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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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

Between:

THE GENERAL MEDICAL COUNCIL

Applicant

and

DR MARY ANNE McCLOSKEY

Respondent

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Ben Thompson BL (instructed by Cleaver Fulton Rankin Solicitors) for the Applicant
The Respondent is a Personal Litigant

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ROONEY J

Introduction

[1] The General Medical Council ("the applicant") is responsible for, inter alia, the supervision and regulation of registered medical practitioners under the Medical Act 1983 (as amended) ("the 1983 Act"). The respondent is a doctor who is registered with the GMC.

[2] Following an oral hearing on 21 September 2021, at which the respondent was represented by Counsel and Solicitor, an Interim Orders Tribunal ("IOT") made an order suspending the registration of the respondent for a period of 18 months.

[3] The interim suspension order was reviewed by the IOT on 16 March 2022, 8 September 2022 and 3 March 2023 in accordance with section 41A(2) of the 1983 Act.

[4] Pursuant to section 41A(6) of the Medical Act 1983, the GMC brings an application to extend the said interim suspension order.

[5] The application for extension was listed before this court on 20 March 2023. McAlinden J granted the extension of the order until midnight on 23 May 2023.

[6] On 22 May 2023, McAlinden J granted a further extension of the order until midnight on 19 June 2023. Following submissions made by the respondent, McAlinden J directed the applicant to file affidavit evidence addressing the following issues:

(a) Whether the decision of the Interim Orders Tribunal is an order for the purposes of section 41A of the Medical Act 1983 and/or whether any further additional document must be generated or produced so as to make the order effective.

(b) To review the issues of disclosure relating to the IOT proceedings and confirm whether further disclosure ought to be provided.

[7] The issues directed by McAlinden J will be considered below.

[8] The application was listed for hearing on 19 June 2023. Following submissions made by both parties, I indicated that the substantive hearing would proceed on 22 June 2023. Accordingly, I made an order that the interim suspension order would be extended until midnight on 22 June 2023.

[9] The respondent opposes the application to extend. The respondent's challenge is contained in a document entitled 'Application for Motion to Dismiss' dated 13 June 2023 which the respondent claims has been superseded by a more detailed document dated 19 June 2023. These documents were not in a prescribed form in accordance with the Rules of the Court of Judicature (NI) 1980. The documents were not directed by the court and the respondent did not make an application to this court for leave to serve the documents. No prior notice was given by the respondent to the applicant of her intention to serve the documents. Rather, the document dated 19 June 2023 was lodged with the court on the morning of the hearing on 19 June 2023.

[10] In essence, contained with the document, the respondent challenges the validity of the interim suspension order dated 21 September 2021, and further review orders dated 16 March 2022, 8 September 2022 and 3 March 2023 on grounds of, inter alia, fraud, false representation, illegality, ultra vires, breach of various statutory duties, breach of the rules of natural justice and procedural unfairness.

[11] The respondent also refers to Schedule 4 of the Medical Act 1983 which deals with proceedings before the Investigation Committee, the Medical Practitioners Tribunal and the Interim Orders Tribunal, and in particular sub-para 1(A) and 1(B), wherein it is stated that the overriding objective of the General Council in making

rules under this Schedule with respect to the procedure to be followed is to secure that the Tribunal or Committee (as the case may be) deals with cases fairly and justly. Where the General Council consider that there is a conflict between meeting the objective under sub-para (1A) and the over-arching objective, they must give priority to meeting the objective under sub-para (1A).

[12] Mr Ben Thompson BL, on behalf of the applicant, alerted the court to the applicant's concerns in relation to the unconventional nature of the said document, the fact of the respondent's non-compliance with the Rules and the nature of challenges contained within the document. Nevertheless, he indicated that the applicant was in a position to deal with the relevant issues and essentially stated there was no merit in the challenges advanced by the respondent.

[13] The respondent is a personal litigant who is assisted by a McKenzie friend. Despite the court's concerns as detailed in para [9] above, I am prepared to deal with the document submitted by the respondent as an application pursuant to section 41A(10) of the 1983 Act. The issues raised in the respondent's application will be considered below.

Section 41A Medical Act 1983

[14] In situations where, as in this case, a doctor is subject to a fitness to practise investigation, section 41A of the 1983 Act provides the GMC with powers to determine whether a practitioner should be permitted to practise, or at least, should only be permitted to practise subject to conditions, before any decision has been reached as to the practitioner's continued registration.

