Neutral Citation Number: [2024] EWHC 3176 (Admin)

Claim No: AC-2024-MAN-000392

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

(SITTING IN MANCHESTER)

18 December 2024

Before His Honour Judge Pearce sitting as a Judge of the High Court

BETWEEN

GENERAL MEDICAL COUNCIL

Claimant

-and-

DR CIAN HUGHES

Defendant

- -

APPROVED JUDGMENT

This judgment was handed down in writing at 2pm on 18 December 2024 by email to the parties and to the National Archive.

INTRODUCTION

1. The Defendant is subject to a restriction on his registration as a doctor imposed by the Interim Orders Tribunal ("IOT") of the Medical Practitioners Tribunal Service ("MPTS") in the course of regulatory proceedings brought by the Claimant under the Medical Act 1983. The Claimant sought an extension to that restriction pending the determination of fitness to practice proceedings pursuant to Section 41A of the 1983 Act. Such an extension requires application to the High Court because the effect of the extension sought will take the total period of the interim order on the Defendant's registration to more than 18 months.

2. The parties lodged a draft consent order by which the extension sought was agreed. The draft order also contained a provision relating to the application of CPR 5.4C in these terms:

> "***UPON READING*** *the Part 8 Claim Form and evidence filed in support of the interim order due to expire on 06/12/2024*
>
> ***AND UPON*** *the agreement of the parties*
>
> ***IT IS ORDERED THAT****:*
>
> 1. *The interim order currently imposed upon the Defendant's registration be extended for a period of 4 months, up to and including 06/04/2025.*
> 2. *There be no order for costs.*
> 3. *Any application by a non-party to obtain documents under CPR 5.4C(2) be made on at least 14 days' notice to the parties.*
>
> *Reasons*
>
> *The direction at paragraph 3 is made pursuant to CPR 5.4D(2). The parties are 'persons who would be affected by' the Court's decision in respect of such an application. It is appropriate that they be given notice of such an application, and the opportunity to make submissions thereon, given the otherwise confidential nature of the Claimant's investigation and the sensitive nature of the evidence filed in support of the claim.*"

No person, whether a party to the proceedings or otherwise, has made submissions objecting to the order. Should the court make the order?

3. The issue arise because the application for an extension and the draft consent order was referred to an Administrative Court lawyer, who, exercising the power under CPR 54.1A to deal with matters referred to under paragraph (2) with the consent of the President of the King's Bench Division, made the following order:

> "***UPON READING*** *the Part 8 Claim Form and evidence filed in support of the interim order due to expire on 06/12/2024*
>
> ***AND UPON*** *the agreement of the parties*
>
> ***IT IS ORDERED THAT****:*
>
> 1. *The interim order currently imposed upon the Defendant's registration be extended for a period of 4 months, up to and including 06/04/2025.*
> 2. *There be no order for costs.*

3. *Any application by a non-party to obtain documents under CPR 5.4C(2) be made on at least 14 days' notice to the parties.*

~~*Reasons*~~

~~*The direction at paragraph 3 is made pursuant to CPR 5.4D(2). The parties are 'persons who would be affected by' the Court's decision in respect of such an application. It is appropriate that they be given notice of such an application, and the opportunity to make submissions thereon, given the otherwise confidential nature of the Claimant's investigation and the sensitive nature of the evidence filed in support of the claim*~~.[1]

No application for an order under CPR 5.4C was made."

4. The Claimant and the Defendant have now both filed submissions inviting the court to make the order sought in the original draft consent order.

RELEVANT GMC PROCEDURES

5. The Claimant's fitness to practise procedures are governed by the General Medical Council (Fitness to Practise) Rules 2004. In summary, in a case involving an allegation that a doctor's fitness to practise is impaired, this involves the following stages:

   a. A triage stage, where the GMC makes provisional enquiries and determines whether the concern should proceed or should be concluded without further action;

   b. If the case proceeds, the investigation of the allegations

   c. Determination by case examiners or the GMC's Investigation Committee as to whether the allegations may be dealt without further referral (whether by no action being taken, a warning being issued or the doctor being invited to comply with undertakings) or whether the matter should be referred for adjudication by a Medical Practitioners' Tribunal ("MPT").

   d. If the case is referred to the MPT, further investigation and case management leading to hearing.

