

PRIVATE AND CONFIDENTIAL

Health and Care Professions Council

At

405 Kennington Road,
London, SE11 4PT

Friday, 10 March 2017

**IN THE MATTER OF MR MATTHEW GEARY
REGISTRATION NO. PA31560**

**RECORD AND PROCEEDINGS OF THE
CONDUCT AND COMPETENCE COMMITTEE
IN PUBLIC SESSION**

PROFESSOR IAN HUGHES

(Chair)

MS GILLIAN SEAGER

(Lay Partner)

MR HUW SIMMONDS

(Paramedic)

PRESENTING OFFICER

MS LAURA RYAN

LEGAL ASSESSOR

MR ASHLEY SERR

HEARING OFFICER

MS SOPHIE WING

The Registrant attended and was represented by Mr Simon Hoyle

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(At 10.09 am)

CHAIR: Okay. Good morning, ladies and gentlemen. Welcome to this HCPC hearing in the case of Mr Mathew Geary. Start off with some introductions. My name is Ian Hughes. I'm a lay member of the Panel, and I'll be chairing this hearing. On my left is –

MR SIMMONDS: My name's Huw Simmonds, HCPC registered paramedic. Good morning.

CHAIR: And on my right –

MS SEAGER: Good morning. My name's Gillian Seager and I'm the lay member.

CHAIR: If we just run round the room so everyone knows who everyone is and briefly what their role is.

LEGAL ASSESSOR: Yes. My name's Ashley Serr. I'm the Legal Assessor, so I provide legal advice to the Panel on law and practice, but I don't actually make the decision.

HEARINGS OFFICER: Good morning. My name is Sophie Wing. I'm the Hearings Officer for the Health and Care Professions Council. A quick health and safety announcement that there are no fire alarm tests scheduled. If a fire alarm does sound, please follow myself and the appropriate fire wardens through the nearest marked fire exits, and if everyone could please make sure that their mobile phones are turned off or on silent. Thank you.

REGISTRANT: Good morning. My name's Matthew Geary. I'm a paramedic.

MR HOYLE: You are still, aren't you? Good morning. Simon Hoyle. I am the representative of Mr Geary. I have been throughout the entire conduct of these proceedings, including the High Court appeal.

CHAIR: Is there anything that you – I mean, we are, in a sense, familiar with each other. Is there anything you need to change or alter to help you better present your case?

MR HOYLE: No, sir, not at all. Thank you for asking.

PRESENTING OFFICER: Good morning. I'm Laura Ryan. I'm the Presenting Officer on behalf of the HCPC.

CHAIR: Okay. Next we have, I think, members of the press present.

MEMBER OF THE PRESS: Yes.

CHAIR: Yes, okay. Can I just remind you of HCPC practices about press and recording and all the rest of it, yes? Okay. Thank you. Okay. I think probably the best thing to do to start with is just to deal with the paperwork, and we have a paperwork bundle from the HCPC, and that is in fact in two parts. The first bit, which is paginated 1 to 265, we're going to call bundle A. Have we all got that?

PRESENTING OFFICER: Yes. Yes, thank you.

MR HOYLE: No, sir. Mine only goes up to 202.

CHAIR: The second bit goes up to 202.

MR HOYLE: I'm sorry, did you say 165 or 265?

CHAIR: It's split – the bundle itself is split into two parts. The first part we're going to call bundle A and goes from 1 to 265, and then it starts again.

MR HOYLE: Sorry, sir, could I just ask you that, 1 to 265 or 165?

CHAIR: 1 to 265, and then it starts again at page 1.

PRESENTING OFFICER: I must admit actually I've not got that either.

MR HOYLE: Ah yes, sir, I see now. I do see.

CHAIR: Which is why we're going to have to split it, because if we want to refer to a page number we need to know if it's the first page number or the second page. This is why we're going to call the second bit bundle B, perhaps unsurprisingly, and it's paginated 1 to 202.

PRESENTING OFFICER: Can I clarify, is the bundle A you're referring to the one that is entitled 'Sanction Hearing' and the bundle B is the 'Final Hearing'?

CHAIR: Yes. This is indeed entitled 'Sanction Hearing', and then we have a second bundle, which is tagged on the back of that, which is entitled 'Final Hearing', but since these are both paginated starting at 1 we just need to distinguish between them.

PRESENTING OFFICER: Yes. Thank you.

CHAIR: So it's going to be A and B. In addition, the Panel has received some additional paperwork, and that additional paperwork we're going to start by calling bundle C. And there's an email dated 5 May 2016 that starts 'Dear Mr Hoyle', and we're

going to call that page 1. Do we all have this?

PRESENTING OFFICER: Yes.

CHAIR: This is C1. And then we have a Professional Standards Authority sheet with a picture on the front, which we're going to call page 2, and then there's some text which follows, which starts at 6.22, and we're going to call that page 3. So those are the paperwork that the Panel has received. We've also received via email transcripts of previous hearings, just to put that on record. Okay. Is there any other paperwork that either party intends to rely on?

PRESENTING OFFICER: No, not from the HCPC's point of view.

MR HOYLE: No, sir.

CHAIR: Okay. Thank you very much. In which case then, since the Registrant is here and represented, we don't need to deal with service, and there is an issue which I would like to raise. Are there any other preliminary applications?

MR HOYLE: Yes, sir, there will be.

CHAIR: Okay.

MR HOYLE: The purpose of –

CHAIR: Would you like to go – is there anything from the HCPC in preliminary matters?

PRESENTING OFFICER: No, we're ready to proceed.

CHAIR: Okay. Do you want to proceed with that preliminary application now?

MR HOYLE: Yes, sir, I do, if you will. The reason why we're here today is because the previous hearing was adjourned. The purpose of that adjournment was to seek clarification on an issue which I rightly raised, in relation to the Legal Assessor who sat through the original proceedings having no practising certificate. Mr Leong, Gary Leong, of counsel was invited in, and he stated it was difficult for him to be able to ascertain the legal position because it was complex and it also had wide ranging ramifications upon the wider legal profession.

He did say that the statute that had been quoted in the Health Professions Order 2001 in relation to Legal Assessors had been superseded by the Legal Services Act 2007, and that related to reserved legal activity, where a reserved legal

activity means activity which can only be carried out by a solicitor or barrister, and anybody without a practising certificate, or without a qualification and a practising certificate who does that work commits an offence, and obviously will face disciplinary proceedings as well for holding out. That is the term that is used.

It is very similar to the only offence which lies on the Health Professions Order 2001, which is purporting to be on the register when you are not. Obviously if you took legal advice from someone who was not duly authorised or qualified to give it, then that invalidates the procedures, because the whole procedure is fundamentally flawed at its root.

I raised that, and the HCPC did not afford me the courtesy of informing me what their findings were, and I found out five minutes ago from Ms Ryan. I haven't been given the full detail of why they think there isn't a problem. However, my enquiries have led me to discover that there is another Legal Assessor who has sat on 395 cases since 2007 who does not have a practising certificate. I do not know him. I have never met him, and I do not know of his work. Therefore, there could be no implied malice when I say that my intention is now to report this issue to the relevant enforcing authorities, because there is something I believe is seriously wrong, and that is, having adduced both Legal Services Act 2007 and also the guidance on practising certificates issued by both the Bar Council and also the Law Society and the Solicitors Regulation Authority. They have guidance on when you do and do not need a practising certificate, and what work you should and should not do, and what title you should hold or should not hold.

So it is still my position that, regardless of the submissions that I'm going to – I know what your decision will be, but I'm going to make it on the public record, because obviously the transcript of this may be used in future proceedings. You are still independent. You still have the right to make decisions of your own in relation to whether or not the hearing you sat through a year ago was actually lawful. So I'm inviting you now to consider whether or not this case should proceed, or whether or not you should direct that the HCPC withdraws its case because of illegality.

As I say, the HCPC are being less than helpful in communicating this – their findings, and certainly I don't know the detail of the findings, but they usually adopt a siege mentality when challenged. So if the case goes ahead today, as I imagine that it will, I reserve the right, on the basis of the application that I have made today and the submissions that I made at the previous hearing, to make an application to such court as necessary to have the proceedings and any sanction as a result of those proceedings deemed unlawful, and for Mr Geary to be compensated accordingly. That will be no reflection upon yourself, sir, because you are an independent Panel and you are entitled to find what facts you intend to rely upon, and make a decision accordingly and hand that decision down. But I would ask you to take a short time to consider whether or not there is a danger that these new proceedings today are at risk of similarly being unlawful.

Now, I am aware of the previous position held by one member of the Panel. I was pulled up for saying the name last time, so I won't do again, but obviously there is, within your joint knowledge, a particular scope of knowledge that may lend itself to giving you rise to share the same concerns that I have. So, sir, I invite you to consider whether or not this hearing is legal or unlawful.

CHAIR: Okay. So if I've understood correctly – I'm just trying to encapsulate what – the nature of the application, which is for us to consider, in the light of the circumstances which were discussed at the previous hearing on the – in January this year, whether or not this hearing is lawful and whether the last hearing was lawful, and therefore whether we should proceed or not. Is that the –

MR HOYLE: Yes, sir, because –

CHAIR: – core of the application?

MR HOYLE: Yes, sir. If the initial hearing a year ago was unlawful, then any appeal from it is unlawful, and any direction that comes from that appeal that the case must be remitted for redetermination is necessarily also unlawful, due to procedural irregularity in relation to an essential advisor to the Panel not holding the necessary qualification.

CHAIR: Okay.

MR HOYLE: Thank you, sir.

CHAIR: And I think my understanding is that if this hearing goes ahead then – and has an outcome, I think there is an automatic right of appeal to the High Court that's encapsulated within the findings of any Panel that does continue. So your reservation of your right to appeal etc I think will be automatically taken care of in the judgment that any – if this Panel went ahead it would produce. I'm struggling trying to –

MR HOYLE: Yes, sir. The situation is that we reserve the right to take the case to such court as we see fit. Now, that not – necessarily may not be the High Court to appeal against a sanction.

CHAIR: I see. Okay.

MR HOYLE: We may be very well satisfied with the sanction. That all depends on the outcome, but obviously if we are dissatisfied with the sanction then that is a further ground of appeal. However, in relation to everything that is proceeded today, Mr Geary has been put to substantial cost and claims of tens of thousands of pounds have been made by the Professional Standards Authority, and we argue that, in light of what I know or what we know, he is not liable for those costs. So indeed now that a certificate – a costs certificate has been issued, we would challenge it on those grounds, and –

LEGAL ASSESSOR: Sorry, costs that the High Court ordered?

MR HOYLE: Yes, sir.

LEGAL ASSESSOR: So there was an order for costs against your – against Mr Geary at the High Court, was there?

MR HOYLE: Yes, there was, sir.

LEGAL ASSESSOR: By the – on behalf of the Professional Standards Authority or – and/or the HCPC?

MR HOYLE: Both.

LEGAL ASSESSOR: So both asked for costs against your client?

MR HOYLE: Mmm.

LEGAL ASSESSOR: What was the basis of that costs application, just out of interest?

It's not clear on the record.

MR HOYLE: What I won't do, sir, is discuss that whilst there's press in here. That's something that's private to Mr Geary.

LEGAL ASSESSOR: Well, I don't think it is. If it was part of the record – if it was heard in open court at the High Court then it's a matter of public record, isn't it?

MR HOYLE: There was no figure put on it during the –

LEGAL ASSESSOR: Yes. I'm not overly worried about the figure. What was the basis for why it was said your client should pay any of the costs.

MR HOYLE: Quite simply because he lost.

LEGAL ASSESSOR: Right, because he took an active part in the proceedings, in essence.

MR HOYLE: Yes. I represented him. I was given rights of audience that day.

LEGAL ASSESSOR: Right. Okay. Yes, thank you.

MR HOYLE: He successfully challenged the vast majority of the blunderbuss that was fired in his direction, and on the day the majority of the grounds of appeal were withdrawn by a counsel for the PSA before we even commenced.

LEGAL ASSESSOR: Yes, that – sorry, I just wanted to clarify that.

MR HOYLE: Yes, sir.

CHAIR: Okay. Ms Ryan, do you have any – you've heard the application, which I tried to summarise and put into a nutshell, bearing in mind there was a lot of background to that. Do you have any comments on that application?

PRESENTING OFFICER: Yes. If I can say at the outset that the HCPC's position is that they wish to invite the Panel to proceed today and move on to the position of the redetermination of sanction. In relation to the previous adjournment, the HCPC sought legal advice. The HCPC are satisfied with the validity of the previous decision and don't have any concerns in relation to that. What I would say is that if there are any ongoing issues in relation to that that wish to be raised, this isn't actually the forum for that. The remit of the Panel today is the redetermination of sanction, and not whether these proceedings were previously lawful or not. That is something for another forum. So the position is that if there is any challenge to

the lawfulness of the previous decision or anything in relation to that, that should be made to an alternative port, which can be done without you adjourning these proceedings.

You'll be aware from the decision of the High Court on the previous occasion that the judge was anxious that we should proceed to re-determine the sanction as soon as practicable, and that's another reason why I'd invite you to proceed today. But certainly I think in terms of the application to not proceed because the previous decision was unlawful, the HCPC say it was lawful and that this isn't the forum to challenge that.

CHAIR: Okay. Thank you. I'll just find out if my colleagues have any questions, either for Mr Hoyle or for yourself. Do you have any questions on this application? Do you have any questions on this application? Okay. Is there any legal advice at this point?

LEGAL ASSESSOR: Yes. In my view the law is absolutely clear in this regard. The decision was promulgated by this Panel on all matters, including facts, grounds, impairment and sanction, on the previous occasion, January of 2016. That was then subject to an appeal by the Professional Standards Authority, as perhaps the PSA was entitled to do. As a result of that appeal, which – my understanding of reading the decision of Mr Justice Silber, Mr Geary supported the position of this Panel, see paragraph 38, page 23 of bundle 1. It supported this and certainly no point was taken that in fact the previous decision was *ultra vires* in some way because it wasn't properly constituted.

As a result of that appeal, Mr Justice Silber ordered that this matter be remitted to the same Panel of the Competence – Conduct and Competence Committee for redetermination as to sanction as soon as practicable. So for those reasons if there was a point about the – whether this Panel was properly constituted or the Legal Assessor – whether the Legal Assessor was properly constituted, that time has passed. Your job is to do, in essence, what the High Court told you to do, I think, which is to re-determine the question as to sanction and sanction alone. There is of course a right of appeal against this decision to the High Court, and that's of

course a matter for the parties and for the PSA if anybody wants to take that appeal, but for now it's quite clear from the order of the High Court that this matter now, with the same Panel, has to be re-determined purely as to the question of sanction.

CHAIR: Okay. Thank you very much. Do you have any questions for the Legal Assessor? Do you have any questions for the Legal Assessor? Do you have any comments on the legal advice?

MR HOYLE: Yes, sir, just the one, which is the position as advanced by the HCPC is they've taken legal advice and they've determined that there is no issue. You would have thought, given the importance and the significance of the issue, they might have put their reasoning in writing, presented it to this Panel and indeed to myself. They haven't done, so we've only got their word that they don't see anything's wrong. They haven't set out their reasoning and explained why the Legal Services Act 2007 and the issue of practising certificates does not apply to Legal Assessors who sit at the HCPC. Thank you, sir.

