Council for the Regulation of Healthcare Professionals v General Dental Council [2006] APP.L.R. 07/24

JUDGMENT : Mr Justice Hodge : QBD. Administrative Div. 24th July 2006

1. Iain Ralph Marshall became a dentist in 1982. He received the qualification of Batchelor of Dental Surgery from Manchester University in that year. From 1985 he established a dental practice in Belfast, Northern Ireland. He worked, apparently successfully, within the NHS but did some private work as well. He was responsible, with one other dentist, for some 6,000 patients, working latterly from purpose built premises in Sandown Road, Belfast.

2. In or about 2001, Mr Marshall sold his practice and emigrated to New Zealand. He has been working there as a dentist since then. Complaints began to be made about his work as a dentist in the UK after he moved to New Zealand. They covered a broad period from 1985 to 2001.

3. The first respondent, the General Dental Council (the GDC), became involved. It did not appear at this hearing and was not represented. It does however support the appeal of the claimant.

4. The Professional Conduct Committee (the PCC) of the General Dental Council eventually found Mr Marshall guilty of serious professional misconduct. They determined on 14 July 2005 to suspend Mr Marshall's registration for a period of 12 months.

5. The Council for Regulation of Healthcare Professionals (now known as the Council for Healthcare Regulatory Excellence and referred to in this judgment as "the Council") determined that the decision by the PCC was unduly lenient. Accordingly it appealed against the decision of the PCC using its powers under Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (the 2002 Act).

6. In its Appellant's Notice issued in the Administrative Court on 5th August 2005, the Council contends that the decision was unduly lenient and that only erasure of Mr Marshall's name from the Dental Register would properly protect the public. The Court was invited to quash the PCC's determination as to sanction and direct that Mr Marshall's name be removed from the register. Alternatively, the Council says in its Notice, that in failing in any way to explain how it was that the sanction of suspension for a period of 12 months adequately protected the relevant public interests, the PCC failed to give any, or any proper, reasons for its determination as to sanction, and the Court was invited to direct that the matter be remitted to the PCC for fresh consideration in accordance with the Court's judgment.

7. The contention that the sanction of erasure should be imposed was not pursued before this Court. The Council pursued the alternative remedy and seeks an Order under Section 29(8)(d) of the 2002 Act that the matter be remitted to the PCC of the GDC for rehearing in accordance with the judgment of the Court.

Facts

8. After he emigrated to New Zealand it became clear from a number of complaints and from the work of other dentists that Mr Marshall's work, had in a number of cases, fallen significantly below the required standards. He recognised in his evidence before the PCC that during the period relevant to the complaints he took on an excessive workload, seeing 25-30 patients a day. He also contended that the cases represented a very small fraction of the total number of cases treated over the relevant period.

9. That period extended over some 15 ½ years from 1985. In a hearing which lasted for 7 days, the PCC considered 81 charges relating to 9 patients over the 15 ½ year period. Many of the 81 charges Mr Marshall faced were particularised and contained a number of sub-charges running in some cases to 8 such sub-charges. The Court was provided with a detailed list showing the heads of charge and findings. It is clear that Mr Marshall contested many of the charges. Some charges were withdrawn, some were not proved, some were admitted. But it is clear that the bulk of the charges were not admitted. Yet in relation to each of the 9 patients, there were a substantial number of the particularised charges found proved. Mr Marshall appears to have failed these patients badly.

10. The PCC, having been satisfied so it was sure in relation to the charges that it found proved, heard mitigation from Mr Hockton on behalf of Mr Marshall. In its determination it summarised the matters found proved and said as follows:

"Mr Marshall, in reaching its determination the Committee has paid very careful regard to the facts found proved against you, which show deficiencies in the standards of care you provided to 9 patients over the period from 1985 – 2001. The particular failings which have been identified in your practice include:

1. *Failure to perform and note periodontal examinations, to provide treatment for advanced periodontal disease, and to provide advice on oral hygiene;*
2. *Inadequate use of radiography;*
3. *Very poor standards of root canal treatments;*
4. *Failure to diagnose and treat caries;*
5. *Provision of inappropriate treatment;*
6. *Provision of defective crown and bridge work;*
7. *Failure to inform one patient of a root perforation, and another patient of a fractured instrument left inside a root canal;*
8. *Inadequate record keeping;*
9. *Failure to explain to patients the nature of the contract under which they are being treated;*
10. *Failure to provide adequate treatment plans; and*
11. *Not always wearing gloves when treating patients."*

11. The PCC had concluded that the facts found against Mr Marshall established that he had been guilty of serious professional misconduct. They set out their reasons and their conclusions in relation to sanction as follows:

"In reaching its conclusions, the Committee found your testimony to be somewhat unreliable and self-justifying. It has preferred the evidence of the patients and the expert witnesses Dr Deery and Mr Emery, over your testimony and that of Mr McPhillips.