[15] The statutory scheme as provided in section 41A(1) empowers an Interim Orders Tribunal (IOT) or a Medical Practitioners Tribunal (MPT) to make "interim orders" where the Tribunal is "satisfied that [the making of such interim order] … is necessary for the protection of members of the public or is otherwise in the public interest. If so satisfied, the Tribunal may decide to make an interim order suspending the registration of the practitioner or an order imposing conditions upon the practitioner's registration for a period up to 18 months.

[16] An order suspending the practitioner's registration may be specified as an "interim suspension order." An order imposing conditions on the practitioner's registration requires that person's compliance and may be referred to as "order for interim conditional registration."

[17] Section 41A(2) provides for periodical reviews of any order made by the IOT. The reviews must be made within a period of six months beginning on a date on which the order was made. Where an interim order is required beyond its date of expiry, pursuant to section 41A(6) the GMC can apply to have the order extended by this court for a period of up to 12 months. Further extensions may be granted by the court up to a maximum of 12 months (Article 41A(7)).

[18] The powers of the court are considered in section 41A(10). In the case of an interim suspension order, the court can terminate the suspension or substitute the period specified in the order. In the case of an order for interim conditional registration, the court can revoke or vary any condition imposed by the order and substitute the period specified in the order.

[19] The statutory scheme under section 41A and, in particular, the powers of the court pursuant to section 41A(7) and (10) were succinctly considered by Arden LJ in *General Medical Council v Hiew* [2007] 4 ER 473 in the following paras:

> '[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.'

[20] In respect the criteria to be used in an application for extension, the learned judge stated:

> '[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).'

[21] Further, at para [31], Arden LJ emphasised;

> '[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.'

[22] Significantly, further guidance is provided at para [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.'"

[23] In *The General Medical Council v Dr Obasi* [2019] NIQB 27, Maguire J, having considered the decisions in *The General Medical Council v Hiew* [2007] 4 ER 473 and *Martinez v General Dental Council* [2015] EWHC 1223, comprehensively summarised the parameters for the court in the exercise of its powers under section 41A(7) and (10) as follows:

> "[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.
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> [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.
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> [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.
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> [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.

[24] The respondent referred the court to the decision of Dove J in *Dr Samuel White v GMC* [2021] EWHC 3286 and, in particular, to para [13]:

> "13. The approach to be taken to the jurisdiction of this court in considering an application under section 41A(10) is well settled in a number of authorities: see *R (Madan) v GMC* [2001] EWHC Admin 322; *GMC v Anyuam Osigwe* [2012] EWHC 3884 (Admin); *Houshain v GMC* [2012] EWHC 3458, and, drawing these threads together, *Agoe v GMC* [2020] EWHC 39 (Admin) in particular at paras 17 to 21. In approaching an application the court exercises an original jurisdiction and is not confined to an inquiry in relation to whether or not there were public law errors of the kind which would arise in a judicial review, albeit of course the court will seek to examine whether or not the IOT was properly directed to the appropriate legal questions when reaching its decision. Although the court exercises an original jurisdiction it will show respect for, and give appropriate weight to, the decision of the IOT as an expert body well acquainted with the requirements of the profession that it is regulating, and the need to uphold public perception and confidence in the profession. The court will interfere with the decision if it is satisfied that the order which was made was wrong: see *GMC v Hiew* [2007] 1 WLR 2007. When considering whether or not the order made was wrong the court will have regard not only to all of those matters and all of the evidence which were before the IOT, but can also have regard to other evidence which has come to light since the IOT reached its decision."

[25] I now propose to consider the documentation and the information made available to the IOT on 21 September 2021 which formed the basis of its decision to make an interim suspension order. Thereafter, the same consideration will be given to the decision of each IOT which reviewed the documents and made the said interim orders.

Interim Orders Tribunal: 21 September 2021

[26] At the commencement of its determination, the IOT reminded itself of its role in accordance with section 41A(1) of the Medical Act 1983, namely that it will only make an order if it is satisfied that there may be impairment of a doctor's fitness to practise which poses a real risk to the public or may adversely affect the public interest or the interests of the practitioner and, after balancing the interests of the doctor and the public, such an interim order is necessary to guard against such risk.

