Gupta (Dr. Prabha) v The General Medical Council (GMC) [2001] APP.L.R. 12/18

Privy Council Appeal No. 44 of 2001 from the Professional Conduct Committee of the General Medical Council before Lords Steyn, Hobhouse, Rodger. 18th December 2001

JUDGMENT delivered by Lord Rodger of Earlsferry

1. On 1 June 2001 the Professional Conduct Committee of the respondent Council ("the Committee") found the appellant, Dr Prabha Gupta, guilty of serious professional misconduct, directed that her name be erased from the register, found that it would be in the appellant's own best interests that her registration should be suspended with immediate effect and accordingly ordered that her registration be suspended forthwith. On 13 June the appellant lodged and served her petition of appeal to their Lordships' Board under section 40 of the Medical Act 1983. On 22 June the appellant issued proceedings in the High Court under section 38(6) of the 1983 Act seeking the termination of the immediate suspension of her registration. On 25 July 2001 the Administrative Court quashed that part of the Committee's decision in which it ordered that the appellant's registration should be terminated forthwith: ***The Queen (Gupta) v General Medical Council*** The Times 16 October 2001. The effect of the order of the Administrative Court was to permit the appellant to continue to practise pending the determination of her appeal to the Board.

2. Where a case has been referred to the Committee for inquiry, rule 17 of The General Medical Council Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order in Council 1988 (as amended) requires the solicitor appointed by the respondent Council to send the medical practitioner concerned a notice of inquiry specifying *"in the form of a charge or charges, the matters into which the inquiry is to be held"*. The charge against the appellant before the Committee was in these terms:

   "1a On 9 March 1996, Dr R P Gupta was found guilty of serious professional misconduct, and a direction made that his name be erased from the Register. A direction was also made that his registration should be suspended with immediate effect;
   b following the lodging, and subsequent withdrawal of an appeal, Dr Gupta's erasure took effect on 25 July 1996, and Dr Gupta has not been registered with the GMC since this date;
   2. Dr R P Gupta
   a. was in 1996 and is your husband;
   b. in March 1996 was your partner;
   3. you were aware of the matters set out at heads 1 and 2 above;
   4 a. between about May 1996 and about December 1998 Dr R P Gupta took part in consultations which you held with various patients who attended your surgery premises at 8 St Kilda Road, Ealing, London W13 9DE, and 59 Rutland Road, Southall, for medical services;
   b. you permitted Dr R P Gupta to take part in such consultations;
   5a. between about May 1996 and about December 1998 Dr R P Gupta held consultations with various patients who attended your surgery premises at 8 St Kilda Road, Ealing, London W13 9DE, and 59 Rutland Road, Southall, for medical services;
   b. you knew that Dr R P Gupta was holding consultations with patients;
   6a. in or around mid-1997 you were made aware that Dr R P Gupta had recently given an MMR injection to a child;
   b. in or about July 1998 you were aware that Dr R P Gupta
   i. had been consulted by Mrs 'A' at the Southall surgery premises;
   ii. had written a referral letter for Mrs 'A' to Ealing Hospital;
   7a. you permitted Dr R P Gupta to hold consultations with patients at your surgery premises;
   b. you failed to prevent Dr R P Gupta holding consultations with patients at your surgery premises."

   As can be seen from heads 1 and 2, the Dr R P Gupta referred to in the charge is the appellant's husband whose name was erased from the register for serious professional misconduct in 1996. The allegations in heads 4, 5, 6 and 7 relate to instances where he was said to have acted as a medical practitioner in the appellant's practice.

3. Before the Committee the appellant admitted the allegations in heads 1, 2 and 3. Addressing the appellant, the chairman explained the Committee's decision on the allegations in the charge in these terms:

   "Dr Gupta, having carefully considered all the evidence, the Committee have made the following findings of fact in your case. Heads 1, 2 and 3 of the charge have been admitted and found proved. Heads 4(a) and 4(b) have not been found proved. Heads 5(a) and 5(b) have been found proved. Heads 6(a), 6(b)(i) and 6(b)(ii) have been found proved. Heads 7(a) and (b) have been found proved."

