Neutral Citation Number: [2008] EWHC 182 (Admin)

Case No: CO/3515/2006

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8th February 2008

Before :

THE HON MR. JUSTICE BLAKE

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Between :

Dr. Bright Selvadurai Selvarajan	**Appellant**
- and -	
General Medical Council	**Respondent**

- -
- -

David Cocks QC and Shaun Murphy Esq. (instructed by Edwards Duthie) for the **Appellant**
Miss Fenella Morris (instructed by General Medical Council) for the **Respondent**

Hearing date: 16th January 2008

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Judgment

Mr. Justice Blake:

1. This is an appeal against a decision of the General Medical Council (GMC) directing the sanction of erasure from the register for an admitted charge of professional misconduct committed by Dr Selvarajan (the Appellant).

2. On the 30th March 2006 the Fitness to Practise Panel (Professional Conduct) hereafter "the Panel" of the General Medical Council (GMC) determined that the Appellant's name be erased from the Medical Register. Three days earlier he had admitted that he was guilty of serious professional misconduct in that between March 1994 and November 1996 he had written and signed a number of prescriptions relating to 2649 items of medication that were not recorded in the patients' records but were purported to have been prescribed by a neighbouring chemist. The substance of the allegation was a sustained course of dishonest conduct by this Appellant together with the chemist whereby the local health authority now known as the Ealing Primary Care Trust were fraudulently deprived of a sum of about £150,000, and the proceeds split between the chemist and this Appellant.

3. The Appellant now appeals to this court against the severity of this sentence pursuant to the Medical Act 1983 as amended. He does so on the ground that the Panel misdirected itself on the relevance of the passage of time between the conduct admitted and the sanction imposed to the mitigation that he sought to advance.

4. In order to understand the submissions made, it is necessary to set out some of the history. The Appellant is a General Practitioner of medicine whose professional care for his patients is spoken highly of by a great many testimonials brought to the attention of the Panel in these proceedings. His medical skills and devotion to the welfare of his patients is not in question. His character and reputation were unblemished until the events that gave rise to these proceedings. According to the mitigation advanced the dishonest conduct started in 1994 as a result of financial difficulties that the Appellant was then facing.

5. In 1994 an investigation was begun by the health authority. In April 1996 the investigation was taken over by the Metropolitan Police. There was evidently some liaison between the health authority and the police because in December 1996 the Appellant and the chemist were arrested at a time when representatives of the health authority were present. In March 1997 civil proceedings for recovery of the sums paid out in respect of the false prescriptions were commenced although they were stayed by consent whilst the criminal investigation took its course.

6. On the 20th April 1998, the Appellant was charged with conspiracy to defraud by the police. The following month in May 1998, the GMC were informed of these facts by the police. The GMC awaited, and was plainly entitled to await, the outcome of criminal proceedings before deciding whether and how to proceed with any proceedings of its own with respect to professional misconduct.

7. The criminal proceedings came to an end on the 6th April 2000 when the Appellant was acquitted on a judicial ruling, an earlier jury having failed to agree a verdict. The solicitors acting for the health authority in the civil recovery proceedings informed the

GMC of the acquittal on the 3rd July 2000. The Appellant alleges that from this time on the GMC were obliged to consider within a reasonable period of time whether to bring professional disciplinary proceedings against him and if so for what charge and pursue any proceedings with due expedition.

8. The GMC were doubtless assisted in their inquiries by the fact that Radcliffes (solicitors for the health authority) conducted a full investigation into all prescriptions issued by the Appellant and dispensed by the chemist, from which fraudulent ones (not entered into any patient's record) could be distinguished. A schedule of such material was served on the GMC by Radcliffes on the 1st November 2001. This is of course 18 months after the Appellant had been acquitted; three and half years after the GMC had been told that he had been charged, and nearly five years after he had been arrested.

