

CA on appeal from QBD, Administrative Court (Bean J) before Tuckey LJ, Arden LJ, Lawrence Collins LJ. 30th April 2007

Lady Justice Arden :

1. This is an appeal by Dr Stephen Hiew from the order of Bean J dated 17 October 2006 extending, for a period of six months, an order for the suspension of Dr Hiew's registration as a medical practitioner previously made by an Interim Orders Panel ("IOP") of the General Medical Council ("the GMC"). The order was made on an interim basis. That means that there has not been any finding of misconduct against Dr Hiew. The suspension has been ordered for the reasons explained below on a preventative basis.
2. The judge's order was made under section 41A(7) of the Medical Act 1983 (set out below). The original order of the IOP had originally been made on 29 April 2005 for a period of eighteen months but had been reviewed, but not revoked, on three occasions prior to the application to Bean J. On 19 January 2007, after the date of the judge's order and before the hearing of this appeal, the IOP reviewed Dr Hiew's suspension again and substituted for the interim suspension order various conditions designed to ensure that Dr Hiew practises under supervision. To that extent, the position of Dr Hiew has changed in his favour since the date of the judge's order. The IOP indicated that it would apply to the High Court for a further extension of the interim order, as so varied by them, when it expires.
3. However, we are nonetheless asked to consider whether the judge erred in making his order and generally to give guidance as to the approach which the court should take to an application under section 41A(7). We took the view that it would be right to continue hearing the appeal for this purpose. The IOP discharges duties that affect the public. Litigation by an individual medical practitioner is one of the means by which the position of the IOP can be reviewed by the court. By means of such review, the jurisprudence on the legality of the exercise by the IOP of its functions can be developed. By this process, litigants provide the raw material for the court to spin into cloth, but the time has perhaps now come to work those pieces of cloth into some kind of garment that is more useful to those who are concerned with these provisions, recognising of course that such a garment may have to be refashioned as needs require at a later stage.

Legislative Framework

4. The GMC was established as long ago as 1858. The Medical Act 1983 ("the 1983 Act") deals first with its organisation and internal management. The 1983 Act has been heavily amended and references in this judgment to the 1983 Act are to that Act as now in force. Schedule 1 to the 1983 Act refers to a number of committees of the GMC including the IOP.
5. The 1983 Act also deals with the registration of medical practitioners and their education and qualifications. The registration of medical practitioners is one of the matters for which the GMC is statutorily responsible. Certain qualifications obtained outside the United Kingdom, particularly in the European Community or in a contracting state of the European Economic Area, are recognised by statute and the holders of these qualifications may be entitled to be registered on one of the registers maintained by the GMC. Parts VI and VII of the 1983 Act deal with the privileges of registered practitioners, offences and miscellaneous matters.
6. Part V of the 1983 Act (covering sections 35 to 46) sets out the powers of the GMC with respect to professional conduct and fitness to practise. Section 41A(7) of the 1983 Act was inserted in 2002. Part V also provides for the investigation of allegations about the fitness to practise of medical practitioners registered with the GMC. It establishes a Fitness to Practise Panel, whose function it is to decide whether a practitioner's fitness to practise is impaired, whether on account of misconduct, deficient performance, health or any other of the prescribed grounds. A Fitness to Practise Panel can, if they think fit, direct that the name of a person be erased from the register or that his registration should be suspended. Part V also provides for an Investigation Committee and an IOP. Under section 35C of the 1983 Act, the Investigation Committee can refer to an IOP the question whether a suspension order should be made in relation to a registered practitioner pending the completion of an investigation.
7. Section 41A of the 1983 Act endows the GMC with powers to deal with the situation that can arise where it has become aware of an issue as to whether a practitioner should be permitted to practise, or at least should only be permitted to practise subject to conditions, but before any decision has been reached as to his continued registration. The GMC has to have powers to deal with this situation in order to provide protection for the public, or indeed in the interests of the practitioner himself. The scheme of section 41A is that an IOP or Fitness to Practise Panel may decide that the registration of a practitioner may be suspended for up to 18 months or that his registration should be subject to conditions. That order must be reviewed at least every six months. They must give the person in question an opportunity of appearing before them. However, the GMC cannot itself extend the period of time for which any order is in force. If it considers that an extension is required, it must apply to the court. The maximum extension that the court can give on any one occasion is 12 months. The court is also given power to terminate the suspension or to substitute a new period for the period in the original order.
8. Section 41A accordingly provides in material part as follows:

