

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

[2019] EWHC 1062 (Admin)

CO/1055/2019

Royal Courts of Justice

Wednesday, 3 April 2019

Before:

HER HONOUR JUDGE ALICE ROBINSON

(Sitting as a Judge of the High Court)

B E T W E E N:

GENERAL DENTAL COUNCIL Claimant

- and -

MUSTAFA Defendant

MR T. DOBLE (instructed by the General Dental Council) appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

J U D G M E N T

THE JUDGE:

1This is an application by the General Dental Council ("GDC") pursuant to s.32(8) of the Dentists Act 1984 ("the 1984 Act") for an extension of an interim suspension order ("ISO") originally made on 8 June 2017 by the GDC's interim orders committee. It was extended by the High Court on 6 December 2018 for a period of 4 months to 12 April 2019. This application seeks a further extension of 10 months.

2The defendant is not present today or represented. However, it is clear from an email from him to the GDC, dated 19 March 2019 that he is aware of today's hearing, and there has been no application for an adjournment. In those circumstances, I am satisfied that it is appropriate to proceed in his absence.

The factual background.

3The ISO was originally made following the defendant's arrest for conspiracy to commit grievous bodily harm with intent and conspiracy to administer a noxious substance with intent. In due course, the first charge was dropped, and on 9 April 2018, the defendant went on trial on a charge of intentionally encouraging or assisting the commission of an indictable offence; in effect encouraging a patient to obtain a noxious substance. On 12 April 2018, he pleaded guilty to that offence.

4Briefly, the circumstances of the offence were that he encouraged the patient to obtain the drug GHB, commonly known as a date rape drug, in order to administer it to his (the defendant's) wife to incapacitate her so that he could place her finger on her iPhone to unlock it; the purpose of that being to ascertain if she was having an affair. In the event, the plan was not proceeded with because the defendant found out about his wife's affair by conducting surveillance on her.

5On 12 April, the defendant was sentenced to a 12month conditional discharge. The judge regarded it as a serious offence, but took what he described as an exceptional course, having regard to the fact that no harm had in fact been caused; that the patient in question had already been looking for the drug for his own purposes; that the defendant had spent the equivalent of a 12month sentence in custody already, and that he would likely lose his ability to practice as a dentist, which would also be a punishment.

6Following that, the GDC made concerted efforts to obtain further information about the criminal proceedings in order to progress its investigation. Those are summarised in the Skeleton Argument of Mr Doble, who appears today on behalf of the GDC, at paras.1315, which I can summarise briefly.

7On 13 April 2018, the GDC wrote to the police, seeking information. On 15 May, the police responded that they were going to seek the consent of the defendant. On 20 June, the police confirmed that the defendant had not responded to the request to consent to disclosure, so that they were going to consider the matter further. The GDC sought an update on progress in July, August, September and October 2018, but no decision was forthcoming. On 23 October, the police informed the GDC that the defendant had lodged an appeal against the disclosure of information about his case.

8In the meantime, in October 2018, it came to the GDC's attention that the defendant had applied for permission to appeal to the Court of Appeal in respect of the criminal proceedings, whether against conviction or sentence is not entirely clear. On 14 November, the GDC contacted the police again for an update, and on 23 November, the police replied, saying they were awaiting a response from the CPS.

9On 6 December, on the application for an extension to the ISO, David Edwards QC, sitting as a Deputy Judge of the High Court, granted the application, which was for a 12month extension, for a period of 4 months. The defendant was again aware of that hearing, but did not attend, nor was he represented. In his decision, Mr Edwards said, amongst other things:

"Given the hardship to Dr Mustafa and the serious lack of progress to date, however, I am not prepared to grant an extension for 12 months as I am asked to do. What I am prepared to do is to grant a fairly short extension of 4 months, which will allow the papers from the Humberside Police to be obtained, which should allow more clarity in relation to the allegations, and which should also allow the process of any appeal to work its way out."

10I have been provided with information as to what has happened since then, and, in my view, the progress could best be described as glacial. A month later, on 7 January, the GDC decided that the defendant's fitness to practise was potentially impaired and therefore the matter was referred to the Case Examiners, pursuant to rule 5 of The General Dental Council (Fitness to Practice) Rules Order of Council 2006 (SI 2006/1663). It took a further two months, until 12 March this year, for the Case Examiners to decide that the allegation of misconduct should be referred to the Professional Conduct Committee (PCC).

11The allegations of misconduct are set out in the decision of the Case Examiners, and are that the defendant's fitness to practise is impaired by reason of conduct in that:

"(1) Between 30 March 2017 and 24 April 2017, you encouraged your patient RL to obtain a drug known as GHB on your behalf with the intention of unlawfully administering it to your wife;

(2) On 12 April 2018, you were convicted at the Crown Court at KingstonuponHull of intentionally encourage/assist a commission of an indictable offence;

(3) You failed to immediately inform the GDC that on 21 May 2017 you were charged by Humberside Police with (1) conspiring to cause grievous bodily harm with intent; and (2) conspiring to administer a noxious substance with intent;(4) from 31 May 2017 to at least 4 January 2019 you failed to cooperate with the GDC's investigation by not providing the GDC with your employment details;

(5) you failed to maintain adequate professional boundaries in the relationship you had with your patient RL;

(6) your conduct at allegation (5) above was (a) unprofessional, (b) lacking in integrity;

(7) your conduct at allegation (3) above was (a) misleading, (b) lacking integrity, (c) dishonest in that you knew you were required to immediately notify the GDC that you were subject to criminal proceedings."

