Case No: AC-2024-MAN-000405

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING AT MANCHESTER

[2025] EWHC 733 (Admin)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester, M60 9DJ

Date: 28 January 2025

Before:

MR JUSTICE KERR

- -

Between:

GENERAL MEDICAL COUNCIL

Claimant

- and -

DR RAJESH RAJU JAIN

Defendant

- -
- -

Mr Alan Taylor (instructed by **General Medical Council**) appeared for the **Claimant**
The Defendant appeared **in person**

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APPROVED JUDGMENT

(given extempore by video link on 28 January 2025)

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MR JUSTICE KERR:

Preliminary: Application for Recusal

1. There is an application that I should stand down and not hear this case and it is of the upmost importance, because it is fundamental to our system of justice that litigants are entitled to a fair and impartial tribunal. On the other hand, if grounds for removing the judge are not made out, it is not fair on the other side and is wrong for a party, without good cause, to be able to get rid of a judge that party does not want to sit.

2. I have to consider this application with the utmost care. It is made in writing and orally by Dr Jain and was first made overnight and today, this morning, when I happened to see yesterday a case I had completely forgotten, involving the same Dr Jain: *Jain v General Medical Council* [2019] EWHC 1841 (Admin). I reread my judgment in that case when I saw that it appeared in the authorities bundle provided by the parties and it occurred to me that it was very likely the same Dr Jain as in that appeal, which I had completely forgotten.

3. Having reread that case, I noted that I heard it on 11 July 2019 and gave my judgment the very next day, 12 July 2019, in order to minimise the prejudice to Dr Jain of a rule which, as I explained in that judgment, was prejudicial and in my humble opinion unfair to him. I am not going to repeat here what I said in that judgment because it is a matter of public record.

4. The recusal application now made is based on what are described as objective concerns regarding the appearance of bias and supported by legal principles established in *Porter v. Magill* [2001] UKHL 67, *Locabail (UK) Ltd v. Bayfield Properties Ltd* [2000] QB 451; and also mentioned is *Fayed (Mohamed Al) v. United Kingdom* [1994] 18 EHRR 393. If I can quote from the written application:

> "While I acknowledge that a judge is not automatically disqualified merely because they ruled against a party in the past [*Locabail*] ... this case involves exceptional circumstances where a previous judgment by the same judge dealt with nearly identical issues, overlooked key evidence, and demonstrated a lack of impartial assessment regarding my medical conditions."

5. The application continues saying that:

> "I did not approve that ground of appeal from my side in which panel members said that my involuntary tic disorder was a serious professional misconduct or words to that effect."

6. It is said on that basis that a fair minded and informed observer would reasonably conclude that there is a real possibility of bias if the same judge were now to adjudicate this matter, particularly as what are described as there are "errors in the 2019 judgment" which "continue to have a direct impact on my ability to practise medicine".

7. So it is said that I ruled in 2019 on substantially the same factual and legal issues as those that are now under reconsideration and that, quoting from the written application:

> "...the continuing impact of that decision creates a risk of judicial predisposition, whether conscious or unconscious."

8. I do not accept that I am, in the present case, ruling on the same issues or even particularly similar issues as I did in the previous case but it is said that, and again I am quoting from the written application:

> "The 2019 judgment failed to properly assess my neurodivergent conditions, disregarding medical evidence regarding the impact of tic disorder, ADHD, and autism on my professional conduct. The previous ruling also failed to address the procedural breaches committed by the GMC leading to an erroneous finding of serious professional misconduct that was disproportionately severe and contrary to established case law and regulatory fairness... ."

9. I do not accept that in the 2019 appeal, I failed properly to assess Dr Jain's neurodivergent conditions. As far as I recall, I was not asked to make any adjustments in that appeal, in which Dr Jain as represented by counsel. The issues in the appeal concerned whether the decision of the MPTS tribunal below was defensible or not, or whether it was wrong or marred by any serious procedural irregularity. That is not the issue in the present case which is an application to extend time for the currency of interim measures.

10. In the previous case, I do not accept that I failed to address procedural breaches committed by the GMC. I actually strongly criticised the procedure and the rules, and the time that it had taken to operate them. Despite that, I record that Mr Taylor for the GMC has confirmed that he does not support the application to recuse me in this case.