[27] The information and documentation taken into consideration by the IOT is summarised in the following paras of the IOT's determination:

> "5. The Tribunal has taken account of the letter dated 23 August 2021 from Dr O'Brien, HSCB, in which she advised that Dr McCloskey had been suspended from the Primary Medical Services Performers List on a precautionary basis, with immediate effect.
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> 6. The Tribunal has had regard to the transcript of a video where Dr McCloskey expressed her views regarding the coronavirus vaccine. Within the transcript of that video Dr McCloskey describes the vaccine as "two injections of an experimental genetic therapy" and stated that people were only being vaccinated "because of the removal of their human rights and basic privileges." Dr McCloskey did not agree that the NHS was being overwhelmed, rather, it was "being dismantled in front of our eyes." She also stated, "these injections are doing real harm; they're certainly not providing any visible protection for people and they are still in clinical trials for another two years."
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> 7. Dr McCloskey stated, "the other thing I am seeing in increasing numbers, it's so distressful to even think about it because I know that they're coming after the children next, because I'm seeing young people, healthy, previously fit young people who are damaged." She further stated "… the whole hype has largely been a figment of the media and the government and their lying scientific advisors' deceptions." In relation to the vaccination, Dr McCloskey stated "If you look at the MHRA data – and it is not being analysed at all; there is over 1,500 deaths so far in the UK."
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> 8. Within the transcript, in relation to vaccines, Dr McCloskey stated "They are unlicensed and unapproved. They have emergency authorisation on the premise of the false assumption that there are no other treatments available for Covid."

9. The Tribunal has taken account of the transcript of the BBC Radio Ulster Talkback Interview between Dr McCloskey and Mr William Crawley, released on 24 August 2021. Part of the transcript stated:

> "WC: So you accept, do you, that if a registered doctor were to be promoting unscientific views or misinformation during an epidemic that their behaviour would be unethical and irresponsible? You accept that? Yes?
>
> AMcC: I accept that, yes."

10. During the radio interview, Dr McCloskey held the view that the PCR test could not detect Covid-19. She also stated that face coverings did "not make any significant difference" and that the vaccine would "cause clots." Dr McCloskey maintained that the information she was providing was not misinformation and was the truth. Dr McCloskey said, "I regard the lockdown, the second lockdown which happened after the bulk of this pandemic had passed and which was based not upon illness but upon PCR tests which we know in populations with low viral loads are at 100% false positive." She also stated, "I would contend that the masks are there to keep us afraid."

11. Dr McCloskey stated during interview, "Professor McCollum in America has said that more children will die as a result of being immunised than will die from Covid." She also said, "vaccination of healthy people … it's criminal." During the interview, Dr McCloskey said about the vaccination "it's killed 1,500 people … according to the Yellow Card data." She further stated, "These vaccines do not work. They are not reducing hospital admissions."

[28] The IOT noted that when challenged about her assertion that the vaccine had been responsible for 1,500 deaths, Dr McCloskey accepted that cause and effect had not been proved and retracted her comment regarding vaccine deaths. The Tribunal also took into consideration the submission made by counsel for the GMC, that Dr McCloskey's comments had the potential to undermine the vaccination

programme, which increased the risk of harm to her patients and the public at large. It was submitted that the strength of Dr McCloskey's language had the potential to significantly influence a listener who was not particularly well informed.

[29] The Tribunal also took into account information presented on Dr McCloskey's behalf, which included her CV, positive testimonials and the 2019 appraisal. Dr McCloskey was also represented by counsel, Mr Davidson BL. It was submitted on behalf of Dr McCloskey that she passionately disagreed with the current vaccination programme, particularly in relation to young children and adults. It was further submitted that Dr McCloskey's concerns were shared by medics and scientists across the world and were reflective of the government's own concerns to be found on the Medicines and Healthcare Products Regulatory Agency (MHRA) website arising from the "Yellow Card" data. It was argued that the MHRA acknowledged that there had been health concerns regarding the vaccine and that Dr McCloskey was only referencing data that was in the public domain.

[30] Specifically, it was submitted on behalf of Dr McCloskey that she had not provided any misinformation, she had not breached patient confidentiality, she had not committed any criminal offence and there is no suggestion that she stood to gain from expressing any of her views. It was submitted that the imposition of an interim order should not be used to shut down or stifle medical debates.