"(1) Where an Interim Orders Panel or Fitness to Practise Panel are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of a fully registered person, for the registration of that person to be suspended or to be made subject to conditions, the Panel may make an order

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- (a) that his registration in the register shall be suspended (that is to say, shall not have effect) during such period not exceeding eighteen months as may be specified in the order (an "interim suspension order"); or
- (b) that his registration shall be conditional on his compliance, during such period not exceeding eighteen months as may be specified in the order, with such requirements so specified as the Panel think fit to impose (an "order for interim conditional registration.").
- (2) Subject to subsection (9) below, where an Interim Orders Panel or Fitness to Practise Panel have made an order under subsection (1) above, an Interim Orders Panel or Fitness to Practise Panel
- (a) shall review it within the period of six months beginning on the date on which the order was made, and shall thereafter, for so long as the order continues in force, further review it -
- (i) before the end of the period of six months beginning on the date of the decision of the immediately preceding review; or
- (ii) if after the end of the period of three months beginning on the date of the decision of the immediately preceding review the person requests an earlier review, as soon as practicable after that request; and
- (b) may review it where new evidence relevant to the order has become available after the making of the order.
- (3) Where an interim suspension order or an order for interim conditional registration has been made in relation to any person under any provision of this section (including this subsection), an Interim Orders Panel or a Fitness to Practise Panel may, subject to subsection (4) below
- (a) revoke the order or revoke any condition imposed by the order;
- (b) vary any condition imposed by the order;
- (c) if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the person concerned, replace an order for interim conditional registration with an interim suspension order having effect for the remainder of the term of the former; or
- (d) if satisfied that to do so is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interests of the person concerned, replace an interim suspension order with an order for interim conditional registration having effect for the remainder of the term of the former.
- (4) No order under subsection (1) or (3)(b) to (d) above shall be made by any Panel in respect of any person unless he has been offered an opportunity of appearing before the Panel and being heard on the question whether such an order should be made in his case; and for the purposes of this subsection a person may be represented before the Panel by counsel or a solicitor, or (if rules made under paragraph 1 of Schedule 4 to this Act so provide, and he so elects) by a person of such other description as may be specified in the rules.
- (5) If an order is made under any provision of this section, the Registrar shall without delay serve a notification of the order on the person to whose registration it relates.
- (6) The General Council may apply to the relevant court for an order made by an Interim Orders Panel or a Fitness to Practise Panel under subsection (1) or (3) above to be extended, and may apply again for further extensions.
- (7) On such an application to the relevant court the court may extend (or further extend) for up to 12 months the period for which the order has effect. ...
- (10) Where an order has effect under any provision of this section, the relevant court may
- (a) in the case of an interim suspension order, terminate the suspension;
- (b) in the case of an order for interim conditional suspension, revoke or vary any condition imposed by the order;
- (c) in either case, substitute for the period specified in the order (or in the order extending it) some other period which could have been specified in the order when it was made (or in the order extending it)... and the decision of the relevant court under any application under this subsection shall be final."
9. In the case of a registered person other than a person whose address in the register is in Scotland or Northern Ireland, the "relevant court" is the High Court of Justice in England and Wales (sections 41A(14) and 40(5) of the 1983 Act).

