IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
[2023] EWHC 2611 (Admin)

No. CO/4840/2022

Royal Courts of Justice

Wednesday, 3 May 2023

Before:

MRS JUSTICE MAY DBE

B E T W E E N :

ABDELWAHAB IBRAHEEM SHEHAB — Claimant

- and -

GENERAL DENTAL COUNCIL — Defendant

MR A COLMAN appeared on behalf of the Claimant.

MS E POWER appeared on behalf of the Defendant.

J U D G M E N T

MRS JUSTICE MAY:

Introduction

1 This is a challenge by Mr Abdelwahab Ibraheem Shehab under s.32(12)(b) of the Dentists Act 1984 ("the 1984 Act") against a decision of the Interim Orders Committee ("IOC") of the General Dental Council ("GDC") made on 16 November 2022 imposing conditions on his registration. In this judgment, I shall refer to Mr Shehab as "the claimant".

2 The matter had been referred to the IOC by the registrar following allegations regarding the claimant's behaviour to female staff and patients between August 2021 and October 2022. By its decision, the IOC imposed an interim order of conditional registration for a period of 18 months. The conditions imposed included a requirement that the claimant be chaperoned by another GDC registrant at his place of work and that he inform all staff members of his conditions.

3 The GDC has subsequently clarified how it intends the chaperoning condition to be enforced. The claimant is not permitted to enter his place of work unless the chaperone is already in the building to greet him; he is to be escorted to the door of the toilets and the chaperone is to be present during all of the claimant's patient consultations in addition to a dental nurse.

4 The challenge, as presented today by Mr Colman for the claimant, is directed at the proportionality of the condition of chaperonage imposed. He submits that if the same objectives of public protection can be secured by a less restrictive set of conditions then that should be the proportionate order.

Factual Background

5 On 25 October 2022, the claimant was referred to the GDC in respect of inappropriate comments and behaviour of a sexist and demeaning nature alleged to have taken place at a practice in Cornwall where he had worked. The details of the allegations are set out in the IOC's decision letter:

> "On 25 October 2022, the GDC received a word form referral from the informant (a partner director) of the practice where you previously worked. The informant reported concerns about your conduct towards a female nurse who had alleged that you made inappropriate and unprofessional comments towards her. The nurse had also reported to the informant that you locked yourself in the surgery with her and that whilst the door was locked she was very frightened as to what you intended to do.
>
> The informant stated that following the nurse's complaints an investigation was opened against you and other female members of the team also informed the informant of comments that had been made you to them and patients as well. You were interviewed by the informant and from the investigation transcripts you admitted that you made some of the comments alleged but was (sic) very dismissive towards the informant and did not see why you were being investigated. The informant stated that your contract was terminated with immediate effect.

The informant has provided a copy of the transcripts from the investigatory meetings with you and the other staff members. Comments made by you to Person 1 who reported the concerns to the informant who was locked in a room by you include:

> "You should meet a guy who will fund your life.;
> If you were my wife, you wouldn't have to work.;
> You work because you trust your partner.;
> Why don't you have loads of kids and take someone's money?;
> Have you put on weight because your face looks bigger?;
> You must have had a lot of filler put in your face then.;
> I will give you my number but don't tell your boyfriend.;
> I will post hate mail through your new practice door."

Another staff member, Person 2, explained the following about you:

> "He can be quite misogynistic and feels he can talk to any nurse as he likes. He asks nurses leading questions and probes for information. I know a few agency nurses won't work with him anymore either. I know of a nurse he has commented on how her skin looks. He has dated a dental nurse from here before and when the relationship wasn't going the way he wanted he would turn quite nasty with her. I know he has spoken to a patient who is a mother of multiple children and he thrusted sexually about her. It is just the way he treats women. In the kitchen he quite often speaks about his ex and how she and all women are evil an they just want money. He is derogatory towards women. I just feel he doesn't take any responsibility of what he does. I don't think he believes he is doing anything wrong. I am sure he feels his culture allows him to be like this to women."

