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[2021] EWHC 3620 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
(SITTING AT MANCHESTER)

No. CO-3812-2021

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

Wednesday, 1 December 2021
Monday, 6 December 2021

Before:

HIS HONOUR JUDGE PEARCE
(Sitting as a Judge of the High Court)

B E T W E E N :

GENERAL MEDICAL COUNCIL — Claimant

- and -

HELEN WEBBERLEY — Defendant

MS K JOHNSON (on 1 December 2021) and MS L. BARBOUR (on 6 December 2021) (instructed by Legal Services Department) appeared on behalf of the Claimant.

MR T. BULEY QC (on both 1 and 6 December 2021) (instructed by Gunnercooke LLP) appeared on behalf of the Defendant.

J U D G M E N T

(via Microsoft Teams)

JUDGE PEARCE:

1 This is my judgment on the claimant's application.

2 The claimant is the body charged with responsibility for the regulation of the medical profession pursuant to the Medical Act 1983 ("the Act"). The defendant is a doctor whose registration with the claimant is currently suspended pursuant to an interim order. That order is due to expire tomorrow, 7 December 2021. The claimant seeks to extend the period of suspension by a period of eight months. The defendant opposes that application.

3 The application is supported by a witness statement from Mr Lewis John Stubbs dated 5 November 2021. In opposition to the application, the defendant relies upon her own statement dated 29 November 2021. Counsel for the claimant, who was instructed last week, Ms Kathryn Johnson, provided a skeleton argument dated 26 November. 2021 Counsel for the defendant for both then and today, Mr Buley QC, provided a skeleton argument dated 29 November 2021. Those two counsel appeared before me last Wednesday 1 December 2021. For reasons that I shall turn to, I adjourned matters to today.

4 As Ms Johnson made clear last Wednesday, she could not attend today and in her place Ms Barbour of counsel attends. She has provided submissions of today's date. Mr Buley QC attends today again on behalf of the doctor, he having provided further

written submissions dated last Friday 3 December 2021. I have heard further oral submissions from Ms Barbour and Mr Buley today.

5 The statutory scheme of the Medical Act 1983 provides, amongst other things, in s.1 that the overarching objective of the defendant in exercising its functions is the protection of the public. By s.1(1B) it is provided that the pursuit by the General Medical Council of their overarching objective involves the pursuit of the following objectives:

> "(a) to protect, promote and maintain the health, safety and well-being of the public,
> (b) to promote and maintain public confidence in the medical profession, and
> (c) to promote and maintain proper professional standards and conduct for members of that profession."

6 Part IV of the Medical Act 1983 deals with the powers and duties of the General Medical Council relating to the regulation of doctors' fitness to practise. Section 35C provides that where an allegation is made to the claimant against a doctor that their fitness to practise is impaired, the claimant's investigation committee should investigate the allegation and decide whether it should be considered by a relevant Medical Practitioners Tribunal. Further, if the investigation committee is of the opinion that tribunal should consider whether an order for interim suspension or interim conditional regulation under s.41A of the Act should be made, then the committee should refer the matter to the relevant tribunal, usually the Interim Orders Tribunal.

7 Section 41A of the Act, dealing with the making of interim orders, provides that if an Interim Orders Tribunal is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of a fully registered person for that person's registration to be suspended or to be made subject to conditions, then the

Tribunal may make an interim suspension order or an order for Interim Conditional Regulation.

8 The Tribunal is under an obligation to review such an order not less than every six months and the order that it may make may not exceed eighteen months in length. Beyond the eighteen-month period, or indeed in appropriate cases prior to that, the claimant may apply to the High Court for an interim order and the court may extend for a further period of up to twelve months at a time.

9 Section 41A(10) provides that:

> "Where an order has effect under any provision of this section, the relevant court may -
>
> (a) in the case of an interim suspension order, terminate the suspension;
> (b) in the case of an order for interim conditional registration, revoke or vary any condition imposed by the order;
> (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made..."

10 That slightly awkward wording means this, that on an application such as this to extend an interim order of suspension the court may only either make no order, make the order sought by the claimant, or make a shorter period of suspension. It may not substitute a conditional registration order.

