ARDL

ASSOCIATION OF REGULATORY & DISCIPLINARY LAWYERS

QUARTERLY BULLETIN – SPRING 2019

CONTENTS

Introduction

Welcome to the Spring edition of the ARDL Bulletin which continues to provide insightful articles on various aspects of professional regulation and discipline. This edition has a bumper crop of book reviews together with an interesting article by Fameeda Shafiq of Ward Hadaway on Consensual Disposals in healthcare cases. An area of great debate and development in recent years.

The ARDL dinner is nearly upon us and the ARDL Committee is looking forward to welcoming over 600 members and guests to the Guildhall on 5th July. Our guest speaker this year is Sir Robert Francis QC whose contribution to the world of regulation will need no introduction to members. This year we plan to add an additional element to the dinner with a collection for LawCare a charity dedicated to supporting mental health and wellbeing in the legal profession. Dealing with such issues has sadly become an important part of our role as regulatory lawyers and I am sure that members will be very supportive in giving generously on the night.

In the meantime I am delighted to report that membership continues to grow and is just short of 1000 members. We are also aware that we need to improve the services that ARDL provides to its members and are currently working on a new website which we hope will go live before the end of the year. I would also like to take this opportunity to thank the Seminar Committee for their hard work strong program in London, Manchester and Edinburgh for the rest of the year. Many of our events are now heavily oversubscribed and we are trying to identify and use bigger venues. Whilst I

know this has been frustrating for some who wanted to attend an event it also demonstrates the growing interest in our work.

Iain Miller
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Consensual Disposal in Professional Regulation

Legal Framework

Examples of consensual disposal of proceedings in healthcare cases include:

General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000, rule 8 (the committee, where it considers it appropriate to do so, shall invite the osteopath to accept that the facts amount to either unacceptable professional conduct or professional incompetence and that the complaint shall be dealt with by way of an admonishment).

General Medical Council (Fitness to Practise) Rules 2004, rule 10 (if, after considering the allegation, it appears to the case examiners that (a) the practitioner's fitness to practise is impaired, or (b) the practitioner suffers from a continuing or episodic physical or mental condition that, although in remission at the time of the assessment, may be expected to cause a recurrence of impairment of the practitioner's fitness to practise, the case examiners may recommend that the practitioner be invited to comply with such undertakings as they think fit – including any limitations on the practitioner's practice – rule 10(2); the registrar shall not invite the practitioner to comply with any such undertakings where there is a realistic prospect that, if the allegation were referred to a fitness to practise panel, the practitioner's name would be erased from the register – rule 10(5)).

General Pharmaceutical Council (Fitness to Practise and Disqualification etc) Rules 2010, rules 10 and 26 (agreement of undertakings by the investigating committee; agreement of undertakings and giving of advice and warnings by the fitness to practise committee).

Examples in other cases include:

Royal Institution of Chartered Surveyors, Disciplinary, Registration and Appeal Panel Rules 2009 (version 7 with effect from 1 January 2017), rule 11 (A Consent Order shall consist of terms requiring the relevant person to: (a) take or desist from taking certain actions within a specific period of time (b) if appropriate, pay a fine in accordance with the provision of the published Sanctions Policy (c) if appropriate, pay costs to RICS in accordance with published scales.').

Solicitors Disciplinary Tribunal, Practice Direction No. 6 (Case Management and Standard Directions for First Instance Proceedings), 2013 (if the applicant and some or all of the respondents jointly wish to submit to the tribunal for approval an agreed outcome, they must submit to the tribunal in writing a document signed by the relevant parties, which contains a statement of the facts that are agreed between the parties as the proposed penalty and an explanation of why such an order would be in accordance with the tribunal's sanction guidance).

Chartered Institute of Management Accountants, Investigations Committee Guidance Notes 2015, paragraph 6.4 (disposal by consent order if a prima facie case is disclosed with one or more of the following sanctions – admonishment, reprimand, severe reprimand, fine up to £2,000 for members or £500 for students, and costs; right of appeal against consent order available to the complainant).

Chartered Insurance Institute, Disciplinary Procedure Rules (pursuant to Chartered Insurance Institute Disciplinary Regulations 2015), rule 9 ('Consensual Order 9.1 The Case Examiner may at any time invite the Member to approve and sign a Consensual Order to be prepared by the Case Examiner which sets out a brief summary of the facts surrounding the Complaint and the proposed sanction(s). 9.2 The effect of a Consensual Order is to dispose of the matter on the terms as agreed in the Consensual Order without the need for further process. 9.3 Where a Consensual Order is agreed by the parties the right to appeal is removed…').

