CO/13945/2009

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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 16 November 2016

B e f o r e:

MR JUSTICE JAY

Between:

HARROLD

Appellant

v

NURSING AND MIDWIFERY COUNCIL

Respondent

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Mr Marc Beaumont (instructed by Direct Access) appeared on behalf of the **Appellant**
Mr Adam Solomon (instructed by the Nursing and Midwifery Council) appeared on behalf of the **Respondent**

J U D G M E N T
(Approved)

1. MR JUSTICE JAY: This is an appeal under article 38(1)(a) of the Nursing and Midwifery Order 2001 SI 2002/253 against a decision of the respondent's Conduct and Competence Committee ("CCC") striking off the appellant Mrs Alvida Harrold on 21 October 2009.

2. It is immediately apparent that this is an extremely stale case. I have set out the background salient to the appeal itself in my judgment in R (On the application of Harrold) v Nursing and Midwifery Council [2016] EWHC 255 (Admin) where I held that, notwithstanding the delay, the appellant cannot be deemed to have abandoned her appeal. Over the years, there has been a plethora of litigation brought by the appellant against the NMC, her former employer, and others. This culminated in the decision of Elizabeth Laing J given on 9 May 2016 in Nursing and Midwifery Council v Harrold [2016] EWHC 1078 (QB). There Elizabeth Laing J made a general civil restraint order against the appellant, but exempted this appeal from its scope.

3. The parties are agreed that this appeal proceeds by way of rehearing upon an examination of the transcripts. This is not, as it happens, a case which turns on an assessment of the credibility or reliability of witnesses. I am content to adopt the approach indicated by Richards J, as he then was, in R (on the application of Clarke) v NMC [2004] EWHC 1350 (Admin), at paragraph 6:

> "In broad terms, the approach of the court on an appeal is as follows. Although its function in respect of a statutory appeal is to conduct a rehearing, it is one usually conducted and conducted in this case on the basis of a transcript of the hearing below. The appellant court must bear in mind that the decision-making committee had the advantage of seeing and hearing the oral evidence given and it must accord an appropriate measure of respect and weight to the judgment of the committee on measures necessary to maintain professional standards and provide adequate protection to the public. See generally Ghosh v GMC [2001] 1 WLR 195 and Gupta v GMC [2002] 1 WLR 1691 to both of which I will refer further in due course."

4. There is an issue between the parties as to the quantum of respect which ought to be shown by this court. I will address that when I come to what I consider to be the main point of this appeal; namely, that of sanction.

5. The appellant was employed by the North Bristol NHS Trust, ("the Trust") until her dismissal in December 2005. She had been signed off sick since June 2004. On 17 November 2006, the Trust, somewhat belatedly, referred the appellant to the NMC, because she had written an open letter dated 31 August 2004 to "all the patients on the dialysis unit."

6. The letter complained of the conduct of the appellant's unit manager who had made her life intolerably difficult and stressful. It asserted that her unit manager, if not management in general, had subjected her to "harassment and victimisation" and that in truth there were no problems with the nursing care she had provided. The letter also

stated that she had raised a formal complaint about the manager's outrageous behaviour and was expecting a favourable outcome. At the end of the letter, which although written in manuscript is not difficult to read, the appellant stated "please ensure that everyone see [sic] this letter."

7. It took far too long for this complaint to be investigated by the NMC. No convincing explanation for the delay has been given. A hearing before the CCC was set down for 4 June 2009, but was adjourned on the appellant's application. According to the respondent's decision letter dated 2 July 2009, the application for an adjournment was made on four grounds, including the appellant's wish to have legal representation. It was refused on three grounds, but "with considerable regret" allowed on the fourth; namely, that the appellant was apparently in ill health. The decision letter referred to "the very brief medical report received from her GP by fax this afternoon."

8. It is clear from subsequent correspondence between the appellant and the respondent that, (1) the former was well aware of the adjourned hearing dates, 20 and 21 October 2009; (2) her union had refused to provide legal representation (she accused UNISON of colluding with the Trust) and, (3) that unless the union changed its mind, she would be unable to attend.

9. The charges against the appellant read as follows:

> "That you, while employed as a Staff Nurse at the Trust:
>
> 1. On or between 1 August 2004 and 30 September 2004 forwarded an open letter to 'all the patients' on the dialysis unit at the Trust alleging misconduct by the Trust or one of its employees, more particularly you stated;
>
> A. Cathryn Greaves had been making life at work difficult for you;
>
> B. You had suffered harassment and victimisation on the unit;
>
> C. You had made a formal complaint about Cathryn Greaves' behaviour towards you;
>
> 2. In relation to (1) above you requested that the letter be seen by 'everyone';
>
> And in the light of the above your fitness to practise is impaired by reason of your misconduct."