Your failures to provide an adequate standard of care were apparent in so many basic aspects of dentistry, and took place over such a lengthy period, that the Committee can only view them as extremely serious. Because of your failings, the oral health of these patients suffered. Their serious dental decay or periodontal disease should have been identified and treated while they were under your care, but your inaction over many years amounted to serious neglect of their needs. In all the respects identified above you failed to meet the standards required of you as a member of the dental profession. Taking all the matters of your conduct into account, the Committee has found you guilty of Serious Professional Misconduct.

The Committee is concerned by the lack of insight you have shown into your failings in this case. You should be in no doubt that your conduct has fallen far short of the standard expected of a member of the dental profession.

The Committee recognises that directions imposed under Rule 11 do not have any punitive purpose. Their purpose is to protect the public, maintain public confidence in the profession and maintain proper standards of behaviour by dental practitioners. The Committee has made its determination on that basis. In considering sanction the Committee has taken into account all the mitigation which has been presented on your behalf.

The Committee has considered each of the options available to it in turn. It has borne in mind the need for proportionality in its decision, balancing your interests against the need to maintain public confidence in the dental profession, the broader public interest, and the need to maintain high standards of behaviour by dental practitioners.

The extensive and serious findings mean, in the judgement of the Committee, that to conclude with an admonition would be inadequate. The Committee carefully considered whether postponement would be an appropriate and proportionate sanction, and decided that this would not be sufficient to protect the public interest. The Committee then considered whether suspension would be an appropriate and proportionate sanction and concluded that this was the case. Accordingly the Committee has concluded that, for the protection of the public, your registration should be suspended for a period of 12 months.

The Committee has directed the Registrar to suspend the name of Iain Ralph Marshall from the Register. The effect of the foregoing direction is that unless you exercise your right of appeal your name will be suspended from the Dentists Register for a period of 12 months, beginning 28 days from this date.

The dental authorities in New Zealand will be informed of this determination. That concludes this case."

The Statutory Framework

12. Section 25 of the 2002 Act created the Council. By Section 25(2):

"*(2) The general functions of the Council are*

a) To promote the interests of patients and other members of the public in relation to the performance of their functions by the bodies mentioned in subsection (3)… and by their committees and offices / officers

b) To promote best practice in the performance of their functions

c) To formulate principles relating to good professional self regulation, and to encourage regulatory bodies to conform to them, and

d) To promote cooperation between regulatory bodies; and between them or any of them, and other bodies performing corresponding functions. "

13. Section 29 provides for the reference of disciplinary cases by the Council to the Court. By Subsection (1), among other professional bodies, decisions of the PCC of the GDC as to professional misconduct may be referred. By Subsection (2), this power also applies to certain decisions not to take disciplinary measures. Subsection (3) provides: "*the things to which this Section applies are referred to below as 'relevant decisions*'".

14. Section 29 (4)(7) and (8) provide the further statutory framework for this appeal:

"*(4) If the council considers that-(a) a relevant decision falling within subsection (1) has been unduly lenient, whether as to any finding of professional misconduct or fitness to practise on the part of the practitioner concerned (or lack of such a finding), or as to any penalty imposed, or both, or (b) a relevant decision falling within subsection (2) should not have been made, and that it would be desirable for the protection of members of the public for the council to take action under this section, the council may refer the case to the relevant court… …*

(7) If the council does so refer a case-(a) the case is to be treated by the court to which it has been referred as an appeal by the council against the relevant decision (even though the council was not a party to the proceedings resulting in the relevant decision), and (b) the body which made the relevant decision is to be a respondent… …

(8) The court may-(a) dismiss the appeal, (b) allow the appeal and quash the relevant decision, (c) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned, or (d) remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court, and may make such order as to costs… as it thinks fit."

