

*Privy Council Appeal No. 24 of 1981*

Aylmer James Crompton - - - - - *Appellant*

v.

The General Medical Council - - - - - *Respondent*

FROM:

**THE PROFESSIONAL CONDUCT COMMITTEE OF THE  
GENERAL MEDICAL COUNCIL**

---

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL OF THE 27TH JULY 1981  
DELIVERED THE 21ST AUGUST 1981

---

*Present at the Hearing :*

LORD DIPLOCK

LORD BRIDGE OF HARWICH

SIR JOHN MEGAW

[*Delivered by* LORD DIPLOCK]

---

The disciplinary proceedings in respect of which this appeal is brought were instituted against the appellant, Dr. Crompton, before 1 August 1980 which was the appointed day on which section 6 of the Medical Act 1978 came into operation. It was therefore a pending disciplinary case to which Schedule 3 of the Act applied; and since the Disciplinary Committee appointed under section 32 of the Medical Act 1956 had not completed their inquiry into it, they referred the case under paragraph 5(1) of Schedule 3 to be dealt with by the Professional Conduct Committee constituted under section 6 of the Act of 1978 with functions broadly similar to those performed by the Disciplinary Committee under the legislation previously in force. Paragraph 5(2) of Schedule 3, however, provides that in dealing with a case transferred to it in this manner the Professional Conduct Committee "shall have such powers only as would have been available to the Disciplinary Committee under section 33 or 35 of the Medical Act 1956." So Schedule 4 of the Act of 1978, in so far as it confers on the Professional Conduct Committee power to refer to the Health Committee (which is also constituted under section 6 of the Act) the question whether a medical practitioner's fitness to practise may be "seriously impaired by reason of his physical or mental condition", was not applicable in Dr. Crompton's case.

Nevertheless, although the number of cases, such as that of Dr. Crompton, to which Schedule 3 applies will diminish with the passing of time after 1 August 1980 when the Act of 1978 came into operation, the question of law raised by this appeal will continue to be of considerable importance under the new regime established by sections 6 to 14 and

Schedule 4 of the Act of 1978, for dealing with criminal offences, professional misconduct and unfitness to practise through mental or physical illness. The question of law turns upon the true construction of rules that formed part of the General Medical Council Disciplinary Committee (Procedure) Rules Order of Council 1970 ("the 1970 Rules") that were in force up to 1 August 1980 and are reproduced, in language that is identical in all relevant respects, in the General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1980, ("The Current Rules"), that replaced the 1970 Rules and are presently in force.

For a proper understanding of the relevant rules it is necessary to look briefly at the legislative history of the Medical Acts 1956 to 1969 and the Medical Act 1978.

The Medical Act 1956 was essentially a consolidation act, Part V of which, comprising sections 32 to 39, dealt with "Erasure and Restoration to Register". The Disciplinary Committee constituted under section 32 had power under section 33 to direct the erasure from the register of the name of any fully registered medical practitioner who had been convicted of a criminal offence by a Court in the United Kingdom or the Republic of Ireland or who was judged by the Disciplinary Committee after due inquiry to have been guilty of what is now described as serious professional misconduct. Erasure was the only penalty that the Disciplinary Committee had jurisdiction to impose under the Medical Act 1956. They had no power to suspend a doctor temporarily from practice; but under section 34 they did have power to restore a doctor's name to the register upon application made by him not less than eleven months after the date of erasure or, if he had already made an application for restoration that had been refused, not less than eleven months after the date of the last refusal. The power of erasure had existed since 1858. It was a draconian penalty, and the practice had arisen under which the Committee, in cases where they thought that leniency might be justified, instead of delivering their judgment at the close of the hearing, would postpone it to some future date, so as to give the doctor an opportunity to redeem himself and show by his good behaviour in the meantime that he was a fit person to remain on the register. Where judgment was postponed in this way it was common practice for the Committee to invite the doctor to provide the names of persons, particularly professional colleagues, to whom the Committee could refer for confidential information as to his behaviour since the original hearing.

