AN ARD-CHÚIRT
THE HIGH COURT

[2024] IEHC 710

[Record No. 2023/277 MCA]

BETWEEN

MICHAEL JOHN SHEILL

APPELLANT

AND

THE MEDICAL COUNCIL OF IRELAND

RESPONDENT

Judgment of Mr. Justice Micheál P. O'Higgins delivered on the 31st day of October 2024

Introduction

1. The appellant practised as a doctor in the United Kingdom for a number of years and was first registered with the General Medical Council ("GMC") in 1987. In 2007 he was struck off the register following a Fitness to Practice hearing which found 43 allegations of misconduct proven against him. He had previously been registered in Ireland in 1987/1988. He applied to have his name restored to the register in Ireland. This application was refused by the Medical Council in April 2023 pursuant to s.54 of the Medical Practitioners Act 2007 (as amended) (the "2007 Act"). The decision to refuse registration was based on a finding that he was unfit to practise medicine. This is the appellant's appeal from that decision.

2. The case raises issues concerning the level of fair procedures to be applied in a registration application, as distinct from a disciplinary hearing. The case is important from the appellant's point of view because, while no disciplinary charges are in play, his fitness to practise medicine is.

3. The hearing before me proceeded on affidavit. Both sides made detailed oral submissions and relied on an extensive bank of documentation. There was no oral evidence or cross-examination. Under s.54(4) of the 2007 Act, the High Court may either confirm the decision the subject of the appeal or cancel the decision and replace it with such other decision as the court considers appropriate. I will return to the relevant statutory provisions later in this judgment.

4. Alongside the statutory structure, the Medical Council operates a two-stage internal procedure in respect of applications for registration. The appellant applied on 14th July 2017 to have his name restored to the register. He had previously been registered in the general division of the register. He revealed that he had been convicted in a court of law and that he had been the subject of disciplinary proceedings before the GMC in the United Kingdom resulting in his erasure from the register. He also disclosed that he had been convicted of dangerous driving in 2009 and was sentenced to a period of twelve months imprisonment.

5. On the 28th September 2017, the Registration and Continuing Practice Committee ("RCPC") of the Medical Council met to discuss and make recommendations on the appellant's application. This is the first tier of the internal process. The committee found that the appellant had demonstrated insufficient insight into the matters which led to the erasure of his name from the GMC's register. The committee also expressed concerns in relation to the seriousness of the issues and ultimately decided not to grant the appellant's application. By letter dated 15th November 2017, the appellant notified the respondent that he wished to exercise his rights to have the RCPC recommendation to refuse his registration reviewed.

6. A Review Panel was selected to consider the appellant's application. This is the second stage of the respondent's internal process. The two tiers of the process are provided for in a document called *"Procedures for the Internal Review of Decisions Refusing Registration* (Version 5), effective from July 2014.

7. The Review Panel hearing took place in private over four days throughout 2022, beginning on 24th January 2022 (when the hearing was adjourned), and the final hearing date on 24th November 2022. The appellant was given the opportunity to make detailed oral submissions and the parties also relied on a large amount of written documentation.

8. The Review Panel found against the appellant and issued a recommendation that registration should be refused on the ground that the appellant was unfit to practice medicine. I will address the detail of the Review Panel hearing later.

9. The appellant is unhappy with the outcome of both tiers of the respondent's internal process. However, the decision that ultimately has legal effect is the decision of the Medical Council on 19th April 2023. On this date, the Medical Council convened to consider the application for registration. Counsel on behalf of the CEO endorsed the recommendation made by the Review Panel to refuse the application. At this stage the appellant made further legal submissions to the Council. He stated that he had not withdrawn his registration from the Council, that the signatures that appeared on the relevant documents were not his, and that the withdrawal application was effectively a forgery. He also made lengthy submissions concerning the validity of the GMC decision in the United Kingdom. He complained that it amounted to a judgment of a foreign jurisdiction, and submitted that there had been a want of fair procedures and non-compliance with provisions of the Irish Constitution, the European Convention on Human Rights (the "ECHR") and European Union law. Moreover, the appellant alleged that he was being discriminated against on the grounds of sexual orientation.

10. The Medical Council adopted the recommendation and reasoning of the Review Panel and ultimately determined that the appellant was not fit to practise medicine. The Review Panel had addressed the significance of the GMC decision from the United Kingdom and stated that, while the Council was not obliged to accept the findings of a foreign registry

process, the reasons for the appellant's erasure by the GMC were plainly relevant. The Council noted that serious allegations of bias, discrimination and homophobia had been advanced by the appellant without any evidence or justification, beyond the fact that adverse findings were made against him. The Council recorded its disquiet at the appellant's willingness to make allegations against the Review Panel and against counsel. The Council rejected the arguments that there was a requirement to hold the hearing in public and that the appellant's entitlements to fair procedures had been breached. The Council concluded that the appellant had shown himself not to be amenable to regulation and to be lacking in insight concerning the circumstances and processes that led to his erasure from the GMC. I will come back to the Council's reasons in greater depth later in this judgment.

11. As cases such as this are very context-specific, I should start by setting out the background context which led to the GMC in the United Kingdom making the decision to strike off the appellant in 2007.

Backdrop to the GMC disciplinary proceedings in the United Kingdom

12. The appellant first registered with the GMC in 1987. He was a general practitioner and the medical director of four private clinics which provided cosmetic and weight loss treatments. In 2002, the Healthcare Commission, which was responsible for the registration and regulation of private clinics, became concerned that despite registrable activities being carried out, the clinics were not registered. During the next three years, inspections of the clinics raised concerns about the appellant's clinical management, his failure to comply with directions of the Commission, and the continuation in the clinics of registrable activity.

13. In June 2005, the Interim Orders Panel of the GMC imposed interim conditions on his registration as a medical practitioner. He subsequently breached both conditions. In August 2007, a panel of the GMC directed that the appellant's name be erased from the register in the

UK. The Fitness to Practice Committee ("FTPC") made multiple findings of misconduct against the appellant involving some 43 factual allegations, some of which involved further sub allegations.

14. Broadly speaking, there were two distinct categories of disciplinary charges. Firstly, his dealings with the Healthcare Commission in the context of his providing certain services that constituted a "registerable activity". Secondly, charges referable to complaints made by four individual patients concerning treatment provided to them by the appellant. In its ruling, the GMC stated that there was a pattern in the appellant's failures, namely his wilful disregard of instructions from the Healthcare Commission or from the GMC Interim Orders Panel. The GMC considered that he adopted a cavalier approach to prescribing and the storage of medicines which potentially put patients at risk. He disregarded the requirements of the Healthcare Commission and of relevant guidelines in the use of medication and concerns expressed by professionals. In addition, the GMC made findings against the appellant of dishonesty and misleading a patient (these were later set aside) and made findings of failing to obtain informed consent and of rude, abusive and unprofessional behaviour towards a number of patients.

15. The appellant appealed the ruling of the GMC to the High Court of England and Wales (*Sheill v. General Medical Council* [2008] EWHC 2967 (Admin.)). The appeal was partly successful in that the finding of dishonesty was overturned. Foskett J. stated the following at para. 64 of his judgment:

> "*I have considerable misgivings about interfering with the decision reached because the Panel plainly preferred Miss KL's account of events to that of the Appellant and there was, as I have indicated, substantial agreement about how the [dishonesty allegation] was to be addressed by them. However, as I have already indicated, I am left with a lurking doubt about whether there was a clear focus on the true issue…for*

my part, however, I can see no substitute, when it comes to a serious allegation such as dishonesty, for a properly formulated and specific allegation being made that is fully and fairly ventilated in the proceedings examining it. By misadventure that does not seem to have occurred in this case…

65. With considerable reluctance, therefore, but nonetheless satisfied that it is the right thing to do in the circumstances, I will set aside the findings made under the heads of charge 26(b) and 27(b)".

16. Foskett J. noted that the appellant did not contend that the Fitness to Practice panel was wrong to find that his fitness to practice was impaired by his misconduct. Rather, his submission was that he should not have been the subject of an order for erasure, and that the appropriate sanction should have been suspension from practice for one year. However, Foskett J. rejected this and ultimately ruled there was no ground for interfering with the sanction of erasure. He stated as follows at para. 74:

"*Whilst it is clear that the Panel referred to "dishonesty" on two occasions in their remarks, it cannot sensibly be argued that those references added much, if anything, to the Panel's overall appraisal of the Appellant's conduct. Simply deleting those references from those remarks would leave a carefully structured and compelling case for erasure without any recourse to the findings of dishonesty".*

17. Accordingly, the appellant was struck off in the United Kingdom on the 4th of December 2008.

18. I will now consider the relevant provisions of the Medical Practitioner's Act, 2007.

Medical Practitioners Act 2007, as amended

19. Section 43 of the 2007 Act requires the respondent to establish and maintain a Register of Medical Practitioners. The statutory code allows a medical practitioner to make an application, accompanied by the appropriate fee, to the respondent to be registered.

20. Section 54(1) of the 2007 Act provides:

> *"(1) Nothing in sections 45 to 53 shall operate to prevent the Council from refusing to register or restore the registration of a medical practitioner on the grounds of the unfitness of the practitioner to practise medicine."*

Where the respondent decides to refuse to register or restore the registration of a medical practitioner to the register, the respondent is required to forthwith give notice in writing to the practitioner and the reasons for the decision.