[31] In response to questions from the IOT, counsel for Dr McCloskey acknowledged that her comments on the vaccine killing people were inappropriate.

[32] Based on an analysis of the information stated above, the IOT determined that there were concerns regarding Dr McCloskey's fitness to practise which posed a real risk to members of the public and which may adversely affect the public interest. After balancing Dr McCloskey's interests and the interests of the public, the IOT decided that an interim suspension order was necessary to guard against such a risk.

[33] In reaching its decision, the IOT made specific reference to the following:

> "[29] … Dr McCloskey has allegedly made misleading comments regarding the Covid-19 virus, lockdowns, vaccinations, mask wearing and PCR testing. The Tribunal has noted Mr Davidson's response to the allegations, on behalf of Dr McCloskey, and the documentation provided in support of her rebuttal of the allegations. The Tribunal has also taken account of Mr Davidson's submission that Dr McCloskey has the right to express her views and that she is taking information from government published data from the MHRA.
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> [30] However, the Tribunal considers that Dr McCloskey's manner of expressing her own views to

> the general public and patients may have a real impact on patient safety. The Tribunal is concerned that Dr McCloskey appears to have expressed a view on death rates associated with Covid vaccination which she retracted only after having been repeatedly challenged and after an apparent attempt to support her initial view. The Tribunal is therefore concerned about the accuracy of information that Dr McCloskey has provided and may provide in the future to individuals considering whether to be vaccinated in respect of Covid-19. Accordingly, the Tribunal is concerned as to the effect the information that may be provided by Dr McCloskey would have on the ability for a member of the public to reach a proper and informed decision about whether they would take the Covid-19 vaccination. Further, the Tribunal considers that the alleged conduct is not likely to be an isolated incident, given the tenor of comments made by Dr McCloskey concerning the use and utility of Covid vaccinations on the intent behind them expressed over a period of time. The Tribunal considers that there is a high likelihood of repetition in this case. It further notes that she has been suspended by the Health Board in Northern Ireland."

[34] In conclusion, the IOT determined that on the basis of an analysis of the information provided to it was sufficient to suggest that "Dr McCloskey may pose a real risk to members of the public" and further, that if "the allegations were later found proved, public confidence in the profession could be seriously undermined if Dr McCloskey was permitted to practise medicine unrestricted whilst these concerns remain unresolved." Furthermore, the IOT stated that since the nature of the concerns go to Dr McCloskey's attitude to the dissemination of accurate information to the public, an order imposing conditions would not be workable.

[35] A preliminary issue raised by the respondent in this case is whether the decision of the IOT constituted an order for the purposes of section 41A of the Medical Act 1983. Regarding this issue, I have read the affidavit of Benjamin Hartley, Principal Legal Advisor to the GMC, dated 12 June 2023. The said affidavit was directed by Mr Justice McAlinden in response to the matter raised by the respondent. In my judgment, having carefully considered the analysis of the documents by the IOT on 21 September 2021, whether the analysis is referred to as a determination or a decision, it is clear that the IOT made an interim suspension order and it specifically stated that the order would be reviewed within six months. Such constituted an order for the purposes of section 41A of the Medical Act 1983. It was not necessary for the IOT to generate or produce another document confirming the nature and extent of the order.

[36] As summarised in paras [10]- [11] above, the respondent challenges the determination of the IOT and the decision to make an interim suspension order on

grounds of, inter alia, fraud, false representation, illegality, ultra vires, breach of various statutory duties, breach of the rules of natural justice and procedural unfairness. The respondent was warned that fraud was a serious allegation to make and that the legal burden of proof must be discharged by the respondent. As stated by Stephens J in *Beechview Aviation v Axa Insurance Ltd* [2015] NIQB 106, each allegation "should be distinctly alleged and should be pleaded with the utmost particularity."

[37] In a detailed skeleton argument and pertinent oral submissions, the respondent asserts that she is a lawful whistle-blower who is protected by law if she reports, inter alia, a criminal offence (for example fraud), that someone's health and safety is in danger, and that someone is covering up wrongdoing. The thrust of the respondent's allegations include the following:

(a) Real and serious issues around what constitutes informed consent in the administration of covid injections.