During the period while judgment was postponed, which was in effect a period of probation, the doctor's name remained upon the register and he was entitled to continue to practise. Until the Medical Act 1969 there was no way of suspending him from practice temporarily. Where temporary suspension would, in the Disciplinary Committee's view have been an appropriate penalty, all that they could do was to erase his name and intimate to him that an application for restoration of his name to the register in due course would be likely to receive sympathetic consideration.

Section 13 of the Medical Act 1969, which substituted new subsections for section 33(1) of the Medical Act 1956, conferred upon the Disciplinary Committee, as an alternative to ordering erasure, jurisdiction to direct that a doctor's registration be suspended for a period not exceeding twelve months but with power to extend from time to time for additional periods, not exceeding twelve months at a time, the period specified in the original direction.

The 1970 Rules made after the passing of the Medical Act 1969 contained provision for continuing the former practice of postponing judgment in a disciplinary case as well as for the procedure to be followed

by the Disciplinary Committee in exercising its newly-acquired jurisdiction to direct the suspension of the registration of a doctor's name for a period, or successive periods, of not more than twelve months at a time.

Rule 47 of the 1970 Rules provided that in cases both of postponement of judgment and of suspension,

“ [The] Committee or the President may require the practitioner . . . to furnish the Registrar with the names and addresses of professional colleagues and other persons of standing to whom the Council will be able to apply for information, to be given confidentially, as to their knowledge of his habits and conduct since the time of the original hearing.”

and

“ Where any practitioner . . . has supplied to the Committee or to the Registrar on their behalf the name of any person to whom reference may be made confidentially as to his habits or conduct, the Committee may consider any information received from such person in consequence of such reference without disclosing the same to the practitioner . . . ”

The jurisdiction of the Disciplinary Committee under the Medical Acts 1956 to 1969 was dependent upon the existence of a complaint that a registered medical practitioner had either been convicted of a criminal offence by a court of law in the United Kingdom or had been guilty of serious professional misconduct. There was no power to restrain a doctor from practising simply because he was unfit to do so through mental or physical illness. It is, in their Lordships' view, quite clear that in Rule 47 of the 1970 Rules the reference to information “ as to their knowledge of his habits and conduct since the time of the original hearing ” received from persons whose names have been furnished by the doctor, is restricted to information as to how the doctor has behaved himself since the original hearing. It was not open to the Disciplinary Committee under the guise of acting pursuant to this Rule, to obtain medical reports as to his mental state from psychiatric consultants who were strangers to him; and then to refuse to disclose the reports to the doctor himself so as to give him an opportunity of dealing with them.

The lacuna resulting from the absence of any power to restrain a doctor from practising because of mental or physical illness which seriously impaired his fitness to practise was filled by the Medical Act 1978; but this was done, not by extending the jurisdiction of the Disciplinary Committee (which under the new Act became the Professional Conduct Committee), but by creating an entirely new committee called the Health Committee with exclusive jurisdiction to judge whether a doctor's fitness to practise is seriously impaired by reason of his physical or mental condition; and, if they so find, to suspend his registration for a period or successive periods, of not more than twelve months at a time, or to make his registration conditional upon his complying with requirements laid down by the Health Committee. It is to be noted that the Health Committee, unlike the Professional Conduct Committee, has no power of erasure. The only additional jurisdiction conferred upon the Professional Conduct Committee by the new Act which had not been enjoyed by the former Disciplinary Committee was the power to make the registration of a doctor who had been convicted of a criminal offence or judged guilty of serious professional misconduct, conditional upon his complying with requirements laid down by the Professional Conduct Committee.

The Medical Act 1978 provided by Schedule 4, paragraph 4, for the reference and transfer of cases by the Professional Conduct Committee to the Health Committee. This provision reads as follows:—

“4.—(1) Where, in the course of inquiring into the case of a practitioner, it appears to the Professional Conduct Committee that his fitness to practise may be seriously impaired by reason of his physical or mental condition, the Committee may refer that question to the Health Committee for determination.

