted. There must be exceptional circumstances justifying restoration to the roll. The reason for this stringent approach is the public interest in protecting the public and maintaining the reputation of the profession."

28 So the Tribunal has to identify exceptional reasons which would allow the unusual step of restoration to the Roll for someone who has committed proven acts of dishonesty.

65. Whilst it is now accepted by both sides that the basic principles found in *Bolton* apply equally to doctors, Ms Grey says that it is at this point that the parallels with solicitors diverge and she, in common with Miss O'Rourke, submits that the "exceptional circumstances" gloss referred to in *Jideofo* does not apply in respect of doctors applying to be restored to the medical register.

66. Plainly, Ms Grey says, for an application to be successful, the applicant must demonstrate that there is no risk of repetition and that he/she is safe to resume practise; which will include issues of insight and remorse. Without this, no application can succeed. Even if these interests are satisfied, Ms Grey submits, the remaining two limbs ((b) and (c)) of the over-arching objective must still be given their full and proper weight. Fundamentally, she submits, the principles relating to solicitors recognise these factors and represent a proper recognition of the fact that public confidence and professional standards will frequently demand that a registrant who has been struck off for serious failings in respect of dishonesty and sexual misconduct should not be restored.

67. The gloss of exceptional circumstances she says, is not required, even though, in practical terms, it may be the case that only in exceptional circumstances will there be the restoration of a doctor to the Register in such cases.

68. In my judgment, the exclusion from the test of 'exceptional circumstances' in the cases of doctors may seem, against the backdrop of the approach of the courts overall to dishonest and sexual misconduct in solicitors' cases, to be "dancing on a pin head", but for my part I agree with both counsel for two reasons:

i) The use of the expression "exceptional circumstances" may give the impression that it is a test to be applied by the MPT before an applicant can be restored to the register. That would be incorrect, the test is whether having regard to the over-arching objective, the applicant is now fit to practice.

ii) In this respect, there is also a distinction to be drawn between the two professions. The difference is neither in respect of their obligations to the public nor, contrary to the submissions of Ms O'Rourke, by way of distinction as to the level of integrity required by either type of practitioner; but rather the differentiation lies in respect of certain important regulatory differences which, in my view, render the non-statutory addition of "exceptional circumstances" as a requirement before a doctor can be restored to the register, as unnecessary and inappropriate. In particular:

a) Restoration of solicitors to the roll is governed by section 47 Solicitors Act 1974. There is, however, no equivalent of section 41(12) Medical Act 1983 requiring a tribunal to consider an over-arching objective to protect the public.

b) Unlike doctors who must wait at least 5 years before they can make an application to be restored to the register, there is no minimum period before a solicitor can make such an application.

69. In *Giele v General Medical Council* [2005] EWHC 2143 (Admin), [2006] 1 WLR 942, the court held that it was wrong for a tribunal in a case of sexual misconduct to ask itself whether there were exceptional circumstances to avoid erasure. Rather, it had to look at the misconduct and mitigation and decide which sanction was appropriate.

70. In my judgment, the same approach applies equally to restoration – the tribunal must consider the matters in the guidelines including the circumstances which led to the erasure. They must make findings as to what extent the applicant has shown remorse and insight and remediated him/herself and satisfy themselves that he or she is no longer a risk. The passage of time (here now twelve years) will be important. The MPT must then stand back and have proper regard to the over-arching objective. As Mrs Justice Cox put it in *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin), a sanctions case, but which applies equally to a restoration case:

> "101 The Committee should therefore have asked themselves not only whether the Registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the Registrant and in the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case. In my judgment, in failing to have

> regard to these issues and to ask themselves the right questions, the Committee were in error.

71. In my judgment, to this limited extent, the "test" to be applied to solicitors and doctors does not march hand in hand. In my judgment, the 5 year minimum together with the three-pronged over-arching objective, render any judicial gloss to the discretion given to the MPT to restore an applicant to the Medical Register if they "think fit" unnecessary in relation to doctors.

Ground 2: The judge failed to give proper weight to the interests of (a) the maintenance of public confidence in the medical profession; and (b) the maintenance of proper professional standards and conduct for that profession.