CHAIR: Thank you. Do you have any comments on the legal advice?

PRESENTING OFFICER: No, thank you.

CHAIR: Okay. In that case then I think the Panel will retire to consider this, and we will be back with you as soon as we can. Legal Assessors are allowed to join Panels for their discussion now, as well as for – whereas before they were only allowed to join Panels after a decision had been made. I think this Panel would be happy for the Legal Assessor to join us for this decision, if the Legal Assessor is happy with that.

LEGAL ASSESSOR: Yes, and to be – to assure the parties that I take – although I may join the Panel from time to time and I will assist in the drafting of this decision, I take no part in the decision, and any legal advice or fresh legal advice that I give to the Panel I will then give again in open hearing and give the parties an opportunity to comment on.

MR HOYLE: May I just ask, sir, you say there has been a change and Legal Assessors may now join in discussions. Can you tell me to the best of your knowledge when

that occurred and whether or not that was in force when the initial hearing took place?

CHAIR: I really couldn't tell you. All I know is that within the last year, I would say, HCPC guidance, which previously was that Legal Assessors could join Panels after Panels had made decisions, was modified, and the advice then became that, should the Panel and the Legal Assessor agree that the Legal Assessor would be present during the Panels discussions, that was permitted. I cannot tell you more than that. I do not know a date when that happened.

MR HOYLE: In which case, sir, do you think that you could direct that the HCPC deliver up that practice note with the date clear on it please? I would like to see it.

HEARINGS OFFICER: Would you like me to make some enquiries, sir, with regard to where that –

CHAIR: If you could make an enquiry, but that change in practice did happen – I just – I don't know the date when it did. Can we leave that –

MR HOYLE: Yes, sir. I don't have an issue with today.

CHAIR: Right.

MR HOYLE: I am just trying to work out whether or not it may have been an issue back then.

CHAIR: We will try and get that information for you.

MR HOYLE: Thank you, sir.

CHAIR: Okay. We'll adjourn now, and we'll be back with you as soon as we can.

(The Panel were *in camera* from 10.31 a.m. to 10.51 a.m.)

CHAIR: Okay, ladies and gentlemen, we're back again, and what we have decided is that we will proceed with this hearing at this time, and the reasons for that will be handed down in a written copy at the end of the hearing.

MR HOYLE: Thank you, sir.

CHAIR: Okay. There is one issue that the Panel would like to raise, in that we would just like some legal advice and to give people an opportunity to comment on that

legal advice. The issue for the Panel is it needs to understand whether it is deciding sanction on the basis of the conditions which existed at the time of the previous hearing, or whether it is deciding sanction on the basis of the conditions which exist now, because those conditions are different, as I understand it. So what I'm going to do is to ask for some legal advice on that, and then give both parties an opportunity to comment on or make whatever comments they wish about this issue, but I think it would be helpful for the Panel to have resolved this issue and decided exactly when it is, in terms of the, sort of, base date for the decision on sanction. Legal advice.

LEGAL ASSESSOR: Yes. Well, returning back to the order of Mr Justice Silber, which is at page 38 of the bundle, as I reminded the Panel previously, the scope of this rehearing that's been fixed by the High Court is that the matter be remitted to the same Panel of this Conduct and Competence Committee for re-determination as to sanction as soon as practicable. So it's quite clear that the only matter that you are to consider is sanction, and the assumption of course – the presumption is that Mr Geary is impaired. In fact, he is impaired, his practice is impaired, because the previous finding of impairment stands and isn't to be disturbed.

Having said that, it's my view that quite clearly the High Court had the view that Mr Geary would have a full opportunity to address you with submissions through Mr Hoyle, and to provide evidence if necessary, in respect of the current position vis a vis sanction. So I think that the correct position to hold is that it is the current position, but it's the current position on sanction and nothing else, and that would open the door for any appropriate evidence and submissions to be given by Mr – through Mr Hoyle. And it's my view that if he so wishes it's open to Mr Hoyle to take the Panel back, if he wants to, to transcripts of submissions made previously, or in fact that the Panel can refresh their memories as to anything that's been said previously as well, and that can also be considered. It's not invalid. That's the position.

CHAIR: Okay, so in a nutshell what you're saying is that sanction should be determined on the basis of the situation as it is now, not the situation as it was.

LEGAL ASSESSOR: Correct.

CHAIR: Yes. Okay. I'll just ask my colleagues if they have any comments – if they have any questions for the Legal Assessor. Okay. Any comments on our legal advice or any other remarks?

MR HOYLE: Yes, sir. Mr Serr has intuitively forecasted how I intend to present my case today, and I'm in full agreement with his advice, as it concurs with my own view, sir.

PRESENTING OFFICER: And I agree with the legal advice given.

MR HOYLE: What a relief.

CHAIR: I make no further comment, other than to say that – thank you very much for that, in which case the Panel is clear what its job is. Now I think we just need to determine how we're going to proceed. We've heard from the Legal Assessor, and obviously there are a number of ways forward. We need to hear any submissions on sanction, and that may or may not involve presenting evidence under oath personally by the Registrant or not, and I would like to have some comment as to how you might wish to proceed in terms of presenting your case on sanction.

MR HOYLE: Yes, sir. Obviously not knowing how this case was going to pan out, due to the lack of communication from the HCPC, this hearing could have gone in many different directions, hence the reason why we did not produce a witness statement, because we did not know what to put in it, whether or not it was going to concentrate solely on the issue of the Legal Assessor and the position under the Legal Services Act or something else. Well, clearly it's now something else, and there is no challenge to the fact that we are going to be looking at the current position.

What I intend to do – and this will not, you'll be pleased to hear, take me a great deal of time. I intend to take you through some of the documents in this bundle. I then intend to draw your attention to some of the case law that was referred to in the PSA's appeal and Judge Sir Stephen Silber's judgment. There will then come the point where I will invite you to consider what sanction or what – whether or

not you ought to leave well alone, whether or not you ought to do something else, and indeed you will need to affirm or to adduce the current position with Mr Geary. And in doing so what I would propose to do, without a prepared witness statement, for the reasons I've given, is to have him on oath. We will establish his current position today. He has his CPD file. He will be able to tell you how he has continued to comply with the conditions of practice, even though those conditions of practice were actually removed. He currently sits before you as a man with no sanction, and has done since July last year, but nevertheless he wisely continued with the conditions of practice, in the hope or expectation that this Panel would not interfere with its decision and make any sanction reflect its original decision, based upon my submissions.

So that is how I intend to run my case. The only other suggestion I might have is of course this is still the HCPC bringing its case against Mr Geary. Obviously the issue of impairment is already dealt with and cannot be disturbed, as Mr Serr has quite rightly said, but the HCPC will still have submissions to make on sanction, and I think it would be appropriate for Ms Ryan to go first. That would therefore afford her the opportunity to cross-examine Mr Geary and make comment on my closing submissions.

CHAIR: Okay. Is there any legal advice or comment on that way forward?

LEGAL ASSESSOR: No, I think that's appropriate. It's usual, isn't it, for the Presenting Officer to go first at this stage. I'm right, Mr Hoyle, there is no burden though of course at this stage on the HCPC. We're past the facts and grounds stage indeed in fact, but it's right that if your client does give live evidence then he'll be open to cross-examination. It is normally appropriate, or it's possible, for you to make submissions and update the Panel through that. I leave it in the hands of the Chairman as to how – as to what – the best way the Panel would like it done, but just to remind you that it's not an absolute necessity that the Registrant give evidence.

MR HOYLE: Sir, what I'm really hoping for today is just to see through a swift and efficient disposal of this, because this is not got to be today a contentious hearing.

There are no matters of contention that I need to challenge.

LEGAL ASSESSOR: Has Ms Ryan had the – have you indicated to Ms Ryan, given her an update as to what Mr Geary's been doing?

MR HOYLE: No, I haven't, because, as I say, the HCPC have stonewalled me again since the decision or the adjournment last –

LEGAL ASSESSOR: Okay.

MR HOYLE: So if they wanted to establish and open up a line of communication, share information, it was down to them.

LEGAL ASSESSOR: Okay. Well –

PRESENTING OFFICER: Maybe if I can make a suggestion. I've prepared a chronology just to assist the Panel in terms of how we've reached this point. I can open, as it were, with that. It's very, very brief. It's then perhaps to hand over to the Registrant, and if he wants to give live evidence, and then perhaps there can be short submissions after he has presented his case, as it were, from myself and from the Registrant's representative, perhaps.

CHAIR: That seems a reasonable way forward.

MR HOYLE: Yes, sir, and I envisage that my submissions will be based upon what Ms Ryan brings up in challenge, if indeed there is any sort of challenge mounted, sir.

CHAIR: Okay. I'm aware it's now 11 o'clock. However, we did have a short break. Does anyone need a break at this point, or can we go straight to the submissions?

PRESENTING OFFICER: No, I'm happy to proceed.

MR HOYLE: Yes, sir.

CHAIR: Yes. Okay. In that case then, HCPC.

PRESENTING OFFICER: Thank you. So all I propose to do to assist you, because this is slightly unusual, in that we are not going straight into sanction having recently heard the matter, is to just provide you with a very, very brief chronology as to how we are at this point. So as you'll recall, on 15 December 2014 Mr Geary was convicted at Wolverhampton Crown Court of failing to discharge a relevant duty. The sentence imposed was one of eight months, which was suspended for 24

months, and he was also ordered to do 240 hours' unpaid work, which had to be completed within a period of 12 months.

Following on from that, there was an HCPC hearing before the Conduct and Competence Committee on 8 December 2015, and that concluded on 7 and 8 January 2016, and the decision is at page 252 of the bundle. I don't propose to take you through that, as you are the Panel that made the decision, but you will be aware that your finding was that the allegation that his fitness to practise was impaired by virtue of that criminal conviction was well founded. As a result, you imposed a sanction of a two year conditions of practice order.

Following on from that, the Professional Standards Authority appealed against the decision under section 29. It was a section 29 appeal brought on the basis that the sanction imposed was not sufficient for public protection. A section 29 appeal can be brought where it is considered that the decision is not sufficient for public protection, and the considerations behind that are whether it protects the health, safety and wellbeing of the public, whether it maintains public confidence in the profession, and whether it maintains proper standards and conduct for the profession. Having heard the appeal, the conclusion of Sir Stephen Silber can be found at page 26 of the bundle. His entire judgment is between pages 13 and 30.

In conclusion, when returning to consider your sanction you must give appropriate weight to the wider public interest, not just the deterrent effect on other Registrants, but also on the reputation of the profession and the public confidence in the regulatory process. And so at this point you'll be invited to hear any evidence that is brought on behalf of the Registrant, and then sanctions from myself and the representative on sanction, and then retire to consider the matter further. Thank you.

CHAIR: Okay. Thank you very much. Do you have any points for clarification? Okay.

Mr Hoyle –

MR HOYLE: Thank you, sir.

CHAIR: – do you wish now to put – to make an opening statement, or do you wish to put Mr Geary on the stand? How would you like to proceed?

MR HOYLE: I would wish to make an opening statement. I would then like to take the Panel through the documents, and then through the authorities. Then I would like to have Mr Geary take the oath and give evidence on his current position in relation to work, conditions of practice and obviously the issue relating to his conviction. And then I will invite Ms Ryan and yourself to ask questions of Mr Geary. From that point you will then direct how the case will proceed, because obviously there'll be advice from the Legal Assessor. So that's how I propose to go.

LEGAL ASSESSOR: Shall we hear from the Registrant first, and –

MR HOYLE: No, I'd like to do the Registrant after I have –

LEGAL ASSESSOR: Well, that's not the normal way in which these matters proceed. Normally there would – we'd be hearing from the Registrant. There will be cross-examination if you'd adduced the evidence, cross-examination if necessary, and then closing submissions.

MR HOYLE: This is a rather unusual case though, isn't it, Mr Serr?

LEGAL ASSESSOR: Well, why is it that you want to give submissions first and then hear from the Registrant? Presumably you're going to want to then address the Panel on the evidence that's been given.

MR HOYLE: I will address the Panel on the evidence that's been given, but first of all we need to set the background. We need to put the context. The Panel need to understand why we're here fully, at least –

LEGAL ASSESSOR: Well, the Panel do know why we're here. I can assure you of that.

MR HOYLE: From our point of view that may be slightly different.

LEGAL ASSESSOR: No, the Panel do know why we're here. Well, it's a matter for you, but from my legal advice the normal position is that the Registrant will give live evidence, be cross-examined if so – if necessary, and then we'd hear submissions.

CHAIR: Okay. You've heard that legal advice. Do you have any comments on it?

MR HOYLE: Yes, sir. I would like to be drawn to the law which states that that's an absolute necessity, a given, and a must. If there is no law and it's just simply

common practice then I'm going to ask that you depart from common practice to allow me to put Mr Geary's case in the best way possible and for – certainly the way that I've rehearsed it.

CHAIR: HCPC, do you have any comments?

PRESENTING OFFICER: I agree with the advice. It is typical that live evidence is heard and then submissions are made.

CHAIR: Okay. The Panel will retire and we will consider this, and we will be back with you as soon as we can. I don't think we're going to be terribly long, so –

MR HOYLE: We'll stay, sir.

(The Panel were *in camera* from 11.07 a.m. to 11.10 a.m.)

CHAIR: Okay, the Panel has decided that it will hear first from Mr Geary under oath and then it will be up to you then to make any comments that you wish after that. So the Panel – if you wish to call Mr Geary he will now move into the witness box.

LEGAL ASSESSOR: Mr Hoyle, can I remind you that if there are any matters of health or other private matters that Mr Geary wants to refer to, you should ask the Panel to move into private session because there are no...

MR HOYLE: Yes, thank you.

THE REGISTRANT, affirmed

CHAIR: Mr Geary, please sit yourself down, make yourself comfortable.

REGISTRANT: Thank you.

CHAIR: You've got some water there. I'm not going to go round with introductions; I think you know who we all are and what our role is. There is a pile of papers there, which it may be that your representative may want to take you to. Is there anything else we can do to make you more comfortable or better able to give your evidence?

REGISTRANT: No, I'm good thank you.

CHAIR: Okay, Mr Hoyle.

Examined by MR HOYLE

Q. Thank you sir. Well Mr Geary, obviously, we both feel that the order of batting is somewhat prejudicial now, but we will press on. And I am now having to think how best to approach this. You are currently registered as a paramedic.

A. I am, yes.

Q. And you are registered currently without sanction, is that correct?

A. That's correct.

Q. And that sanction was quashed by the High Court.

A. Correct.

Q. That was in July last year?

A. Mm.

Q. Okay. So, since July and February you have been without sanction.

A. Yes.

Q. Have you committed any offences in that time?

A. I have not, no.

Q. Have you had any complaints made about your fitness to practise either in relation to your competence or misconduct?

A. I haven't, no.

Q. Have there been any concerns raised about you by enforcing authorities or police?

A. No.

Q. No.

CHAIR: Mr Geary, it's difficult because you're being asked questions over there but you need to reply to the Panel, if you can try to remember that.