10. At the commencement of the proceedings on 19 October 2009, the CCC satisfied itself that the appellant had been properly served with notice of the hearing and then received advice from its legal assessor as to how it should proceed. The legal assessor advised the CCC that it should interpret the appellant's correspondence as containing a request for an adjournment of the proceedings simply on the basis that she wished to obtain legal representation. Further advice was given (see the transcript of day one page 6 E to F). The CCC then ruled as follows:

"The issue before the panel is whether it should acceded to the Registrant's application for an adjournment or it should proceed in her absence. The panel has considered carefully the material which has been placed before it in relation to the proof of posting which includes the correspondence from the Registrant since the last hearing. It is clear that the Registrant will not be able to obtain legal representation if there is an adjournment. Unison, her union, is not prepared to represent her. She is unable to afford independent legal representation and, as she is a member of a trade union, she is not entitled to free representation. In the circumstances there is no purpose in adjourning on the grounds that she advances. It is moreover the case that the fitness to practise proceedings do not rely on the Registrant being represented. It is right to observe that the NMC will be represented, but in the absence of any representation for the Registrant the Legal Assessor has a role to protect the Registrant's interests and make sure that her case is before the panel.

This is a relatively old case. The initial complaint was made in June 2007. It relates to matters which took place in the late summer of 2004. The Registrant received her notice of referral to the Conduct and Competence Committee in October 2008. She has had sufficient time to explore all the avenues available to her to obtain representation. Moreover, she has had a specific opportunity to obtain representation since the hearing was adjourned in early June, if that was possible. On that occasion the three witnesses who attend today were in attendance. In the view of the panel it is not in the public interest to delay the hearing of this case any further and, indeed, it would not be fair to the witnesses who have attended again today. The Registrant has stated that she does not intend to be present without representation. In the light of the foregoing the panel refuses the application to adjourn and finds it is appropriate to proceed with the hearing in the Registrant's absence."

11. The CCC then heard evidence from a number of witnesses relating to 31 August 2004 letter. The bundle contains correspondence both previous and subsequent to the letter which indicates that the appellant was lining up and then pursuing discrimination proceedings against the Trust. On 9 August 2004, the appellant wrote to the Trust warning them that a letter would be sent to the patients on the dialysis unit. On 20 September 2004, in a letter to which the CCC was not referred, in my view wrongly, the appellant wrote again to the Trust explaining her position as regards some of the earlier correspondence. The letter further stated:

"... all the patients in the unit were aware of the problems in the unit. It was an open secret that things were not well between Cathryn Greaves and myself. I was often asked by patients why I looked so unhappy on the unit. They were aware that I had left the unit because of the problems. I am also aware the patients have been overhearing discussions taking place about me on the unit. Again, to prevent any misconception, I felt the patients should be told why I had to leave the unit the way that I did. I believe that the whole world should know and

will know the terrible problems and injustice that I have suffered ..."

12. At the end of the first day of the hearing, the CCC found the charges proved. Given that the appellant was the author of the 31 August 2004 letter, there could be no dispute about the bare facts. At the start of day two, the CCC heard further evidence relating to the letter and explored issues of possible ill health and remorse. As regards the latter, there was none. It was also established that the appellant did not cooperate with the Trust in relation to finding her somewhere else to work. Employment tribunal proceedings were also explored and it was established that the appellant had been successful in none of them. The legal assessor asked a number of questions designed to draw out the points the appellant herself had been making in correspondence.

13. The CCC found the appellant guilty of misconduct on the basis of the established facts. In short:

> "The explanation of the Registrant, to the effect that she was driven to writing the letter by reason of the treatment which she received at the hands of her manager, and the failure of the trust to investigate her grievances, does not, in the view of the Panel, justify writing the open letter to the patients.
>
> The account of the Registrant, as set out in her correspondence with the NMC, was explored by the Legal Assessor with the witnesses called by the NMC. As the Registrant did not attend to give that account herself, she could not, therefore, be cross-examined and the panel must give appropriate weight to what it has heard. Further, the Registrant was inconsistent about her explanation for writing the letter ..."