6. At any stage, the Claimant may invite an IOT to suspend or impose conditions on the doctor's registration pending completion of the investigation or hearing of the case. Such an interim order may made for a period of up to 18 months. By virtue of Regulation 41(3) of the 2004

[1] I am not clear whether the author of the order intended it to be redrawn with the struck out words removed. It would be unusual to leave in words from a draft order that were not an approved part of the final order, even if those words are stuck though. However, unless the struck out word are left in or there is some other explanation such as that an application for an order under CPR 5.4C was refused, the words "*No application for an order under CPR 5.4C was made"* are meaningless.

Rules, such a hearing is held in private unless requested by the doctor or the tribunal otherwise orders.

7. If the GMC wishes the period of an interim order to be extend beyond that period, it must apply for such extension to the High Court under Section 41A of the Medical Act 1983. Such an application would, in accordance with the usual principles of hearings in the High Court[2], be held in public unless otherwise ordered.

8. The criteria for making an interim order, which is the same whether before an IOT or before the High Court, was considered by the Court of Appeal in *GMC v Hiew* [2007] EWCA Civ 369. Those criteria are well established and rarely give rise to difficulty in their practical application, even if questions as to why an extension is considered necessary and why the proceedings have not been resolved quickly may be the subject of contention.

THE PROVISIONS OF CPR 5.4C

9. As far as relevant, CPR 5.4C provides:

> **"*Supply of documents to a non-party from court records***
>
> ***5.4C*** *(1) The general rule is that a person who is not a party to proceedings may obtain from the court records a copy of –*
>
> *(a) a statement of case, but not any documents filed with or attached to the statement of case, or intended by the party whose statement it is to be served with it;*
>
> *(b) a judgment or order given or made in public (whether made at a hearing or without a hearing).*
>
> *…*
>
> *(2) A non-party may, if the court gives permission, obtain from the records of the court a copy of any other document filed by a party, or communication between the court and a party or another person.*
>
> *…*
>
> *(4) The court may, on the application of a party or of any person identified in a statement of case –*
>
> *(a) order that a non-party may not obtain a copy of a statement of case under paragraph (1);*
>
> *(b) restrict the persons or classes of persons who may obtain a copy of a statement of case;*
>
> *(c) order that persons or classes of persons may only obtain a copy of a*

[2] See CPR 39.2(1).

statement of case if it is edited in accordance with the directions of the court; or

(d) make such other order as it thinks fit.

(5) A person wishing to apply for an order under paragraph (4) must file an application notice in accordance with Part 23.

(6) Where the court makes an order under paragraph (4), a non-party who wishes to obtain a copy of the statement of case, or to obtain an unedited copy of the statement of case, may apply on notice to the party or person identified in the statement of case who requested the order, for permission.

Supply of documents from court records – general

5.4D *(1) A person wishing to obtain a copy of a document under rule 5.4B or rule 5.4C must pay any prescribed fee and –*

(a) if the court's permission is required, file an application notice in accordance with Part 23; or

(b) if permission is not required, file a written request for the document.

(2) An application for an order under rule 5.4C(4) or for permission to obtain a copy of a document under rule 5.4B or rule 5.4C (except an application for permission under rule 5.4C(6)) may be made without notice, but the court may direct notice to be given to any person who would be affected by its decision.

…"

10. It will be noted that, in addition to the court's power to place limitations on the right of a non-party to seek access to documents on the court file, there is a separate control mechanism on non-parties gaining access to documents on the court file, namely that, apart from requests for copies of statements of case or judgments/orders given or made in public, an application for access in any event requires the court's permission.

THE TYPE OF ORDER SOUGHT

11. Applications to the High Court for orders pursuant to Section 41A of the Medical Act 1986 relating to the extension of an interim order on a doctor's registration are common. They are routinely issued in Manchester (where the Claimant has offices). In the large majority of cases, the doctor consents and the order is made without a hearing.

12. It has become common for the Claimant (and other professional regulators such as Social Work England and the Nursing and Midwifery Council) to include in their draft orders a condition along the lines of the order sought here requiring any party seeking documents from the court file to give notice to the parties. The making of such orders has been considered by Fordham J,

the Liaison Judge of the Administrative Court for the Northern and North Eastern Circuits, in two reported cases of which I am aware. In *GMC v Mwambingu* [2023] EWHC 324 (Admin), he declined to make the order sought by the parties, albeit that the order in that case was in wider terms than that sought here. In *SWE v Yalden* [2024] EWHC 86 (Admin), a claim issues in the Administrative Court in Leeds, he noted that the matter had been considered in User Group meetings both in Leeds and Manchester[3] and he described the issue as one that was potentially ripe for consideration in an appropriate case.

