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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **19/01/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND KING'S BENCH DIVISION

_____

DR MARY ANNE MCCLOSKEY

v

GENERAL MEDICAL COUNCIL

_____

The appellant appeared as a litigant in person
Mr Ben Thompson (instructed by Cleaver Fulton Rankin, Solicitors) for the respondent

_____

Before: Keegan LCJ and McCloskey LJ

_____

McCLOSKEY LJ (*delivering the judgment of the court*)

Glossary

[1] In the United Kingdom the professional regulatory body for general medical practitioners is the General Medical Council ("GMC"). "MPTS" and "IOT" denote, respectively, Medical Practitioners Tribunal Service and Interim Orders Tribunal. "ISO" denotes interim suspension order.

Introduction

[2] At the several interim listings before the Court of Appeal the appellant either represented herself or was represented by an unqualified lay person who was permitted to address the court. At the main listing the appellant was self-representing, assisted by the aforementioned person *qua* "McKenzie Friend."

[3] The GMC initiated disciplinary proceedings against Doctor McCloskey. The case concerned her conduct relating to the restrictions ordered by the government during the pandemic. In short, the appellant disagreed profoundly with the

Government's management of the Covid-19 vaccines. The essential factual allegations against her were that in August and November 2021 she appeared in two videos uploaded to video sharing platforms and gave an interview, similarly uploaded, in which she stated that (a) people receiving the vaccines had been coerced, bribed, bullied and treated in breach of their human rights and basic privileges, (b) the pandemic had been largely a construct of the government, the media and dishonest scientific advisers and (c) the PCR testing was being used as a psychological weapon by governments in order to instil fear and terror in populations.

[4] The ensuing disciplinary charges against her were, in summary, that the appellant had used her position as a doctor to promote her personal opinion and her conduct had the potential to undermine public health information, to undermine public confidence in the medical profession and to discourage members of the public from receiving the vaccine. On these several grounds it was contended that she had engaged in misconduct impairing her fitness to practice.

[5] The sincerity of the appellant's beliefs is not questioned in the proceedings before this court. Nor is there any dissent from her assertion that she has an unblemished record of 40 years' medical service to the community. It does not fall to this court to examine, much less determine, either of these issues.

Statutory framework

[6] The most important statutory provisions in the context of this appeal are contained in primary legislation. They are the following:

> "**Medical Act 1983**
>
> "41A Interim Orders
>
> (A1) Where a matter is referred under section 35C(8) to the MPTS, the MPTS must arrange for an Interim Orders Tribunal or a Medical Practitioners Tribunal to decide whether to make an order as mentioned in that provision.
>
> (1) Where an Interim Orders Tribunal or a Medical Practitioners Tribunal in arrangements made under subsection (A1), or a Medical Practitioners Tribunal on their consideration of a matter,] are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, the Tribunal may make an order—

(a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding eighteen months as may be specified in the order (an "interim suspension order"); or

(b) that his registration shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Tribunal think fit to impose (an "order for interim conditional registration").

(2) Subject to subsection (9) below, where an Interim Orders Tribunal or a Medical Practitioners Tribunal have made an order under subsection (1) above, an Interim Orders Tribunal or a Medical Practitioners Tribunal—

(a) shall review it within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it—

(i) before the end of the period of six months beginning on the date of the decision of the immediately preceding review; or

(ii) if after the end of the period of three months beginning on the date of the decision of the immediately preceding review the person concerned requests an earlier review, as soon as practicable after that request; and

(b) may review it where new evidence relevant to the order has become available after the making of the order.

(3) Where an interim suspension order or an order for interim conditional registration has been made in relation to any person under any provision of this section (including this subsection), an Interim Orders Tribunal or a Medical Practitioners Tribunal may, subject to subsection (4) below—

(a) revoke the order or revoke any condition imposed by the order;

(b) vary any condition imposed by the order;

(c) if satisfied that to do so is necessary for the protection of members 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; or

(d) if satisfied that to do so is necessary for the protection of members 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.