(b) The administration of vaccines which are unlicenced products.

(c) The medium to long term safety issues regarding the vaccines, to include the effects on future fertility and the dangers of "pathogenic-priming."

(d) The failure to ascertain the risks of harm.

(e) The indemnification of doctors and the protection of patients.

[38] The respondent further submits that the Medicines and Healthcare products Regulatory Agency (MHRA) falsely represented that it was the appropriate licencing authority and that it permitted temporary authorisation for the supply of unlicensed medicine, such as vaccines, in response to specific types of a public health threat.

[39] The respondent highlighted that, following a freedom of information request, the MHRA stated that "all the covid vaccines and therapeutics authorisation decisions were taken by the Licencing Minister and were not delegated." The respondent alleges this statement is untrue.

[40] The respondent further alleges that in August 2021, the Department of Health was looking to expand the Covid-19 vaccination programme to children, even though, as she claimed, the risk of the death of a healthy child from Covid-19 was statistically zero based on government data and evidence. For this reason, the respondent submitted that the risk of serious harm and injury from the unlicensed vaccines for a child greatly outweighed any benefit.

[41] Many of the respondent's allegations are aimed at Professor Sir Michael McBride, the Chief Medical Officer. The respondent alleges that despite the messages provided by the Chief Medical Officer and representatives within the Department of Health, vaccine injections were doing real harm. The respondent

alleged that the vaccines are unlicenced and unapproved, they are not providing any physical protection, they are still in the phase of clinical trials and that they have been authorised on the false assumption that no other treatments are available for covid.

[42] Clearly, the view adopted by Professor McBride, Chief Medical Officer, differs significantly from that of the respondent. He stated that he had very serious and significant concerns in respect of misinformation promulgated by the respondent, which in his view, was not consistent with the standards and responsibilities of doctors as outlined "good medical practice."

[43] Relying upon the decision of Dove J in *Dr Samuel White v General Medical Council*, the respondent argues that the High Court has power to interfere with a decision of IOT if it is satisfied that the order which was made was wrong. In considering whether the order made was wrong, the court should have regard to not only those matters and evidence which were before the IOT, but also other evidence which has come to light since the IOT reached its decision. The respondent submits that the evidence contained within her nine affidavits remain unrebutted and that the legal burden of proof of fraud, false representation and illegality have been satisfied. In support of her argument, the respondent relies upon the statement of principle as cited by Lord Denning in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 (CA) namely:

> "… no court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a minister, can be allowed to stand if it has been obtained by fraud … Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

Decision

[44] Applying the guidance provided by the courts in *GMC v Hiew* and *GMC v Obasi*, the decision for this court is simply whether there should be an extension of the period of suspension. It is not for this court to consider the merits of the case de novo. Similar to the position of the IOT, this court is not in a position to attempt to resolve disputes over what was said by the respondent, whether it amounted to misinformation and whether the respondent's right to free speech has been infringed. Furthermore, the court is not in a position to evaluate the respondent's allegations of fraud, false representation and illegality. Resolution of those issues will be a matter for the GMC at the hearing which is to take place between 16 October and 25 October 2023.

[45] Section 41A(7) of the Medical Act 1983 does not set out the criteria for the exercise by the court of its power under that subsection in any given case. However, as stated by Arden LJ in *GMC v Hiew*, "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."

[46] In my judgment, based on the information provided, the assessment of risk carried out by the IOT is not open to criticism. In coming to this conclusion, it is proper that I should give appropriate weight and consideration to the experience and expertise of the IOT panels. On the basis of the analysis of the information provided to the IOT together and following a balancing of the respondent's interests and the interests of the public, the Tribunal was justified in making an order to suspend the respondent from practise. For the reasons given, I also agree that an order of conditions will not be appropriate nor proportionate in this case. As stated by the IOT, the concerns go to the respondent's attitude to the dissemination of accurate information to the public and, due to the nature of those concerns, no conditions could be workable.