14. In relation to this last point, the appellant stated in her letter dated 9 August 2004 that she needed to explain why she was not on the unit. In a much later letter written in November 2005, she said that she wrote the letter to reassure patients of her health and safety credentials.

15. Critically, in my judgment, the CCC found that the appellant was in breach of three provisions of the NMC Code, paragraphs 1.2, 2.3, and 4, in four overlapping respects: namely, (1) putting her own concerns before considerations of the health and welfare of patients; (2) taking action which had the potential to cause significant distress to patients; (3) failing to observe professional boundaries and, (4) failing to cooperate with colleagues.

16. The CCC further found on the same occasion that the appellant's fitness to practise was impaired. There was no evidence of remorse, contrition, apology or willingness to learn from past mistakes. Instead, the appellant had embarked on a course of extensive litigation against the Trust. The final stage of the proceedings involved consideration being given to the question of sanction. In this regard, the CCC purported to follow the Indicative Sanctions Guidance published by the NMC. As in all these cases, it was the duty of the CCC to weigh the private interests of the registrant against the tripartite public interest in protecting the public, maintaining standards in nursing and upholding

the reputation of the nursing profession and the NMC itself. The CCC expressly referred to these matters as well as to the need for proportionate sanction.

17. The core reasoning of the CCC was as follows:

> "Next the panel considered whether to impose a Suspension Order. Such an order is only appropriate if the Registrant's misconduct is not fundamentally incompatible with continuing to be registered with the NMC. That is, therefore, the issue which the Panel has addressed. The fundamental implausibility is where there is a serious departure from the Code of Professional Conduct and/or where there is continuing risk to patients, clients and/or where confidence in the NMC would be undermined if the person is not struck off.
>
> The Panel's findings in relation to misconduct represent serious breaches of the Code. The Panel has taken into account the fact that the Registrant did not engage with the internal investigation and, indeed, this inquiry to explain her position and to demonstrate any insight, as well as her continuing litigation with the trust. In light of these observations, the Panel is not confident that she can or will effect the necessary changes in her behaviour. A Suspension Order is, therefore, not appropriate.
>
> In the light of the foregoing, the panel considers that it has no alternative but to impose a Striking-off Order. The behaviour of the Registrant was fundamentally incompatible with being on the Register. The Registrant demonstrated an inability to work with colleagues to the detriment of patients, which represented serious breaches of the Code. Therefore, the Panel has decided to impose a Striking-off Order."

18. In her amended grounds of appeal, the appellant advances four grounds: namely, (1) the CCC erred in law and/or in principle in deciding to proceed in the appellant's absence; (2) the CCC's decision on misconducted was perverse; (3) the CCC's decision on fitness to practise was also perverse; and (4) the CCC's imposition of the extreme sanction of strike off was "clearly inappropriate" in a case of this kind.

19. I propose to address these four grounds in turn. In developing his first ground, Mr Mark Beaumont for the appellant reminded me of the decision of the House of Lords in R v Jones [2002] UKHL 5 where it was held that in the context of criminal proceedings the judicial discretion to proceed in the absence of a defendant should be exercised with "great caution" even where he had voluntarily absconded. The House of Lords endorsed a checklist of factors itemised in paragraph 22 of the judgment of the Court of Appeal and observed that even in a case where a defendant had made a deliberate decision not to attend, it was generally desirable that he should be legally represented. Mr Beaumont submitted that this reasoning has been applied to disciplinary tribunals: see, for example, the decision of the Privy Council in Tait v The Royal College of Veterinary Surgeons [2003] UKPS 34 and of the Divisional Court in Norton v Bar Standards Board [2014] EWHC 2681 (Admin). In both these instances, the relevant

decisions were quashed, because no reference was made by the panel or the tribunal to the R v Jones checklist.

20. Mr Beaumont's point is that the legal assessor made no mention of relevant authority, in particular the need to exercise what he said was utmost care and caution in making a decision of this sort. It follows, submitted Mr Beaumont, that the CCC's decision on the adjournment issue was fatally flawed.

21. The most recent and relevant authority in this area is the decision of the Court of Appeal in GMC v Adeogba [2016] EWCA Civ 162. In that case, Sir Brian Leveson P. reviewed the jurisprudence I have mentioned and placed a slightly different emphasis on some of it. In a disciplinary context, the key factors were not merely fairness to the registrant, but fairness to the regulator - there the GMC - acting in the public interest. The GMC had no power to compel attendance. The registrant has an express obligation to engage with the regulator and the disciplinary process. In short:

> "Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration, along with the methods used by the practitioner to communicate with the GMC and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the panel is aware with fairness to the practitioner being a prime consideration, but fairness to the GMC and the interests of the public also taken into account. The criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the GMC and the practitioner." [Paragraph 23 of the judgment]

22. Hickinbottom J recently applied these principles in a non-medical disciplinary context: see Rehman and others v Bar Standards Board and others [2016] EWHC 2023 (Admin).