11 In the case of *General Medical Council v Kor* [2011] EWHC 2825, HHJ Pelling QC said this of the scheme for the making of interim orders:

> "The scheme of the section is clear. It provides a mechanism by which the GMC may make interim orders for protective purposes until the practitioner concerned can be brought before a Fitness to Practise Panel. It is, as I have said, not a substitute for a final decision or the imposition of a sanction by a Fitness to Practise Panel and it is clear

> from the scheme contained in section 41A that Parliament was alert to the possibility of injustice if interim orders were permitted to continue indefinitely or even for an over-lengthy period. It was for that reason that the statute prescribes a maximum length of time for which an interim order can apply. It is also clear that Parliament recognised that whilst eighteen months ought to be a sufficient period within which a practitioner could be brought before a Fitness to Practise Panel, there might be cases where that was not so. It was for that reason that Parliament inserted a saving provision which enabled the GMC to apply to the court for an extension and why the question whether, and if so for how long, an extension ought to be granted is left to the discretion of the court to be exercised in accordance with the principles I have already identified."

With respect, I agree.

12 The principles to be applied in the exercise by the court of the power contained in s.41A were definitely considered by the Court of Appeal in *General Medical Council v Hiew* [2007] EWCA Civ. 369 ("*Hiew*"). Arden LJ (as she then was) gave clear guidance at paras.26-33 of the judgment. That guidance is well summarised by Ms Johnson in her skeleton argument as follows:

> "(a) the court acts as primary decision maker and has the power to decide whether to grant an extension for the period sought, for a lesser term, or not at all;
> (b) the criteria are the same as for the original interim order and means that the court may take into account:
>
> i. the gravity of the allegation;
> ii. the nature of the evidence relied upon;
> iii. the risk to patients and/or the public interest if the Defendant were permitted to practise without restrictions on their registration; and
> iv. the reasons for the extension requested;
>
> (c) the onus on satisfying the court that the criteria is met falls upon the Claimant to the civil standard of proof;
> (d) the court does not have the power to determine whether an interim order should have been made in the first instance; and
> (e) it is not the function of the court to make findings of primary fact about the events which led to the order, or to consider the merits of the case for the order."

13 Mr Buley QC quite rightly draws my attention to two particular paragraphs within the judgment of Arden LJ. First of all, at [28] she cites the following:

> "Section 41A(7) does not set out the criteria for the exercise by the court of its power under that subsection in any given case. In my judgment, the criteria must be the same as for the original interim order under section 41A(1), namely the protection of the public, the public interest or the practitioner's own interests. This means, as Mr Englehart QC, for the GMC, submits, that the court can take into account such matters as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued."

It is that last sentence that Mr Buley particularly seeks to underline in making his submission as to the appropriate analysis on the facts of this case.

14 Second, conceding, as Mr Buley must do, that the court is not a primary finder of fact, he reminds me specifically of what Arden LJ said at [33]:

> "In this case, the decision of the court is simply that there should be an extension of the period of suspension. The court is not expressing any view on the merits of the case against the medical practitioner. In those circumstances, the function of the court is to ascertain whether the allegations made against the medical practitioner, rather than their truth or falsity, justify the prolongation of the suspension. In general, it need not look beyond the allegations."

Again, it is that final sentence of the passage that I have read upon which Mr Buley QC places emphasis. In general, the court need not look beyond the allegations, but that does not mean that the court should not look at all beyond them.

15 Mr Buley has also drawn my attention to paragraph 29 of the judgment of Arden LJ in which she says of the evidence in support of the application for an interim order brought by the General Medical Council that:

> "The witness statement should fairly explain in summary but as a self-standing document the GMC's reasons for the application for an extension."

16 I was addressed on the issue of delay during submissions and reference was made to the decision of the Court of Appeal in *NatWest Markets Plc v Bilta (UK) Ltd. & Others* [2021] EWCA Civ. 680 ("*NatWest v Bilta*"). That was a case in which judgment was handed down some nineteen months after the judge had heard closing submissions. At [44]-[45] the Court of Appeal had this to say:

> "As Sir Geoffrey Vos, then the Chancellor of the High Court, emphasised in the more recent case of *Bank St Petersburg v Arkhangelsky* [2020] EWCA Civ. 408 ["*Arkhangelsky*"], the general, albeit unwritten, rule is that a judgment should be delivered within 3 months of the hearing. That rule should be adhered to even in long and complex cases because, as he put it at [84]:
>
>> 'Justice delayed is justice denied. The parties to civil and particularly commercial litigation are entitled to receive their judgments within a reasonably short period of time. That period should not be longer than three months. As has been repeatedly said any other approach will lead to a loss of public and business confidence in our justice system.'
>
> We respectfully agree. A delay of the magnitude in the present case, whatever the explanation may be, is plainly inexcusable. It should not have happened and should not have been allowed to happen, particularly in a case where there were allegations of dishonesty, and the reputations and future employment prospects of the individuals concerned were at stake. Nevertheless, it is quite clear from the authorities that delay alone will be insufficient to afford a ground for setting a judgment aside. However, the delay will be an important factor to be taken into account when an appellate court is considering the trial judge's findings and treatment of the evidence, and the appellate court must exercise special care in reviewing the evidence, the judge's treatment of that evidence, his findings of fact and his reasoning."