13. In a series of cases (none of which have neutral citation numbers to the best of my knowledge), Fordham J has made orders in the following or similar terms:

> "*UPON the CPR Part 8 Claim Form in support of the extension of the interim order due to expire on XXX*
>
> *AND UPON the agreement of the parties as to paragraphs 1 and 2 of this Order.*
>
> *AND UPON the agreement of the parties as to a further paragraph 3 as follows:*
>
> *"3. Any application by a non-party to obtain documents under CPR 5.4C(2) be made on at least 14 days' notice to the parties.*
>
> *Reasons.*
>
> *The direction at paragraph 3 is made pursuant to CPR 5.4D(2). The parties are 'persons who would be affected by' the Court's decision in respect of such an application. It is appropriate that they be given notice of such an application, and the opportunity to make submissions thereon, given the otherwise confidential nature of the Claimant's investigation and the sensitive nature of the evidence filed in support of the claim."*
>
> *AND UPON the Court being satisfied, in the absence of (a) any covering letter or note identifying any specific information and (b) any decision of the Court having established justification for its routine inclusion (see SWE v Yalden [2024] EWHC 86 (Admin) §§2-3), only as to the appropriateness of allowing the mechanism in paragraph 3 below.*
>
> *BY CONSENT, IT IS ORDERED that:*
>
> *1. The interim order currently imposed upon the Defendant's registration be extended for a period of Y months, up to and including ZZZ*
>
> *2. There be no order for costs.*

[3] Those minutes are available at Court-User-Group-Minutes-17-Oct-2023-North-Manchester--17-Oct-2023-PDF.pdf and Court User Group Minutes (North) Manchester – 12 Dec 2023 (PDF).

AND IT IS FURTHER ORDERED that:

3. The parties or either of them have liberty to request by email, with submissions in support, a further Order that any application by a non-party to obtain documents under CPR 5.4C(2) be made on at least 14 days' notice to the parties, with liberty to any person to apply on notice to abridge the 14 day time period."

14. Orders in these or similar terms have become commonplace where a draft consent order on the lines of that set out in [2] above is lodged, allowing the parties to address the issue in written submission without incurring the expense and inconvenience of having to make a separate application. In some cases (*SWE v Yalden* was an example of this), the Judge is persuaded that the material on the court file justifies the making of an order restricting the rights of access of a third party to material on the court file by requiring notice of any such application to be given by the parties. Such an order may be made following a hearing during which the issue is addressed (as in *Yalden* itself), at the time when the order is initially sought (it being self evident that the court file contains information, for example specific details of the health of an identified person, which is considered to justify the order) or following the receipt of written submissions pursuant to an order on the lines of that set out at [13] above.

15. Unlike the form of order referred to at [13], the order of the Administrative Court lawyer here did not contain liberty to request an order requiring notice of any application by a non-party for access to court documents be on notice. This is presumably because CPR 54.1A(5) gives a right to the parties to request a review of the lawyer's order and hence permission to apply would not be required.

16. The parties' submissions here appear to reflect the format that is generally used where there has been a request by email under paragraph 3 of the type of order of Fordham J referred to at [13] above, rather than a request for review under CPR 54.1A(5). I treat those submissions as a request for review of the decision, though there is no material difference in my approach to those submissions than would have been the case had this been a request pursuant to the liberty to request under the type of order that Fordham J has made.

17. I note that in *Nursing and Midwifery Council v Campbell* [2022] EWHC 3415 (KB), Upper Tribunal Judge Church was persuaded to make an order requiring 7 days' notice of an application by a non-party to obtain a document from the court file. This was considered to be "*a fair and proportionate order in the circumstances of this case"* and would "*give the parties an opportunity to bring any sensitive or personal information to the attention of the court, provide any further relevant updates and make submissions about the appropriateness of the release of the disclosure or to raise the possibility of appropriate redactions to the same before*

it is released." It will be noted that the Respondent's health was an issue that arose in that case, unlike here.

