

Neutral Citation No: [2019] NIQB 27

Ref: MAG10869

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 18/02/2019

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION UNDER SECTION 41A(6)  
OF THE MEDICAL ACT 1983 (AS AMENDED) TO EXTEND  
AN INTERIM ORDER OF CONDITIONS

BETWEEN:

THE GENERAL MEDICAL COUNCIL

Applicant

and

DR CHRISTOPHER OGBONNA OBASI

Respondent

MAGUIRE J

**Introduction**

[1] In these proceedings the General Medical Council ("the GMC") is the applicant and Dr Christopher Ogbonna Obasi is the respondent.

[2] The respondent is a doctor who is described in the papers as a "specialty doctor in anaesthetics". He currently is subject to a GMC investigation and the issue before the court relates to an application by the GMC for a 12 months extension order in respect of the period allowed to it in which to complete its investigation.

[3] At the moment, the respondent is subject to an order made by the Interim Orders Tribunal ("IOT") which has the effect of placing conditions on his registration. These conditions essentially require him to work under the supervision of others. As a result he was (while employed by his employer) unable to provide emergency or on call cover which had originally been a feature of his proposed employment.

[4] At the hearing before the court the applicant was represented by Mr Barnard BL and the respondent's daughter, Dr Claudia Obasi, spoke for him.

### **Chronology of key events**

[5] While the court has considered an extensive volume of material in this case, the chronology which the court will provide below sets out the essential factual matrix in respect of this application. It does not purport to deal with every single event.

18 March 2016	Respondent interviewed <i>via</i> skype for the post of specialty doctor in anaesthesia with Doncaster and Bassetlaw Hospitals NHS Foundation Trust (hereinafter "the Trust").
18 July 2016	Respondent commences work for the Trust. A feature of his employment was that he would provide emergency and on call cover at certain times.
19 October 2016	Trust decides to conduct in relation to the respondent what they describe as a 'capability investigation'.
16 November 2016	Terms of reference for the investigation provided to the investigator, who was to be a fellow anaesthetist.
25 November 2016	Respondent lodges a grievance which has the result that the investigation ( <i>supra</i> ) was suspended.
28 November 2016	Respondent resigns from his post.
14 December 2016	The investigation into his capability recommences following its suspension.
February 2017	A report of the above investigation is produced, written by Dr David Northwood, Consultant Anaesthetist.
5 May 2017	A Fitness to Practice referral was provided by the Trust to the applicant.
15 May 2017	Respondent informed of GMC investigation and that there would be a hearing before an IOT.
25 May 2017	Hearing before IOT convened. Respondent does not attend but submits documents. Decision made to place conditions on the respondent's registration.

7 June 2017	Respondent invited to undertake a GMC Performance Assessment and asked to fill in a Secondary Care Portfolio.
21 June 2017	Respondent declines invitation to undertake Performance Assessment. <i>Inter alia</i> , says he is under stress. Raises a range of objections. Does not return Secondary Care Portfolio.
21 June 2017	A lengthy e-mail response sent by applicant to the respondent dealing with the questions raised by the respondent concerning undergoing a performance assessment.
23 June 2017	Applicant responds to further questions and reminds respondent about returning Secondary Care Portfolio.
23 November 2017	Review of the case conducted by IOT. Respondent attends and makes submissions. No change.
11 May 2018	Further review of respondent's case by IOT. Respondent does not attend, though invited. No change.
1 November 2018	Further review of respondent's case by IOT. No change. Respondent does not attend, though invited.
19 November 2018	Respondent told that applicant had referred his case to a Non-Compliance Tribunal for non-compliance with the applicant's reasonable requests. In particular, reference is made to respondent not undertaking a performance assessment and to his failure to return the Secondary Care Portfolio.
20 November 2018	Extension of time granted by this court to 24 December 2018 to enable respondent to prepare his opposition to the applicant's application to extend time.
20 December 2018	Afternoon hearing in this court on the extension of time issue. Respondent attends, together with his wife and daughter (Dr Claudia Obasi) who speaks for the applicant at the hearing. Hearing uncompleted. The court extends time to enable it to complete the hearing at a later date. Extension is for two months.

31 January 2019

Further hearing in this court. Respondent not present but as before his wife and daughter attend with the latter speaking for him.