17 I take from that passage in *NatWest v Bilta* as being of relevance to the hearing before me the need for a judgment to be delivered within a short period of time in particular where issues of dishonesty arise and/or where a person's reputation and future employment prospects may turn on how quickly judgment is handed down. Mr Buley, in his written

submissions, raised the issue as to whether the kind of delay that is arising in this case may amount to an infringement of the doctor's human rights. I make no comment on that point. As he says, that is a matter for another day, but I note in passing that mere delay is unlikely to be sufficient to justify an interference by an appellate court with a decision of a lower court or, equally one might suppose, a tribunal such as the Medical Practitioners Tribunal.

18 Turning to the procedural history of this case, the allegations against the doctor led to a hearing before the Medical Practitioners Tribunal. That hearing commenced on 26 July 2021. It was listed for fifty-five days. During the course of the hearing, submissions were made pursuant to regulation 17 of the General Medical Council Fitness to Practise Rules 2004 as to whether the evidence was sufficient to support some of the allegations being made. Following that submission, certain of the allegations against the doctor were withdrawn.

19 On 15 August 2021, the Medical Practitioners Tribunal adjourned part heard in order to determine issues on the first stage of the process before it, the so-called fact-finding stage. The Medical Practitioners Tribunal Service, an independent arm of the claimant before me, has said that the Tribunal will convene in January 2022 for four days and will deliver its judgment in April 2022.

20 Subject to those findings of fact, and it ought to be noted in passing that in small part the allegations against the doctor are admitted so that in any event there will be findings of fact before the Tribunal that will need further consideration, the Tribunal will need to go on to consider whether the doctor's fitness to practise is impaired and what, if any, order is appropriate in respect of her registration in consequence of any such impairment.

21 Mr Buley on behalf of his client expresses the fear that the determination of this case before the Medical Practitioners Tribunal may not be complete until 2023. I share that concern, although I share also the hope and aspiration raised last Wednesday that things should not take so long to reach a conclusion.

22 The period of eight months sought by way of extension of the current interim order by the claimant is intended to cover the period until the determination of stage 1, the fact-finding stage, is handed down, with a further period, as I understand it, to allow any consequent application to extend an interim order that may be necessary to be made. It does not appear likely that the period of eight months extension sought would take this case through to conclusion if there were adverse findings of fact for the doctor and a finding of impairment consequent upon those.

23 During the course of this hearing, counsel for the doctor proffered undertakings which he contended should be sufficient to satisfy the court that the order of suspension need not be extended. Those proposed undertakings are considered in further detail below. The primary submission on behalf of the doctor is that the claimant cannot make out the justification for an extension at all pursuant to the criteria in *Hiew*. However, his secondary submission is that even if the claimant might in principle be able to make out a good argument for an extension, that in fact an extension would be disproportionate given the undertakings proffered by the doctor.

24 In response to that submission last week, Ms Johnson for the General Medical Council submitted that there were circumstances in which the giving of an undertaking might be effective to regulate a doctor's practise pending the matter coming back before the Tribunal and raised the possibility that proceedings before an interim tribunal might be reconvened

in order to consider the situation. I was satisfied that this was a position that merited further investigation. It was for that reason that I adjourned the hearing last Wednesday in order to allow further submissions to be made.

25 Turning then to the detail of the case against the doctor. Dr Webberley is a general practitioner with a special interest in gender dysphoria. In December 2016, the General Medical Council received a complaint from Professor Peter Hindmarsh, the paediatric endocrinologist at University College London Hospitals NHS Foundation Trust. That complaint related to the defendant's management of the induction of puberty in a prepubertal patient by the prescription of testosterone.

26 Shortly thereafter, the claimant was informed by the Care Quality Commission that it had suspended a digital provider operated by a company associated with the defendant due to the allegations of inappropriate prescribing.

27 The claimant received a number of pieces of information which, to a greater or lesser extent, caused concern in respect of the defendant's practice. That material is fully set out in the witness statement of Mr Stubbs, which it is not necessary for me to repeat here and is, if I may say so, well-summarised by Ms Johnson in her skeleton argument at paragraph 6.

28 In the event, not all of those concerns have been laid before the Fitness to Practise Tribunal that has been investigating matters relating to the doctor, but those that have been can clearly be seen within the document in the bundle before me that records allegations relating to the doctor, and in particular whether those allegations were withdrawn following the rule 17 submission.