   The only other passage in the transcript which gives any indication of the Committee's thinking about the evidence on the facts is to be found in its determination on the sanction to be imposed. When addressing the appellant, the Chairman said, *"Your evidence to this Committee was inconsistent and by reason of our determination untruthful in many respects"*.

4. The appellant appeals against the decision of the Committee finding heads 5, 6 and 7 proved. She does so, first, on the basis that the Committee failed to give reasons for its finding that, as a matter of fact, these heads had been proved. She argues, secondly, that in any event, in the exercise of its appellate function, this Board should take account of various criticisms of the evidence led in support of these heads and, on that basis, should allow her appeal against the Committee's decision on these matters of fact. On the other hand, the appellant accepts that, if those findings were properly made, the Committee was entitled to conclude that she had been guilty of serious professional misconduct. She appeals, however, against the Committee's direction that her name should be erased from the register, on the ground that the sanction was excessive in all the circumstances.

5. In arguing that the Committee's decision was bad for want of reasons, Ms Booth readily acknowledged that she was asking the Board to break new ground – or, as she put it, to take the next incremental step in a developing field. In that connexion she drew attention to the decision of the Board in ***Stefan v General Medical Council*** [1999] 1 WLR 1293 holding that there was a common law duty on the Health Committee of the respondent Council to give at least a short statement of the reasons for its decisions. As counsel herself pointed out, Lord Clyde had specifically acknowledged (at pp 1296H –1297A) that there were differences between appeals from the Health Committee and appeals from the Professional Conduct Committee, not least because appeals from the Health Committee were confined to points of law. In *Stefan* their Lordships had therefore refrained from expressing any view as to the existence of any equivalent duty on the Professional Conduct Committee to give reasons.

6. The position as to the duty of the Professional Conduct Committee to give reasons, as presently understood, is to be found in ***Selvanathan v General Medical Council*** [2001] Lloyd's Rep Med 1. In that case the amended allegation against the practitioner

was to the effect that he had knowingly given a false and misleading response to an inquiry by his local health authority in relation to a complaint by a patient. The evidence against the practitioner was all agreed and the Committee's decision depended on the inferences drawn from that evidence and from the oral evidence given by the practitioner. After considering the evidence, the Committee decided that particular heads of the charge had been proved. The Committee gave no reasons for its decision. The practitioner appealed to this Board on the basis that the Committee should have given its reasons for finding against the practitioner on the charge that he had known that his response to the health authority had been false and misleading. Giving the decision of the Board, Lord Hope of Craighead first of all drew attention to the nature and composition of the Committee, comprising medical practitioners and lay members, acting with the legal advice of their assessor. The rules required the Committee, as a committee, to reach a view on the matters for its determination and there was no provision for expressions of dissent. *"In these circumstances,"* said Lord Hope at p 7,

"it is not to be expected of the Committee that they should give detailed reasons for their findings of fact. A general explanation of the basis for their determination on the questions of serious professional misconduct and of penalty will be sufficient in most cases.

In the present case the complaint is that reasons should have been given to explain the basis upon which the Committee found against the appellant on the questions of fact raised by head 2(b). It was plain, however, from the outset that their decision on this point was going to depend upon inferences which it was open to them to make from agreed facts and on the Committee's assessment of the appellant's credibility. The issue was a relatively simple one, and all the appellant needed to know in order to decide what to do next was the decision which the Committee had reached upon it. There are no grounds for thinking that the appellant has suffered any prejudice due to the absence of reasons directed specifically to this finding. In these circumstances their Lordships do not consider that it was necessary for reasons for this part of the Committee's decision to be given."

In that passage their Lordships affirmed the existence of a duty to give a general explanation for the Committee's decisions on questions of serious professional misconduct and of penalty. By contrast, they rejected the existence of any such duty to give reasons for the Committee's decision on the matters of fact in that case.