A. Okay, yeah.

MR HOYLE: Now, at the conclusion of the original hearing, you were given a two year conditions of practice and that involved a number of things but in particular one of them was being mentored by a fellow paramedic.

A. That's correct.

Q. Who is that?

A. It's a gentleman called John Flynn.

Q. Okay. Now, the obligation was that you carry out those conditions of practice for 2 years after, which you or the sanction would be made, i.e. the determination whether or not to fully restore your registration without a black mark against it. Now, in July, so only a matter of some 5 or 6 months after the determination was made, that was quashed. Have you however, continued with those conditions of practice?

A. I have, yes.

Q. And are you able to evidence that?

A. Yes, the folder in front of me is the work I've been doing.

Q. Have you continued to keep up your CPD?

A. Yes, I have.

Q. Continual professional developments?

A. Yes.

Q. And are you able to evidence this?

A. Yes again, that's the folder in front of you.

Q. So in essence, you have carried on, even though you are not obliged to do so, with those conditions of practice up until today.

A. That's correct.

Q. Okay. Have you undertaken any paramedic work?

A. I have, yes.

Q. Okay if you could just explain what work you have done?

A. I've been working for a company down in Bristol dealing with school events; it's rather a high profile school, covering Rugby events, American football. I've been working as a two man crew. I've also been working on my own without any complaints or problems or issues.

Q. And just to reiterate, one of the conditions of practice were you were not to work single-handed unless your mentor determined that you were able to; did he make

that decision?

A. Yes.

Q. Okay and just to reaffirm, the company you've been working for is Community Paramedics?

A. Correct.

Q. And that is run by Mr Gary Eaves, who is a witness you are very familiar with. Have you applied for any jobs, other permanent jobs?

A. I did initially, early on.

Q. And what was the – what got in the way of your successful application?

A. Unfortunately, it was the press coverage. I did have a couple of people saying they would be happy to take me on, but because there's a bit of a black cloud if you like, hanging over me, they would be a bit hesitant at that time, which is something that's interrupted gaining more work during that time.

Q. Indeed, after the adjournment of the previous hearing we were accosted by the press outside, weren't we.

A. Yes, we were, yes.

Q. And within 24 hours, a sweeping and defamatory press report was issued on the internet and in the printed press, is that correct?

A. That's correct, yes.

Q. Did we take action to have that dealt with?

A. We did, yes.

Q. Was what was written suggesting that you received a two years' condition of practice as a result of you being charged with manslaughter?

A. It was, yes.

Q. And did they correct it immediately?

A. They did, but unfortunately, it still went out in the written press?

Q. That matter has not been resolved has it?

A. Not as yet no.

Q. Do you still wish to continue your paramedic profession?

A. I do. The short term I've been working for Community Paramedics has reaffirmed

the enjoyment that I get from doing the job. It's relit the fire if you like, you know, I've enjoyed working with other people, enjoyed working with the patients and doing the best for them.

Q. In terms of full time occupation, day job, what is it that you're doing?

A. I'm currently working in a factory at the moment and trying to do my paramedic work on the weekends.

Q. And your wage?

A. Minimum wage.

Q. Minimum wage. What were you earning before as a paramedic?

A. With the ambulance service or...

Q. Yes.

A. Well, I was on Band 6 so I was working on a responder car. I can't remember the wage offhand.

Q. And currently, when you're doing the ad hoc paramedic work, what is your wage there?

A. Usually £18 to £20 an hour ranging.

Q. Okay and has the particularly the appeal impacted upon your finances?

A. Well, it has hugely, yes.

Q. And have claims been made against you for tens of thousands of pounds by the Professional Standards Authority, is that correct?

A. That's correct, yes.

Q. Okay. But nevertheless, you are still determined to return to paramedic practice?

A. Yeah. After everything I've been through, all the press coverage I've had the hate if you like that's been directed towards me, I'm still standing here.

Q. Were you ever tempted to walk away?

A. It's crossed my mind obviously, but you know, I enjoy being a paramedic and that's why I'm still here and that's why I'm still fighting.

Q. Okay Mr Geary, that's all the evidence that – well that's all the questions I have for you. I have no questions for you from the written evidence we have here. Obviously, there will be questions now regarding your current position and what

you've done, since the original sanction and since the appeal. So, I will hand you over, presumably now, to Ms Ryan.

Cross-examined by the PRESENTING OFFICER

Q. Thank you. I just want to pick up on couple of points on the evidence you've given so far. You've mentioned about doing paramedic work on the weekends, can you give us some idea of what that involves, does it involve responding to emergency calls or is it more your based at an event which is going on?

A. It's event based work so therefore, if I was covering a rugby match I'd be on the halfway line and then I'd get called onto the pitch if I was required and we'd sort the patient out from there.

Q. And so that's on your weekends, and does the scope go outside people that are on the pitch, or is it just the pitch players that you're also helping out?

A. It's anybody that's required, whether it be the bystanders, parents etc.

Q. And it's children activities as opposed to adults?

A. Yeah, children, teenagers, yes.

Q. And have you had any situations where you've had to sort of deal with something unexpected or have somebody in the crowd or something?

A. I can't really say unexpected. I mean, during the rugby match I expect sort of head injuries and head clashes. I've had a couple of elderly patients if you like, which I've felt that I've dealt with well.

Q. And are you then responsible for transferring them to hospital if required?

A. If required, yes. They do tend to get the ambulance service in depending on the situation. Each case is done on its own merit because obviously, if the medical cover leaves pitch-side then there's no medical cover at all, so it's judged on each individual patient.

Q. And in relation to that work, would there be just two of you per game or is there say more?

A. It just depends on the event of that day. I mean, for example, there was one day

where there were several rugby matches going on at the same time so I was sort of clinical lead and we had technicians and different ranks of staff around each pitch.

And then I've just went to wherever was required.

Q. And I don't know whether enquiries were made but were you employees willing to provide you with a reference for these proceedings as to what you have been doing?

A. Yes, unfortunately, I haven't got it – he hasn't produced it as yet, but he has been more than happy and he has been asking me to work for future events this year. So he is happy with what I'm doing.

Q. And in relation to that do you know why he wasn't able to provide it today?

A. Unfortunately, I don't mean this as an excuse; I have had a hell of lot going on in my personal life. My partner's been pregnant, we've had our first child, it was a difficult pregnancy. I've been trying to juggle lots of things. Obviously, travelling down to London on regular basis you know, keeping up to date with my folder. There's no reason for it other than it's a job that's on my list. I've got a 'to do' list on the back of my folder and that's one of them.

Q. And just in relation to that how long have you been in that role for?

A. Well I started doing event work shortly after I left the ambulance service back in around August 2012. I was full time for a couple of years doing private events, then it tailed off a bit again with the press coverage. I was always honest with employers and said 'Look, this is what's going on. This is the process I'm going through'. So unfortunately, it tailed off and then I've been able to pick it up again recently, so it has been intermittent.

Q. I just want to ask a few questions in relation to CPD/courses to do with reflection. So, what's the sort of things you've been doing in terms of keeping your professional skills up to date?

A. Well, I've been seeing John, John Flynn, on a monthly basis. We've been working out my strengths, my weaknesses. I've been doing on-line courses, which have helped a great deal. I've been going to a training company who sorted out the action plan so I could set out the goals I wanted to achieve and doing practical

aspects there as well.

Q. You've mentioned John Flynn, who is he?

A. He's a paramedic, registered paramedic.

Q. No, but who is he to you in terms of you say you've been going to him?

A. Oh, he was recommended to me and I've been meeting up with him on a regular basis. We go through the things I feel are required and he talks to me on what he thinks I may need.

MR HOYLE: Sir, I may be able to assist you on that.

CHAIR: Sorry?

MR HOYLE: I may be able to assist in that point, Mr Flynn's position, if that would help?

PRESENTING OFFICER: I'm just wondering, is he in some sort of supervisor or mentor role? That's sort of what I'm trying to establish, or is it just an informal arrangement?

A. Well, I suppose it's an informal arrangement. He's a very experienced paramedic.

MR HOYLE: It may assist sir. Mr Flynn was someone I represented at the HCPC for a fitness to practise matter and he was given conditions of practice. He established a [inaudible] company with David Poulton; I forget the name of the company.

A. HDP.

MR HOYLE: HDP Solutions I think it is. Mr Flynn completed that conditions of practice and submitted his work to a subsequent Panel, who signed him off as having complied, Mr Flynn being a friend of mine, also owing me a favour for representing him. As soon as Mr Geary was issued with conditions of practice, I asked him as having first-hand knowledge of what would be expected, and having already devised a successful route to mentor Mr Geary. Mr Flynn has some 25 years' experience in two NHS trusts and he is currently a senior mentor paramedic with a private company based in Nottinghamshire, although he does also freelance work elsewhere. There have been no concerns raised about his ability before and as I said, he has successfully gone down the route that Mr Geary is currently going through now. You didn't place any conditions on any particular qualification

when you gave the conditions of practice and it was someone suitable. Mr Flynn, in our opinion, was somebody suitable.

CHAIR: Does that clarify?

PRESENTING OFFICER: I think so. So he is in the mentor role of the conditions of practice?

A. Yes, yeah.

Q. And has he provided something sort of a reflection document in terms of the mentoring he's done with you?

A. I was doing reflections a long time before I actually met John due to doing my degree at university, my paramedic degree. So, we used Gibbs reflective practice anyway, so I was very used to doing reflections before I met John. And John was happy with me carrying on the way I was doing. It's a quite commonly used reflective practice and I felt I was getting the best out of that, using that method.

Q. Has he done anything though for the Panel today in terms of reconsidering your sanction as to how things have been progressing?

A. He's been giving me monthly tasks to actually achieve, which I've been doing. We haven't got anything written as such like you suggest.

Q. Yes, that's what I mean of course, was there anything that he can comment on how you have progressed over the last few months?

A. No.

Q. Okay. And how long has he been in the role for you?

A. February of last year.

Q. And that is separate from the company that you're doing the work for at the weekends or is it the same?

A. Yes, yeah.

Q. Okay. And just dealing with the sorts of things, have you done anything in particular that you can reference course wise perhaps or online learning that relate to specifically sort of dealing with patients, dealing with perhaps challenging patients?

A. Yes, I did a quality management online course, which was to do with treatment of

patients, whether it be in hospital or whether it be out of hospital.

Q. And just in relation to, obviously, when the Panel are thinking about the sanction that they're looking at, to what has happened since. Obviously, you gave evidence at your previous hearing in relation to your position and your thoughts in relation to what had happened. Has that in any way changed or altered. Have you had any further thoughts on the incident itself?

A. Yes. I've done a reflective practice at different points as time has gone by. I feel now that a lot of what was going on in my home life at that time affected my thinking, maybe my attitude on that day. Those have now gone and my home life is a lot calmer. I've obviously grown up quite a lot in the last four and a half, five years. I've now become a dad. My attitude, my way of looking at life is completely different, especially going through all this procedure that I've had to go through.

Q. I don't have any further questions thank you.

CHAIR: Okay, do you have anything to redirect at this point?

MR HOYLE: No, I do not thank you.

CHAIR: Okay, the Panel may have some questions but we're going to retire to think about our questions. And so there will be a short break here. I would think probably it'll take us 15 minutes to sort out our questions, so if you want a cup of coffee than that will be fine. But I just remind you that you are on oath at this point and therefore you must discuss your evidence with no one in this interlude, okay.

REGISTRANT: Yes.

CHAIR: Okay, we will retire for 15 minutes, thank you.

(The Panel were *in camera* from 11.37 a.m. until 11.52 a.m.)

CHAIR: Okay, ladies and gentlemen, we are back again; we do have some questions for you. I just remind you that you are still on oath at this point and my professional colleague is going to start.

Questioned by the PANEL

MR SIMMONDS: Hello Mr Geary.

A. Hello.

Q. Thank you, could you just tell me how regular the work is that you do when you say you do the rugby work?

A. Obviously, with the event work it does tend to go quieter over the Christmas period so I started working for him in the autumn of last year. And then it's gone quiet over Christmas and it's starting to pick up again now. So there has been a handful of events since the autumn.

Q. Could you, no detail obviously, could you give me an idea of the cross-section of work that you've had? You've had trauma and medical conditions to deal with?

A. Recently or when I was working full time as well?

Q. No, sort of recently and sort of yes, a little bit of the full time as well; what you've had since we last sort of saw you really.

A. Okay, more recently it's tended to have been more trauma based obviously with sporting events; that is the majority of the patients we tend to get. When I was full time I was covering a lot of sporting events again which were mainly trauma based, but there were patients on the medical side as well.

Q. All right thank you. I appreciate you've got a big bundle there in front of you. Do you have evidence with you of the online courses that you say you've done?

A. Yes, I have, yes.

Q. You've got that in there. And do you have a copy of the reflective practice? You said you've been doing reflective practice.

A. Yeah, at the front yeah.

Q. You've got that in there, so we will be allowed to see that...

A. Of course, yeah.

Q. Shortly, if I may.

CHAIR: I wonder if – there will be other questions I think involving evidence that may

be available. Rather than necessary have it all copied, would one way forward be for some Post-It notes to be put in at the appropriate places that illustrate particular aspects of evidence, which the Panel could then have a look at in the bundle, rather than take everything out, photocopy it at times. Would that be a reasonable way forward, is that a reasonable way forward?

PRESENTING OFFICER: Yes, I agree.

CHAIR: Mr Hoyle is that...

MR HOYLE: I have no objections. How you determine well, how you adduce the evidence is a matter for you sir. If that aids you and it's within our ability to do so.

CHAIR: I was thinking that perhaps we will be leading some questions obviously. They will refer to particular pieces of paper that may or may not exist. The ones that do exist then perhaps over the lunch break we could insert a Post-It or something in the appropriate page and the Panel could then look at it.

MR HOYLE: Indeed sir, what I will do then is if you would like to I will commence a list now of what it is you want to see and we can reconfirm that at the end of your questions and over the lunch period Mr Geary and I can set to work. But certainly, I expect that it will be done well before the conclusion of – the estimated finish time today in any case. That will allow you the ability to review that today, possibly over the weekend, and certainly at your leisure all day on Monday. So, it could be that you may wish to just take the bundle as it is and you may find things in there, which you did not ask for, which you find –

CHAIR: Yes, I'm just reluctant to copy the whole bundle.

HEARINGS OFFICER: Sir, just to confirm that anything which the Panel sees will need to be photocopied at least once by me so it is an exhibit to the case. So as long as I know what the Panel have seen and I am able to photocopy all the documents that have been reviewed by the Panel today.

PRESENTING OFFICER: It is fair to say that I haven't had sight of any of the documents.

CHAIR: I'm sorry, say it again.

PRESENTING OFFICER: I haven't had sight of anything.

CHAIR: Indeed. Obviously, there would have to be a fair process, yes. Does the Legal Assessor have any comments on this possible way forward?

LEGAL ASSESSOR: No, I think whatever's – sorry, I am slightly got lost as to what's going to happen, so the Registrant's going to take this out or is going to...

CHAIR: Well, we are going to go through some questions, which may ask about the existence of various documents. Those are going to be listed by Mr Hoyle and then, over the lunchbreak there will be some insertion of stickers, which the Presenting Officer can then have a look at the bundle before we see it and if there's any argument we can sort that out. But then the Panel then, rather than to have to copy the whole bundle, will look at the particular pages, which have been posted.