11. It is then said in the written application that the previous ruling "tore apart the fundamental principles of fairness, equality, and human rights" and that given that I am now presiding over:

> "...an appeal directly challenging the conclusions of the 2019 case, there is a real risk that preconceptions formed in the earlier proceedings will influence the current decision."

12. I respectfully reject this contention. I do not accept that the previous ruling tore apart fundamental principles of fairness, equality, and human rights. It was an ordinary appeal against the decision of an MPTS tribunal, of which there are many in the records of cases decided. There was nothing particularly unusual about it. I did find that the tribunal's decision could not be faulted and was not wrong but that does not mean that I disregarded principles of fairness. My decision stood and was not further challenged. The present case, contrary to the submission made, is not an "appeal". It is an application in a Part 8 claim for an extension of the time for interim measures. The issues are different.

13. For those short reasons, I do not accept that a fair minded and informed observer, having considered the facts, would conclude there was a real possibility that the tribunal would not act fairly to both parties. I want to reassure Dr Jain and, indeed, the GMC, that I have taken a judicial oath which requires me to do justice according to law without fear or favour, affection, or ill will; and that I intend to abide by that oath in hearing this application by the GMC which, for the reasons I have given, will now proceed.

(After hearing argument on the substance of the claim)

Introduction

14. The claimant is responsible for the conduct of doctors in this country and for disciplinary proceedings against them in the event of alleged misconduct, incompetence, or other wrongdoing. The defendant Dr Jain is a doctor and psychiatrist. This application was made on 11 November 2024 by the claimant pursuant to section 41A(6) and (7) of the Medical Act 1983 (as amended).

15. The application is for an extension of an interim order imposed upon Dr Jain's registration. The extension sought is for 12 months up to and including 8 December 2025. The current interim order, imposed by an Interim Orders Tribunal, was due to expire on 18 December 2024. A hearing was to take place at this court on or before that date but proved impracticable for logistical reasons and, at the request of Dr Jain, was adjourned.

16. His Honour Judge Stephen Davies extended the interim order to 31 January 2025, which is three days from now. On 28 November 2024, His Honour Judge Pearce granted an application by the claimant, the GMC, to rely on certain further evidence. Although there were some difficulties with bundles, the effective hearing of the Part 8 claim brought by the GMC did take place before me remotely today.

Factual and Legal Background

17. The GMC has been investigating concerns that Dr Jain's fitness to practise may be impaired by reason of misconduct and ill health. In July 2022, Dr Jain is said to have spoken inappropriately to a female doctor in a manner that could be described as sexual harassment, though not involving any touching. Mr Taylor, for the GMC, did not mention this in his skeleton argument and nor did Ms Garry, the GMC's witness, in her first witness statement setting out the chronology. I am not clear why that is. Dr Jain has suggested that there may have been a question about whether that allegation was intended to be proceeded with. However, it does feature in a later formulation of the allegations.

18. Mr Taylor's skeleton argument and Ms Garry's witness statement begin the story on 25 January 2023. The GMC received a complaint from a patient referred to as "EC". The previous day, EC had seen Dr Jain for a mental health assessment in West Sussex. Her complaint alleged that he made her feel "very uncomfortable" and she regarded his conduct of the sessions as "incredibly unprofessional".

19. In April 2023, some two and a half to three months later, the GMC received witness statements about the matter from a receptionist, the patient EC herself, and her husband. That same month, in April 2023, the GMC heard from Powys Health Board that Dr Jain had been acting as a clinician there without having formal Welsh approved clinician status and, accordingly, that health board terminated his contract. He had, it was said, failed to inform them about local NHS restrictions placed on his practice.

20. On 9 June 2023, the interim orders tribunal considered his position and decided to impose conditions on his registration for a period of 18 months, therefore expiring in late 2024. 18 months is the maximum period during which the tribunal can impose restrictions.

21. On 21 September 2023, the GMC received a witness statement from a doctor not named to me, identified only by initials. The subject matter of his or her statement was not made clear to me.