Background

10. Dr Hiew qualified in Ireland in 1983. He qualified as a general practitioner in the United Kingdom. In September 1989, he then joined a practice of which a Dr X was the sole principal. In 1990 he became a part-time partner of the practice. In 2004 an investigation was begun into the practice as a result of two members of staff telling Enfield NHS primary care trust ("the PCT") that they had concerns about the way in which the practice was being conducted in particular, the validity of its claims. Dr Hiew had a contract of employment with the PCT. It is not necessary to set out the law in any detail, but, by law, any medical practitioner who has a contract of employment with a PCT must be included in a medical performers' list for a PCT in England.
11. On 2 July 2004 Dr Hiew was arrested in respect of allegations of conspiracy to defraud the National Health Service ("NHS") and false accounting, which allegations he denied. On 13 July 2004, the PCT suspended Dr Hiew from its performers' list pursuant to regulation 13 of the NHS (Performance List) Regulations 2004. In its letter dated 19 July 2004 to Dr Hiew, the oral hearings panel of the PCT set out four allegations, three of which related to the matters under police investigation, namely conspiracy to defraud, failure to work the contracted number of hours and falsification of records. There were further allegations relating to poor practice management. For example, the vaccine fridge was not maintained at the correct temperature. However, the oral hearings panel said that the poor practice management issues were insufficient to justify suspension. The view was

also expressed by the representative of the PCT that the failure to work contracted hours would not of itself merit suspension, but the position was different in the light of the allegation about falsification of records.

12. On 1 December 2004, the GMC wrote to the police stating that they wished to make a determination on the suspension of Dr Hiew's registration given the nature of the allegations against him. The police replied on 3 December 2004 that the investigation was still ongoing, but that it was anticipated a preliminary report would be available by January. In fact, as we now know, the police decided not to proceed with their investigations.
13. By letter dated 4 April 2005 the PCT wrote to the GMC enclosing a copy of the agenda papers which were produced before an oral hearing, originally set up to consider the removal of Dr Hiew from the performers' list, but it had decided to postpone this meeting. It never proceeded with this matter, which was based on the allegations of fraud. These appear to have been based, according to the appellant, on the observations of a Nurse Golightly.
14. In April 2005, the GMC considered whether or not to order the suspension of Dr Hiew's registration. It regarded the important matter as the allegations of fraud. The poor practice management allegations were regarded as less serious. Dr Hiew expressed concerns about delay.
15. On 22 April 2005, the IOP decided to suspend Dr Hiew for eighteen months, observing that that period of time was necessary to resolve all the issues. The IOP reviewed the suspension on 19 October 2005. It observed that the GMC were waiting for the outcome of the police investigation and subsequent proceedings. It was observed that, beyond suspension, the PCT appeared to have done nothing. There had never been any police interview with Dr Hiew, who was very concerned about the delay during which time he remained suspended. No charges have been brought and he has lost his research work at the University of London. The IOP continued his suspension on the basis of the allegations against him that were said to raise concerns as to his lack of probity.
16. On 6 January 2006, the PCT wrote to the GMC stating that it proposed to hold a removal hearing once the decision of the Crown Prosecution Service (CPS) was made. On 1 March 2006, Dr Hiew's solicitors wrote to the GMC, telling them that they had been told by the police that Dr Hiew was no longer was the subject of any investigation.
17. On 6 April 2006 the IOP held a further review hearing in which it accepted that no proceedings were to be brought but continued the suspension on the basis that the criminal investigation related only to the allegations of fraud and the other allegations were outstanding. Dr Hiew submitted that the criminal investigation was the real reason for the suspension, that there was nothing in the lost hours point, which the PCT had accepted was insufficient in itself to justify extension, that the PCT appeared to have done nothing since July 2004 and that, if there was anything outstanding, it was a matter for the PCT alone. However, the IOP decided to continue the suspension on the basis of the contention that there were outstanding allegations of falsifying patient records and poor practice management, which were still being investigated by the PCT and the GMC and further that the PCT proposed to hold an oral hearing into those matters in the future.
18. On 10 July 2006, the PCT wrote to Dr Hiew informing him that his suspension ceased in January 2005. On 11 July 2006, the CPS wrote to the GMC confirming that the trial of Dr X was unlikely to take place before early 2007 and stating that there was insufficient evidence to pursue a prosecution against Dr Hiew.
19. On 14 July 2006 the PCT sent an e-mail to GMC stating that it was still investigating both doctors in terms of fitness as to practice, but that it could not hold the hearing until the completion of the criminal case. On 17 July 2006, Dr Hiew's solicitors wrote to the GMC asking them to ascertain what the PCT were investigating, what was the current status of the investigation and what relevance the trial of Dr X had to the matter. The PCT replied on 20 July 2006 that it had a significant amount of evidence which would warrant his removal from the performers' list under regulation 10 but it would not hold the removal hearing until completion of the criminal case. On 25 July 2006, the IOP resolved to continue the suspension and authorise the application to the court. It did so on the basis of a continuing investigation by the PCT and the GMC, although it noted that there was some ambiguity in some of the information before it. Addressing itself to Dr Hiew, the IOP said in the ruling: "The allegations demonstrate that you may pose a real risk to members of the public, the public interest and your own interests if you were to remain in unrestricted practice." The IOP considered whether to replace the order for suspension with an order for conditions but, having heard submissions, the IOP determined that owing to the seriousness of the allegations there were no appropriate conditions that it could impose on Dr Hiew's registration. So long as the interim suspension order was in place, Dr Hiew could not earn his living as a medical practitioner.

