CO/1444/2016

Neutral Citation Number: [2016] EWHC 2210 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday 22 July 2016

B e f o r e:

SIR STEPHEN SILBER

(Sitting as a Judge of the High Court)

Between:

PROFESSIONAL STANDARDS AUTHORITY FOR HEALTH AND SOCIAL CARE
Appellant

v

HEALTH AND CARE PROFESSIONS COUNCIL
First Respondent

MATTHEW GEARY
Second Respondent

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(Official Shorthand Writers to the Court)

Mr Fenella Morris QC (instructed by Field Fisher) appeared on behalf of the Appellant

Mr Cleon Catsambis (instructed by Bircham Dyson Bell) appeared on behalf of the First Respondent
Mr Simon Hoyle appeared as the McKenzie Friend for the Second Respondent who attended.

J U D G M E N T
(Approved)

1. SIR STEPHEN SILBER:

2. Introduction

3. On 15 December 2014 at Wolverhampton Crown Court Mr Matthew Geary, a paramedic, ("the Registrant") pleaded guilty to a count of failing to discharge a relevant duty in relation to his failure to provide assistance to a patient. He was sentenced to 8 months' imprisonment suspended for 24 months and ordered to do 240 hours' unpaid work within 12 months.

4. The Registrant' conduct was referred to the Health and Care Professions Council ("the HCPC"). Its Conduct and Competence Committee ("the Committee") having heard evidence and submissions on 11 December 2015 as well as on 7 and 8 January 2016, found that the Registrant's fitness to practise was impaired by virtue of his conviction. The Committee imposed a Conditions of Practice Order for a period of 2 years with effect from 5 February 2016.

5. The Professional Standards Authority for Health and Social Care ("the Appellant") appeals against the decision of the Committee under section 29 of the National Health Service Reform and Health Care Professions Act 2002 ("the 2002 Act"), on the basis that the sanction imposed on the Registrant was not sufficient for the protection of the public. It relied on various grounds. They were eventually re‑ cast as six grounds in the skeleton argument.

6. The HCPC does not challenge two of the grounds of the appeal although in respect of one grounds it makes an admission which is different from the Appellant's ground but which nevertheless means that it accepts that the ruling on the sanction imposed on the Registrant should be quashed. I only heard submissions relating to those two grounds.

7. The first ground is that when determining the correct sanction, the Committee failed to have any or any sufficient regard to the public interest, and in particular in the maintenance of the reputation of the profession. In other words,the point is that the Committee failed to to strike a fair balance between the interests of the Registrant and the public.The HCPC agrees that the appeal must be allowed on this ground

8. The second ground relates to a failure by the Committee to give adequate reasons to justify its decision.

9. A consent order was prepared quashing the decision under challenge. The Appellant and the HCPC agreed to the terms of the consent order under which the sanction imposed on

the Registrant would thereby be be quashed and the sanction would then have to be reconsidered by the Committee. .

10. The Registrant did not agree to that Order. So the issue to be determined at the present hearing is whether the decision should be quashed on those grounds and that is the subject of this judgment. The case for the Appellant was put forward by Ms Fenella Morris QC and the Registrant was represented by Mr Simon Hoyle, who made submissions as the Registrant's McKenzie Friend. Mr Catsambis appeared for the HCPC and he agreed that the appeal should be allowed.

11. <u>The law relating to this appeal</u>

12. The Committee's decision under challenge was a "relevant decision" under section 29 (1) (i) of the 2002 Act.

13. Pursuant to section 29 (4) of the 2002 Act (as amended by the Professional Standards Authority for Health and Social Care (References to Court) Order 2015), the Authority may refer to the High Court where it considers that:

    i. "..... the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public."

14. By 29 (4A) of the 2002 Act, consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient -

    i. "(a) to protect the health, safety and well- being of the public;

    ii. (b) to maintain public confidence in the profession concerned; and

    iii. (c) to maintain proper professional standards and conduct for members of that profession."

15. Where a case is referred to the High Court, it is to be treated as an appeal. Under section 29 (8) of the 2002 Act, the Court may:

    i. "(a) dismiss the appeal,

ii. (b) allow the appeal and quash the relevant decision,

iii. (c) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned, or

iv. (d) remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court,

v. and may make such order as to costs ..... as it thinks fit."