15. The background to the 2002 Act, the functions of the Council and the principles governing this appellate jurisdiction are now well established. The leading case in the Court of Appeal is ***CRHCP v General Medical Council and Ruscillo*** and ***CRHCP v Nursing and Midwifery Council and Truscott (General Medical Council intervening)*** [2004] EWCA Civ 1356 (Ruscillo/Truscott). That case has been followed and applied and further summaries provided of the statutory framework and the purposes behind the implementation of the 2002 Act in ***CHCRE v General Medical Council and Basiouny*** [2005] EWHC 68 (Admin) and in ***CRHCP v GDC and Fleischmann*** [2005] EWHC 87 (Admin).

16. The Council has power to refer a case to the Court on the ground that the PCC's decision was "unduly lenient" as regards to the facts found by it, the sanction imposed, or both. The doubts about this in relation to findings of fact have been resolved by the decision of Richards J in ***CRHCP v GMC/Basiouny*** at paragraphs 34 to 42.

17. Further, in ***Ruscillo/Truscott***, the Court of Appeal endorsed the conclusions that CPR Part 52 applies to appeals under Section 29 of the Act. It accepted for the reasons given at paragraph 54 in its judgment that "a reference to the High Court under Section 29 of the Act is subject to the following provisions of CPR R52.11" which provides:

"*(1) Every appeal will be limited to a review of the decision of the lower court unless…*

(a) a practice direction makes different provision for a particularly category of appeal; or

(b) the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a rehearing.

(2) Unless it orders otherwise, the Appeal Court will not receive

(a) oral evidence; or

(b) evidence which was not before the lower court.

(3) 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 of the lower court

(4) the Appeal Court may draw any inference of fact which it considers justified on the evidence".

18. The Court of Appeal went on to say at para 55: "*The powers of the High Court on an appeal, as set out in Section 29(7) of the Act, are in no way incompatible with CPR R52.11. The two have to be read together.*"

The Reference and the Court's Approach

19. A Committee of the Council referred this case to the Court in a decision made on 3rd August 2005. They concluded that the decision of the PCC to suspend Mr Marshall was manifestly inappropriate and unduly lenient. They also decided that it was desirable in the interests of the public to take action under Section 29 of the 2002 Act. Further, they concluded that the interests of the public meant that the proper penalty should have been erasure. In ***Ruscillo*/*Truscott***, the Court of Appeal concluded that a reference is to be treated as an appeal by the Council against the relevant decision, and so the Court here is concerned with the decision as to the penalty. The Court of Appeal said that the appeal must be dismissed if the Court decides the decision as to the penalty was correct. But they went on to say:

"*(71) If the Court decides the decision as to penalty was 'wrong' it must allow the appeal and quash the relevant decision, in accordance with CPR R52.11(3)(a) and Section 29(8)(b) of the Act. It can then substitute its own decision under Section 29(8)(c) or remit the case under Section 29(8)(d).*

(72) It may be that the Court will find that there has been a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal. In those circumstances it may be unable to decide whether the decision as to penalty was appropriate or not. In such circumstances the Court can allow the appeal and remit the case to the Disciplinary Tribunal with directions as how to proceed pursuant to CPR R52.11(3)(b) and Section 29(8)(d) of the Act".

20. Then, at paragraph 78, the Court observed "*where, however, there had been a failure of process… The decision reached by (the) Tribunal will inevitably need to be reassessed*".

21. It is no longer contended that this Court should quash the PCC's decision to suspend Mr Marshall and substitute for that decision a decision to erase him from the Register. The Court is now asked by the Council to allow the appeal, quash the relevant decision (the suspension) and remit the case to the PCC to dispose of the case in accordance with the directions of the Court. It is said on behalf of the Council that there has been a failure of process. The PCC's duty includes the protection of the public. In essence they are said to have failed to give adequate reasons for the decision that they reached in the light of that duty. The failure to give adequate reasons is said in the terms of CPR R52.11(3) to be a "serious procedural irregularity". It is said on behalf of Mr Marshall on the other hand that the decision not to press for the erasure of Mr Marshall as a penalty is highly significant. Mr Hockton argues that the case was founded on the basis that the suspension decision was unduly lenient. The right decision was therefore erasure, and that is what the Council's committee regarded as appropriate. The decision not to argue before this Court that the proper penalty was erasure means that the sentence imposed by the PCC was not unduly lenient. In those circumstances the Court should dismiss the appeal. It is further asserted that it must be implicit in the appellant's arguments that there has been a procedural defect in the lack of reasons that some further reasons were not but should have been given for not imposing the sanction of erasure.