72. Ms O'Rourke carefully took the court to the evolution of the Medical Act 1983 and emphasised the changes which followed the Shipman Inquiry in 2003. This saw a movement away from "serious professional misconduct" and towards "fitness to practise" with the question for a tribunal (whether at the sanction stage or at restoration) being whether a practitioner was unfit to practise due to impairment. Ms O'Rourke submits that this now places the emphasis on whether an applicant is fit to practise "looking forward". For this reason, she submits the court should be wary of placing any reliance on either *Gupta* or *Patel*, which are 'old' cases and which relate to serious misconduct and not fitness to practise.

73. Ms O'Rourke developed her argument by submitting that although she accepts that the MPT must look at the facts found at the time of erasure, the structure of the Act is now all about "looking forward". That being the case, it follows she says, that even if, as here, the misconduct was serious, the MPT when it turns to consider fitness to practise in circumstances where they are satisfied that there has been remediation, that finding of remediation should, seven or eight years after erasure, translate to a direction for restoration to the Register.

74. In *Yeong v General Medical* Council [2009] EWHC 1923 (Admin), [2010] 1 WLR 548, Sales J (as he then was) was alive to the change in emphasis brought about by the fitness to practise regime which came into effect in 2004. He said:

> "19. It appears that a reason for the change in concept may have been to emphasise that the regime under the Act is concerned with a medical practitioner's current and future fitness to practise rather than with imposing penal sanctions for things done in the past, although that was also the case under the previous version of the regime (in common with the position in relation to a range of bodies which regulate professionals): *General Medical Council v Meadow* [2006] EWCA Civ 1390, [28]-[32]. The statute requires the FTPP to consider whether the fitness of a medical practitioner to practise "is" impaired: see s. 35D(2). Accordingly, the FTPP has to assess the current position looking forward not back: see also *Meadow* at [32] per Sir Anthony Clarke MR; *Zygmunt v General Medical Council* [2008] EWHC 2643 (Admin) at [31]

> (Mitting J). However, as Sir Anthony Clarke MR also observed in *Meadow* at [32]: "... in order to form a view of the fitness of a person to practise today, it is evident that [the FTPP] will have to take account of the way in which the person concerned has acted or failed to act in the past.""

75. Sales J went on the consider [48] the relevance of the over-arching objective variously to 'clinical errors and incompetence' on the one hand and misconduct which 'violates the fundamental rule of the professional relationship' between doctor and patient, and thereby undermines public confidence in the medical profession, on the other. Sales J made two points in this respect:

> "50. First, in my judgment, the over-arching function of the GMC as set out in s. 1(1A) of the Act informs the meaning of impairment of fitness to practise by reason of misconduct in s. 35C(2), so that under s. 35C(2) and s. 35D the FTPP (acting on behalf of the GMC) is entitled to have regard to the public interest in the form of maintaining public confidence in the medical profession generally and in the individual medical practitioner when determining whether particular misconduct on the part of that medical practitioner qualifies as misconduct which currently impairs the fitness to practise of that practitioner. Where a medical practitioner violates such a fundamental rule governing the doctor/patient relationship as the rule prohibiting a doctor from engaging in a sexual relationship with a patient, his fitness to practise may be impaired if the public is left with the impression that no steps have been taken by the GMC to bring forcibly to his attention the profound unacceptability of his behaviour and the importance of the rule he has violated. The public may then, as a result of his misconduct and the absence of any regulatory action taken in respect of it, not have the confidence in engaging with him which is the necessary foundation of the doctor/patient relationship. The public's confidence in engaging with him and with other medical practitioners may be undermined if there is a sense that such misconduct may be engaged in with impunity.
>
> 51. Secondly, where a FTPP considers that fitness to practise is impaired for such reasons, and that a firm declaration of professional standards so as to promote public confidence in that medical practitioner and the profession generally is required, the efforts made by the practitioner to address his problems and to reduce the risk of recurrence of such misconduct in the future may be of far less significance than in other cases, such as those involving clinical errors or incompetence. In the former type of case, the fact that the medical practitioner in question has taken remedial action in relation to his own attitudes and behaviour will not meet the basis of justification on which the FTPP considers that a

finding of impairment of fitness to practise should be made. This view is also supported to some degree by the judgment of McCombe J in *Azzam* at [51] (distinguishing the case before him, which involved clinical errors, in respect of which evidence of remedial steps and improvement was relevant, from a case involving "a rape or misconduct of that kind", in relation to which – by implication – such evidence might be less significant).