22. On 2 October 2023, a Dr Campbell produced a health assessment report on Dr Jain. Dr Campbell's opinion was that Dr Jain was fit to practise with restrictions. Two days later, a further health assessment report was produced by Dr Callender, who formed the same opinion.

23. On 2 November 2023, a further witness statement from a Dr Shahid Khan was produced. He is, I am told, a responsible officer for Apex Medical Locums. The interim orders tribunal reviewed the registration of Dr Jain, and the conditions attached to it, on 7 December 2023 and decided to maintain the same conditions.

24. On that date, a further witness statement was received from the doctor who, it was alleged, had been the subject of the incident in July 2022. Nothing then happened until 22 March 2024 when the GMC received a further witness statement from the patient EC. Nothing of note then happened until 5 June 2024, when the GMC received a witness statement from a doctor, not identified except by initials, who is said to be a responsible officer at the Powys Health Board.

25. Pausing there, there was effectively no significant progress in the investigation in the first half of 2024 apart from receipt of a few witness statements.

26. On 6 June 2024, the interim orders tribunal again reviewed the matter and maintained the same conditions on Dr Jain's registration. At this stage, two years or nearly two years had elapsed since the date of the first alleged incident in July 2022. I am told that Dr Jain became out of work at about this time, which is about 20 months ago, and that he has not worked or not worked much since then.

27. On 5 August 2024, the GMC received a report from a Dr Shaharyar Alikhan, an expert. Dr Alikhan's opinion was that if patient EC's account was correct, the entirety of the consultation that took place in January 2023 would be seriously below the required professional standard.

28. On 19 September 2024, the GMC wrote to Dr Jain in accordance with rule 7 of the relevant fitness to practice rules what is known as a "Rule 7 letter". It included a statement that the medical and lay assessors, who would be considering the matter and his response, were of the view that a warning might suffice to dispose of the issues. Draft allegations were attached at Annex A along the lines that I have mentioned.

29. On 7 October 2024, Dr Jain referred himself to the GMC having unwisely, as he accepts, taken his then 17 year old son to observe a mental health assessment. This led to a concern that he was working in breach of the interim conditions to which he was subject, due to length of the placements, lack of supervision, and failure to inform the GMC about employment or supervision arrangements.

30. At the end of that month, on 30 October 2024, the GMC sought to convene a further hearing before the interim orders tribunal, asking for Dr Jain to be suspended instead of merely being subject to conditions. While that hearing was pending, before it took place, the GMC made the application that is before me today.

31. The hearing then did take place on 18 and 25 November 2024. The interim orders tribunal, despite Dr Jain's attempts to persuade it to the contrary, varied the interim order from conditions of registration to outright suspension from work. In its reasoning, the tribunal said this paragraphs 4 and 5:

> "4. In reaching its decision, the Tribunal is mindful that its role today is not to make findings of fact or determine the veracity of the allegations, but to conduct a risk assessment exercise. The Tribunal determined that there were concerns regarding Dr Jain's probity, conduct, and health which may pose a serious risk to the public, the public interest, and to the doctor's own interests. The Tribunal noted that since the last IOT, the risk profile had altered in that there was now an independent expert report which found aspects of Dr Jain's care to fall seriously below standard, and that Dr Jain had recently breached his interim conditions. It noted that Dr Jain challenged the validity of the expert report and provided and explanation for the breach of conditions, however the Tribunal determined that the test for an interim order continues to be met. The Tribunal considered that the risk profile has elevated in light of the new information before it and that suspension is now the proportionate response.
>
> 5. Whilst the Tribunal notes that the order has removed Dr Jain's ability to practise medicine it is satisfied that the order imposed is the proportionate response because of the alleged breach of his conditions which would suggest that conditions are no longer workable or enforceable."

32. Following that decision, on 25 November 2024, the GMC wrote a second Rule 7 letter to Dr Jain, again including a comment that the two senior decision makers feel the case could be concluded with a warning. The allegations were the same as before except that the breach of condition allegation from September 2024 was added.