21. Section 54(3) gives the practitioner a right of appeal and s.54(4) provides for the jurisdiction of the High Court in such an appeal. It provides as follows:

> *"The Court may, on the hearing of an appeal under subsection (3) by a medical practitioner—*
>
> *(a) either—*
>
> *(i) confirm the decision the subject of the appeal, or*
>
> *(ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision—*
>
> *(I) to register or restore the registration of the practitioner in such division of the register as the Court considers appropriate and with no conditions attached to the registration, or*
>
> *(II) to register or restore the registration of the practitioner—*
>
> *(A) in such division of the register as the Court considers appropriate, and*

(B) with such conditions attached to that registration as the Court considers appropriate,

and

(b) give the Council such directions as the Court considers appropriate and direct how the costs of the appeal are to be borne."

22. Certain amendments to the 2007 Act were introduced on the 6th November 2020, at a point in time when the appellant's application was pending before the Medical Council. These amendments included s.45(4) of the 2007 Act. The legislative scheme now provides at s.45(4) (c) that the applicant for registration must satisfy the respondent "*that he or she is a fit and proper person to practice medicine in the State".* While that is now the law, the appellant's application was determined in accordance with the legislative provisions as they stood at the time the application for registration was initially made. The Medical Council submits that that is important because, actually, in ease of the appellant's position, the application was determined on the basis that the appellant did not have to meet any onus of proof.

Summary of the appellant's submissions

23. I will endeavour to summarise the appellants arguments in this appeal. This is not a straightforward task because the appellant's pleadings were *prolix* and at times hard to follow. Many of his points were theoretical in nature and lacked focus and practical grounding. Quite often he failed to focus on the specific facts of the case. However, in fairness to the appellant, particularly in his oral submissions, he argued his case with considerable force and articulacy. It is fair to say that the appellant's submissions took up the lion's share of the hearing time.

24. I have read all submissions provided by the appellant, some of which were prepared with the benefit of legal advice, some of which were not. The issues at stake for the appellant are clearly important. He appears to have dedicated a considerable part of the last two decades to challenging the respective decisions of the GMC in the United Kingdom and the Medical Council in this jurisdiction, which he believes have unfairly prevented him from practising his chosen profession. He makes the valid point that he worked hard to obtain the required qualifications and the decision of the respondent has major implications for his reputation, his standing in the community and ability to earn a livelihood.

25. In a written submission entitled *"The Concept of Open Justice in the Republic of Ireland Legal System"* the appellant submits that the principle of open justice applies to various legal proceedings including tribunals held by bodies such as the Medical Council. The principle of open justice ensures transparency and public access to the legal process, allowing individuals to observe and understand these proceedings. The appellant focuses on various aspects of the open justice principle:

1. **Public hearings**

   The appellant says that tribunals in Ireland are generally conducted in public. He says this did not occur, and given that his case did not come within any permitted exceptions, there was a failure to comply with the concept of open justice and a difference of treatment.

2. **Publication of reports**

   The findings and reports of tribunal proceedings are typically made public, which did not happen in the RCPC report of October 2017, the Review Panel report of January 2023 and the decision of the Medical Council on the 31st of May 2023. The applicant contends that these reports should be published and accessible to the

public. Again, he argues that this amounts to an unjustified difference in treatment and a departure from the fundamental principles of fair and public hearings.

3. <u>Access to reports and information</u>

The appellant says the Medical Council's hearings concerning his application were held from 2017 to 2023, constituting an unreasonable length of time. He states that the allegations made by him, of discrimination on the basis of his sexual orientation and negligent infliction of emotional suffering, are important for public awareness of sexual discrimination by public authorities.

In addressing the Medical Council's argument that he was applying for registration which, as an administrative procedure, was not required to be held in public, the appellant argues that the Medical Council undertook a Fitness to Practice review under the "guise" of an application for registration, and consequently failed to follow the correct fair procedures required under the Charter of Fundamental Rights of the European Union. He argues that any infringement of Article 15 (Freedom to choose an occupation and right to engage in work) and Article 16 (Freedom to conduct a business) requires, under Article 47 of the Charter, a fair and public hearing, and the effects of non-compliance with open justice were highly prejudicial for the appellant and caused him emotional and financial damage, and resulted in indirect discrimination. He argued that the Medical Council, aware of the appellant's mental health conditions, showed no care or compassion, thereby demonstrating either conscious or unconscious bias.

There was no sworn evidence before any of the Medical Council's hearings. The appellant states that the hearings were based entirely on information obtained from another jurisdiction, which was never tested by investigation by the Medical

Council. Further, information from the internet was referenced as fact by the Review Panel, even though it had no patient names or medical records to rely upon as reliable reference points, and no oral or written testimony sworn under oath. Additionally, the appellant submits that he was deemed guilty for breaching law that did not exist in Ireland at the time of commission of the conduct in question, which he claims amounted to a breach of Article 15.5 of the Irish Constitution.

4. <u>Democratic values</u>

By not holding the proceedings in public, the appellant contends that the respondent acted undemocratically and the entire process was inconsistent with fair procedures under the Irish Constitution, Article 47 of the Charter of Fundamental Rights of the European Union and also inconsistent with the ECHR and relevant case law.

The appellant referenced the right to the protection of personal data under Article 8 ECHR. In that regard, he complains that the Medical Council's information was obtained from the GMC, which was itself based on information obtained in breach of Article 8.

The appellant says that it is his perception that heterosexual doctors would not have been abused in this manner in similar proceedings before the Medical Council, and that this difference in treatment is legally inadmissible.

He argues that to allow the Medical Council's decision to stand would involve breaching his constitutionally protected presumption of innocence and his right to a defence.

The appellant also makes arguments under the headings of equality and discrimination relying on Article 20 of the Constitution and Article 21 of the

Charter, and states that discrimination based on nationality or sexual orientation is prohibited under European law.

The appellant also invited the court to consider the Fitness to Practice decision of the GMC in 2007, and sought to identify a number of frailties in that decision. He also challenged the correctness of the decision of Foskett J. in the High Court of England and Wales in 2008. The appellant argued that the GMC's investigation was flawed in that the GMC's investigator was not impartial. The appellant complains that this was not considered by the Irish Medical Council.

The appellant says there were important differences in treatment between the way in which his case was dealt with and that of another litigant, who is a heterosexual male. He argues that his application to be reinstated on to the medical register was rejected on the basis of a determination that he was unfit to practice, whereas in consideration of the registration of the other doctor, it was concluded that the doctor must first be placed on the register before it can be determined if a doctor is fit to practice. He argues that the other registration hearing involved the investigation of patients' complaints, was held in public, and took 12 months to conclude, whereas he was not reinstated on the medical register, there was no independent investigation of the patient's complaints, no sworn evidence, the hearing was otherwise than in public and the process was ongoing for 7 years. Additionally, he argues that the Medical Council failed to take into account/ investigate the Appellants complaints about the GMC hearing.

In all these circumstances, it is the appellant's perception that the Medical Council demonstrated unconscious bias because of his sexual orientation and having a disability. Additionally, he feels that he received hostile and aggressive treatment at the hands of the Medical Council.

The appellant submits that the Review Panel was not independent as the panel was appointed by the executive of the Medical Council. They were not members of the Medical Council and were not elected by medical professionals. He argues that they were not appointed under the correct procedure by the Minister of Health.

The appellant submits that he was treated differently to doctors coming from other European Union countries. Under Directive 2005/36/EC on the recognition of professional qualifications, medical practitioners from other European member states have an automatic right to be put on the medical register of the Republic of Ireland. He argues that he was denied this right, and that once a medical practitioner has been registered, a member state can, if necessary, conduct disciplinary proceedings without delay or additional costs. It is further contended that, in failing to reinstate him on the register in order to conduct disciplinary proceedings, the Medical Council treated the appellant differently from other medical graduates of EU member states and violated his right to equality under Article 20 of the Charter.

26. The court also heard additional oral submissions on the 25th of June 2024. In advance of the second day of hearing, the parties provided helpful written responses to a number of queries raised by the court. This exercise was intended to assist the parties, particularly the appellant, and focus the submissions on to areas that warranted further exploration. I have reviewed all the additional submissions and materials provided by the parties and I have endeavoured to address them in my treatment of the relevant issues below.

27. In his oral submissions on the 25th of June 2024, the appellant submitted that, while the registration application was an administrative procedure, the nature of the procedure and the importance of the issues at stake were such that protections and safeguards under Article

6 ECHR should apply. Alternatively, he submits that if Article 6 did not apply, equivalent protections under the Irish Constitution, akin to those of a criminal trial, should have been put in place due to the seriousness of the issues, the reputational matters at stake and that, ultimately, the application concerned his livelihood and his ability to practice his chosen profession.

28. Secondly, the appellant emphasised the *"severity of the penalty"* point. He submitted that, even if the procedure was administrative in nature, the sanction/ outcome was so severe, and given that the application involved a decision of indefinite duration that touched upon his place in the medical community and his ongoing ability to earn a livelihood, he should have been accorded the same safeguards and procedures applicable to a Fitness to Practice hearing. In that context, he submitted that in accordance with the principles laid down by the Supreme Court in *Re Haughey* [1971] IR 217, he was entitled to cross examine his accusers, i.e. the patients who had made complaints against him as part of the disciplinary process before the GMC, and that this right was denied to him.

29. Separately, the appellant reiterated the point that the respondent failed to address new evidence he presented to the Council as to what was said by Mr. David Behan, the Chief Executive of the Care Quality Commission, which he claimed amounted to a statement that he was not guilty of charges to 2(d) and 2 (f) as found by the GMC in the 2007 disciplinary process in the United Kingdom.

30. In answer to a question from the court, he submitted that he was not inviting the court to revisit the decision that had been made by the GMC in 2007. Rather, it was appropriate, he submitted, for the court to assess whether it was reasonable for the GMC to take the decision they had taken, in light of the new evidence.