76. Ms O'Rourke does not accept that *Yeong* presents her with any difficulties as it is a case which relates to sanctions. She submits that in a forward looking fitness to practise approach, the effluxion of time serves to change the emphasis from the seriousness of the misconduct to the extent of remediation and therefore a conclusion the applicant is no longer unfit to practise.

77. I do not agree. Whilst I accept that the passage of time is a matter of considerable importance and must properly be weighed in the balance by the MPT on an application to restore, I remain of the view that there is a striking difference between cases involving clinical errors or incompetence and matters of dishonesty and sexual misconduct which applies equally at both the sanctions and restoration stage and, accordingly, the observations of Sales J in *Yeong* are of equal application to a restoration case as a sanctions case.

78. I accept the submission of Ms Grey that the 5 year minimum period before an application for restoration can be made, is not a 'tariff' after which only issues of public protection (ie remediation) are relevant; all three aspects of the over-arching objective must come into play. In my judgment remediation is essential but not, when coupled with the passage of time, the complete answer to the question the MPT has to ask itself which is: is the applicant now fit to practise having regard to the over-arching objective?

79. Referring back to *Bolton,* the Master of the Rolls underlined the critical importance of honesty in a solicitor by reference to the significance to a member of the public of the sale of his or her house, often his or her largest asset (518H). In doing so the Master of the Rolls was alluding to the fact that the honest handling of an individual's money goes to the very heart of the responsibility of a solicitor to that person in particular, and the public in general. Turning to the position of a doctor; I find it hard to imagine any feature in relation to any doctor, let alone a psychiatrist, which goes so entirely to the essence, or heart, of his role as medical practitioner as the entitlement of each and every patient, (whether vulnerable or not) to be entirely confident in the sexual probity of their physician. To adopt and adapt the words of the Master of the Rolls taken from 519 A (and quoted at para [52] above): "If a member of the public submits him or herself to a physical or mental examination or consultation by a doctor, he or she is ordinarily entitled to expect that that doctor is a person whose trustworthiness and sexual integrity is not and never has been, seriously in question".

Appeals

80. Section 40A provides, by 40A (1), for appeals by the GMC in respect of a decision not to erase (s.40A(1)(d)) and also to a decision restoring a person's name to the register (s.40A(1)(e)). It is unarguable, therefore, to suggest that appeals, whether in respect of sanctions or restoration, are each determined other than in accordance with the same principles and approach.

81. In *General Medical Council v Jagjivan and another* [2017] EWHC 1247, [2017] 1 WLR 4438, Sharp LJ sitting in the Divisional Court considered the correct approach to appeals under section 40A saying as follows:

> "39. As a preliminary matter, the GMC invites us to adopt the approach adopted to appeals under section 40 of the 1983 Act, to appeals under section 40A of the 1983 Act, and we consider it is right to do so. It follows that the well-settled principles developed in relation to section 40 appeals (in cases including: *Meadow v General Medical Council* [2006] EWCA Civ 1390; [2007] QB 462; *Fatnani and Raschid v General Medical Council* [2007] EWCA Civ 46; [2007] 1 WLR 1460; and *Southall v General Medical Council* [2010] EWCA Civ 407; [2010] 2 FLR 1550) as appropriately modified, can be applied to section 40A appeals.
>
> 40. In summary:
>
> i) Proceedings under section 40A of the 1983 Act are appeals and are governed by CPR Part 52. A court will allow an appeal under CPR Part 52.21(3) if it is 'wrong' or 'unjust because of a serious procedural or other irregularity in the proceedings in the lower court'.
>
> ii) It is not appropriate to add any qualification to the test in CPR Part 52 that decisions are 'clearly wrong': see *Fatnani* at paragraph 21 and *Meadow* at paragraphs 125 to 128.
>
> iii) The court will correct material errors of fact and of law: see *Fatnani* at paragraph 20. Any appeal court must however be extremely cautious about upsetting a conclusion of primary fact, particularly where the findings depend upon the assessment of the credibility of the witnesses, who the Tribunal, unlike the appellate court, has had the advantage of seeing and hearing (see *Assicurazioni Generali SpA v Arab Insurance Group* (Practice Note) [2002] EWCA Civ 1642; [2003] 1 WLR 577, at paragraphs 15 to 17, cited with approval in *Datec Electronics Holdings Ltd v United Parcels Service Ltd* [2007] UKHL 23, [2007] 1 WLR 1325 at paragraph 46, and *Southall* at paragraph 47).
>
> iv) When the question is what inferences are to be drawn from specific facts, an appellate court is under less of a disadvantage.

