



Case No: C1/2016/1896

**Neutral Citation Number: [2018] EWCA 713 Civ**  
**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**(MR JUSTICE KERR)**

The Royal Courts of Justice  
Strand, London, WC2A 2LL

Tuesday, 6 March 2018

**Before:**

**LORD JUSTICE NEWEY**

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**Between:**

**Peckitt**

**Applicant**

**- and -**

**The General Medical Council and Another**

**Respondent  
s**

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**Mr Nicholas Peacock** (instructed by **GMS**) appeared on behalf of the **Applicant**

**Ms Eloise Power** (instructed by **Capsticks**) appeared on behalf of the **General Dental Council**

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**Judgment**  
**(Approved)**

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**LORD JUSTICE NEWEY:**

1. I have before me an application by Professor Ninian Peckitt for permission to appeal against two orders made by Kerr J on 21 April 2016. By one of these, Kerr J, agreeing with an order that Leggatt J (as he then was) had made on the papers, declined to reinstate an appeal by Professor Peckitt against his striking off by the Medical Practice Tribunal Service (or “MPTS”) of the General Medical Council. By the other, Kerr J dismissed Professor Peckitt’s appeal against a decision of the General Dental Council that he should be erased from the register.
  
2. The background, briefly, is as follows. Professor Peckitt was a consultant oral and maxillofacial surgeon registered with both the GMC and the GDC. In a determination dated 20 April 2015, however, the MPTS found proved allegations that Professor Peckitt had repeatedly punched a patient in the face, ostensibly to reduce a fracture, and that he had left an outpatient clinic before the end of his contractual shift without arranging a handover and without explaining or apologising to patients. The MPTS further concluded that erasure was the appropriate sanction.
  
3. Professor Peckitt, who had not been present or represented at the hearing before the MPTS, had until 21 May 2015 to appeal against this decision. On 20 May he attended the court office in Leeds with appeal documents. The court received and stamped them, but it could not at that stage process the credit card with which Professor Peckitt wished to pay the fee. On 13 July the court sent Professor Peckitt a letter in which it said this:

“The above claim was issued on 20 May 2015 but no fee was paid when issued due to the claim being received after 4.00pm and the

court not being able to take fees by card after 4pm. Since then several attempts have been made to pay the fee, but as yet, the court has not yet received the £240.00 or a fully completed fee remission application. Accordingly, I write to inform you that the file in this matter has been closed.”

4. Professor Peckitt took no steps to challenge that until 16 February 2016, when he issued the application which Leggatt J rejected on the papers. In the meantime, in January 2016, the Professional Conduct Committee of the GDC had concluded that Professor Peckitt should be removed from the register. It had found proved, first, a charge that the MPTS had ordered erasure and, secondly, allegations that Professor Peckitt had dishonestly made misleading and inaccurate statements in correspondence with the GMC. Once again, Professor Peckitt had not been present or represented at the hearing.
5. In this instance there was no doubt but that Professor Peckitt had lodged an appeal in time. On 21 April 2016, however, Kerr J dismissed the appeal. On the same occasion, as I have mentioned, he endorsed Leggatt J’s decision.
6. Mr Nicholas Peacock, who appeared for Professor Peckitt today, suggested that the GDC’s reliance on the MPTS determination risked offending the rule in Hollington v Hewthorn. In oral submissions this morning, he developed his point further by reference to a comparison between the provisions of the Dentists Act 1984 and those relating to disciplinary proceedings concerning doctors. In the case of the Dentists Act, section 27 of the Act provides that a person’s fitness to practise as a dentist shall be regarded as impaired for the purposes of the Act by reason only of, among other things:

“a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the person’s fitness to practise as a member of that

profession is impaired, or a determination by a regulatory body elsewhere to the same effect.”

That provision is supplemented by paragraph 5 of Schedule 3 to the Act, which is in these terms:

“Where the proceedings relate to a person’s conduct, and that conduct has been considered by another body whose functions include overseeing the conduct of members of a health or social care profession, a Committee may adopt as its own findings any finding of fact found by that body and proceed to determine the case without further inquiry.”