Bar Standards Board Complaints Regulations 2018, rE67-83 ('Determination by consent') (A complaint that the Professional Conduct Committee is otherwise intending to refer to the Disciplinary Tribunal may, with the consent of the person against whom the complaint is made, be finally determined

by the PCC having regard to the regulatory objective. It must be in the public interest to resolve the complaint under the determination by consent procedure; the potential professional misconduct, if proved, must not appear to be such as to warrant a period of suspension or disbarment; there must be no substantial disputes of fact that can only be resolved by oral evidence. If the relevant person accepts a determination by consent, no one may appeal against it; the sanctions available are fine, imposition of conditions, reprimand, advice, and an order to complete continuing professional development, or CPD.).

Institute of Chartered Accountants in England and Wales, Disciplinary Bye-laws 2018, article 16 (if the investigation committee is of the opinion that a complaint discloses a prima facie case and is of the opinion to deal with it as a consent order).

Commentary

Regulators are increasingly making provision for consensual disposal of cases. The examples in this article show that the practice is adopted across a wide range of professions. A notable development in recent years has been the regulatory settlements between the Financial Conduct Authority (FCA) and firms imposing fines in relation, for example, to manipulation of the London interbank offered rate (LIBOR), money laundering, and controls. A case can be concluded by agreement following investigation of the allegations and a prima fade case being disclosed. There are various stages at which consensual disposal can be achieved: the accountancy professions seek to achieve disposal by means of a consent order at the investigation stage; some of the healthcare professions allow for undertakings to be agreed or warnings to be given by case examiners or the investigation committee; and the Solicitors Disciplinary Tribunal (SDT) requires any agreed outcome to be approved by the Tribunal. The SDT's Practice Direction states that any proposed penalty must be in accordance with the Tribunal's sanctions guidance. In *Solicitors Regulation Authority v. Panayides and Clifford Chance LLP*, Case No. 11716-2017, in approving the agreed outcome and determining the appropriate level of fine, the Tribunal took into account comparative cases in which fines had been imposed. Whilst consensual disposal of proceedings has significant benefits both in terms of costs savings and avoiding the emotional strain of a contested hearing for the complainant, the practitioner, and witnesses, it may mean that there is less scope to assess the practitioner's insight and the risk of repetition. Possible drawbacks include that practitioners may feel under pressure to reach an agreement and there is a risk of a lack of transparency in the process.

Fameedia Shafiq
Ward Hadaway

Book Review – A Practical Guide to the Police and Criminal Evidence Act 1984, *5th Edition,* by Paul Ozin QC and HHJ Heather Norton

Historically the Blackstone's Practical Policing series was considered helpful to trainee police constables and newly qualified desk sergeants as a snappy guide to their police powers and duties under the Police and Criminal Evidence Act 1984 and its associated Codes of Practice. Indeed, having visited the odd police station over the years (in my professional capacity only obviously) it was not uncommon to see well-thumbed previous editions on the shelves of custody suites.

Whilst it remains an incredibly useful practical guide for the police market, this Fifth Edition is bound to build upon the Fourth's reputation as a go to guide, not only for police officers and police lawyers, but for any lawyer whose clients (individual or corporate) are the subject of police action. This edition retains the clarity, concision and practicality of its predecessors and is bolstered by expert legal analysis which definitely strikes the right balance between being informative as opposed to over-academic. References to the relevant case law are kept short and to the point, the authors no doubt tipping their hat to the notion that if you need to rely on case law to advise, there really is no substitute for reading the case itself.

There have been significant changes to the Codes since the last edition, new legislation (such as the Policing and

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Book Review – Professional Conduct Casebook, *3rd Edition*, by Kenneth Hamer

It is with some trepidation that I embark upon a book review of the Professional Conduct Casebook. I have had the privilege to know Kenneth Hamer for many years and I am conscious that he is also joint editor, along with Nicole Curtis, of this very publication.

The third edition builds on the success of the previous editions. For those of you who are not familiar with the book it consists of short summaries of cases in the area of professional conduct arranged by subject matter or chapters. There are 85 chapters to the new edition compared to 71 in the last edition. Some of the previous chapters have been divided such as Dishonesty (General Principles) and Dishonesty (Sanction). In addition many chapters have been extensively rewritten including Drafting of Charges, Human Rights, Impairment, Misconduct and the chapters on Sanctions. New chapters to this edition include Amendment, Integrity (Lack of), Language (Knowledge of English), Notice of Proceedings and Proportionality.