> The court may draw any inferences of fact which it considers are justified on the evidence: see CPR Part 52.11(4).
>
> v) In regulatory proceedings the appellate court will not have the professional expertise of the Tribunal of fact. As a consequence, the appellate court will approach Tribunal determinations about whether conduct is serious misconduct or impairs a person's fitness to practise, and what is necessary to maintain public confidence and proper standards in the profession and sanctions, with diffidence: see *Fatnani* at paragraph 16; and *Khan v General Pharmaceutical Council* [2016] UKSC 64; [2017] 1 WLR 169, at paragraph 36.
>
> vi) However there may be matters, such as dishonesty or sexual misconduct, where the court "is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the Tribunal …": see *Council for the Regulation of Healthcare Professionals v GMC and Southall* [2005] EWHC 579 (Admin); [2005] Lloyd's Rep Med 365 at paragraph 11, and *Khan* at paragraph 36(c). As Lord Millett observed in *Ghosh v GMC* [2001] UKPC 29; [2001] 1 WLR 1915 and 1923G, the appellate court "will afford an appropriate measure of respect of the judgment in the committee … but the [appellate court] will not defer to the committee's judgment more than is warranted by the circumstances".
>
> vii) Matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the over-arching concern of the professional regulator is the protection of the public.
>
> viii) A failure to provide adequate reasons may constitute a serious procedural irregularity which renders the Tribunal's decision unjust (see *Southall* at paragraphs 55 to 56).

82. Ms Grey submits that a simple application of the principles in *Jagjivan* result inexorably in the conclusion that both the MPT and the judge applied the wrong test when considering the application to restore.

83. Ms Grey (rightly) unreservedly accepts the primary findings of fact of the MPT as to Dr Chandra's credibility, remorse and the level of future risk. She further accepts that where, as here, there is an expert specialist tribunal, this court will approach their conclusions 'with diffidence'. However, Ms Grey submits, this case falls fairly and squarely within (vi), (vii) and (viii) of *Jagjivan* above. In other words, where, as here, the case centres around Dr Chandra's dishonesty and sexual misconduct, the appeal court is entitled, whilst giving the decision of the MPT a proper measure of respect, to feel able itself to assess what is needed to protect the public or maintain the reputation of the profession. In doing so, Ms Grey submits, matters of mitigation will be of less

concern than in retributive justice, as the over-arching objective is the protection of the public.

84. In considering her submissions, I turn again to [38] of the reasons of the MPT which I rehearse for ease of analysis:

> "38. In all the circumstances, the tribunal considered that the over-arching objective, and in particular the public interest, would not be compromised through the restoration of your name to the Medical Register. It was of the view that you have accepted your wrongdoing, you have reflected appropriately, significantly gained in maturity and insight, and gained substantial understanding in regard to the proper boundaries and relationships with patients, and the central role of honesty and probity in the medical profession. It found that you have made sufficient progress such that you have demonstrated that you are no fit to practice, that you are a fit and proper person to be restored and that taking such a course would be an appropriate and proportionate response."