29 They can be broken down into ten areas. The first is the treatment of patient A. During the course of submissions, Mr Buley QC said that patient A was a female to male transgender patient who had been referred to the defendant at age twelve. The defendant prescribed testosterone which, in this context, may properly be described as a gender affirming or gender altering treatment. As Mr Buley put it:

> "The high point of this case is that the prescription of testosterone is necessarily inappropriate for a twelve-year-old."

30 I note in passing in respect of patient A that he gave evidence at the Tribunal hearing in support of the doctor and that he said of the treatment that she had prescribed that it was of critical value to him and in essence probably lifesaving.

31 The second area of allegations relate to patient B. In respect of this patient, Mr Buley again said that the patient was a female to male transgender patient who again was prescribed testosterone. The allegations of inappropriateness can be seen from the so-called charge sheet. The difference between patient B and patient A is that patient B was aged over sixteen at the time. This, says Mr Buley, on the face of it makes it a less serious allegation.

32 The third area related to patient C. Mr Buley told me that patient C was under the age of sixteen but that he had been prescribed not testosterone but rather puberty blockers, that being a less invasive form of treatment. Again therefore, said Mr Buley, that necessarily was a less serious allegation than that in relation to patient A.

33 None of the other areas of the treatment and/or practise of the doctor that was criticised was specifically put under headings that named patients, although it is right to say that some of those allegations do directly relate to patient treatment.

34 The fourth area related to the operation of a company called Doctor Matt Limited. Again the allegations related to prescriptions to patients who were anonymised as patient D and patient E respectively.

35 The fifth area was an alleged inaccurate representation to the Interim Orders Tribunal as to the doctor's membership of the Royal College of General Practitioners.

36 The sixth area related to the completion and signing of a Work Details Form provided to a pharmacy.

37 The seventh area was that of a failure allegedly to notify a pharmacy of her suspension from the Medical Performers List.

38 The eighth area related to an allegation essentially that the doctor repeatedly frustrated attempts by the Aneurin Bevan University Health Board to carry out a review into her prescribing practises.

39 The ninth area related to involvement in a company called GenderGP.

40 The tenth area related to the management of an independent medical agency without being registered under the Care Standard Act 2000. This is an area where admissions were made based upon the conviction before the Merthyr Tydfil Magistrates' Court in respect of that allegation.

41 In respect of those ten areas within the so-called charge sheet, it should be noted, first of all, that those relating to the submission of the Work Details Form were withdrawn after a rule 17 submission. It is noted, as I have indicated already, that the allegations relating to the managing of an independent medical agency without being registered were admitted.

42 I note in passing that the fifth and seventh areas that I referred to, the alleged misrepresentation as to membership of the Royal College of General Practitioners and the failure to declare suspension from the Medical Performers List involve allegations of dishonesty.

43 Finally, I note in respect of those allegations that the allegation relating to GenderGP seems now to be a freestanding disputed fact as to whether the doctor operated and controlled GenderGP, albeit that there does not seem to be any separate allegation that acts were caried out by or on behalf of GenderGP which themselves were inappropriate, or whether those acts were those of the doctor herself or anyone else.

44 As I have indicated already, the allegations before the Fitness to Practise Tribunal are not the same as those that were originally brought to the General Medical Council's attention. That is by no means unusual, but, for example, Mr Stubbs's witness statement refers to allegations relating to a patient who has been anonymised as patient F yet there were no allegations relating to patient F within the matters being dealt with by the Tribunal. For that reason, care is required in looking at the history as set out in the witness statement of Mr Stubbs and as summarised by Ms Johnson.

45 As Ms Johnson said, it is important for this court to know the history of matters so as to understand the complexities of investigation, but there is a difference between knowing the history of matters for that historic purpose on the one hand and on the other hand knowing what are actually live allegations that could amount to misconduct by the doctor on the other. The one should not be confused with the other.

46 In terms of relevant regulatory history, the doctor first had conditions imposed upon her registration in May 2017, that is to say slightly over four-and-a-half years ago. In November 2018, that is to say slightly over three years ago, an Interim Orders Tribunal imposed a suspension on the doctor in place of the conditions. The Interim Orders Tribunal determination at that phase stated:

> "In reaching its decision, the Tribunal has borne in mind the serious and multiple concerns raised in relation to Dr Webberley's clinical conduct, performance and probity and that further clinical concerns have been raised involving two more patients. It is noted with significant concern the new information provided that Dr Webberley has been convicted of running a medical agency without being registered with the HIW."