The key to the book is the ability to find the relevant case quickly. The new addition has added further aids to doing this. Many chapters have been divided into health, legal and other professional cases grouped separately so as to be easily identified. This is a particularly useful feature as it is clearly best to rely upon cases that are specific to a particular profession and it is now easy to find these within the book. Further navigation innovations include a helpful Summary at the end of each chapter which seeks to bring together the relevant legal principles and key cases in the chapter. The margin notes to many of the cases have also been largely rewritten and expanded so as to enable the reader to see at a glance the critical features of the case.

However, the star of the piece is the succinct well written summary of each case which provides an invaluable resource for all those working in professional regulation. As the book now runs to over 1000 pages it is difficult to comprehend the scale of the task that Kenneth has successfully undertaken and the level of enthusiasm he has for the subject. All of us who work in this area are hugely indebted to him. I work in a busy regulatory team where we have a number of hearings each day. Whilst we have multiple copies of the book it is always in high demand which reflects its practical benefit in dealing with cases. Indeed it would be difficult to run any type of professional regulatory practice without at least one copy of the book.

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Legal Update

***El Karout v. Nursing and Midwifery Council* [2019] EWHC 28 (Admin)**

Evidence – hearsay evidence – admissibility of hearsay evidence from patient – distinction between admissibility and weight – serious procedural irregularity

The appellant had some 20 years' experience as a midwife, with no previous findings of misconduct. She was employed as a Band 6 midwife by Brighton and Sussex University NHS Trust. In short the allegation was that on the ward where she worked the appellant had stolen packs of Dihydrocodeine tablets prescribed to patients to take home when discharged from hospital after giving birth, and had falsified medical records to facilitate and conceal the thefts. It was alleged that the appellant had stolen Dihydrocodeine in this way in relation to seven patients, although the panel found the allegation of theft proved in relation only to five of the seven. The relevant events took place in June and July 2015. The delay of nearly three years before the disciplinary proceedings were heard in May 2018 arose in part because there were criminal proceedings which did not conclude until March 2017. The appellant was tried in the Crown Court for the offences of theft alleged in relation to two of the patients. She was acquitted by the jury. Spencer J, at [88], said the fact that the appellant was acquitted by the jury of stealing the Dihydrocodeine prescribed for Patients A and B – precisely the allegation she faced in the disciplinary proceedings – obviously did not preclude the panel from reaching a contrary conclusion. This was not least because the standard of proof was different. However, the fact of her acquittal was not altogether irrelevant. As a matter of common sense and common fairness the panel were obliged to proceed with greater caution in differing from the jury's conclusion on the very same allegations of theft, particularly in view of the serious consequences of such a finding for the appellant's

career as a midwife. Although as a matter of law the standard of proof remained the civil standard, it is well established that the more serious the charge alleged, the more cogent is the evidence needed to prove it: see *R v. H* [1996] AC 563. The panel were so advised by the legal assessor, although no reference was made to it in their reasons.