LEGAL ASSESSOR: Posted, yes.

CHAIR: Okay, I think we've established a way forward then so perhaps you could just recap on for Mr Hoyle can take the notes of any particular documents that...

MR SIMMONDS: The documents that are required, it was evidence of the online courses that Mr Geary's done and copies of...

MR HOYLE: I'm sorry, I'm trying to keep up. Online courses and?

MR SIMMONDS: And reflective practices.

MR HOYLE: Reflective practices.

MR SIMMONDS: So that's probably all I'm asking for at the moment.

CHAIR: So that's for Mr Simmonds.

MR HOYLE: Okay, so do have any other?

MR SIMMONDS: I don't, no thank you very much.

CHAIR: Okay, moving over then, do you have any questions?

MS SEAGER: I do, yes.

CHAIR: Okay.

MS SEAGER: Can we turn to page 263 please in bundle A.

A. Yes.

Q. So, it's just some questions here on the conditions, which I appreciate there was a

change last year, but it's – you said you were working with the conditions just so to work through and get clarification as to what you have been doing. If we look at number one, on page 263, 'Remain under the supervision of a workplace supervisor'. Is that the person at the weekend paramedic duties, is that who you are considering is the supervisor?

A. John Flynn's my mentor. But the gentleman I'm working for, Gary Eaves, he's a paramedic as well. So, I suppose it would be John.

CHAIR: So, in terms of initial notification to the HCPC, your supervisor officially is?

A. John Flynn.

MS SEAGER: And did you supply those details to the HCPC within one month?

A. No, because I wasn't working at that point. It wasn't until the autumn.

Q. Until the autumn.

A. Yeah.

Q. Right, that's what I thought okay. And then turning over, number 6, 'Working with your supervisor to formulate a personal development plan' etc. have you got any evidence of this?

A. Yes, there is my action plan in there.

Q. And it talks here, at 6.2, 'Analysis and understanding the root cause of deficiencies in your practice or improvements that could be made'. Can you talk me through some of those please?

A. I suppose analysing and understanding the root cause would be what I mentioned earlier about having a lot of problems at home, which were causing the considerable stress at that time. I think it took me a while to actually understand that fully, hence things I've said in previous hearings, which have maybe come across wrong or misunderstood. It's because of the suspended sentence and because of you know, job worries, home worries. It's took me a long time to reflect on all those issues fully. But I am now at a point and I did have counselling as well, which I feel I understand how my brain was working on that day if you like. And obviously, that's a deficiency that will never happen again.

Q. How could you know it's not happening again, when you've had other problems at

home or something concerning you?

A. Because I'm more aware now of how my – how I'm behaving, how I can change my behaviour. What I need to do and to put things in place, obviously that was something which got discussed in my counselling. A lot of writing went on, a lot of writing in diaries. It's quite enlightening when you do things like that because you do understand yourself as a person a lot more than I ever did before. So, I am a lot better now at identifying issues and resolving compared to what I was previously. So I do feel really quite strong in that area now; that I am able to resolve issues.

Q. And how would that transfer into your work life as a paramedic?

A. Well, I think I'd have to take every patient as it came. I think I would have to – using a holistic approach, which I got taught at university to look at a bigger picture, look at how the patient may be feeling, he's feeling, rather than just identifying the problem. So my ability to show understanding towards other people has increased greatly.

Q. Okay. Number 7, 'Forwarding your personal development plan' are you saying that you haven't done that because you started work as a paramedic in the autumn of last year.

A. Yeah.

Q. So, you've not done that part, okay. Number 9, 'Allow your supervisor to provide information to the HCPC about your progress towards achieving the aims set out in the personal development plan'. Has any of that taken place about your supervisor providing information?

A. I'll just read it again if you don't...

Q. Yeah of course, yeah. [*Pause for reading*]

A. No, that hasn't happened. Again, that was a difficult time because of the High Court issue and the fact I wasn't working early on.

Q. So just to be clear yourself, your paramedic work in autumn of last year; that's the first you did after the previous hearing is it?

A. Yeah, yeah.

- Q. Okay. So, when did your factory work commence?
- A. May of last year.
- Q. Of last year.
- A. I was working at a place called Back to Bikes before then.
- Q. Well, we discussed that, haven't we?
- A. Yeah, which was the place where I did my community service. They offered me a job because I'd done such a good job while I was working there. Unfortunately, that place was having financial difficulties and so it let a lot of staff go, clearly myself unfortunately and that's why I moved over to the factory work.
- Q. Okay. And have you got any evidence of your employer's review of performance, whether it be factory, paramedic?
- A. No, not at this time, no. Like I said to Ms Ryan, this is on my 'to do' list.
- Q. Is it not something that's sort of went higher on your 'to do' list as you know, bearing in mind another hearing today? How come it got so low on your 'to do' list?
- A. It's not low on my 'to do' list. It's like I said, I've had a lot going on so I have a 'to do' list, lots of juggling with different aspects. You know, I have focussed on the learning side, which has increased my confidence, because obviously that was a major issue after everything that's happened, that my confidence had gone down. So, by me doing the learning, by me starting to do the work again, that's made me into a more rounded paramedic again.
- Q. And did you actually ask anyone to do references for you?
- A. Yes, Gary Eaves is more than willing to give me a reference. I've forgotten his last name, my supervisor in the factory job Tony, he's given me all his details, name, address, email etc. he's more than willing to give me a reference.
- Q. And what about John Flynn?
- A. Oh yes definitely, definitely.
- Q. So, I'm not quite sure why you've got three people that would give you references but you haven't come with one today.
- A. Like I say, I've just been concentrating on the learning aspect and there's no

reason for it that there's no – I'm not trying to be obstructive in any way. There's a lot of aspects that need to go into the folder. It's a work in progress. And it's – it is something that will be completed.

Q. Okay, thank you.

CHAIR: Okay, I just want to take you back to the original incident, which precipitated all this. How would – looking back now, how would you regard your behaviour at that time?

A. My behaviour wasn't up to standard. There were aspects that I should have done, which I didn't. I should have dealt with the incident differently. I should have raised my concerns early on, when the patient was put into the waiting room. It's something that I've learnt from, something from a similar situation I've been in post event and I dealt with it completely differently and for the better.

Q. Okay and appreciating that you have now learnt from that, what do you see as being the root cause underlying what was in a sense and abhorrent set of behaviours. Because you'd been in practice for a long time before that as a paramedic perfectly satisfactorily. And then suddenly there's this one incident, so what was the root cause to make you change from, in a sense, being a perfectly satisfactory paramedic, to being one, which was a problem on that particular instance. What was the root cause behind that?

A. It was simply that the problems that were going on in my own life, I don't want to go into details for obvious reasons.

Q. No indeed, I'm not –

A. On that day it came to a head. My mind set was wrong. My decision-making was wrong and I made those mistakes.

Q. Okay. While not wishing for you to have the same problems again for – but if other problems arose of a similar sort of magnitude, what makes you think you wouldn't behave in the same way?

A. Because I'm a lot stronger person now. I've been to Magistrates court, I've been to Crown court, I've been to High Court, I've been questioned on a police station. I've been shouted at in a police station. I'm a lot stronger person now than I ever

was before. I am, like I said to Ms Seager, just I'm a lot more aware of my behaviour, I'm a lot more aware of how to adjust it. I've become a more rounded person. And I'm very confident that my mind set will never go in that direction ever again.

Q. Okay thank you very much. I will just ask my colleagues if they have any supplementaries for you.

MS SEAGER: No thank you.

CHAIR: Okay. Is there anything arising on the Panel's questions?

PRESENTING OFFICER: No thank you.

CHAIR: Anything arising from the Panel's question?

Re-examination by MR HOYLE

MR HOYLE: Yes, just a few things if I may. In relation to the root cause, you've identified it as being home life problems. Would you like the opportunity to go into private session and discuss those further or would you not, it's entirely up to you. Obviously, if it's in private session then it will not go on any written transcript that can be seen by any member of the public or indeed the press. It would simply be a – for the purpose of professional considering.

A. I'm willing to discuss it with the Panel if they would like to understand.

Q. Okay so in which case, can I make an application to go into private session for the purposes of speaking about the root cause Mr Geary has identified?

CHAIR: Are you happy to do that, any legal advice? Okay we are now in private session so can we record that please and could I ask the public to leave.

**(The hearing went into private session at 12.12 p.m.
and resumed in public session at 12.31 p.m.)**

CHAIR: Okay, we are back in public session again and we are just dealing with questions arising from the Panel.

MR HOYLE: Yes sir, I've been advising you on how to present the case haven't I.

A. Yeah, you have yes.

Q. And I haven't suggested to you that bringing references with you were a critical part of the presentation of your case today.

A. No.

Q. No okay, in fact we haven't discussed that at all have we.

A. No.

Q. No. Now, in terms of you have complied with the conditions of practice that were put upon you even though they were subsequently quashed as best you could.

A. Yes.

Q. So, even though you are currently, and have been since the autumn a paramedic without restriction, you have carried on those conditions of practice as best you can.

A. Yes.

Q. So, with all of this out of the way, and now we managed to secure you some more regular work, if any conditions of practice are put upon you. Or if the original order is remade, to last for as long as it was intended, will you be able to comply with all of those conditions whilst you are working?

A. Yes, probably.

Q. Would you be prepared to accept any new ones?

A. I've been prepared to go on with what's expected.

Q. Okay. Just in terms of dealing with stressful situations, and how you react, obviously you don't get many of those in the factory do you.

A. No.

Q. But the last time we were here we were subjected to what I might describe as a public order incident when we were accosted by a reporter who was behaving most unprofessionally. Now, we discussed how you dealt with that on the way to the tube and you came out with one or two things that showed you reflected straight away.

A. Yes.

Q. Just explain, when we were dealing with that gentleman and I use that term loosely, all the things that were going through your mind, if you would.

A. Well, my prior concern was to obviously get away from that gentleman. Because of the situation he was causing. Again, in hindsight I could have done things slightly different. I ran across the road to try and get away from him, which is an automatic reaction. You know, that could have caused problems for me and other road users. But when you're in a situation you've never been in before, it's – you do the best that you think you can at the time. If it happens again today then it will be dealt with completely differently.

Q. Did that man come within striking difference?

A. He did, yes.

Q. Did you strike him?

A. No.

Q. Did you make threats towards him?

A. No.

Q. No. Going back to when you were going through the difficulties we discussed in private session, and faced with that situation, could you speculate that you might have behaved differently, and if so, how so?

A. It's a very difficult question to answer because you – well I probably would have thought it – I would have acted irrationally at that time. But I'm a different person today than I was back then.

Q. Okay. Sir, I have no further questions emanating or arising from the Panel's questions.

CHAIR: Okay. I will check with my colleagues, no, okay. In which case then I think we have finished with your evidence as such and I can move you back to your chair and I can release you from your evidence.

REGISTRANT: Thank you.

MR HOYLE: Thank you sir, I'm obliged. Okay?

REGISTRANT: Yes.

CHAIR: Okay, I think are we now at the point where the HCPC would summarise and

then make any further submissions, and then you would have a final word to make any submissions or comments that you wish?

MR HOYLE: I have a significant amount of submissions to make. It's just a matter of where we are going to fit that in. I have an opening statement. I need to walk through the documents and I need to make closing submission sir. But at the moment I think it's still our floor, if I'm not mistaken.

LEGAL ASSESSOR: Well perhaps the best thing to do is to hear Mr Hoyle's submissions, let Ms Ryan say anything she wants to say and let Mr Hoyle have the last word.

CHAIR: Okay, so if we hear those submissions now and the HCPC are happy with that?

PRESENTING OFFICER: Yes sir.

CHAIR: But I am anxious to give you the last word in the proceedings.

MR HOYLE: Now I estimate that this is going to take well under an hour if you were thinking about timetabling specially a lunchbreak.

LEGAL ASSESSOR: Yes, is that a written document?

MR HOYLE: No, this is my notes.

LEGAL ASSESSOR: That's not to hand out?

MR HOYLE: That's not to hand out, no sir.

LEGAL ASSESSOR: Okay. Because if you will be reading something it could...

MR HOYLE: No, these are simply my notes.

CHAIR: Okay, so I think we are going to adjourn now for lunch and it's now, by my watch, twenty five to one. We need to make sure that we've got the bundle annotated with Post-It's at the appropriate point. So, half past one? Would that be a reasonable time to go and have that and also to have lunch?

PRESENTING OFFICER: Yes sir.

MR HOYLE: I think so, yes sir.

CHAIR: Okay, in that case then we will adjourn until half past one.

PRESENTING OFFICER: Thank you.

CHAIR: Thank you.

(The hearing adjourned from 12.38 p.m. until 1.39 p.m.)

CHAIR: Good afternoon, ladies and gentlemen. Okay, ladies and gentlemen, we're back in the session again – Mr Hoyle.

MR HOYLE: Thank you, sir. Obviously, the mood is nowhere near as tense and fatuous as it has been in the past because we can now see the light at the end of the tunnel. And hopefully, this will be an end to everything, for everyone. I have an opening statement and then I'm going to walk you through some of the documents. I'm going to walk you through some of the case law and I'm going to invite you to draw some conclusions.

But obviously, I've done a great deal of research into the background of how we've arrived here. And one or two things, when I speak of them, you may be tempted to say are not relevant. But one of the things that we're here for is it was suggested that public interest had not been met. The public, therefore, may be interested in this and certainly we have a law reporter here with us, today, who may report on a rather unique set of circumstances that causes us to be here, or in another view, not quite so unique as they might be.

We're here because of the Professional Standards Authority, and no other reason than that. You would have thought the Professional Standards Authority was an organisation aimed at ensuring patient care and safety – an extra safeguard in a chain of safeguards. And we all know on reading the news that sometimes these safeguards do not work. There are enquiries and there are things to be learned from those enquiries. Now, I was once of the opinion that the PSA did that – they ensured professional standards. But what I quickly discovered is that nothing could be further from the truth – that is not what they do, and I will explain why. Their remit is to review every decision of the health regulatory bodies: so that's the NMC, the GMC, the GDC. I'm not sure if they stretch as far as the Veterinary College, but certainly, the regulatory law is the same.

Now, you may remember from my summing up, more than a year ago, the

rogues gallery, as I called it, of criminal offenders, all of whom retain their registration because they did some serious, and in some cases, pre-meditated acts of criminality, and they retained their registration. And indeed, none of those, according to my research – and I do stand to be corrected – were ever challenged by the Professional Standards Authority. They let those cases and the decisions of the Panel be and let them lie; didn't seek to interfere.

The Professional Standards Authority do not earn money, a bit like the HCPC, really. They take a proportion of fees given to regulatory bodies, so a proportion of the fees that are given by registrants to you, you then give to the PSA, along with all of the other regulatory bodies. So ultimately, this organisation is funded by every healthcare professional who has a current registration. One of the things that you have to have in mind is the interest of the registrants, as well as the public. You have to balance that against the interests of the Registrant; sometimes that can be a very fine balance, open to challenge.

