Neutral Citation Number: [2021] EWHC 1376 (QB)

CO/3583/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/05/2021

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between

MR ARFAN ZIA DAD

Appellant

- and -

THE GENERAL DENTAL COUNCIL

Respondent

- -
- -

Mr Anthony Metzer QC & Ms Heather Beckett (instructed by direct access) for the **Appellant**
Ms Eloise Power (instructed by GDC Legal Dept) for the **Respondent**

Hearing date: 6th May 2021

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website.

The date and time for hand-down is deemed to be 10:30 am 25 May 2021.

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

Mrs Justice Collins Rice:

Introduction

1. Mr Dad appeals (as of right), under section 29(1)(b) of the Dentists Act 1984, against a decision of 11th September 2020 by a Professional Conduct Committee (PCC) of the General Dental Council (GDC). The PCC ordered erasure of Mr Dad's name from the Dentists' Register, and immediate suspension until the coming into force of the erasure.

2. Mr Dad says the decision is wrong, and unjust because of serious procedural irregularity (CPR 52.21(3)). His appeal is by way of re-hearing (paragraph 19(2) of Practice Direction 52D).

Historical Background

3. Mr Dad's regulatory history is eventful. He was removed from the Dentists' Register in 2006 for non-payment of the annual fee. He says this was a deliberate decision he took. He was being investigated at the time by National Services Scotland Counter Fraud Services (NSS CFS) over a business rates fraud, and faced criminal proceedings. He decided that by coming off the Register he would make space to sort out his problems without having to inform the GDC about the investigation. He had always planned to re-register in due course.

4. He did apply, successfully, for restoration to the Register in February 2007. But the criminal proceedings had not by then concluded, and he did not declare them in his application. He was convicted of fraud offences in October 2007. His name was subsequently erased from the Register in 2010, on the grounds of the convictions and his failure to declare. He had also failed to declare some earlier road traffic convictions from 1997-98 (he had been subject to past regulatory investigation and proceedings in relation to those, but a sanction of 12 months' suspension was subsequently overturned on appeal and the case closed with no further sanction).

5. He applied to be restored again to the Register on 30th January 2018. He declared his convictions, but not his regulatory history. However, in or around November 2018 Mr Dad was made aware that he was subject to another NSS CFS investigation, with a view to criminal proceedings, in relation to the submission and reimbursement of non-domestic rates by The Dental Surgery Ltd, a company of which he had been director. He did not update the information in his application for restoration to reflect the fact that he was being investigated.

6. His restoration hearing took place in June 2019. He was restored to the Register with conditions imposed on his practice. Because of the lapse of time since he had applied at the beginning of 2018, he was then asked to update his details by resubmitting a further restoration application form. He did so on 19th June. He declared his convictions and his full regulatory history. He did not declare the still current NSS CFS investigation. The GDC were notified of it shortly afterwards. They brought misconduct proceedings against him, charging him with failure to declare. It is these proceedings which are the subject matter of the present appeal.

The Application for Restoration Form

7. Section 3 of the GDC form Mr Dad filled in to apply for restoration – in 2018 and again in 2019 – has a section headed '*Health and self-declaration*'. A number of questions follow. They begin:

> 1. Have you been convicted of a criminal offence and/or cautioned (other than a protected conviction or caution) and/or are you currently the subject of any police investigations which might lead to a conviction or a caution in the UK or any other country?
>
> ☐Yes ☐No
>
> If yes, please give details on a separate sheet, including the approximate date, offence, authority which dealt with the offence and any circumstances that the Council should be aware of in consideration of your application.
>
> 2. To the best of your knowledge, have you been or are you currently subject to any proceedings or investigations by a regulatory or licensing body in the UK or any other country, including student fitness to practise?
>
> ☐Yes ☐No
>
> If yes, please give details on a separate sheet of the proceedings undertaken or contemplated, including the approximate date of the proceedings, country where proceedings were undertaken and the name and address of the licensing or regulatory body concerned.

8. In the 2018 form, Mr Dad had ticked the 'yes' box to question 1 and the 'no' box to question 2. In the 2019 form, he ticked the 'yes' box to both. He gave historical details on a separate sheet, but did not mention the NSS CFS investigation.

9. Section 3 of the form ends with the following declaration:

> Declaration by all applicants.