33. So pulling the threads together, the current allegations span a period from July 2022 to September 2024. In summary, they are these:

- July 2022, inappropriate sexual harassment;

- January 2023, inappropriate behaviour concerning patient EC during a consultation;

- March and April 2023, allegations against about probity and false claims about approved clinician status for Wales, and misleading of a locum about the status of a GMC investigation, working without informed approved status and failing to inform Powys Health Board of restrictions on practice;

- September 2023, health concerns arising from reports that he was fit to practise but subject to conditions; and

- September 2024, breach of conditions (they are numbered 2, 6, 7, and 8) imposed on 9 June 2023 in relation to work in East London.

34. I add in parenthesis that Dr Jain accepts the thrust of the last of those allegations, namely that he was in breach of his conditions or practice in September 2024, a matter for which he apologises and says he immediately put a stop to.

35. As I may have mentioned, on 29 November 2024 the interim order was extended until 18 December because the hearing on 29 November was adjourned at Dr Jain's request. As I have said, the hearing did not take place on 18 December with the result that the interim suspension order is now extended until the end of this month.

36. I was told that about a week ago, on 21 January 2025, Dr Jain produced and provided to the GMC his response to the second Rule 7 letter, although I have not seen that response. It is not difficult to surmise what it may contain because the arguments Dr Jain has developed in writing and orally in this application are likely to be to similar effect.

The Legal Framework

37. Under section 41A(1), an interim orders tribunal can impose an interim order of suspension, or conditions if satisfied that that is necessary for the protection of members of the public, is otherwise in the public interest, or is in the interests of the doctor concerned. The public interest includes protection of patients, maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

38. Such an order may not exceed a period of 18 months and must be reviewed at least every six months by the tribunal (section 41A(2)). The GMC may apply to this court under

section 41A(6) for the order to be extended. Under section 41A(7), the court may extend it but only for up to 12 months. The court has no power to vary the kind of interim order imposed.

39. The principles on which this court acts are well known and stated in *General Medical Council v Hiew* [2007] EWCA Civ 369, at [26]-[33], in the judgment of Arden LJ (as she then was). The court acts as a primary decision maker and may decide whether to grant an extension for the whole, part, or none of the period sought. The criteria are the same as those applied by the interim orders tribunal: the gravity of the allegations; the nature of the evidence relied on; the risk to patients and/or the public interest if the defendant were permitted to practise without restrictions; and the reasons for the extension requested.

40. The onus of satisfying a court that the criteria are met falls upon the GMC, applying the civil standard of proof. The court may not enquire into or determine whether an interim order should have been made at all; nor may the court make primary findings of fact, or consider the merits of the allegations.

41. My function, as is clear from Arden LJ's judgment, is to ascertain whether the allegations, rather than their truth or falsity, justify prolonging the order. In general, I would look no further than the allegations and not be distracted by contentions that they are ill founded.

Submissions

42. For the GMC, Mr Taylor submitted that the interim order remains necessary for the protection of the public, in the public interest, and in the defendant's own interests due to serious concerns raised by his failure to provide an appropriate standard of care, the state of his health, and breaching his interim conditions. Mr Taylor effectively adopted the reasoning of the interim orders tribunal that the criteria were met and the decision to suspend correct for the reasons given by it.

43. The tribunal had noted, Mr Taylor noted, that the risk profile had altered; they regarded the risk as elevated in the light of the new information to the point where suspension was now proportionate. Mr Taylor informed me that the matter has now, in light of Dr Jain's recent response to the second Rule 7 letter, been referred to the case examiners for a decision in accordance with Rule 8 of the Fitness to Practice Rules. The case examiners have several options ranging from taking no action or an informal settlement at one end of the spectrum, to a full-blown referral to a disciplinary tribunal, at the other.

44. Mr Taylor's instructions are that the Medical Practitioners Tribunal Service (MPTS) would provide a tribunal to hold a hearing within about 9 months from the date of any decision to make a referral. For that reason, he submitted a period of 12 months up to just before Christmas 2025 was an appropriate extension.

45. Dr Jain, opposing the application, made oral factual submissions about the incidents, explaining his contention that the matters early in the history involving alleged inappropriate language addressed to female persons were not at the time regarded as crossing the threshold for GMC investigation back in April 2023; and that in relation to working in Wales, he essentially characterised the errors as bureaucratic rather than dishonest, and not in any way reflecting on his competence or standing as a psychiatrist.

