

ENGLAND AND WALES / JUDGMENT

Khan v General Medical Council

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2015] EWHC 301 (Admin) Case No. CO/1218/2014 IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION THE ADMINISTRATIVE COURT Royal Courts of Justice W C 2A 2LL Strand London Date: Wednesday, 28 January 2015 Before: MR JUSTICE MOSTYN Between:

- ----- REHAN AHMED KHAN Claimant v GENERAL MEDICAL COUNCIL
Defendant
 - ----- Computer-Aided Transcript of the Stenograph Notes of WordWave International Limited A Merrill Communications Company 165 Fleet Street London EC4A 2DY Tel No: 020 7404 1400 Fax No: 020 7404 1424 (Official Shorthand Writers to the Court)
 - ----- The Claimant appeared in person. Mr D Pievsky (instructed by GMC Legal) appeared on behalf of the Defendant
 - ----- J U D G M E N T (As approved) MR JUSTICE MOSTYN: 1. 2. 3. This is my judgment on an appeal made pursuant to Section 40 of the Medical Act 1983 against a decision made by the General Medical Council Fitness to Practise Panel ("FTPP") on 20 February 2014. The appellant appeals against both the finding of impairment and the sanction of erasure and advances five grounds of appeal to which I shall turn in due course. By Section 1(1A) of the 1983 Act the main objective of the GMC is to protect, promote and maintain the health and safety of the public. By Section 35C, where a complaint is made that a doctor's fitness to practise is impaired by virtue, among other things, of misconduct then the GMC's investigation committee has to decide whether to send the matter to a FTPP. By Section 35D(2)(a), where the FTPP finds a doctor's fitness to be impaired it may order his name to be erased from the register. Impairment is not defined in the Act but in the decision of CHRE v NMC and Grant
- [2011] EWHC 927 Admin, Cox J adopted the definition used by Dame Janet Smith in her fifth report of the Shipman inquiry as follows: "Does the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his or her fitness to practise is impaired and hence that he or she:
- (a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

- (b) has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- (c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- (d) has in the past acted dishonestly and/or is liable to act dishonestly in the future." 4. For the purposes of deciding what sanction, if any, to impose if impairment is found, there is available to the panel "indicative sanctions guidance" published in April 2009 but since amended. For my purposes I need refer only to the following paragraphs of that guidance: Paragraph 77: "The panel may erase a doctor from the register in any case - except one which relates solely to the doctor's health and/or knowledge of English - where this is the only means of protecting patients and the wider public interest which includes maintaining public trust and confidence in the profession." Paragraph 82: "Erasure may well be appropriate where the behaviour involves any of the following factors (this list is not exhaustive): ...
- (d) abuse of position/trust ...
- (h) dishonesty, especially where persistent and/or covered up." Paragraph 105: "The GMC's guidance, Good medical practice, states that registered doctors must be honest and trustworthy, and must never abuse their patients' trust in them or the public's trust in the profession. Paragraph 108: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.' (Good medical practice paragraph 65)" "Dishonesty, even where it does not result in direct harm to patients but is for example related to matters outside the doctor's clinical responsibility, e.g. providing false statements or fraudulent claims for monies, is particularly serious because it can undermine the trust the public place in the profession. The Privy Council has emphasised that: '... Health Authorities must be able to place complete reliance on the integrity of practitioners; and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of the profession as a whole.'" Paragraph 111: "Dishonesty, especially where persistent and/or covered up is likely to result in erasure." 5. 6. In addition to the indicative sanctions guidance, the panel will have regard to sentencing guidance given by this court which is the appellate court for these purposes. The decisions from this court have demonstrated that a very strict line has been taken in relation to findings of dishonesty. This court and its predecessor, the Privy Council, has repeatedly recognised that for all professional men and women, a finding of dishonesty lies at the top end of the spectrum of gravity of misconduct; see *Tait v Royal College of Veterinary Surgeons* [2003] UKPC 34 at paragraph 13.
- 7. Dishonesty will be particularly serious where it occurs in the performance by a doctor of his or her duties and/or involves a breach of trust placed in the doctor by the community. Both elements are serious and aggravating features and both are present in a case of dishonestly using prescription forms to obtain drugs. See *R (Rogers) v GMC* [2004] EWHC 424 (Admin)

per Mitting J at [28-30]. 8. In cases of proven dishonesty, the balance can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the doctor concerned. See *Nicholas-Pillai v GMC* [2009] EWHC 1048 (Admin) per Mitting J at [27] where he stated: "That sanction will often and perfectly properly be the sanction of erasure, even in the case of a one-off instance of dishonesty."