31. The appellant relied on several cases from Ireland, the European Court of Justice and the European Court of Human Rights including *Engel v. The Netherlands (Article 50)*

Application no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 *(ECHR,* 23 November 1976) 1 EHRR 647.

Summary of the Medical Council's submissions

32. The Medical Council's overall position was that the appellant's challenge to the decision to refuse registration was wholly lacking in substance and should be dismissed. The respondent stated that the appellant was granted provisional registration in January 1986 and full registration in February 1987. In March 1988, an application for voluntary withdrawal from the register was received and processed by the respondent. Accordingly, the appellant's name was withdrawn from the register later that same month. As a matter of fact, therefore, the respondent argues that the appellant voluntarily took himself off the register.

33. In any event, even if that is disputed, the agreed starting point was that the appellant's name was not on the register, and that the appellant sought a change in the existing *status quo*. This is important, says the Medical Council, because despite what the appellant says, at no stage has the respondent sought to cancel the appellant's registration, given that the appellant is not in fact on the register. The respondent has simply considered an application made by the appellant for registration. Based on the material and submissions available to it, the Council determined that the appellant is not a person who is fit to practice medicine and therefore does not meet the statutory criteria for registration.

34. A key focus of the Medical Council's submission was the distinction between an application for registration and a disciplinary procedure arising from allegations of misconduct. Applications for registration are governed by Part 6 of the 2007 Act, whereas disciplinary procedures are provided for under Parts 7-9 of the Act. While they may share common objectives in protecting the public and ensuring professional standards, they are very separate and distinct processes. A key failing in the appellant's approach was his failure

to acknowledge this distinction. It was simply wrong to equate an application for registration with a complaint of professional misconduct or to conflate the distinct processes provided under the statutory scheme.

35. The respondent has established a comprehensive internal process for dealing with applications for registration and/or restoration pursuant to Part 6 of the Act. The process is set out in a document entitled *"Procedures for the Internal Review of Decisions Refusing Registration (Version 5)*", effective from July 2014. A registration application is assessed based on the material included in the application. Where the Registration and Continuing Practice Committee (RCPC) recommends refusal of an application, and this recommendation is appealed, the matter is then reviewed by way of an oral hearing before the Review Panel. After the oral hearing, the Review Panel prepares a report for the Medical Council, setting out the Review Panel's recommendation. This is precisely what occurred in the appellant's case. The respondent then decides whether the relevant criteria are met, including the core criteria as to whether the applicant is a person fit to practice medicine.

36. The respondent submits that such an application neither necessitates, nor requires, the holding of a Fitness to Practice Inquiry pursuant to Part 8 of the 2007 Act, and the appellant is incorrect in insisting it is required. The respondent cannot subject a person who is not on the register to the disciplinary processes provided for in the Act. The Council contends that, if it had required the holding of a Fitness to Practice Inquiry, it would have been acting *ultra vires.*

37. The respondent submits that the appellant's related contention that the Medical Council is required to grant registration to all applicants, whether they are fit to practice medicine or not, and then hold Fitness to Practice inquiries to suspend or cancel the registration of those determined to be unfit, is wholly unreasonable and absurd.

38. As to the appellant's submission that the application should have been heard in public, the respondent submits that Article 6 (1) of the ECHR has no application to a registration process because the appellant did not have a *"right"* to be registered in circumstances where he did not meet the statutory criteria for such registration. Insofar as there was a *"dispute"* within the scope of Article 6 (1), it only arose after the respondent refused the application for registration.

39. In the alternative, the Medical Council submits that even if (which is denied) Article 6 was in fact engaged during the process before the respondent, there was no violation of the right having regard to the proceedings as a whole. Any perceived procedural shortcoming that arises by virtue of the hearings before the Review Panel and/or the respondent not taking place in public, is remedied by the provision of a court-based appeal whereby the High Court has full jurisdiction and before which the appellant has the right to a public hearing.

40. The respondent contends that the applicant's reliance upon the decision of the Supreme Court in *Zalewski v. WRC* [2022] 1 IR 421 is misplaced. The registration process does not involve the exercise of limited functions or powers of a judicial nature. Moreover, the respondent was not engaged in the determination of a dispute of fact, nor any contest as regards any competing rights.

41. The respondent submits that the appellant does not have a *right* to be registered. Rather, he has a right to have his application for registration fairly and appropriately considered. As the transcripts show, that is precisely what occurred.

42. The respondent submits it was entitled to rely on the previous findings of the GMC insofar as they were upheld by the English High Court. The respondent emphasises, however, that it is not making the case that the GMC findings must be accepted without question. Rather, the respondent submits that the Council was entitled to assess the fact of the previous findings of misconduct, and attach such weight to those findings as the Review Panel and the

Medical Council itself considered appropriate, in light of all the circumstances of the case and any other matters brought to its attention. The fact the GMC erased the appellant from the register in the UK was patently relevant as to whether he should be registered in this jurisdiction. To suggest, as it appears the appellant does, that he ought to be considered as an individual who had not been erased from the GMC register is absurd, particularly having regard to the objectives of the respondent to protect the public interest and ensure high professional standards among doctors.

43. The Medical Council submits that on any fair reading of the transcripts, the appellant was afforded his right to fair procedures throughout the process. It was made clear to him throughout that he was entitled to call any evidence that he wished to call. He was also entitled to put before the Medical Council any documents or materials that he wished to be taken into consideration. He was also afforded an untrammelled right of submission which he very clearly exercised. In these circumstances, the respondent contends that the appellant enjoyed the full panoply of rights that was appropriate to the process that the respondent was engaged in.

44. There is no evidence that the respondent engaged in any form of discriminatory decision making. The appellant has made unbridled, scurrilous and wholly unfounded allegations that should not have been made. The question as to the appellant's sexuality was not a matter that the Council considered to be of any relevance whatsoever to the question of fitness for the purpose of registration.

45. Insofar as there was a lapse of time between November 2017 and January 2022, it was submitted that this was mostly attributable to the appellant's ill health, albeit that the global pandemic also impacted on the timeline. At the very outset of the Review Panel hearing on the 24th January 2022, the appellant openly acknowledged that his health issues had delayed the matter being heard.

46. The Medical Council also addressed the appellant's submission that, because the conduct at issue in the GMC constituted a criminal offence, and that there was no criminal prosecution, the regulatory proceedings in the UK ought not to have occurred. The appellant's argument further contends that the criminal offence at issue was not an offence in this jurisdiction at the time, such that the respondent was prohibited from considering the conduct *at all.* This argument is premised on a fundamental misunderstanding of the distinct processes. The respondent has no role in the investigation or prosecution of criminal complaints either in Ireland or in the UK. Rather, it is charged under the 2007 Act with regulating registered practitioners in the public interest and for the protection of the public.

47. Given the separate and distinct processes between regulation and crime, with their differing objectives, matters can, if appropriate, run in parallel. It has never been the law that a person must be prosecuted for, or convicted of, a criminal offence before that person can be subject to a Fitness to Practice proceeding and found guilty of professional misconduct or poor professional performance. The respondent relies upon *AA v. Medical Council* [2002] 3 IR 1 and *Shine v. Medical Council* [2009] 1 IR 283 in that regard. It follows that the criminal status or otherwise of the conduct at issue is not relevant to the appellant's registration application. It is the conduct itself and the GMC's decision in that regard which is determinative in the appellant's circumstances.

48. The appellant also relies on the principles of *ne bis in idem* and/or the principle of double jeopardy to make the argument that, as the GMC has erased him from the register in the United Kingdom, the respondent is prohibited from imposing *"a further sanction"* i.e. not allowing him entry on to the register. The respondent submits that, leaving aside the fact that the principle of double jeopardy has no application, any such argument fundamentally misunderstands the registration process and the respondent's role therein. The respondent is not attempting to re-sanction the appellant for conduct determined by the GMC. The

respondent was engaged in a purely regulatory process, the purpose of which is intended to determine whether the appellant is fit to practice medicine for the purpose of registration. No part of this process involves the imposition of a sanction on the appellant. The principle of *ne bis in idem* simply does not arise.

49. In conclusion, the respondent submits that, viewing matters in the round, the appellant was afforded fair procedures throughout the entire process. The respondent correctly adhered to the process for determining registration applications provided for in the 2007 Act and in the respondent's internal procedures. The decision of the respondent and the reasons for it were clearly set out. The respondent's decision was reasonable, factually sustainable and well-reasoned and was also made in good faith. Accordingly, the respondent submits that the appellant's appeal should be refused.

Analysis of the appellant's key arguments

50. For reasons of brevity and clarity, I propose to address the appellant's arguments under the following eleven headings, some of which overlap:

1. Issue of delay.
2. Should the oral hearing have been held in public?
3. Medical Council's reliance on the GMC decision.
4. Significance of the GMC conduct having been *criminal* in nature.
5. Claim of an indefinite and disproportionate sanction.
6. Double jeopardy.
7. Breach of the presumption of innocence.
8. Complaint that the oral hearing took place on Zoom.
9. Complaint that the Review Panel was improperly constituted.
10. Complaint of discrimination on grounds of sexual orientation.

11. Breach of fair procedures.

My analysis will primarily focus on the last-mentioned ground – fair procedures – as that seems to me to be the most important area in the case.

1. Issue of delay

51. The appellant complains that matters have dragged on since 2007 and that this is, in all the circumstances, oppressive and unfair. In my view it would not be correct to conflate the process that took place before the GMC in the United Kingdom with the process that commenced in 2017 before the Irish Medical Council. The respondent is correct that the appeal before the court relates to the process that commenced in 2017 when the appellant applied to the Medical Council to have his name restored to the register. The appellant insists that the respondent should bear responsibility for the period predating the application for registration, including the process in the United Kingdom before the GMC. In my view, that is not correct. The period the court is concerned with is the period from July 2017 onwards.