12In the Case Examiner's decision, they identified the following standards which are relevant to the allegations of misconduct:

"9.1 You must ensure that your conduct both at work and in your personal life justifies patients' trust in you and the public's trust in the dental profession.

9.1.4 You must maintain appropriate boundaries in the relationships you have with patients. You must not take advantage of your position as a dental professional in your relationships with patients.

9.3 You must inform the GDC if you are subject to criminal proceedings or a regulatory finding is made against you anywhere in the world.

9.4 You must cooperate with any relevant formal or informal inquiry and give full and truthful information."

13The PCC must now convene a hearing to consider the allegations; I say a hearing, but in fact there is power to adjourn the hearing which must itself comprise four stages that are set out in rule 14 of the 2006 rules.

14In the meantime, on 22 February this year, the Court of Appeal refused the defendant's renewed application for permission to appeal. Throughout the period since the ISO was initially made, the GDC's interim orders committee has periodically reviewed the order, as it is required to do, and confirmed it, most recently on 28 February 2019. That decision states:

"The committee has considered the submissions carefully. It has taken into account the serious nature of Dr Mustafa's conviction on 12 April 2018 at Doncaster Crown Court of intentionally encouraging/assisting the commission of an indictable offence for which he was sentenced to a conditional discharge for a period of 12 months.

Given the serious nature of Dr Mustafa's conviction, the committee is satisfied that an interim order is necessary for the protection of the public, and is otherwise in the public interest. This is for the same reasons set out in the IOC's determination at the initial hearing in June and at the subsequent review hearing.

Given the serious nature of Dr Mustafa's conviction, this committee has concluded that an interim order of conditions would not be sufficient or workable. Accordingly, it directs the continuation of the interim order of suspension of Dr Mustafa's registration. It has taken into account the principle of proportionality and the impact of the continuation of this order will have on Dr Mustafa's ability to practise as a dentist, bearing in mind Dr Mustafa's desire to wish to continue practising as a dentist in the UK.

However, given the serious nature of Dr Mustafa's conviction, the committee is satisfied that such an order is necessary for the protection of the public and is otherwise in the public interest."

Legal framework.

15 By virtue of s.32 of the 1984 Act, the interim orders committee, amongst other committees, has power to impose an interim suspension order under subsection(4)(a) where it is satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interest of the person concerned. The committee may instead make an order for conditional registration. Both orders may only be made for a period not exceeding 18 months. By virtue of subsection (8) the GDC may apply to the court for an order made by a committee under subsection (4) to be extended, and may apply again for further extensions. By virtue of subsection (9), on each such application, the court may extend or further extend for up to 12 months the period for which the order has effect.

16 It is well established that on such an application, this court must apply the principles set out in the equivalent jurisdiction of the GMC described in the case of the *GMC v Hiew* [2017] 1 WLR 2007. Without, I hope, doing a disservice to the judgment of Arden LJ, I can summarise those principles as follows. First of all, the decision is performed by the court as the primary decision maker, it is not simply a review of the GDC's decision. Secondly, the criteria applied must be the same as those set out in s.32(4), namely the protection of the public, the public interest, or the practitioner's own interests. The court can take into account matters such as the gravity of the allegations; the nature of the evidence; the seriousness of the risk of harm to patients; the reasons why the case has not been concluded; and the prejudice to the practitioner if an interim order is continued. The onus of satisfying the court that the criteria are met falls on the GDC on the balance of probabilities. Thirdly, it is not the function of the judge to make findings in primary fact about the offence which had led to the suspension, or consider the merits of the case of suspension. The function of the court is not to ascertain whether the allegations made are true or false; simply whether they justify prolongation of the suspension. Fourthly, the court is not bound to follow the opinion of the GDC, nor should it defer to it, and it is a matter for the court to decide what weight should be given to it. Finally, the court has power to grant no extension, the extension sought by the GDC or some lesser extension.

17 Applying those principles, I consider first the gravity of the allegations. In my judgment, they are extremely serious involving encouraging a patient, a person with whom a dentist is supposed to maintain appropriate professional boundaries, to obtain a noxious drug whose precise composition and effects will be unknown, and therefore potentially dangerous to health, for the purpose of incapacitating his wife in order to access her phone, a gross breach of trust.

18 As to the nature of the evidence, the defendant pleaded guilty to this offence, and therefore none of those allegations are in dispute as a matter of fact. That is quite apart from the other matters comprising the charges of misconduct to which I have referred.