9. Where proven dishonesty is combined with a lack of insight (or is covered up) the authorities show that nothing short of erasure is likely to be appropriate. As Sullivan J put it in *R(Farah) v GMC* [2008] EWHC 731 (Admin), a case which involved the theft and forgery of prescription forms in order to obtain drugs, at paragraph 21: "... given the nature of the appellant's dishonesty and given the Panel's finding that there had been a persistent lack of insight into that dishonesty, whatever the mitigating factors were, the inevitable consequence was that erasure from the register was an entirely proportionate response to the appellant's conduct. The Panel was entitled to come to the view that where a doctor had engaged in deliberate dishonesty and abused his position as a doctor and then had shown a persistent lack of insight into that conduct, he simply could not continue to practise in the medical profession. Thus, the Panel's conclusion as to sanction was in practical terms inevitable once it had reached the conclusion it did about the appellant's lack of insight into his dishonest conduct. For these reasons, this appeal must be dismissed."
10. This appeal is governed by CPR 52.11(3) which provides: "The appeal court will allow an appeal where the decision of the lower court was - (a) wrong; or
(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."
11. The principles in play on such an appeal have all been succinctly expressed by Laws LJ in the decision of *Raschid v GMC* [2007] 1 WLR 1460. Taking the reasoning of Laws LJ in combination with CPR 52.11(3), the governing principles are:
 - (i) I can only overturn the decision of the F'TPP if I am satisfied that it was either wrong or unjust because of a serious procedural or other irregularity in its proceedings. (ii) In determining whether the decision was wrong, I must pay close regard to the special expertise of the F'TPP to make the required judgment. (iii) Equally, I must have in mind that the exercise is centrally concerned with the reputation and standards of the profession and the protection of the public rather than the punishment of the doctor. (iv) The High Court will correct material errors of fact and of law and it will exercise a judgment, although distinctly and firmly a secondary judgment, as to the application of the principles to the facts of the case.
 - (v) Where the appeal is against a sanction, my decision must not constitute an exercise in resentencing or the substitution of one view of the merits for another.
12. In considering factor number (iii) I remind myself of the words of Sir Anthony Clarke MR in *GMC v Meadow* [2007] 1 QB 462 at paragraph 32: "The purpose of fitness to practise proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts

and omissions of those who are not fit to practise. The FFTP thus looks forward not back, however, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past." 13. In my own decision of *Luthra v GMC* [2013] EWHC 240 (Admin) at paragraph 5 I stated: "The exercise is proleptic but the best prophet of the future is the past. By the same token as Sir Thomas Bingham MR explained in *Bolton v Law Society*

- [1994] 1 WLR 512 there should be a full understanding of the reason why the FFTP makes an order which might otherwise seem harsh. The sanction may have consequences for the individual and his family which are deeply unfortunate and unintended but that does not make the sanction the wrong order if it is otherwise right: 'The reputation of the professions is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is part of the price'. The reason that the reputation of the profession is so important is not a reflection of a collective amour propre. It is an aspect of the need to protect the public. The public must be able to approach doctors, lawyers and other professionals with complete faith that they are both honest and competent. Without that faith the problems that arise are too obvious to state."
14. At paragraph 6 I stated this: "At the end of the day the appellate test is (in a case not involving procedural unfairness) simply whether the decision was 'wrong'. This concept of wrongness should not be glossed by adverbs such as 'seriously' or 'clearly' or 'plainly', see *General Medical Council v Meadow* at paragraph 125 per Auld LJ and *Cheatle v GMC* [2009] EWHC 645 (Admin) at paragraph 12 and paragraph 15 per Cranston J." 15. I now turn to the facts of this case. The appellant qualified as a doctor in 2007. After that and until March 2009 he worked at the Limes Medical Centre in Epping. There he had access to and possession of some blank prescription forms which had printed at the bottom the name of the senior doctor there, the appellant's mentor, Dr Rana. No one has suggested that the appellant's possession of these forms at that point was other than legitimate. However, when the appellant left his employment at the Limes Medical Centre, he should not have kept those forms. He should have destroyed them or given them back. He did not, rather he kept them. Whether he kept them for nefarious purposes from the start is not known, but keep them he did and, as will be seen, he later used them for seriously nefarious purposes.
16. On 9 December 2011, the appellant wrote a completely fake prescription on one of those forms in favour of someone known as SK.
17. The prescription in question was for 84 tablets of Diazepam and 28 tablets of Temazepam. This is a large quantity of class C drugs which are both powerful and psychotropic and the abuse of which can cause untold problems. The prescription was dispensed on about 15 December 2011 by the pharmacist. The evidence of the pharmacist in the criminal proceedings to this effect was not challenged by the appellant.