Another staff member, Person 3, explained the following about you:

> "Professionally he can be rude. He will tell me to "Shh" and raise his hand sharply to my face when he wants me to be quiet. I sometimes raise my eyebrows at the comments he makes to patients. He can be very rude. He had a 19-year-old male in the chair for an exam and when he asked him how he was doing the patient said he was having issues with his girlfriend. He replied and said, "English women, they're just trouble. They just cry, "Rape, rape, rape." He kept repeating the word "rape" when doing the exam. He also said a patient who had four children that she was "at it like a rabbit" and did a sexual thrust motion."

The IOC was also provided with a defence bundle containing communications between the claimant and his former colleagues, continuing professional development material, reflective material, testimonials and feedback from patients and staff.

6 On 16 November 2022, the IOC made an order for interim conditional registration for a period of 18 months. The conditions included the following:

> "6. At all times he is present at his place of work in areas where practice staff (save for the chaperones approved by the GDC) or the public are present you must have a chaperone with you (sic). He must provide the name and full contact details of any proposed chaperones to the GDC within 7 days. The chaperone is to be a GDC registrant and is to be approved by the GDC.
>
> 7. He must not start or restart work until his chaperones have been approved by the GDC.
>
> 8. He must present the chaperones with a copy of this determination immediately after the chaperones have been approved by the GDC. Evidence that the determination has been provided to the chaperones must be forwarded to the GDC within 7 days of disclosure. The registrant must provide a statement from the chaperones to confirm that they have chaperoned the registrant in the manner required by the conditions. A statement must be received every 3 months and at least 14 days prior to any review hearing.
>
> 9. He must allow the GDC to exchange information about his conditions with his chaperones.
>
> 10. He must ensure that every member of the dental team at the practice where he works is notified of the conditions. Evidence that he has notified all members of the dental team must be forwarded to the GDC within 7 days of disclosure."

7 Mr Colman informs me that the claimant has been unable to find employment under these conditions imposed by the IOC.

8 The claimant applied for an early review, which was heard on 23 January 2023. The IOC maintained the order without any variation. The claimant's solicitor subsequently wrote on 30 March 2023 suggesting alternative conditions but in its response dated 4 April 2023 the GDC rejected them. In the meantime, the claimant has continued to be unable to obtain employment.

Issues for determination on his application

9 The issues originally canvassed in the Part 8 claim appear to have distilled into a single question; whether the conditions as to chaperonage imposed by the IOC in its original order of 16 November 2022 and maintained in its review decision of 23 January 2023 are proportionate to the risk.

10 Ms Power, for the GDC, does not object to the claimant's application to adduce fresh evidence relating to the review hearing in January, nor to the (tacit) extension of the claim to cover a challenge to the review decision itself. Accordingly, I grant permission pursuant to CPR 8.8(1)(b) for the admission of fresh evidence with respect to the review decision and, to the extent necessary, for the amendment of the Part 8 claim to include a challenge to that decision.

Legal framework

11 Section 32(12) of the Dentists Act 1984 provides that:

> "Where an interim order has effect under any provision of this section, the court may —
>
> a) in the case of an interim suspension order, terminate the suspension,
>
> b) in the case of an order for interim conditional registration, revoke the order or revoke, vary or add to any condition imposed by the order,
>
> c) in either case, substitute for the period specified in the order (or in an order extending it) some other period which could have been specified in the order (or in the order extending it) when it was made, and the decision of the court on any application under this subsection shall be final."

12 In *Sheikh, R (on the application of) v General Dental Council* [2007] EWHC 2972 (Admin), Davis J (as he then was) found that s.32(12) conferred an original jurisdiction upon the court rather than an approach which was equivalent to judicial review and held that the approach set out in the Court of Appeal decision in *GMC v Hiew* [2007] 4 All ER should guide the court:

> "10. … The court has to approach the task by reference to its powers under section 32(12) as a matter of original jurisdiction. At the same time, it seems to me that in the ordinary way the court will show respect for the decision of a Panel in this context, given that the Panel is an expert body which is well acquainted with the requirements that a particular profession needs to uphold and with issues of public perception and public confidence."