16. The Court may also allow an appeal where there has been serious procedural or other irregularity such that it is not possible to determine whether the decision as to sanction was unduly lenient or not, and this may include failure to provide adequate reasons for a decision (see Council for the Regulation of Healthcare Professionals v General Dental Council and Marshall [2006] EWHC 1870 (Admin) at 31‑ 32).

17. Where, as in this case, a Registrant appeals to the High Court against a decision of the HCPC, the court's function is to determine whether the HCPC's decision was wrong (in the sense of CPR r.52.11 (3) (a)).

18. In General Medical Council v Meadow [2007] QB 462, the Court of Appeal outlined the appropriate approach to be adopted on such an appeal in paragraph 197 of its judgment when stating:

i. "197 On appeal from a determination by the GMC, acting formerly and in this case through the FPP, or now under the new statutory regime, whatever label is given to the section 40 test, it is plain from the authorities that the Court must have in mind and give such weight *as is appropriate in the circumstances* to the following factors. (i) The body from whom the appeal lies is a specialist tribunal whose understanding of what the medical profession expects of its members in matters of medical practice deserve respect."

19. I will bear that approach in mind and also that a court should be cautious when reviewing a disciplinary tribunal's decision on sanction. This was emphasised by the Court of Appeal in Raschid and Fatnani v General Medical Council [2007] 1 WLR 1460

when it explained that:

i. "16 In these circumstances it seems to me to be clear that we should follow the guidance given in the cases decided before the change in the appeal system effected on 1 April 2003. First, the Privy Council is of course a source of high authority; but secondly, we are in any event considering an effectively identical statutory regime. As it seems to me there are in particular two strands in the relevant learning before 1 April 2003. One differentiates the function of the Panel or committee in imposing sanctions from that of a court imposing retributive punishment. The other emphasises the special expertise of the Panel or committee to make the required judgment.

ii. 17 The first of these strands may be gleaned from the Privy Council decision in Gupta v General Medical Council [2002] 1 WLR 1691, 1702 at paragraph 21 in the judgment of their Lordships delivered by Lord Rodger of Earlsferry:

iii. '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] I WLR 512, 517-519 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. Sir Thomas Bingham MR concluded, at p 519:

iv. '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 a part of the price.'

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

vi. 18 The Panel then is centrally concerned with the reputation or standing of the profession rather than the punishment of the doctor. This as it seems to me engages the second strand to which I have referred. In Marinovitch v General Medical Council, 24 June 2002, Lord Hope giving the judgment of the board said this (paragraph 28, second sentence):

vii. '28 In the appellant's case the effect of the committee's order is that his erasure is for life but it has been said many times that the Professional Conduct Committee is the body which is best equipped to determine questions as to the sanction that should be imposed in the public interest for serious professional misconduct. This is because the assessment of the seriousness of the misconduct is essentially a matter for the committee in the light of its experience. It is the body which is best qualified to judge what measures are required to maintain the standards and reputation of the profession.

viii. 29 That is not to say that their Lordships may not intervene if there are good grounds for doing so. But in this case their Lordships are satisfied that there are no such grounds. This is a case of such a grave nature that the finding that the appellant was unfit to practice was inevitable. The committee was entitled to give greater weight to the public interest and to the need to maintain public confidence in the profession than to the consequences to the appellant of the imposition of the penalty. Their Lordships are quite unable to say that the sanction of erasure which the committee decided to impose in this case while undoubtedly

severe was wrong or unjustified.'

ix. 19 There is, I should note, no tension between this approach and the human rights jurisprudence. That is because of what was said by Lord Hoffmann giving the judgment of the board in Bijl [2002] UKPC 42 para 2 to 3, which with great respect I need not set out. As it seems to me the fact that a principal purpose of the Panel's jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the profession rather than the administration of retributive justice, particular force is given to the need to accord special respect to the judgment of the professional decision‑making body in the shape of the Panel. That I think is reflected in the last citation I need give. It consists in Lord Millett's observations at paragraph 34 of Ghosh v General Medical Council [2001] 1 WLR 1915, page 1923 G:

x. 'The board will afford an appropriate measure of respect to the judgment in the committee whether the practitioner's failing amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the board will not defer to the committee's judgment more than is warranted by the circumstances.'"

