

Walter John Finegan

Appellant

v.

The General Medical Council

Respondent

FROM

THE PROFESSIONAL CONDUCT COMMITTEE
OF THE GENERAL MEDICAL COUNCIL

MOTION

REASONS FOR DECISION OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE
2ND OCTOBER 1986, DELIVERED THE 20TH OCTOBER 1986

Present at the Hearing:

LORD BRIDGE OF HARWICH

LORD ACKNER

LORD OLIVER OF AYLMEYTON

[Delivered by Lord Oliver of Aylmerton]

At the conclusion of the hearing of this appeal of Walter J. Finegan against the decision of the Registrar of the Privy Council to refuse the lodging of the petition of appeal against the direction of the General Medical Council, their Lordships announced that they would allow the appeal for reasons to be given later. This they now do.

Section 36 of Medical Act 1983 empowers the Professional Conduct Committee of the General Medical Council, where a medical practitioner is found to have been convicted of a criminal offence or is judged to have been guilty of serious professional misconduct, to impose certain penalties, including (*inter alia*) a direction that his registration shall be conditional on compliance, during such period not exceeding three years as may be specified in the direction, with such requirements as the Committee shall think fit to impose for the protection of members of the public or in his own interests. Where such a direction is given section 36(6) imposes on the Registrar of the General Medical Council an

obligation forthwith to serve on the practitioner to whom the direction applies a notification of the direction and of his right to appeal against it.

In the instant case, the Committee, at a hearing which took place on 14th July 1986, found that the appellant, Dr. Walter Finegan, had been guilty of serious professional misconduct and directed that his registration as a medical practitioner should, for a period of three years, be conditional on compliance with a requirement that he should not prescribe or possess any controlled drugs or any other "prescription only" medicines. It is self-evident that such a direction has very serious and far-reaching consequences for Dr. Finegan and he wishes to appeal against it to the Privy Council. It is not in issue that the decision of the Committee is an appealable decision under section 40 of the Act and sub-section (3) of that section prescribes a period for appealing. That period is "within 28 days of the service of the notification of the decision".

There is no provision in the Act or in either the Judicial Committee (General Appellate Jurisdiction) Rules or the Judicial Committee (Medical Rules) Order 1980 enabling the time for appealing to be extended save in very limited circumstances which do not apply in this case. Thus the notification referred to in section 40(3), which sets time running with no possibility of extension, is an extremely important document and, by implication, a formal document which must make it clear that it is the notification which is required by the statute and which sets time running. It requires to be served upon the practitioner affected and paragraph 8 of Schedule 4 to the Act contains specific provisions requiring either delivery to the practitioner personally or service by registered post or recorded delivery.

What occurred in the instant case was that immediately after the Professional Conduct Committee hearing the Deputy Registrar of the General Medical Council who was present caused to be handed to Dr. Finegan three documents. The first was an adaptation, partly in typescript and partly handwritten, of a standard draft which is kept for the preparation of notifications. It provides for a number of contingencies. There are suitable blanks which can be completed and passages which can be deleted or added as appropriate. It was marked "Standard Draft Notification" in the right hand corner and contained the following heading:-

"THE MEDICAL ACT 1983

NOTIFICATION OF THE IMPOSITION OF
CONDITIONS ON REGISTRATION"

It was addressed to Dr. J. Finegan in manuscript and contained below a text which reads:-

"In pursuance of section 36(6) of the Medical Act 1983 Notice is hereby given to you that at a meeting of the Professional Conduct Committee of the Council held today the Committee directed that/....." [there follows a blank space and a dozen words which have been deleted in ink] "/your registration/" [followed by the word 'thereafter/' deleted in ink] "shall be conditional on your compliance with the following requirements for a period of months."

The blank has been completed by inserting the word 'three' in manuscript and the word 'months' has been deleted and the word 'years' substituted. There has been added in manuscript "that you shall not prescribe or possess any controlled drugs or any other prescription only medicines".

This document was signed by the Deputy Registrar and was dated at the left hand bottom corner with a manuscript figure which looks remarkably like 16th July but which their Lordships have been told was intended to be 14th and which on careful inspection could be so read. The second document was a precise duplicate of the first which Dr. Finegan was asked to (and did) sign and return to the Registrar's representatives. The third document was a printed or typewritten note for the information of practitioners stating that the Committee's direction took effect from the date specified in paragraph 10 of Schedule 4 to the Act and indicating that there was a right of appeal under section 40 "at any time within 28 days after the service upon him of the notification required by section 36(6) of the Act".