13 In *Manuel Nunez Martinez v General Dental Council* [2015] EWHC 1223, Warby J (as he then was) found as follows in relation to the function of the IOC and the court:

> "The correct approach to risk assessment was considered by Laing J in *Howells v General Medical Council* [2015] EWHC 348 (Admin), where she said at paragraph 53:
>
> > "19. It is not for the IOP or the court to quantify risk in this way. Once a risk has been shown, unless it can be seen to be a wholly fanciful risk, that in my judgement is sufficient.
> >
> > 20. I accept the submission of Miss Power that the function of the IOC and the court in relation to an interim order is one of risk assessment. This necessarily requires that attention is paid to the nature of the allegations and the evidence which is relied upon to support them. The fact that it is an exercise of risk assessment cannot justify the court ignoring the need to pay attention to the quality of the evidence and the possibility or prospect that it may not be sufficient to justify the view that there is a risk. But there is no threshold specified in the

legislation other than the need to protect the public, the public interest and, where applicable, the interests of the registrant. It is not a question of the threshold of a *prima facie* case.""

14 Section 32 of the Dentists Act (as amended) governs the making and review of interim orders for dentists. Subsection (4) provides:

> "Where a Committee are satisfied that it is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, for the person's registration to be suspended or to be made subject to conditions, the Committee may make —
>
> a) an order that his registration in the register shall be suspended during such period not exceeding 18 months as may be specified in the order (an "interim suspension order"); or
>
> b) an order that his registration shall be conditional on his compliance, during such period not exceeding 18 months as may be specified in the order, with such conditions so specified as the Committee think fit to impose (an "order for interim conditional registration")."

By subsection (6):

> "Where an interim suspension order or an order for interim conditional registration has been made in relation to a person under any provision of this section (including this subsection), the Committee that made the order may —
>
> a) revoke the order;
>
> b) make an order adding to, varying or revoking any condition imposed by the order;
>
> c) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former; or
>
> d) if satisfied that to do so is necessary for the protection of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former."

15 In *MXM v General Medical Council* [2022] EWHC 817 (Admin) Steyn J held as follows:

> "In deciding whether the IOT's decision is wrong, I must consider all the relevant evidence and arguments, not limited to that which was deployed before the IOT: *Sandler* at [12], *GMC v Anyuam-Osigwe* [2012] EWHC 3884 (Admin) at [13], [15]. The court will always be mindful that it is being asked to overturn a decision of a specialist disciplinary tribunal, but the weight to be given to the opinion of the tribunal is a matter for the court to determine, as it thinks fit in the circumstances of the individual case."

The parties' arguments

16 Mr Colman submits that the current conditions have restricted the claimant's ability to pursue his profession. The condition requiring a GDC registrant to act as chaperone means that a practice would have to employ two professional registrants when only one was economically productive and no dental practice would do that. He says that the conditions imposed by the IOC accordingly amount to suspension, having the practical effect of precluding the claimant from finding employment. He points out that this is at a time when there is a severe national shortage of trained dentists and in circumstances where there has never been any complaint about the claimant's clinical abilities.

17 Further, Mr Colman asked the court to note that the allegations made against his client, which are, in any event, disputed, contain no suggestion of inappropriate touching or other physical impropriety, being restricted to complaints about his use of sexist, demeaning language. He submitted that although the IOC in January noted the further educational and other activity undertaken by the claimant since the interim order, they did not appear to take into account the fact that the claimant had previously undertaken thousands of appointments working with about 20 female colleagues with no complaints of this nature, when assessing the extent of the risk which he posed.

18 The claimant has suggested alternative conditions, essentially requiring continuous feedback from staff and patients reported to the GDC via a registrant reporting function. Mr Colman argues that the requirement to obtain feedback from staff and patients would itself act as an effective control and the prompt reporting of any repetition of the disputed objectionable comments would result in swift action by the GDC. The combination, he says, would achieve the same objectives of public protection as the current order.

19 Mr Colman took me to the cases dealing with the degree of deference the court should give to the IOC's decision as a specialist tribunal. He argued that this court is not obliged to give any weight to the decision of one, let alone that of two committees, when assessing risk and the proportionate means of dealing with that risk.