9. It was not until the 27th May 2002 that Dr. Selvarajan was informed that the information supplied by the health authority (which had now become the Ealing Primary Care Trust) would be referred to the Preliminary Proceedings Committee of the GMC to consider disciplinary charges. It was accepted that this was the relevant starting date for the purposes of Article 6 of the European Convention on Human Rights, that provides that "everyone is entitled to a fair and public hearing within a reasonable period of time" (see *AG Reference No 2 of 2001* [2003] UKHL 68 [2004] 2 AC 72 at para [27] as applied to disciplinary proceedings; see also *Haikel v GMC* (2002) UKPC 37 of 4th July 2002 [14]). It is common ground that disciplinary proceedings that might deprive the Appellant of his livelihood engage the Article 6 obligation and that therefore the GMC and its panels were under a statutory duty imposed by Human Rights Act 1998 s.6 to prosecute the proceedings to final determination within a reasonable period of time.

10. Even in May 2002 the charges brought were not of dishonest or fraudulent conduct where the seriousness of the allegation was likely to lead to the sanction of erasure, but charges of inappropriate prescribing and record keeping. Apparently the GMC and its committees were acting on erroneous legal advice that it could not frame a charge of dishonest conduct that traversed the same activity as the conduct alleged in the criminal proceedings for which he had been acquitted.

11. The court was surprised to hear that in 2002 such advice was tendered and acted on as accurate. S.36 (1) Medical Act 1983 (as well as its predecessors) makes a clear distinction between practitioners a) who have been found guilty of a criminal offence and b) those guilty of professional misconduct. Well established authority including the case of *Bolton v Law Society* [1994] 1 WLR 512, establishes the general principle that the purpose of professional disciplinary proceedings is not to punish the individual practitioner as to preserve the integrity of the profession, and therefore decisions in criminal cases are very different from the issues that the GMC have to consider. Indeed the Respondent in this appeal relies on these well known words of Lord Bingham at 519B-E

> "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."

12. The absence of any common law double jeopardy rule in professional misconduct proceedings was specifically noted in the case of *R v Statutory Committee of the Pharmaceutical Society of Great Britain* [1981] 2 All ER 805 where disciplinary proceedings had been brought in respect of conduct for which there had been an acquittal. The absence of such a common law rule was assumed by the police disciplinary authorities in the case of *R (on the application of Reynolds) v Commissioner for Police for the Metropolis* [2003] EWCA Civ 4 22nd January 2003 (unreported). Police officers once had the benefit of a statutory prohibition on double jeopardy, but that had been removed. Following a refusal of a voluntary bill on criminal charges that was treated as the equivalent of an acquittal, a police officer was charged with misconduct in September 2000; in March 2001 a Police Disciplinary Board ruled that no issue of double jeopardy arose; in May 2002 Moses J as he then was upheld that conclusion in dismissing judicial review proceedings and on the 23rd January 2003 the Court of Appeal upheld that conclusion in a judgment designed to clarify any doubts on the issue.

13. It was the decision of the Court of Appeal in the *Reynolds* case that resulted in the GMC reconsidering its earlier decision. In November 2003 it requested cancellation of the referral of the inappropriate prescription charges and consideration of the fraud allegations based essentially on the information supplied by the health authority. The Appellant points out that not only were the inappropriate prescribing charges much less serious than an allegation of fraud or dishonesty which was highly likely to lead to a sanction of erasure, they were also totally inappropriate as the investigations conducted into his practice had revealed his record keeping and prescribing practice for patients to be exemplary.

14. It was not until December 2004 that Dr Selvarajan was finally and lawfully informed by the Panel that he would now face misconduct charges based on fraud and dishonesty. An earlier referral had to be set aside as vitiated by procedural error. A date set for hearing those charges was set for September 2005. Having briefly considered whether to judicially review this decision as an abuse of process by reason of delay, the Appellant sought and under threat of judicial review succeeded in turning the September date into the hearing of a preliminary point to be decided by the Panel,

namely whether the charges should be stayed as an abuse of process. On the 7th September 2005 the Panel declined a stay. It is clear that it considered both common law abuse and the question of a stay as an appropriate remedy for a breach of the Appellant's rights to a determination within a reasonable period of time under Article 6. By this time the decision in *A-G's Reference No 2 of 2001* (citation at [9] above) had determined in the context of criminal proceedings that a stay for a breach of Article 6 on the grounds of delay would only be appropriate where there was prejudice that could not be remedied in the trial process itself and a fair trial of the issue was not possible (see Lord Bingham [24]).