19 Turning to the seriousness of the risk of harm to patients and the public interest, in my judgment, these are obvious. The defendant's actions are evidence of the potential for patients to be encouraged to obtain a harmful drug and to themselves commit an offence by doing so, as well as the potential for a breach of trust of a patient, given the defendant's willingness to breach the trust reposed upon him by his wife.

20 Further, given the GDC's role in maintaining proper standards and public confidence in the profession, the nature and seriousness of the conduct and the risk of harm, in my judgment, it would inevitably be contrary to the public interest for the defendant to be permitted to continue practising pending resolution of the disciplinary proceedings for misconduct.

21 It turns to the reasons why the case has not so far concluded. The GDC relies upon the decision of the *GMC v Razok* [2012] EWHC 2135 (*Admin*) in which Hickinbottom J, as the then was, held that the GMC was entitled to wait until the conclusion of criminal proceedings before embarking on disciplinary proceedings. The court said this in para.15:

"Despite the force of those submissions, I accept that it was appropriate for the GMC to stay their hand in respect of the disciplinary investigation and procedures against Dr Razok whilst the criminal proceedings were running their course. The frauds that were the subject matter of the criminal proceeding concerned Dr Razok's conduct as a doctor, and those frauds were clearly going to be crucial to any disciplinary proceeding against him before the GMC. Although, as Dr Razok, stressed, the GMC is a specialist disciplinary panel well able to decide matters such as those raised in the criminal proceedings, there can, in my view, be no criticism of the GMC as to the manner in which they have dealt with the allegations against the defendant or the time that they have taken, or their decision not to proceed whilst the criminal charges were pending. That is the usual course and for good reason because, contrary to Dr Razok's submission, the criminal proceedings may well sensibly inform the disciplinary proceedings."

22I agree that the criminal proceedings in this case are central to the disciplinary investigation, and although this is not the reason for all of the delays, in my view it was appropriate, or would have been appropriate for the GDC to wait until the outcome of the appeal to the Court of Appeal to be known, which was only on 22 February this year. However, the length of time taken to obtain information about the criminal proceedings is, in my view, unreasonable and unnecessary. The GDC could, at any stage, have obtained a transcript of the whole of the trial, not just the sentencing remarks, to which they would have been entitled, pursuant to the Criminal Procedure Rules 5.5(2)(c) and the Criminal Practice Direction para.5B.4, something that they have only recently set in train.

23Further, the delays since the High Court order on 6 December to date are, in my view, also unreasonable, and it is coincidental that the Court of Appeal refusal of permission to appeal has only recently been given. As to prejudice to the defendant, this undoubtedly exists. He has been prohibited from practising as a dentist since early June 2017, nearly two years. It is clear from his emails that he is very unhappy about this and wants to continue to practise. His recent email says that he is a good dentist, and I observe that there is no evidence to the contrary, and says that his patients need him. He has apologised, and invites the GDC to work, as he put it, to start a new page in their relationship.

24Balancing those competing considerations, I am satisfied that the ISO should be extended. The previous short extension of 4 months was granted to enable information relating to the criminal proceedings to be obtained. That has not happened, but now the GDC have started the process of applying for a transcript of the trial, that can happen quite quickly. I also bear in mind that the delays in obtaining papers from the police are because the defendant has objected to their disclosure. The High Court order was also made to allow the appeal to the Court of Appeal process to conclude, which it now has. There was no question of the High Court expecting, back in December, that any disciplinary proceedings would have concluded within that period; only that the position would now be clearer.

25Now that a decision has been taken by the Case Examiners to refer allegations of misconduct to the PCC, in my view, a reasonable period of time should be allowed for that to be done. These are very serious allegations of misconduct based on undisputed facts, and I am entirely satisfied that the protection of the public and the public interest considerations heavily outweigh the prejudice to the defendant by virtue of continued interim suspension. For completeness, I add that, in my judgment, the protection of the public and the public interest cannot be adequately protected by a conditional registration.

26As to the length of the extension, it was submitted on behalf of the GDC that 10 months is necessary in order to allow time for service of the GDC's case and for the defendant's response. There are other hearings the GDC has to conduct and a listing window for the case has been identified, the earliest being October 2019, and the latest, March 2020.

27In my view, if a shorter extension is granted than 10 months, which would take us to early February next year, all that will happen is the GDC will be put to the expense of returning to court unnecessarily to apply for a further extension. However, the extension for a period of 10 months, as requested, should not be regarded as an opportunity for the GDC to take its time. Unlike the proceedings to date, the court expects the disciplinary process to have been fully completed by then, and if the GDC seeks any further extension, it will have to identify exceedingly good grounds indeed for the court to contemplate granting one.

28Mr Doble, you have a draft order here somewhere.

MR DOBLE: Yes, my Lady; it is at the end of the skeleton argument at p.10.

THE JUDGE: Would it be helpful if I just rip that out and give it to the clerk?

MR DOBLE: Or I can hand up a copy.

THE JUDGE: That's all right; I think there are two in here. Yes. There we go.

MR DOBLE: The word "draft" should probably be excised from the heading as well. Sorry, I should have said.

THE JUDGE: Thank you.