> I understand that the GDC may contact my character referee and any of the health practitioners whose names have been provided.
>
> I acknowledge that my professional registration will be at risk if I knowingly make a false statement in this declaration and undertaking, or if I act in any way which is incompatible with it. I further acknowledge and accept that should a question as to whether or not I have acted in accordance with this declaration and undertaking arise, it may be used by the GDC in fitness to practise proceedings against me.
>
> I will advise the GDC of any future criminal proceedings/police investigations, convictions or cautions and any future health conditions which arise which affect the safety of patients I treat and/or those they work with, and/or my ability to do my job safely.
>
> I have read and understand the General Dental Council's standards and health self-certification guidance and I will adhere to this guidance.

Mr Dad ticked a box at the end of this declaration and signed and dated it.

10. Section 8 of the form is headed '*Guidance notes'*. There is a checklist at the front of the form with boxes to tick for each section completed, including the guidance notes (Mr Dad ticked none of these boxes on his first application, but all of them on his second). The guidance notes include the following:

> The health and self-declaration
>
> This declaration should be completed and signed by the applicant. Because dentists are exempt from the UK Rehabilitation of Offenders Act 1974, you must tell us about any previous or pending prosecutions or convictions, including those considered "spent" under this Act (other than a protected conviction or caution). Protected convictions and cautions are defined in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. We also need to know if you have been the subject of any professional proceedings in the past, or any are being contemplated, by a regulatory or licensing body in the UK or any other country. You will also need to advise the GDC of any future criminal proceedings/police investigations, convictions or cautions. We will treat the information you provide in confidence. We will only use it to assess your fitness for registration now and in the future and will only refuse registration on the basis of this information if we are satisfied about your fitness to practise and/or good character. If you make a false statement, we may refuse your application for registration and/or prosecute you and/or charge you with professional misconduct.

The PCC Proceedings

11. The charge Mr Dad faced before the PCC was:

> That being registered as a dentist:
>
> 1. On 24th June 2019, the General Dental Council received an application for your restoration to the Dentists' Register, dated 19th June and signed by you.
>
> 2. As part of the application at allegation 1 above, you did not declare that you were currently subject to an investigation by NHS National Services Scotland Counter Fraud Services.
>
> 3. Your conduct in relation to allegation 2 above was:
>
>   (a) misleading;
>
>   (b) dishonest.
>
> And that by reason of the facts alleged, your fitness to practise is impaired by reason of your misconduct.

12. The PCC heard his case from 8th-11th September 2020. At the close of the GDC's case against him, Mr Dad's Counsel – Ms Beckett, who, led by Mr Metzer, also represents him in the present appeal – submitted that he had no case to answer (NCA). This was put on the basis that the PCC had been given no sufficient material on which it could properly conclude that Mr Dad's failure to declare the NSS CFS investigation was either misleading or dishonest. That was because, on a proper interpretation of his application form, it did not require him to declare it in the first place. The NSS CFS investigation was neither a 'police investigation' nor 'proceedings or investigations by a regulatory or licensing body' and the PCC had been given no basis on which it could properly conclude that it was.

13. The Committee heard submissions on NCA and received Legal Adviser advice on how to approach a NCA application, and the questions it should ask itself in this case in particular. It retired to consider the application and gave its ruling the following morning. It rejected the application of NCA, giving the following reasons:

> The Committee next considered whether you were under a duty to disclose that investigation. As part of their considerations, the Committee noted that there was no dispute as to the meaning of question one on the form and that you answered this correctly. It then considered the meaning of the words 'regulatory body' and what that would encompass. It also noted that it was important to consider what information the GDC were trying to capture on this form as cited in the case of Pinner v Everett. When considering the meaning of the words 'regulatory body' the Committee considered the role of the Counter Fraud Service and

> noted that it undertook investigations on behalf of the NHS, and had an input into the regulatory functions of the NHS. The Committee was, therefore, satisfied that the Counter Fraud Service should be considered as a regulatory body for the purposes of question 2 on the declaration form. Even if it was wrong about this, the Committee was satisfied that the Counter Fraud Service is part of the NHS in Scotland and that the NHS certainly carries out regulatory functions. Accordingly, the Counter Fraud Service, as part of the NHS in Scotland, does come within the parameters of question 2 on the restoration form. When considering the intentions of the GDC, the Committee noted that although question 2 was not worded as clearly as it might be, it was apparent by the broad way in which it was drafted, that the GDC's intentions had been for question 2 to capture any investigations that might not come within question 1. The Committee considered that it would be perverse that the GDC would not want to be made aware of a criminal investigation carried out by NHS Counter Fraud Services involving someone applying to be restored to the register. Accordingly, the Committee does not accede to the No Case to Answer application made by Ms Beckett.