52. The appellant has not adduced evidence of inordinate and inexcusable delay by the Medical Council in dealing with his application. Certainly, there is no evidence that there was *blameworthy* delay on the part of the respondent. On reviewing the transcripts, I note that in the oral hearing before the Review Panel on the 24th of November 2022 (pg. 29 of the transcript), there is reference to the appellant acknowledging that the passage of time between 2017 and 2022 was largely due to his own issues of mental ill health. When this was raised by counsel for the CEO during the oral hearing, the appellant did not dispute this.

53. While the appellant sought to dispute this in the hearing before me on the 25th of June 2024, there is insufficient evidence before the court to justify the conclusion that the Medical Council exercised inexcusable delay in dealing with the application. While it is certainly unfortunate that a registration application made in 2017 was ultimately not finalised until April 2023, the evidence suggests that the passage of time was largely down to a combination

of the appellant's own ill health (the main factor), the respondent's efforts to provide the appellant with an oral hearing in accordance with its internal procedure and, to a lesser extent, the COVID-19 pandemic. Accordingly, I reject this ground of challenge.

2. Should the hearing have been held in public?

54. It is clear from the transcript that the appellant called for a public hearing at various stages of his submission. It is appropriate therefore that the court should consider the substance of this point of challenge. The appellant submits that his application for registration involved a dispute surrounding his civil rights and obligations, namely his entitlement to practice his chosen profession as a medical practitioner. He submits that the hearing should have been held in public to satisfy the principle of open justice, and this failure to do so constitutes a breach of his entitlements under Article 6 ECHR. He further argues that the lack of a public hearing resulted in a deficit in transparency, a lack of media coverage of his case, no proper publication of the Medical Council's decision, and no reasons published for its decision. He relies upon several ECHR case authorities including *Engel v. The Netherlands* (Article 50) *Application no. 5100/71; 5101/71; 5102/71; 5354/72;* 5370/72 *(ECHR*, 23 November 1976) 1 EHRR 647, *Diennet v. France Application no. 18160/91* and *Albert and Le Compte v. Belgium Application no. 7299/75; 7496/76* in support of his submission that his case ought to have been heard in public before an independent arbiter.

55. Consideration of the appellant's Article 6 argument requires the court to assess whether the appellant enjoys an automatic right to be placed on the register by virtue of obtaining the necessary qualifications. In my view, he did not. Section 54 of the 2007 Act makes it clear that nothing in the statutory code shall operate to prevent the Medical Council from refusing to register or restore the registration of a medical practitioner on the grounds of the unfitness of the practitioner to practice medicine. The respondent has developed quite a sophisticated internal procedure for dealing with registration applications. The wording of

s.54 makes it clear that it was not the intention of the Oireachtas that a medical practitioner, having the required qualification, would have an automatic right to be placed on the register. It is evident from the section that the Council can refuse to register otherwise qualified applicants where it concludes that the applicant is unfit to practice medicine. It seems to me beyond dispute that an applicant for registration does not enjoy an automatic right to be registered.

56. Article 6 ECHR provides that, in the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The application before the Medical Council was the appellant's application for registration. This was not an application to discipline the appellant, or to revoke a licence. I am not persuaded that the nature of the application was such as to engage Article 6. The ECHR case law on which the appellant relies appears to relate to professional disciplinary charges and fitness to practice hearings into professional misconduct. This was not the process engaged in by the respondent here.

57. If I am wrong in this conclusion, and if in fact the appellant's Article 6 rights were engaged, I think there is force in the respondent's argument that the appellant's Article 6 rights (if any) were fully safeguarded by his right to appeal to the High Court. He has exercised this right fully in bringing forward this appeal. If there were perceived procedural shortcomings in the oral hearing before the Review Panel or Medical Council taking place in private, in my view that was remedied (if it required to be remedied) by the fact that the appellant was afforded a full statutory appeal before a judicial body which has a broad range of powers to vindicate the appellant's interests. The appeal which took place before this court was a hearing held in public. For all these reasons, I am not persuaded there has been any violation of the appellant's entitlements under Article 6 of the Convention.

58. The fact that the appellant had attained the necessary medical qualifications is neither here nor there. The respondent acknowledged in the hearing before me that the appellant's qualifications were sufficient to permit him to apply for registration. Therefore, the issue concerning the Professional Qualifications Directive 2005/36/EC is a red herring. Nobody was making a case that the appellant did not possess the required medical qualifications. Rather, the issue in the case was the issue expressly referenced in s.54 of the 2007 Act itself, namely the question whether the application for registration should be refused on the grounds of the unfitness of a practitioner to practice medicine.

Issue 3: Medical Council's reliance on the GMC decision

59. In order to assess this aspect of the appellant's case, it is necessary to view the GMC ruling in context. The appellant was given a full opportunity to contest the misconduct allegations against him at the Fitness to Practice hearings in the UK. He was represented throughout that process by solicitors and counsel. He exercised his right of appeal to the High Court of England and Wales. He brought a limited appeal against the GMC findings. Again, he was represented by a legal team throughout that process. The High Court in England upheld the decision of the GMC to cancel his registration. The Judge set out his reasoning in a considered judgment, which is available online. It is beyond dispute that the findings of the GMC were relevant to the issue the Medical Council had to decide, namely the question whether the appellant was fit to practice medicine. In my view, the respondent was entitled to assess the fact of the previous findings of misconduct and attach such weight to those findings as the Review Panel, and the Medical Council itself, considered appropriate in light of all the circumstances of the case, including the appellant's submissions and the materials relied upon at the hearing. The fact that a regulatory body in a neighbouring jurisdiction had erased him from the register was plainly a relevant matter that the Council was entitled to consider. To hold otherwise would involve ignoring the respondent's statutory mandate,

including its obligations to protect members of the public and ensure high professional standards among doctors.

60. Whilst the respondent was entitled to consider the GMC findings insofar as they had been upheld by the High Court, it was not *bound* to follow the outcome of the GMC process or regard it as determinative of the appellant's application in any way. The process before the Medical Council could not on any view be regarded as a rubber-stamping exercise. Doubtless the respondent would have considered the significant period of time that had elapsed since the conduct the subject of the GMC findings. In that regard, I note the emphasis placed by the respondent on the question whether the appellant had demonstrated sufficient *insight* into the circumstances that led to the misconduct findings and his removal from the register. Consideration of the issue of insight necessarily extends the temporal range of the matters considered by the respondent, beyond the fact of the previous findings of misconduct and the decision to strike off.

61. Sensibly, and to his credit, the appellant accepted before the Review Panel that he had been the subject of prior disciplinary proceedings in the UK, and he disclosed these matters in his application form. He also adduced new materials which were not before the GMC, including the statements of David Behan. He made submissions on why this new material, on his case, cast doubt on the reliability of the GMC findings and the decision to strike him off the register. It is clear from the detailed report of the Review Panel that all this new material was considered.

62. In view of its role as a regulator concerned with protecting members of the public and maintaining standards in the medical profession, the GMC findings of misconduct were plainly relevant to the task the Council had to carry out. Had it not considered the GMC decision, it would not have been doing the job which the statute required it to do. What weight to give to the GMC findings, and how to balance those findings against other factors

in the case, including the passage of time since the GMC process, were all matters for the respondent to consider. In all these circumstances, I reject this ground of challenge and conclude that the respondent was entitled to have regard to the findings of misconduct by the GMC.

Issue 4: Significance of the disciplinary conduct having been criminal in nature

63. The appellant submits that because the conduct at issue in the GMC inquiry constituted a criminal offence, and because there was no criminal prosecution, the regulatory proceedings in the UK should not have occurred. Moreover, he argues that since the conduct at issue was not a criminal offence in *this* jurisdiction, the Medical Council here was prohibited from considering the conduct *at all*. In my view, this argument is without substance. The Medical Council has no role whatsoever in the investigation or prosecution of criminal complaints. Rather, its role is that of a regulatory body responsible for regulating doctors in the public interest, protecting members of the public and maintaining professional standards. The respondent is correct in saying it has never been the law that a person must be convicted of a criminal offence before that person can be the subject of a Fitness to Practice hearing. For these reasons, the criminal status or otherwise of the conduct at issue is not relevant to the appellant's application for registration.

Issue 5: Indefinite and disproportionate sanction

Similarly, the appellant's argument that the impugned decision amounted to an indeterminate or disproportionate sanction misunderstands the nature of the respondent's role as a regulator. The respondent was not engaged in a penal process and had no role in imposing any punishment or sanction. Nor was it engaged in a disciplinary process or indeed any application to terminate an existing license or authorisation. Undoubtedly, the decision to refuse registration has long-term and potentially enduring implications for the appellant, but that reality cannot be a basis for collapsing the distinction between a registration decision and

a disciplinary decision: see *Doherty v. The Nursing and Midwifery Council* [2017] EWCA Civ 1344 where the English Court of Appeal emphasised the distinction between the two types of process. In my view, the appellant's arguments under this heading are unsustainable.

Issue 6: Double jeopardy

64. The appellant relies on the principle of *ne bis in idem,* or the principle of double jeopardy, in support of the argument that, as the GMC has erased him from the register in the UK, the Medical Council here is prohibited from imposing a "further sanction". Again, this argument misunderstands the nature of the role played by the respondent in this instance. In considering the registration application, the respondent is not engaged in any sanctioning process. Nor is it seeking to re-sanction the appellant for conduct already determined by the GMC. Rather, it is the appellant who has invoked the machinery of the respondent's regulatory process by applying for registration on the Irish register. The principle of double jeopardy in my view does not arise.