In allowing the appeal, and quashing the decision to strike off the appellant from the register, and remitting the case to be re-heard by a differently constituted panel, the learned judge said that the striking feature of the NMC's case against the appellant was that of the seven allegations of stealing Dihydrocodeine, four depended entirely on hearsay evidence to establish that the patient had not received the Dihydrocodeine prescribed for her. The only witnesses called before the panel were patients A, B and C. In relation to patients D, E, F and G, the only evidence that the patient had not received Dihydrocodeine as part of her "to-take out" medication came from an audit conducted by an employee of the Trust and her colleagues in which these and other patients were telephoned at home, on the pretext of a welfare call, in order to ascertain whether they had been given Dihydrocodeine as part of their to-take out medication. The "investigation" conducted by the Trust in relation to these seven patients, based solely on replies in "welfare" telephone calls, could never have been a proper foundation in itself for disciplinary proceedings whose outcome could jeopardise the appellant's whole career as a midwife. The investigation was conducted principally for the benefit of the Trust as her employer, to determine whether she should be dismissed from her employment. Patients D, E, F and G declined to co-operate with the NMC proceedings. The learned judge said that it was extremely regrettable that no consideration was given by the NMC initially in framing the charges, or by counsel or the legal assessor at the hearing, to the admissibility of the hearsay evidence from these four patients, as opposed to the weight to be attached to the hearsay evidence. That distinction is very important, and has been emphasised in the authorities; see *Nursing and Midwifery Council v. Ogbanna* [2010] EWCA Civ 1216, and *Thorneycroft v. Nursing and Midwifery Council* [2014] EWHC 1565 (Admin). There were several reasons why the panel would have been obliged to find that the hearsay evidence in relation to patients D, E, F and G was inadmissible. First, it was not even a case where reliance was placed on a properly recorded witness statement from any of these four patients. All four of them had declined to engage with the process. The hearsay evidence was the oral response which each of them purportedly made to an enquiry by the Trust over the telephone. There was no audio recording of the conversation. There was no precision in the noting of the conversation. Although a template was used, there was no "script" produced to show exactly what was to be said in each conversation to ensure consistency in the questions answered. Whatever contemporaneous note may have been made of any of the conversations had not apparently been preserved, which was extremely poor practice. Second and equally important, even if the panel could fairly and properly rely on the accuracy of what the patient was reported as saying, the context of the telephone conversations was very different from the formal setting of a request for information which might be used in disciplinary proceedings with the career of a midwife at stake. Third, the hearsay from the telephone conversations was the sole and decisive evidence to prove each of the charges relating to these four patients. Fourth, there was an obvious consequent unfairness if the hearsay evidence were admitted, in that the panel would then inevitably rely upon the greater accumulation of examples of patients who had not received their Dihydrocodeine as rebutting any suggestion of innocent coincidence. It follows that had there been no mention of patients D, E, F and G at the hearing (as should plainly have been the case), it is impossible to say that the panel's overall conclusion in relation to patients A, B and C would necessarily have been the same. Put another way, the fact that the panel wrongly found the charges proved in relation to patients D and G may very well have reinforced, improperly and unfairly, their conclusion in relation to patients A, B and C. The proceedings were thereby rendered unfair through a serious procedural irregularity.

***Sastry v. General Medical Council* [2019] EWHC 390 (Admin)**

Misconduct – assessment of misconduct – treatment of patient in India – behaviour to be judged by UK standards taking into account local conditions and practices – sanction

On 1 August 2018 a Medical Practitioners Tribunal (the tribunal) determined to erase S from the medical register. The allegations arose out of S's treatment of a lady in India, referred to as Patient A, during 2013-14 when he was working as a Consultant Medical Oncologist at Kokilaben Dhirubhai Ambani Hospital in Mumbai. S was referred to the GMC by Patient A's son who alleged that his mother's death on 10 July 2014

was as a result of negligent treatment by S. Before the tribunal, it was alleged that S, being registered under the Medical Act 1983, acted inappropriately in his collection of stem cells from Patient A, and in recommending that Patient A undergo, and proceeding with, high dose chemotherapy with BEAM and autologous stem cell transplantation when Patient A had failed to mobilise an adequate number of CD34 positive cells and/or an adequate number of CD34 positive cells/kg had not been collected. S had been practising in the UK for 4 years without complaint since coming back from India. The tribunal found the allegations proved and that S's fitness to practise was currently impaired by reason of misconduct. The foundation of S's complaint on the appeal was that the tribunal failed to have any or any sufficient regard to what was referred to as "the Indian context", and that the sanction of erasure was disproportionate. In dismissing S's appeal, May J said that once it is accepted (as it is) that the tribunal has jurisdiction to consider complaints about a registrant's behaviour and conduct occurring anywhere in the world, then the advice given by the legal assessor in the present case was right, namely that S needed to be judged by UK standards, GMC standards, but taking into account the circumstances such as the hospital, the patient, and the facilities that were available to S in India. The learned judge said that since the GMC's remit is to protect the public in the UK and to promote and protect proper professional standards in the UK pursuant to section 1(1B) of the Medical Act 1983, it is bound to assess conduct with those standards in mind. That is not to say that in applying UK professional standards a tribunal simply translates the behaviour directly to a UK setting, that would obviously be wrong. In considering whether or not a registrant undertaking professional duties outside the UK has fallen short of levels of professional conduct which the UK public is entitled to expect from its doctors, a Tribunal must take account of any particular limitations or local practices which apply in the foreign location. In short, a registrant's behaviour is to be judged by reference to UK standards but taking into account local conditions and practices. That is the approach that the legal assessor advised the MPT to take here.