18. Another recent example of a court making an order on these lines is the decision of Dan Kolinsky KC in *Nursing and Midwifery Council v Dobbin* [2024] EWHC 3226 (Admin). Whilst the judgment does not identify any material in detail, in explaining the reasons for making the order the Judge refers to "*confidential information relating to sensitive matters*."

THE APPLICATION BEFORE THE COURT

19. The Claimant's application for an interim order was made in circumstances where allegations relating to the doctor's fitness to practice have been referred to the MPTS and a hearing is due to commence on 8 January 2025.

20. Two preliminary points need to be made:

    a. It is necessary for an understanding of this judgment to have at least a broad sense of the allegations that have been made against the Defendant. However, for reasons identified elsewhere in this judgment, whether or not I make the order sought, any copies of documents beyond the statements of case and any judgment/order given or made in public can only be obtained with the permission of the court. It is not my purpose in this judgment to consider whether permission ought to be given if such application were made by a third party. At that stage of permission being sought, a judge would need to weigh in the balance the interests of the parties including the matters referred to in this judgment. So as not to prejudge the issue of whether a third party would in fact be permitted to see documents that gave more particularity of the background to the regulatory proceedings, it is not appropriate for me to describe the allegations against the Defendant in any more than the most general terms.

    b. Most applications of this kind are dealt with in rather shorter judgments that this that are unlikely to be publicised. Given the possibility that this judgment will receive more publicity than most, I consider it appropriate to reserve any application for permission to see documents on the court file in this case to the Supervising Judge for the Administrative Courts of the North of England or any person nominated by that Judge.

21. The Claimant's application for an extension of the interim order it brought by Part 8 Claim Form. The Claim Form simply states, "*The Claim is made under Section 41A (6) and (7) of the Medical Act 1983 (as amended) for an Order extending for 4 months, up to and including 06/04/2025, the interim order currently imposed on the Defendant's registration which is due to expire at the end of 06/12/2024."*

22. The Claimant filed a witness statement from Mr Nicholas Turner dated 15 October 2024 accompanying the Part 8 Claim Form. The statement sets out the history of the regulatory proceedings and annexes orders of the IOT. As is typically but not invariably the case in applications of this kind brought by the GMC, the witness statement does not contain any detail of the regulatory proceedings brought in respect of the doctor's regulation. However, one of the interim orders contains considerable details of allegations that have been made that give rise to the regulatory proceedings. Since those matters are not referred to in the Claim Form itself or any judgment or order of the court, they are not documents that a non-party is entitled to see as of right under CPR5.4C(1), but rather fall within the category of documents where the non-party needs to apply to the court under CPR 5.4C(2).

23. The allegations that have been made about the doctor's behaviour are serious and I accept that, if brought into the public domain, they could harm the doctor's reputation. However none of the material relates to the health of any identified person nor does any of the material identify any people apart from the doctor himself and those involved in the matters referred to other than pursuant to the duties of their employment and/or profession.

THE PARTIES' SUBMISSIONS

24. Both parties have lodged written submission, the Claimant's dated 21 November 2024 and the Defendant's dated 29 November 2024. They each refer to the decision of the Supreme Court in *Dring v Cape Intermediate Holdings* [2020] AC 619 and *ZXC v Bloomberg* [2022] AC 1158.

25. The court in *Dring v Cape* was concerned with the exercise of powers under CPR 5.4C(2). Employees had brought claims against their employers for damages for injury said to have been negligently caused by exposure to asbestos during the course of their employment. The employers' insurers settled the claims and brought a claim in negligence against a company involved in the manufacture and supply of asbestos products. The company denied liability and a six-week trial took place in the High Court. After the trial had ended but before judgment had been delivered the parties settled the claim by a consent order. The applicant, who had not been a party to those proceedings, applied on behalf of a group which supported victims of asbestos-related diseases for access to all documents used or disclosed at or for the trial, including the trial bundles and trial transcripts, on the basis that they were records of the court falling within CPR 5.4C(2) and that their disclosure would assist in understanding and dealing with issues raised in asbestos-related disease claims.

