



Neutral Citation Number: [2023] EWHC 324 (Admin)

Case No: CO/221/2023

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**SITTING IN MANCHESTER**

Wednesday, 15<sup>th</sup> February 2023

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**GENERAL MEDICAL COUNCIL**

**Claimant**

**- and -**

**DR SEKELA MWAMBINGU**

**Defendant**

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**Shirlie Duckworth** (instructed by GMC) for the **Claimant**  
The **Defendant** did not appear and was not represented

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Hearing date: 15.2.23

Judgment as delivered in open court at the hearing  
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**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**THE HON. MR JUSTICE FORDHAM**

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment in a remote hearing.

**MR JUSTICE FORDHAM:**

Introduction

1. Applying the guidance in GMC v Hiew [2007] EWCA Civ 369 at §§26-33, I am satisfied that the GMC has discharged the onus of demonstrating that it is necessary for the protection of the public, and in any event necessary in the public interest, that the Interim Order of Conditions (“IOC”) in place – most recently reviewed and maintained by the Interim Orders Tribunal (“IOT”) on 26 October 2022 – be extended for a period of six months to 20 August 2023. I so order.

The Hearing

2. I am satisfied that it is necessary and appropriate, in the interests of justice and the public interest, to proceed with the hearing today. This was a public hearing by MS Teams, which and whose start time were published in the Court’s Cause List, together with an email address usable by any member of the press or public who wished to observe. The Defendant did not participate. I have seen her email exchange with the GMC in December 2022 about this envisaged application to this Court for this further extension of the IOC. She responded by email saying that she would wish to review the documents. She was subsequently provided, by email on 24 January 2023, with the claim and the supporting witness statement of Sarah Jones, and other claim documents. She had consented back in June 2019 to communication by email. She asked, by email on 19 December 2022, for documents also to be printed and posted. They were. The GMC confirmed, by email on 1 February 2023, that the claim documents were being sent by post on that day. There is a record of collection of those documents on 4 February 2023. I have also seen the GMC’s follow-up emails on 6 and 10 February 2023. A certificate of service dated 13 February 2023 has been filed with the Court. I am satisfied that all necessary and appropriate and proportionate steps have been taken; and that the Defendant has had a full opportunity to respond and engage. Ms Duckworth updated me this morning with the fact that there has been no further communication received by the GMC from the Defendant.

Justification

3. I turn to the justification for the IOC and its extension. The concerns in this case are serious. I emphasise that these are allegations. No findings of fact have been made and I am not making any. But, to illustrate, the Defendant is a GP who faces allegations of failing to action urgent, and non-urgent, referrals of patients; of pre-signing prescription forms; and of prescribing to her family members. Expert reports relating to her alleged clinical misconduct have expressed the view that her overall standard of care fell seriously below that expected of a reasonably competent GP. In addition, there are allegations of failing to declare additional sources of income when applying for payments, as a medical practitioner suspended from the Performer’s List, at the heart of which allegations are issues of probity and honesty. There are in this case serious concerns engaging questions of risk to patient safety as well as public confidence. Like the IOT in October 2022, I do not have concrete information as to whether the Defendant continues to practise. Ms Duckworth tells me that there have been periods in this case in which the Defendant has been working. She also points out correctly that, given the terms of the IOC, there would need to be notification to the GMC if the Defendant were now working. There has been no such current notification. The GMC

has taken it, as do I, that the Defendant is not therefore currently working. However, the conditions imposed by the IOC involve matters of notification and supervision, together with some restrictions including a prohibition on the Defendant prescribing drugs for herself or anyone with whom she has a close personal relationship. These are conditions designed to enable her to continue to practise. This is not an interim suspension order.

4. The case goes back to an original referral to the GMC in June 2019. That is 3½ years ago. Following that, there were a series of further concerns raised, through to at least December 2019. The IOC was first imposed in August 2019, and was varied by the IOT in August 2021. It has been considered and maintained by the IOT on some 8 occasions between February 2020 and October 2022. So far as the High Court is concerned, the IOT was extended for 12 months by HHJ Eyre QC (as he then was) on 19 February 2021 and again, by Consent Order, for a further 12 months on 14 February 2022. The witness statement of Sarah Jones has provided me with a very detailed chronology of the steps that have been taken during what is undoubtedly a very significant period of time. Within 10 days of the 14 February 2022 High Court extension, Rule 7 formal Allegations were served, to which the Defendant submitted her formal Response on 27 May 2022. On 6 July 2022 there was a notice of referral to a Tribunal for a substantive “impairment of fitness to practise” hearing, with its familiar potential three stages. On 5 September 2022 that substantive hearing before the Tribunal was listed, to take place in the slot 5 to 23 June 2023, 15 days. In the meantime, the preparations for that substantive hearing have continued with further witness statements being obtained by the GMC in October and December 2022 and January 2023 and the latest supplementary expert report being obtained in December 2022. The extension sought, on this occasion, is 6 months, which allows an 8 week period of headroom following the impairment hearing listing.
5. I have had regard to all the circumstances and features of the case, the seriousness of the allegations, the nature of the evidence relied on, the risk to relevant members of the public and to the public interest if the Defendant were permitted to practise without any restrictions on her registration, the reasons for the extension requested, and the reasons why the case has not yet finally been determined. I am satisfied that the necessity test is met, both as to protecting the public and the public interest. I am satisfied that it is met in all three key respects: (i) having an interim order in place; (ii) the nature of the IOC; and (iii) the period of the extension. I have been assisted by, and agree with, the reasoning which was expressed by the IOT on 26 October 2022 (exhibited as SJ1 to Ms Jones’s witness statement). I will make the extension order in the terms sought.