In the instant case, the learned judge said that the tribunal did take account of the Indian context when making its decision on misconduct and impairment, and in assessing sanction the tribunal had regard to the context. The tribunal's (unchallenged) findings were that S was aware of the clinical importance of a sufficient number of CD34 cells and yet proceeded to give Patient A high-level chemotherapy when there was an insufficient number for a viable re-transfer after the chemotherapy had ended. There was no proper reason for interfering with the decision on sanction. The observations in *Bawa-Garba v. General Medical Council* [2018] EWCA Civ 22 at [61] are of particular relevance here. Where it comes to an evaluation of clinical behaviour and the treatment of patients, particularly in connection with a sophisticated procedure like autologous cell transfer, a court is totally ill-equipped to arrive at a view of what public protection and reputation of the profession requires. Moreover, S had given dishonest evidence in relation to the allegations which he faced. A doctor's credibility and the way he gives his evidence are clearly relevant matters going to his fitness to practise generally; see *Nicholas-Pillai v. General Medical Council* [2009] EWHC 1048 (Admin), per Mitting J at [18]-21].

***Dymoke v. Association for Dance Movement Psychotherapy UK Limited* [2019] EWHC 94 (QB)**

Natural justice – termination of claimant's membership of association – breach of rules of naturela justice - failure to give substance of allegations or opportunity to respond

The defendant company, Association for Dance Movement Psychotherapy UK Limited (ADMP) is a company limited by guarantee whose purpose is to promote dance music psychotherapy in the UK and to encourage suitable standards in its practitioners. It is a relatively small organisation of about 350 practising members, reflecting this particular specialisation within psychotherapy. The claimant was the former chair of ADMP's counsel prior to December 2014. By letter dated 10 March 2016 the acting chair informed the claimant that her membership of ADMP was terminated on the ground that there had been two conflicts of interest in relation to her dealings with an MA course in dance movement psychotherapy at Edge Hill University for the academic 2013/14. ADMP had accredited the course. The two conflicts identified in the letter as grounds for termination were that the claimant had failed to notify ADMP during the process of accreditation that she was a co-director of another organisation called Embody Move Association, and that, on behalf of Embody Move Association, she had withdrawn permission for Edge Hill University to conduct courses which Embody Move Association was the sole UK licence holder. In this action the claimant claimed that her membership of ADMP was unlawfully terminated in breach of the rules of natural justice and

ADMP's published procedures on handling complaints. It was common ground that at the material times there were express terms of a contract between the claimant and ADMP to be found in the articles of association, and two documents published by ADMP being its Code of Ethics and Professional Practice and its Complaints Procedure. The termination letter of 10 March 2016 did not identify why the two alleged conflicts of interest were regarded as justifying termination of the claimant's membership rather than some lesser sanction, and did not refer to or address the criteria for termination identified in the Complaints Procedure. The claimant's appeal against the decision was dismissed on paper by a lawyer acting as an appeal panel for the purposes of hearing an appeal.

Popplewell J held that in terminating the claimant's membership ADMP acted contrary to the express and implied terms of ADMP's contract with the claimant that she would be treated fairly in relation to her termination. She had never had clearly articulated to her the criticisms she faced; she was never given an opportunity to address whether her conduct merited the sanction of termination of membership; at no stage was she forewarned that there was a possibility that her membership would be terminated; the decision to terminate her membership was not taken by the Council; throughout the process she was not kept appropriately informed; and the decision in relation to sanction was (a) irrational in the public law sense of the word, that is to say, it was not the subject of any process of reasoning, and (b) it did not take into account the criteria identified in ADMP's published documents for that sanction. The learned judge said he would hear the parties on remedies and whether the claimant's membership should be reinstated or that ADMP should conduct the process afresh. The learned judge rejected the defendant's submission that any procedural deficiencies were irrelevant because it was clear that the claimant had no answer to the allegations for a conflict of interest. It was clear that she never had an opportunity to address the underlying facts, and it was clear from her evidence before the court that she maintained that any conflict of interest had been disclosed to ADMP. Moreover there were clearly issues which arose as to whether the sanction of termination was appropriate for the conduct alleged.