Now, I draw your attention sir, to C1. Now, I made a freedom of information request on 5 April 2016, and they responded within a month. So they actually didn't take all the time they were entitled to. And I asked them to supply details of all complaints made by members of the public, where they complained about the leniency of the decision. And I just picked out of them, the GMC, the NMC and the HCPC.

CHAIR: I mean, I appreciate this is part of your submission, but I mean, it needs to focus very much on what sanction, if any.

MR HOYLE: Indeed, sir. And as I said in my opening gambit, there may be a temptation to think that what I'm about to say to you may not be relevant, but please bear with me. This opening statement will take me another five minutes, then I'll be moving on to the things that you want to hear.

Now, the PSA responded, and said, 'We don't accept or record complaints about leniency, not in our remit; we don't do it.' So, what is it that they do do – that's the question. Sir, you have my question, you have my answer at C1.

So, what we can take from this is that we are not here because somebody on the public, or many people from the public, or many registrants, or the healthcare professionals, phoned up the Professional Standards Authority or melted down the switchboard here, and said, 'You've come to the wrong decision on Mr Geary.' There's no evidence been put forward to say that that's the case, so it must be presumed that no complaints were made and indeed, there's no way of recording it.

Now, we're here because of the curious practice that the PSA now seems to take a theme. There is a theme to what they've done, and I'll draw your attention to that in the case law. Now, what the PSA do, they have a budget of £3 million. The chief executive takes £205,000 of that, for himself. But what they actually do is they farm out all of their work to Fieldfisher Solicitors. Fieldfisher are the instructing solicitors for Fenella Morris, QC, who acted for the PSA, at the High Court. What they do when they review each of these decisions, it appears to me, is they treat it like a law school debating society, and they construct arguments and case law. They don't seem to stretch into misapplication of facts that amount to clearly perverse decisions, as perhaps might happen in an employment tribunal, where I also represent. They seem to concentrate only on case law. They also have a history involving the Nursing and Midwifery Council, and the patient safety champion, James Titcombe, OBE. Now, I won't elaborate on that any further, but it is on the record, should any member of the public who reads this transcript feel the need to go and explore further about what it is that the PSA do.

So, why are we here? Now, I'd suggest to you that somebody, just like everybody else on the PSA, saw the news, and they saw that video. You remember day one? You had a video; you had a certificate of conviction, and you were going to treat it as a conviction case, and you had an awful lot of arguments. The case became something completely different. You recognised it was always not what it seemed because there were more videos; there was more evidence that had been secreted from you by the HCPC. I would make

no bones about that. Now, nobody else but you saw those videos. So nobody but you could draw the same conclusion that you did. So anyway, they didn't see the videos; they set their legal academics onto it and they drafted an appeal.

Now, the PSA also seemed to have some – a lot of great deal of leverage over the HCPC. They conduct performance reviews of you and the other health regulators. This is where things take a slightly more sombre turn, and I'll take you to C2 and C3, and in particular, 6.22 at the top of C3. And I'd just like to have you reflect on why you applied to do – perform the role that you done, and the experience that you have got, and any training and instruction you received in being Panel members of the HCPC. It was a challenge by the PSA; they marked the HCPC down on a review; they didn't give you full marks. And this said, the HCPC has pointed out to us that Panels are independent, and that it cannot control their decisions; rightly so, that's the whole purpose of having independent Panel members. They then go on to say: 'We agree that this is the case. However, the HCPC remains responsible for the appointment and training of its Panels and, indeed, its Case Presenters. We believe that it,' 'it' being the HCPC, 'should have significant concerns if Panels are consistently not following its guidance' – 'Panel,' meaning you, 'guidance' meaning the Indicative Sanctions Policy, in this case. 'We hope that the HCPC takes on board our concerns and provides further training for panellists who sit on an interim order hearings.' This is in relation to interim order hearings but the import seems to cover the whole spectrum of the work that you do, and its Case Presenters. 'We understand the HCPC has taken steps to do so.'

Now, I read that and I reread it, and I looked at it and that came to me as being positively Orwellian. It's got an air of the Stalinist gulag. People were sent to the gulags for re-education when they dissented. The PSA are saying the HCPC need to re-educate you, because they are not happy about a decision that you made, even though you are independent and the HCPC have no

control – so they say, because you are independent. They’re challenging the sovereignty of the HCPC, and they’re challenging your independence to decide as you see fit. I will take you to the case law. They seem to be flying in the face of that, and it’s unconstitutional. So, potentially, Panel members – not necessarily you, but other Panel members – are under pressure and your performance is being measured, it is being measured by the PSA. You’re going to be encouraged, despite your independence and in direct conflict with it – whether or not you knew it before today, I don’t know – you’re going to be measured on whether you toe the line, and that is in relation to the decisions and the findings of fact that you make. A very definite import of the meaning ‘provides further training’ could be drawn. And I’m challenging it today on the public record before it damages justice, because I know that this is a unique case, and the legal scholars and the people who make decisions about organisations like this are going to be reading this transcript.

What the PSA is saying is you need to be controlled if you do not follow its guidance. So therefore, the organisation bringing the case is also telling its independent panellists how to decide the case with a clear risk that something might befall you; you might be let go if you don’t meet key performance indicators. Other suitable candidates who apply to become panellists may not be appointed because they have a history of fair play, a sense of duty; maybe they’ve dissented to something like this, in the past. Maybe they’ve challenged an authority that’s oppressive and arbitrary. So, in actual fact, what 6.22 on C3 seems to be saying is it’s not guidance; it’s absolute rule dressed up as guidance to give the illusion of fair play. Perhaps one day a whistle-blower might shed some light on that; we don’t know. But we’re here for very sound reasons today because you chose to be part from the normal application of the Indicative Sanctions Policy, and the PSA took exception to that.

So that’s my opening statement. I’m now going to take you through the bundle. I’m just going to explore the arguments that I’d like to put to you.

And then I'm going to invite you to prefer my view.

Now, at page 1 of the bundle – bundle A – this has been produced for the purposes of this hearing by the HCPC. Now, first thing to remember, and it was something that was raised at the very beginning of this hearing: the time of the hearing, and indeed, the appeal, Mr Geary was partway through his suspended sentence. That was in essence the biggest beef that the PSA had with your decision. But on February 11, this year, Mr Geary's suspended sentence fell away. He is now no longer under a suspended sentence. He has not reoffended and if he does reoffend, that suspended sentence cannot be reinvigorated and added consecutively or otherwise concurrently to any further sentence.

LEGAL ASSESSOR: Can I just have that date, please?

MR HOYLE: February 11, of this year, sir. So, you've already identified that you have to look at Mr Geary in the current situation and not as it was, so any argument, any reference to the fact that, at the time, Mr Geary was given a conditions of practice whilst he was still on a period of suspended sentence, all of that falls away. Nevertheless, you were entitled to give him a conditions of practice while he was on suspended sentence. Equally, you were entitled to suspend him until the expiry of that sentence; you did not, and indeed, I suggest to you now sir, you cannot consider suspension as being a safe sanction and disposal of his case, because Mr Geary is now being treated as a misconduct case, and he has no criminal sentence over him.

Now, over the page on page 2, paragraph 7: 'The Professional Standards Authority appealed against a decision of the Conduct and Competence Committee on the basis that the sanction imposed by the Panel was not sufficient protection of the public' – that is absolute nonsense. Whoever's drafted this has drafted it without any care, whatsoever. There were eight grounds of appeal that the PSA drafted. In actual fact, what they did was they went fishing with a hand grenade.

LEGAL ASSESSOR: Mr Hoyle, if it's any assistance, the decision of Mr Justice

Silber was that his decision should be placed before the Panel; they do have it, and they have read it, and they will read it.

MR HOYLE: Yes, but the opening gambit from the HCPC says that this case, and the case was sent back, because the sanction imposed was not sufficient for the protection of the public; that was an allegation that was made; that was a ground of appeal that was raised, but it was one that seems to have been withdrawn entirely, because we will hear about the two grounds on which submissions were heard. This is inaccurate and it's misquoting entirely Judge Sir Stephen Silber's reasons.

So, moving on: the arguments put forward were put to me in skeleton form, and obviously to the court in skeleton form. They don't form a part of this bundle. But this simply serves as a reminder to you of the salient points that were considered. As to sanction, the Committee - that being you - they go on to say, the case of *CRHP v GDC and Fleischmann* [2005] EWHC 87 Admin - that was the predecessor of the PSA. The *Fleischmann* case is one that everybody always refers to all the time, which includes the following: '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.'

You satisfied yourself that there were circumstances that plainly justified a different course, and so therefore Mr Geary was able to keep practising or resume his practice, whilst there was still a live sentence; that was a latitude you were able to exercise. Where we're eventually going to go with this is the succeeding argument is you failed to articulate sufficiently your reasons, and we'll get back to that. There may have been a reason for that, in that by the time you'd delivered your verdict, it was 17.51 hours, I think it was; I'd already had to leave in order to be able to catch a train. You delivered the judgment, not by reading it out in full but by - your opening words were, 'The headlines.' So you read out the decision but you didn't give all the reasoning

that followed in the judgment that was handed down, having been later completed. But you were under pressure that day to complete the hearing so you made best use of time, and obviously you didn't have a leisurely amount of time in order to be able to draft a decision. I agree with the decision, by the way. I don't find anything wrong with it, so I'm not criticising the decision that you made, the PSA have.

Now, at 55 and 56 of your decision, '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. Personal factors such as character, previous history, practitioner's livelihood' – sorry, this is in relation to *Fleischmann*; so this is paragraphs 55 and 56 of *Fleischmann*. So what they're saying is – well, I'll finish it, actually. 'Personal factors such as character, previous history and the practitioner's livelihood as a dentist will invariably be insufficient to produce a different result from that which would have applied had the individual been an applicant for registration.'

So the test that they are putting on there is that Mr Fleischmann, at the time he was handed his sanction, was in a position whereby he could not have applied to go on the register because he had a live sanction. So, by default, if he had a live sanction, he would not be allowed to remain on the register until that live sanction fell away; that was *Fleischmann*. *Fleischmann* was drawn to your attention by the Legal Assessor. There is a practice note; I take you back to page C3: practice note – Indicative Sanctions Practice Note. The Committee stated – sorry, this again is – now, is this you or is this *Fleischmann* – no, this is you. 'The Panel gave consideration to the issue of whether this was a serious conviction and came to the decision that it was not the most serious.'

And I argued with you that he had been charged with the lowest possible health and safety offence. He had been peculiarly charged by the police, having been on bail for two and a half years, because they couldn't stick anything else on him. They tried gross negligence/manslaughter; they tried misconduct in public office. They had him hanging around for two and a half

years. Eventually they decided to do the health and safety executive shot for him.

So, you decided that it was not the most serious. Also, you said, '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. 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.' You were absolutely correct in that judgment, sir, because Mr Geary did not reoffend. It was not brought to the attention of any regulatory authority or enforcing authorities. And indeed, your confidence in him was well placed. Your trust in him was well placed. It was the correct decision.

So, the next criticism which was levelled at you is the Committee set out what it considered to be the relevant aggravating, mitigating factors. And they then go on to criticise and say the latter were focused upon the Registrant rather than the public interest theme – it's the theme I'm going to build for you. Now, they then go on to mention two cases: they are *R (Jackson) v General Medical Council* [2013] EWHC 2595, and *Professional Standards Authority v Health and Care Professions Council and Gemma Williamson* [2015] EWHC 2420 (Admin). This is actually being rather critical of these particular cases because the PSA argued, 'A Committee that departs in its approach on indicative sanctions guidance should give reasons for doing so.' Then they quote these two cases; I'll be walking through those very shortly. The practice note includes the following: 'As noted in *Fleischmann*, if the Registrant has been convicted of a serious criminal offence and is still serving their sentence at the time the matter comes before the Panel, normally the Panel should not permit the Registrant to resume their practice until that sentence has been satisfactorily completed.'

And you remember, I spent some time labouring the word, 'normally,' meaning that is not a 'must' or a 'should'; it's not even a 'could.' You have a

latitude and a discretion to exercise, and you did on this occasion exercise your right, as independent Panel members, to exercise that latitude – that discretion.

Now, this then brings us to page 13. Now, Mr Geary, being a man of absolutely zero cash reserves, asked me to assist him in the appeal. I was granted full rights of audience by Judge Stephen Silber, in the High Court, without opposition from the PSA solicitor, helpfully, or the PSA's barrister, quite helpfully. Now, I was therefore able to advance some arguments. Now, at the commencement of the hearing I had raised, in writing, on a number of occasions, our challenge to the blunderbuss that had been fired in our direction. There was then some discussion about what grounds of appeal PSA were going to run with and what they were; what they eventually settled on to. If I can take you to page 14, paragraph 6, because there was some agreement of concession made by the HCPC's own barristers, instructed by Kingsley Napley Solicitors. I think it was Kingsley Napley, wasn't it?

PRESENTING OFFICER: It's Bircham Dyson Bell.

MR HOYLE: Bircham Dyson Bell; I do apologise. Paragraph 6 of Judge Stephen Silber's reasons: 'The HCPC does not challenge two of the grounds of appeal, although in respect of one of the grounds it makes an admission which is different from the Appellant's ground, but which nevertheless means that it accepts the ruling on sanction imposed on the Registrant should be quashed.' Now, we did not accept. The hearing went ahead because we challenged all of the grounds because we felt that the decision that you handed down, the reason for it was absolutely correct. So, the judge only heard submissions on two of those grounds. The first ground is that, when determining the correct sanction, the Committee failed to have any or sufficient regard to the public interest. I disagree with that - you might, as well – and in particular, the maintenance of the reputation of the profession. In other words, the point is that the Committee failed to strike a fair balance between the interests of the Registrant, and the public. We already know that the public have no

mechanism to make any complaints. And certainly, we do not have any evidence that, as I said, the switchboard melted down with people clamouring for Mr Geary's blood – it didn't happen; it's theoretical.

Now, one of the things which makes your decisions quite safe is that, albeit that you are professional paid Panel members, but two of you are members of the public, with a broad experience of life. The third member is a paramedic, but he is also a member of the public. He could see it from two different directions. So I would say that the public interest has been served by your joint decision making, by up to 75% at least – 66.6 between the two of you plus Mr Simmonds's contribution, if he was to put himself into the mind of the reasonable man on the Clapham omnibus who is nothing more than a member of the public. So, in other words, the point is that Committee failed 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. The second ground relates to a failure by the Committee to give adequate reasons to justify its decision.

Right, let us deal with maintenance of the reputation and having sufficient regard for the public interest: that relates to the fact that you allowed a man with a suspended sentence hanging over him to retain his registration. That is no longer in contemplation. It cannot be considered, it's not a relevant factor, it's not a material factor; it is now history. Mr Geary appears before you as a person accused of misconduct on an isolated occasion, nearly five years ago, and he has today given further evidence of his insight - something you will have to take into consideration.

Now, page 23, paragraph 38: this is another important point. My fear was that, if we did not challenge this appeal, they drafted all sorts of consent orders and made all sorts of written threats about costs. They did it persistently; they were asked to stop. They didn't want this to go to court. But it was my view that you might feel compelled to revisit your decision and strike Mr Geary off because your decision was unpopular. Well, to do that without Mr Geary

having a say would not be in the interest of him because he still wants to maintain his paramedic career.