[47] Having considered the affidavits provided by the respondent and taking into account her written and oral submissions, in my judgment, these fall far short of persuading me that order of the IOT was wrong. I also take into consideration the fact that at the hearing on 21 September 2021 the documentation relied upon by the respondent in its submissions was presented to the IOT. The IOT expressly stated that it had taken into account documentation provided in support of Dr McCloskey's rebuttal of the allegations. The Tribunal had also taken into consideration submissions made on behalf of Dr McCloskey by her counsel as to her right to express her views and, the fact that she states the information is taken from government published data from the MHRA. Although not relevant to this application, it is noted that the respondent did not seek to challenge by way of judicial review the interim suspension order of the IOT made on 21 September 2021.

Interim Orders Tribunal: Review 16 March 2022

[48] An IOT had been designated to review the interim order on 10 March 2022. At the commencement of the hearing, the Legally Qualified Chair, Mr Andrew Webster KC, revealed that he and the medical tribunal member, Dr Richard Bateman, had received correspondence from Dr McCloskey purporting to imply that there might be a potential financial liability on the part of those members of the Tribunal involved in imposing the interim order on 21 September 2021. Mr Webster invited submissions from the parties on the propriety of the Tribunal proceeding with the hearing.

[49] Dr McCloskey confirmed that she did send documents to both Mr Webster QC and Dr Bateman. She claimed that these documents were not intended to be intimidatory, but as part of a process that could lead to court proceedings against the

Tribunal members. It was noted by the Tribunal that the letter sent to Dr Bateman purported to identify the imposition of a potential financial liability. In light of the content of the said documents sent to Mr Webster and Dr Bateman, it was likely the same would be considered as part of the GMC investigation. Accordingly, since Mr Webster QC and Dr Bateman could potentially be witnesses in future GMC proceedings, there was a clear conflict of interest, and a decision was made to adjourn the hearing to be reviewed by a fresh Tribunal.

[50] The adjourned Tribunal hearing was listed on 16 March 2022 before a differently constituted IOT. At the outset of the hearing, Dr McCloskey stated that the IOT was in breach of civil procedure rules in that she had not been provided with a transcript of the previous IOT hearings and that she had been sent a large bundle of documents only 17 hours prior to the hearing. However, Dr McCloskey confirmed that she was familiar with most of the documents.

[51] The Tribunal noted that since the interim suspension order on 21 September 2021, the GMC had received information relating to concerns raised in respect of Dr McCloskey by Dr Brian Sweeney, Clinical Director, Western Health and Social Care Trust. The Tribunal observed that the inquiry carried out by the Trust found no recurring issues of concern relating to Dr McCloskey's practise, clinical advice, management or prescribing.

[52] The Tribunal referred to the transcript of a Twitter Broadcast which took place on 30 November 2021 in which Dr McCloskey repeated her previous views on Covid-19 matters. The Tribunal also noted that the GMC wrote to Dr McCloskey on 8 March 2022, informing her that it had received new allegations relating to correspondence and documents sent by Dr McCloskey to Mr Webster QC and Dr Bateman, members of the IOT that imposed the interim suspension order on 21 September 2021.

[53] It is clear from the IOT's determination dated 16 March 2022 that it took into consideration submissions made by Dr McCloskey. At para [12] of the determination, the following is stated:

> "Dr McCloskey detailed her CV and stated that she had resigned her last position due to the Government's Covid-19 policies. She reiterated her right to free speech and scientific debate, which she stated was inalienable and fundamental, even when this was at variance with Government policy, and she referenced her right to freedom of expression. Dr McCloskey detailed her views in relation to the national management of Covid-19 and the impact on patients and members of the public during the pandemic. Dr McCloskey submitted that she had felt it was her duty as a doctor to provide information to protect people from the harm which public health policies had created. She stated that she made no apologies for

> 'speaking out' and that she would do so again. Dr McCloskey submitted that no argument had been brought to refute the assertions she had made. Mr McCloskey submitted that her interim suspension should be revoked unless evidence could be provided that her submissions are incorrect."

[54] Having considered all the information and documentation provided to it, the Tribunal remained concerned that Dr McCloskey may have provided inaccurate information relating to death rates in people who had received the Covid-19 vaccine and that she was only willing to retract these comments after being challenged. The Tribunal further considered that Dr McCloskey's manner of expressing her views about potentially inaccurate information which may impact on individuals who are considering whether or not to be vaccinated in respect of Covid-19 and to take other precautions, such as wearing face masks. The Tribunal was also concerned that Dr McCloskey may not have sufficient insight into the seriousness of the concerns raised and the potential risks to patient safety. The Tribunal noted from the transcript of Dr McCloskey's Twitter Broadcast on 30 November 2021 that she had continued to express her views on social media.