…

(6) The General Council may apply to the relevant court for an order made by an Interim Orders Tribunal or a Medical Practitioners Tribunal under subsection (1) or (3) above to be extended, and may apply again for further extensions.

(7) On such an application the relevant court may extend (or further extend) for up to 12 months the period for which the order has effect.

(8) Any reference in this section to an interim suspension order, or to an order for interim conditional registration, includes a reference to such an order as so extended."

[emphasis added.]

Finally, by Rule 17(p) of The General Medical Council (Fitness to Practise) Rules Order of Council 2004:

> "the FTP Panel shall deal with any interim order in place inrespect of the practitioner."

[7] Summarising, bearing in mind the context of these proceedings, the effect of the governing legislation is the following: a referral by the MPTS to an IOT at a very early stage of the GMC fitness to practice process is made if the GMC are of the opinion that an IOT/MPT should consider making an interim order; the IOT is empowered (but not obliged) to make an ISO following such referral; the lifetime of an ISO shall not exceed 18 months; where an ISO is made it must be reviewed by

either an IOT or a MPT at specified intervals; where the GMC seeks to extend an ISO beyond its expiry date, it must apply to the High Court for this purpose; in such event the High Court is empowered to extend the lifespan of the ISO for a period of 12 months maximum; further applications to, and orders by, the High Court may ensue.

Chronology of proceedings

[8] The following is gratefully borrowed from the judgment of Rooney J in the High Court. On 21 September 2021, following an oral hearing at which the appellant was represented by counsel and solicitor, an IOT of the GMC made an order suspending her registration for a period of 18 months. On 16 March 2022, 8 September 2022 and 03 March 2023 the IOT reviewed the ISO. This was followed by an application by the GMC to the High Court to extend the ISO. On 20 March and 22 May2023 the High Court made two orders the effect whereof was that the ISO was extended until midnight on 19 June 2023. Next there was a hearing in the High Court on 19 and 22 June 2023 attended by the appellant represented by a "McKenzie Friend." By his commendably full and expeditious judgment delivered on 30 June 2023, Rooney J rejected the various objections canvassed by the appellant and made an order extending the ISO until noon on 20 March 2024.

[9] The appellant has exercised her statutory right to appeal against this order to the Court of Appeal. Her appeal was subjected by this court to conventional case management. During this phase a substantive hearing date – 15 December 2023 – was allocated. Subsequently the GMC lawyers notified to the court that the disciplinary proceedings against the appellant had been completed. Reacting to this information, this court at a case management review hearing accelerated the listing date to 22 November 2023. The purpose of this listing was to determine whether the appeal should be struck out on the basis that it had been extinguished by statute. At this listing and subsequently the continued management of this appeal was orchestrated so as to ensure that the appellant had ample opportunity to make her case to the court. As a result, the next main listing was deferred to 10 January 2024, allowing the appellant additional time as requested. The case management order of this court dated 22 Nov 2023 is in Appendix 1 hereto.

Determination

[10] The main issue to be determined by this court is whether the appellant's appeal against the Order of Rooney J has been extinguished by operation of law. If "yes", the appeal is a nullity.

[11] Both parties were afforded, and availed of, an opportunity to provide documentary evidence, written argument and oral argument. The appellant's grounds of appeal extend to 42 pages excluding her index of authorities. The appellant contends in particular in her grounds of appeal that:

> "The learned judge made errors in fact and law and has failed to take into account various authorities and statutory instruments … the judge demonstrated bias in his selection of authorities etc … the judge failed to grasp the evidence and complexity of the case … [the appellant] was making public interest disclosures and whistleblowing."

The appellant has also provided further materials including an extensive affidavit which we have considered, together with all oral submissions advanced.

[12] This court's formulation of the central elements of the appellant's Notice of Appeal, summarised immediately above, is the following:

(i) In the absence of elementary particularity the first ground is manifestly devoid of substance.