47 That interim order of suspension has been maintained first by the Interim Orders Tribunal and then with effect from November 2019 and since then by order of the High Court. The most recent order of the High Court was one made by consent.

48 In terms of the claimant's case in support of this allegation, I can do no better than read Mr Stubbs's witness statement at paragraphs 143 to 145 and to note how Ms Johnson put matters. Mr Stubbs says this:

> "The allegations are serious and widespread and include specific concerns about the care and treatment of a number of transgender patients. The concerns include instances of alleged inappropriate prescribing, inadequate assessment and follow up of patients and failures to follow applicable guidelines.

> During the course of its investigation the Claimant has obtained a number of expert reports from independent experts. Drs Harker and Dean in particular have opined that the Defendant's care and treatment fell seriously below the standard expected. Clearly, this raises serious and significant concerns about the safety of the Defendant's patients. Similarly, concerns were raised in the reports received from Dr Klink and Dr Kierans.
>
> The allegations made against the Defendant are serious and if substantiated directly impact on the safe provision of care. The Claimant submits that there is an ongoing risk to patient safety."

49 Ms Johnson in her written submissions adopts this and notes that the allegations relate to the alleged inappropriate treatment of young and vulnerable patients. She says:

> "It is submitted that the overall picture is of a doctor that poses a very significant risk to public safety, and that there is clear evidence that there may be impairment of the Defendant's fitness to practise which poses a real risk to members of the public and which may adversely affect the public interest; an interim order is necessary to guard against such risk. The Claimant submits that, having regard to the fact that the nature of the risk to public safety is very serious in this case, and that there are wide ranging and serious probity concern[s]..."

50 Ms Johnson goes on to say that Mr Stubbs's witness statement shows that the claimant has conducted the investigation of these matters diligently and expeditiously at all times. She accepts that investigations have been lengthy and describes it as unfortunate that the Fitness to Practise hearing was not concluded in the time allotted.

51 In her submissions, Ms Johnson dealt with certain obvious problems in the General Medical Council's case. Mr Stubbs's witness statement did not deal with the fact that there had been submissions under rule 17 that had led to allegations being withdrawn. She accepted that that was unfortunate. Indeed, it ought to be mentioned that Mr Stubbs's statement also did not deal with the fact that evidence was adduced on behalf of the defendant during the course of that hearing which questions whether the doctor's fitness to practise is impaired at all or recite that evidence.

52 The second area that Ms Johnson dealt with was the lack of explanation from the Medical Practitioners Tribunal Service to explain the reason for the delay from the hearing having been adjourned in October of this year to the date upon which it is suggested that the judgment on the first stage of the hearing will be promulgated in April of next year. She postulated various possible explanations: the effect of the pandemic and the fact of a backlog of cases; the fact that a Medical Practitioners Tribunal comprises three people, the legally qualified chair who may be a practising solicitor or barrister who has their own commitments that makes reconvening difficult, the lay member of the Tribunal who may come from any walk of life and have their own commitments, and a medical member who doubtless will have professional commitments as well.

53 Third, Ms Johnson says that there are difficulties in terms of the capacity of the Medical Practitioners Tribunal Service to convene hearings, those difficulties arising both from the physical constraints of the building and staff availability.

54 Notwithstanding any such concerns, she maintains that the seriousness of the allegations against the doctor's practise that remain live both relating to treatment and to other matters including probity render the imposition of conditions unworkable. In those circumstances, an interim order of suspension remains proportionate and necessary to meet the risks posed in the doctor's case.

55 On the question of proposed undertakings to the court, in effect substitution for an order of suspension, Ms Barbour today has made in essence three points. First, she concedes that an undertaking to the High Court has teeth. It has teeth because any breach of the undertaking potentially leads to an application to commit a person to prison. However,

she says that such an undertaking has no real effective means of being enforced because of the difficulty of investigating or policing any breach.

56 She points out that unlike an order for conditions imposed by an Interim Orders Tribunal or any other tribunal of the Medical Practitioners Tribunal Service, this is not a case where the court can realistically impose conditions relating to the supervision or monitoring of the doctor's practise. Indeed, the question of supervision or monitoring the doctor's practise is one that has created difficulty previously in considering whether an order of conditions might be appropriate.

57 In essence, it is typical when the General Medical Council is considering the appropriateness of conditions from its viewpoint that consideration be given as to how one knows whether the doctor is complying with the conditions. The answer to that is that the General Medical Council argues for conditions that involve supervision or monitoring so that the Medical Practitioners Tribunal considering whether conditions are being complied with has a ready means of knowing what in fact is going on within the doctor's practice.

