



Neutral Citation Number: [2022] EWHC 332 (Admin)

Case No: CO/4209/2021

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

Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Date of hearing: 12 January 2022

Before:

HIS HONOUR JUDGE STEPHEN DAVIES SITTING AS A HIGH COURT JUDGE

Between:

GENERAL MEDICAL COUNCIL

Claimant

- and -

SARFARAZ AHMED MALIK

Defendant

Mr Neil Usher for the Claimant.

The Defendant did not attend and was not represented.

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

His Honour Judge Stephen Davies:

1. I accept that it is appropriate in this case to proceed in the absence of the doctor. As Mr Usher, counsel for the GMC, has submitted, it is a case where the court can be satisfied as to service and can also be satisfied that the doctor has been able to engage because he has submitted voluminous written submissions which are in the hearing bundle. He has also, yesterday, submitted addendum submissions responding to Mr Usher's skeleton argument and made it clear that he is not intending to appear in person but to rely upon his written submissions. In those circumstances it seems to me that it is appropriate to proceed with the hearing today in his absence but taking into account, of course, what he says in his submissions.

(Hearing continues)

2. I will now give a ruling on the claimant's application to extend the existing order of conditions upon the defendant's practice for a period of twelve months from the expiry of the existing order, which is 14 January 2022.
3. I have heard this application in the absence of the defendant doctor, being satisfied as to service and also knowing that he had decided not to attend but having put in substantial written submissions and an addendum written submission, setting out in some detail his reasons for objecting to the extension. I have had the opportunity not only to read and to consider those submissions but to raise some of the points made in them with counsel for the claimant, Mr Usher.
4. In short, this is a case where the doctor was the subject of a complaint in August 2018 that he had indecently assaulted a 17 year old female family member in August 2015. That was the subject of a police investigation and he was charged in November of 2019. At the trial which took place in the Crown Court in April of 2021 after some delay because of the Covid pandemic he was found not guilty.
5. In the same month the claimant sought documentary and transcript evidence from the police and subsequently from the court which they received by September 2021. At the same time the complainant intimated that she would assist the claimant in its further investigations and in November 2021 she provided a witness statement. The current position is that all that is outstanding before the case is referred to the claimant's case examiners for a decision is to obtain a copy of the s.28 Achieving Best Evidence interview of the complainant and a witness statement from the complainant's mother.
6. The claimant also makes a further complaint about a lengthy failure by the doctor to provide a work details form, but I do not think that this is something which by itself would justify a continuation of the interim order of conditions.
7. It is also right to say and important to record that there are no other complaints registered against the doctor. In particular, there is no allegation of any inappropriate behaviour in relation to his practice as a doctor, whether with female patients or otherwise.
8. The Interim Orders Tribunal made an interim order of suspension on 3 February 2020 which was varied to one of conditions on 23 July 2020. It was extended for six months by this court in July 2021 and maintained by the Interim Orders Tribunal on 19 October

2021. The order of conditions contains what are standard notification and information sharing provisions and also contains a substantive prohibition against carrying out intimate examinations of female patients without a chaperone except in life threatening emergencies.

9. The defendant's position is that there is no justification for continuing the interim order of conditions. He refers me to the guidance provided to the Interim Orders Tribunal and, in particular, paragraphs 29, 30 and 31, dealing with allegations of sexual misconduct. As he says, these state that consideration should be given to interim action where there is an existing police investigation for a sexual criminal offence, which of course no longer applies here, or where there are other allegations which are connected with his role as a doctor and the sexual misconduct is directed towards patients, which has never applied here. He submits that on that basis and applying that guidance the order should not be continued.
10. He also complains of the non-disclosure of the evidence obtained by the claimant either to the Interim Orders Tribunal in October 2021 and to this court so that there is no opportunity to test or to understand the strength or weakness of the case or to understand why a not guilty verdict was entered at the criminal trial. He points to the continued delay and to the impact upon him of the delay and the conditions. He says, in short, that these conditions make it impossible for him to obtain work as a doctor, that he has been unemployed as a result for the last two years and has suffered both financially and personally as a result.
11. In my judgment this is a difficult case. On the one hand it is clearly right that the mere fact that the criminal prosecution has not resulted in a conviction is not in itself determinative. As Mr Usher has rightly reminded me, a criminal prosecution requires a higher standard of proof to succeed. Just because the prosecution has not succeeded does not mean that the Medical Practitioners Tribunal may not conclude to the appropriate standard after a full hearing that the conduct complained of has indeed occurred. It is also right to observe, as he has done, that the complainant is clearly willing to assist in this complaint. He also rightly submits that the guidance to the Interim Orders Tribunal is only that, guidance, and does not cover every situation, and in any event that this court in particular is not bound by it. He submits that in the circumstances of this case it would not be acceptable, either in terms of dealing with any risk to patient safety or in terms of promoting public confidence, for there to be no continuing interim order. He also observes, and of course this is right, that the interim order of conditions is by no means the same as an interim order of suspension and that the particular conditions are both standard and not onerous.
12. As I have said during the course of the hearing, it seems to me that really the court is faced with two options.
13. The first is to refuse to extend the order on the basis that the prospect of a further lengthy interim order of conditions, with the impact they are said to have upon the doctor, if this case does go all the way to a full substantive hearing before the Medical Practitioners Tribunal, is such that it cannot be justified as a proportionate response in the light of everything that is before the court.
14. The alternative is to accept that at this stage there is clearly a case which needs, in short order, the further investigations to be completed and a decision taken whether or not to

refer in the light of the Rule 7 letter and any response. In my judgment that can and should, as I have said in submissions, be done within six months. If that is the case, then rather than extend for a lengthy period and simply leave the matter to the Interim Orders Tribunal to review in the meantime, the effect of a shorter extension is that the matter will have to come back before the High Court within 6 months when it can, and should, have the benefit of an analysis and submissions as appropriate from both parties as to the strengths and weaknesses of the case which either has been or is to be referred.

15. Furthermore, because this is a point which the doctor has made submissions about but has not addressed in evidence, he can provide actual evidence as to what the actual impact of the continued suspension is upon him. This is important because the judge at any further hearing will be required to conduct a careful balancing exercise in the light of the likely further extension which would be required if the case had to be referred to a full hearing.
16. Having weighed these matters I am satisfied that the appropriate and proportionate course is to extend the existing order of suspension by six months. This is on the basis that at this stage I am prepared to accept that the complaint is one which has a real prospect of being taken further on *bona fide* and credible grounds, that there are clearly allegations of a very serious nature being made, albeit not in a patient context, and that it is necessary and proportionate for patient safety and the promotion of public confidence for there to be some continuing conditions, which are themselves necessary and proportionate, on the doctor's registration, and that the existing conditions fall into both those categories.
17. I am going therefore to extend for six months on that basis. I will include specific reference in the order to the basis upon which I have been prepared to extend, so that this will be before the reviewing High Court Judge in six months' time, if there is a further hearing.

This Judgment has been approved by HHJ Davies, sitting as a Judge of the High Court.