26. The Court in *Dring* was concerned in the first place with the ambit of the documents covered by CPR5.4C. It held that *"the records of the court"* means *"those documents and records which the court keeps for its own purposes"* not every single document that night be generated in respect of a case that might be filed, lodged or held by the court. However, the court has a wider

power under its inherent jurisdiction to determine what the constitutional principle of open justice requires in terms of access to documents on the court file, and the default position, following *Guardian News and Media* [2013] QB 618 is that "*the public should be allowed access, not only to the parties' written submissions and arguments, but also to the documents which have been placed before the court and referred to during the hearing* " ([44] in *Dring*). However, the Supreme Court made clear that there is no right to access such material.

27. In terms of permitting access to the documents, the Supreme Court considered that the principle of open justice that was engaged was engaged both with respect to the public scrutiny of how courts decide cases but also more generally it enable the public to understand how the justice system works. The court made clear at [45] that "*it is for the person seeking access to explain why he seeks it and how granting him access will advance the open justice principle."* The court's determination on whether to permit access will be guided by the open justice principle but also balanced against that, the risk of harm which disclosure may case to the judicial system or the interest of others. As the Supreme Court put it at [46], "*There may be very good reasons for denying access. The most obvious ones are national security, the protection of the interests of children or mentally disabled adults, the protection of privacy interests more generally, and the protection of trade secrets and commercial confidentiality. In civil cases, a party may be compelled to disclose documents to the other side which remain confidential unless and until they are deployed for the purpose of the proceedings. But even then there may be good reasons for preserving their confidentiality, for example, in a patent case."* The court will be engaged in what was described at [45] as a "*fact-specific balancing exercise."*

28. In *ZXC v Bloomberg*, the Supreme Court was concerned with the disclosure of information relating to a criminal investigation. In brief, a UK legal enforcement body sent a confidential letter of request to foreign state as part of its criminal investigation into the Claimant and other employees of a company. The letter came into the hands of the Defendant which published an article based on the letter. The Claimant brought an action for misuse of private information against the Defendant, asserting that he had a reasonable expectation of privacy in respect of several matters in the article relating to the fact of the investigation and the belief of the law enforcement body asserted in the letter that the Claimant was guilty of criminal conduct. The claim was successful and, following an unsuccessful appeal to the Court of Appeal, the Defendant appealed to the Supreme Court.

29. The Supreme Court judgment at [1] states that the central issue in the appeal was "*whether, in general a person under criminal investigation has, prior to being charge, a reasonable expectation of privacy in respect of information relating to that investigation."* The Supreme Court endorsed the principle of applying a two stage test to claims relating to the publication of allegedly private material, with consideration at the first stage as to whether the Claimant

has a reasonable expectation of privacy in the relevant information and at the second stage whether that expectation was outweighed by the countervailing interest of the publisher's right to freedom of expression. The Court agreed with the Trial Judge and the Court of Appeal that there was a "*general rule or legitimate staring point"* of a reasonable expectation of privacy in a matters relating to a criminal investigation before charge. In so holding, the Court noted that the general rule or legitimate starting point is not a legal rule or legal presumption, let alone an irrebuttable presumption. The court said at [71] that "*the rationale for such a starting point is that publication of such information ordinarily causes damage to the person's reputation together with harm to multiple aspects of the person's physical and social identity such as the right to personal development, and the right to establish and develop relationships with other human beings and the outside world all of which are protected by article 8 of the ECHR*…"

30. The Supreme Court noted the types of information which normally (not invariably) are regarded as giving a reasonable expectation of privacy to include, as suggested in Gatley on Libel and Slander, 12th ed (2013) at [22.5] ,"*the state of a person's physical or mental health or condition; a person's physical characteristics (nudity[4]); a person's racial or ethnic characteristics; a person's emotional state (in particular in the context of distress, injury or bereavement); the generality of personal and family relationships; a person's sexual orientation; the intimate details of personal relationships; information conveyed in the course of personal relationships; a person's political opinions and affiliations; a person's religious commitment; personal, financial and tax related information; personal communications and correspondence; matters pertaining to the home; past involvement in criminal behaviour; involvement in civil litigation concerning private affairs; and involvement in crime as a victim or a witness*" . On the other hand, matters said by Gatley not normally to give rise to such an expectation include "*corporate information, a person's physical location, involvement in current criminal activity, a person's misperformance of a public role, information deriving from a hearing of a criminal case conducted in public, and the identity of an author…"*

31. In considering the second stage of the test, the publisher's right to freedom of expression, the Supreme Court noted at [101] the Defendant's argument that the presumption of innocence "*eliminates, or significantly reduces, the negative effects of publication of information that a person is under criminal investigation."* The Court rejected the argument that there was any rule of law to this effect, rather treating it as a factual issue and noting, in the context of information relating to matters under criminal investigation, that "*reputational and other harm will ordinarily be caused to the individual by the publication of such information"* (see [109]).