15. The Panel were referred to this authority by the GMC and the analogy between stays in criminal and disciplinary proceedings was relied on. Very detailed submissions were made to the panel by experienced counsel Miss Glynn QC representing the GMC on the question of why it had taken so long to reach this point, whether the delay was unreasonable and if so whether a stay was an appropriate remedy. In the course of her submissions she said this:

> "There have been quite clearly unjustifiable delays, which means that you may find that there has not been trial within a reasonable time and therefore a breach of Article 6 (1). What does that mean? That means you then go on to look at whether that there has been prejudice as a result. So in essence it comes down to prejudice, whether you are applying Convention arguments or you are looking at the common law arguments. But what is abundantly clear, whichever way one is approaching this case, is that the correct approach is not to punish the prosecuting authority for errors. It boils down, where there is absence of malafides, to [the] prejudice issue."

16. Despite those observations the Panel decided not only that there was no or insufficient prejudice to justify a stay but that there had been no unreasonable delay. It said this:

> "The Panel is satisfied that there was indeed some delay but has determined that, were it standing alone the period would not in itself demonstrate unreasonable delay. However it is satisfied that the overall period since 1994 to date represents an unsatisfactory delay. Having taken into account all the information before it the Panel does not find the delay to be unreasonable. Even if that were not the case the doctor has not demonstrated that he has suffered such serious prejudice as would deprive him of a fair hearing"

I shall comment on this conclusion a little later in this judgment.

17. The Appellant sought to challenge the decision of the panel by judicial review. On the 6th December 2005 following an *inter partes* oral hearing in which both sides were represented by leading counsel, Mr. Justice Charles refused permission on the basis that the claimant had not established any delay had caused him such prejudice as to prevent a fair hearing of the charges. On the question of delay at all he said this:

> "I do not propose to spend any time in dealing with the issues as to whether or not delay has been established either for the purposes of Article 6 or of the common law. In my judgment, it is plainly arguable that there has been delay for those purposes. For my part, at this preliminary stage, I would go further and say that there has in fact been a delay for those purposes."

18. Ms. Morris, who appears for the GMC at the hearing before me, reminds me that judicial observations made in the course of refusing an application for permission are not a binding judgment or a final view of the matter. I accept that, but this articulated judicial observation of how to characterise the period involved in prosecuting them, chiming as it did with the realistic observations made by Miss Glynn, carried some weight, and could legitimately have required the Panel to reconsider this aspect of their previous decision when the issue came back before them.

19. The unsuccessful judicial review application did not unduly delay matters, as by the 27th March 2006 the substantive hearing into the fraud charges began with the admission of serious professional misconduct already noted in this judgment. The Panel found the misconduct proved and then Mr. Cocks QC for Dr. Selvarajan then proceeded to mitigate.

20. The essence of his mitigation remarks was as follows:-

> "(1) He has made nothing out of it. It is all paid back.
>
> (2) He has been allowed by the GMC to continue to practise, and has done so for 10 years with a skill, a diligence, and a conscientious devotion to his patient that is outstanding. Erasure would mean that the Nation Health Service would be deprived of the services of a model GP;
>
> (3) He has displayed conspicuous courage through all these travails.
>
> (4) He has admitted the charges; he has saved a great deal of time and expense.
>
> (5) He has been subjected to delay and inefficiency on the part of the General Medical Council for which significant allowance should be made.
>
> (6) The public interest in vindicating the profession's reputation, which is the main purpose of these proceedings, can only be fulfilled, we submit, if professional proceedings against the doctor are competent, fair and expeditious, and, furthermore, manifestly seen to be so.
>
> (7) It would not now be a just and proportionate exercise of the Panel's power of erasure to erase him from the register some 12 years after inquiry into his conduct started, to bring his career to an end.
>
> You are dealing uniquely here with a case in which an enormous amount of water has passed under the bridge. It has given the doctor the opportunity, as I say, not only to make reparation but to atone for what he has done and to show the public and the Panel that he has continued to be an excellent General Practitioner that he has always been, these matter apart. We ask you to bear all those matters in mind when assessing what the correct sanction is."