20 Miss Power argued that the chaperonage condition was proportionate and that the claimant's alternative would not suffice to protect the public, which includes staff as well as patients at any workplace. Although the court exercises an original jurisdiction in relation to challenges under s.32(12), she relied on the remarks of Davis J in *Sheikh*, to which I have referred above, that the court will, in the ordinary way, show respect for the expertise of specialist committee. She draws attention to the very restrictive nature of the assessment here, namely as to whether the particular chaperonage condition is practical and workable. She says that the practicalities involved in chaperonage by another registrant within a busy practice is an example of an issue falling squarely within the expertise of a specialist committee. She points out that two separately constituted IOCs have now considered the issue of interim conditions of practice and have each imposed a chaperonage condition. Moreover, although the first IOC gave limited reasons, the IOC which considered the review in January, she says, gave full and clear reasons for its decision to uphold the condition.

The reasons included a detailed consideration of the ability of the claimant to find employment with a chaperonage condition, concluding that although it would be more difficult it would not be impossible.

21 As to the evidence of unworkability, she says that the court should be slow to find that it would be impossible to find work on the strength of two job rejections dating from last year, together with a view of Mr Shehab's past mentor. There has been nothing in 2023, she points out, to which Mr Colman responded that the claimant's continued lack of employment over 6 months itself demonstrates the unworkability of the chaperonage condition.

22 As to the point made by Mr Colman the allegations do not extend to physical assault, Ms Power accepts that this is strictly correct, but points out that one member of staff recorded the claimant locking himself in the room with her and standing by the door, making her very scared. In any event, Ms Power says, the adverse impact upon female staff and patients of the use of demeaning, sexist language and gestures should not be underestimated. Moreover, when assessing the risk, the IOC is bound to take the allegations very seriously.

23 Ms Power argues that the proposed alternative condition could not provide sufficient protection. She points out that people who have experienced inappropriate behaviour will not necessarily wish to report it, let alone complete a feedback questionnaire about their experience. Moreover, the existence of such forms would not necessarily prevent the behaviour from occurring in the first place. Is there any guarantee that inappropriate behaviours would be reported swiftly or speedily acted upon at the practice which employed the claimant? Ms Power asked rhetorically.

Discussion and decision

24 There was discussion before me as to the varying degrees of deference to the original committee that a court undertaking a review under s.34 will have. The different ways in which courts have described this, Davis J in *Sheikh*, Steyn J in *MXM*, do not, to my mind, detract from the fundamental point that this court exercises an original jurisdiction different from a judicial review.

25 That being so, whilst it will always be the case that the court will be looking at the opinion of the IOC – in this case two such opinions – it will also bear in mind all the evidence before the committees and must turn its own mind to the question of risk and mitigation of risk. I have done that.

26 Here, the issue has, to a large extent, been determined for me since Mr Colman accepts that, given the allegations made against the claimant, there is a risk which needs to be met by conditions. The only issue is what those conditions should rightly and proportionately be.

27 I start by rejecting any suggestion that allegations of sexist, demeaning words or gestures falling short of physical touching are to be treated as minor, somehow less serious than physical impropriety, when considered in a professional context. It is a truism that words can be no less damaging to a person's sense of agency and self-worth than actions themselves. That is particularly so in a professional healthcare setting, where staff and patients expect and are certainly entitled to be treated with the utmost care, respect and consideration. The days are long gone when disrespectful words uttered by men to their women colleagues can be dismissed as a joke. Today there is a zero tolerance of such behaviour. Whether a professional person who acts improperly does so from a failure to appreciate the existence of such a zero tolerance ethic or from a failure to share or respect that ethic so as to act in accordance with it, either must give rise to very serious concerns on

the part of a regulating body charged with protecting the public as well as the reputation of the profession.