(ii) The quotations from decided cases in the judgment of Rooney J were entirely apposite and disclose not the slightest hint of bias, actual or apparent.

(iii) The suggestion that the judge "… failed to grasp the evidence and complexity of the case" suffers incurably from want of particularity and in any event is confounded by his judgment in its entirety.

(iv) The fact that the appellant claims to have been "… making public interest disclosures and whistleblowing" was a matter exclusively for the GMC to consider as it relates to the merits of the fitness to practice proceedings and has no bearing on the sustainability of the order under appeal.

[13] In a combination of her written materials and oral submissions the appellant advanced certain further assertions and contentions. These are listed below in tabular form, the formulation being that of this court based on its understanding of each, accompanied by this court's assessment and determination:

(i) <u>The order of Rooney J is tainted by apparent bias by reason of the judge having represented certain public authorities in private professional bias</u>. The conduct of the High Court proceedings and ensuing order of Rooney J are in our view manifestly compliant with the governing legal principles, as expounded in *Re Hawthorne and White's Application* [2018] NIQB 4, paras [147]–[155].

(ii) <u>The appellant is a lawful whistleblower</u>. We repeat para [12](iv) above.

(iii) <u>The order of Rooney J was not an ISO</u>. This is correct: it was an order extending the lifespan of a presumptively lawfully made ISO.

(iv) This is an appeal against the whole of the order of Rooney J. This is correct and acknowledged by this court.

(v) The affidavits sworn on behalf of the GMC at earlier stages of these proceedings were rebutted by the appellant. The merits of this assertion did not require any determination by either Rooney J or this court. They belong exclusively to the forum of the substantive GMC fitness to practice proceedings.

(vi) The MPTS is an 'interloper.' Insofar as this is a contention that Rooney J did not have jurisdiction to make the order under appeal, it is manifestly without foundation.

(vii) The first ISO was unlawful. The legality of the first ISO was not a matter requiring to be determined by Rooney J and, furthermore, it benefits from the principle of presumptive regularity (the "*omnia praesumuntur*" principle).

(viii) "Information" was withheld from the appellant. This is another example of a bare, unsubstantiated assertion of no coherence or discernible relevance.

(ix) The GMC proceedings against the appellant were flawed from the outset. If and insofar as this claim has any bearing on the sustainability of the order of Rooney J, it is mere unsubstantiated assertion providing no sustenance to this appeal.

[14] In addition, the appellant advanced submissions in relation to the service of certain materials on her. During the hearing the appellant demonstrated that she had received these materials and addressed them as she chose. Viewed through the critical prism of procedural fairness, and without determining the correctness of the underlying assertions as this is unnecessary, this court is entirely satisfied that the fairness of the process which it has applied from the outset of this appeal is unimpeachable. In particular, and avoiding otiose elaboration, it is clear beyond peradventure that the appellant has received everything generated by the GMC in these appeal proceedings and has had adequate opportunity to consider same and respond.

[15] The appellant further advanced a submission relating to the statutory terms "order" and "determination" in the 1983 Act, contending (in her words) that "everything is null and void." This court is unable to ascertain the slightest degree of merit in this submission.

[16] Finally, the appellant appeared to question the impartiality of the constitution of this court on the ground that both members are Privy Councillors. The appellant, in manifestly vague and unparticularised terms, sought to establish a nexus between the Privy Council and the GMC. She was unable to explain the nexus asserted.

[17] This court considers that the GMC is an independent statutory authority. It exists, and operates, by virtue of the 1983 Act and not by reason of any act of the Privy Council. This court's further understanding is that the Privy Council appoints lay members to the GMC and approves its procedural rules. This court is cognisant that by virtue of the General Medical Council (Constitution) Order 2008 appointments (12 "registrant" members and 12 "lay" members) are made by the Privy Council. This court is further cognisant that appeals against GMC fitness to practice decisions were formerly made to the Privy Council. In recent years, such appeals have lain to the High Court, per section 40 of the 1983 Act as amended.