### **The issues which have emerged**

[6] It is helpful to set out the main issues which have emerged from a consideration of the papers having regard to the oral and written submissions of the parties.

[7] The first issue, which is the most important one, relates to the respondent's period of employment with the Trust. This lasted for 4½ months. From the Trust's perspective, at a relatively early stage in the respondent's employment by them, questions arose relating to his capability. The way in which they arose is depicted in the report of Dr David Northwood which was completed in February 2017. Concerns, according to the Trust, appear to have surfaced within two weeks of the respondent being employed by it. But why they did so is controversial as between the Trust and the respondent.

[8] In essence, the Trust maintains that there was dissatisfaction among consultant level and other staff about the respondent's performance from as early as 1 August 2016. In due course this prompted the establishment of a capability investigation in respect of the respondent which was finalised in February 2017 after the respondent had left the employment of the Trust in November 2016. The outcome of this investigation was, in general terms, negative from the respondent's point of view, with a variety of clinical and other staff within the Trust being critical of his capabilities. Perhaps most tellingly, the report contains a range of feedback pro-formas from consultant staff; a section which contains what are described as 'consultant summaries'; and a number of other staff comments. Many of these, unfortunately, are unfavourable to the respondent. As regards the consultant summaries, the author reports that in October 2016 there was a unanimous consensus that the respondent was still not demonstrating the abilities of an experienced anaesthetist who could safely cope with the demands of out of hours emergency work. These summaries, it is reported, were later confirmed at interviews with Dr Northwood at later dates. Considering the totality of the material available to him, Dr Northwood, in his conclusion, noted that consultants at the hospital "could not judge that Dr Obasi was able to fulfil the demands of the job in a safe manner". In short, "he was not able to fulfil his role of Specialty Doctor in Anaesthesia as expected". This led to a recommendation that he should not work in an anaesthetic post which expects unsupervised work until he has undertaken further training and assessment of his capabilities.

[9] The respondent, in contrast, offers a quite different version of events. In his view, his problems with the Trust began when, within a day or two of him starting work, he indicated that for religious observance reasons he would not be able to do out of hours work between sun down on Friday and sun down on a Saturday. This,

the respondent claimed, gave rise to resentment as other clinical staff did not wish to cover the period when he would be unavailable. This, as the respondent thought, generated ill-will towards him which manifested itself initially in his induction period being lengthened and, as he saw it, him being punished by reason of his adherence to his religious faith.

[10] At all times the respondent in his contact with Trust management maintained that he was an able and capable anaesthetist but, increasingly, he was being faced with negative assessments completed in the context of the Trust's capability investigation. The respondent identified these negative assessments as part of a campaign against him.

[11] Ultimately, this led to the respondent leaving his employment with the Trust and later registering a grievance about the treatment he had received but it also led to the Trust making a fitness to practice referral in May 2017 to the GMC.

[12] The referral to the GMC was substantially based on the capability investigation carried out on behalf of the Trust by Dr Northwood. Dr Northwood assembled a range of materials much of which raised question marks about the respondent's capability to act as an anaesthetist without supervision. In composing his report, Dr Northwood spoke with the respondent and in his report of his investigation he refers to the respondent's views, summarised above. However, Dr Northwood recorded his opinion that he did not view any negative assessments of the respondent from other staff which he had received as being biased or the product of collusive activity and he did not consider that there was a campaign being waged against the respondent by other clinical or other staff. These views are contested by the respondent.

[13] The second issue which has emerged relates to the respondent's reaction to events and, in particular, to the effect of stress upon his wellbeing. It appears that the respondent views the pressures to which he was subjected while employed by the Trust to have been such that they were beyond what he could withstand. Those pressures, in his eyes, arose from the sequence of events described above; from bullying which he alleged he experienced while employed by the Trust; and later as a by-product of the controversy brought about as a result of the capability investigation and, latterly, the GMC investigation which has been ongoing. It is his case that stress caused him to resign his post and has brought with it depression. It is also his case that he has become medically unfit and that this has prevented him from being able to attend and/or participate at hearings conducted by the applicant.