21. It is to be noted that Mr. Cocks put his case on the grounds of undue delay generally, rather than on any breach of Article 6, doubtless because he was conscious of the Panel's previous decision.

22. His mitigation nevertheless elicited a response from Ms. Glynn on the issue of law: she said:

> "Our submission is that it is not relevant to sanction, but the context in which I made those submissions on the abuse hearing needs to be borne in mind. ….. there were a number of referrals, which is why I made the concession that you may take the view that it was not tried within a reasonable time, but that was not the issue. The issue was whether or not there could nevertheless be a fair trial. The issue in the abuse hearing was the issue of fair trial. We looked at the authorities, you may recall, and the authorities clearly indicate that it is not necessary to show prejudice on the part of the doctor, but nevertheless to establish a breach of the right to a trial within a reasonable time it is necessary to show that you could not have a fair trial, of that it would not be fair to try the doctor. Those are authorities that are very well known now.
>
> The Panel looked at the submissions that were made in that context. That is the relevance of delay whether we are talking about common law delay or indeed Article 6 breach delay. The Panel made its decision in the context of whether it was possible to have a fair trial, and you determined that it was possible to have a fair trial. That is the relevance of delay. We respectfully submit it is not relevant to the issue of sanction, where there are other criteria that the Panel needs to look at."

Despite submissions from Mr Cocks that those submissions were misconceived as a matter of common sense and what had been said in the *Attorney General's Reference No 2 of 2001*, the Panel was advised by its legal observer that delay was irrelevant to sanction and in any event had already determined that there had been no delay that breached the Article 6 duty. In doing so, of course, it deprived the Appellant of the substance of his mitigation as advanced by his counsel. In due course it decided that the sanction of erasure was the only appropriate one.

<u>The Issue in the Appeal</u>

23. Mr. Cocks QC advances this appeal by submitting:-

a. The submissions of the GMC and the advice of the Panel were plainly wrong, and the passage of time at common law and unreasonable delay in prosecuting proceedings for the purpose of Article 6 were both relevant to mitigation of sanction;

b. The Panel having misdirected itself on a central aspect of the mitigation advanced, the correct course would be to allow this appeal and remit the matter for re-determination.

24. Ms. Morris responds:-

a. That a breach of the reasonable time requirement in Article 6 cannot be a consideration in mitigation of sanction, and the difference in purpose between the punitive function of the criminal law and the maintenance of professional integrity that is the function of disciplinary law makes it inappropriate to transpose the principles of criminal case law relating to delay over to disciplinary case law.

b. In any event the Panel were entitled to reach the conclusion that there was insufficient delay to amount to a breach of Article 6.

c. Further contrary to the view of the Panel in September 2005 the Appellant could be said to have contributed to the delay by not admitting the charges of fraud earlier and taking the abuse point at all.

d. In the alternative, if I concluded that there had been misdirection, I should not now remit the matter to the Panel but decide on the appropriate penalty for myself, and in all the circumstances erasure remained the only possible sanction for this sustained breach of trust in a professional capacity.

Conclusions

25 Having been assisted by both counsel and the citation of authority, I have no hesitation in concluding that Mr. Cocks's first submission is correct, as a matter of common sense, past practice, fair trial case law and indeed the GMC's own guidance in the Indicative Sanctions Guidance booklet of April 2004.

26. Paragraph 15 of the Guidance states:

> "In any case before them, the panel will need to have due regard to any evidence presented by way of mitigation. This could include….time lapsed since the incident(s)…efforts to avoid such behaviour recurring or efforts made to correct deficiencies in performance"

27. This Guidance appears to be supported by the assumptions made by practitioners and judges in the past. Ms. Morris helpfully drew to my attention part of the judgment of the Judicial Committee of the Privy Council in the case of *Haikel* (cited above at [9]). On the facts of the case the Committee did not consider that the two year period to prosecute a complaint of sexual misconduct against a doctor was a violation of Article 6, or that the overall period since the conduct came to light made a fair trial impossible. It nevertheless observed that the overall delay was strongly relied on by counsel in mitigation of penalty and Sir Phillip Otton delivering the judgment of the Committee said at [28]

> "It is well established that it is open to the Judicial Committee to consider all the matters raised by Dr Haikel on this appeal; to decide whether the sanction of erasure was necessary in the public interest or excessive and disproportionate"

28. It is common sense that the longer the threat of erasure has been hanging over the head of a professional person terminating their ability to practise their vocation, and with it the extinction of their means of earning a living livelihood and the deprivation of their practice, the more severe the sanction will be and the more punitive it will appear to be to the recipient, even if in disciplinary proceedings the purpose of the sanction is not intended to be punitive.