46. That is a very brief summary of what, it is clear from his explanation, is a complex factual position. I explained that I am not here to go into great detail about the facts. I can consider the nature of the evidence constituting the GMC's factual case but I cannot and will not determine or examine whether it is or might be well founded.

47. Further, in opposition to the extension of time sought, in a detailed written skeleton argument from page 23 onwards, he made powerful procedural and substantive points in detail, which I do not set out in full but summarise by reference to the headings as follows.

48. Firstly, he complains of numerous procedural breaches. The most serious is what he calls intractable delay. He says there were breaches of a policy called the "fair to refer" policy emphasising the need to resolve concerns locally, where appropriate, and taking contextual factors into account.

49. He complained that documents before the court had been unjustifiably redacted or left out. He mentioned that he considers himself to be a whistleblower. He complained that during the process, there had been insufficient notice taken of his need for reasonable adjustments under the Equality Act 2010. He complains that the two health assessment reports are outdated, dating as they do from September 2023.

50. Dr Jain submitted that the GMC had failed to demonstrate the need for an extension of time. He made detailed points in that regard. Those I regard as most important are the following. He said that he had consistently complied with and engaged in good faith with the GMC process; that the GMC had failed to provide any concrete evidence of any risk

to patients or any member of the public; that Dr Campbell had acknowledged that he is not known to have posed a risk to others at any time; that he is well aware of his various health conditions, and retains full insight into his health conditions.

51. Dr Jain went on to submit that the GMC had provided no adequate factual evidence to substantiate its contention that public confidence in the medical profession would be eroded without an extension of time. He submitted that the allegations were not of the utmost seriousness and pertain to remediable mistakes rather than substantive misconduct; that there was no evidence that his fitness to practise was impaired; that the GMC had displayed prejudice and bias towards him.

52. Dr Jain further submitted that the extension of the interim order for another 12 months would be disproportionate given the 18 months that had elapsed during the investigation and rule 7 stage. That had left him, he said, without clinical work for 18 months. A further suspension would exacerbate the process of deskilling him as well as his financial position and personal wellbeing.

53. He acknowledged that he has made unintentional mistakes but submitted that they were neither deliberate nor harmful and that his underlying disability should be taken into account. He said that he had taken remedial actions including, for example, changing seating arrangements in his consultation room and apologising to the patient EC, among other things.

54. He submitted that the interim order had caused him to suffer a relapse of symptoms of depression, impairing his ability to engage in hearings and in the debilitating process. He pointed to the decision of this court in *Nandi v General Medical Council* [2004] EWHC 2317 (Admin); and in *Giele v General Medical Council* [2005] EWHC 2143 (Admin), where the court underlined the importance of proportionality and the personal impact on a doctor when imposing interim orders. He submitted in the light of those contentions that the extension should either be refused outright or, if granted, be for well under a year.

Reasoning and Conclusion

55. Such were the main points made by Dr Jain in opposition to the application. I come to my reasoning and conclusions. In doing so, I must consider the factors identified in the *Hiew* case. The first is the gravity of the allegations. They are not trivial but neither are they of the utmost seriousness. Whilst lack of probity and dishonesty is alleged, that is not

alleged in the sense of financial fraud or deception for personal gain. It is not suggested that the life of any patient has been put at risk, nor that the wellbeing of any patient, except the patient EC, has been adversely affected.

56. The next factor is the nature of the evidence relied upon. In short, that evidence is evidence that, if proved, would be likely to sustain the charges but, as I have said, what is charged is not at the most serious end of the spectrum of misconduct.

57. As to incompetence, it is only suggested that in a 20 year career, Dr Jain has conducted an incompetent medical consultation on one occasion nearly two years ago. Without in any way playing down or trivialising the seriousness of that, one would expect, if he were an incompetent psychiatrist, to find more instances of alleged incompetence than one in about 20 years.

58. The next factor I have to consider is the risk to patients and/or to the public interest if Dr Jain is permitted to practise. On this, I think there is a public interest going in both directions. I accept, of course, that there is a strong public interest in doctors obeying the rules, behaving well, conducting medicine competently and abiding by conditions. On the other side, there is a strong public interest against deskilling of doctors and depriving the public of their services when they are most unlikely to be incompetent in any general or lasting sense.