(2) If, on a reference under this paragraph, the Health Committee determine that the fitness of the practitioner to practise is not seriously impaired by reason of his condition the Health Committee shall certify their opinion to the Professional Conduct Committee.

(3) If, on a reference under this paragraph, the Health Committee determine that the fitness of the practitioner to practise is seriously impaired by reason of his condition the Health Committee shall certify their opinion to the Professional Conduct Committee and shall proceed to dispose of the case, and the Professional Conduct Committee shall cease to exercise their functions in relation to the case.”

Reference by the Professional Conduct Committee to the Health Committee of the question of the fitness of the doctor to practise by reason of mental or physical illness is not mandatory. The Professional Conduct Committee may consider that the crime of which the doctor was convicted or the professional misconduct of which he has been judged guilty is so grave as to demand the erasure of his name from the register regardless of mental or physical ill-health; but the fact that reference of the question to the Health Committee is discretionary does not permit the Professional Conduct Committee to erase the name of a doctor from the register not because of the criminal offence or serious professional misconduct of which he had been guilty but simply because they think that his present fitness to practise is seriously impaired by reason of his physical or mental condition.

The procedures of the Professional Conduct Committee and of the Health Committee respectively are governed by quite separate rules: the former by the Current Rules already referred to, the latter by The General Medical Council Health Committee (Procedure) Rules Order of Council 1980 (“the Health Committee Rules”).

The passages cited above from Rule 47 of the 1970 Rules are reproduced verbatim in Rule 55 of the Current Rules, and bear the same meaning that their Lordships have already ascribed to them. They authorise the Committee to obtain, consider and withhold from disclosure to the doctor information, from persons nominated by the doctor, as to what they know about his habits and conduct since the original hearing, that is to say how he has behaved himself during that period. The Rule does not authorise the obtaining, consideration and non-disclosure to the doctor of medical reports about his mental condition made by consultants who are strangers to him. Unfortunately it is reports of the latter kind with which the instant case is concerned.

Dr. Crompton had been convicted in 1975 and 1977 of criminal offences which it is unnecessary to specify. These were the subject of an inquiry by the Disciplinary Committee in March 1978 who found the convictions proved but postponed their judgment until March 1979. By the time of the adjourned hearing in March 1979, Dr. Crompton had acquired two more convictions for which he had served a term of imprisonment. At that hearing the Disciplinary Committee directed that his registration should be suspended for 12 months. At the resumed consideration in March 1980 the Committee decided to extend the suspension for another 9 months. The hearing of Dr. Crompton’s case was next resumed in December 1980 by the Professional Conduct Committee, the Medical Act 1978 being by now in force. On that occasion the Committee suspended the registration for another three months and told Dr. Crompton’s solicitor that

“ Shortly before that date, the practitioner would be asked to furnish the names of professional colleagues *including two consultants in adult psychiatry* to whom the Council could apply for information, to be given in confidence, *on his fitness to resume medical practice* ” (Emphasis supplied).

Pursuant to this requirement Dr. Crompton, who had not previously undergone psychiatric treatment, furnished the names of two consultant psychiatrists whom he had seen for the first time in his life during the three weeks immediately preceding the resumed hearing in March 1981. The name of the second of these, Dr. Fleminger of Guy’s Hospital, who examined him in the week before the hearing, was actually recommended to him by the Registrar of the General Medical Council. The reports of these two consultant psychiatrists were before the Professional Conduct Committee at the resumed hearing, but the Committee refused to tell Dr. Crompton what these reports said about what the Chairman of the Committee described as his “ condition ”.

The actual hearing, at which Dr. Crompton insisted on representing himself in person, was held, at his request, *in camera*. At the outset, the Chairman made it clear that the purpose of the hearing was to consider whether the reports received affected the Committee’s decision as to what was to happen to Dr. Crompton next. “ We are strictly concerned,” he said, “ with your present fitness.” That this was regarded as the only purpose of the hearing was repeated on several subsequent occasions during its course. For instance the Legal Assessor advised the Committee : “ the question is whether, in view of the medical evidence and so on, they should end their suspension ”, and the Chairman on more than one occasion reiterated that what the Committee was concerned with was the state of Dr. Crompton’s mental health as it affected his fitness to practise.