The application to the judge

20. The application was supported by a relatively short witness statement of Toni Smerdon, in house solicitor to the GMC, containing the following paragraph:

"32. The reason that an extension of 12 months has been requested is due to the length of time required to complete the claimant's fitness to practise procedures in light of the necessary delay in obtaining the CPS and police documents. This documentation will need to be received and considered prior to a Fitness to Practise Panel hearing being listed."

The judgment of the judge

21. The judge gave a concise judgment. He described how Dr Hiew had since July 2004 been under suspicion of committing fraud on the NHS and of falsifying records and that he had also been the subject of criticisms, which

would not be the subject of criminal prosecution, relating to alleged poor management of his practice. The criminal allegations had been investigated by the CPS, who had stated that they did not propose to prosecute. The PCT was bringing proceedings to remove him from the list of performers in its area and in July 2006 it had indicated that it would reconvene a removal hearing following completion of the criminal case relating to Dr X.

22. On 20 September 2006 the CPS wrote to the GMC stating that they could not release documentation relating to Dr Hiew's case to the GMC until the case against Dr X had been heard. This was unlikely to be until early 2007. Accordingly the GMC applied for an extension of 12 months.
23. The judge recorded the submission of counsel for Dr Hiew, Mr Philip Engelman, that in effect there was no case to answer and that the IOP had been wrong to extend the period of suspension on earlier occasions. The judge noted that he had not been invited to examine the witness statements before the IOP or to rule that there was no case to answer. He continued: *"Any judge of this court naturally pays great respect to the view of the evidence taken by the [IOP]. I am not prepared to say on the submissions before me that there was no case justifying suspension or the renewal of the suspension."*
24. At paragraph 6 of his judgment, the judge said: *"However I must say the way the application for a 12 month extension is put is inviting the court almost to act as a rubber stamp. It is plain from the structure of section 41A that the court is not bound to endorse a decision of the [IOP] that extensions should be granted, and particularly not where, as here, the allegations against the doctor were first made more than two years ago and the first appearance before the [IOP] was 18 months ago."*
25. The judge considered that the position would have been different if Dr Hiew was himself being prosecuted. However, in all the circumstances, Dr Hiew was entitled to say to the GMC that the time had come "to put up or shut up". The judge regarded a twelve-month extension as too long and gave an extension of six months only.