20. The Background to the Offence of the Registrant

21. The Registrant's offence was committed while he was working as paramedic. He brought a patient to the hospital and the patient collapsed outside the Accident and Emergency Department of the hospital. The Registrant was standing next to the collapsed patient for several minutes, but he did not assist the patient and instead he just stood with his hands in his pockets while the patient lay in the road. The patient then had a cardiac arrest and he died, although it is accepted that the Registrant's inaction was not the cause of the patient's death. CCTV images showed that the Registrant's attitude to the patient was that he considered that the patient was not genuinely ill.

22. When the Registrant was sentenced at Wolverhampton Crown Court the sentencing judge made the following comments about the patient and which were addressed to the Registrant:

i. "He came back from the shop collapsing twice. On the second occasion he never got up. You saw this, you did nothing at all to help either as a paramedic, or I have to say, as a human being ..... There was no excuse, in my judgment, for the way you acted, or rather failed to act, in relation to your dealing with [the patient] at the material time.

ii. Without any justification you had obviously come to a view about him, you were not going to waste your time on him once you had got him to A & E.

iii. Your behaviour was, in my judgment, callous and uncaring, and totally at odds with the job you were doing."

23. When this matter was referred to the Committee, the Registrant denied that his fitness to practise was impaired by reason of his conviction. He was, at the least, ambivalent about whether he was guilty of the offence of which he had been convicted. He said he "didn't feel guilty".

24. The Registrant's evidence to the Committee included the following statements:

i. " ..... in the last three years and seven months I have gone through a hell of a lot. You know, it just affected personal life and the issue that we discussed earlier. So yes, I wish it never happened, you know and I wish things had happened differently.

ii. I am genuinely sorry that the gentleman passed away but from my point of view, I am the only one who ended up with a criminal record and I genuinely don't think, I genuinely feel that other people should have been made to be accountable for their actions as well."

25. Although the Registrant conceded that he should not have walked away from the patient, he did not admit that there were deficiencies in his approach to the patient.

26. <u>The Approach of the Committee</u>

27. Two conclusions of the Committee which have not been challenged are first, that the conviction of the Registrant showed a satisfaction of the statutory ground, and second, that there was in consequence impairment to the Registrant's fitness to practise.

28. In relation to that latter issue, the Committee found that:

    i. "The Panel has accepted the sincerity of the Registrant's remorse and regret for what happened. The Registrant was also able to demonstrate that he has gained partial insight into the reasons why his actions had fallen short of the standards expected. The Registrant had, however, even at this distance from the events, difficulty in expressing clearly his reasons and motivation for not doing on this occasion the full examination he would normally have done. Without this ability to fully articulate the root causes underlying his failings it was impossible for the Registrant to gain full insight into his actions and to guard against a repetition. The Panel therefore considers that on the personal component of its decision, the Registrant's fitness to practise is still impaired due to the limited nature of his insight at this time and in turn the possibility of a repetition of his previous behaviour.

    ii. In relation to the public interest element of its decision the Panel considers that the matters are sufficiently serious to make a finding of impairment notwithstanding whether there had been personal remediation. In addition it would be inappropriate given that the Registrant is part way through a suspended sentence."

    iii. <u>The Appropriate Sanction</u>

29. The Committee then proceeded to consider the appropriate sanction which should be imposed on the Registrant starting with the least onerous sanctions. It rejected the possibility of taking no further action against the Registrant or a referral of him to mediation because such findings "would not address the Registrant's need to further develop his insight into the event" and that it "is not appropriate in a case where there has been an error of judgment that has resulted in an adverse impact on the care of a patient".

    .

30. The Committee then considered that a caution order would not provide any degree of public protection where it had identified that "there is the possibility, albeit slight, of

repetition". In addition, it considered that it was "not a proportionate level of sanction in all the circumstances of this case involving as it does a criminal conviction relating directly to his professional practice".

31. The Committee then decided to impose a Conditions of Practice order for two years on the Registrant and that is this decision which has been the focus of the submissions on the present appeal. The conditions made no proper provision for the assessment of improvement in the Registrant's insight, which was important in order for the Committee to be able to be satisfied that there was no risk of repetition in a case where the Registrant's attitude towards a patient was the concern.

32. The Committee stated that it considered that orders for the suspension and striking off of the Registrant "were not proportionate in this instance given the particular circumstance of the case" and because they would be "further punishment and excessive", and so they were not required in the public interest. It added that it "cannot identify any degree to which service- user protection could be better achieved by a period of suspension".