7. Counsel did not suggest that the decision in ***Selvanathan*** had been incorrect in this respect or that it would have had to be decided differently today. She argued, however, that ***Selvanathan*** was a very particular kind of case where the factual issue had been extremely simple. The terms of the letter sent by the practitioner were not disputed, nor was it disputed that they had been false and misleading. The only issue for the Committee was whether the practitioner had known that they were false and misleading. This really depended on the Committee's assessment of the practitioner's evidence. In those circumstances the practitioner could easily see, from the Committee's decision to find that he had known that the reply was false and misleading, that it had rejected his evidence. In a simple case like that it was accordingly not necessary for the Committee to give reasons. Except in such very straightforward cases, however, the Committee should now give reasons – not of the sophisticated nature that could be demanded of a professional judge but sufficient to inform the parties in broad terms as to why the Committee had reached its decision. A case like the present fell into the category of cases where reasons of this kind required to be given: the allegations concerned a tract of alleged behaviour on different occasions over a period of years, the evidence was hotly disputed, acute questions of credibility arose and the Committee had apparently accepted some crucial evidence from one particular witness while rejecting other crucial evidence from the same witness.

8. Ms Booth argued that the requirement to give reasons for all but the most straightforward decisions on matters of fact sprang from the development which had occurred, since ***Selvanathan***, in the Board's understanding of its role in appeals from the decisions of the Committee. In ***Ghosh v General Medical Council*** [2001] 1 WLR 1915, the practitioner accepted the Committee's finding that she had been guilty of serious professional misconduct but appealed against the sanction of erasure. Counsel for the practitioner argued that either the Committee itself had to be an independent and impartial tribunal or, if not, that its processes had to be subject to control by an appellate body with full jurisdiction to reverse its decision. Counsel for the respondent Council in that case did not dispute that submission, which their Lordships accepted. At p 1923, in paragraph 33 of the opinion of the Board, Lord Millett observed:

"Practitioners have a statutory right of appeal to the Board under section 40 of the Medical Act 1983, which does not limit or qualify the right of … appeal or the jurisdiction of the Board in any respect. The Board's jurisdiction is appellate, not supervisory. The appeal is by way of a rehearing in which the Board is fully entitled to substitute its own decision for that of the committee. The fact that the appeal is on paper and that witnesses are not recalled makes it incumbent upon the appellant to demonstrate that some error has occurred in the proceedings before the committee or in its decision, but this is true of most appellate processes."

The fact that the Board's jurisdiction is appellate rather than merely supervisory was reaffirmed a few weeks later by the Board, with the same members, in ***Preiss v General Dental Council*** [2001] 1 WLR 1926. The practitioner appealed, inter alia, on the ground that the allegations which the Professional Conduct Committee of the General Dental Council had found proved did not amount to serious professional misconduct. Giving the judgment of the Board (at p 1935E–1936A in paras 26– 27), Lord Cooke of Thorndon indicated that the relevant provisions of the Dentists Act 1984 appeared manifestly designed to give a full right of appeal to Her Majesty in Council, extending to questions of fact as well as of law and not limited even as to matters of degree or discretion,

"though as with most such general appeals the Judicial Committee will have to be satisfied before allowing an appeal that the decision of the PCC has been shown to have been wrong. It would be unusual for the Board to hear oral evidence, and allowance must be made for any advantages that the PCC has derived from seeing and hearing the witnesses; but this does not mean that for the purposes of article 6(1) the Board lacks full jurisdiction over the case.

*27. Since the coming into operation of the Human Rights Act 1998, with its adjuration in section 3 to read and give effect to legislation, so far as it is possible to do so, in a way compatible with the Convention rights, any tendency to read down rights of appeal in disciplinary cases is to be resisted. In **Ghosh v General Medical Council** [2001] 1 WLR 1915, 1923 F – H the Board has recently emphasised that the powers are not as limited as may be suggested by some of the observations which have been made in the past. An instance, on which some reliance was placed for the General Dental Council in the argument of the present appeal, is the observation in Libman v General Medical Council [1972] AC 217, 221, suggesting that findings of a professional disciplinary committee should not be disturbed unless sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence was misread. That observation has been applied from time to time in the past, but in their Lordships' view it can no longer be taken as definitive. This does not mean that respect will not be accorded to the opinion*

*of a professional tribunal on technical matters. But, as indicated in **Ghosh**, the appropriate degree of deference will depend on the circumstances."*

The Board then proceeded to give its own opinion, differing from the Professional Conduct Committee and finding that one of the failures amounted to serious professional misconduct and that the others did not.