Discussion and Conclusions

(1) The function of the court on an application under section 41A(7)

26. I have already set out the scheme of section 41A, and the relevant parts of the section, in paras 7 and 8 above. Parliament could have provided that the IOP or Fitness to Practise Panel, rather than the court, should have power to determine whether the period of any interim suspension order or conditional order should be extended. The courts could then review that determination on an application for judicial review in an appropriate case. That is not, however, the scheme for which Parliament has provided. Parliament has not provided that the IOP or the Fitness to Practise Panel should in this respect simply operate in the shadow of judicial review, but rather that the courts should have the power and duty to consider whether any extension of time beyond the initial period is appropriate. Under this scheme, the exercise in decision-making is to be performed by the court as the primary decision maker. This was indeed the manner in which, albeit without detailed analysis of the position, the Divisional Court and the High Court have proceeded in earlier cases (see for example, *Donnelly v GMC* [2002] EWHC 1312 (Admin)(Kennedy and Forbes J); *GMC v Malik* [2002] EWHC 2338 (Admin) (Keith J); *R... o/a GMC v Walker* [2005] EWHC 122 (Admin); *R(o/a GMC) v Martin* [2005] EWHC 3199 (Admin) (Walker J).
27. Under section 41A(7), the court has power to determine that there should be no extension or the extension sought by the GMC or (as in this case) some lesser extension. In an appropriate case, and having given the parties an opportunity to be heard, the judge also has power under section 41A(10) to terminate the suspension or to shorten the current period of suspension. The powers conferred by section 41A(10) are also original powers and not merely powers of judicial review.
28. Section 41A(7) does not set out the criteria for the exercise by the court of its power under that subsection in any given case. In my judgment, the criteria must be the same as for the original interim order under section 41A(1), namely the protection of the public, the public interest or the practitioner's own interests. This means, as Mr Englehart QC, for the GMC, submits, that the court can take into account such matters as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued. The onus of satisfying the court that the criteria are met falls on the GMC as the applicant for the extension under section 41A(7). Although Mr Engelman submitted that the standard of proof was the criminal standard, I prefer Mr Englehart's submission that the relevant standard is the civil standard, namely on a balance of probabilities. Proceedings for the extension of an interim suspension order are not criminal proceedings.
29. The judge must, however, reach his decision as to whether to grant an extension on the basis of the evidence on the application. He will need to examine that evidence with care. One of the difficulties in this case was that the witness statement in support of the application was relatively perfunctory with respect to the narrative of events and moreover set out the reasons for the application in summary form only: see paragraph 32 of the witness statement in support of the application, set out in paragraph 20 above. The evidence did not explain, to the requisite level of detail, the reasons why the GMC made the application and the judge had to elicit that information from the submissions of counsel and the large volume of contemporary documents with which he was provided. In my judgment, the witness statement should fairly explain, in summary, but as a self-standing document, the GMC's reasons for the application for an extension.
30. The power to grant an extension contained in section 41A(7) and the power to make the orders set out in section 41A(10) represent the limit of the court's express powers in relation to interim measures under section 41A. It is to be noted that Parliament has not given the court power to determine in the first instance whether an interim

suspension order or conditional order should be made. Furthermore, the power to erase the name of a medical practitioner from the register is not conferred on the court. That power, together with the power to impose other disciplinary sanctions, is conferred on the various panels of the GMC: see sections 35D, 36, 36A, 37, 38, and 39. Section 40 provides for an appeal to the court in respect of some of these decisions. Parliament has clearly taken the view that the organs of the GMC are better placed than the courts to investigate such matters and evaluate them.