22. What then is the duty imposed on the PCC to give reasons, and are the reasons given for the sanction imposed adequate? How far does the duty to give reasons, if such there be, extend?

The Reasons Issue

23. In ***Selvanathan v General Medical Council***, PC Appeal No.21 of 2000, Lord Hope said at page 13: "*Their Lordships consider that in practice, reasons should now always be given by the Professional Conduct Committee for the determination under Rule 29(2) whether or not they find the practitioner to have been guilty of serious professional misconduct and their decision on the question of penalty. Fairness requires this to be done, so that the losing party can decide in an informed fashion whether or not to accept the decision or to appeal against it… It is plain that reasons were given in this case. The question is as to the adequacy of those reasons.*"

And at page 14: *"In these circumstances it is not expected of the Committee that they should give detailed reasons for their findings of fact. A general explanation for the basis of their determination on the questions of serious professional misconduct and of penalty will be sufficient in most cases."*

24. In ***Stefan v GMC*** [1999] 1WLR page 1293 at page 1303 letter H it was said by the Privy Council: "*the provision of a right of appeal and the judicial character of the body point to an obligation to give reasons… There is nothing in the Act nor the Rules requiring reasons not to be given and no grounds of policy or public interest justifying such restraint. In the light of the character of the Committee and the framework in which they operate, it seems to their Lordships that there is an obligation on the Committee to give at least a short statement for the reasons of their decisions.*"

25. The PCC of the General Dental Council is in all respects in the same position as the General Medical Council. It is settled law that reasons must be given in these professional disciplinary cases. The issue here is both the adequacy of the reasons given in Mr Marshall's case and, importantly from the Council's perspective, whether those reasons adequately address the realisation of the need for the protection of the public when considering penalty in such a case as this. There are clearly issues as to duty to give reasons for decisions on factual matters such as credibility (*Gupta* ***v General Medical Council*** [2001] UKPC 61). But that is not this case. Here, the inadequate reasons are said to relate to the decision as to penalty. The Council founds its reasons challenge on the basis that, when considering whether to take action, it must consider whether "it would be desirable for the protection of members of the public" (Section 29(4)(b) of the 2002 Act).

26. As ***Garfoot v GMC***, PC Appeal No.81 of 2001 shows, decisions in this field do not have a punitive purpose. The purpose is to protect the public; to maintain public confidence in the profession; and to maintain proper standards of behaviour by healthcare professionals.

27. In ***Ruscillo/Truscott*** at paragraph 73, the Court of Appeal held: "*The task of the Disciplinary Tribunal is to consider whether the relevant facts demonstrate that the practitioner has been guilty of the defined professional misconduct that gives rise to the right or duty to impose a penalty and, where they do, to impose the penalty that is appropriate, having regard to the safety of the public and the reputation of the profession. The role of the Court in the cases referred is to consider whether the Disciplinary Tribunal has properly performed that task so as to reach a correct decision as to the imposition of a penalty*".

28. Hence the protection of the public is at the core of the decision making process of the PCC in their deliberations in professional conduct cases and certainly as to the issue of any penalty that is to be imposed after adverse findings of fact have been made against a practitioner.

29. Mr Hockton submits in relation to the requirement to give reasons that "the essence of the requirements is that the practitioner should know the basis upon which his right to practice is being restricted and therefore provide an opportunity for challenge". He contends that the decided cases all turn on the rights of the appellant practitioner to be able to identify adequate reasons for the decision. In particular, he says it is a novel claim for which there is no statutory basis, that there is a free standing duty on a PCC owed to the Council for the Regulation of Healthcare Professionals to give reasons for their decision.

30. I reject those contentions. It is clear that the protection of the public is one of the factors which lead to the requirement to give reasons. If reasons for the imposition of a particular penalty are not adequately reasoned or are in other respects unclear, that duty is not fulfilled.

31. In ***Threlfall v General Optical Council*** [2004] EWHC 2683 (Admin), Stanley Burnton J in dealing with the need to give adequate reasons said at paragraph 37: "*Lastly I mention that there is a further practical reason why disciplinary committees should give adequate reasons for their decisions, and that is to enable the Council for the Regulation of Healthcare Professionals to consider whether to exercise its powers under Section 29 of the 2002 Act*".