58 The third point made by Ms Barbour is that if the court is concerned that the claimant is not able to make out the length of suspension for which it seeks, whether because of problems relating to delays in these proceedings or otherwise, that the court should consider a shorter period of suspension. That would allow for the matter to be referred back to an Interim Orders Tribunal which further could consider matters including the workability of any conditions that it considered to be enforceable and proportionate.

59 On behalf of the defendant, Mr Buley QC submits that the allegations relating to the three patients, A, B and C, are by far the most serious part of this case and indeed are the only

part of the case which could justify erasure of the doctor's registration in due course and/or could justify an interim order for suspension of the doctor's registration. Of these, he says that patient A is the most serious, for reasons that I have identified already. Even then, he draws my attention to the evidence adduced on behalf of the doctor which is referred to in the witness bundle. In particular, he draws my attention to the report from Dr Shumer and from Dr Bourman, very particularly in Dr Bourman's case the report relating to patient A. I ought, in order to do justice to that submission, to read out paragraph 6 of Dr Bourman's conclusions relating to patient A:

> "Dr Webberley has acted in the best interest of the patient putting the patient at the heart of her clinical practice - preventing years of suffering. On the balance of probabilities, Dr Webberley's treatment with testosterone of Patient A was proportionate and has followed the principles of beneficence and non-maleficence, and above all followed the principle of justice - listening to young trans people, whose voices often remain unheard and get overshadowed by medical paternalism..."

60 As I indicate, Mr Buley contends that other than in respect of the treatment of patients A, B and C, the allegations against the doctor in any event could not be sufficient to justify an order for suspension or ultimate erasure even if made out. In this regard in particular, he draws my attention to what was said by the Interim Orders Tribunal in its determination of the 10 May 2017. In essence, in respect of the so-called Doctor Matt Limited allegations, those are the allegations I summarised as area 4 of the allegations earlier, that, "The threshold for an interim order was not met". It was equally dismissive about the inaccurate Work Details Form and indeed on the information currently available to it in respect of what I understand to have amounted ultimately to allegation 10.

61 He says that even serious charges do not necessarily lead to a strong public interest in maintaining suspension even if suspension was justified at one point. Suspension has to be proportionate in terms of length. This suspension is disproportionate. The doctor could

not simply return to practise even if the suspension were limited. As Dr Webberley herself points out at paragraph 62 of her witness statement, there would be other actions required before she could practise as a doctor. The continued suspension acts severely to her personal prejudice. As set out at paragraphs 60 to 61 of the witness statement, Dr Webberley says that she has been denied her livelihood:

> "...I have been unable to teach, talk at conferences, take part in medical debates, significantly contribute to research and even hold medical indemnity insurance."

62 She refers to an issue where she was on a flight, witnessed a medical emergency but did not feel confident in becoming involved given her ongoing suspension. Mr Buley draws my attention to the decisions of the High Court in *Social Work England v Micu* [2020] EWHC 3283 and *Nursing and Midwifery Council v Coombs* [2020] EWHC 2571 where judges had expressed concern about the length of suspension even in cases where the length of suspension was shorter than here and the allegations more serious.

63 Overall, he says that the balance of the public interest clearly favours allowing the doctor to begin to return to practise. He says it will only be a beginning to return to practise for the reasons that I have given.

64 If I am concerned about matters and the doctor's situation, he suggests I should consider the conditions that are proffered by the doctor. There are two groups of undertakings proffered by the doctor. The first proposal is that she undertake to follow the guidelines published by WPATH and the Endocrine Society for the care of transgender patients, compliance with such guidelines being properly monitored by an undertaking that the doctor keep a log detailing in every case where she prescribes gender affirming hormones or puberty blockers, indicating which guidelines she has followed and why, and that she undertakes to give the GMC a log of this on request.

65 The alternative is that she undertakes not to prescribe medication at all. That is a very wide and significant undertaking, but it would at least, says Mr Buley, allow the doctor to begin to return to some form of practising as a doctor.

66 I turn then to a consideration of the issues within this case. The core of the allegations against Dr Webberley relate to the alleged inappropriate treatment of young transgender patients, treatment which the claimant says does fall seriously below the standard to be expected. I note that there are differing opinions on this issue. In part, I read that passage from the report of Dr Bourman not just to show that there are different opinions on the point but also to show that there are strong feelings on this issue. As someone in my position, one cannot read passages like that, nor can one hear that patient A gave evidence at the hearing in support of Dr Webberley, without realising the high levels of distress that issues relating to gender dysphoria may cause within patients and the harmful conduct and behaviours that may be associated with such distress. The court would be inhuman if it did not note those issues but nevertheless the court must approach this issue in a dispassionate way.