9. Put shortly, counsel's submission was that, since this Board had recognised that its role was not merely to supervise the decision-making process of the Committee but to act as an appeal court, having power to reconsider matters of fact, this new, full, appellate role required that the decisions of the Committee should now be given in a form that would permit the Board to perform that role. This meant that, except in the simplest of cases, the Committee would have to give reasons indicating why they had found particular allegations proved. Without such reasons the practitioner could not decide whether he had a proper basis for appealing to the Board and the Board could not decide whether the Committee's decision on the relevant matters of fact had been soundly based. This is a not unfamiliar argument which has been advanced with varying success in a number of contexts, as can be seen from the discussion in *Stefan* at pp 1298H–1299D. Their Lordships are not persuaded that, in itself, their role in appeals of this kind requires the Committee to give reasons for its findings of fact.

10. The decisions in ***Ghosh*** and ***Preiss*** are a reminder of the scope of the jurisdiction of this Board in appeals from professional conduct or practices committees. They do indeed emphasise that the Board's role is truly appellate, but they also draw attention to the obvious fact that the appeals are conducted on the basis of the transcript of the hearing and that, unless exceptionally, witnesses are not recalled. In this respect these appeals are similar to many other appeals in both civil and criminal cases from a judge, jury or other body who has seen and heard the witnesses. In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position. In considering appeals on matters of fact from the various professional conduct committees, the Board must inevitably follow the same general approach. Which means that, where acute issues arise as to the credibility or reliability of the evidence given before such a committee, the Board, duly exercising its appellate function, will tend to be unable properly to differ from the decisions as to fact reached by the committee except in the kinds of situation described by Lord Thankerton in the well-known passage in ***Thomas v Thomas*** [1947] AC 484, 487–488.

11. Ms Booth submitted that, even in cases which turned on the credibility or reliability of the witnesses before the Committee, the Committee could and should give reasons explaining what it had done. In a case like the present, those reasons might need to go little further than saying that the Committee had preferred the evidence of a particular witness and had rejected the evidence of another witness, perhaps in particular the practitioner concerned. In this way the practitioner would be able to understand the Committee's thinking.

12. Their Lordships are unable to accept that submission. The form of the notice given to practitioners was amended in 1988 so as to ensure that they would be given considerable detail about the conduct on which the respondent Council were basing their complaint. In its determination the Committee finds a particular charge or head of a charge proved or not proved. The practitioner is therefore able to see, in the same detail, which allegations have been established. This in turn will usually mean that the practitioner will have a very good idea what evidence the Committee has accepted. In some cases, such as the present, the Committee's decision will show that it has felt able to find one allegation proved on the basis of the evidence of a particular witness, while feeling unable to find another allegation proved on the basis of some other part of the evidence given by the same witness. In this way, in cases involving issues of credibility and reliability, the structured determination of the Committee dealing with the various heads of the charge, will in itself reveal much about its reasons for reaching its decision. As the European Commission of Human Rights noted in ***Wickramsinghe v United Kingdom*** (Application 31503/96), 9 December 1997, the fact that the practitioner can study a transcript of the hearing, including not only the evidence but the submissions on the evidence by the respective parties, further assists the practitioner in understanding not only which witnesses' evidence the Committee accepted and which it rejected, but why it did so.