[14] As far as the GMC investigation is concerned, the GMC have maintained the position that they are anxious to consider the respondent's medical position. They have sought from him medical evidence to verify the level of his difficulties but despite numerous requests the respondent has failed to provide such evidence.

[15] The third issue relates to the respondent's compliance with other requests made by the GMC. The GMC has repeatedly made requests that the respondent should undergo a Performance Assessment. The first request in this regard was made on 7 June 2017 but, repeatedly, the respondent has failed to agree to such an assessment, despite him being told that such a failure may ultimately involve the step being taken of his case being referred to what is described in the paperwork as a Non-Compliance Tribunal.

[16] In respect of this issue, the respondent has questioned the need for a Performance Assessment to be carried out and he has indicated that he is "neither worried nor afraid of any tests or exams". This has given rise to substantial correspondence between the GMC and the respondent but ultimately there has been no agreement forthcoming from the respondent to the course of action suggested by the GMC, notwithstanding that the GMC have advised him that it would be in his best interests to comply as it would present him with an opportunity to prove to it that he is capable of performing the functions he might be expected to perform and to prove his fitness to practice, contrary to the views contained in the Trust's capability investigation.

[17] A similar impasse exists over the provision by the respondent to the applicant of a completed Secondary Care Portfolio.

[18] In the absence of resolution of these issues it will be noted that the applicant has now referred these matters to a Non-Compliance Tribunal and such a tribunal is due to sit to consider the respondent's case in February 2019. This therefore remains an unresolved issue.

### **The Legal Position**

[19] The court is grateful to counsel for the applicant for his assistance as to the role of the court in connection with an application to extend time for the GMC's investigation to be completed. This is a statutory application and counsel has carefully explained to the respondent and the court what the approach of the court should be, in accordance with the relevant authorities.

[20] The summary below which the court provides is taken from materials which have been put before the court by counsel for the applicant.

[21] The statutory provision under which the application is made is Section 41A(6) of the Medical Act 1983 (as amended). Section 41 deals with the overall subject of "Interim Orders". Such orders are made, as in this case, by an Interim Orders Tribunal and may be made where the Tribunal is "satisfied that [the making of such order] ... is necessary for the protection of members of the public or is otherwise in the public interest". Where this is so, the Tribunal may decide whether the registration of that person should be suspended or be made subject to conditions (as was the case here). In this latter case, registration becomes conditional on the

person's compliance, during a period not exceeding 18 months, with such requirements, specified by the Tribunal, as it thinks fit to impose.

[22] Provision, thereafter, is made in section 41A for periodical reviews of any order made. If the order is to remain in force beyond its date of expiry, under sub-section (6) the GMC, as it has done here, can apply to have the order extended by this court for a period of up to another 12 months. Thereafter, there can be further 12 month extensions granted by the court.

[23] Section 41(10) deals with the powers of the court. These include power, in the case of an order for interim conditional registration, to revoke or vary any condition imposed by the order or substitute for the period in the order (or in any order extending it) some other period which could have been specified in the order when it was made (or in the order extending it).

[24] The operation of these provisions has been the subject of consideration in a number of cases.

[25] Of importance, is the case of *General Medical Council v Hiew* [2007] 4 ER 473. Arden LJ (as she then was) succinctly described the broad background as follows:

“[7] Section 41A of the 1983 Act endows the GMC with powers to deal with the situation that can arise where it has become aware of an issue as to whether a practitioner should be permitted to practise, or at least should only be permitted to practise subject to conditions, but before any decision has been reached as to his continued registration. The GMC has to have powers to deal with this situation in order to provide protection for the public, or indeed in the interests of the practitioner himself. The scheme of section 41A is that an IOP or Fitness to Practise Panel may decide that the registration of a practitioner may be suspended for up to 18 months or that his registration should be subject to conditions. That order must be reviewed at least every six months. They must give the person in question an opportunity of appearing before them. However, the GMC cannot itself extend the period of time for which any order is in force. If it considers that an extension is required, it must apply to the court. The maximum extension that the court can give on any one occasion is 12 months. The court is also given power to terminate the suspension or to substitute a new period for the period in the original order.”