Issue 7: Breach of presumption of innocence

65. The appellant submits that the manner in which the registration application was considered breached his constitutionally protected presumption of innocence. In my view, this argument is not sustainable. The process carried out by the respondent was inquisitorial in nature. It was an administrative process that involved the respondent carrying out a statutorily mandated assessment as to whether the appellant was or was not fit to practice medicine. In accordance with s.54(1) of the 2007 Act the respondent was obliged to consider whether the appellant was fit to practice medicine. In my view, no evidence has been adduced that, in carrying out that process, the respondent breached the appellant's presumption of innocence. During the hearing before me, I specifically invited the parties to address me on the question as to the onus of proof. I am satisfied from the transcript of the hearing before

the Review Panel that the matter was dealt with by way of an inquisitorial hearing with the appellant being under no obligation to make his case or discharge any onus of proof.

66. In point of fact, as I have noted at para. 22 above, the appellant's application was determined in accordance with the legislative provisions as they stood at the time the appellant initially made his application. That meant he was not required to discharge an onus of proof, as is now required by s.45(4)(c) of the 2007 Act, as amended. This was a fair and reasonable accommodation which was made *in ease* of the appellant's position.

Issue 8: Remote hearings

67. The appellant submits that the hearing should not have been heard via Zoom. In the hearing before the Review Panel on the 24th of January 2022, when the appellant was represented by a solicitor and counsel, no objection was taken to the fact that the hearing was to be conducted on Zoom. On that occasion, the appellant's barrister sought an adjournment on behalf of the appellant, and this was granted so that his entitlement to fair procedures would be fully respected.

68. The appellant has not identified any prejudice or issue of unfairness arising from the decision to conduct the hearing on Zoom. From my reading of the transcripts, he did not object to the hearings before either the Review Panel or the Council itself being conducted remotely. In my view, having acquiesced in the procedure, he is not entitled to raise the issue for the first time at this remove and accordingly this ground of challenge must fail.

Issue 9: Improperly constituted panel.

69. The appellant submits that the Review Panel was not properly constituted. Again, no objection was taken to the composition of either the Review Panel or the composition of the Council members to make the final decision. This is precisely the sort of objection that would need to be made before the local tribunal at the relevant time. It seems to me that this ground of challenge was not developed in oral argument to any great extent. I am not persuaded that

this ground of challenge has any substance or that it can be raised for the first time at this remove.

Issue 10: Claim of discrimination and bias.

70. The appellant submits that the Medical Council has discriminated against him on grounds of his sexual orientation. In my view, this is the low point of the appellant's appeal. No evidence has been adduced by the appellant to justify this very serious allegation. The Review Panel delivered its report on the 16th of January 2023. Following receipt of the report, the appellant made complaints to the Workplace Relations Commission on the 2nd of February 2023. He alleged discrimination on grounds of sexual orientation, victimisation and bullying on the part of the Medical Council. He also saw fit to make a criminal complaint to An Garda Síochána against counsel who appeared on behalf of the CEO. He alleged that counsel had made homophobic comments directed at the appellant during the course of the Review Panel hearing.

71. In my view, neither allegation should have been made by the appellant. Individuals who give their time to act on behalf of public bodies and boards should not be subjected to wild and unfounded allegations unsupported by evidence. Having such a serious allegation made against a person can cause considerable stress and anxiety. It can also do serious harm to a person's reputation. Serious allegations of this nature should not be made unless there is a clear and rational basis for them. The appellant appears to have concluded that, because he is homosexual, and because his application for registration was refused, those who made that decision are guilty of discriminating against him on grounds of sexual orientation. This sort of thinking is flawed, circular and illogical.

72. The appellant points to what he says are comparators in an effort to persuade the court that the respondent discriminated against him on the grounds of his sexual orientation. I agree with the respondent's submission that the purported comparator cases relied upon by the

appellant are readily distinguishable and of no relevance to the issues I have to decide in this appeal.

73. In justifying his complaints, the appellant points to his "perception" that the decision to refuse his application for registration was influenced by his sexual orientation. In my view, a litigant's perception and sensitivities are important and should always be respected by a court. However, a litigant's perception is no substitute for evidence or coherent argument. Perceptions cannot be tested or scrutinised in the way that evidence can.

74. The Medical Council noted in its ruling that at no point during the GMC process or the subsequent appeal to the English High Court did the appellant raise any issue of discrimination or bias. The Council considered that the allegations made by the appellant are highly generalised assertions of bias and discrimination on grounds of nationality and homophobia, that were entirely unsupported by any factual or logical basis. The Council found that the appellant was content to advance those very serious allegations of bias, discrimination and homophobia, but conspicuously failed to offer any evidence or justification for such allegations, beyond the fact that adverse findings were made against him. In my view, the same can be said of the similar allegations made by the appellant in this appeal. These allegations are without substance and should not have been made.

Issue 11: Was there a breach of fair procedures?

75. In my view, this is the central issue in the case. The primary focus of the second day of hearing was on the question of whether the oral hearing before the Review Panel was constitutionally fair and met fundamental standards of fair procedures. I propose to address this part of the appellant's case in some detail. Case law makes clear that the elements of a fair hearing will vary greatly depending on the circumstances. At one end of the spectrum, purely administrative applications that involve day-to-day subject matter will require little or no formality. At the other end of the spectrum come hearings that involve the determination

of rights, findings of wrongdoing, reputational consequences, or the imposition of sanctions and penalties. Generally speaking, in cases falling at this end of the spectrum, more elaborate procedural requirements will be imposed on the decision maker, more akin to those required in a court setting. Modern administrative law emphasises that the nature and context of the application will govern the extent of the formalities required. Much will depend on the subject matter of the decision, the nature and function of the decision-making body, the body of rules traditionally associated with the process, and the overall importance of the issues.

76. In the present case, the respondent emphasises that the application under discussion was administrative in nature; did not involve disciplinary charges; did not involve the imposition of a sanction; did not involve the adjudication of rights; and did not involve a situation where the applicant had an automatic right to be registered. The Medical Council emphasises that an application for registration is entirely separate and distinct from any disciplinary process and the appellant's entire case fails to recognise this all-important distinction. Unlike a disciplinary process where the petitioner already enjoys the right to practise, an applicant for registration is putting himself forward as a person who should be entitled to practise medicine in this jurisdiction. Since entry on the register is the gateway to practise, the gatekeeper (in this case the Medical Council) is obliged to ask questions and probe issues that have a bearing on an applicant's fitness and suitability. This is because the Medical Council is charged by statute with fulfilling the overarching obligations of protecting the public, promoting confidence in the medical profession and maintaining proper standards and conduct among doctors. The respondent submits that any assessment of the fairness of the review hearing must take these important issues of context into account.

77. I am inclined to agree with the general thrust of the Medical Council's submission as to the context in which the court should view the appellant's submission on the fairness of the hearing before the Review Panel. The starting point in any assessment is that the application

before the Review Panel was an administrative application that did not involve any adjudication of the appellant's existing rights. This was not a disciplinary hearing. Nor was it an application to revoke a licence. However, that is not the end of the matter. A critical matter that must also be borne in mind is that, while the hearing involved an administrative application for registration, as distinct from the disciplining of an existing registrant, the subject matter of the hearing was the question whether the appellant was fit to practice medicine. That subject matter touched on issues that were of great importance to the appellant, including his entitlement to practice his chosen career for which he was otherwise qualified, his right to earn a livelihood, his right to a good name and reputation and his personal sense of esteem and place in the community. Therefore, it seems to me that his right to constitutional fair procedures meant in this instance that his application would be considered fairly, in a formal setting and that fundamental standards would be observed. As emphasised by the Supreme Court in cases such as in *Re Haughey* [1971] IR 217 and *Borges v. Fitness to Practice Committee* [2004] 1 IR 103, the question as to the level of procedural safeguards that will be required in any application will depend on the individual circumstances of each case, and its factual and legal context. There is no one-size-fits-all rule that will govern all cases. Rather, the level of safeguards required will depend on the individual circumstances of each case.

78. As the appellant's case developed, a number of issues or potential frailties with the Review Panel hearing were discussed. These points may be summarised as follows:

(i) The hearing was held in private.

(ii) There was no sworn evidence.

(iii) There was no cross examination of complainants or formal testing of evidence.

(iv) Panel members were permitted to ask questions of their choosing in a question-and-answer session at the end of the hearing.

(v) No notice of the questions was given to the appellant in advance.

(vi) There was no formal proof of the materials placed before the Review Panel, including the GMC ruling.

(vii) The Review Panel considered additional materials including the Channel 4 and BBC broadcasts.

(viii) There was no particularisation of the specific concerns raised by the two broadcasts, as one might see in a Notice of Inquiry in a Fitness to Practice hearing.

79. Very few of the potential complaints mentioned above were raised by the appellant during the hearing before the Review Panel. This is problematic because ordinarily where a litigant wishes to take issue with any aspect of a hearing, the onus is on the litigant to raise the issue at the relevant time so that the tribunal concerned can deal with the issue and hear from the other side. Depending on the context, issues of acquiescence and estoppel may arise where a litigant chooses to remain silent or fails to make his objection at the appropriate time.

80. Looking at the list of potential concerns, the appellant undoubtedly raised the issue concerning the absence of a public hearing and I have already addressed this issue. However, he did not object to the absence of sworn evidence nor did he take up the offer to give sworn evidence himself. He did not object to panel members asking questions. He did not raise any issue of prior notice or make any objection that he had no notice of the questions that were going to be asked by panel members. He did not call for the materials before the Review Panel to be formally proved. He did not object to the Review Panel considering the Channel 4 and BBC programmes. Nor did he call for particularisation of the specific concerns raised by the two broadcasts. This was so even though transcripts of the broadcasts were provided to the appellant in advance of the hearing.