14. The hearing continued. The PCC procedure is composed of a number of stages. The first is making findings of fact. In approaching its fact-finding, the PCC directed itself to submissions and evidence, and standard and burden of proof. It found all three heads of charge proved. It split the second – failure to declare – into three questions: whether Mr Dad was subject to the investigation at the time; whether he was under a duty to declare it on his application form; and whether he declared it.

15. On the question of the duty to declare, the PCC found as follows:

> …the Committee considered that it had already determined in its decision on Ms. Beckett's application of no case to answer, that NHS National Services Scotland Counter Fraud Services was part of the NHS and therefore performed some form of regulatory function. It could therefore be classed as a regulatory body, as mentioned in question 2 of that form. The Committee also has sight of documents contained within your defence bundle. Specifically, it noted the organisational chart titled 'Current Organisation of the NHS in Scotland' contained within the document 'FPICE Briefing, the National Health Service in Scotland (9th December 2016)'. On that chart, the Counter Fraud Service is included under the heading of 'National Services Scotland'. The Committee also had sight of the document titled 'NHS Improvement. Licensing Application Guidance for Independent Providers (January 2019)', from which it seems clear by the title itself that the NHS is also a licensing body."

16. On the third head of charge – misleading and dishonest – the PCC found as fact that Mr Dad was aware of the investigation and had no genuine belief that he did not need to declare it. It took into account his regulatory history, the evidence that he had given his

mind to the choice of declaring or not, and his failure to take the 'obvious' course of consulting the GDC if in any doubt. It found that he knew he had to declare, and meant to deceive the GDC into believing that he was not under investigation by NSS CFS.

17. After the fact-finding stage comes the determination of whether the facts as found amount to misconduct. The PCC took into account the GDC's *Standards for the Dental Team*, directing itself in particular to the requirement that dentists '*must be honest and act with integrity*' and justify patients' and the public's trust in them and in the profession as a whole. It went on to find misconduct proved, and Mr Dad's fitness to practise currently impaired as a result, and proceeded to sanction him.

Mr Dad's Appeal

18. This appeal challenges from a number of directions. It makes a procedural challenge: it says the PCC was obliged, on reviewing the GDC's case, to conclude that Mr Dad had no case to answer, and the decision to continue was a serious procedural irregularity which rendered the entire process unfair. The PCC also did not give sufficient reasons for rejecting the NCA application. It makes a substantive challenge: it says the decision made at the NCA stage that Mr Dad was under a duty to declare the NSS CFS investigation – and which also formed a part of the PCC's final decision – was wrong, as a matter of the proper interpretation of the form.

19. The focus of these grounds is the PCC's alleged failure to recognise that Mr Dad was not under any duty to declare the NSS CFS investigation. Mr Dad makes no challenge otherwise to the PCC's findings of fact. It is accepted for the purposes of this appeal that he was subject to the investigation and knew he was. It is accepted that *if* he were under a duty to declare *then* the finding that his failure to do so was misleading and dishonest would have been justified. But it is said that however much Mr Dad may be morally censured for his subjective state of mind – even if he *thought* he was under a duty to declare the investigation, which he then deliberately breached with a view to deception – it is only if he were *actually*, objectively, under a duty to declare that the PCC could have found the charge proved. And he was not.

Analysis

(i) General Interpretative Approach

20. The parties agree that the duty to declare must be sought in the application form itself. I am told there is no free-standing duty, derivable from any applicable professional code, to declare an investigation like this to the GDC, nor any other external source for what must be declared on a restoration application. It is all a matter of interpreting the form, and what it required Mr Dad to declare. A narrow and a broad interpretation are in contention.

21. The narrow interpretation goes like this. The NSS CFS investigation was not a 'police investigation' within question 1, because the NSS CFS are not the police. (The parties had agreed on that in front of the PCC, and the PCC observed that Mr Dad had answered question 1 'correctly'.) The only issue then is the correct interpretation of question 2. That is addressed to relevant *professional* regulatory proceedings and investigations ('licensing' being an aspect of professional regulation in the health and social care sector). The reference to 'student fitness to practise' is a category indicator to that

effect. So the NSS CFS is not a 'regulatory or licensing body', either by itself or as an emanation of the NHS in Scotland. It does revenue protection and law enforcement work, investigating frauds on the NHS by employees or by the public. Whether or not the NHS has other regulatory or licensing functions is not the point. Question 2 requires applicants to declare their professional regulatory history. Nothing else has to be declared. Had the GDC wanted to make other declarations obligatory, it could have asked for them. It did not, and applicants are entitled to rely on that.