13. To go further and to insist that in virtually all cases raising issues of credibility and reliability the Committee should formally indicate which witnesses it accepted and which it rejected would be to require it to perform an essentially sterile exercise. For the reasons that their Lordships have already given, it would not in practice advance the appeal on the matters of fact which the Committee had found proved on the basis of its assessment of the witnesses. In making this point, their Lordships are following the approach which the Board has taken when exercising its full appellate jurisdiction in other spheres. In ***Wallace v The Queen***, The Times, 31 December 1996, a criminal appeal from Jamaica, the trial judge had heard evidence about certain statements on a voir dire, lasting four days, in the absence of the jury. In giving his decision, the trial judge had simply said that he found that the statements had been given voluntarily by both the accused. The appellant appealed inter alia on the ground that, as a general rule, a judge should always give reasons for any procedural ruling. The Board rejected that general contention and held that whether reasons should be given, and with what particularity, would depend on the particular circumstances. Lord Mustill continued at para 27:

"Here, the trial judge was faced with an irreconcilable conflict of evidence between the police officers and the defendant, turning on credibility alone. No principles of law were in issue, and there was no discretion to be exercised. The only question was whether the judge believed one set of witnesses or the other. His ruling leaves the answer in no doubt. Simply to announce that he accepted the account given by the officers and the Justice, and found the appellants' story unworthy of credit would not have advanced an appeal. Furthermore, although in cases where reasons are given it is prudent for the judge to say no more than strictly necessary, it is hard to see how a mere summary would have been appropriate in the present case; for there was always the risk that if anything was omitted in the interests of brevity the defendants would argue on appeal that the judge had overlooked it. In practice, he could scarcely stop short of a fully reasoned analysis. Their Lordships can see nothing to recommend such a course, and good reason not to follow it."

Their Lordships would adopt the reasoning in this passage in the present context where it applies a fortiori, given the size and composition of the Committee, to which Lord Hope drew attention in *Selvanathan*. They are accordingly satisfied that there

is no general duty on the Committee to give reasons for its decisions on matters of fact and, more particularly, that there is no duty to do so in a case like the present where, as the appellant's solicitor was at pains to emphasise to the Committee, its decision depended essentially on resolving questions of the credibility of the witnesses led before it. The Committee's decision on the individual heads of the charge, when considered in the light of the transcript of the evidence, reveals sufficiently clearly the reasons for its decision. Nothing more was required in this case. It so happens, however, that a further indication of the Committee's reasons could be found in its indication to the appellant in person that it had found her evidence to be untruthful in many respects. That made the position even clearer.

14. Their Lordships would add this. They have rejected the submission that there is a general duty to give reasons in cases where the essential issue is one of the credibility or reliability of the evidence in the case. None the less, while bearing in mind the potential pitfalls highlighted by Lord Mustill, the Committee can always give reasons, if it considers it appropriate to do so in a particular case. Their Lordships would go further: there may indeed be cases where the principle of fairness may require the Committee to give reasons for their decision even on matters of fact. Nothing in ***Selvanathan*** is inconsistent with that approach, while the general reasoning in *Wallace* supports it. It is also in line with the observations of Lord Steyn giving the judgment of the Board in ***Rey v Government of Switzerland*** [1999] 1 AC 54. That case concerned extradition proceedings in the Bahamas in which the magistrate had not given reasons for her decision on certain disputed matters of fact. The Board was not prepared to hold that there is a general implied duty on magistrates to give reasons in respect of all disputed issues of fact and law in extradition proceedings. Lord Steyn continued, however, at p 66H:

"But their Lordships must enter a cautionary note: it is unnecessary in the present case to consider whether in the great diversity of cases which come before magistrates in extradition proceedings the principle of fairness may in particular circumstances require a magistrate to give reasons."

In the present case Mr Shaw, who appeared for the respondent Council, accepted that in certain circumstances – which he said would be exceptional - there could indeed be a duty on the Committee to give reasons for its decision on matters of fact. He gave examples of situations in which, he believed, such a duty might arise. He urged the Board to provide guidance to the Committee on this matter. Their Lordships are satisfied that no duty to give reasons arose in this case. That being so, they prefer to leave the questions of the existence of any such exceptional duty to give reasons, and of its scope, to be determined in a case where the point is live.