18. On 22 December 2011, another completely fake prescription was written by the appellant in favour of SK for 84 Diazepam tablets and 56 Temazepam tablets. This was dispensed by the same pharmacist on 23 December 2011. The pharmacist recalled that the customer looked scruffy and had the appearance of a drug abuser. On 3 January 2012, the pharmacist became suspicious in circumstances I now recount from his witness statement in the criminal proceedings which is in the bundle at page 105: "On about 3 January 2012, I was doing a stock check, an analysis of the store, and these two prescriptions from Limes Medical Centre stood out at me. I recall the same man had brought in the prescription. The fact that both slips were written, especially as controlled drugs prescriptions are typed and these were not. This also stood out at me because the doctors do not prescribe controlled drugs of the same type within 28 days of each other. This was brought in as a result of the Shipman inquiry. These prescriptions were of a high dose and no doctor would have prescribed these two slips for the same drugs so close to each other in time. I phoned in fact Limes Medical Centre who confirmed they had never prescribed these slips, that the signature of the doctor on them was false and they had never heard of the name and address given on the slips. On both slips the man had his name as [redacted] and his address was [redacted]. He gave a date of birth of [redacted]. Limes Medical Centre told me that they would report the matter to Essex police and I requested it to my local PCT. The slip number on the first visit was 33862636610. On both occasions I described the male as [redacted] of thin build. He had [redacted] hair by [redacted]. He had the appearance of a drug or methadone user in my opinion. I would certainly recognise him again." Then there is an extensive redaction. Continuing with the quote: "On the first time he came to the store with the first prescription note I remember that he was asking questions such as 'Do you think I will definitely get it?' At the time I was so busy that I did not register but looking back at it, he seemed keen to know the prescription would be honoured." I do not need to quote from the rest of the witness statement.
19. The appellant was arrested. He was interviewed by the police in March 2012 and December 2012 and on each occasion he flatly denied having written the scripts or having given them to SK. He suggested that SK, who he knew, may have stolen them from his car. He denied that the scripts were in his handwriting. However, at some point, I know not when, SK admitted his role in these offences. The appellant was charged with two offences of fraud in relation to the two scripts. The charges explicitly allege that the fraud was for the financial gain of him or another. He was also charged about two offences of theft in relation to his possession and use of these two scripts.
20. The matter came before the Crown Court at Isleworth on 18 August 2013 and was heard over two days before Judge Davis and a jury. The appellant continued to deny his guilt. The prosecution called a handwriting expert who said that it was the appellant's handwriting on the scripts and she justified this by comparison to some text indisputably written by the appellant. The appellant instructed his counsel vigorously to cross-examine this witness, among other things accusing her of bias.