23. In the present case, the legal assessor did not refer to any of the authorities. Had he done so, the law was more favourable to a registrant than it is now. That said, the declaratory theory of the common law applies. In my judgment, the legal accuracy, or otherwise, of the CCC's ruling must be viewed through the prism of Adeogba. What the legal assessor did say was:

> "To proceed in the absence of the Registrant is clearly an important thing because you have the right, if you find the case proved against her, to remove her from the register. Therefore, whether or not to proceed in her absence is a matter that you should consider very seriously in the interests of justice, bearing in mind not only her own rights but also the rights of the NMC and the obligation of the NMC to protect the public, and the rights and interests of any witnesses the NMC is intending to

call."

24. In my judgment, there is no difference in substance between the advice the legal assessor gave the CCC on this occasion and what fell from the Court of Appeal in Adeogba. The legal assessor said in terms that the question of an adjournment required very serious consideration, not least because the potential consequences for the appellant are so serious.

25. In the instant case, the CCC was aware that the appellant had deliberately refused to attend the hearing and to engage with the disciplinary process. There was no prospect of the appellant obtaining legal representation within a reasonable time or at all. As a secondary factor, to the extent that the appellant's interests needed separate protection, the legal assessor could come to her aid. There was a clear public interest in bringing these stale proceedings to an end, although, as I have already wryly observed, the majority of the delay appears to be the fault of the NMC.

26. The harsh reality of the matter was that the appellant was caught between the metaphorical rock and a hard place. If legal representations could be obtained pro bono, the appellant had already had plenty of time within which to secure the services of an advocate to advance her interests. If legal representation could not be obtained on that footing, it was never going to be secured. Mr Beaumont does not submit that the NMC erred in law in failing to pay for and secure legal representations for the appellant. The case could not be put off indefinitely.

27. By failing to attend the hearing to make her application and then, if it were unsuccessful, to advance her defence, the appellant took the risk that the CCC would be driven to conclude that it should proceed in her absence. It has not been demonstrated that the CCC erred in law or in principle in refusing the appellant's application to adjourn and in therefore deciding to proceed in her absence. The first ground must therefore be refused.

28. Mr Beaumont's oral argument in response of his second ground of appeal went along the lines that a finding of misconduct should not have been made simply on the basis that the appellant had breached the Code, even if she did in three respects. To say otherwise would be to fix the appellant with a form of strict liability. What is required in addition is a finding that the conduct in question is "seriously reprehensible": see, for example, the decision of the Board of Visitors in Walker v Bar Standards Board [2013] (Case Number PC 2011/0219). That of course was a case which turned on its own specific facts. Mr Beaumont characterised the August 2004 letter as:

> "A naive, emotional and ill-advised action on her part rather than anything more."

29. In his reply, Mr Beaumont apologised on his client's behalf for the letter, but that, in my view, comes far too late. Mr Beaumont further submitted that the legal assessor should have advised the CCC as to the meaning of "misconduct" and, in particular, the need to find serious reprehensibility.

30. The difficulty with the second ground is that the CCC found in terms that the appellant's actions were deliberate and pre-planned and that they amounted to serious breaches of the Code. As for the latter, that finding is made expressly in the context of sanction. Further, the provisions of the Code which were in play were of considerable importance.

31. The CCC found, amongst other things, that the appellant acted in a way that undermined public trust and confidence, failed to focus exclusively on the needs of the patients and clients, and undermined team relationships. Although it is true that only one patient saw the letter and that the evidence was that he did not appear to be troubled or distressed by it, it was clearly the appellant's intention that the letter receive as wide a readership as possible. There was evidence before the CCC that there were vulnerable patients in the ward and one nurse said that she thought the letter could have caused a lot of distress. I accept the submission of Mr Adam Solomon for the respondent that if patients were told that there was disharmony within the nursing team that could well cause distress, in as much as that dysfunction had the capacity to impact on their own care. Further, the appellant had asserted in the letter that the unit manager had been accusing her of being unable to needle dialysis patients properly.