15. Their Lordships now turn to the appellant's second ground of appeal under which counsel provided a critique of the evidence led on behalf of the respondent Council before the Committee. It is useful to recall that, in his submissions on the evidence before the Committee, the appellant's solicitor, Mr Murphy, opened with a rhetorical question as to how you know if somebody is telling the truth. He went on to point out that it was a difficult matter, but "having heard a number of witnesses, you are going to be asked shortly to decide who is telling you the truth and who is telling you lies". In this Mr Murphy was simply reflecting, from the opposing standpoint, what Miss Vaughan-Jones had said in her submissions on behalf of the Council. Each side flagged up what they saw as the pointers to the truth or falsity of particular parts of the evidence. In particular, Mr Murphy painted the three witnesses for the Council, Mrs Hingerton, Mrs Dhiri and Dr Chatterjee, as not disinterested, objective observers but as three people united in their desire to further their own ends at the expense of the appellant and her husband. Equally, Miss Vaughan-Jones attacked the credibility of the witnesses for the appellant who gave evidence supporting her position and contradicting the position adopted by the Council. It is hard to imagine a case where the decision would be more dependent on the impression made by the witnesses on the Committee who saw them examined and cross-examined. It is equally hard to imagine a case where it would be more difficult for this Board to substitute its view of the facts for the view formed by the Committee.

16. The appellant's principal criticism of the Committee's decision - to which Ms Booth returned time and again in her submissions – arose from the fact that it had found head 4 of the charge not proved. This must mean that it had not accepted the evidence of the only witness for the Council, Mrs Hingerton, on that matter. Despite this, the Committee had held heads 5, 6 and 7 to be proved, even though Mrs Hingerton, whom the Committee had rejected on head 4, had been a witness on these matters also. This showed, it was submitted, that the Committee had approached its task of assessing the evidence in a wholly unsatisfactory, indeed inconsistent and inexplicable, manner.

17. Their Lordships reject that criticism. As counsel for the respondents pointed out in his skeleton argument and as Miss Vaughan-Jones had also pointed out to the Committee, Mrs Hingerton was the only witness who spoke to the supposed events in head 4. Her evidence was subjected to sustained, effective cross-examination and was also contradicted by witnesses led on behalf of the appellant. It would scarcely be surprising if, in these circumstances, the Committee felt unable to be satisfied, on her evidence alone, that the allegations in head 4 had been proved to the necessary standard. On the other heads her evidence, though important, did not stand alone. On head 5, there was relevant evidence from Mrs Dhiri and from Dr Chatterjee on different aspects of the charge. On head 6a, which concerned the giving of a third MMR vaccination, the area of dispute was limited and the evidence for the Council came from Dr Chatterjee. On head 6b, there was evidence from Mrs Dhiri as well as from Mrs Hingerton, while on head 7 there was evidence from Dr Chatterjee as well as from Mrs Hingerton. Especially in a case where the truthfulness of the witnesses was under sustained attack, it would be entirely understandable if the Committee felt able to find a head proved where that finding could be based on the evidence of more than one witness, but unable to find a head proved where the evidence of the only available witness had been weakened in cross-examination and had been contradicted by other witnesses. When examined in the light of the transcript, the decision of the Committee to find head 4 not proved and the other heads proved points to the members having proceeded in this way. So far from being inexplicable, it is just the kind of approach which is founded in common sense and is frequently adopted by fact finders of all kinds.

18. Their Lordships have carefully considered the appellant's written critique of the evidence as well as the skeleton argument on behalf of the Council. They have also had the advantage of studying passages in the transcript of the hearing. When the written critique is compared with the transcript, it becomes obvious that, in large measure, the critique consists in a more formal version of the criticisms that Mr Murphy had made of the Council's evidence at the hearing, both in cross-examining the witnesses and when making his submissions to the Committee on their evidence. That cross-examination and those submissions were commendably thorough and the Committee can have been under no misapprehension as to the nature of its task in assessing the evidence. Despite all that he had urged, however, the Committee must have accepted the relevant evidence of the Council's witnesses in respect of the heads which it found proved. That decision must have depended on a myriad of factors relating to the demeanour of the witnesses, including the appellant, and to the way in which they gave their answers. In these

circumstances, while appreciating the criticisms that are made of the evidence accepted by the Committee, their Lordships do not find in those criticisms any basis for substituting their own view for the view of the Committee and setting aside its decision on the facts. They accordingly reject this ground of appeal.