32. I agree with that view. Disciplinary committees, as here for the PCC of the GDC, have in their decisions to have regard to the protection of the public. The Council has a similar duty to consider whether to take action for the protection of the public. It is no great leap to say that disciplinary committees should be aware that the duty to give reasons to ensure the protection of the public is also required to enable, among other matters, the Council for the Regulation of Healthcare Professionals to carry out its statutory functions.

33. Mr Hockton on behalf of Mr Marshall argues that in this case the reasons given by the PCC for the imposition of the penalty of suspension on Mr Marshall were in fact clear and adequate. The Council do not agree. I therefore next consider this issue.

Adequacy of Reasons

34. In their determination, the PCC referred to the ethical guidance given to the dental profession in the GDC's Red Book up to November 1997 and after that in a guidance entitled Maintaining Standards. In summary, this guidance provides that the public is entitled to expect that a dentist will provide a high standard of care; there is responsibility on the dentist to explain the nature of a contract clearly to the patient; written treatment plans and estimates should always be provided for extensive or expensive courses of treatment; full contemporaneous records should be kept; dentists have a duty to take appropriate precautions to protect their patients and their staff from the risk of cross infection.

35. During submissions on misconduct at page 691 of the record of proceeding in Mr Marshall's disciplinary hearing, the material summarised by the Committee in its determination was referred to more extensively. They were told that dentists have a responsibility to put their patients' interests before their own, and the professional relationships between dentists and patients rely on trust and the assumption that dentists would act in the best interests of their patients. Dentists have an obligation to refer a patient for further professional advice or treatment if it transpires that the task in hand is beyond the dentist's own skills. It was accepted by the Committee that failures in these areas meant that the GDC is liable to take a serious view of the neglect of the dentist's professional responsibility as to his or her patients for their care and treatment.

36. In a lengthy hearing which took place over some 7 days, the PCC heard evidence from 8 patients identified by alphabetical letters. 2 dentists who were subsequent treating dentists of various of the patients gave evidence as did a dentist who approved further treatment for Patient B and another dental practitioner at Mr Marshall's practice. Three experts were called. Doctors Deery and Emery were called on behalf of the GDC, and a Mr McPhillips on behalf of Mr Marshall. The PCC also had written evidence for a number of medical practitioners producing medical records.

37. Any reading of the transcripts of evidence from the PCC hearing shows the extensive nature of the failings of Mr Marshall in relation to the patients who gave evidence. In my judgment it is clear that they suffered as individuals and that Mr Marshall's treatments fell far short of what was required. It is not necessary to set out in full detail the extensive evidence from the various patients or individual findings on that evidence. However, to show the full extent of the failings in treatment, a helpful summary with reference to the transcript of the disciplinary hearing has been provided by Ms Stern in her skeleton argument as below:

"*a) After patient A stopped being treated by Mr Marshall she was found to have a perforated root (pages 135, 179). She has suffered from problems since root treatment was provided by Mr Marshall (pages 134-135). She was also found to have significant evidence of periodontal disease, and to need replacement of 5 restorations (pages 177-178).*

b) Patient B (who was aged 5 when she started seeing Mr Marshall) was found on 26th February 2002 to have a lot of decay, to require 17 fillings and to have poor contouring and contacts on all of her 7 existing restorations (pages 149, 180-181, and page 1093).

c) Patient C, who was found to have chronic adult periodontitis in December 2001, was not aware that she had any gum problems whilst she was a patient of Mr Marshall (page 188).

d) Patient D, aged 14 upon first attending Mr Marshall in August 1985, required replacement of all 10 restorations, and re-root canal treatment to eleven teeth (pages 933-939). This extensive remedial treatment was provided over a 2 ½ year period. Also, in October 2001 she was identified as having a piece of fractured instrument inside her tooth, but had never been

informed of this by Mr Marshall notwithstanding that she had told him that it was sore (page 198). Patient D's evidence was that when restorative work was suggested in 2001/2002 she went along with it because by then she was in constant pain and her teeth were fracturing and literally falling to bits (page 201).

e) Patient E was found, in March 2002, to have chronic adult periodontitis (page 102) about which he was unaware (page 212). There was bone loss and a need for specialist treatment. Five teeth ultimately needed to be extracted (page 104).

f) Patient F was found on 28 August 2001 to have caries in 5 teeth (page 106 and see findings of PCC attached). Also to have generalised calculus inflammation, plaque, possible staining, pocketing and probably increased bone loss (page 106), and to have suffered a perforation of the root during root canal treatment in 1999 (page 360).