[4] In the 13th edition of Gatley, published since the judgment of the Supreme Court, the words "*i.e. those ordinarily covered by clothes*" are substituted for "*nudity*", probably making clearer sense of the authors' meaning.

32. The Supreme Court also considered the status of the Claimant (on the facts of the case before it, a business man involved in the affairs of a large public company) and its relevance to the bounds of acceptable criticism of him. At [140] of the judgment, it is stated., "*We consider that it is a relevant consideration at stage one in determining whether the information which has been published or which is to be published can be characterised as private. However, it is only one factor, and consideration of the attributes of the claimant must be balanced against the effect of publication of the information on him. The ordinary conclusion in relation to the effect of publication of information that an individual is under criminal investigation is that damage occurs whatever his characteristic or status. Indeed, ordinarily we would anticipate greater damage to a businessperson actively involved in the affairs of a large public company than to a private individual."*

33. The Court commented that no reasonable expectation of privacy applied where a person had been charged with a criminal offence. As the judgment puts it at [77], "*We consider, generally, that to be a rational boundary, as the open justice principal in a free country is fundamental to securing public confidence in the administration of justice."*

34. In considering whether to make the order sought here, the Claimant contends that court should bear in mind the sensitive nature of the matters that are referred to in material on the court file. This includes information relating to an investigation that has been concluded without referral to the MPT but also where some matters have been referred to the MPT but the process has not been concluded.

35. The order sought is said to be a minor interference with the open justice principle, since the parties are not seeking an order that the public may not access material on the court file, merely that any application should be on notice to the parties. This form of order would permit the parties to engage with the balancing exercise referred to in the authorities.

36. Further, as the Defendant points out in agreeing with the Claimant's submissions, the fact that interim order hearings are normally held in private and that it is not the Claimant's practice to publish the detailed decisions of Interim Orders Tribunals hearing means that the detail of material considered in such hearings may well not be in the public domain prior to any application to the High Court. The need for the application to the High Court (and therefore the potential for the material to be subject to public access under CPR 5.4C) may itself be a consequence of the slow progress of the Claimant's investigation in the particular case, a matter outside of the doctor's control. It would be wrong for their to be any interference in the doctor's right to privacy where that privacy would have ben maintained but for the need for the application to the High Court, at least without the doctor being given reasonable notice of any

application for access to material on the court file and having an opportunity to object to such access.

37. Further, a doctor may be unable to respond to allegations listed for hearting before an IOT (or may choose not to do so) such that publication of material related to what happens before an IOT may involve a distorted picture of the allegations and the doctor's responses thereto to be published if there is inadequate control on the ability of third parties to access such material.

DISCUSSION

38. I draw from the decisions in *Dring v Cape* and *ZXC v Bloomberg* the following principles that are relevant to the issue in this case.

    a. The Court's power to order disclosure of documents on the court file is a broad power;

    b. The exercise of that power permits and indeed requires the court to balance the principle of open justice with the particular consequences that may flow from disclosure in the particular case.

    c. There is however no right to a non party to access material beyond that specifically listed in CPR 5.4C(1) – rather any person seeking such access must justify their application.

    d. In considering a request for disclosure of information on the court file, which is not otherwise in the public domain, the Court should consider whether to permit the disclosure of private information, the publication of which would on the face of it infringe the right to privacy or confidentiality of any person;

    e. Where the information relates to issues such as the health of any identified person or the identify of an alleged victim or witness, the right to privacy is likely to be engaged, such as to require the court to consider the two stage process referred on in *ZXC v Bloomberg* and earlier cases;

    f. Where the information relates to criminal investigation prior to charge, the right to privacy of the person under investigation again requires the court to engage in the two stage process;

    g. The characteristic or status of the person who is the subject of investigation is likely to be irrelevant to whether their right to privacy is engaged; put another way, there is nothing particular about the status of a doctor that affects their right to privacy in material relating to a criminal or similar investigation prior to charge.