[26] She later considered the criteria to be used in an application for extension:

“[28] Section 41A(7) does not set out the criteria for the exercise by the court of its power under that subsection in any given case. In my judgment, the criteria must be the same as for the original interim order under section 41A(1), namely the protection of the public, the public interest or the practitioner's own interests. This means, ... that the court can take into account such matters as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued. The onus of satisfying the court that the criteria are met falls on the GMC as the applicant for the extension under section 41A(7).”

[27] A further significant passage is found at paragraph [31]:

“[31] The statutory scheme thus makes it clear that it is not the function of the judge under section 41A(7) to make the findings of primary fact about the events that have led to the suspension or to consider the merits of the case for suspension. There is, moreover, no express threshold test to be satisfied before the court can exercise its power under section 41A(7), such as a condition that the court should be satisfied that there is evidence showing that there is a case to answer in respect of misconduct or any other matter. On the other hand, if the judge can clearly see that the case has little merit, he may take that factor into account in weighing his decision on the application. But this is to be done as part of the ordinary task of making a judicial decision, and a case where a statutory body makes an application on obviously wholly unsupportable grounds is likely to be rare.”

[28] Finally, it is helpful to refer to paragraph [33]:

[33] ... But, in this case, the decision of the court is simply that there should be an extension of the period of suspension. The court is not expressing any view on the merits of the case against the medical practitioner. In those circumstances, the function of the court is to ascertain whether the allegations made against the medical practitioner, rather than their truth or falsity, justify the prolongation of the suspension. In general, it need not look beyond the allegations.”

[29] A more recent case *Martinez v General Dental Council* [2015] EWHC 1223 has similarities to the present case (albeit with the General Dental Council being the applicant and not the GMC). In that case the judge was Warby J. He stated at paragraph [15] of his judgment:

“The approach to be taken to an application under this sub-section has been considered on several occasions in recent years and it is convenient to refer to a decision of His Honour Judge Gore QC in *General Medical Council v Anyuan-Osigwe* [2012] EWHC 3984 (Admin) at paragraphs 12-14:

“[12] From those expressions of principle I come to the view that my approach must be as follows. First, I must decide whether the decision of the Interim Order Panel was wrong. In making that decision what I have to consider is whether the material indicates that, firstly, the decision the Panel made was necessary for the protection of the public or otherwise is in the public interest, (there being no suggestion here of any legitimate basis for the making of the decision in question), and secondly, in accordance with paragraph 18 of the Interim Orders Panel Guidance, the Panel in deciding to suspend or impose conditions were entitled to have formed a view that there was an impairment of fitness to practise which posed a real risk to the members of the public, and the order was necessary after balancing the interests of the doctor, that is to continue in practice and earn a living and the interest of the public to guard against the risk.

[13] Secondly, in making that decision I exercise original powers as opposed to either appellate or for that matter what are sometimes called public law or judicial review powers and this calls upon me to consider all the relevant evidence and arguments, not only those that existed or were deployed at the time of the decision of the Panel, as indeed seems to me to have been the explicit judgment of Nicol J in *Sandler* at paragraph 12.

[14] Thirdly, in coming to that decision, I must consider what weight, if any, to attach to the decision of the Panel but in doing so I must acknowledge that Parliament has entrusted that expert medical body of professionals powers to apply their own expertise and experience and their own knowledge of public expectations of the professionals they regulate and what is necessary in the public interest and I should not lightly substitute my own decision unless I determine that their view was wrong.”

[30] Later at [17] Warby J went on to say:

“[17] Where factual allegations are disputed, it will normally not be possible for the IOC or the court to arrive at definitive conclusions of fact. What the Interim Orders Committee or panel in a GMC case will normally have to determine is whether the allegations are credible. The role of the IOC is, as Underhill J emphasised in *Kumar v General Medical Council* [2013] EWHC 452 (Admin):

‘Not to undertake the definitive examination of the allegations against the doctor or to decide on the fairness of the investigation. The Panel can at most satisfy itself that there is a prima facie case that the allegations are well-founded.’

Put another way, the allegations will need to be treated as disclosing a sufficient case unless they are manifestly incredible, or it appears that for some other reason they are bound to be rejected at a final hearing.”

### **The Applicant’s Case**

[31] The applicant’s case before the court is that the role of the IOT at the stage when the matter came before it was to look carefully at the referral it had received and at the concerns which had been raised by the Trust.