21. The appellant went into the witness box. He took the oath on his Holy Book, the Koran. He flatly denied having written the scripts. He said in evidence in chief: "I have never given either of them a script." In cross-examination he stated: "I did not write these prescriptions." These were flat lies and were serious perjury.
22. The appellant was convicted on all four Counts. The jury was sure that his account was false and that he had fraudulently written these scripts for the financial gain of himself or another.
23. The matter was adjourned for sentence and a pre-sentence report was ordered. If there were ever a time for the appellant to come clean and to set out with full candour the complete story and his role in it, it was now, but in the pre-sentence report, he continued to deny his guilt, notwithstanding that he now admits it to me. I quote from the pre-sentence report. "Mr Khan continues to deny the offences but stated he would not be appealing. He told me he was first introduced to Mr S by another friend about 12 months before his arrest in order to buy a Staffordshire terrier puppy from him and stated that on a number of occasions his friend Mr S travelled in his car for them to go to the park with their dogs. He said that on some of those occasions his work bag to undergo home visits would be in his car and he claims that he strongly suspects that the said prescriptions were stolen from his bag, strongly denying involvement in the offences, stating he would not have knowingly put his career at risk. He disputed having any financial problems at the time, earning £2,800 per month net. Although he had an outstanding bank loan of £15,000, he said he managed without difficulties. He strongly denied any substance abuse problems or issues of gambling, he asserted he was not coerced by others to commit the offences." Later this was written: "Following his arrest on the current matters, Mr Khan was suspended from his employment on full pay which continued until December 2012. He said that to date he has had three interim order suspension hearings with the GMC and expects to be deregistered as a doctor from the GMC once this court case is concluded. He said that since being charged with the current offences everything has largely been on hold and he doesn't know what job or career path he will take but stated that since February 2012 he has been working on a voluntary basis for Paving Paths LTD, a registered charity who provide assistance with health, education and agriculture to various countries throughout the world and until shortly before the last court hearing, he had worked in that capacity in Kashmir, Pakistan and claimed he has now been appointed as an honorary director and stated he will resume the same role once this court case is concluded. He said the directors of Paving Paths are fully aware of the circumstances of the current offences. Mr Khan referred to his suspension and impending deregistration as a doctor as devastating after studying and training for so long which he said has brought shame on him, his parents, family and his community. His involvement with the Paving Paths charity, however, shows that he has some determination trying to recover and move on but it was clearly evident he is still trying to pick up the pieces." 24. It is noteworthy that the appellant played the card of impending erasure to seek to improve the mitigation on his behalf. It is also noteworthy that he kept the cards very close to his chest about what the true and full story was and what his role was in it. This aspect bemused Judge

Davis at the sentencing hearing on 4 October 2013. In his sentencing remarks, he said this: "... there was other material to show, in my view, that there was a reason for you doing what you did, for which the jury convicted you, and I say that and I say no more in specifics about it because I don't know (...) the motive. I can't fathom a motive actually from the evidence that there was or the specifics of that evidence, save to say that there was a clue perhaps in some text messages as to what under the surface, perhaps deeper under the surface than perhaps anyone knows, was going on and motivated you to do this. Whether it was money - you said: 'I had debt' but we [all] have debts, 'I didn't have too much [at the time]'. Whether it was misguided loyalty I don't know and so I'm not going to try and add any specificity to this part of my sentencing remarks, but those in the main are the points I would make on the facts of the case." 25. Judge Davis sentenced the appellant to nine months immediate imprisonment. That was a heavy sentence which reflected the gravity of the offences and the appellant's complete lack of insight into, candour about, or remorse for what he had done.

26. The appellant was released about ten weeks later on home detention curfew on 12 December 2013. The curfew was removed on 18 February 2014. However, while at home the appellant had full access to the internet and so was in a position to deal with the impairment proceedings commenced against him. The appellant was served on 17 January 2014 with notice of the FFTP hearing fixed for 19 and 20 February 2014. However, he did not attend the Fitness to Practise hearing. Instead, on 18 February, he wrote a one and a half page letter to the panel which was long on seeking the mercy of the panel but which was short on a candid explanation for what he had done. I quote from that letter as follows: "I understand that what has occurred was a serious error of judgment on my behalf and fell short of the professionalism expected of a doctor. Furthermore, it was an abuse of trust and should not have happened under any circumstances and there can be no excuses, however, I have been punished for this in the most extreme way, both personally and professionally. In my opinion and I would think in the opinion of the general public whom I took an oath to serve, I have been punished more than adequately and had the opportunity to reflect upon my actions (...) I have read other cases of other doctors who have been in similar situations whom the GMC has allowed to return to their professional lives. I would argue that there should be no reason not to allow me to return to my professional life, to a career I have dedicated most of my adult life. I feel that I have much to give the profession and my period of suspension has reiterated to me that being a doctor is a huge part of my life but I have earned the right to practice and again I would stress that I have been punished to the extreme, both personally and professionally, and anything further in my opinion would be a breach of my human rights. I say this with reference to other cases I have read where doctors with convictions have been allowed to return to their professional lives because a criminal conviction does not automatically take away a doctor's right to practice. Due to the freedom of information the other cases are no secret (freely available on the internet) and I am sure that your legal advisers will be able to confirm that there are hundreds of doctors with criminal convictions who are still practising medicine. If persons convicted of offences against children, kidnapping, GBH and many other serious convictions are still allowed to