32. In my view, it was not incumbent on the legal assessor to spell out the meaning of "misconduct" in a case such as this. There might be situations, in particular those involving one-off acts of clinical negligence or misjudgement, where assistance of a legal nature might be helpfully given, but this was a case which classically turned on the expert experienced judgment of this Committee. Overall, I am unable to accept the appellant's second ground.

33. As for the appellant's third ground, it is said that she worked as a nurse without any disciplinary issues between 2004 and 2009, that a letter of 20 September 2004 clearly explained and set out her position and that the CCC was misled about the existence of that letter.

34. The CCC's decision on fitness to practise could only be based on the evidence which was or ought to have been available to it. The letter of 20 September 2004 ought to have been made available to the CCC, but I agree with Mr Solomon that it does not avail the appellant at all. It is merely a dogged restatement of her point of view, an exercise in self-justification rather than an expression of remorse or contrition. There was nothing in the 20 September letter which might have availed the appellant on the question of insight.

35. The appellant cannot rely on evidence that she failed to place before the CCC. If she indeed worked for a different Trust between 2005 and 2009, that might have assisted her case, particularly if she did so without incident, but there was no evidence to that effect before the CCC. Instead, the CCC proceeded on the footing that the appellant had a good record until 2002, but this was an isolated incident and that after December 2005 there was no material which suggested that she had learned from her mistakes. In my judgment, the CCC was entitled to adopt that approach. It follows that the third ground too must be rejected.

36. The appellant's fourth ground is the most troubling and it is the one that has given me cause to hesitate. I was taken to three authorities which bear on the relevant test in this jurisdiction. These were Ghosh v General Medical Council [2001] 1 WLR 1915, Dad v General Dental Council [2000] 1 WLR 1538 and Salsbury v Law Society [2009] 1 WLR 1286. There are slight differences in expression and emphasis in the earlier cases. I propose to follow the "clearly inappropriate" test set forth in paragraph 30 of the judgment of Jackson LJ in Salsbury.

37. Mr Beaumont submits that it is hard to envisage a clearer example of a disproportionate sentence. The CCC was wrong to proceed on the premise that the appellant had failed to cooperate with the investigation and the CCC was clearly misled about the 20 September 2004 letter. Further, there is no evidence that any patient was distressed by the letter and the appellant's litigation against the Trust and others was an irrelevant consideration.

38. Under the Indicative Sanctions Guidance, the CCC had power to impose the sanction of suspension for "misconduct but not fundamentally incompatible with continuing to be registered with the NMC". Striking off is indicated for the following:

> "... serious departure from the relevant standards as set out in the Code of Professional Conduct ... and/or where there is a continuing risk to patients/clients or others."

39. Examining the CCC's reasoning process at pages 87 and 88 of the bundle as set out above, it is clear that the Committee went through the available sanctions in order of increasing severity, thereby following standard procedure in cases of this sort. It is also clear that the CCC concluded both that the appellant had perpetrated serious breaches of the Code and that there was continuing risk to patients.

40. I have given this ground careful consideration. I have already made the point that even had the 20 September 2004 letter been drawn to the CCC's attention, it would not have improved the appellant's overall chances. As a matter of fact, including secondary facts which the CCC was entitled to draw, the appellant had not cooperated with the regulator. She had tenaciously stuck to her guns quite convinced in the rightness and justice of her cause. She had exhibited no remorse or insight. In particular, she could not see that ventilating employment grievances before patients was (1) putting herself first and (2) at the very least capable of causing them consternation. Instead, as the CCC put the matter:

> "She continues to dispute the outcome of the grievances which she made against her colleagues which form the basis of the letter which she wrote."

41. The litigation was therefore capable of being understood as betokening a continuing lack of insight. She also took a deliberate and considered policy decision not to attend the hearing. At the very least, no inferences favourable to her case could be drawn. The reference in the CCC's decision to the appellant having "demonstrated an inability to work with colleagues to the detriment of patients which represented serious breaches

of the Code" was no doubt intended to cover the undated letter the appellant wrote to colleagues, probably also on 31 August 2004, which showed that her relationships with a number of them had broken down.

42. Accordingly, I agree with Mr Solomon that the CCC was entitled to have regard to the subsequent history, including the litigation to which I have referred. Had the appellant apologised for the letter before the CCC and demonstrated a modicum of self-awareness and remorse, she would probably not have been struck off. However, her conduct over time gave the CCC absolutely no confidence that she had learned any lessons. The CCC clearly felt that it had no option in the circumstances but to strike off the appellant and the tone of its decision is one of anxious consideration.