[32] Those concerns, counsel submitted, were matters of substance affecting the respondent’s capability to perform at the requisite level as a specialty doctor. The IOT, moreover, had before it a recommendation that the respondent should not work in an anaesthetic post which involved unsupervised activity until he had undertaken further training and an assessment of his capabilities.

[33] The IOT considered that the material contained in the referral was sufficiently credible to cause it to be satisfied that there may be impairment of the respondent's fitness to practice. In these circumstances, the IOT was not in a position to arrive at any conclusion on the facts and could not fact find but what it could do was to risk assess and seek to arrive at a view as to whether it was necessary to take action, in the form either of a suspension of the respondent or in the form of the attachment of conditions to his registration.

[34] In arriving at a view on these matters the IOT had to keep in mind what a reasonable and properly informed member of the public would expect of it as an independent arbiter at this early stage of the GMC investigation.

[35] Given the contents of the Trust referral, it was submitted that it was a proper discharge of the IOT's duty for it to choose the option of putting in place conditions which were designed to protect the public and the medical profession and which at the same time would enable the respondent to continue working.

[36] The conditions put in place did not prevent the respondent from continuing to work as a doctor but rather regulated some aspects of the way in which he should work.

[37] Thereafter, it was submitted that the IOT duly reviewed the case. On each occasion the respondent was notified of the review and had the opportunity to both attend and contribute to it. On each occasion there was a different panel which dealt with the case. However, none of the panels saw fit to alter the course set by the first panel.

[38] The issue of the respondent's health throughout this process has had to be considered but despite efforts by the applicant to obtain details of his condition from him and, in particular, medical verification of it, the respondent has failed to put before the GMC supporting medical information.

[39] Attempts by the applicant to encourage the respondent to undertake a Performance Assessment have also met with no success, through no lack of trying on the applicant's part. The same, moreover, is true of attempts to obtain from the respondent a completed Secondary Care Portfolio.

[40] It was submitted on behalf of the applicant that without the active co-operation of the respondent in the areas noted above the extent to which the GMC's investigation could advance was limited. This is why as of November 2018 the next step has been identified as being to bring the matter of the respondent's compliance before the Non-Compliance Tribunal where these issues can be examined and action taken in the light of any conclusion reached.

[41] In the above circumstances, the proposition advanced on behalf of the GMC was that the respondent's failure to engage has hampered the investigator's ability

to determine (to date) whether the appraisals and allegations which have been directed against him are without foundation, as the respondent maintains.

[42] In respect of matters raised by the respondent at the hearing, outside the matters referred to above, it was submitted that many of these had little, if any, relevance to the proceedings before the court. In any event, it was submitted that:

- It is not any action by the IOT or the GMC arising out of the allegations against the respondent which have been levelled by the Trust which has caused the respondent's licence to practice to expire. Rather, this has occurred due to a failure on the respondent's part to re-validate his licence since 1 January 2018 when it naturally expired.
- Much of the respondent's challenge in this case has been directed at what was alleged to be failings within the Trust's investigation. The Trust's investigation was fully considered by the IOT.
- Issues relating to how the Trust dealt with the respondent's invocation of its grievance procedures are matters which are of limited relevance to the application before the court and should be directed to the Trust.
- The applicant, it was submitted has tried to deal with the respondent's questions about process, including in relation to the proposed Performance Assessment, and has acted properly in this regard.
- It would be in the respondent's interest to agree to the steps which the GMC has, as part of its investigation, asked him to take.

### **The Respondent's Case**

[43] It was made clear on behalf of the respondent that prior to the matters which have given rise to these proceedings, he has been a person with a record of good performance. Indeed he was held in high esteem and had accumulated over 20 years' experience as a doctor.

[44] However, the matters which have arisen have done so not because of any failure of performance but because of his alleged failure for religious reasons to work on-call on Friday to Saturday night. While hospital managers had tried to pressurise him into compromise in respect of his position, his faith would not allow this.

[45] Moreover, since this situation has developed it is suggested that there have been persons working for the Trust who have conspired against the respondent and who have sought to blacken his name. In effect, he was prevented from working other than as a supernumery doctor attached to consultants. He was bullied and harassed by hospital staff and often was asked to look for another job.