practise medicine then I cannot see why I should not be allowed to return to work. There must be some sort of uniformity and based on the hundreds of other doctors with criminal convictions who are practising I should be allowed to return to work. I attach one particular case that I felt had certain similarities to my own, that of Dr Emily Clare McKitterick. You will see that a period of conditional registration was deemed appropriate in that case. If one was to compare then to say that I received harsher treatment from both the GMC and the Police would be a gross understatement. Although the MPTS panel cannot change what has already occurred you can certainly ensure that I receive fairer treatment henceforth. I am not condoning what I or any other doctor with a criminal conviction has done. Speaking for myself I can say that I am deeply sorry for my actions. I plead with you to consider that this is my life and to give me a chance to put things right and repay the general public for my shortcomings by serving them selflessly once again. I understand you have a duty to the general public and so I appeal to that very fact that by allowing me to serve them again is in my opinion your duty and stopping me from doing that would not be in their best interests as they would lose someone who is committed to his profession and knows nothing else as his work has been an all consuming part of his life. I hope you will all come to a favourable decision based on the facts as I have outlined. I thank you for your time and apologise for anything deemed offensive that is certainly not my intention but simply a reflection of the passion I have to getting back to my life."

27. The panel found that the appellant's fitness to practise was impaired. That was, in my judgment, an inevitable finding. As to sanction, it said this in its determination: "The Panel (...) considered that there is a risk of repetition of the dishonest behaviour which led to Dr Khan's conviction because of his continued denial of guilt and his lack of insight into the gravity of his behaviour. The Panel has carefully considered the letter written by Dr Khan. The Panel found that there are elements in this letter which do indicate an attitudinal problem. The tone of the letter is that his suspension from the Medical Register and the custodial sentence he received for his criminal activities are sufficient punishment to allow him to restart his medical career. In this letter Dr Khan also claimed that he had been rehabilitated although the Panel has not been presented with any evidence to substantiate his claim. There is little or no regard of public confidence or his betrayal of this. The Panel considered that Dr Khan's dishonesty was an abuse of his position as a doctor and that this dishonesty was particularly serious. Dr Khan prescribed heavy doses of controlled drugs in large quantities using stolen prescription slips and false signatures. These prescriptions were given to third parties who were not his patients. Dr Khan was found guilty in a criminal court of theft and false representation for which he was given a custodial sentence. His actions fell far below the proper standards of conduct and behaviour expected of a registered medical practitioner. The Panel finds that the public would have no confidence in this doctor if it knew what had happened. The Panel is of the opinion therefore that suspension is insufficient to protect the public, to maintain public confidence in the profession, or to uphold the proper standards of conduct and behaviour. The Panel considered that Dr Khan's continued denial of guilt was troubling; indeed, even in his letter

to the Panel which was submitted two days ago, it is not clear whether Dr Khan completely acknowledged or accepted fault for his previous dishonest conduct. There is no evidence to indicate that he has made a full admission of the offences. The Panel is of the opinion that Dr Khan does not appreciate the gravity of his actions or the impact which they may have had on other members of the public for whom he wrote these prescriptions. Those people were not his patients. The Panel is of the view that patients and the public are entitled to expect and do expect that medical practitioners act honestly and with integrity at all times. It considers that Dr Khan has abused the trust the public are entitled to place in the medical profession and its doctors and that his behaviour is unacceptable and fundamentally incompatible with his continued registration. In all the circumstances of this case, the Panel has therefore determined the only appropriate and proportionate sanction is erasure."