22. The broad interpretation goes like this. The form, and the sequence of questions, has to be read as a whole and in context. The role of the GDC in considering a restoration application, keeping in mind its statutory 'over-arching objective' to protect the public, is to assess fitness to practise, including looking at why an applicant is not already on the Register. The form, and the duty to declare, must therefore be given a sufficiently purposive and capacious interpretation to include the NSS CPS investigation. It was a criminal investigation, for the NHS, into the activities of a health professional in the administrative conduct of his practice. It was highly relevant to the application for restoration, both in principle and especially given Mr Dad's regulatory history and the reasons he was off the Register in the first place. He was under a duty to declare it.

23. Which of these is the better approach depends on clarity about what *kind* of question is being addressed here. The PCC's Legal Adviser characterised it as '*a question of interpretation and not law*'. I respectfully agree. I was taken, as was the PCC, to *Pinner v Everett [1969] 1 WLR 1266* for the proposition that the 'natural and ordinary' meaning of words should be the touchstone, and that that points to the narrower approach here: it is '*wrong and dangerous*' for tribunals to take it upon themselves to fill in drafting gaps or fill out meanings, when sense can be made of the words actually chosen. There are, however, two distinct caveats.

24. First, *Pinner v Everett* and the other authorities to which I was taken are about *statutory* interpretation. The difference between a statute and a GDC application form is one of kind, not degree. The meaning of statutory text *is* a question of law. Profound constitutional principles are engaged as to the respective roles of Parliament and the courts. Extensive and subtle jurisprudence has been developed to fine-tune the balance needed between the simultaneous demands of both legal certainty and fact-sensitive fairness on the one hand, and deference to the democratic mandate of the legislature on the other. None of this applies to the present issue other than by analogy, and that analogy must be treated carefully and not pushed too far.

25. Second, there is no absolute, abstract 'ordinary and natural' meaning of any piece of language taken in isolation. Context matters. The issue is what the right and relevant context properly is, the factors to be taken into account and the weight to be given to them. There is also an issue about how far the factual circumstances of a particular case are any part of the approach – that is, whether the 'question of interpretation' is a universal exercise with a single answer, or whether it is to any degree fact-sensitive.

26. The audience to which this form is addressed is limited: dentists not on the Register who wish to be restored. The context is restoration procedure. Two perspectives are involved. First, the GDC, with its duty to protect the public, must elicit the information it needs to make a start on assessing the merits of the application and identifying points to follow up. So the form asks about: registration details and identity; character and identity referees; professional insurance/indemnity arrangements; language

proficiency; CPD compliance; arrangements for paying annual fees; health; and, under the heading of 'self-declaration', past, present and future 'criminal proceedings/police investigations' and regulatory matters.

27. If the intention of the GDC as author of the form is at all analogous to the intention of Parliament as author of statute law, then it will be not only a permissible but a necessary aid to interpretation - *in an appropriate case*. The PCC certainly thought this was such a case. It had no hesitation in either discerning or applying the intention of the GDC. It was 'obvious' and, since the form *could* be interpreted to give effect to that intention, any other interpretation would be 'perverse'.

28. But secondly there is the applicant's perspective. It is the applicant who has all the information and must complete the form. A lot is potentially at stake. Applicants do not want to jeopardise a restoration application with adverse material unless they have to. Then again, the consequences of not declaring what must be declared are serious, particularly in relation to section 3 as the final declaration makes clear. It is right to expect individual applicants to focus carefully and with precision on exactly what is asked for: they are both required and entitled to do so. The form should be capable of being taken fairly at its word.

29. In my view, both of these perspectives – the intention of the GDC and fairness to the applicant – are proper aids to the interpretation of a GDC application form where a genuine question arises. Important public policy considerations are involved in both. But they pull in different directions and the issue is how they are to be reconciled. There is also an issue about when a genuine question of interpretation does arise.