LEGAL ASSESSOR: Mr Hoyle, it wasn't the question that the decision was unpopular; it was unlawful, which is why the High Court remitted it back.

MR HOYLE: If you will allow me to continue, I will explain further, Mr Serr. At paragraph 38, Mr Hoyle, who as I explained is a McKenzie friend acting for the Registrant, contends 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. Judge Silber was at pains to point out - there was discussion on this, sir. 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 to Mr Hoyle, two comparable cases, and he argued that the Registrant's case should be placed at the bottom end of seriousness. I drew his attention to the rogue's gallery, as I shall refer to it again, the list of criminal offenders tried by the HCPC and given a sanction other than strike-off.

Now, Judge Silber then goes on to say, 'In my view, Ms Morris' – that's Fenella Morris QC, acting for Fieldfisher and the PSA – '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 HCPC' – that is what it should be, not HSPC – 'agrees. And in my opinion, even after taking account of Mr Hoyle's submissions, and also the statements to which I've referred you from the judgment of the Court of Appeal in *Meadows* and *Raschid* and *Fatnami* the appeal must be allowed on this ground.' Now, I don't propose to reference *Meadows* and *Raschid* and *Fatnami*. I'm not going to look at those judgments; you can if you are so minded, but I don't see that there's anything in there that particularly assists us, today.

At paragraph 40 it then says, '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 the public safety from the perspective of the risk which the Registrant concerned may pose to those who use or need his or her service.’ You judged that risk to be low. You’re entitled to judge that risk to be low. ‘Second, also to give appropriate weight to the wider public interest that includes not merely the deterrent effect on 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.’ As I explained to you only a few moments ago, you have more than enough experience of members of the public to be able to form the view that any reasonable member of the public, armed with the facts as you have them, might conclude.

Now, this is another critical point because this forms a significant part of the judgment at paragraph 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 upon him in the Crown Court was satisfactory completed; and that could not occur until 10 February 2017, the date when the two year period of suspension of his suspended sentence in the Crown Court expired.’

So, Fenella Morris, QC for the PSA is saying that Mr Geary can be allowed to continue to practise because the two-year period of suspension has now fallen away. So, quite simply, if you’ve come to a decision that doesn’t amount to suspension or strike-off, it cannot be challenged by the PSA, again; nor would it be within their interests to do so, I think. But nevertheless, you have a very clear instruction, there. First, from Judge Silber, ‘You are not obliged to impose a more serious sanction,’ and secondly, a concession from the PSA that, once the suspended sentence goes, then the majority of their argument disappears, because we were having this argument in July of last year, when Mr Geary’s sentence was still live.

Now, we're going to get to the meat of what remains, and I'll take you to page 25, paragraph 49. I will remind you, again, that you delivered your decision in brief form, very late in the day, after a very intense and tiring hearing which was brought to a conclusion that day; we simply couldn't come back for another. I'm not suggesting that you made your decision in haste. What I'm suggesting is that perhaps with more time available you might have elaborated more on the deficiencies which the PSA argue were present in your judgment, and that is being the public confidence. So, paragraph 49, very surprisingly again, there's no mention of the public confidence in the regulatory process, or more importantly, of the reputation of the profession. There were some words missing out of your judgment. It's not that you didn't have those in contemplation; you just simply – they weren't written down. Not necessarily a fatal flaw in my view, but in the judge's view this was a fatal error in the reasons of the Committee, so we have to go by what Judge Silber says. And it shows why the appeal against the decision on 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 will determine the outcome of the appeal.

Ms Morris's second ground is that the Committee failed to comply with its obligation that when it departed in its approach from the indicative sanctions guidance, to give reasons, and reference to again, *Jackson* and *Williamson*. He draws your attention to that. Significantly, this is at paragraph 51, the Indicative Sanctions Policy includes the following statement: 'This policy is intended to assist Panels to make fair, consistent and transparent decisions. When a Panel deviates from this policy' – your deviation was to allow Mr Geary to continue to practise, despite his suspended sentence still being live – 'its written determination should provide clear and cogent reasons for doing so.'

Please have in mind, I'm going to take you to *Jackson* and *Williamson*. But *Jackson* and *Williamson* are the two cases which you must have the most

regard to. 'The HCPC accepts that the appeal should be allowed on a different ground, based on the absence of reasons. This 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 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's different from the way in which Ms Morris puts it. So we agree to a point, but there are some differences. It's academic arguments, nothing more. 'I do not think anything would be gained by considering if I should accept Ms Morris's second ground or the HCPC's version, because for the reasons which I've set out, the appeal has been allowed.'

Conclusion, 'I should repeat that by allowing this appeal' – so Judge Silber did take on board my submissions – '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 risk which the Registrant concerned may pose to those who need his service and also give appropriate weight to the wider public interest, which includes not merely the deterrent effect on the registrants, but also the reputation of the profession and the public confidence in the regulatory process.' I imagine this is something like a university lecturer returning a piece of work to a student because they haven't done enough referencing and arguing. It's an academic exercise; you've got a 2:1 instead of a first.

Now, so long as you make your decision without fear, favour or finance, and clearly set out your reasons in your decision – this new decision, it cannot be challenged by the PSA; that's the simple fact of the matter. So, your determination will be as Mr Geary, as you see him now, not how you saw him then, but you've already accepted that.

Another point that I would raise at page 27, paragraph 63 and 64: what is the position at present? There is no interim order – no, there isn't and there never

has been. In the near five years since the incident occurred of misconduct Mr Geary has never been seen as posing so much of a risk to the public that an interim order needs to be put in place. Even at the last – well, at the substantive hearing I did question this. Ms Ryan sought advice from the HCPC, and their determination was, ‘We will not be making an application for an interim suspension order.’ So Mr Geary never presented a risk then, clearly, he doesn’t now and you should bear that in mind. Any departure from that, to suggest that he might, and suspension would be necessary, flies in the face of the logic that we already know.

Now, I will revisit the issue regarding the Legal Assessor. I need to because when I gave my submissions to you in January, I said you had not been properly informed by her and that the advice that she gave was wrong. That obviously met with some comment and I stand by it. And I’m now going to explain to you how and why. Why is it that you did not give sufficient reasons to satisfy the PSA paper sifters? Why is it that they decided to take it all the way to the High Court? What is the route case analysis? Let’s use that. What is the root cause of us being back here today?

So, the advice you were given, page 242, starts at Legal Assessor, third of the way down, second paragraph. And sir, this is the advice being given to you by the Legal Assessor. ‘And sir, in this instance we’ve already established, this being a conviction case, you have the full range of sanctions available to you. And when considering which sanction to impose, the Panel may take into account the terms of the HCPC’s Indicative Sanctions Policy. Those guidelines are persuasive in nature, and it’s ultimately a matter for the Panel’s judgment.’ You were not briefed on *Jackson* or *Williamson*; it would have been entirely appropriate to do so when it became apparent that you would deviate from the normal interpretation of the Indicative Sanctions Policy, and I’ll make the point that *Williamson* was a PSA case that occurred only six months ago. Anybody properly informed, performing the role of the Legal Assessor, recognising where this case is going to go, should have informed

you about *Jackson* and *Williamson*, and she did not.

Now, page 243, a quarter of the way down, this is the continuation of the advice that's given. 'Sir, there has been reference to the *Fleischmann* case. And it was Mr Justice Newton in the High Court who stated that, "As a matter of general principle, where a Registrant has been convicted of a serious criminal offence, he should not be permitted to resume practice until he satisfactorily completes his sentence. Only circumstances which plainly justify a different course should permit otherwise.'" And that is a direct quote, and I made distinction with a reference to 'normally' – this is the moot point: normally, and I made submissions on that – is the wording that has been adopted by the HCPC practice note guidance. But as you will have seen, Mr Justice Newton does within his quote envisage that there may be circumstances which plainly justify a different course. Now, if a situation arises where circumstances plainly justifying a different course arise, then a competently informed Panel would have had regard to *Jackson* and *Williamson*, and would have carefully drafted their reasons in order to prevent their decision being appealed; that is what happens. You were not told about the HCPC being appealed against by the PSA, successfully, in *Williamson*. You were not told about the *Jackson* case. If you had have been, we would not be sitting here today.

So, obviously, Mr Geary has suffered a significant amount of costs from the PSA, and we may seek to recover those from the HCPC because of negligence, the aggregating feature being of course, as I'd raised, that I believe, and I have yet to have a determination from the professional authorities because I have not reported it yet, that the Legal Assessor was not qualified to give that advice; and secondly, that it negligently had not kept up continual professional development – perhaps, I don't know. Those are things to be explored. But you should have been told about *Jackson* and you should have been told about *Williamson* because it was obvious at that time, you were going to depart from the Indicative Sanctions Policy because the

circumstances plainly justified a different course to those which are normally adopted.

Now, did you disregard the public? You didn't, as far as I'm concerned. If I could take you to page 259. This is part of your full reasons which were handed down after the conclusion of the hearing.

LEGAL ASSESSOR: Why does this matter? The High Court felt that the decision was unlawful and it was remitted back. So really, don't you need to be focussing, now, on the personal circumstances of Mr Geary?

MR HOYLE: No.

LEGAL ASSESSOR: Well, I'm telling you that you do.

MR HOYLE: Well, I will get there, but I will get there in a way that I propose to do because I will be going back to case law.

LEGAL ASSESSOR: Alright. Well, how is that going to be of assistance to this Panel?

MR HOYLE: Because we're here because case law wasn't considered.

LEGAL ASSESSOR: No, that's not the reason-

MR HOYLE: No, I'm sorry. It's taken a year or more to get here and I'm not going to be interrupted. I am going to continue and once I've done my summing up, if you want to give legal advice on anything that I've said, that is your right. But you are an independent Legal Assessor, so please –

LEGAL ASSESSOR: Well, I'm trying to direct these proceedings to assist the Panel, okay. We are not revisiting the decision of Mr Justice Silber; that's gone. We are now in a position where the Panel are looking to decide what is the appropriate sanction.

MR HOYLE: I need to ensure that the Panel do not make the same mistake twice. As far as I'm concerned they have been incompletely directed, once, and I intend to make sure that they are not incompetently directed, again. So, if you'll let me continue, please –

LEGAL ASSESSOR: Mr Hoyle, I –

MR HOYLE: Sir, if you would ask Mr Serr not to interrupt me because I still haven't

finished.

THE CHAIR: I won't ask that, no, because the Legal Assessor is there to help the Panel and to make sure the proceedings proceed as efficiently as possible. However, it might perhaps assist you to appreciate that the Panel is aware of the point that you're making: that if the Panel reaches a decision which is contrary to the Indicative Sanctions Guidance, it must give its reasons, very carefully. The Panel has appreciated that point that you're making; does that help?

MR HOYLE: Well sir, I need to make sure in my own mind that nothing has been missed. Now, I am going to be a matter of another five minutes; that is all I'm going to be. If you would please afford me that five minutes without interruption, I'll be most grateful, and perhaps you will be as informed as I am. I'd be grateful of that.

THE CHAIR: Okay.

MR HOYLE: Thank you, sir. Page 259 of your judgment, paragraph 36, you addressed: '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 or not there had been personal remediation.' You addressed the public interest there.

The decision on sanction, paragraph 39, that is some of your reasoning, which I would be grateful... I won't read it out, it's a very long passage but it's something I'm sure you've familiarised yourself with. But at paragraph 40: 'In reaching its decision, the Panel has taken into account the Council's Indicative Sanctions Policy, the advice given by the Legal Assessor' – which I say is defective, or was defective, and is the reason why we're sat here, today – 'and the parties' representations.' And I'm making representations today to ensure that all the Ts are crossed and all the Is are dotted.

Now, at page 262, you address the public interest, again – paragraph 45. 'A caution order would not provide any degree of public protection.' You considered the public protection there, okay. At paragraph 48, page 263,

fourth line down, 'A period of suspension or strike-off would not in the Panel's view, be required in the public interest.' And then you've balanced the public interest against further punishment and it being excessive. So, that deals with all the documents in bundle A; I've no need to revisit those. What I do need to do to complete my hopefully thorough presentation, and make it properly understood, is that I've given some case citations to Mr Serr. Preparations are going to be made for you to have copies made available.

R on the application Jackson v GMC Friday 26 July 2013, so this is a date which preceded your decision by several years – three years, two and a half, something like that. At page 46 of that judgment it is entitled, 'Insufficient Reasons,' I am only dealing with the legality of the decision. The situation is therefore different from the situation which existed in the case of *Southall v GMC* – you may want to go and have a look at that, as well. It's Doctor David Southall. The circumstances are so different that I have chosen not to visit it in detail, but it's referred to in this case. And you are entitled and invited to go and look at it if you so wish, because there is a particular word which is used right at the end of that judgment, 'amplification'; I'll return to that in a minute. 'Both parties accepted that this is a case where the Panel is under a duty to give reasons, and both parties relied on *Southall* as setting out proper guidance about the extent of that duty to give reasons. I accept those joint submissions. If one looks at paragraphs 49-57 of *Southall* – you may wish to make a note of that – 'there is extensive discussion about the duty to give reasons. The reasons will state the decision in a form which makes it sufficiently clear to the losing party why he has lost. There may be more complex cases where greater reasons are required. In *Southall* itself, it was held the reasons do not do sufficient justice to that case.' So, in *Southall*, the requirement from the judge was the reasons needed to be amplified, padded out, more expressive.

Over the page at paragraph 56 of *Jackson*, 'For those reasons, shortly explained, it seems to me that there was a failure to give sufficient reasons to

Mr Jackson about why the Panel failed to take into account or follow the last sentence at paragraph 16 of the guidance.’ So again, it was probably within the forefront of the mind of that particular Panel; they simply didn’t articulate it sufficiently because they felt that there was more pressing or more important things they needed to turn their hand to putting into writing.

Now, this next case, 10 July 2015; so this was five months before the commencement of proceedings, six months before the conclusion of the fitness to practise hearing where you handed down a two year conditions of practice. The Professional Standards Authority, the Health and Care Professions Council is the first respondent, and the second respondent is Gemma Williamson. Any competent Legal Assessor, faced with the circumstances that were thrown up in the final hearing and your obvious decision, you should have been informed immediately of the importance of *Williamson* and reasons why the appeal was successful. Why it wasn’t, I don’t know, but given the fact that you were being professionally advised, I would say it was certainly negligent.

The appeal: ‘The appellant submits that the Committee’s decision on sanction was wrong. It was unduly lenient and not one that the Committee properly directing itself on the evidence, could have reached. A caution was outside of the range of reasonable responses to those findings, having regard to the purpose of these proceedings, the importance of the protection of the public interest and the guidance given in the Indicative Sanctions Policy.’ Well, nobody has once argued that the sanction was unduly lenient. Well, they tried to but they withdrew them. The argument is that you deviated from the Indicative Sanctions Policy and you failed to give sufficient reasons as to why.