39. Without commenting on the facts of the particular case, I accept that an investigation by the GMC into matters relevant to a doctor's fitness to practise may, like criminal investigations,

involve the consideration of sensitive material which is of a kind that may engage a right to privacy. I accept that the picture that emerges of allegation in a hearing before an IOT may not be a fair reflection of what actually proceeds to a later hearing. Indeed, depending on the stage in the proceedings when the IOT hearing takes place, it may be that the material would never come into the public domain but for the need for the hearing before the High Court. I further accept that the reason that this issue arises at all may be a consequence of the relatively slow progress of the investigation in the particular case. All these are factors to be weighed in the balance in considering the question of disclosure in any particular case.

40. It is not argued that any of these points necessarily should act as a bar to a third party accessing material on the court file, merely that the court should exercise a cautious approach by insisting on an order that requires notice of any application to be given to the parties. The derogation from the principle of open justice that arises from the order sought is undoubtedly relatively minor for the reasons identified at paragraph 34 above and is, the parties submit, justified on the facts of the case.

41. But there is to be balanced against this the potential consequence of such an order for the principle of open justice:

    a. If I make the order sought here, it will be harder for any non-party to access material within the court file. It will require notice to be given with the potential consequence of costs being incurred in dealing with the issue.

    b. Further, the need to give notice is likely delay in the application by the non-party being dealt with. Whilst it would be possible to abridge the time for notice sought in the draft order sought by the parties, the reality is that any provision requiring the giving of notice is likely to delay the application being dealt with.

    c. It may be that the material sought in the particular case is entirely unobjectionable. Once the application is made by a third party, it may be that a judge to whom this issue is referred on paper would have not hesitation in considering that the material sought ought to be provided and that it can be anticipated that no party would object to its disclosure, in which case the procedural hurdle imposed by the order would serve no useful purpose.

    d. It may further be that any application for disclosure is on terms that avoiding any risk of harm to the doctor's reputation.

42. Further, I note the "Key Objectives" published on 6 December 2024 by the Transparency and Open Justice Board established by the Lady Chief Justice. Of these, the fourth objective is expressed thus:

> "***Open documents****: that the core documents relating to proceedings, particularly the evidence and submissions communicated to the court or tribunal, should be available to the public so that they can make sense of proceedings and the decision of the Court or Tribunal. The importance of this factor is greater in modern litigation because of the increased reliance, in many jurisdictions, upon written witness statements (often standing in place of a witness's oral evidence) and written submissions.* "*The availability of skeleton arguments, and witness statements, deployed in open court hearings is essential to any meaningful concept of open justice*" (*Hayden -v- Associated Newspapers Ltd* [2022] EWHC 2693 (KB) [32])."

43. These factors all point in the direction of limiting obstacles to the free access of documents that are central to the court's decision making to the least that is consistent with the privacy rights identified above.

44. As I have noted already, the material on the court file here does not include reference to any identified person's health nor are other sensitive details disclosed other than some detail of allegations that have been made against the doctor. In such circumstances, the risk that the parties identify of the inappropriate disclosure of information from the court file is easily managed by the process of application under CPR5.4C for access to the court file. Any judge to whom such an application is referred will be able to consider the application at the time, determine whether the kind of issues referred to in the authorities justify the court in requiring notice of the application to be given to the parties or whether alternatively the court can be satisfied that the balance comes down in favour of disclosure without the cost and delay that would flow from requiring notice to be given. This control mechanism is sufficiently robust to allow the court to adhere to the open justice principle without risking the disclosure of material to which the parties might legitimately object. Like Fordham J in *Mwambingu*, I do not consider the restrictive order sought to be proportionate or necessary.

45. For these reasons, on the fact of this case I decline to make the order sought.

46. This order has been made having regard to the parties' written submissions but without hearing oral submissions. Given the importance of this issue to the parties and the lack of reported authority in relation to applications in this particular context, I give liberty to the parties to renew the application for an order under CPR5.4C(4) restricting the right of non-parties to access the court file at an oral hearing. Any such application must be made within 7 days of the service on the parties of the order made consequent upon this judgment. If such an application is made it should be referred for directions to the Liaison Judge of the Administrative Court for the Northern Circuit or any nominee of that Judge.