29. Ms Morris suggested that [15] of the Guidance noted above was only concerned with delay where the Appellant could show non-repetition of the misconduct in the interim, but that is not what it says, and intervening good conduct is noted as a separate consideration.

30. Moreover, delay in bringing or prosecuting proceedings has the capacity to cause real prejudice where the person concerned has been suspended from practice or severely restricted in how he or she can practice for lengthy period before being struck off.

31. Lord Bingham in the case of *Bolton* (cited above [11]) on which the Respondents rely for the difference of effect between criminal and disciplinary mitigation, himself noted at 520 C-D that it would be oppressive to restore the penalty of suspension two and half years after the order was made but never implemented pending appeal. There is no reason for concluding that the Panel could not also have regard to whether delay made a particular penalty oppressive and therefore disproportionate in any particular circumstances. Although the penalty of erasure is often considered to be a permanent and irrevocable sanction, the present regulations allowing reformed and penitent practitioners to be readmitted to the register after five years, but delay in prosecuting a case may mean that the practitioner is so advanced in years that the possibility of ever applying for restitution is rendered completely out of the question.

32. I finally turn to the Appellant's reliance on the criminal analogy and the case of *Attorney General's Reference of 2001* (cited above). It would be odd if this was considered a compelling authority for the Panel to consider in determining whether a fair hearing was possible by reason of delay or breach of an Art 6 right, but irrelevant as to what it said about mitigation. It was central to Lord Bingham's reasoning giving the judgment of the majority at [24] that breach of the reasonable time requirement did not automatically result in a stay as there may be other ways of vindicating the breach of the rights concerned: a public acknowledgement of the breach, release on bail, financial compensation, and a reduction in the sentence that would otherwise be appropriate. It was because the trial process may be able in one of more of these ways to address the breach that it was said that a stay was not automatic and should be restricted to cases where the trial process could not cure the breach and a fair trial itself was no longer possible.

33. Lord Roger differing in the result but concurring on how there were different remedies than a stay for a breach made the same point at [176] citing the South African case of *Wild* where it was said to be obvious that a denial of the right to be tried within a reasonable period of time was a distinct right that could be vindicated by a reduction in the appropriate penalty.

34. I recognise the distinction in purpose between criminal and disciplinary mitigation but see no reason in logic, policy or common sense why any delay since the conduct was committed or notified to those in authority let alone unreasonable delay in prosecuting charges, should not be capable of mitigating the penalty. This is not to say that it is mandatory that it must do so in every case, or that it necessarily means that a lesser penalty than erasure was appropriate in the present one. Indeed, if delay causing a breach of Article 6 were indeed irrelevant to penalty in disciplinary proceedings, the consequence should be that many more proceedings where there has been delay should be stayed as a breach of the fair trial rights, because disciplinary proceedings would have less capacity to remedy delay by an adjustment of penalty in appropriate cases. This result would be far more contrary to the public interest and the vindication of the reputation of the profession by disciplinary sanction, than reducing the penalty of erasure to one of suspension, or suspension to one of conditional registration.