However, at paragraph 23 of *Williamson*, Ms Richard[?], acting for the HCPC, says in rebuttal, ‘The Committee was aware of the public interest and the nature of its task to balance the interest of the public in maintaining the reputation and the integrity of social work or the social work profession and

the interest of the Registrant because it referred to that elsewhere in its findings. So, the HCPC is saying, 'Well, actually, yeah, we did, the Panel did refer to', and indeed, rather than treating it like an academic exercise, which is what the PSA have done, this court should read this decision as a whole. And the references made in one part of the decision indicate the Committee would be aware of the factors when it comes to a question of sanction; in this case, the public interest. You were aware; you were acutely aware of it; that's part of your job. You balance the interests of the Registrant against the public and the reputation of the profession.

It is not necessary for the Committee to repeat them in the context of sanction; so that's what she said. She's standing up for that Panel. The solicitor in Mr Geary's case did you no justice, at all, didn't advance a single argument in his defence as far as I'm concerned. It is not necessary for the Committee to repeat them in the context of sanction. Reading the decision as a whole makes sense as to what factors it took into account, as does the decision that you handed down, with the extended reasons.

Now in the defence of the HCPC Panel, Ms Richard also says, 'The Committee was aware of the Indicative Sanctions Policy, but it was not obliged to quote it in full, and it was not bound by it.' You are still not bound by it. It is general guidance and it's not dispositive of sanctions in particular cases.

So, the conclusions of the judge in *Williamson* in July 2015, paragraph 26: 'I am nevertheless driven to accept the appellant's submissions that on the facts found by the Committee and on the information before it, the sanction of a caution in this case was unduly lenient and not within the range of reasonable responses open to it. It is markedly different from the guidance offered by the Indicative Sanctions Policy.' Well, you didn't follow the Indicative Sanctions Policy; you exercised your discretion, as you are permitted to do. But the criticism in July 2015, 'It gives no indication of any explanation as to why such indifference was appropriate. It does not identify any factor that would

justify a caution being appropriate in this case.’ They failed to give sufficient written reasons, and as a result the decision was successfully appealed on that ground.

Paragraph 28. The judge goes on to say, ‘I recognise that the Committee is not bound by the terms of paragraph 20 of the Indicative Sanctions Policy.’ I have no idea if that is the same Indicative Sanctions Policy that’s in there now; perhaps you might want to go and have a look at that, at paragraph 20, to see what he meant. ‘And is not restricted to issue a caution only where there is only insight, but in my judgment the policy guidance accurately reflects the general principles repeated in many cases for many years as to the primary need to uphold the reputation of the profession, as well as the protection of the public from dishonest and incompetent practitioners.’ However, he goes on to say at paragraph 30. ‘Of course there are always special circumstances that will enable the Committee to reach its own conclusions, properly applying the proportionality principle and the difficult balance it has to make in any individual appeal.’ You did that. You’re going to do it again today; I’m absolute certain of that.

Paragraph 32: ‘There were defects in their reasoning explaining its decision. The appeal is accordingly allowed.’ Insufficient reasons, insufficient discussions, insufficient explanation – that is the reason why *Williamson* failed. It appears that this is the reason why the appeal is successful on that particular ground, in this case. I’m also mindful of the fact that you would not have been entirely responsible for drafting that decision. You would have been presented with the skeleton by the Legal Assessor, and you would have put the meat onto the bones. And lacking in that skeleton was the legal framework, which includes *Williamson* and *Jackson*. If it had been included, you would have paid regard to it and you would have made your own comment on the reason why the decision you made does not fly in the face of the appeal of *Williamson* and *Jackson*.

Now, I mentioned a theme. There is a theme, because on 30 June 2016, the

PSA appealed a case against the General Dental Council. That was *The Professional Standards Authority for Health and Social Care v the General Dental Council*, as the first respondent; and the second respondent is AB. His name has been redacted because this was in relation to an infectious disease. At paragraph 47 of AB, the authority's grounds of appeal, they are five in number, and the PSA have done exactly with this case what they did with Mr Geary's case; they stuck it on a dartboard and fired at it with a scatter gun. So there are five grounds of appeal. But the fifth one: the Committee failed to provide adequate reasons for its decisions, in particular, its departure from the General Dental Council's Indicative Sanctions Guidance. So, therefore the thing it seems to me that the PSA always seem to pursue, and they always seem to win on, is lack of written reasons, explanation, or in the case of Southall, 'amplification' – the reasons needed to be amplified or argued to exhaustion, I suppose, to ensure that challenge cannot be mounted. If you imagine that you've just picked up a contract for a mobile telephone contract, and you're expecting to be able to use the phone, to be able to make calls and receive calls and use the internet. But the contract is that big, in tiny writing and it's full of tiny little clauses. It's designed to be absolutely thorough and inarguable. The General Dental Council's response paragraph 50, at the bottom there: 'Overall, there was a lack of sufficient reasons for the decisions which the Committee had reached' – so there's a concession there. Now, there's also a discussion about undue leniency in this particular case; so this is something that's been explored in the High Court. At paragraph 74, this relates to Lord Justice Judge in *Neil v Ryan* [1998], and it's paraphrased here, 'But the sentence should not be increased under that act unless the court is satisfied that it's not merely lenient but unduly lenient.' There has been no claim at all that the sanction given to Mr Geary was unduly lenient. So you can cast that from your minds, and you may pay regard to two occasions in his judgment that Judge Silber states, 'You are under no obligation to increase the sanction.' It does not expect you to do that as a result of the appeal.

succeeding.

Now, helpfully, in this particular case of *AB* – and this is why I’m particularly going to reserve this case as a point of reference for future cases I’m representing – paragraph 75: ‘I of course bear in mind that, when considering the question of sanction, a considerable degree of regard must usually be had to the fact that the Committee has significant expertise in assessing what is required in order to best protect the needs of the public and the profession. Moreover, when considering the question of undue leniency, it’s necessary to consider whether the sanction imposed is one that a disciplinary tribunal having regard to the relevant facts and the object of this disciplinary proceedings could reasonably have imposed.’ The judge is returning the power to the Panel, and saying they are entitled to make such judgments on this sort of thing as they see fit, because they have the significant expertise.

At paragraph 79, ‘Furthermore, over and above a general expression of the need to protect the confidence of the public in the profession, there is no indication that the Committee considered whether public confidence in the profession would be insufficiently protected by a conditions of practice rather than suspension. Certainly, there is no sufficient rationale provided as to the reasons for reaching any determination on this issue.’ Had you been presented with *Jackson* and *Williamson*; had you been explained to by the Legal Assessor why these two cases were successfully appealed, you would have addressed those in your written judgment at the end of Mr Geary’s substantive hearing.

At paragraph 81 the judge goes on again: ‘In these circumstances, not only am I satisfied that the Committee failed to provide adequate reasons for its decision on sanction, in this case.’ He also goes on to mention that they failed to have regard to a significant aggravating fact; that was relating to the gentlemen’s health, if you were to read the entire judgment. The salient point here is here we have a third – well, a fourth now, including Mr Geary’s; with *Jackson*, *Williamson*, *Geary* and *AB*, all heard in the Court of Appeal and all

succeeded on the same grounds that there is insufficient explanation.

And again, I direct you to Southall, and the word, 'amplification,' Am I saying this loud enough? Do I need to shout this louder? Do I need to expand upon this? Do I need to put bells and whistles on it? Do I need to use 100 words, when 10 will do? Well, it seems that in relation to the public perception and indeed any deviation from the Indicative Sanctions Policy, it appears that that is what the court expects of you. Now, I would point out that, in criminal appeals, it is within the range of responses of an appeal court judge to overturn a conviction as being unsafe if it appears that the judge did not properly direct the jury. You are a properly constructed jury; you are a professional jury. The judge in this case, who was giving you directions, as Mr Serr certainly was doing earlier on, failed to give adequate directions; that is why we are sat here today, going over the same stuff, over and over again, but with the benefit of Mr Geary sitting before you, with no suspended sentence.

So there's no requirement for you to deviate from the Indicative Sanctions Policy. You have the full range available to you. You can exercise your discretion. You have today heard from Mr Geary evidence which was unplanned. He answered your questions fully. You now know that he has greater insight – full insight, I would suggest to you; you may not agree with me, but he certainly has a greater insight than he did when he appeared before you more than a year ago. I would ask you to take that into consideration. Really and truly, sir, I can think of nothing else that I need put to you. The matter of sanction is one for you. The aggravating factors that were present in the previous hearing, we're now looking at an improved landscape of no suspended sentence and a greater insight into the root cause. Further, and to his credit, Mr Geary's sanction was quashed five months after you handed it down, by the High Court. He was not subjected to any interim order. It would probably have been disproportionate, given the fact that the HCPC never applied one previously. It would have made them look rather silly.

However, Mr Geary chose to continue, so far as he was able, to abide by the conditions of the practice that you gave him. Clearly, he has benefitted from those; he has a file of CPD. I believe you described it last time as 'impressive'; well, it's even more impressive, now. There's far more in it. There are a number of regular pieces of reflection in there. He had no obligation to comply with those conditions, but he chose to because he felt it benefitted him. What I would suggest to you is, sir, if you decided a year ago that Mr Geary and the public would benefit from a two-year condition of practice, I would ask that you make no order and that the conditions of practice remains and expires on the date previously set down. You may choose to amend those conditions of practice to take into account Mr Geary's now known work circumstances. You may choose, given the fact that this incident happened nearly five years ago, and the fact that Mr Geary had engaged with the process all the way throughout, despite the insurmountable hurdles he's based, you might decide that he's paid his dues and he should not be issued with any further sanction, and that he walks out of here with no sanction at all. You are entitled to make whatever order you wish, and the case law states that you are fit and proper people to make those decisions, and you have a full range of sanctions available to you.

So my submission to you, sir, is please do your best for Mr Geary and please put your reasons in full, as best you can and make sure that these cannot be argued by anybody again. It will serve nobody's benefit, whatsoever, for all of us to have to come back here a third time. Mr Geary would probably have gone grey by then. So sir, I thank you very much for giving me your audience, and bearing with me, despite challenge. And I have nothing further to say, so over to Ms Ryan.

THE CHAIR: Okay, thanks very much. We have been going for an hour and a quarter at the moment, and what I would propose at this time is that we have a 15 minute comfort break before hearing submissions from the HCPC, any closing remarks that Mr Hoyle may want to make after that, giving him a last word,

and then any legal advice that there might be.

PRESENTING OFFICER: Yes, thank you.

MR HOYLE: Thank you, sir.

THE CHAIR: Okay. So I think at this point then, we will adjourn for 15 minutes. It is now five to three, we're back here at ten past three and we've got the schedule ahead of us, thank you.

(The hearing was adjourned from 2.55 p.m. until 3.14 p.m.)

CHAIR: Okay ladies and gentlemen, we are back again and, if my memory serves me correctly, it's HCPC, final comments from Mr Hoyle, legal advice. HCPC?

PRESENTING OFFICER: That's correct. So, I'm restricted to just making submissions in relation to the issue of sanction. As this is a re-determination of sanction you are, in effect, picking the case up from having made your previous findings in relation to impairment. And because of the previous findings that you've made, the range of sanctions are available to you, all of them. What I would, of course, remind you is to consider the indicative sanctions policy. It is a key document when determining sanction. I would also ask you to look at the transcript of the previous submissions in relation to sanction that were made by the HCPC. Those are at page 221 of the bundle. And to make clear, obviously, the HCPC don't propose a particular sanction, so they do not suggest what you should or should not make but simply highlight some factors for you to consider.

So, when thinking about what might be an appropriate sanction in this matter, the things that I would urge you to consider is that obviously the conviction which forms the basis of the finding of impairment arises directly from the Registrant's role as a paramedic. There are occasions obviously where registrants pick up a conviction outside of the role but this is specifically to do with the role as the health professional, a paramedic.

You will also recall that throughout the original hearing there was very limited insight demonstrated and that the Registrant sought to highlight the role of others

involved rather than reflect on his own. I am aware that you've been provided with a reflective piece following on from the point at which the previous decision was made, but it may be that you still find that the reflections or the comments that are made in relation to this don't quite hit the mark in terms of what you would expect to hear from somebody having received a conviction in relation to events that were quite so serious.

The other thing I would ask you to look at once again would be the comments that were made by the sentencing judge. Those are at page 201 of the final hearing bundle and, again, I drew your attention to those on the previous occasion in respect of some of the matters that the judge picked up in relation to the Registrant's unwillingness to become involved.

The position is that in relation to some of the information that you've heard today, and what has happened since your finding, you've heard that there has been some paramedic work undertaken. It might be that you would conclude that that work is actually very limited. It clearly isn't something that's of a terribly frequent nature and you may also conclude that it's not very similar to the work that he was conducting at the time that this occurred.

You've also heard that some attempts were made in relation to the previous conditions of practice order that was imposed and how there are a number of documents that were proposed to be put forward in relation to that, that have not yet been put forward. I don't seek to highlight that in the sense of a failure to comply because obviously the decision was made by the High Court but, you have heard that a particular supervisor has been selected, a Mr Flynn, and the details in relation to his previous case were highlighted at previous hearings, in particular at page 232 of the final hearing bundle – of the bundle, so he was referencing the previous transcript and you might find that in relation to the facts of his matter and the conditions of practice order that perhaps he's not a very appropriate supervisor in the circumstances.

I think the other thing of note is, despite the fact that this matter has been listed for a re-determination of sanction today, we don't have any references, any written

references, or anything written from Mr Flynn in relation to how things have been progressing and I do think that is quite a notable absence because it's something that would have potentially provided some assistance in relation to the level of insight and the level of remediation that has occurred since.

So, what I would say in relation to the incident itself, the actions are damaging to the profession and they are damaging in relation to the public's confidence and that was something particularly that the PSA picked up on. Obviously when you're determining sanction there are a number of different factors that you draw on. You do draw in what the Registrant has done, how the Registrant has reflected, what they may – the likelihood of it possibly being repeated but you also have to consider the public, not only their protection but how they view what is happening and there is an – that is the part that the PSA in particular picked up on.

What are the public going to think about the paramedic profession as a whole or about the process of regulating a paramedic where such an incident has occurred and how it is then decided to be marked?

What I would say is that his actions have portrayed the paramedic service in a very poor light. He has demonstrated by virtue of the conviction an uncaring attitude, a low tolerance for perceived malingerers and an unwillingness to take people at their face value and – I think in light of that, and particularly thinking how the public perceive somebody involved in such a serious incident being allowed to continue to practice, that is something which is very, very key to the issue of sanction.

And so I'd ask you to go away and consider all of those factors when you are considering sanction. Obviously you will receive legal advice in respect of the indicative sanctions policy, the purpose of sanction and how to approach it but, in effect, as I would remind you, you are starting at the point at which you finished when you made your determination and you are now thinking of all the different factors from the Registrant's personal perspective also through to how the public would view this, as well as their protection. So, unless I can assist you any further.

CHAIR: Okay, thanks very much. Just one point for clarification. I note your references to the situation as it was. We are I believe, if I remember correctly, dealing with the situation we are in today?

PRESENTING OFFICER: Certainly, and I apologise. In terms of the finding that you've made, the finding of impairment, the finding that there is impairment as a result of a conviction, you are picking up at that point but, in terms of considering sanction, you are considering everything that has happened since. I apologise that I haven't quite made that clear enough but that's the distinction between the two.