19. Finally, Ms Booth argued that, even though heads 5, 6 and 7 of the charge justified a finding that the appellant had been guilty of serious professional misconduct, the sanction of erasure of the appellant's name from the register had been excessive. She reminded the Board of the indication in ***Ghosh*** at p 1923G–H, in para 34, that their Lordships will not defer to the Committee's judgment on matters of sanction to a greater extent than is warranted by the circumstances. She pointed out that there was no criticism of the appellant's clinical competence and that she was doing important work in her community in South London where there was much support for her. The testimonials lodged on her behalf showed this. Any erasure would have effect for a minimum period of 5 years before the appellant could apply to have her name restored to the register. The appellant was now 55 years of age. Particularly with the speed of medical developments and with the difficulty in keeping abreast of those developments while not in practice, there was no realistic possibility of the appellant ever resuming active medical practice if her name were now erased from the register. Not only did this mean that the appellant would be unable to earn any income again from medical practice to support her family, but it would mean that her community would be permanently deprived of the services which she could offer. Sometimes erasure was the only option, but here that was not so. The misconduct of which she had been found guilty all stemmed from her husband's presence in the practice. In itself, that had not, of course, been unlawful since he was entitled to carry out certain administrative tasks, even though he was unable to practise medicine. The difficulty had been that he had strayed over the line – a line that had been hard to police when he was involved in the practice. The problem could be overcome, however, by allowing the appellant to continue to practise, but subject to a condition that her husband was not involved in the practice in any way. The Board should take the view that, in these unusual circumstances, the public interest could be duly safeguarded in this way and that, accordingly, the sanction of erasure was excessive.

20. Effectively though this submission was presented, their Lordships are quite unable to accept it. The Committee took the view that the appellant's behaviour demonstrated a blatant disregard for the system of registration which is designed to safeguard the interests of patients and to maintain high standards within the profession. The Committee also had regard to the fact that the appellant had been found guilty of serious professional misconduct on a previous occasion, when conditions had been imposed on her registration. Its overall conclusion was that any action other than erasure would be inappropriate because of the appellant's behaviour, which demonstrated a serious lack of probity in professional practice and thus seriously undermined the trust which the public places in the profession.

21. It has frequently been observed that, where professional discipline is at stake, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned. Their Lordships refer, for instance, to the judgment of Sir Thomas Bingham MR in ***Bolton v Law Society*** [1994] 1 WLR 512, 517H–519E where his Lordship set out the general approach that has to be adopted. In particular he pointed out that, since the professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction. And he observed that it can never be an objection to an order for suspension that the practitioner may be unable to re-establish his practice when the period has passed. That consequence may be deeply unfortunate for the individual concerned but it does not make the order for suspension wrong if it is otherwise right. The Master of the Rolls concluded at p 519E:

"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price."

Mutatis mutandis the same approach falls to be applied in considering the sanction of erasure imposed by the Committee in this case.

22. On that footing, and without deferring to the judgment of the Committee on the matter to a greater extent than is warranted in the circumstances, their Lordships are satisfied that, for the reasons which it gave, the sanction of erasure was wholly appropriate for the protection of the public and of the standing of the profession. In particular, the actions of the appellant undermined the safeguard which erasure of her husband's name from the register had been intended to provide for the patients in her practice. That is a grave matter.

23. In these circumstances their Lordships will humbly advise Her Majesty that the appeal against the erasure of the appellant's name from the register should be refused. The appellant must bear the costs of the appeal to their Lordships' Board.