31. The statutory scheme thus makes it clear that it is not the function of the judge under section 41A(7) to make the findings of primary fact about the events that have led to the suspension or to consider the merits of the case for suspension. There is, moreover, no express threshold test to be satisfied before the court can exercise its power under section 41A(7), such as a condition that the court should be satisfied that there is evidence showing that there is a case to answer in respect of misconduct or any other matter. On the other hand, if the judge can clearly see that the case has little merit, he may take that factor into account in weighing his decision on the application. But this is to be done as part of the ordinary task of making a judicial decision, and a case where a statutory body makes an application on obviously wholly unsupportable grounds is likely to be rare.
32. The evidence on the application will include evidence as to the opinion of the GMC, and the IOP or Fitness to Practise Panel, as to the need for an interim order. It is for the court to decide what weight to give to that opinion. It is certainly not bound to follow that opinion. Nor should it defer to that opinion. All that is required is that the court should give that opinion such weight as in the circumstances of the case it thinks fit. Weighing up the opinion of a body that has special statutory responsibilities and relevant experience and expertise is again part of the ordinary task of judicial decision-making.
33. Mr Engelman relies on the proposition, regarded as axiomatic by Laws LJ in *R(o/a D) v Secretary Of State for Health* [2006] Lloyd's Rep Med 457, that, the more serious a public authority's interference with an individual's interest, the more substantial will be the justification which the court will require if the interference is to be permitted. But, in this case, the decision of the court is simply that there should be an extension of the period of suspension. The court is not expressing any view on the merits of the case against the medical practitioner. In those circumstances, the function of the court is to ascertain whether the allegations made against the medical practitioner, rather than their truth or falsity, justify the prolongation of the suspension. In general, it need not look beyond the allegations. If the medical practitioner contends that the allegations are unfounded, the medical practitioner should challenge by judicial review the original order for suspension or the failure to review it and make some other decision in accordance with section 41A(2). On such an application, the decision of the IOP or Fitness to Practise Panel will then be examined on well-established judicial review grounds. I do not consider that a judge is bound to treat a medical practitioner's opposition to an application under section 41A(7) as if it were an application for judicial review on the grounds that the allegations are without foundation, and there is a danger if he does so, other than in a plain and obvious case (which I have already observed will be rare), that the wrong test will be applied. If the judge proceeds in the manner described above, he is unlikely to be diverted by the task of having to consider the seriousness of the risk to the public on the evidence provided by the GMC by contentions that the allegations are unfounded.

(2) Considerations arising from the European Convention on Human Rights

34. Art 6 of the European Convention on Human Rights confers the right of access to court "in the determination of civil rights or obligations". We are not concerned with the question whether the imposition of, or the extension of the duration of, an interim suspension order involves the determination of a civil right since, in the former case, that issue is not before us, and in the latter case, Parliament has specifically provided for an application to the court so consideration of the question is unnecessary. It can, however, be observed that the right given by section 41A(7) is consistent with the decision of the European Court of Human Rights ("the Strasbourg court") in *Le Compte, Van Leuven and De Meyere v Belgium* (1982) 4 EHRR 1, and the fact that no similar right is provided in relation to the decision to impose the original suspension order does not necessarily entail any violation of the right of access to court as the possibility of judicial review is not excluded.
35. The practitioner who is the subject of an interim suspension order would have to be a party to any application under section 41A. Counsel has not suggested that there is any limitation on the powers of the court on such an application, or any application for judicial review, which would amount to a violation of art 6.
36. Under the jurisprudence of the Strasbourg court, any restriction on the right of access to court must be proportionate. This appeal concerns the exercise by the court of its own original powers under section 41A(7). The question has arisen in earlier cases as to whether the actual exercise by the IOP of its powers is subject not only to the requirements of the common law, including the requirement that it must be exercised in a way which is fair and reasonable, but is also subject to the Convention doctrine of proportionality. In *Madan v GMC* [2001] Lloyd's Law Rep 539 at [48], [49] and [80], the Divisional Court (Brooke LJ and Newman J) appears to have been of the view that art 6 also applied to the process whereby the IOP decided whether to make an interim suspension order, and that accordingly their decision had to satisfy the Convention concept of proportionality. In *Chaudhury v GMC* [2002] UKPC 41 at [17] and [23], however, the Privy Council expressed the view that there was little or no difference between the requirement of the common law that the IOP must act in a way which is fair and reasonable and the Convention doctrine of proportionality. The Privy Council reserved their opinion on whether the Convention doctrine of proportionality had any direct application to the exercise by the IOP of its power to make an interim suspension order.