At the resumption of the public hearing, the Chairman announced the decision of the Committee in the following terms :

Chairman :

“ Dr. Crompton, the Committee have most carefully considered everything you have said and also the confidential evidence of your condition which is before them today. The Committee are bound to regard the evidence of your condition as a source of grave and continuing concern. By reason of the convictions which were proved against you in March 1978 and March 1979, the Committee have now directed the Registrar to erase your name from the Register.”

Dr. Crompton :

“ May I please ask the condition to which you refer? ”

Chairman :

“ This is the evidence that we have had from you and from the confidential documents which were put into the Committee.”

It is in their Lordships’ view quite clear that what the Committee were anxious about was Dr. Crompton’s mental condition, of which the criminal offences that he had committed might well have been symptoms—an anxiety which what Dr. Crompton had said when he addressed them *in camera* can have done little to allay. If this situation were to arise in disciplinary proceedings instituted after 1 August 1980, the proper course for the Professional Conduct Committee would be to refer the question of the doctor’s fitness to practise by reason of his mental condition to the Health Committee under paragraph 4 of Schedule 4 to the Medical Act 1978 which is reproduced in Rule 41 of the Current Rules. The matter would then proceed in accordance with the Health Committee Rules which, be it noted, contain elaborate provisions for letting the doctor know what is the evidence about his mental or physical

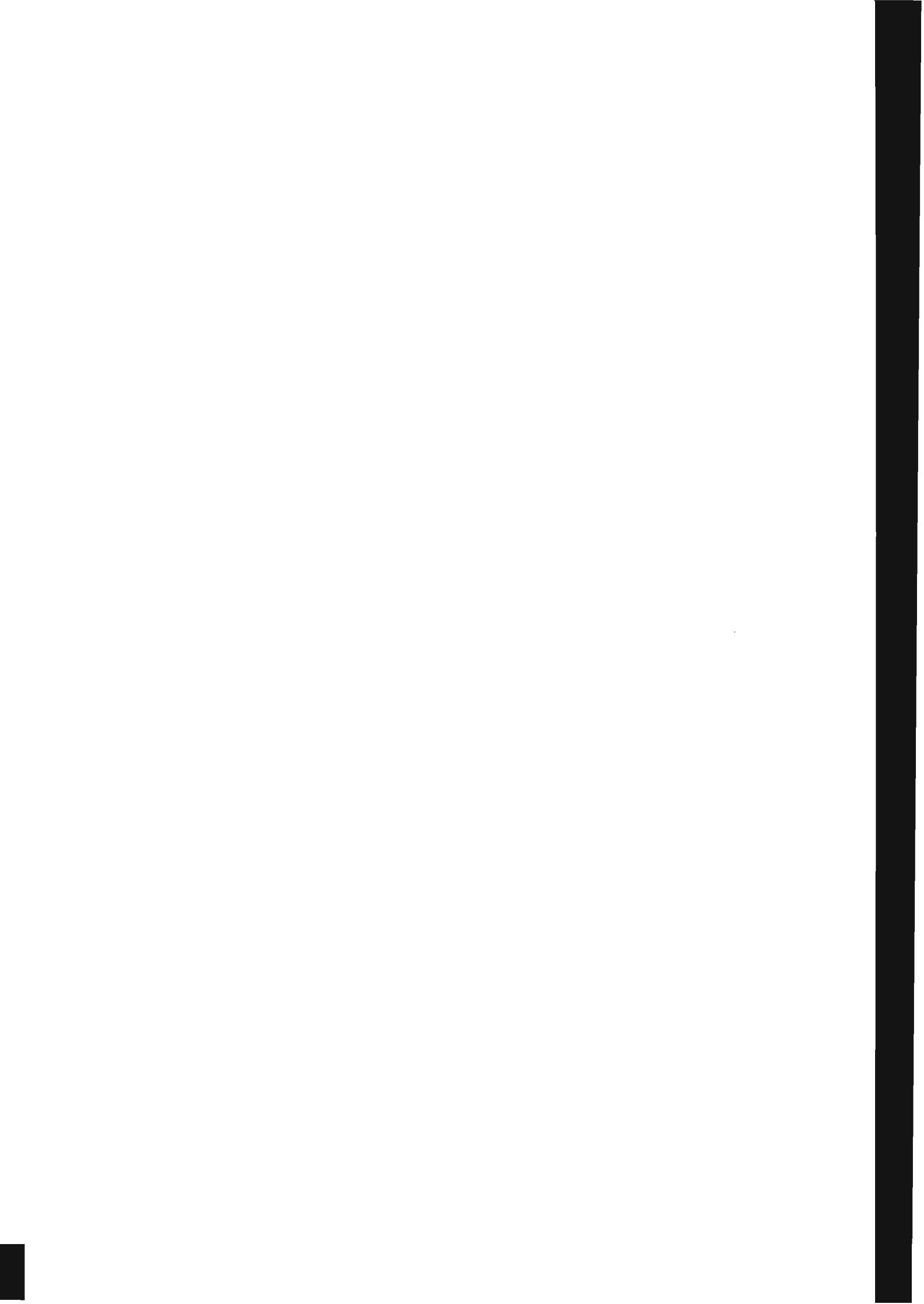
condition that is alleged to impair seriously his fitness to practise and for enabling him to adduce medical evidence on his own behalf to contradict it. Furthermore, the Health Committee's findings of unfitness to practise for health reasons, as already pointed out, can lead to suspension of registration only, not to erasure.