81. Since the appellant did not raise these issues before the Review Panel, and in many respects did not press these issues in argument before me, it would not be appropriate for the Court to determine whether any of these individual points has validity or would operate to invalidate a registration process. I wish to make clear, therefore, that nothing in this judgment should be interpreted as a statement that any of the identified issues of potential concern have substance or should operate to invalidate an administrative process such as this. Rather, a determination of these issues will have to await another case where the points are fully argued and may fall to be decided.

82. In coming to this view, I take into account that the appellant represented himself at the hearing. As against that, the appellant had the benefit of legal representation right up until the first day of the hearing before the Review Panel. No formal objection appears to have been made concerning any of these potential points, save that he did object to the Medical Council "enforcing a foreign judgment" or "rubberstamping a decision of another regulator", as he characterised the Medical Council's reliance on the GMC ruling. It is also evident that the appellant was always advised that he could adduce his own evidence, and it is clear from the transcripts that this facility was offered to him, and that he declined. Moreover, it is important to note that the appellant never contested the fact that he had been the subject of misconduct findings by the GMC and that his appeal against the decision to strike him off the register to the English High Court had been unsuccessful.

Complaint of no evidence or cross examination

83. Separately, the appellant has argued that the hearing before the Review Panel was flawed on account of the complainants before the GMC not being called to give evidence. This had the effect, says the appellant, that he was deprived of an opportunity to cross examine his accusers. He relies on the Supreme Court's decision in *Borges v. Fitness to*

Practice Committee of the Medical Council [2004] 1 IR 103 in support of the proposition that, where a person's reputation and livelihood is at stake, constitutional fair procedures require that the applicant should be given a proper opportunity to cross examine his accusers. For its part, the respondent disputes the substance of this argument, but also raises a procedural ground of objection. The respondent submits that the appellant is estopped from making this argument because, it asserts, he acquiesced in the process followed by the Review Panel, and at no stage sought to have specific witnesses produced for cross examination. The respondent says the appellant made no submission that the hearing could not proceed without the witnesses in question being called to give their evidence *viva voce.*

84. In my view, it would be appropriate to take a generous view, in ease of the appellant's position, on the respondent's acquiescence objection under this heading. In my view, on a fair reading of the transcripts, the appellant just about did enough before the Review Panel to entitle him to make the argument in this appeal that the failure to call the witnesses to give sworn evidence, and to be cross examined, was fatal to the validity of the process. At various stages throughout the hearing, the appellant made general arguments on the need for an adversarial hearing, the right to adduce evidence and the right to cross examine accusers (see for instance transcripts of the oral hearing on the 20th May 2022 p. 113). Notwithstanding the very generalised way in which the argument was put, I think in the circumstances it would be unfair to shut out the appellant from at least making the argument. Accordingly, I propose to address the substance of the appellant's sworn evidence/ cross examination argument.

85. The appellant relies, by analogy, on the ruling of Keane C.J. in *Borges* where it was observed that, when a tribunal is inquiring into allegations of misconduct which reflect on a person's good name or reputation, basic fairness of procedure requires that he or she should be allowed to cross examine his accuser or accusers (see also in *Re Haughey* [1971] IR 217). The *Borges* case concerned a disciplinary process that was yet to be conducted by the Fitness

to Practise Committee of the Medical Council. The applicant's complaint was that the Medical Council intended to conduct an inquiry before its own Fitness to Practice Committee. The Medical Council contended that the complainants against the applicant would not be called in evidence in the inquiry, which was to be held in Ireland, but, instead, their testimony was to be introduced by reference to a transcript of proceedings before the Professional Conduct Committee of the GMC before which such complainants had testified. The Supreme Court held that such an inquiry could not lawfully be held here, on the basis that the applicant would be deprived of his right to fair procedures. During his decision Keane C.J. stated that:

> *"It is beyond argument that, where a tribunal such as the Committee is inquiring into an allegation of conduct which reflects on a person's good name or reputation, basic fairness of procedure requires that he or she should be allowed to cross-examine, by counsel, his accuser or accusers. That has been the law since the decision of this court in re Haughey and the importance of observing that requirement is manifestly all the greater where, as here, the consequence of the tribunal's finding may not simply reflect on [the doctor's] reputation but may also prevent him from practicing as a doctor, either for a specified period or indefinitely."*

86. Counsel for the Medical Council submits that the Supreme Court's analysis in *Borges* is not applicable to the present case on a number of grounds. Firstly, the estoppel point, namely the contention that the appellant had acquiesced in the process followed and had raised no objection. Secondly, the important distinction that in a disciplinary process, the Medical Council is bringing disciplinary proceedings against a doctor, whereas in the present context the appellant was the person making the application. Different considerations arise in a disciplinary context where the decision-maker is obliged to make findings of fact. Thirdly, counsel submits it would have been *ultra vires* for the Medical Council to engage in some

form of disciplinary process against the appellant in circumstances where he was not on the medical register. Fourthly, neither the Review Panel nor the Medical Council were engaged in a review of transcripts. Nor were they considering the medical records of patients who made the allegations before the GMC.

87. Counsel submits therefore that the Supreme Court's decision in *Borges* is distinguishable on a number of grounds, not least the crucial fact that the processes involved were completely separate and distinct. The Review Panel and Medical Council were not considering disciplinary charges or allegations of misconduct. Rather, the process they were involved in was considering, in the round, whether the appellant was a fit person to be registered, in light of the admitted fact that findings had been made against him by the GMC which were upheld by the English High Court. This was different to the situation that obtained in *Borges*, where the Medical Council were not merely relying on the fact that findings had been made, but went further in that the FTPC sought to short circuit matters by holding disciplinary proceedings in Ireland without calling the complainants to give *viva voce* evidence. For these reasons, the Medical Council submitted that the Supreme Court's decision in *Borges* was inapplicable.

88. In my view, based upon the facts of the present case, there are a number of weaknesses in the appellant's argument. Firstly, it is clear from the transcripts that the appellant expressly declined the option of calling his own evidence. While that may not be dispositive of the issue, it is a relevant factor in the mix. *Mapp v. Gilhooley* [1991] 2 IR 253 is authority for the proposition that it is a fundamental principle of the common law that, for the purpose of civil and criminal trials, *viva voce* evidence should be given on oath or affirmation. The trial judge was found to have erred in law in admitting the unsworn evidence of the minor plaintiff. The Supreme Court regarded this as sufficiently fundamental an error to warrant setting aside the award and ordering a fresh trial. However, the hearing in question

involved the administration of justice and the award set aside was for damages for personal injuries in the High Court. By contrast, the appellant's case here involved an administrative application to a public body. The administration of justice was not engaged. He was legally represented by solicitors and counsel right up to the hearing before the Review Panel and no facility for sworn evidence was sought. Nor was the appellant himself cross examined, as he did not give evidence. During the appeal before me, he made no submission that the absence of sworn evidence *per se* invalidated the hearing. Rather, he confined his complaint under this heading to the fact that the complainants who gave evidence against him before the GMC were not produced for cross examination and he was therefore, on his case, deprived of an opportunity to confront his accusers. As a matter of fact, therefore, the appellant did not pursue any argument before me that the hearing was flawed on account of the absence of sworn evidence. Nor did he seek or advance sworn testimony in the appeal before me. In those circumstances, the issue concerning the absence of sworn evidence *per se* does not properly fall for determination in this appeal. The issue should therefore be left over to another case where it is properly advanced.

89. Secondly, the emphasis in the appellant's submissions was not so much that the Review Panel could not have regard to the findings made by the GMC, but rather that, according to him, the new evidence that he was offering called into question the reliability of the findings of the GMC. The appellant was given every opportunity to put forward his case that the new materials changed the picture materially and warranted the Panel disregarding the GMC findings. No part of this argument depended on, or was influenced by, the non-production of the complainants for cross examination.

90. Thirdly, the specific complaints of patients formed only a part of the material relied upon by the GMC in the disciplinary process that led to the appellant's erasure from the register. Fourthly, it is clear from the respondent's reasons for refusing registration, that the

issues that were suggestive of the appellant's unfitness to practice medicine went beyond the findings of misconduct made by the GMC and the fact that the appellant had been struck off in 2007.

91. Fifthly, and crucially in my view, unlike the disciplinary situation before the GMC, the respondent in this registration application was not relying on the complainants' evidence *per se* to prove that their allegations of misconduct against the appellant were true. Rather, the *fact* that the GMC had made findings, as upheld by the English High Court, was considered in the round, against the backdrop of all the other material. The disciplinary process in the UK had long since concluded and it was not necessary in the circumstances for the Review Panel to re-hear evidence or pour through transcripts.

92. The Medical Council submits that, from a general perspective, it would be undesirable and unworkable from a practical point of view if an applicant for registration could insist on previous criminal convictions being re-litigated or earlier disciplinary processes being re-run. In my view the practical concerns underlying that submission are reasonable. To take an example, if an applicant has a conviction for murder on their record, they cannot sensibly expect a regulator considering a registration application to rehear the criminal charge. Apart altogether from issues of finality, it would arguably be unfair and oppressive on witnesses and complainants if they were obliged to run the gauntlet of a further trial, with all the consequential stress and anxiety that that would entail.

93. In the case of previous misconduct rulings by overseas regulators, it would present major issues of practicality and fairness if applicants for registration could insist on the whole disciplinary process being re-run, particularly where disciplinary charges are historical in nature and may involve witnesses who are no longer alive or available.