General Medical Council v. X, R (X) v. General Medical Council **[2019] EWHC 493 (Admin)**

Publicity and anonymity - publication of GMC decision – high risk of practitioner's suicide – publication likely to exacerbate suicide risk

The tribunal found that X, a paediatrician, was guilty of misconduct, and that X's fitness to practise was impaired, arising from X having had a sexual conversation on an adult website with a person (Y) who, part way through the conversation, purported to be 15 years old. Y and X exchanged pictures of themselves. Although they arranged to meet the following day, they did not and there was no further contact. The tribunal heard the hearing in private because of X's health. The tribunal found X's motive had been sexual, and that X's explanation to the police and in the disciplinary proceedings was untrue and dishonest. It suspended X's registration for 12 months with a review. X asked the GMC not to publish any part of the decision, beyond saying that X was suspended for 12 months for misconduct, because of a significant fear of revealing X's sexuality and related suicide risk. The GMC wished to publish the decision in full but redacted so as to avoid revealing X's gender and sexuality. The GMC's appeal against the sanction of suspension was dismissed by Soole J. X sought judicial review of the GMC's decision on publication. X adduced expert evidence of a continued high suicide risk, and how it would be exacerbated by the publication of the tribunal's decision, given X's fear of their sexuality and sexual misconduct being revealed. The learned judge held that in the unusual circumstances, the balance was in favour of X's anonymity. There was a public interest in the GMC's maintenance of the register and in the publication of tribunal findings. However, the public interest was not absolute. The GMC's duties had to be performed in accordance with the European Convention on Human Rights. There was a real risk of X's suicide which would be exacerbated by publishing X's sexuality or details of the sexual misconduct. The risk was real and immediate. The expert evidence was that even with redaction the risk remained. Patient safety was met by the fact of X's suspension.

General Medical Council v. Chandra **[2018] EWCA Civ 1898**

Restoration of doctor to register – appeal by GMC – appeal allowed – application of principles to sanction and restoration - court remitting matter for re-determination by tribunal – whether doctor permitted to practise pending re-determination – Medical Act 1983, s40A(6)(d)

Dr C was erased from the GMC medical register for sexual misconduct. 11 years later he applied for restoration and a panel of the MPTS granted his application. The GMC's appeal against this decision was dismissed by the High Court [2017] EWHC 2556 (Admin). The GMC appealed to the Court of Appeal (McCombe, King and Flaux LJJ) which stated its intention to allow the appeal in due course with a view to the matter being remitted to the MPT for rehearing. The court said that the principles in *Bolton v. Law Society* [1994] 1 WLR 512 apply equally to doctors as solicitors, and the same principles and approach apply equally to both sanctions and restoration. The over-arching objective applies to both sanctions and restoration. The question in each case is the same namely, having regard to the over-arching objective, is the doctor/applicant fit to practise? The emphasis may be different and the various factors may be weighed up with differing emphasis depending on whether the tribunal is concerned with the sanction stage or, over 5 years later, at the restoration stage. Equally, the approach is likely to be different in clinical error/negligence cases as opposed to, say, cases of dishonesty or sexual misconduct. Restoration of solicitors to the roll is governed by section 47 of the Solicitors Act 1974 and there is no equivalent of section 41 (12) of the Medical Act 1983, requiring the SDT to consider an over-arching objective to protect the public. 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 decide which sanction was appropriate. In its judgment the court said that the same approach applies equally to restoration. The court agreed 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 although did not agree that there is a bright line as between sanction and restoration whereby a different balancing act may be appropriate. Although certain features may carry different weight at the date of erasure of a doctor from the register from that at the time of his or her application to be restored to the register, 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 practise. The tribunal is required, by statute, to have regard to the over-arching objectives specified in section 1 (1B) of the Medical Act 1983. In the instant case, the tribunal 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.

***General Medical Council v. Chandra (No 2)* [2019] EWCA Civ 236**

In a short addendum judgment dated 26 February 2019, King LJ (with whom McCombe and Flaux LJJ agreed) said that the matter should be remitted to the original tribunal for consideration, but that pending the hearing Dr C should be permitted to continue in practice. Section 40A(6)(d) of the 1983 Act provides that on an appeal under section 40A, the court may remit the case to the MPTS for them to arrange for a tribunal to dispose of the case in accordance with the directions of the court. The judgment of the court was that in the light of section 40A(6), Dr C should be permitted to continue to practice and for the matter to be remitted to the tribunal for reconsideration of the case in the light of the judgment of the court. It is not necessary for their to be a quashing order of the original decision of the tribunal before an order was made for remission with directions under section 40A(6)(d). However, the decision of the Administrative Court should be quashed. This leaves the original order of the tribunal in place, but subject to the direction of the court that the matter be remitted for reconsideration.

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Request for Comments and Contributions

We would welcome any comments on the Quarterly Bulletin and would also appreciate any contributions for inclusion in future editions. Please contact either of the joint editors with your suggestions. The joint editors are:

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