[55] The Tribunal also expressed probity concerns arising from the fact that Dr McCloskey had admitted to contacting Tribunal members and sending information to one Tribunal member.

[56] In all the circumstances, the Tribunal considered that there was sufficient information to suggest that Dr McCloskey may pose a real risk to members of the public if she were permitted to return to unrestricted clinical practise, given the nature of the concerns raised and the serious impact they may have on patient safety. The Tribunal considered that public confidence in the profession may be seriously undermined if the order for suspension was not reviewed. The Tribunal therefore determined that suspension remains a necessary and proportionate response to the risks identified in this case. No conditions would be sufficient as a workable and enforceable means of addressing the risks imposed.

[57] Applying the guidance given by Arden LJ in *GMC v Hiew* and Maguire J in *GMC v Obasi*, in my judgment, the analysis made by the review Tribunal and the order for continued suspension is beyond reproach. The Tribunal correctly focused on the relevant criteria under section 41A(1) namely the protection of the public, the public interest or the practitioner's own interests and carried out the appropriate balancing exercise, giving due regard and consideration to the submissions made by Dr McCloskey.

[58] Although ultimately this will be a matter for the GMC hearing, I have concerns relating to the appropriateness and propriety of Dr McCloskey's conduct in contacting Tribunal members.

Interim Orders Tribunal: Review 8 September 2022

[59] At the review hearing on 8 September 2022, the Tribunal noted that since the last review hearing, Dr McCloskey had sent further correspondence, including threatening legal documents to members of the IOT and to prominent members of hospitals.

[60] Significantly, on 15 August 2022, the GMC wrote to Dr McCloskey to advise that information had been received from the Regulation Quality Improvement Authority (RQIA). The RQIA referral to the GMC dated 28 June 2022 stated as follows:

> "A patient attended on 1 June 2022 and had a follow-up appointment on 7 June 2022. It is alleged that during this follow-up appointment Dr Anne McCloskey performed a scan. Dr McCloskey is a Trustee of Stanton listed on the Charity Commission NI website."

[61] If this information was correct, it was clear that the procedure was carried out when Dr McCloskey's registration was subject to suspension.

[62] The Tribunal took into consideration Dr McCloskey's responding submission to the GMC. In particular, at para [11] of the IOT's determination, the response from Dr McCloskey is set out as follows:

> "A letter in my possession from a member of Stanton's Board of Trustees to Ms Hopkins of the RQIA of 27 July 2022 reiterates the position held up to this time that Stanton Healthcare is not required to register with the RQIA. Independent clinics are only required to register with this body if 'they employ a doctor who works solely in this sector.' This is not the case. I am not an employee, I do not work 'as a doctor', but as a sonographer, a taker of pictures, using ultrasound as a means to generate the images. Although there is no requirement for a sonographer to hold a recognised qualification in order to carry out scans in the UK, I have undertaken training and hold relevant certification."

[63] Furthermore, the Tribunal noted that on 25 August 2022, the GMC wrote to Dr McCloskey stating that additional information had been received and she had been charged with two criminal offences and had communicated with the district judge. On 29 July 2022, the GMC received confirmation from Londonderry Courthouse that Dr McCloskey was subject to two charges relating to contraventions of Regulation 8(1) of the Health Protection (Coronavirus Restrictions) (No:2) Regulations (NI) 2020.

[64] In submissions made by Dr McCloskey to the IOT, she contended that she was being silenced. She further stated that she maintained her position in relation to her opposition to masks, lockdown and vaccines. She also stated that she felt that the outcome of the proceedings was irrelevant to her and that she will continue to defend her position.

[65] In its decision to maintain the existing interim order of suspension, the Tribunal took into consideration that Dr McCloskey had been charged with two criminal offences of contravening covid regulations and that she was under investigation by the RQIA. The Tribunal determined, based on information provided to it, there were concerns regarding Dr McCloskey's fitness to practise which posed a real risk to members of the public and which may adversely affect the public interest. After balancing Dr McCloskey's interests and the interests of the public, the Tribunal decided that an interim order remains necessary to guard against such a risk.