67 Clearly, there are considerable differences in opinion between the defendant and indeed experts who gave evidence on her behalf and those who gave evidence on behalf of the General Medical Council as to the appropriateness of treatment. Whilst it is correct to categorise this as a difference of expert opinion, one must note that such differences do potentially carry with them serious consequences for practise. There may be two schools of thought and there may be two schools of practise upon particular issues but the mere fact that there were two schools of thought or indeed two schools of practise cannot,

without more, absolve a doctor from blame if they follow a course of practise that they should not follow.

68 I say that because doctors, as professionals, have responsibilities including as to examining their own practise and being up to date with medical knowledge and thinking.. Part of a doctor's professionalism and requirement to reflect upon their own practise includes obligations as to probity and compliance with regulatory processes. If a professional is not honest and straightforward as to their practise and if a professional does not comply with regulatory processes then if their practise is at the margin of that which is generally acceptable then they clearly may be seen as creating a risk to public safety and may be seen as acting in a way which reflects upon their fitness to practise.

69 I wish to make entirely clear that I express no view as to the correctness or otherwise of either of the opinions relied upon by the General Medical Council in support of this application or of Dr Webberley's own practise and the expressions of opinion by those who gave evidence on her behalf. However, it seems to me that looked at in the round the evidence before the court is of serious allegations against the doctor and the seriousness of those allegations is not, in my judgment, simply limited to the question of patient treatment. The associated allegations - and they are no more than allegations - relating to probity and/or cooperation with the regulatory process it seems to me feed in potentially to an assessment of the overall seriousness of the situation.

70 In considering though the overall situation, I must comment upon the witness statement of Mr Stubbs. I have referred already to what Arden LJ (as she then was) had to say in *Hiew* about the contents of a witness statement in support of an application. The General Medical Council's duty of candour requires that it bring before a court such as this considering an

application such as this not only the underlying factual matters that led to the proceedings against the doctor in the first place but also material relied upon by the doctor in defence of that allegation, in particular where that material has been adduced before a Fitness to Practise Tribunal and should include reference to the fact that allegations have not been pursued beyond a rule 17 submission.

71 For that information not to be before the court risks a court being seriously misled as to the true nature of the position in respect of the doctor. Mr Buley QC rightly said on Wednesday that the reader who did not know more would think from Mr Stubbs's witness statement and therefore from Ms Johnson's skeleton argument (which is based upon that witness statement) that those matters referred to as allegations against the doctor during the inquiry phase remained allegations against the doctor during the hearing before the Tribunal.

72 I make clear that I do not criticise Mr Stubbs for seeking to mislead but merely for the fact that what he has said, being an incomplete picture, risks being misleading. In respect of Ms Johnson, I have no doubt that her skeleton argument reflects the material that was available to her, namely the witness statement of Mr Stubbs.

73 Ms Johnson said on Wednesday that in effect - and this is a summary of what she said and is not meant to be pejorative - no harm had been done because the true position as to the nature of the allegations against the doctor had come to light. That is true, but many an application such as this is dealt with by consent and often by a doctor who is legally unrepresented and may not raise all arguments that they could do before the court. It is important that the General Medical Council discharge what seems to me properly to be described as a duty of candour by making sure that the full picture is available to the court.

74 During the course of submissions today, Ms Barbour has rightly made passing reference to the importance of maintaining confidence in the regulator as part of maintaining confidence in the medical profession. That takes me to the second issue which is that a regulator whose processes lead to considerable delays is likely itself to be accused of putting at risk the public's confidence in the medical profession.

75 In this regard, I start with the unwritten rule of three months referred to by the Master of the Rolls in *Arkhangelsky* and by the Court of Appeal in *NatWest v Bilta*. A three-month period between the close of submissions and the delivery of judgment is not intended to be a target, it is clearly intended by the Master of the Rolls to be a maximum. He spoke of cases in particular in the commercial sphere; that was the sphere with which he was concerned in the *Arkhangelsky* case. This is a different context. It is a context of a three-person tribunal whose members are not full-time judges who may have logistical difficulties in terms of reconvening and the such like.

76 In response to the suggestion that one might excuse a longer period of time between close of submissions and the handing down of judgment, a number of points can be made. First, the need for this panel to convene in order to determine the outstanding allegations against the doctor must have become predictable towards the end of the fifty-five-day period for which this original hearing was listed. From the determination of the rule 17 application, the Tribunal Service was aware that there would be a need to determine factual issues before the Tribunal could go on to consider the question of fitness to practise and/or impairment. From that stage, a properly proactive system should have been considering how that was to be achieved within a reasonable period of time.