[46] These persons, together with others who are complicit in acting against him, including those in the Trust who were involved in the capability investigation, were not to be trusted.

[47] While the respondent was to have received the benefit of a short induction period when he started with the Trust in fact this did not occur. Moreover, he was not told when the induction period was extended and there was no appointed responsible officer.

[48] As a result of all of this, his health had deteriorated. At the same time a decision was taken by management to get him to resign. Among the tactics used as a way of doing this, a panel was set up to look into allegations made about his performance.

[49] In the end, he was forced to resign but this was for health reasons brought about by the treatment he was receiving and was not because of the establishment of the investigatory panel.

[50] When the referral was made by the Trust to the applicant, he was greatly shocked so much so that he has had difficulty getting over it.

[51] In his current circumstances, he is not working, is ill and cannot afford a lawyer. In his view, the GMC had taken advantage of his position and is acting in collusion with the Trust to ruin his career.

[52] The respondent also believes that the GMC are acting against him on racial grounds as he is an immigrant born in Africa but who was educated in Europe.

[53] The restrictions placed on his practice by the GMC are unwarranted and it is running roughshod over his rights as an innocent person. In effect, the GMC is using its powers to destroy his life and health.

[54] Because of the GMC's imposition of conditions it is virtually impossible for the respondent to be employed. This amounts to punishment without proof.

[55] Overall, it is the contention of the respondent that the GMC should have enquired more closely into why members of the Trust staff so vehemently opposed him. In the respondent's view the motives of the Trust had been improper and Dr Northwood's report contains lies and distortions.

[56] Unfortunately, the respondent says that the GMC has also been biased against him and has failed to carry out its functions properly. In particular, the respondent is of the view that the GMC failed to give him proper notice of allegations against him prior to opening its investigation.

[57] Examples of the GMC's failures included not telling the respondent of the allegations against him; claiming it had not received letters he had in fact sent to them; and pestering him about irrelevant matters including his health.

[58] In respect of the Performance Assessment which the GMC wished him to undertake, this has not occurred due to his ill-health and the failure by the GMC to comply with requests he has made for information about how this process would operate. The GMC has failed to give him assurances as to how the respondent's co-operation in this process would be funded and as to how any information generated by it would be used and whether he would be dealt with transparently.

[59] In short, the respondent does not see the GMC as trustworthy and this has inhibited him from co-operating with them.

### **The Court's Assessment**

[60] It is important that the court should emphasise at the outset the parameters of its role. These have been set out in full above and the court will not simply repeat them here. But the essence of the court's role is that it is not its function to make findings of fact about the events which have occurred and which have led to conditions being imposed on the respondent's registration and it is not for the court to consider the merits of the case *de novo*, save perhaps in an extreme case, such as where the GMC has abdicated its role or has acted in a demonstrably misguided way: neither of which is this case.

[61] This aspect of the matter is important because many of the respondent's complaints have been directed at events which are heavily disputed as between the Trust and him and which arise out of his period of 4½ months' employment with the Trust. The court is not in a position to seek to resolve disputes over what occurred in that period, just as the IOT was not. Resolution of such issues as may be necessary will be a matter for the ongoing investigation being carried out by the GMC.

[62] What is, however, a concern for the court is whether the IOT - acting in its role of assessing risk - has come to an opinion which the court should give weight to and which is not wrong, in the court's eyes. In considering this the court is entitled to arrive at its own view but it should be prepared to give weight to the experience and expertise of the IOT panels.

[63] The question for the court, it should not be forgotten, is whether there should be an extension of the period during which the GMC may continue its investigation. The court is not involved in expressing a view on the merits of the case against the medical practitioner but it is entitled to ask whether the allegations which have been made justify the prolongation of restrictions. This, however, is a long way from the court attempting to say whether the allegations made are true or false.

[64] The role of the IOT is to determine whether the allegations against the doctor disclose a *prima facie* case that they are well-founded and the court will usually look at what it decided to see if the allegations disclose a sufficient case.

[65] The outworking of the above is that while the Trust's referral is a significant document in this case much of what it contains has, at this stage, to be taken at face value and the court is not well positioned to drill down into the detail. The conflict which exists as between Professor Northwood's investigation results and the respondent's view of the motivation of those who offer criticism in respect of his ability to perform his professional obligations to a satisfactory standard, while visible, cannot easily be measured in this forum in the context of the present application.