[66] I have carefully considered the decision of the Tribunal in my judgment, applying the relevant guidelines and based on the information provided to the Tribunal, the assessment of risk carried out by the IOT is not open to criticism. Appropriate weight and consideration must be given to the experience and expertise of the IOT panel. No information and/or documents or evidence had been provided to me which would lead to a conclusion that the analysis and decision of the IOT was wrong.

Interim Orders Tribunal: Review 3 March 2023

[67] At the hearing on 3 March 2023, it was noted that Dr McCloskey was represented by Mr Brentnall, Solicitor. At the commencement of the hearing, Mr Brentnall stated that he had only received instructions and requested an adjournment. Upon deliberation between the parties and that the order required to be reviewed by 7 March 2023, it appears that Mr Brentnall withdrew his application to adjourn and consented to a continuance of the order of suspension.

[68] The Tribunal noted that since the previous review on 8 September 2022, Dr McCloskey had made Freedom of Information requests from the GMC. In response to the request, the GMC stated as follows:

> "The GMC doesn't hold any of the information or documentation you have asked for. We aren't involved in developing, regulating, or monitoring the safety and effectiveness of vaccines or implementing the NHS Covid-19 vaccination programme. Our advice to doctors is therefore limited to how they can provide the best treatment for patients based on the evidence that they have available."

[69] The Tribunal noted that in a letter sent to Dr McCloskey dated 9 January 2023, the case examiners had decided to conclude matters with no further action in relation to allegations that Dr McCloskey had made inappropriate comments and spread misinformation about Covid-19 and vaccines in the context of election hustings regarding an article which appeared in the Belfast Telegraph.

[70] The Tribunal noted that Dr McCloskey received a conviction on 13 September 2022 and ordered to pay a fine of £240. It appears that no representations were made by or on behalf of Dr McCloskey in respect of the said order of the magistrates' court.

[71] The Tribunal determined, based on information that there remained concerns regarding Dr McCloskey's fitness to practise which, accordingly to the Tribunal, posed a real risk to members of the public and which may adversely affect the public interest. Again, after balancing Dr McCloskey's interests and the interests of the public, the Tribunal decided that the interim order remains necessary to guard against any such risk. Furthermore, the Tribunal noted that the interim suspension order would expire on 20 March 2023 and that, pursuant to section 41A of the Medical Act 1983, it would be necessary for the GMC to apply to the High Court for the Order to be extended.

[72] Having considered the analysis of the information provided to the Tribunal, in my judgment, no criticism can be levelled at the Tribunal on the basis upon which it reached its decision. The Tribunal, when assessing risk, has come to an opinion which must be given weight by this court. There is no evidence that the decision is wrong, in my view. As emphasised above, it is not the role of this court to express any view on the merits of the case against Dr McCloskey. The function of this court is to ascertain whether the allegations made against Dr McCloskey justify the prolongation of the suspension. The truth or falsity of the allegations is not a consideration for this court. The order made by the IOT on 3 March 2023 was correctly made.

Ancillary matters

[73] Dr McCloskey has submitted that, due to alleged procedural irregularities in the failure of Mr Masterson, Solicitor, the interim suspension order should be struck out. Mr Masterson rejects this allegation. Even if the affidavit from Mr Masterson was served on the court a day late, which was not accepted by Mr Masterson, I would have no hesitation in granting leave for late service.

[74] Dr McCloskey has also expressed dissatisfaction with regard to the applicant's response to information requests (SAR and FOI). In this regard, I refer to the affidavit from Mr Julian Graves dated 12 June 2023. I agree with the view taken by Mr Graves that the respondent may, if she wishes, appeal to the Information Commissioner who regulates both data protection and freedom of information legislation in the UK.

[75] It is noted that a hearing is to take place in October 2023. The court expresses its concern as to the delay in finalising these matters. In order to bring finality to these

proceedings, I would urge that a concerted effort should be made to determine all matters relating to Dr McCloskey's fitness to practise at the said hearing date.

Conclusion

[76] For the reasons given above, the interim order of suspension imposed on the registration of Dr Mary Anne McCloskey by the Interim Orders Tribunal dated 21 September 2021, which was lawfully reviewed on 16 March 2022, 8 September 2022 and 3 March 2023 will be extended until noon on 20 March 2024.

[77] I will hear the parties with regard to the issue of costs.