#### Third Party Access to Claim Documents

6. This is a claim in the High Court to which the open justice principle applies. This judgment is in the public domain. There is no anonymity. The Claim Bundle is 75 pages. The draft order that was sent to the Defendant, inviting her consent, included within it this paragraph:

*There be no disclosure to non-parties, of any documents relating to the present application apart from the Claim Form and the Order herein, without permission. Any application for disclosure of documents to be made on Notice to the parties.*

7. I have not been persuaded, for the purposes of the present case, that such an Order is justified. It is not said that any confidential third party information is present in the 75-page bundle. What is present is the IOT's reasoned determination of 26 October 2022. That determination does three things. First it sets out the background. Secondly it gives the IOT's reasoning for maintaining the IOC. Thirdly it sets out the conditions of the IOC. Ms Duckworth has confirmed that those conditions are in the present case, in any event, in the public domain. In my judgment the contents of the IOT's background, the substance of the conditions, and the IOT's reasoning – put forward and commended to this Court by the GMC – are all matters which engage the open justice principle in the context of these High Court proceedings.
8. The points made by Ms Duckworth in relation to the proposed paragraph in the draft order are as follows. She tells me that this is a familiar paragraph treated as “standard” in relation to extension orders of this kind, sought by the GMC. She tells me, and I accept, that this paragraph was included in the previous orders of this Court on 19 February 2021 and 14 February 2022. She tells me that what lies behind this paragraph is the fact that IOT proceedings and IOT Determinations are treated as “private”. This was not a matter addressed within her skeleton argument and she helpfully addressed me on it when I raised it. She also offered to take further instructions were the Court making any decision of principle that might be more far-reaching than the particular circumstances of the present case.
9. I am dealing only with the present case. I have scrutinised carefully the contents of the 75 page claim bundle and have scrutinised carefully the substantive contents of the IOT Determination (at exhibit SJ1), alongside what I am saying in this judgment and will in any event be in the public domain. In the circumstances of the present case, I am not going to include the draft paragraph from the draft order. That is because I do not regard to be either a necessary or a proportionate order restricting third party access to documents in the court records; imposing a necessary layer of supervision and control where, in my judgment, these are not warranted. The nature of the allegations – which I have myself summarised – do not in my judgment attract any derogation from open justice. They are known and understood to be allegations, as I have emphasised. The Tribunal at the substantive hearing will be able to afford a fair hearing and a just determination of the merits of the case. The Defendant could have no guarantee that the paragraph in the draft Order would be an Order made by the Court, she was made no promise in that respect, and she has chosen not to engage with the claim and this hearing. I am not, in the circumstances of the present case, going to include the proposed restriction in the draft order, within the Order I make.

### Costs

10. Finally, the GMC seeks its costs, limited to the costs of today's hearing and excluding all those costs which would have been incurred in any event had the Defendant decided to consent to the extension of the IOC, avoiding the need for the hearing today. The relevant costs figure is £1845.20. I will order that the Defendant pay the GMC's costs summarily assessed in the figure of £1200. In my judgment that order is justified and appropriate, in the particular circumstances of the present case. It is also a proportionate costs figure. The Defendant knew that she was at risk of an order for costs. At the hearing which she attended before HHJ Eyre QC on 19 February 2021 she was ordered to pay £900 in costs (which Ms Duckworth tells me would have been at around the level of Counsel's fees and not the entirety of the GMC's costs). To that extent, the

Defendant would have been aware of the likely scale of a costs order. The Defendant knew that she could consent to this Order and avoid a costs risk. She had consented to the High Court extension order made on 14 February 2022, and avoiding a costs order. She was squarely warned that she faced the prospect of a costs order. She had said in December 2022 that she would want to review the documents. She has had that opportunity. She knew this application for the extension was going to be made. She knew the current expiry date (20 February 2023) of the IOC. She was expressly warned, by letter on 20 January 2023, that costs would be applied for if she chose not to consent to the extension. The warning was, moreover, repeated by email on 10 February 2023. It was a matter for the Defendant to choose: whether to consent to the Order; whether actively to oppose it by making any written or oral representations or adducing any evidence; or whether to have the GMC make its claim for the extension at a hearing where a Judge would scrutinise whether the Order was justified as necessary and proportionate, in circumstances where there was no consent to it. The figure of £1200 is a summarily assessed amount, in circumstances where I am not ordering indemnity costs and where I have had close regard to what is reasonable and proportionate in all the circumstances. I make it where the GMC has proceeded and succeeded, in respect of costs which it would be inappropriate in my judgment for the GMC (and so medical practitioners as a whole) to have to bear, in the circumstances of this case.

15.2.23