77 In any event, some of the reasons that have been proffered before this court as to why the delay might be as long as it is going to be relates to matters which seem to be resource issues relating to staffing and/or the adequacies of the physical premises for the Tribunal Service. Those are matters which a properly operated tribunal system would have in mind when making the appropriate decisions as to the allocation of resources.

78 This is a case where the outcome of the matters that the Tribunal is considering have a significant bearing upon the practise of an individual, where issues of dishonesty are raised which call for determination within a relatively speedy period. Delay is inimical to the fair determination of such issues. In my judgment, it is simply not possible to justify a delay to April for this decision to be promulgated and certainly not possible to justify further suspension for a period of time that would cover such a delay.

79 I am told that the position of the Medical Practitioners Tribunal Service is that its judgments are always promulgated in public and that is in part the cause of the delay. That may well indeed be a statutory requirement, I make no comment upon that point, but it seems to me that it must be possible for the Tribunal Service so to manage things that a determination can be handed down in public with the doctor, lawyers with a watching brief if necessary, and members of the public and press able to attend. The delay in this case, which is suggested between the Tribunal convening to consider its determination in January but then not handing down its judgment until April is both incomprehensible and indefensible.

80 Turning back to the issue in hand then, I do not see that a suspension for the period that the General Medical Council contends for could be justified. Could a shorter period be justified? Well, in considering that, it seems to me I need to balance the seriousness of the

matters that I have raised so far with a proportionate response to those including the fact that one response is the proffering by Dr Webberley of undertakings.

81 In respect of the undertakings proposed by Dr Webberley, the first and more detailed undertakings are, it seems to me, distinctly problematic. True it is that enforcement by application to commit is clearly a significant and powerful potential driver of behaviour and therefore in that sense the conditions being offered could be said to be enforceable. However, the High Court would be in an entirely unenviable position if it were faced with an application to commit in circumstances in which there was argument over whether in fact the doctor had complied with guidelines such as the Endocrine Society guidelines that are produced to me. Ms Barbour on behalf of the General Medical Council pointed to paragraph 1.4:

> "We recommend against puberty blocking and gender affirming hormone treatment in prepubertal children with GD/gender incongruence."

82 Yet, whether a patient is in fact prepubertal is itself potentially open to argument and to interpretation. For those reasons, I do not consider that the first category of undertaking offered by the doctor could truly be said to be enforceable and workable in a realistic sense in an application such as this before the High Court.

83 I consider the alternative, that is to say of not prescribing medication at all. That is an attraction from the court's point of view because it is a clear-cut matter. It seems to me that one could not seriously have an argument as to whether any particular factual scenario amounted to the prescribing of medication. However, I bear in mind the General Medical Council's argument put before me by Ms Barbour today that although there may be significant bite if a breach were capable of being demonstrated, the court is left in a

situation in which it is not clear as to the mechanism through which any alleged breach would in fact come to light.

84 In that regard, it seems to me I have to bear in mind the fact that the allegations against the doctor include allegations relating to probity and/or compliance with a regulator. In reality, it would be possible for a doctor with unrestricted practise and with no monitoring over them to prescribe in circumstances where the regulator, the General Medical Council, might be in ignorance of that prescription.

85 In those circumstances, on balance - and I have to say it is a narrow balance - I am driven to the conclusion that some form of suspension is proportionate, but it can only be strictly limited in time. It would be one that would have been sufficient to allow the Medical Practitioners Tribunal to promulgate its decision had it complied with the time limits referred to by the Master of the Rolls in the *Arkhangelsky* case. It is one also which, it seems to me, is sufficient to allow some attempt to be made to re-refer this matter to an Interim Orders Tribunal to see whether in fact some form of restriction upon the doctor's registration that can be said to be proportionate can be conceived of, consulted upon, and considered.

86 In my judgment, the longest period that is proportionate, having regard to the delay already in this matter, is a period of three months from today's date. In those circumstances, I grant the General Medical Council's application but with a limit of three months.

87 My comments today in respect of delay as well as in respect of the contents of the witness statement of Mr Stubbs should be carefully considered by the Medical Practitioners Tribunal Service and the General Medical Council. In respect of the reasons for not

granting a more than three-month suspension, those reasons should be clearly in front of any other body, be it an Interim Orders Tribunal or the High Court, if there were any further proposed sanction in respect of the doctor's registration. It is of course not for me to pre-judge what any other body might decide in such circumstances.

CERTIFICATE

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