37. In my judgment, the requirement for proportionality required by art 6 applies when the right of access to court is in some way qualified, as in the case where a bankrupt cannot take proceedings to enforce some right of action to which he was entitled before his bankruptcy. Art 6 does not guarantee that the grounds on which the court may determine an application shall have any particular content: the content of any civil right is a matter for national law (*Z v United Kingdom* [2002] 34 EHR 97). Accordingly, in my judgment, the Divisional Court was in error in holding that by virtue of art 6 the IOP was obliged to act in a manner that was proportionate. But, like the Privy Council, I consider that there may be little, if any, difference between the Convention requirement for proportionality in this context and the requirements of the common law. However, I do not express a final view on that particular point until it arises for decision.

(3) Application of the relevant principles to this case

38. The judge's reasoning was as follows. First, the judge paid respect to the view of the evidence taken by the IOP. Secondly, he was not prepared to say that there was no case justifying suspension or the renewal of suspension. Thirdly, he held that the court was not however a "rubber stamp" for the IOP and fourthly that the 12 months' extension was too long. He did not, however, say precisely why six months was required and twelve months was too long beyond saying that Dr Hiew was entitled to say it was time for the GMC to "put up or shut up".
39. Mr Engelman criticises the judge for not holding that it was for him to make the decision on any extension rather than simply endorsing a decision made by the IOP. Mr Engelman submits that the implication is that the judge merely adopted the view of the IOP that some suspension was necessary and simply reduced it to six months.
40. In my judgment, it is not correct to say that the judge was mistaken about the role of the court as primary decision maker on the question whether there should be any extension of the interim suspension order. Paragraph 6 of his judgment (set out in paragraph 24 above) must be read as a whole. He used the words "endorse a decision of the [IOP] that extensions should be granted" but he then referred to the "structure" of section 41A, showing that he had taken into account the difference between section 41A(1) and section 41A(7). He would also have appreciated that the IOP had to have regard to the protection of the public in the public interest. In paragraph 5 of his judgment, he had stated that he was not prepared to say that there was no case for an extension. By implication, he selected the period of six months on the basis that this was a sufficient period within which the Fitness to Practise Panel could hear Dr Hiew's case. The fact that the judge rejected the period of twelve months for which the application was made, and of his own initiative granted only six months, supports my interpretation of the judgment.
41. A point of some importance arises on the penultimate sentence of paragraph 5 of the judge's judgment, which I have set out verbatim as the first sentence of the citation from the judge's judgment in para 23 above. The judge held that the court "naturally [paid] great respect to the view of the evidence taken by the IOP", in view of their "immense experience". I would prefer to say that the approach of the court to the opinion of the IOP is not a question of giving respect but of attaching appropriate weight to the evidence in the ordinary way. In contrast to the giving of respect, there can be no automaticity about the attaching of weight to evidence. Weight does not attach to a person's evidence by virtue only of his experience or status. The giving of weight to opinion evidence entails a holistic evaluation of the persuasiveness of the evidence on the relevant issue, having regard to all relevant circumstances including its content as well as the viewpoint of the author of the opinion. I consider that this is likely to have been what the judge, as an experienced judge, had in mind and this court must take into account that the judgment was given ex tempore in the administrative court which is known to have a heavy workload.
42. The point made in the last paragraph does not assist the appellant on the facts of this case. The judge was faced with a conflict between the opinion of the IOP and that of the PCT. But it was open to the IOP to take a more serious view of the allegations against Dr Hiew than the PCT. It was not the function of the judge definitively to resolve this conflict. The judge merely had to consider whether it was appropriate for him to accept either and, if so, which opinion for the limited purposes of the application before him. The judge clearly accepted the view of the IOP for this purpose. He was entitled to do this provided that, expressly or by implication, he gave sufficient reasons. The judge did not in fact give express reasons in this case, but by implication his reasons must have been that when assessing the question of seriousness of the risk of harm to the public for the purposes of an interim order, he preferred the more cautious view of the IOP. As to the sufficiency of reasons given by a judge, see *English v Emery Reimbold & Strick* [2002] 1 WLR 2409 and, in relation to reasoning by implication, *Battista v Bassano* [2007] EWCA Civ 370, a decision of this constitution of this Court given on 8 February 2007.
43. At one point in his submissions, Mr Engelman submitted that a court can never give weight to the opinion of any other person on the issue which it has to determine. However he recognised that that was an extreme submission. There is no sound basis for it. The opinion of the IOP is no more rendered inadmissible on an application under section 41A(7) than the opinion of an expert in a civil case between two private parties. Indeed, although Mr Engelman strove to submit to the contrary, his submission was inconsistent with his own submission that the court should rely on the evidence of Mrs Trish Galloway, Head of Primary Care Practitioner Performance at the PCT, on the seriousness of the poor practice management issues.
44. For the reasons given in para 31 above, the judge did not have to be satisfied that there was a case to answer. He rejected the argument that there was no case to answer, but only because submissions to that effect were made to him. Likewise, for the reasons given in para 33 above, I reject the submission by Mr Engelman that the judge had to be satisfied as to evidence to support the continuance of the suspension.