35. I am further wholly un-persuaded by the Panel's conclusions in September 2005 that the delay in the present case did not result in a breach of the reasonable time requirement. As was apparent from the later debate in January 2006, at the earlier hearing the Panel was considered with whether a fair hearing could take place and not simply with whether there had been delay. Justified as its conclusion was on the first question, in my judgement its conclusion on the second was plainly wrong. I reach this conclusion for the following reasons;-

a. It depends on an obscure distinction between unjustifiable delay by the GMC and unreasonable delay and ignored the realistic concession that unjustified delay could lead to the conclusion that the delay was unreasonable for Art 6 purposes (see [16] above);

b. It implicitly endorsed the submissions of the GMC that delay in formulating the appropriate charge should be discounted as the law was not clear before the *Reynolds* judgment. In my judgement, the test is not whether the GMC were unreasonable in acting on legal advice, but whether the delay caused by their error of law is delay for which they were responsible and added to the other delays caused by the GMC in getting their case together contributed to the overall conclusion of unreasonableness. Further, I do not consider that the law was obscure in relation to professional disciplinary proceedings, and the law did not change with the *Reynolds* judgement. Even the first instance decision in that case could and should have alerted the GMC to what the law already was;

c. It ignored the pertinent observations of Charles J. made in the refusal of permission for judicial review, which could and in my judgement should have alerted the Panel to the fact that they should reconsider their conclusion in the mitigation context;

d. This is not an area where the judgement of the Panel is to be afforded special weight or respect in recognition of their expertise. It was the Legal Assessor who advised them on this issue. It is an issue of law that judges are well versed in considering, and the ultimate question whether the decision was right or wrong is a legal judgement having regard to all the facts. This was not a case of special complexity. The relevant schedules had been compiled in the civil action and were reused in the disciplinary proceedings. For those proceedings to take nearly four years from charge to penalty as well as the further two years for them to be finally determined in this court on appeal is unacceptable and unreasonable. Moreover although the period of delay for Article 6 purposes only starts with the formal notification of disciplinary proceedings, in determining whether the period taken to prosecute was reasonable, the fact that the GMC knew all about the allegation four years before and there may have been some pre charge delay, is a relevant consideration. Where there has already been delay for whatever reason, there is an added imperative to get on with it promptly.

36. Finally, I conclude that I do not accept that the Appellant was responsible for the delay by not admitting the charge until it was formally put to him. The charge of dishonesty was only formulated late in the day; he was entitled to take any point that he could to stay the proceedings, and in any event the delay had already occurred by the time of the unsuccessful application for a stay, and the judicial review application did not prolong matters to any significant extent thereafter.

37. For all these reasons, I conclude that there was misdirection in the approach the Panel took to mitigation and I would so declare and publicly acknowledge the breach of the Article 6 right .

38. However, that leaves the more difficult question of whether I should allow the appeal by substituting a lesser penalty than erasure, in effect 12 months suspension, or remit the matter for the Panel to re determine for themselves in accordance with this judgment or conclude that however much weight is given to the mitigation based on delay in the particular facts of this case it cannot have the consequence of displacing the otherwise clearly appropriate penalty of erasure.

39. It is with some reluctance that I have come to the conclusion that only the last of these three options is the appropriate one. I give my reasons briefly:-

a. This was very serious and sustained dishonest conduct in a professional capacity, totally undermining the trust and respect that should be accorded to medical professionals and demanded a severe sanction to vindicate the standing of the profession in public esteem.

b. This was not a case on the borderline of erasure and suspension where mitigation based on delay may well have been compelling as to the outcome.

c. The Appellant had not been suspended or restricted in his practice throughout the period of these proceedings, and so was able to earn his living for longer than would be the case if there had been no delay.

d. He is now aged 66, beyond normal retirement age, although there is no retirement limit for GPs, erasure will permanently terminate his medical practice, but there has never been a serious prospect of any successful application for restoration after five years that has been prejudiced by delay.

e. Although he has long endured the uncertainty of possible criminal conviction and loss of liberty, the financial burden of repayment involved in the compensation claim and the awareness that he could or would face disciplinary sanction, this does not justify the imposition of a manifestly inadequate sanction of 12 months suspension for his misconduct.

f. The whole litigation has been delayed long enough, and the delay in listing this appeal is itself unacceptable and a likely further breach of duty by another public authority than the GMC, I should not add to it by remitting the matter to a Panel who would then have to consider the effect of the yet further delay on sanction.

g. This court has now publicly acknowledged the breach of the right concerned and if there were an application for costs made by the GMC would consider this breach further in exercising its discretion as to costs.

40. For these reasons despite the misdirection declared earlier in this judgement I would otherwise afford no relief on this appeal, reject Mr. Cocks's second submission and dismiss it.