33. <u>The Grounds of Appeal</u>

34. Ms Morris' first ground of appeal is that the Committee failed to have any or any significant regard for the public interest, and, in particular, in the maintenance of the reputation of the profession when determining the correct sanction.In other words, the Committee failed to to strike a fair balance between the interests of the Registrant and the public. It is true that the Committee had stated that it had taken into account the Council's Indicative Sanctions Policy.

35. Paragraph 7 of that Policy states that :

    i. "7 The primary function of any sanction is to address public safety from the perspective of the risk which the Registrant concerned may pose to those who use or need his or her services. However, in reaching their decisions, Panels must also give appropriate weight to the wider public interest, which includes:

- the deterrent effect to other Registrants;

- the reputation of the profession concerned; and

- public confidence in the regulatory process."

36. Ms Morris submits that the Committee did not take appropriate account of these matters because in its reasoning it failed to have regard to them and instead, it simply focussed on the behaviour of the Registrant as well as his mitigating and aggravating circumstances. Thus, it said in paragraph 43 of its reasons that:

    i. "43 To assist in its task in assessing the appropriate and proportionate sanction in this case the Panel has identified the following mitigating and aggravating circumstances."

37. Those mitigating and aggravating circumstances considered by the Committee related solely to those of the Registrant. Very surprisingly, there is no mention in the Committee's reasoning of the need for there to be public confidence in the regulatory process or more importantly in the reputation of the professions concerned.

38. Mr Hoyle who, as I explained, is the McKenzie Friend acting for the Registrant, contends that the Committee's decision on the sanction to be imposed on the Registrant was correct. He points out that if the case is remitted, the Committee at the remitted hearing may well feel constrained to impose a greater sanction on the Registrant. I explained that if the case was remitted, the Committee should not regard itself as being obliged to impose a heavier sentence. There was reference by Mr Hoyle to comparable cases and he was argued that the Registrant's case should be placed at the bottom end of seriousness.

39. In my view. Ms Morris has identified a fatal error on the part of the Committee in that it failed to have regard to the public interest The HSPC agrees and in my opinion, even after taking account of Mr Hoyle's submissions and also of the statements to which I have referred from the judgments of the Court of Appeal in Meadows and in Raschid and Fatnani, the appeal must be allowed on this ground.

40. I must stress that the exercise of fixing an appropriate sanction in disciplinary proceedings is very different from determining the correct sentence in criminal proceedings. That is because in disciplinary proceedings,the primary function of the disciplinary panel is first,to address public safety from the perspective of the risk which the Registrant concerned may pose to those who use or need his or her service and second, also to give appropriate weight to the wider public interest which includes not merely the deterrent effect to other registrants but also the reputation of the profession and the public confidence in the regulatory process. The Committee failed to have regard to the second matter.

41. Ms Morris also contends that the appeal should be allowed because the Committee should not have allowed the Registrant to resume practice until the sentence imposed on him in the Crown Court was satisfactorily completed, and that could not occur until 10 February 2017. That is the date when the two-year period of suspension of his suspended sentence imposed in the Crown Court expires.

42. The basis of this submission is that the HCPC Guidance on Conviction and Caution cases stated:

    i. " ..... normally a Panel should not permit the Registrant to resume their practice until that sentence has been satisfactorily completed."

43. This provision takes account of the comments of Newman J in Council for the Regulation of Health Care Professionals v General Dental Council [2005] EWCA 87 (Admin) in which he said that:

    i. "54 ..... as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise."

44. The Committee quoted this paragraph, but it did not proceed to quote the following passage which explained what the judge meant by the clause "circumstances which plainly justify a different course".

45. Newman J then said:

    i. "54 ..... Such circumstances could arise in connection with a period of disqualification from driving or time allowed by the court for payment of a fine. The rationale for the principle is not that it can serve to punish the practitioner whilst serving his sentence, but that good standing in a profession must be earned if the reputation of the profession is to be maintained.

    ii. 55 ..... The protection of the public will not be served by the application of a different standard at erasure from that which is applied when considering registration.

iii. 56 ..... personal factors, such as character, previous history and the practitioner's livelihood as a dentist, will invariably be insufficient to produce a result different from that which would have applied had the individual been an applicant for registration."

46. In order to register, an applicant had to satisfy the HCPC that he is of good character, that he is capable of "effective practice which requires disclosure of any conviction" (see Article 5 of the Health and Social Work Professions Order 2001 and Rule 5 of the Health and Care Professions Council (Registration and Fees) Rules 2003).