94. However, while these general points may be said to be reasonable, I do not wish to close out a situation where, in an appropriate case, constitutional fair procedures may require

that oral evidence and/or cross examination of witnesses may be necessary in a hearing to decide an applicant's fitness to practice medicine. I think it would be unwise in the context of the present application to attempt to lay down a rigid or "one-size-fits-all" rule on the question whether oral evidence and cross examination will be required, and specifically whether an applicant for registration should be entitled to insist upon complainants from an earlier finalised disciplinary process being recalled for cross examination. Each case will fall to be considered on its own individual facts.

95. There is precedent for a registration application proceeding on the basis of sworn evidence and the cross examination of witnesses: *Carroll v. Law Society of Ireland* [2016] 1 IR 676. *Carroll* concerned an application by an apprentice solicitor to be admitted onto the Roll of Solicitors. The Law Society appointed the former Chief Justice, Mr Justice Finlay to sit with two solicitors as the duly established Education Committee of the Society. Importantly, for the purposes of the present ground of challenge, the Committee was specifically tasked with enquiring into 12 allegations of misconduct which were particularised in a "Statement of Complaint". The Committee sat over seven days to enquire into these complaints. The judgment records that oral evidence was given before the Committee and, when thought necessary, was tested by cross examination. The hearing resulted in adverse findings being made against Mr Carroll and the specific allegations of misconduct being upheld to the criminal standard of proof. On such basis, the Committee concluded that Mr Carroll was not a fit and proper person to be appointed to the Roll.

96. Mr Carroll applied to the President of the High Court to review the Committee's decision, as provided for in Regulation 25(d) of S.I. 287/1997. Finnegan P. conducted a full examination of the findings made by the Committee. The review took place over several days and involved oral evidence and cross examination. Having heard all the evidence and submissions, Finnegan P. concluded that all but two of the complaints should be dismissed.

However, on the basis of the upheld findings, one of which involved a serious finding of dishonesty, he was satisfied that Mr Carroll was not a fit and proper person to be admitted as a solicitor. This decision was upheld by the Supreme Court on appeal.

97. While it was not the issue in the case, some features of the *Carroll* case suggest that there may be circumstances where a hearing with sworn evidence and cross examination may be necessary to fairly try a fitness to practice issue. However, there are also important differences between the factual situation in *Carroll* and the present case, not least the fact that in *Carroll*, the Education Committee (and the High Court) was enquiring into specific allegations of misconduct and determining whether they were proven to the required standard. In that sense, it is important to note that in *Carroll* both the Committee and the President were specifically tasked with making findings on individual counts of misconduct. That was not the case before the Review Panel, or the Medical Council, or in the appeal hearing before me.

98. Moreover, in the course of the hearing before me, the appellant at no stage sought the facility of calling oral evidence or conducting cross examination. Instead, he was content to run the appeal "on the papers". In all these circumstances, I hold that on the facts of this particular application, the fact firstly that oral evidence was not called and secondly, that complainants from the disciplinary process were not produced for cross examination, did not render the proceedings flawed such that the outcome should be set aside. I reach that conclusion in the present case, very much on the basis of the specific facts referenced above.

Viewing the fairness of the proceedings in the round

99. That is not the end of the matter, however, because in my view there is substance to the appellant's submission that the question as to the fairness of the hearing and the adequacy of the procedural safeguards applied must be assessed, having regard to the importance of the

issues at stake and the fact that the appellant's constitutional rights to earn a livelihood and right to a good name were engaged in the hearing. In my view, the best and fairest way of approaching the appellant's appeal on this ground is to consider in the round, whether the particular hearings given to the appellant were fair, and whether he was given sufficient opportunity to make his case and challenge the case being put forward by the CEO as to why registration should not be granted.

100. The hearing before the Review Panel was first listed, as I have said, on the 24th January 2022. At that stage, the appellant was legally represented. Counsel for the appellant made an application for an adjournment on the basis that he had only recently instructed his legal team and they needed time to familiarise themselves with the documentation and take instructions. The Review Panel granted the adjournment. The appellant submitted additional documents to the Review Panel. In addition, further investigations were undertaken by solicitors for the CEO of the Medical Council, to ascertain what publicly available information was available in respect of the appellant. These investigations included, *inter alia,* a Channel 4 news report in 2012 alleging that the appellant was practicing under the name "Dr. Michael Schiel", and an undercover investigation by the BBC broadcast in 2017 into Botox treatments allegedly carried out by the appellant and the allegation that he was holding himself out as a registered medical practitioner in the United Kingdom.

101. On the 20th May 2022, the Review Panel reconvened to continue hearing the appellant's review. The appellant attended with a solicitor in a support capacity. He indicated to the Review Panel that his legal team had withdrawn from the case and that he wished to proceed as a litigant in person. During the course of quite lengthy submissions, the appellant gave his version of the events giving rise to the complaint to the GMC in the UK.

102. The hearing before the Review Panel resumed on the 15th July 2022. The appellant furnished the panel with further additional material in advance of that hearing date. The

Review Panel sought to impose some level of discipline on the amount of time the whole exercise was taking. Nonetheless, the appellant was given further time to make his case. The hearing resumed again on 24th November 2022. Counsel on behalf of the CEO concluded his submissions and the appellant made a number of submissions in reply. Members of the Review Panel then asked the appellant several questions. The appellant did not have notice of what questions were going to be asked of him. However, a reading of the transcript supports the respondent's contention that the appellant was happy to answer the questions put to him. At the conclusion of the hearing, the Review Panel indicated they would issue a written report in due course, once they had an opportunity to further consider the submissions that had been made and the voluminous documentation that had been provided.

103. The Review Panel delivered its report on the 16th January 2023. The report comprises nineteen pages and addresses in some detail the submissions made by the appellant. The Review Panel ultimately concluded that the appellant was unfit to practice medicine. The reasons given for this conclusion are set out at some length in the report.

104. My task in this appeal is to assess the overall fairness of the hearings on a cumulative "in-the-round" basis. In carrying out that assessment, it seems to me the following points in particular are relevant:

- The respondent has developed quite a sophisticated three-tier process for considering applications for registration. If unsuccessful before the initial committee, an applicant can seek an oral hearing before a Review Panel. Thereafter, the applicant has a further right of submission before the Medical Council itself.
- The appellant was afforded the right to be legally represented at the oral hearing before the Review Panel and before the Council.

- The Review Panel had the benefit of legal advice from an experienced counsel who provided on-the-shoulder advice to Panel members and also assisted the appellant where appropriate.
- The appellant was provided in advance with the materials upon which the CEO intended to rely, including the GMC ruling, a copy of the decision of the English High Court upholding the decision to strike off, a transcript of the Channel 4 and BBC programmes and all relevant correspondence.
- He was informed at the oral hearing that he could call whatever evidence he wished.
- He was advised by the legal assessor Ms. Lynch S.C. that he could call witnesses if he wished. He declined.
- He was given a right of submission, which it is clear from the transcript he exercised fully.
- The hearing lasted for four days before the Review Panel and some four hours before the Medical Council itself. He was given as long as he needed to make his case.
- The appellant's claim that he was subjected to aggression and hostility during the process is not borne out by the evidence.
- On occasion, the appellant sought comfort or bathroom breaks and these requests were accommodated without difficulty.
- It is evident from the transcripts that during the hearing he was treated with courtesy and fairness. The Chair, the panel members and the lawyers concerned dealt with the hearing professionally and appropriately.
- In the course of the hearings, the appellant raised a number of issues, and these points were considered by the Review Panel and the Medical Council in the respective hearings.

- The initial process before the RCPC was flawed because the committee proceeded on the basis, *inter alia*, of the findings of dishonesty made by the GMC, even though those findings had been set aside on appeal by the English High Court. However, this was rectified in the hearing before the Review Panel where senior counsel brought to the attention of the panel the findings made by the English High Court.
- It cannot be said that the Review Panel "rubber stamped" the decision of the GMC. The Panel were specifically advised by its legal assessor, correctly in my view, that they were entitled to assess the fact of the previous findings of misconduct by the GMC and attach such weight to those findings as the Review Panel considered appropriate, having regard to all the other matters brought to their attention. In other words, the panel were told they were not *bound* to follow the GMC ruling, but to take into account and attach such weight to it as they considered appropriate, in light of the submissions made against the ruling by the appellant.
- It was an undisputed fact that the appellant was the subject of adverse findings of misconduct by the regulator in the UK, and that he unsuccessfully appealed the decision to strike him off the register to the English High Court.
- The issues that were suggestive of the appellant's unfitness to practice went beyond the findings of misconduct by the GMC and the fact he had been struck off the register in the UK in 2007. The answers given by the appellant in the Q &A session were, to put it mildly, concerning.
- The respondent did not only rely on historical matters. Rather, it paid particular attention to the up-to-date question as to whether the appellant had *insight* into the circumstances and issues underpinning the concerns about his fitness to practice.
- The Review Panel gave detailed reasons for their recommendation.

105. I have reviewed the transcript of the hearing before the Medical Council on the 19th April 2023. The Council carefully considered the Review Panel report dated 16th January 2023. The Council gave the appellant a full opportunity to make his case, which he availed of. He provided numerous submissions on why the complaints of the various patients before the GMC were unfounded, and why the recommendation made by the Review Panel should not be followed. The Council gave considered reasons for its decision. I address these below.

Reasons of the Medical Council for refusing registration

106. I think it is appropriate to set out in some detail the basis of the Medical Council's decision to accept the Review Panel's recommendation to refuse the application. The Council decided that having carefully considered the report of the Review Panel, it agreed with its recommendation and was content to adopt it and the reasons set out within the report. The Council decided that the precise circumstances around the appellant's removal from the register in 1988 were of limited significance for the purposes of his present application for registration. By the time of his application for registration in 2017, he was a person who was not registered and irrespective of what occurred in 1988, the question of his fitness now fell to be assessed.