g) Patient G was found on 5 March 2002 to have chronic adult periodontitis (page 108). Her evidence was that gum disease was never mentioned to her by Mr Marshall (page 373) and that she was really shocked when she discovered that she had severe periodontitis (page 390) and was in fear that she might be losing her teeth (page 392).

h) It was plain from the evidence of the patients that they liked and trusted Mr Marshall, and by reason of that did not consider consulting alternative dentists for a second opinion (see eg page 203, pages 376-377).

i) The expert evidence in relation to the use of Chemfil was that it should not be used for large occlusal or moderate to large occlusal biting surfaces, or for multi-surface restorations (page 226). However, in respect of several patients, it had been used in such situations (eg page 230, page 352).

j) Generally, in relation to periodontal disease such as that found in the patients the subjects of the charges, Dr Deery's evidence was that this would have been apparent on radiographs and upon examination, but that in respect of these patients there was no evidence of control of the disease or improvement whilst the patients were under Mr Marshall's care (pages 358-359)."

38. On the facts established as indicated, the PCC found that Mr Marshall had been guilty of serious professional misconduct. Their general findings in relation to sanction are set out at paragraph 11 above. I note that the Council in their reference of 11th August 2005 summarised the general findings of the PCC at paragraph 15 as follows:

i) Mr Marshall's testimony was somewhat unreliable and self justifying.

ii) Mr Marshall's failure to provide an adequate standard of care was apparent in so many basic aspects of dentistry, and took place over such a lengthy period, that the PCC could only view them as extremely serious.

iii) Because of his failings, the oral health of his patients suffered. Their serious dental decay or periodontal disease should have been identified and treated while they were under his care, but his inaction over many years amounted to serious neglect of their needs.

iv) He showed lack of insight into his failings in this case.

39. When members of the Council considered the case in the context of their duties in relation to public protection, they concluded that the case raised the following issues:

"17. 1) The extent to which Mr Marshall's actions caused or could have caused direct or indirect harm

2) The extent to which Mr Marshall would continue to be a risk to patients if he returns to practice without assessment and retraining to ensure that he is fit to practice; and

3) Maintaining the reputation of the profession and public confidence in regulation".

40. Importantly, in my judgment, they went on to say:

"18. The mitigation submitted by Mr Marshall's counsel provided no assurance about public protection. Whilst he might now be practising in different circumstances, there was no evidence that he was himself changed so that he is fit to practice. On the contrary, there was evidence of lack of insight. Similarly, the testimonials submitted on his behalf provided no reassurance".

41. The Council Committee which concluded that a reference to this Court was needed had before it the details of the mitigation supplied on behalf of Mr Marshall at the hearing. The PCC were told that from June 2002 to 2004, Mr Marshall worked at a dental centre just outside Auckland. The principal of that practice was an implant specialist and Mr Marshall was recruited essentially to take over much of the dental work of the practice. It was said to be a state of the art practice with good support staff, including a hygienist, a dental technician and a practice manageress, where there were regular reviews of the patients with the dentists.

42. From May 2004 he apparently changed jobs to work as a locum general dental practitioner for two other practices in Auckland. The Committee was told of various courses that Mr Marshall had apparently attended since moving to New Zealand and the contacts he had had with the dental profession there. Various testimonials were handed in but all from referees who knew Mr Marshall's work in the UK only.

43. Ms Stern submitted, and I regard it as highly significant, that there was a lack of information from New Zealand about Mr Marshall's work there over the four years since he left the UK. In particular it was pointed out that there were no letters of support from any dentist with whom Mr Marshall had practised in New Zealand during that period. There was no evidence as to the reviews that had been carried out. And there was no assurance as to how he might practice in the future. In my judgment this lack of up to date evidence of adequate or good practice must been seen in the context that Mr Marshall's testimony before the PCC was somewhat unreliable and self-justifying, and he had a lack of insight into his failings.

44. The maximum suspension period available to the PCC as a penalty is 12 months. That is the penalty imposed on Mr Marshall. But it is clear and unchallenged that at the end of the period of suspension, a dentist may recommence practice and the regulatory regime does not provide for any safeguards to be put in place to ensure the protection of the public when the dentist recommences his or her professional work.