43. Overall, I cannot conclude that this was a clearly disproportionate sanction. This appeal must be dismissed.

44. MR SOLOMON: I am grateful, my Lord, for that thorough judgment. I would seek an order for the NMC's costs of this hearing.

45. MR JUSTICE JAY: Your claim is in the sum of £7,000.

46. MR SOLOMON: Yes, £7,192, but I think we have probably overestimated by about half an hour the amount of time of attendance at hearing. We will round it down to £7,000, my Lord. That is being generous to Mrs Harold. It is an hourly rate of £196 per hour.

47. MR JUSTICE JAY: What is your brief fee?

48. MR SOLOMON: £3,500.

49. MR JUSTICE JAY: Including the skeleton argument?

50. MR SOLOMON: Yes, which in terms of breaking that down for your Lordship, if you need it, was at least a day's preparation for today, probably slightly more.

51. MR JUSTICE JAY: That is three days' work.

52. MR SOLOMON: Which is about a third of my general commercial charge-out rate, so it is significantly discounted.

53. MR JUSTICE JAY: Okay.

54. MR BEAUMONT: I do not know the answer. I simply raise this as a question for my learned friend. The order your Lordship made in relation to the argument over an attempt to strike the appeal out --

55. MR SOLOMON: It is just for this hearing.

56. MR BEAUMONT: The costs order was appellant's costs in the appeal.

57. MR JUSTICE JAY: Yes.

58. MR BEAUMONT: I question whether any of these should be stripped out.

59. MR SOLOMON: No.

60. MR BEAUMONT: I can well understand how my learned friend is entitled to be paid for his written work of course. I struggle to deem his fee unreasonable, despite the fact that mine is only £1,000, but that is due to the extenuating circumstances. I am not going to attack that, but his skeleton argument, as I understand it, is included in the £3,500.

61. MR JUSTICE JAY: Yes, it is.

62. MR BEAUMONT: So that leaves £3,000 for the NMC's own costs. Of course one could take a broad-brush view and say it could be infinitely worse or better, depending on which view you take, but it is difficult to agree or not agree in circumstances where all the work has been done by counsel. The bundle was assembled --

63. MR JUSTICE JAY: No, some was done by the solicitors. If it is difficult to agree or disagree, why do you not just let me decide what a fair amount is?

64. MR BEAUMONT: Of course I will. Simply this, Mrs Harrold prepared the appeal bundle and she did a reasonably good job, if I may respectfully say so.

65. MR JUSTICE JAY: Yes, she did.

66. MR BEAUMONT: And as she did neatly in relation to the authorities, but the point is the NMC did not have to do any of that work. So, I just wonder how they have managed to incur £3,000 worth of costs.

67. Ms Thompson, who is named as a grade A solicitor, I know she is a barrister, at £317 an hour, query what role she has actually played apart from a long time ago producing a skeleton argument, as I recall, on the strike out, which has to be stripped out, because they are not entitled to those costs.

68. MR JUSTICE JAY: No. That is not included.

69. MR BEAUMONT: It is very difficult when one does not know exactly what work was done.

70. MR JUSTICE JAY: One can see though. For the hearing, one solicitor has been charged, Ms Hanson, at £196 an hour.

71. MR BEAUMONT: It is not particularly proportionate when the solicitors have charged £980 to be here, which is only £20 less than I have charged to conduct the whole day.

72. MR JUSTICE JAY: I know, but, as you have just said, there are extenuating circumstances. That is all your client can afford.

73. MR BEAUMONT: There we are. Those are my comments, such as they are.

74. MR JUSTICE JAY: The NMC is a public body. It receives its funds from registrants alone. From my experience of other cases, I think £7,000 is entirely reasonable all in. Whether you look at it on a macro or a micro view, looking at individual items, they are only claiming for five hours or a bit less for today in relation to one solicitor. I cannot see any problem with the amount claimed of £7,000. It is only covering the costs of today. The costs of last time, whichever day it was in September --

75. MR BEAUMONT: 20th I think.

76. MR JUSTICE JAY: The result, the appellant having lost the appeal, is that each party bears its own costs of that hearing. Thank you.

77. MR SOLOMON: I am grateful, my Lord. We will draw up the order and send it to your Lordship via your Lordship's clerk.

78. MR JUSTICE JAY: It is reasonably straightforward. The appeal is dismissed and you are having your costs in the sum of £7,000. I do not think we need a draft, but thank you for the offer. Thank you.