(ii) Interpreting the Duty to Declare

30. The risks of misinterpreting the duty are asymmetrical. The risks of under-declaration are substantial – to an applicant, to the proper administration of the application process, and hence to the public if the GDC does not perform its gatekeeper function properly. Applicants are deliberately placed in regulatory jeopardy of under-declaration. They have the knowledge demanded by the form and essential to the process. The exercise must be undertaken seriously. There are commensurate sanctions for failure to do so.

31. The converse risks of over-declaration are relatively minor. There is administrative inconvenience to the GDC in being given irrelevant material. There is some risk to the applicant of disclosing adverse material unnecessarily, but it should not be overstated. Against the poor impression created by adverse material can be set the good impression created by conscientious candour. Restoration procedure is engineered to ensure an applicant is not prejudiced by irrelevant history.

32. The asymmetry of the risks of misinterpretation, from the point of view of *both* parties, points to the better interpretative approach being not forensic minimalism, but 'if in doubt, declare'. An applicant can minimise doubt by checking with the GDC what is wanted: 'if in doubt, ask'. Mr Metzer objected that asking was tantamount to making the actual adverse declaration, but a query raised hypothetically on a helpline is not the same as a signed declaration on an application form.

33. However, the crucial prior question is whether there *was* any doubt, or risk of misinterpreting the form, here. The bullseye of the GDC's target is plain: convictions,

prosecutions, police investigations, professional regulatory history must certainly be declared. But are there outer rings on the target where interpretative effort is needed, or is the duty to declare otherwise definitively excluded?

34. It would be unusual to find binary certainty in a questionnaire like this, with no space left for an evaluative decision. It is quite a feat of drafting to achieve such a thing while ensuring that a form remains fit for everyday purpose. So police investigations are the paradigm, but criminal investigations may be undertaken by other law enforcement agencies. Can an applicant under investigation by, say, the Serious Fraud Office *confidently* tick the 'no' boxes, or does, at the least, a question arise, requiring an applicant to stop and think, and make a decision? If a question does arise, it does so by virtue of analogy and relevance. Where both of these are present, there is room for an interpretative decision to be made, and no obvious basis for assuming the exclusion of a duty to declare. On the contrary, the GDC form has a limited, functional and transactional purpose, which is to elicit relevant material from those who have it. It is not a statutory instrument, and the statutory interpretation principle that specificity is exclusive is not a reliable guide to what must be declared.

35. That is not a conclusion supported only by the purpose and context of the form, and the asymmetric risks of over- and under-declaration. It is also suggested by the form itself. The declaration at the end of section 3 asks applicants to acknowledge that their professional registration will be at risk '*if I knowingly make a false statement in this declaration and undertaking, or if I act in any way which is incompatible with it*'. The last phrase is compendious. An applicant ticking the 'yes' box in question 1 is asked to detail the '*authority which dealt with the offence*' and, notably, '*any circumstances that the Council should be aware of in consideration of your application*'. That is also compendious. Question 2 is prefaced '*To the best of your knowledge*'. That is an invitation to diligence. The declaration refers generically to 'future criminal proceedings/police investigations' (the guidance notes also refer generically to 'previous or pending prosecutions').

36. None of these is itself conclusive, but individually and cumulatively they are suggestive. They ask applicants to *think*, carefully and responsibly, about what they need to declare and to act accordingly. The whole exercise is about assessing whether an applicant is fit to be registered as a responsible professional. That does not encourage self-serving literalism, it encourages responsible reflection on relevance to the professional procedure in hand. The identity of the agents of a criminal investigation is not more relevant than the substance of the investigation. The legal constitution and ancillary functions of investigating bodies (and whether the NHS 'licenses' its independent providers) is not more relevant than what they are investigating. The audience is applicant dentists, including those with a history of investigations, not public law experts. What matters, and what has to be declared, is the fact of a *relevant* investigation, specified or analogous.

37. A test of relevance makes the duty to declare fact-sensitive. That is inevitable, precisely because important and divergent public policy interests are held in tension in the process of applying for restoration to the Register, and because the process is transactional. It involves the GDC, on behalf of the public, taking a fresh look at an applicant's absence from the register. The opening of the form's guidance section states that the Registrar must be satisfied that applicants are fit to practise, now *and* in future, before registering them. A standard exists to which an applicant must aspire and for

which an applicant must make a positive case. Character referees are guided to include any information which might raise a question about an individual applicant's suitability for registration and '*[t]he Registrar will decide whether or not the information is relevant and whether any further inquiries need to be made*'.