45. It is the Council's case that the PCC failed to explain adequately or at all how the penalty of 12 months' suspension could be said to meet the duty they had to fulfil of ensuring the protection of the public. The manner in which the PCC reached its decision is set out in paragraph 11 above. They adopted a step by step approach in relation to penalty. They concluded the seriousness of the findings they had reached precluded them dealing with the case by an admonition. They said that postponement would not be sufficient to protect the public interest and then decided that suspension would be an appropriate and proportionate sanction for the protection of the public. But, says Ms Stern they did not explain why they reached that conclusion.

46. Mr Hockton, for Mr Marshall, does not agree. He argued that the PCC properly looked at the question of sanction on the basis of an ascending scale of seriousness. He noted there is no power to impose conditions. He noted also that where the PCC wants to review the conduct of a practitioner for a period after the hearing, a decision is generally made to postpone judgment leaving a full range of sentencing powers at the resumed hearing. Indeed he categorised the arguments put forward on behalf of the Council as supporting the sanction of postponement so further review could take place. This was significantly less severe than the sanction actually imposed.

47. In particular, he argued that the reasons given for the sanction imposed were clear. He considered it is implicit in the Council's argument that some further reasons should have been given for not imposing the sanction of erasure. That, he said, ignores the statutory framework which requires the Committee to consider their powers on the basis of an ascending scale of penalties. There is no requirement on the PCC, he submitted, to give reasons for not imposing a more severe sanction.

48. It is part of the argument for Mr Marshall that the complaints concerned events which happened many years previously, and that in some way mitigates the findings. I do not accept that. In my judgment, the failings are of very long standing. They were heavily contested in many of the instances by Mr Marshall. At the PCC hearing, the bulk of the findings, and the seriousness of the findings were all against him. The evidence as to his practice in New Zealand, and as to whether it was satisfactory or not, was based on his own evidence and assertion and the apparent lack of complaint. He had no supporting evidence from individual dental practitioners with whom he had worked for what is a fair length of time.

49. The professional misconduct in this case was clearly serious and of long standing. At the hearing, Mr Marshall continued to show a lack of insight and gave unreliable and self justifying testimony. In those circumstances, where there are penalties imposed that mean the practitioner may recommence practice at the end of a period of 12 months' suspension, I regard it as incumbent on a disciplinary committee to explain why they can be satisfied the public will be protected when the practitioner recommences practice.

50. I would expect to see a note in short form that the Disciplinary Committee were satisfied in relation to some or all of the following matters. The first relates to training. Where a dentist is facing serious charges such as here, directed towards a number of apparent failings, public protection is likely to be served if the dentist can satisfy the Committee that, since he became aware that there was a question mark over his abilities in various areas, he has undergone training in those areas. Alternatively they may be satisfied by an undertaking that he will undergo in the future training or retraining in those areas.

51. Next where, as here, a lengthy period has elapsed since the failings came to light, yet the practitioner has continued in practice, I regard it as essential that the Committee has before it information about the dentist's professional work from other dentists with whom he has practised during the period leading up to the disciplinary hearing. Such evidence may well enable the PCC to state why, on the evidence they have, the risk to the public has been reduced or removed. They may also be able to be satisfied that the lapses identified are capable of being remedied over the 12 month suspension period.

52. The reasons given by the PCC in Mr Marshall's case do not address these issues. It is unclear how the PCC thought the public would be protected by the penalty imposed and in my judgment the reasons given are inadequate.

53. I therefore regard the failure to give reasons dealing with the issues set out above as a serious procedural or other irregularity in the proceedings before the PCC and a failure of process. Without knowing if the conditions needed to ensure the protection of the public were or can be satisfied I am unable to decide whether the decision as to penalty was appropriate or not in this case. I accordingly allow the appeal, quash the penalty imposed by the PCC and remit the case to it. I direct them when further considering the penalty to be imposed on the basis of their findings (a) to have regard to such satisfactory evidence as there may be as to the past and future training or retraining undergone or to be undergone by Mr Marshall and (b) to consider such up to date evidence that may be available from dental practitioners with whom he has worked of his conduct and proficiency in practice in New Zealand.

54. If the Committee is satisfied in the light of the evidence received that the public will be protected by a period of suspension, then it will no doubt say so and give its reasons. If it is not, then it appears to me, given the seriousness of the findings made, that erasure may well be the proper penalty.

Kristina Stern (instructed by Bevan Brittan Solicitors) for the Claimant
Andrew Hockton (instructed by Radcliffes le Brasseur) for Iain Ralph Marshall
The General Dental Council did not attend and was not represented