59. The next factor is to enquire into the reasons for the extension of time requested. I have to say that I think the main reason why it is requested is that the GMC's system of disciplining doctors is not geared to swift resolution of disciplinary issues. I have mentioned this problem before in other cases and I regret to have observed something like a culture of delay and tolerance of delay.

60. The GMC have had much of, although not all, the evidence about Dr Jain since June 2023. They wish to prevent him from working as a doctor until the end of 2025, which is about three and a half years after the first incident complained of. In the interim, the GMC has devoted much time and effort into the interim orders tribunal process and applying to this court; and, it seems to me, little effort into convening a hearing if one is needed.

61. The GMC has not booked a tribunal hearing. It has not fixed even a contingent or provisional date for any disciplinary hearing. It could have sent a Rule 7 letter in August

2022 in relation to the incident in July 2022. It could have sent a Rule 7 letter in April 2023 in relation to the incident in January 2023.

62. The onus of satisfying the court that the criteria for extending the interim measures are met falls on the claimant to the civil standard of proof. I do not think the GMC has discharged that onus. I recognise that the court must not determine whether the order should have been made in the first instance and I make no criticism of the interim orders tribunal, nor do I make any findings of primary fact. Dr Jain's attempt to refute the allegations on their merits is not a matter for me.

63. My function is to ascertain whether the allegations made, rather than their truth or falsity, justify prolonging the order. In my judgment, the allegations made do not justify a further delay of nearly a year. There is a mismatch between the seriousness of the allegations and the time that it has taken to investigate them, formulate them into charges, and convene a hearing to determine those charges. The GMC's answers to the charge of delay are bureaucratic ones. "These things do take time" was the way Mr Taylor put it. That is an approach that I think is unfortunate, like a metaphorical shrug of the shoulders.

64. This case has not been managed and has been allowed to drift. There is no timely tribunal service in place. Charges are not formulated quickly enough, whether to refer to a tribunal is not decided quickly enough, and hearings are not booked long enough in advance. No hearing has been booked in this case even now, even on a contingent basis. The reason given is the terms of a service level agreement. The GMC waited until nearly the end of the 18 month maximum period for interim orders tribunal restrictions before applying to this court.

65. I do not think the seriousness of the allegations here is sufficient to justify the extension of time sought in all those circumstances. I do not think it right to deprive this doctor of his right to earn his living for a further year, a doctor against who no wrongdoing has been proved, on the strength of allegations of wrongdoing that while not trivial are not of the utmost gravity, do not entail a serious threat to patient wellbeing and have not been urgently pursued towards a resolution.

66. The disciplinary process of the GMC is, in many cases including this one, far worse for the doctor than any likely sanction to which it could lead. It does not deliver resolution within a reasonable time.

67. The GMC is, even now, unable to give a timescale for the making of a decision whether the matter will proceed any further at all. Some of the incidents have been said to be suitable to be dealt with by a warning. Mr Taylor did mention an estimate of a period of six to eight weeks from now but I have no evidence to support that.

68. He confirmed that a tribunal hearing would not even be sought until that decision were made, if the decision were to make a referral to such a tribunal. He anticipated there would then, in addition, be a further 9 month delay before a hearing could take place; and that in the context of Dr Jain having been out of work for about 20 months. Mr Taylor accepts that the outcome in this case is not necessarily going to be a referral to a tribunal at all.

69. I cannot find it in me to condone such delays given the limited risk to the public interest and absence of any direct risk to patient safety. The GMC cannot dispute Dr Jain's insistence that no patient of his has ever been harmed, subject only to the case involving the patient EC.

70. I accept the submission of Dr Jain that it is not in the public interest for him to become deskilled. I think it is more in the interest of the public that his services should now be available to his patients. If the interim orders tribunal had not changed the interim measures from conditions to suspension, I might - and I emphasise *might* - have allowed the claim or allowed it in part. I do not say I would have allowed it.

71. The outright suspension changes the balance of interests of the doctor and the public and the proportionality assessment. The delay is now disproportionate given the measure of gravity, the allegations, and the fact that the doctor is now suspended and cannot work.

72. For those reasons, I dismiss the claim.

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