28. Very surprisingly the appellant appealed to this court on 30 March 2014. I say very surprisingly as it is arguably an abuse of process to appeal when you have not troubled to engage anything other than minimally with the FTTP proceedings and have not attended that hearing. On the appeal, the appellant has sought to adduce fresh evidence. I refer to the judgment I gave yesterday refusing his application for an adjournment. In that judgment I pointed out that in order to adduce fresh evidence, the appellant would have to satisfy the criteria in *Ladd v Marshall* [1954] 3 All ER 745. The first two criteria are these per Lord Denning MR: "First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial. Secondly, the evidence must be such that if given it would probably have an important influence on the result of the case, though it need not be decisive." In my earlier judgment, I held that the evidence which the appellant sought to adduce concerning alleged comparable cases fell foul of both of these criteria and was therefore inadmissible.
29. The appellant with his notice of appeal lodged a letter containing five grounds of appeal. I look first at the fourth ground which I read out in full: "The panel goes on to say that I prescribed heavy doses of controlled drugs in large quantities using false stolen prescriptions. This is simply not true and a gross distortion of the facts. There were only ever two prescriptions. The second prescription was only written because the first prescription was not dispensed so in fact it was only one prescription that was actually honoured. Furthermore, the prescription requested one month's supply whereas three months is the normal maximum so the fact that the panel says I prescribed heavy doses of controlled drugs is simply not true. Furthermore, the GMC has made no effort to check with the patient's registered medical practitioner if this is medication that they normally did use and so whether prescribed by me or their regular doctor is not of significance. Furthermore, the prescriptions were not stolen, they were given to me as part of my role working at the surgery."

30. To my mind, these statements in this fourth ground very considerably aggravate the appellant's position. The suggestion that the first prescription was not dispensed was a flat lie to this court. It was dispensed, as the evidence of the pharmacist, which was not challenged in the Crown Court, demonstrated.
31. The suggestion that the forms were not stolen is another lie. The jury convicted him of theft of those forms. The penultimate sentence concerning the GMC having made no effort to check with the patient's medical practitioner is, to my mind, completely outrageous. 32. I now turn to the fifth ground which I will read out: "The criminal part is not signing the prescriptions using my own signature. To this day I do not know why I did not do this. It was a serious error of judgment and would never, ever happen again. Had I used my own signature, it was simply a case of a medical practitioner prescribing medication to a patient entitled to NHS treatment. There is no criminal offence in that. No [I think he means now] the fact that I did not use my own signature on these prescriptions has cost me my career, considerable personal turmoil, a criminal record and nine months in prison." That ground, as can be seen, is replete with self pity. It is the first acceptance that I have read by the appellant of any culpability at all but here, I suggest, he is damned by a faint admission. The statements in that ground to my mind trivialise his conduct and, as I have said, they considerably aggravate his position even over and above that as obtained before the panel. But it gets worse. The appellant has gone on to aggravate his position still further. I refer to his offer made to the GMC to consent to this appeal being allowed made on 9 January of this year. In his email of that date, he writes as follows: "As you represent the GMC in my case I will take the unprecedented step of making you an offer, in effect making the GMC an offer. I will consider whether to withdraw my appeal to the High Court against the GMC if:
- 1) the GMC apologises and admits that I have been treated unfairly as compared to other doctors who have been in similar situations.
 - 2) The MPTS/GMC restores my licence to practise. I will agree to conditions limited to any training programme I enter into and I will agree not to practise unless I am part of a supervised training programme. I will not seek any costs. Hopefully you will see the merits of this offer. Hopefully you will consult your legal experts prior to giving me a response. If you dismiss this offer hopefully I will be contacting the appropriate organisations regarding the withholding of the information by the GMC under the Freedom of Information Act and I will hopefully present all the evidence regarding this matter at the appropriate time. I must remind you that I wish to be a law abiding, GMC registered doctor who has learnt from his past mistakes. I do not wish any unnecessary confrontation and hopefully we can come to an arrangement without the need to go to court. As with all other offers, this offer does have a time limit. This offer in no shape or form forgoes my right to appeal and I reserve the right to take the GMC to court and to continue my appeal in the High Court. I reserve the right to reject any offer the GMC does make as well as reserving all other rights granted to me as a citizen of this country. I also reserve the right to take this matter to the European Court of Human Rights."