45. In the alternative, Mr Engelman submits that the confirmation of the suspension was disproportionate in the light of the lack of evidence against Dr Hiew. The IOP accepted that there was a considerable overlap between the falsification of patient records and other allegations. Mr Engelman relies on the withdrawal by the CPS of two allegations and submits that there was no link whatsoever between Dr Hiew and the allegation of falsifying patient records. The PCT accepted that the contracted hours point would not of itself justify suspension. Mr Engelman submits that, if there was sufficient evidence to justify suspension, the GMC should have held a final hearing. He submits that it is not permissible for the GMC to conduct a wait and see approach by pointing to potential disclosure by the CPS.
46. Mr Englehart submits that the extension was not wrong in the circumstances. When the IOP made its decision, it took into account the allegations of fraud on the NHS, falsifying patient records, poor practice management and the failure to work contracted hours: see IOP's determination on 22 April 2005. The same matters had led the PCT to suspend Dr Hiew from its performers' list: see its letter dated 19 July 2004, in particular at section 2. The IOP had before it the same material as the PCT had had before it. The letter dated 19 July 2004 made it clear that the police were investigating allegations of conspiracy to defraud the NHS and allegations of not working contracted hours. On 31 March 2006, the CPS informed Dr Hiew's solicitors that they had decided not to prosecute Mr Hiew and this information was before the IOP when it reviewed Dr Hiew's case on 6 April 2006. But there remained evidence suggesting falsification of patient records and poor practice management. Even though the records do not refer to Dr Hiew as the doctor "consulted", it would not, on Mr Englehart's submission, be unreasonable to conclude that in such a small practice he must have had some knowledge of the record-keeping of the practice. Perhaps more importantly, there is also significant evidence as to poor practice management. The IOP could reasonably conclude on the basis of this evidence that the working environment in Dr Hiew's practice presented a real risk of danger to patient safety. At the time of the application to the judge, the subsequent decision of the IOP to substitute an order that Dr Hiew should practise under supervision could not have been foreseen.
47. In all the circumstances, in my judgment, the judge was entitled to attach weight to the opinion of the IOP and to exercise his discretion in favour of a further extension. The length of the extension was a matter for him to decide in the exercise of his discretion. Given that Dr Hiew is a qualified doctor and that the suspension of his registration had a considerable impact on his reputation and his ability to earn his living, the judge was right to be concerned that the suspension should last no longer than necessary.

Disposition

48. For the reasons given above, I would dismiss this appeal.

Lord Justice Lawrence Collins:

49. I agree.

Lord Justice Tuckey:

50. I also agree.

Mr Philip Engelman (instructed by Messrs Edwards Duthie Solicitors) for the Appellant
Mr Robert Englehart QC (instructed by The General Medical Council) for the Respondent