47. Ms Morris' submission is that the Committee did not take account of this because in its reasoning, it failed to have regard to these factors as it focussed on the behaviour of the Registran as well as what it described as "identifying the following aggravating ad mitigating circumstances ".

48. As I have indicated, those "circumstances" considered by the Committee related solely to the position of the Registrant. The Committee also looked at the offence and it came to the decision that it was not the "most serious" offence. It added that:

i. "It gave consideration as to whether the Panel could allow the Registrant to practise before his conviction had expired and decided that it could. First, because the Registrant had been working without incident for a period of two years since the event and up to the time of the Crown Court hearing and secondly, the Registrant has now gained sufficient, albeit not complete, insight such that the Panel has some confidence that the Registrant would make every effort to ensure that the suspended sentence would not be activated."

49. Very surprisingly again, there is no mention of the public confidence in the regulatory process or more importantly of the reputation of the professions. In my view, this was a fatal error in the reasoning of the Committee, and it shows why the appeal against the decision on the appropriate sanction must be allowed. In those circumstances, I will deal with the next ground of appeal much more briefly than I would have done if this was a crucial issue which would determine the outcome of the appeal.

50. Ms Morris' second ground is that the Committee filed to comply with its obligation that when it departed in its approach from its Indicative Sanctions Guidance to give reasons for doing so (see R (Jackson) v General Medical Council [2013] EWHC 2595

(Admin) and Professional Standards Authority v Health and Care Professions Council and Williamson [2015] EWHC 2420 (Admin) at 26‑ 32.

51. Significantly, the Indicative Sanctions Policy includes the following statement:

    i. "3 ..... this policy is intended to assist Panels to make fair, consistent and transparent decisions. Where a Panel deviates from this policy, its written determination should provide clear and cogent reasons for doing so."

52. The HCPC accepts that the appeal should allowed on a different ground based on the absence of reasons. Its ground is that the Committee failed to provide sufficient reasoning why in the light of its failure to fully engage with the issue of public confidence in the regulatory process and the maintenance of the reputation of the profession, the sanction imposed on the Second Respondent was justified. This is a valid basis for allowing the appeal, but it is different from the way in which Ms Morris puts her second ground. I do not think that anything would be gained by considering if I should accept Ms Morris' second ground or HCPC's version because for the reasons which I have sought to set out, the appeal has to be allowed.

53. Conclusion

54. I should repeat that by allowing this appeal, I am not indicating that a more severe sentence should be imposed on the Registrant. What the Committee must do when the matter is remitted and they make their decision on a sanction the primary function is to address public safety from the perspective of the risk which the Registrant concerned may pose to those who use or need his service and also to give appropriate weight to the wider public interest which includes not merely the deterrent effect to other registrants but also the reputation of the profession and the public confidence in the regulatory process.

55. SIR STEPHEN SILBER: We can now discuss what the terms of the order should be.

56. MS MORRIS: Yes. We handed up a draft consent order and we can use that as a template if you have it still. A great deal of it will still be useful for us today. Do you have it in front of you? I gave you mine yesterday. Quite a lot of this will survive. To look at the heading, I do not know whether we need to record the concession any more.

57. SIR STEPHEN SILBER: We should. We should concede the concession. Also, we ought to record that the Registrant was represented.

58. MS MORRIS: We can put representation in.

59. SIR STEPHEN SILBER: You have to put that in.

60. MS MORRIS: Yes, exactly; insert representation.

61. SIR STEPHEN SILBER: And get rid of the words "by consent".

62. MS MORRIS: And we will get rid of "upon the parties having agreed these terms". So we will put in a paragraph in relation to representation and then we will have the concession.

63. SIR STEPHEN SILBER: What is the position at present?

64. MS MORRIS: There is no interim order.

65. SIR STEPHEN SILBER: I think this matter should come back as speedily as possible. We should say that, for it to come back as speedily as possible.

66. MS MORRIS: So the order: the appeal be allowed, decision quashed, the matter be remitted to the same panel of the PCC to reach determination and sanction as soon as - - - - -

67. SIR STEPHEN SILBER: The only thing that slightly concerns me is if one of them is spending the summer in Australia or something like that, I do not want this to go on for six or nine months.

68. MR CATSAMBIS: I am sure those comments can be conveyed to the HCPC, matter of expediency. If, for whatever reason, there is difficulty with constituting the same panel that will be addressed.