[66] At this time the court cannot rule in or out the possibility that the referral could be contrived or untruthful or the result of malice or improper motive but at this time it is unable to say that it is.

[67] In the meantime the court is left with potentially serious allegations levelled by other professionals, both clinical and otherwise, as to the way in which a doctor carried out his functions in an area of medicine which is demanding for practitioners and crucial to patient safety. Allegations, alike to those made in this case, simply cannot be ignored and, in the public interest, require to be investigated. In the meantime suitable interim measures often will be required and the court is able to see why this is so in this case, both on public safety and public interest grounds. Hence, without any finding of guilt or proven lack of capability, a judgment has to be made which involves assessing risk to the public, on the one hand, and the risk of unfairness to the doctor, on the other. In this case the IOT, the specialist agency dealing with the case, felt that the former outweighed the latter. In the court's view, the IOT did not act without evidence and there is, as one of the cases puts it, a sufficiency of evidence, in the court's estimation, to support its judgment and decision both in respect of risk to the public and adverse impact on the public interest. This is so even though it is right to acknowledge that this is not a case in which the medical practitioner has a relevant history of inadequacy or has been proved to have placed members of the public in danger.

[68] In this case the court notes that the step taken by the IOT was the lesser one of making the respondent's registration subject to conditions – a step which the court understands and could not characterise, for the reasons already expressed, as wrong. The court, it should also be made clear, does not see the action taken as being punitive in nature. The court also acknowledges that the original IOT decision has been reviewed on a number of occasions by different panels, on one occasion with the respondent present and participating.

[69] This takes the court to a consideration of the delay in the GMC investigation. At the time when this application was made, a period just short of 18 months had expired and, accordingly, there was the need, ordained by the legislation, for any

extension to be sought from the court. It is difficult for the court to say that all periods within the overall period of 18 months can be accounted for as periods of activity on the part of the investigators, which is a concern, but the overwhelming impression which the court has gleaned from the materials before it is that the investigation has proceeded slowly because of a stand-off which had developed because of the apparent failure of the respondent to provide to the GMC material it had sought, whether it be his co-operation to engage in a Performance Assessment; the return of the Secondary Care Portfolio; or the production of materials which provide information to verify the respondent's state of health. Unfortunately, this stand-off has been allowed to become entrenched until very recently when the GMC has tried to break it by referring the case to the Non-Compliance Tribunal.

[70] It is important – and is in everyone's interests, including the respondent's – for this matter to be progressed with due expedition. This ought to be the position looking to the future. Stand off or not, the case made in the referral needs to be tested at as early a date as possible. The investigation needs to be finalised and then decisions taken. In order to enable this to occur, the court is willing to provide a 12 months extension, as sought by the GMC, and this is the Order it will make in respect of this application. The starting date from which the period of 12 months is to run from will be 24 December 2018. Hence, the extension will expire on 24 December 2019.

[71] The court will not leave the case without making some comment on the complaints made by the respondent. The court has considered these but is of the view that, for the purpose the court is required to perform, they lack substance. In the court's estimation, many of them either fall outside a proper analysis of the true issues before the court or are points which lack merit. The court does not intend to go down the list and deal *seriatim* with each one, but it is satisfied that where complaints were made against the GMC, these have been effectively answered by Mr Barnard and were not well made. Moreover, the claims of misbehaviour as against GMC staff are in sharp contrast, it seemed to the court, to the attentive and often sympathetic way in which points raised by the respondent were dealt with by the applicant's staff. Unfortunately, it seems likely that the respondent has fallen into the habit of viewing the applicant and the Trust as one and the same body, when this is manifestly not so. The court, considering the matter as a whole, has no reason to believe that the applicant is biased, or has had bias demonstrated, against it. The gravamen of the respondent's allegations appear to be that the Trust, the capability investigator and/or other hospital staff have conspired against him, but, for reasons which have already been explained, the court is not in a position to adjudicate upon this.

## **Conclusion**

[72] The court will grant the relief sought by the applicant in the way described above, and will make an Order to this effect.