107. The Council considered the appellant's submission that no reliance should be placed on the ruling of the GMC to erase his name from the register. They considered the submission that the process leading to that decision had been flawed by reason *inter alia* of prejudice against him due to his nationality and/or sexual orientation. The Council agreed with the Review Panel's conclusion that the primary area of concern in relation to the appellant's fitness arose by reason of his erasure from the GMC register. The Medical Council took the view that it was entitled to have regard to the GMC ruling and that the fact of, and reasons for the decision to erase his name from the register, were of obvious

relevance. The Council emphasised that it was by no means obliged to accept the findings of a foreign regulatory process in an uncritical manner. However, the Council considered it to be particularly relevant that the appellant was given a full opportunity to contest the allegations made against him and that he also had the benefit of legal representation throughout the GMC process. It also took into account that, with the benefit of legal representation, he had appealed the findings of the GMC to the English High Court and succeeded in having two of the findings against him relating to his honesty overturned. It noted that at no point during the GMC process or the subsequent appeal to the English High Court did the appellant raise any issue of discrimination or bias.

108. The Medical Council considered that the findings of the GMC, and the fact that the appellant's registration was erased, was a patently relevant and significant fact in the overall consideration of his application for registration. It found that the disciplinary process operated by the GMC was broadly similar to that operated by the Council and that, absent any evidence to suggest the contrary, the Council considered it appropriate to take account of the extensive and serious findings of misconduct that had been made against the appellant. The GMC had decided to erase his name from the register in circumstances where it had found, amongst other things, that he had engaged in clear disregard for the relevant regulatory authorities in the UK and lacked insight into the seriousness of his actions. Significantly, the Council found that, notwithstanding the substantial passage of time since those findings, the appellant had yet to exhibit insight into the seriousness of the allegations made against him.

109. Insofar as the appellant sought to criticise what he asserted were various illegalities underpinning the GMC investigation which led to the complaints of misconduct, the Medical Council did not consider it to be remotely feasible to assess such allegations at this remove of time. These matters did not appear to have been raised before the courts in the UK or the

GMC. The erasure of his registration by the GMC was clearly a matter of real and obvious significance in terms of assessing his fitness to practise medicine in this jurisdiction.

110. It is clear from its detailed ruling that the Medical Council considered all of the appellant's various legal arguments. These included his arguments that there was an illegality relating to the GMC process, the asserted significance of the fact that no criminal proceedings were ever brought against him, his arguments as to breach of the principle of *ne bis in idem* (double jeopardy), his allegations of bias against the Review Panel, his arguments as to allegations against counsel for the CEO during the oral hearing, arguments on EU Directives on the mutual recognition of professional qualifications, his submission that he was entitled to a public hearing and his submission that the hearing before the Review Panel was flawed and unfair. The Medical Council considered the transcripts of those hearings and the report of the Review Panel and declared itself to be satisfied that the procedure adopted by the Review Panel was entirely fair and was conspicuously exhaustive and detailed.

111. In the concluding section of the decision the Medical Council stated the following:

> *"Council, like the Review Panel, considers that Dr Sheill's response to regulation by the GMC in the past is a critical consideration so far as his current fitness to practice medicine is concerned. In that regard the question of fitness must be considered in light of Council's obligation to protect the public, uphold the reputation of the profession and ensure confidence in the medical profession. Those considerations require, at a bare minimum, that medical practitioners are amenable to regulation.*
>
> *It was a striking and persistent feature of the submissions made by Dr Sheill to Council (and the submissions made to the Review Panel) that he does not accept any wrongdoing on his part notwithstanding the very clear and detailed findings of the GMC. On the contrary Dr Sheill consistently seeks to attribute base and malign motives to any regulatory body, court or other person that makes any adverse finding*

against him or opposes him. Having had the opportunity to assess Dr Sheill's submissions and the manner in which he presented them Councill is firmly of the view that Dr Sheill is not amenable to regulation. Council is also of the view that he has no insight into the circumstances and processes leading to his erasure by the GMC.

Council has also considered whether any form of conditional registration would be appropriate to address the clear concerns that have arisen and similarly concurs with the views expressed by the Review Panel in that regard."

112. In arriving at its decision that the appellant was unfit to practice medicine, the respondent expressly made it clear that it concurred with the views expressed by the Review Panel that the appellant's criminal convictions were not of such a nature as to merit refusal of registration and were not relevant. Finally, the Council also made clear that it did not approach the application on the basis that it was up to the appellant to show that he was fit to practice medicine; there was no legal or evidential burden on the appellant.

113. The court's task in this appeal is to come to its own view on the core issue as to the appellant's fitness to practice medicine. In my view, there was ample evidence before the respondent to enable it to come to the conclusion that it reached. The fact that the appellant had been struck off the register in the United Kingdom in 2007 was a plainly relevant matter. It was reasonable for the Medical Council to note that the disciplinary processes operated by the GMC are broadly similar to those operated by the Council. The findings of misconduct made against the appellant by the GMC were serious and substantial. The GMC found that the appellant had engaged in clear disregard for the relevant regulatory authorities in the UK and that he lacked insight into the seriousness of his actions. It was also relevant that the appellant had appealed the strike off decision to the High Court in England, but this appeal was unsuccessful, save for two findings made against him relating to dishonesty.

114. Moreover, the respondent made clear in its ruling that the question of fitness must be considered in light of the Council's obligation to protect the public, uphold the reputation of, and confidence in, the medical profession. Those considerations require, at a bare minimum, that medical practitioners are amenable to regulation.

115. In the hearing of the 24th of November 2022 before the Review Panel, the appellant provided answers to panel members' questions as to the services he was continuing to provide in England as of 2022. He said that he continued to provide services for patients in the clinic, did operations every day of the week and did "minor surgery". He said he had a vast knowledge and experience of using laser machines for various procedures including treating varicose veins, removing skin tags, CO2 skin resurfacing, and treatment of scars. He stated that from time to time he provided Botox treatment (administering but not prescribing medication) and treated patients for psoriasis. He answered questions about the Channel 4 and BBC programmes, and about the website that appeared to carry his photograph but bore a different spelling of his name.

116. In my view, on an overall reading of the transcript, Panel members were entitled to be concerned about the answers given by the appellant and the possibility that patients may have mistakenly viewed the appellant as a registered doctor. Panel members were also entitled to have serious concerns about the appellant's lack of insight into the circumstances that led to the appellant being struck off the register previously.

117. In *Carroll*, the Supreme Court emphasised the enormity of the task facing any person who has been struck off and who attempts to re-enter the solicitor's profession. While there are important differences between the two statutory codes, similar difficulties arise for a struck off doctor who is seeking restoration of his registration. In fairness to the appellant, it should be noted at all times that, unlike *Carroll,* the present appellant was ultimately not found guilty of disciplinary charges involving dishonesty. Nonetheless, the findings made by

the GMC as upheld by the English High Court were serious and substantial and undoubtedly justified erasure from the register. The GMC concluded *inter alia* that he had adopted a cavalier attitude to prescribing and storing medicines which potentially put patients at risk. He had engaged in clear disregard for the relevant regulatory authorities and lacked insight into the seriousness of his actions. The GMC found a pattern in his failures, namely a wilful disregard of instructions when he decided they did not apply to him. The GMC also made findings of rude, abusive and unprofessional behaviour towards a number of patients and concluded that the appellant had shown no insight into the circumstances that led to his erasure.

118. Based against this background and having carried out its own assessment, the respondent concluded that for various reasons the appellant was simply not amenable to regulation and was not fit to practise medicine. It seems to me that this was the correct test under s.54(1) of the 2007 Act.

119. In *Shatter v. Guerin* [2021] 2 IR 415 Charleton J. stated *obiter* that the judicial arm of government would be rendered unworkable were aspects of rights derived from *In Re Haughey* [1971] IR 217 to become universally applicable. In an interesting discussion on the limits of the *Haughey* principles, Charleton J. deprecated *the "endless slide into the application of criminal-trial-type rights as in Haughey."* In the context of the Guerin report under discussion in that case, he referenced the *"floor rights"* within administrative law of telling the person who may be found at fault that an issue arises, and secondly, taking any response from the person into consideration.

120. In the present case, for the reasons that I have endeavoured to explain, it would not be appropriate for this court to attempt to identify a one-size-fits-all rule as to the level of fair procedures to be afforded to a person seeking registration on the medical register. Nor would it be appropriate for me to determine whether the "floor rights" referenced by Charleton J.

would suffice in such an application. Each case will fall to be determined in accordance with its own individual facts. In the present case, the hearings provided to the appellant were quite formal and a reasonably sophisticated suite of procedural safeguards were put in place. The appellant's arguments were properly considered and taken into account. Relevant materials were considered. The correct legal test was applied. The appellant was given every opportunity to make his case and he was treated with dignity throughout. Detailed reasons were given for the decision. In the particular circumstances of the case, and bearing in mind the factors that I have identified at para. 104 above, I hold that the procedures afforded to the appellant, cumulatively and in the round, were fair and reasonable, and sufficient to meet the appellant's fair procedure rights in the circumstances.

121. Finally, I am also satisfied from my consideration of the materials that the respondent was entitled to be concerned about the level of insight shown by the appellant throughout the entire process. In all these circumstances, I agree with the respondent's decision and see no basis for interfering with it.

Conclusion.

Having considered all the appellant's grounds of challenge, I am not persuaded that there is any basis for setting aside the decision of the Medical Council. In all the circumstances, I refuse the appeal.

Signed: Micheál P. O'Higgins

Appearances:

Appellant: Litigant-in-Person

Respondent: Ronan Kennedy SC and Caoimhe Daly BL, instructed by DAC Beachcroft Solicitors