33. This email was written in the context of what the appellant regarded was an unhelpful response to the GMC to a freedom of information request where the appellant wanted to find out how many doctors with criminal convictions had been allowed to carry on practising. At the hearing before me, I asked the appellant if he would like now to give me a fully candid account of the whole story but he confined himself to the story that he had given to the probation officer that the prescriptions were no more than payment to SK in exchange for a puppy and that was it. No further detail was provided to me as to what happened in what must have been an elaborate exercise. 34. In his submissions the appellant relied on cases where the FTTP had not erased doctors with criminal convictions. As I have said, in my earlier judgment I held this fresh evidence to be inadmissible but as the appellant acts as a litigant in person, I allowed him to dilate to me at some length about these. However, it is the decisions of this court, the Administrative Court, the appellate court, that provide the relevant sentencing guidelines in my judgment and those must be taken in combination with the indicative sanctions guidance. The line taken both in the decisions of this court and in the indicative sanctions guidance is that prescription fraud will almost invariably result in erasure even where there has been a guilty plea. The comparators relied by the appellant are not true comparators as in none of them was the doctor in question given a heavy, immediate custodial sentence following a trial where he pleaded not guilty and where thereafter he continued to maintain his innocence. I have dealt in this way with the second ground of appeal.
35. The first ground of appeal is in these terms: "The panel clearly says they would not draw any adverse inferences from my absence." But it is clear to anyone reading the decision that this is not the case. I completely disagree with this ground. I myself have read the decision and no sense of adverse inference from the non-attendance of the appellant jumps out from the page to me.
36. The third ground is that the sanction of erasure was disproportionate. In my judgment, the reasoning of the panel cannot be faulted. Indeed, in my judgment the decision of the panel is plainly right. I would go further and say that had no erasure been ordered on the facts of this case, that would have been a decision which was both irrational and perverse. This was a case of prolonged dishonesty, lack of insight, lack of candour and lack of remorse. There was plainly a risk of repetition and in any event, the public could have no confidence in the profession were the appellant to be allowed to resume practice. In my judgment, the sanction was proportionate and right.
37. By Section 41(1) and (2) of the 1983 Act, the panel may restore an erased name to the register but not before five years has elapsed from the date of erasure which, as there has been an appeal, will be from today. The appellant can therefore apply for restoration to the register on 28 January 2020. In the meantime, he will need to address the questions of candour, insight and remorse. 38. Finally I would say this: if any case demonstrates the need in these cases for a permission to appeal filter then this is it. That concludes my judgment. LATER

39. The GMC applies for its costs, its actual costs are £10,190.20 according to the amended and augmented schedule with which I have been supplied. The GMC says this is a case where all of those costs should be paid, in effect indemnity costs -- DR KHAN: May I just -- MR JUSTICE MOSTYN: No, you may not. What? DR KHAN: I just wanted to add something. MR JUSTICE MOSTYN: About costs? What? It is not usual to interrupt a judge when he is giving his judgment but anyhow, go ahead. DR KHAN: Just to put you into the picture, I get £140 every two weeks. MR JUSTICE MOSTYN: Well, ability to pay is -- DR KHAN: No, no, I'm just saying, calculated on that basis 10,000 would be years. MR JUSTICE MOSTYN: Unlike the Family Division, the question of your means is not a relevant consideration.
40. The GMC applies for indemnity costs. In *Three Rivers District Council and others v Governor and Company of the Bank of England* [2006] EWHC 816 (Comm), Tomlinson J, as he then was, set out the relevant principles that apply when a claim for indemnity costs is made. In his second principle, he says this: "The critical requirement before an indemnity order can be made is that there must be some conduct or circumstance which takes the case out of the norm." In his principle number 8, he gives some examples of that of which (e) is relevant: "Where a claimant pursues a claim which is, to put it most charitably, thin and in some respects far-fetched." Also (a) is relevant where allegations of dishonesty and impropriety are made. In my judgment, having regard to the terms of my principal judgment in which I dismissed the appeal, this is plainly a case where the appellant has been guilty of conduct which takes this case out of the norm. The appellant has raised with me his own means which are limited but those are not a relevant consideration, unlike the position in family proceedings, and in my judgment this is plainly a case where there should be an award of indemnity costs in the sum of £10,190.20. That will be technically payable in 14 days; from that point judgment debt interest will accrue.
41. The appellant applies for permission to appeal to the Court of Appeal. Under the relevant provision of the CPR, permission can only be given where either I consider that the appeal would have a real prospect of success or, alternatively, where there is some other compelling reason why the appeal should be heard. I am not satisfied that any appeal that might be mounted by the appellant to the Court of Appeal would have any prospect of success, let alone a real prospect of success, having regard to the reasons that I have given in my principal judgment which are largely based on incontrovertible facts. 42. Further, I am not satisfied that there is any reason, let alone a compelling reason, why the appeal should be heard. The application for permission to appeal is therefore refused.
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewhc/admin/2015/301>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/khan-v-general-medical-council-2015>

Prepared on 27 October 2026 · Esheria