7. As Mr Peacock recognised, those provisions plainly entitled the Professional Conduct Committee to adopt findings made by the MPTS. The point he makes, though, is that the Professional Conduct Committee said in its determination that it was aware that “it could not go behind the decision of another statutory body.” That, Mr Peacock says, was a misconception because while the Professional Conduct Committee was permitted to rely on the MPTS findings, it did have power to go behind them.
8. It seems to me, however, that that argument goes nowhere in the context of the present case. Supposing that Mr Peacock is correct as a matter of law, the fact remains that there was no sensible basis here for the Professional Conduct Committee to go behind the MPTS findings. As I have already said, Professor Peckitt was not present or represented at the hearing. There was, in all the circumstances, no basis on which the GDC could have thought it appropriate to look behind the MPTS conclusions.
9. Another point that Mr Peacock mentioned in written submissions, though not one that he developed this morning, was the suggestion that the Professional Conduct Committee had been wrong to conclude that certain statements had been made

dishonestly. In my view, however, the GDC was plainly entitled to take the view it did on the materials before it.

10. Mr Peacock also argued that the GDC's decision was inextricably bound up with the MPTS's. I turn, therefore, to that. In that regard, Mr Peacock suggested that the principal allegation against Professor Peckitt before the MPTS, that of punching, merited sceptical analysis. He pointed out in particular that the anaesthetists who had been in a position to comment on the event had not supported the allegation against Professor Peckitt. There was, Mr Peacock argued, powerful evidence which the MPTS inappropriately and shortly dismissed.
11. I have to say that I would have thought that Professor Peckitt's prospects of succeeding on an appeal on this basis, supposing one to have been brought in time, were at best very slim indeed. The MPTS had evidence before it that appeared to support the punching allegation and once again, of course, Professor Peckitt was not there to fight his own corner. I find it very difficult, therefore, to suppose that a court could have arrived at the conclusion that the MPTS was not entitled to find the punching allegation proved.
12. I should, however, go on to consider the procedural issue. That relates to Professor Peckitt's attempt to appeal against the MPTS determination. Mr Peacock recognised that, while the court has a discretion to extend the 28-day period within which such an appeal is to be filed, the authorities establish that the discretion should be exercised only in exceptional circumstances and where the appellant personally did all he could to bring the appeal in time. Mr Peacock also helpfully drew my attention to paragraph 4.1

of Practice Direction 52B, which as might be expected specifies that an appellant's notice "must be accompanied by the appropriate fee or, if appropriate, a fee remission application or certificate."

13. In those circumstances, as again Mr Peacock sensibly accepted, the position must be that it was incumbent on Professor Peckitt not only to lodge the appropriate documents at court within the 28-day period, but to pay the fee within that time. Mr Peacock argued, however, that there was at least arguably a basis for extending time here. As he pointed out, Professor Peckitt lodged his appellant's notice within the set period and, he said, he sought to pay with a credit card which he had no reason to think would not be accepted by the court. In all the circumstances, Kerr J should have recognised that there was scope for extending time on the basis that Professor Peckitt had indeed done all he could to appeal by the end of the 28 days and accordingly there were exceptional circumstances. Both Kerr J and before him Leggatt J were, Mr Peacock submitted, wrong to see the matter through the prism of an application for relief from sanction.
  
14. However, like Jackson LJ, who refused permission on the papers, I do not think that Professor Peckitt has any real prospect of succeeding in an appeal on this ground. In the first place, the evidence does not appear to me to establish that Professor Peckitt had done all that he could to pay the fee by the end of the 28 days. Having been met with no success on 20 May, Professor Peckitt had 21 May to sort out payment and the materials I have seen (and those which were before Kerr J) do not seem to me to establish that that was impossible.

15. In any event, looking at matters more broadly, it seems to me that in deciding whether time should be extended on the basis of exceptional circumstances on an application launched in February 2016, some seven months after the date of the court's July letter, it must be right to have regard to the lapse of time between the expiry of the 28 days in May and the date of the application. Whether matters are approached by reference to the relief from sanction learning or not, that very lengthy delay must, as it appears to me, negate the possibility of an extension of time. Mr Peacock suggested that what had happened since 21 May could be neither here nor there, but I do not think that that can be right or could be consistent with the learning relating to the very limited circumstances in which the 28-day period should be extended.
16. In all the circumstances, despite Mr Peacock's well-judged advocacy, it seems to me that an appeal against either the MPTS decision or that of the Professional Conduct Committee of the GDC would have no real prospect of success, and I shall accordingly decline to grant permission to appeal.
17. Finally, I should mention that Ms Eloise Power has appeared before me today on behalf of the GDC. She has recognised that her role in today's hearing is a very limited one, but made helpful comments on the GDC's position and I am grateful to her for her assistance. As I say, I shall refuse permission to appeal.

**Order:** Application refused.