Discussion

85. The judge in her judgment following the first appeal, considered the 'proper test for considering applications for restoration to the register' [27]. The judge was of the view that the correct legal test could not be one of 'exceptional circumstances' in the case of sexual misconduct and /or dishonesty. Further, she did not accept an argument that greater weight should be placed on the need to maintain public confidence and uphold professional standards on an application to restore to the register than on that of the remediation undertaken by the individual.

86. In reaching her conclusions, the judge was of the view that, whereas at the sanction stage subjective matters of mitigation may be subordinated to the objective need to protect the public interest, on an application to restore after the expiry of the statutory period of five years, 'a different balancing exercise may be appropriate and the statute has not given greater weight to one factor than another'.

87. The judge, like Ms O'Rourke, regarded Sales J's observations in *Yeung* as unhelpful. She underlined what was, in her view the difference between sanction and restoration saying that:

> "61.... The profound unacceptability of the respondent's behaviour has been clearly declared by his erasure from the register."

88. Against this backdrop the judge concluded that the MPT had adequately taken into account the three factors found in the over-arching objective and 'there was no basis for finding that the MPT had failed to give proper regard to the over-arching objective in general or the public interest in particular' [65].

89. For the reasons I have given, I agree with the judge that there is no test of 'exceptional circumstances' which has to be satisfied before an applicant can be restored to the

register. With respect however, I do not agree that there is a bright line as between sanction and restoration whereby (due it would seem to lapse of time) 'a different balancing act may be appropriate'. Although certain features may carry different weight at the date of the erasure of a doctor from the register from that which it is given upon his or her application to be restored to the register, in my judgment the balancing act itself is the same in respect of each application namely; against the backdrop of the over-arching objective, is the doctor concerned fit to practice.

90. In my judgment the MPT made an error of principle. The question is not whether the over-arching objective is 'compromised'. The Tribunal is required, by statute, to have regard to the over-arching objective which includes the pursuit, i.e. the active pursuit, of the objectives specified in s1(1B) MA 1983, and in my judgment it failed properly to do so. Read overall, the focus of the Tribunal was limited to issues of the applicant's acceptance of his wrongdoing, his insight, the risk of repetition and his competence. The MPT did not address, or address adequately, the issue of whether public confidence and professional standards would be damaged by restoring the applicant to the register, an applicant who had fundamentally fallen short of the necessary standards of probity and good conduct, by his sexual misconduct and dishonesty, albeit many years ago.

91. Ms O'Rourke took the court, paragraph by paragraph, through the reasons and findings of the MPT, seeking to persuade the court that a consideration of the over-arching objective was built in to those findings and, in particular, within their finding that Dr Chandra had 'sufficiently remediated the conduct which led to his erasure and his subsequent sustained dishonesty including before the FTPP".

92. In my judgment, the Tribunal applied the wrong test. Had they been aware of and considered *Bolton,* they would have approached the matter as advanced by Ms Grey; they would first have considered with care all the evidence of remediation against the backdrop of the matters which had led to erasure and made findings in that respect. Having made positive findings in this respect, they would then have metaphorically stepped back and balanced those findings against each of the three limbs of the over-arching objective. Only by doing so could they satisfy themselves that, when considering the case overall, including the length of time which has now elapsed, the restoration of the applicant would promote and maintain public confidence and proper professional standards so that, notwithstanding the serious nature of the original misconduct, the over-arching objective would be achieved.

93. In my judgment, such an analysis and demonstration of the appropriate balancing exercise cannot be teased out of the reasons given by the MPT. Those reasons, absent an understanding of the proper approach as set out in *Bolton,* relied almost exclusively on the issues of remediation and failed properly to understand the central importance of the over-arching objective to their ultimate decision.

94. In those circumstances it is the intention of the Court to allow the appeal in due course with a view to the matter being remitted to the specialist tribunal, namely the MPT for rehearing. There are however a number of important consequential matters which require further oral argument and a further hearing and therefore no order is being made by this court in respect of the appeal prior to the resumed hearing. It follows therefore that until such time as an order is made, Dr Chandra remains on the medical register and is entitled to continue in his employment as a doctor.

Lord Justice Flaux

95. I agree.

Lord Justice McCombe

96. I also agree.