28 Such concern is further increased here by the allegation that the claimant locked himself and his dental nurse into a room. That is a serious allegation of very worrying behaviour, however it is characterised, which presents a particular difficulty when considering how the risk may be mitigated. The choice appears to be between conditions which will act as a deterrent and conditions aimed at preventing what can happen in the first place. I agree with Ms Power that the suggested alternative of feedback questionnaires and regular reporting to the GDC will not sufficiently deal with the risk of repetition, particularly the allegation of locking in. I appreciate that it was a single occasion and that the door was opened the moment the nurse suggested that a patient may be waiting, but that allegation, together with the allegations of inappropriate remarks, came from several different members of staff about things said to them or in their presence and gestures made, and to patients in the presence of staff in a number of different settings. The range and variety of occasion and type of remark, taken together with the locking in is what generates the high level of concern, notwithstanding Mr Colman's point about the thousands of patients consultations which were conducted and concluded without any reported incident.

29 I accept that, as Ms Power pointed out, not everyone would feel able to complain. The claimant's conduct was clearly sufficiently concerning to cause the Cornish practice, having conducted an internal investigation, summarily to dismiss the claimant. This circumstance on its own is likely adversely to affect his chances of securing another position.

30 Considering the allegations, the risk and proper means of mitigation, exercising the original jurisdiction, as I must, I am of the view that questionnaires are not enough. I appreciate that questionnaires will have a deterrent effect, however the allegations are sufficiently serious that a precautionary approach must be taken. Conditions are required which ensure that a locking incident could never happen again. The deterrent effect of questionnaires and reporting will not, as I see it, be sufficient to ensure that such behaviour cannot be repeated. Other than the suggestion of questionnaires, neither side in this case has been able to come up with an alternative to the conditions of chaperonage originally imposed. It follows, therefore, that I can presently see no workable alternative to the condition imposed by the IOC last November and continued in January.

31 Having said this, I am concerned by the treatment of the evidence of unworkability in the reasoning of the January Committee. I see nothing in that reasoning which addresses that evidence directly. There is only a bare assertion that finding employment with those conditions, whilst difficult, will not be impossible. I have considered the evidence as to workability, but on the strength of two rejections last year I cannot find that obtaining some work as a qualified dentist is impossible as opposed to much more difficult.

32 On the current evidence, therefore, I am not satisfied that the chaperonage condition is disproportionate to the risk. There remains the safeguards provided for by s.34(4) in terms of reviews enabling the claimant to re-apply to the Committee to reconsider the requirements which they have imposed.

MRS JUSTICE MAY: Thank you, both. Have you put in----
MS POWER: Yes
MRS JUSTICE MAY: I have seen certificates of costs. Have both sides put them in?
MS POWER: They have, my Lady. My client has done so twice, the second one being slightly lower than the first because a particular senior member of the team could not attend today.

Both sides have put in their costs submissions. The submission of the Council is that costs should follow the event in the normal manner.

In addition to that submission, rather more heavy work was needed on this case than may have ultimately proved necessary, my Lady, and that is because at the outset of the case the ambit was far wider than it has subsequently become.

MRS JUSTICE MAY: Yes.

MS POWER: At the outset of the case it appeared that it would be necessary to address the cogency of the evidence and the need for any order issued which my learned friend has, with respect, wisely not sought to pursue before you today. So, for those reasons I would submit that not only the Council should be granted its costs, but that it should be granted its costs in full, the Council's costs schedule being considerably more modest than the claimant's costs schedule.

MRS JUSTICE MAY: I am just looking for the claimant's costs schedule.

MS POWER: So, the claimant's costs schedule comes to a total of £17,409.70. It is dated 2 May.

MRS JUSTICE MAY: Yours is just over half of that.

MS POWER: So ours is slightly more than half, it comes under £10,000. I can find you the exact figure, my Lady.

MRS JUSTICE MAY: Mr Colman?

MR COLMAN: Nothing to say, my Lady.

MRS JUSTICE MAY: Thank you. I think it is right that costs should follow the event and bearing in mind the two costs certificates that have been filed I award costs in favour of the GDC in the amount set out in the certificate of £9,291.60.

MS POWER: Thank you, my Lady.

MRS JUSTICE MAY: Thank you.

CERTIFICATE

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This transcript has been approved by the Judge.