38. Applicants are entitled to fair consideration of their case for restoration, but they are not entitled to control the limits of the duty to declare, nor to control the factual matrix of the decision-making. They need to think purposively. That does not imply an unfair imbalance of power or jeopardy for the reasons given: an applicant is fairly required at least to think, to acknowledge the professional context, and if in doubt to (a) check and (b) err on the side of declaration. That is not an oppressive duty. The pull of the public protection dimension and the intention of the GDC will prevail over the specificity or silence of the form, to impose a duty to declare what is clearly relevant. The target of the form is information which is clearly relevant, even if outside the indicative bullseye. The gravity of an investigation, and the clarity of its relevance to the restoration process, are material to the scope of the duty to declare. They cannot be excluded by deploying techniques of textual construction. They *are* techniques of textual construction.

(iii) Mr Dad's Duty

39. Relevance has to be considered on a case by case basis. In this case, Mr Dad was seeking restoration because he had been removed from the Register in disciplinary proceedings. That was because he had been convicted of fraud, and because the last time he had applied for restoration he had failed to declare the fraud proceedings. Those proceedings had followed an NSS CFS fraud investigation. He had been off the Register in the first place because he had stopped paying his fees in order to avoid having to bring the NSS CFS investigation and the subsequent criminal proceedings to the attention of the GDC. In his latest application, he failed to declare his regulatory history before his restoration hearing, and failed to disclose another NSS CFS fraud investigation both before and after it.

40. The investigation was obviously and centrally relevant to the application. It was a criminal investigation with a view to prosecution, and of some gravity. It was carried out under the auspices of the NHS into possible offences committed by a health professional in the administration of his practice. It was within the gravitational pull of section 3 of the form, and analogous to the indicative subject matter of *both* questions 1 and 2: a factor more significant than which particular question was the better fit. Mr Dad had in any event (latterly) ticked 'yes' to both questions. The form requires applicants ticking 'yes' to go on beyond the questions to give a full account. The GDC's assessment of Mr Dad's application was obviously going to be focused on his criminal and regulatory antecedents, and the reasons he had been off the Register twice before. Each of those occasions (his self-removal and the erasure) related to an earlier fraud investigation by the NSS CFS into the administration of his dental practice which he intended to, and did, conceal from the GDC. The latest investigation, by the same agency into another possible administrative fraud, could hardly have been more relevant. Nor could the applicant's declaratory candour: the frauds in question were themselves offences of dishonesty and concealment, and he had been sanctioned for lack of candour in his previous restoration application.

41. Mr Dad cannot fairly have been in any doubt at all about the central relevance of this investigation to his latest application nor, if he were in any doubt about his duty to

declare it, about how to resolve that doubt. The PCC found as fact, and it is not challenged, that Mr Dad himself thought it was relevant, that the GDC would have wished to know about it, and that he might have checked. Of course, just because an applicant has been disingenuous does not mean there is a duty to declare that which has not been declared. The duty must be established objectively and not subjectively. But subjective disingenuousness, or an evasive intent, is at least indicative or confirmatory that relevance has been considered and acknowledged, and any doubt resolved. And on any fair basis the relevance of the investigation to Mr Dad's application for restoration, by reference to both the application form and all the antecedent circumstances of his case, would be obvious to any fair-minded observer. A reasonable, conscientious dentist would recognise a duty to declare here.

42. The PCC considered the intention of the GDC, and the duty of the dentist, to be entirely obvious in this case. This was a fact-sensitive question of interpretation and a matter for the PCC to decide. I am required to show due deference to the assessment of a professional body about such matters; I am satisfied that the PCC's assessment was amply justified on the facts. It is unrealistic and inappropriate to hold the GDC to statutory standards of drafting in its application form, or to limit the duty to declare by statutory standards of textual interpretation. The duty to declare appears *indicatively* from the terms of the form, *sufficiently* from the context of the transactional process of assessing fitness to be re-registered, and *plainly* from the relevance of this particular investigation to this particular application.