[18] While the argument which this court has received on this discrete issue is correctly described as minimal, we entertain no doubt that the governing legal principles – noted in para [13](i) above – do not cast the slightest shadow over the propriety of this court as constituted determining this appeal.

Conclusion

[19] Summarising, the GMC made a final order, suspending the appellant from practice for a specified period. Crucially, the GMC also revoked the High Court interim suspension order, pursuant to S41A(3) of the 1983 Act (and Rule 17(2)(p) of the GMC (Fitness to Practise) Rules 2004). The appeal to this court was as a matter of law extinguished in consequence.

[20] For the avoidance of any doubt, this is not an appeal which has become academic engaging the *Ex Parte Salem* principle. It is rather, an appeal which has been extinguished by law. It will be for the appellant to consider whether to have recourse to the appeal mechanism in the 1983 Act, if and insofar as available to her at this time. This appeal is dismissed accordingly.

APPENDIX: ORDER 22 / 11/ 23

HM COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE HIGH COURT NORTHERN IRELAND, KING'S BENCH DIVISION

Wednesday the 22nd day of November 2023

THE RIGHT HONOURABLE THE LADY CHIEF JUSTICE

THE RIGHT HONOURABLE LORD JUSTICE MCCLOSKEY

Between

THE GENERAL MEDICAL COUNCIL

Applicant/Respondent

and

MARY ANNE MCCLOSKEY

Respondent/Appellant

UPON the above appeal being in this list this day for hearing,

AND UPON there being no appearance by or on behalf of the appellant

AND UPON hearing Counsel on behalf of the respondent,

WHEREAS -

1. The General Medical Council ("GMC") initiated disciplinary proceedings against Doctor McCloskey concerning her conduct relating to the restrictions ordered by the government during the pandemic.

2. One of the statutory powers available to the GMC is, having commenced proceedings, to order the interim suspension of the registration of the doctor concerned. This power was exercised vis a vis Dr McCloskey for a specified period. Only the High Court can extend an interim suspension order. In her case the High Court did so, upon the application of the GMC, by its order dated 30 June 2023.

3. Dr McCloskey has exercised her statutory right to appeal against this order to the Court of Appeal. The grounds of appeal extend to 42 pages excluding her index of authorities. She contends in substance that:

- the judge made errors in fact and law and failed to take into account various authorities and statutory instruments;
- the judge demonstrated bias in his selection of authorities etc;
- the judge failed to grasp the evidence and complexity of the case;
- she was making public interest disclosures and whistleblowing,

AND WHEREAS -

4. Dr McCloskey's appeal was subjected to conventional case management and two initial case management orders followed.

5. Subsequently the GMC lawyers notified the court that the disciplinary proceedings against Dr McCloskey had been completed; the GMC had made a final order, suspending Dr McCloskey from practice for six months; and the GMC had also revoked the High Court interim suspension order - pursuant to Rule 17(2)(p) of the GMC (Fitness to Practise) Rules 2004 and S41A(3) of the Medical Act 1983.

6. The Court of Appeal has conducted two further listings. The most recent accelerated the listing date to 22 November 2023. This listing on 22 November 2023 was to determine whether there is any viable appeal in existence ("the viability issue").

AND WHEREAS –

7. Issues concerning the costs of these proceedings, specifically Dr McCloskey's possible exposure to an order for costs should the appeal be dismissed, on whatever basis, have been raised by both the GMC's lawyers and this court.

IT IS HEREBY ORDERED –

(a) The respondent will file an affidavit of service of the GMC Decision of 24/10/23 by 29 November 2023.

(b) The appellant will file any response in writing, to include her representations about the viability of her appeal to this court, by 13 December 2023.
(c) The Court will determine the viability issue at a listing on 10 January 2024.
(d) Costs reserved.
(e) Liberty to apply.

William Ferris

Proper Officer

Time Occupied: 22 November 2023 40 mins