Dr. Finegan handed the first document to his solicitor on the day on which he received it with instructions to seek counsel's advice on the prospects of an appeal. His solicitor has deposed to the fact that he was misled by the description of the document (which had not been deleted by the Deputy Registrar) as "standard draft notification" into the belief that this was not in fact the formal notification required by section 36(6) but merely a draft from which some more formal document was to be prepared. He wrote to the General Medical Council on the following day seeking some clarification of the meaning of the Committee's direction and received a reply dated 17th July together with a copy of a letter sent to Dr. Finegan on the same day setting out *verbatim* the Chairman's announcement of the Committee's decision. Although in his letter of 15th July requesting clarification Dr. Finegan's solicitor asked for a prompt response "given that our client

has 28 days in which to consider whether to take any further action against the decision of the Committee", he has sworn an affidavit deposing to his belief that the letter of 17th July to Dr. Finegan (which begins "I am writing to confirm ... the Committee's determination in the following terms:-") constituted the formal notification from which time was intended to run. A petition to their Lordships' Board was duly prepared and engrossed and was lodged at the office of the Privy Council on the afternoon of 13th August 1986, a date which, on the footing that time ran only from 17th July, was within the statutory time limit. The council having taken the point that the "notification" required by the Act was the document delivered to Dr. Finegan on 14th July 1986 and that the petition was therefore out of time, the Registrar so ruled and refused the petition. Dr. Finegan now appeals by Motion to their Lordships against that ruling.

Mr. Hidden Q.C., who has appeared for Dr. Finegan, has taken a number of points on his behalf but the only one which, in their Lordships' view, requires consideration is the critical one of whether the document handed to Dr. Finegan on 14th July constituted a proper notification as required by the statute. The instant case comes very near the line, but in the end their Lordships are persuaded by Mr. Hidden's argument that in order to constitute a proper notification within the terms of section 36(6) the document must be one which clearly and unequivocally brings to the attention of the recipient that it is indeed the formal notification which the statute requires and which sets the limited time for appeal running. If there is legitimate room for doubt in the mind of the recipient and if he or his advisers are in fact misled then in the case of a document of such critical importance to the whole future of the practitioner that doubt, in their Lordships' judgment, ought to be resolved in favour of the practitioner. Their Lordships are not seeking to lay down any new principle. The principle that a notice required by statute which involves irreparable consequences to the recipient, if ignored or misunderstood, must be couched in unambiguous terms is a familiar one in, for instance, the law of landlord and tenant (see e.g., *Mills v. Edwards* [1971] 1 Q.B. 379). A *fortiori* is that the case where the notice concerned involves, in effect, penal consequences.

Mr. Straker, for the General Medical Council, has argued forcefully that a careful and considered perusal of the notice handed to Dr. Finegan on 14th July and a consideration of the circumstances in which it was so handed to him and he was required to sign and return a duplicate ought to have alerted him and his advisers to the fact that this was intended

by the Council to be the statutory notification. There is much force in this, but there appear to their Lordships to be two critical questions which require to be answered. First, was the document one which was capable of misleading? Secondly, and if so, did it in fact mislead? There are, in their Lordships' judgment, a number of factors which render the document ambiguous, the most important of which is the appearance at the top of the words "standard draft notification". If this had simply been "draft notification", their Lordships consider that most recipients would conclude that it was only a preliminary draft which was to serve as the basis for some more formal and neater document. That impression would certainly be reinforced by the somewhat untidy way in which the document was prepared by deleting words considered inapplicable and incorporating freehand additions. It is urged that the word "standard" should have indicated that this was simply the ordinary pattern being used and adapted to suit the individual case. Whilst their Lordships would see much force in this if the whole phrase "standard draft notification" had been deleted, they are, in the end, not persuaded that the word "standard" sufficiently disposes of the doubt likely to be created in the mind of the recipient by the word "draft". It was at least a possible interpretation that this was intended merely as a form of words which Dr. Finegan was being asked to approve and return and was not itself the formal statutory notification. Nor, in their Lordships' view is the doubt resolved by the contemporaneous note which draws attention to the right of appeal. That note refers to the statutory provisions but not, in terms, to the accompanying document. Moreover the potentially misleading writing of the date on the latter would, even if the documents were read together, be apt to indicate that the time for appealing ran from 16th July and not from the date of actual delivery. As to the question of whether the document, whether reasonably or not, actually misled Dr. Finegan or his advisers, the evidence as to this is undisputed. Certainly any uncertainty about the status of the original document handed to the doctor would not have been resolved by the subsequent sending of a formal letter setting out *verbatim* the Committee's decision.

In the circumstances, their Lordships are not persuaded that the "standard draft notification" in this case constituted a valid notification under the provisions of the Act so as to exclude Dr. Finegan's right of appeal at the date when the petition was lodged. They have accordingly allowed Dr. Finegan's appeal and wish to add only a few words which they hope may be of help in the future. The form of notification is not dictated by the statute and is, of course, a matter for the General Medical Council

to resolve and not for their Lordships to direct. It is obviously convenient for the Council to have standard forms of notification which can be suitably adapted by manuscript additions to suit each individual case and their Lordships can see no objection whatever to this provided that the resulting document draws attention unambiguously to the fact that it is intended to be the statutory notification which the Act requires. If such forms are used, however, it would, in their Lordships' view, be advisable that any reference to a "draft" should be deleted. The matter would be put beyond dispute if, in addition, the notification itself contained a warning to the effect that "the 28 day period for appealing runs from the date of service of this notice".