Conclusions

43. In these circumstances, I am unable to impugn the PCC's decision to refuse Mr Dad's application to terminate its proceedings on the grounds that he had no case to answer. NCA applications in proceedings like these are provided for by paragraph 19(3) of the General Dental Council (Fitness to Practise) Rules Order in Council 2006, but nothing else appears to be said about them beyond that they can be made. They are of course borrowed from criminal procedure. My attention was drawn to the decision in ***R oao Husband v GDC*** *[2019] EWHC 2210 (Admin)* for an indication as to how NCA as a concept might transfer across to professional disciplinary proceedings. Clearly if it is apparent at the close of the regulator's case that a charge *could not* be made out then a tribunal should take the opportunity to end matters there. But the criminal context is very different. There, a judge must decide what is ultimately a matter of law: whether the unchallenged admissible evidence presented is capable of substantiating the criminal law charge, and whether the jury function of weighing evidence and finding fact is properly engaged at all. In regulatory proceedings, the rules of evidence and procedure and the standard of proof are different, and decision-making is undivided – the same tribunal can and must take an overview of the whole case and all the decision-points raised by it. This is another analogy which should not be pushed too far.

44. The NCA application in this case was made on the basis that, *on the narrow interpretative approach* to what the form required, Mr Dad *could not* be found in breach of his duty to disclose. The PCC rejected the premise and the interpretative approach contended for, and thus the logic of the conclusion it was invited to reach. That was a decision recognising that the question was an interpretative one, to be considered in context and to a degree fact-specific. The PCC chose to proceed to full appraisal of the facts, and to assess the extent, and possible breach, of the duty to disclose in all the circumstances of the case. It was entitled, and indeed required, to do so on what was a

fact-sensitive issue. I do not agree that this was unfair, nor that the PCC fell into error by confusing the moral question of whether Mr Dad did or did not do the right thing, with the interpretative question of whether he had a duty to declare. There is no sustainable criticism that the PCA was *obliged* to settle the interpretative question – and in Mr Dad's favour – at the close of the GDC's case and without looking at matters in the round. On the contrary, in my view it took the better course.

45. Mr Dad accepts that *if* he had a duty to declare *then* it was dishonest and misleading of him not to have done so. For the reasons set out, I am satisfied that it was open to the PCC to conclude, on the basis of the facts found and on a proper interpretative approach, that Mr Dad had a duty to declare the latest NSS CFS investigation. That conclusion was not 'wrong'. The question of its reasons for doing so then arises.

46. I take the reasons given for rejecting the NCA application, and the reasons given for the final decision on the facts, together. The latter largely adopt the former on the issue of the duty to declare. The reasons are brief. To some extent they suggest that the PCC did set off down a path of parsing the reference to 'regulatory or licensing body' in question 2, and taking a constitutional approach to concluding that the NSS CFS, and/or the NHS, was such a body. The PCC also suggested that question 2 should be regarded as a residuary category to '*capture any investigations that might not come within question 1*'. This is not a perfect expression of the required interpretative analysis.

47. However, the PCC did cite its understanding of the intention of the GDC (as authors of the form and under statutory duties in relation to the restoration process) as the principal reason for preferring a '*broad*', inclusive approach to the meaning of the form over a narrow, exclusive one. Its essential reasoning is that '*it would be perverse that the GDC would not want to be made aware of a criminal investigation carried out by NHS Counter Fraud Services involving someone applying to be restored to the register*'. The 'someone' in this case was of course Mr Dad himself. The reasoning makes reference to his criminal and regulatory history and the indications to be drawn from that about his duty to declare. His subjective belief in such a duty is insufficient to establish its objective existence, but it is not irrelevant to that task.

48. This is not a model set of reasons. Giving reasons is an important part of the PCC's function, and 'reaching the right answer for the wrong reasons' can in an appropriate case be considered an injustice. It matters that an applicant properly understands why an important decision affecting his professional standing has been taken. Here, while I have reservations about the PCC's articulation of its reasoning, its brevity is in proportion to the obviousness with which it regarded the relevance of declaring this investigation and the duty to do so. The reasoning is not unfair to Mr Dad; it leaves him in no doubt that he had a duty to declare the NSS CFS investigation because, given his antecedent history, it was squarely relevant to the core question of whether he should now be restored to the register, the GDC would certainly want to know about it and, having ticked the two 'yes' boxes and signed the declaration in section 3 of the application form, he needed to include it in the full story he was expected to give.

49. In these circumstances, if there is procedural irregularity or deficiency in the reasons given, I cannot conclude it to be serious to the point of causing injustice. The analysis and reasoning set out in this judgment are themselves addressed to ensuring that a full explanation is now forthcoming.

Decision

50. The decision of the PCC is neither wrong, nor unjust because of serious procedural irregularity. Mr Dad's appeal is dismissed.