69. SIR STEPHEN SILBER: I think we will put "liberty to apply" for that particular reason.

70. MS MORRIS: Yes. So if we say "the matter be remitted to the same panel of the PCC for redetermination and sanction as soon as practicable".

71. SIR STEPHEN SILBER: Yes.

72. MS MORRIS: If there is difficulty in arrangement, liberty to apply.

73. SIR STEPHEN SILBER: Yes.

74. MS MORRIS: (3) It would just be my Lord's judgment; it will be a copy of this order and I think all they need is the judgment.

75. SIR STEPHEN SILBER: They will probably want to have the transcript of what he said, for example, in relation to - - - - -

76. MS MORRIS: I think they have all this if it is the same panel.

77. SIR STEPHEN SILBER: Do we have to put all - - - - -

78. MS MORRIS: We normally do this in a case of a consent order because otherwise they do not have the court's judgment.

79. SIR STEPHEN SILBER: This is not a consent order.

80. MS MORRIS: If it is the same panel, what happens is that they will have all the materials that they had.

81. SIR STEPHEN SILBER: I only see them when there is a dispute. Once it is allowed we need not say any more than that.

82. MS MORRIS: Exactly. They will have a copy. If it is the same panel - - - - -

83. SIR STEPHEN SILBER: There might be an argument, for example, as to whether they ought to see your grounds of appeal. They might have an argument for saying that you were really pressing for a much heavier penalty.

84. MS MORRIS: No. We only have this phraseology for consent orders that take place without a hearing.

85. SIR STEPHEN SILBER: I would say paragraphs 1 and 2, and then move on to costs.

86. MS MORRIS: Well, I think they have the order and the judgment, my Lord, normally.

87. SIR STEPHEN SILBER: Yes. Give them the judgment.

88. MS MORRIS: Yes, a copy of this order and judgment.

89. SIR STEPHEN SILBER: Yes.

90. MS MORRIS: Then 3.2 and 3.3 go.

91. SIR STEPHEN SILBER: The next thing we have to deal with is the question of costs. Are your applying for your costs?

92. MR CATSAMBIS: I will be making submissions on costs. I will be applying for part of our costs, yes.

93. SIR STEPHEN SILBER: Have you served a schedule of costs? It is probably not up-to-date, is it?

94. MS MORRIS: Yes. We have. We did just before the hearing.

95. SIR STEPHEN SILBER: It has probably gone up because you had to come back today. The best thing would be for both sides – that is both the successful parties – to serve their schedule of costs.

96. MS MORRIS: And submissions.

97. SIR STEPHEN SILBER: And submissions within seven days.

98. MR CATSAMBIS: Might I make a request? As your Lordship might anticipate, the HCPC's submissions on costs will relate to a period before it conceded the appeal and after it conceded the appeal.

99. SIR STEPHEN SILBER: I think you might have much greater difficulty with one than the other.

100. MR CATSAMBIS: Of course. But in making those submissions, it would be of assistance if the PSA could present its costs in such a way that those two parts are reflected.

101. MS MORRIS: Yes. We are happy to do that.

102. SIR STEPHEN SILBER: I am sure that seems sensible.

103. MS MORRIS: Can I ask for ten days because I am on holiday next week?

104. SIR STEPHEN SILBER: That seems a very good reason. Shall we say fourteen days?

105. MS MORRIS: Fourteen days. And we give Mr Geary fourteen days to apply.

106. SIR STEPHEN SILBER: Yes.

107. MS MORRIS: And then leave it to my Lord to decide it on the papers.

108. SIR STEPHEN SILBER: Yes.

109. MS MORRIS: Seven days to respond.

110. SIR STEPHEN SILBER: Seven days to respond, and then to come back to me.

111. MS MORRIS: Yes, certainly.

112. MR CATSAMBIS: Is e.mail the most convenient way of submitting the written submissions on costs?

113. SIR STEPHEN SILBER: I prefer if you deal with it – a litigant in person – for it to come through the court office.

114. MS MORRIS: Certainly.

115. SIR STEPHEN SILBER: Because otherwise there is always a risk that you will be getting this correspondence for many months.

116. MS MORRIS: Certainly. As we indicated yesterday, my solicitor is happy to communicate all of this to Mr Geary.

117. SIR STEPHEN SILBER: Yes. I think it is better if it can be dealt with in that way.

118. MS MORRIS: Certainly.