Their Lordships sympathise with the Professional Conduct Committee in the dilemma in which they found themselves as a result of their inability to refer the question of Dr. Crompton's mental condition to the Health Committee because his was a pending disciplinary case governed by Schedule 3 of the new Act and not by Schedule 4. If they had taken the view, upon the expert evidence of psychiatric consultants as to his mental condition, that the criminal offences of which Dr. Crompton had been convicted were symptoms of a persisting mental condition that might well lead him to commit further offences, they would have been entitled, if they thought fit, to order the erasure of his name from the register. But observance of the rules of natural justice would have demanded that the psychiatric medical evidence upon which the Committee proposed to act should be disclosed to the doctor and an opportunity given to him to answer it and adduce, if he so wished, expert psychiatric evidence on his own behalf to contradict it. Such expert medical evidence does not fall within the exception of information to be given confidentially by professional colleagues and other persons of standing nominated by the doctor, as to their knowledge of his habits and conduct since the time of the original hearing.

On his appeal to their Lordships from the Committee's direction to erase his name from the register, Dr. Crompton relied (among various other matters which it is not necessary to mention) upon the Committee's failure to observe the rules of natural justice by their refusal to let him see the reports by the psychiatric consultants upon which they based their decision, or even to inform him of the general nature of those reports. On this ground their Lordships felt reluctantly compelled to recommend to Her Majesty in Council that this appeal be allowed with the consequence that, the last period of suspension validly fixed by the Professional Conduct Committee having now expired, Dr. Crompton's name remains upon the register.

Their Lordships have not thought it right to read for themselves the psychiatric reports relied on by the Committee, since they could not in fairness to Dr. Crompton do so without showing them to him and they could not show them to Dr. Crompton without breaking the promise of confidentiality under which the reports were furnished by the consultants.

In these circumstances their Lordships do not consider it to be appropriate to remit the case to the Professional Conduct Committee for further consideration. If there are good reasons, as there may well be, for questioning Dr. Crompton's fitness to practise upon psychiatric grounds, proceedings may be started *de novo* under the Health Committee Rules that are now in force to deal with such a situation.



In the Privy Council

---

AYLMER JAMES CROMPTON

v.

THE GENERAL MEDICAL COUNCIL

---

DELIVERED BY  
LORD DIPLOCK

Printed by HER MAJESTY'S STATIONERY OFFICE  
1981