CHAIR: Okay, thank you. Do you have any questions for the Presenting Officer? Any questions or concerns? Okay, thank you very much. Mr Hoyle.

MR HOYLE: Thank you. I would be grateful if the Panel would have regard to my submissions that I made back then and they start at page 223. My position has not changed. I don't make any alterations to those. I have simply added further submissions to bring us up to date to the current position.

In relation to Mr Geary's evidence today, I note that Ms Ryan has made no attack. There has been no criticism that he has been disingenuous or has been anything other than genuine or – and he's been truthful. There's no suggestion that you've been misled today. So, you must take what Mr Geary says and give it the appropriate weight.

In terms of the fact that Mr Geary is not doing the same sort of work that he was, 25% of registered paramedics at the HCPC currently do not work for the NHS doing 999 calls. You will find them working in minor injuries units. You will find them working on private ambulance services, sat at the side of race tracks waiting for people to fall off motorcycles. You will find them working as disability assessors working out people's eligibility for personal independence payment. You will find paramedics in all sort of places other than answering 999 calls. But paramedic is paramedic, it's a thought process with a list of available skills and access to pharmacy if they use their judgement and deem it appropriate. There are paramedics who hold their registration who haven't worked on the road in years. Now, I can think of one chief executive from the South Western

Ambulance Service. He is a paramedic but he doesn't go out on the road. He is too busy being the chief executive. You don't have to be currently practising to be deemed to be competent and I would put this to you: you can be as busy as a paramedic on the London Ambulance Service or you could be on a remote Scottish island where not only are you a HCPC registered paramedic but you're also the special constable and the postmaster. Nobody is arguing that simply by occupying that role and practising infrequently makes you incompetent. There has to be evidence that you are incompetent. What you have to do, in order to be able to maintain your competence, is to keep up continual professional development and to access training and refreshing as and when required and Mr Simmonds will no doubt be able to advise you further on where paramedics can be found and the frequency with which some of them practise.

So, in relation to Mr Flynn, there is no objection, there has never been an objection about Mr Flynn and he has no current sanction. He is a paramedic with some 25 years' experience and he also has experience of having been through fitness to practise proceedings. He abandoned a patient and ignored them whilst they deteriorated. He got an 18 months conditions of practise and he was commended for the work that he put in to remediate his position when the Panel sat to review it. I can think of no better person and indeed, in his work, he doesn't work for the NHS, like many paramedics they choose not to answer 999 calls because it's demoralising and damaging to their health. So he doesn't. However, in the role that he occupies, and he's one of those sorts of people who does sit at the side of a racetrack waiting for somebody to fall off a motorcycle. He is a mentor to other paramedics, to ambulance technicians, to trainee ambulance technicians, emergency care assistants and anybody else that he encounters and he is put in charge of. He holds a position of seniority with a Care Quality Commission registered private ambulance service. There could be no attack upon his credibility or his ability to be able to assist Mr Geary and, indeed, the evidence that you've got in front of you, which Ms Wing has copied, will demonstrate that. In relation to the public, it's getting a little bit old hat now to me. The public have

not, save for a few comments on the internet, and obviously this story's been reported, you know 'he should be hung' and 'look at him, he's got an evil looking face', those are the sort of things that have been put up about Mr Geary but by people who didn't know their backside from their elbow and they knew nothing about this case. Value judgements made by people, generally stupid.

So, the public has stayed silent. They have not criticised your decision and, even if they wanted to, there was no mechanism for them to do it. You are professional public jurors and this is the position that you are in: you are making a judgement on behalf of the public. You did so last time, you did it well, you will do it again and I'm sure you will do it well. I remind you now that – July, in July, the incident will have happened five years ago. Now, I make the point now. If this hearing could not have been listed until after July, I would have been making an application that you simply were not entitled to make a further determination on Mr Geary's misconduct because it was greater than five years on. You are precluded from doing that save for exceptional circumstances. That situation has not arisen but you must bear in mind that there has to come a time that – there has to come a limit where you have to stop reminding people about what they did and concentrate on encouraging them in what they do. Now, you can do that by the way that you reflect your decision and your view of Mr Geary as you see him today. But, again, what Mr Geary did, and for reasons you heard in private session, there were mitigating circumstances which he now understands and, in a 12 year career, I think it's greater than 12 years now isn't it, he has made one serious mistake and he's been paying for it ever since. At the end of a day, if a solicitor faced a disciplinary hearing every time he lost a case, the world would not be a very nice place and there wouldn't be very many solicitors. He failed on that day to do his job to the best of his ability.

So, in terms of Ms Ryan's submissions, that addresses everything that she had to say and – I invite you to make a determination as you see fit sir.

CHAIR: Okay, thank you very much.

MR HOYLE: Thank you sir.

CHAIR: Is there any legal advice at this point?

LEGAL ASSESSOR: Yes, this is the legal advice in respect of the sanction stage of the hearing. The decision on sanction is a matter for the Panel exercising the principle of proportionality and reflecting the principles within the HCPC's indicative sanctions policy. While you are not bound by the indicative sanctions policy, any serious departure should be taken with care and should be fully reasoned. The policy guidance accurately reflects the general principles repeated in many cases for many years as the primary need to uphold the reputation of the profession as well as the protection of the public from dishonest and incompetent practitioners.

Any sanction must be proportionate, that is not intended be punitive although it may have a punitive effect and it should be no more than is necessary to meet the legitimate purposes of providing adequate protection to the public and otherwise meeting the wider public interest in protecting the reputation of the profession, maintaining confidence in the regulatory system and declaring and upholding proper professional standards. The wider public interest includes the deterrent effect to other registrants, the reputation of the profession concerned and public confidence in the regulatory process concerned. Consideration of wider public interest is particularly important in conviction cases such as the present.

In *Bolton* and *The Law Society* Lord Bingham stated 'Because orders made by the Tribunal are not punitive, it follows that considerations which would normally weigh in mitigation and punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentence imposed in criminal cases. It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of being struck off or suspension would be little short of tragic. Often he will say convincingly that he has learned his lesson and will not offend again. All these matters are relevant and should be considered but none of them touches on the essential issue which is the need to maintain, among other members of the public, a well-founded confidence that any solicitor

they instruct will be a person of unquestionable integrity, probity and trustworthiness. The reputation of the profession is more important than the fortunes of any individual member. Membership of the profession brings many benefits but that is part of the price’.

That case referred to solicitors but as the other case law has demonstrated, it is equally applicable to health care regulators such as the HCPC.

In *Low v General Osteopathic Council*, Mr Justice Sullivan cited that passage of Lord Bingham above and said this: ‘Because of these considerations, the seriousness of the criminal offence as measured by the sentence imposed by the Crown Court is not necessarily a reliable guide to its gravity in terms of maintaining public confidence in a particular profession’.

Moving on, the sanctions available are those set out in the indicative sanctions policy. These range from no further action through to striking off and, this being a conviction case, the full range of sanctions are available. The Panel must consider the available sanctions in ascending order of severity. Without prejudice to the entirety of the range of sanctions available to the Panel, the Panel’s attention are drawn in particular to the ISP guidance in respect of conditions of practice. So far as conditions of practice are concerned, they must be limited to a maximum of three years and should be remedial or rehabilitative in nature. The Panel must be satisfied that the issues are capable of correction, there is no persistent or general failure which will prevent the Registrant from doing so and appropriate and realistic and verifiable conditions can be formulated. The Panel should be aware of the implicit criticism set out by Mr Justice Silber at paragraph 31 of this decision that previous conditions, the Panel’s previous conditions, make no provision for the assessment of improvement in the Registrant’s insight.

The Registrant’s suspended sentence expired in February 2017. Accordingly, the principle that a practitioner has been convicted of a criminal offence generally would not be permitted to resume practice until he has satisfactorily completed the whole of his sentence, see *CRHP v GDC and Fleischmann*, no longer now applies.

That is the legal advice.

CHAIR: Thank you very much. Do you have any comments on that legal advice?

MR HOYLE: I do sir. Firstly, could I ask, *Bolton v the Law Society* and *Low v General Osteopathic Council*, are these appeals or are these disciplinary proceedings that you refer to, sir?

LEGAL ASSESSOR: They are decisions of the – one is a decision of the Court of Appeal and the other one is a decision of the High Court.

MR HOYLE: Okay, in which case, sir, I would remind you that because these are from a higher court, you do have an obligation to have them in mind because they are binding on similar proceedings.

What I do note, although Mr Serr's submissions were entirely eloquent, he has, as in the previous case, failed to brief you and give you his advice on the cases relating to *Jackson, Williamson, AB and Southall* and that was the defect in the advice you received previously which is why we are sat here today. So, in addition to the advice of Mr Serr, which I do not rebut, I do not challenge, I ask you, and again because these are High Court and Court of Appeal cases, you must have regard to them and you are bound by them and anything you do that could appear out of the norm, out of the ordinary, please use 100 words where you would ordinarily use 10 in order to abate anybody's intention to challenge your decision on the grounds of insufficiency.

So, thank you sir.

CHAIR: Okay, thank you very much. Do you want to come back on any of the comments there?

LEGAL ASSESSOR: Well, as I indicated to the Panel, you must exercise the principles of – you must reflect the principles within the indicative sanctions policy but were you, if you were minded to depart from that policy, that departure should be taken with care and any departure should be fully reasoned and that's the principles that come out of all of those cases.

CHAIR: Okay, thank you very much. Do you have any comments on the legal advice?

PRESENTING OFFICER: No, I agree that the cases mentioned are the leading

authorities that the Legal Assessor has mentioned.

CHAIR: Okay. In that case then, I think we have reached the point where our Panel will retire and consider its judgement in this matter. I just need to try to plot our way forward in terms of – the Panel obviously has to read some of the information that we have in here. There is also a question that you were asking about advice on any change in the HCPC's procedure in terms of legal assessors. Have you received a response to that?

MR HOYLE: No sir, that was in relation to the indicative sanctions policy and whether or not the indicative sanctions policy that exists today is the same one that was in existence when you made your previous decision. There was something in relation to paragraph 20.

CHAIR: Yes, I think there was an earlier one when legal assessors can join panels.

MR HOYLE: Yes, that's right sir, I beg your pardon.

CHAIR: Anyway, have you received it –

HEARING OFFICER: That's an ongoing – sorry, sir, to interrupt but I may be able to help. That is an ongoing enquiry that I've made.

CHAIR: Yes, that's ongoing.

HEARING OFFICER: It's ongoing, yes.

CHAIR: Well that's fine. As long as it's ongoing. I won't forget before the end of the hearing on Monday.

LEGAL ASSESSOR: The current ISP, or the most recent ISP is September 2015. I don't think there's a later one.

MR HOYLE: Right.

HEARING OFFICER: I can, again, double check that.

LEGAL ASSESSOR: Yes.

PRESENTING OFFICER: So that will be the same one as at the time of this hearing?

LEGAL ASSESSOR: Yes, it would.

MR HOYLE: Now, sir, we are at a particular situation, Mr Geary is funding my rail fare and his, he has a wife at home with a newborn and we all know that you are not going to arrive at a decision today. Do you foresee on Monday that you would

have cause to have further submissions made or ask Mr Geary to give any further evidence? The reason why I ask this is Mr Geary is in a position to be able to save the best part of £200 by allowing you to make your determination and then hand the decision down to us in our absence. That would be a matter for how you think Monday would transpire. If you need to have us here, then we must make the arrangements. If it could at all be avoided, then we would ask you to give that due consideration and offer your advice accordingly.

PRESENTING OFFICER: If it helps from the HCPC's point of view, the only further submissions that I would anticipate being made, it may be that if there is any legal advice you seek in the meantime, but potentially depending on what sanction is imposed, there might be an application for an interim order. So, for example, if you imposed a conditions of practice, there may be an application for an interim conditions of practice, or if you impose a suspension, an interim suspension.

LEGAL ASSESSOR: I imagine there will be an application for anything less than the conditions –

PRESENTING OFFICER: Yes, yes, yes.

MR HOYLE: Okay, in which case, sir, if the determination is conditions of practice or below, then we would not mount a challenge to that. The purpose of that interim conditions of practice is to allow for an appeal to take place and, of course, we would not appeal a conditions of practice or anything below that. So maybe that would assist, sir.

PRESENTING OFFICER: I mean I would still have to make the application.

MR HOYLE: And, again, we would not resist it, so –

CHAIR: Okay. I'll just [inaudible] my colleagues, do you think we're going to need them again?

[*Sotto voce discussion*]

CHAIR: I think it's probably best if we just retire for two minutes and discuss this and then we'll get back to you. So, if we just retire for two minutes and then see where we are.

(The Panel were *in camera* from 3.40 p.m. until 3.45 p.m.)

CHAIR: Okay ladies and gentlemen, we're back again. I think we have a way forward. I think, in the circumstances, the Panel will be working on this and we won't be producing a written decision until Monday by any stretch of the imagination. So, we should some time on Monday have a written decision. That, we can certainly hand down but, should there be a need for an application for an interim order, my understanding is that you have a right to make a presentation in terms of that application and you need to be on telephone or otherwise available in order to do that.

MR HOYLE: Of course, sir.

CHAIR: Now, what I would suggest then is that you, or you may have already, provide the Hearing Officer with an email and with a telephone number on which you can be available should there be a need for an interim order application. Does that sound a reasonable way forward?

MR HOYLE: Indeed sir. And if there is no interim order beyond an interim conditions of practice that needs to be challenged, I would be grateful if I could be let – if we could be told as soon as possible by telephone or email, the outcome.

CHAIR: Yes.

MR HOYLE: I mean, obviously, we will be spending the weekend hoping for the best but, obviously, it might be that it has to be, go through the administration in order to be – well then again, no, Ms Wing is very efficient, I've worked alongside her before. So, I don't envisage any problems with that sir.

CHAIR: Okay, in that case, in terms of timing, I'm not sure that we're going to have a written decision with all our reasons set out so that the Panel is copper bottomed on this so to speak before noon and we don't know how long after that it might take. So, what I think I would ask is that you could provide the Hearing Officer with an email and with a telephone number and are available on that from noon onwards. Is that –

MR HOYLE: Yes sir, and your terminology of copper bottomed is music to my ears.

CHAIR: Okay. Is that a reasonable way forward to the HCPC?

PRESENTING OFFICER: Absolutely, yes.

CHAIR: Okay. So, in terms of your involvement –

PRESENTING OFFICER: I will be coming back.

CHAIR: You will be coming back indeed but I don't think there's any need for you to be back here at 9.30 a.m. I think we'll probably not be in a position to do anything before, probably, 12.00 p.m. Does that sound reasonable?

LEGAL ASSESSOR: Yes, not before 12.00 p.m.

PRESENTING OFFICER: That's music to my ears, thank you.

CHAIR: So, at 12.00 p.m., at that point either we will have a decision for you in which case we can communicate it or we will be able to contact you and tell you where we are with it and how long we're likely to be. Does that sound a reasonable way forward?

MR HOYLE: Yes, sir. It does, in fact –

LEGAL ASSESSOR: And then I think what will happen is, you will be emailed the decision, you will have an opportunity to think about it and then, if there is an application for an interim order, a short period of time after that, after you've considered the written decision, you will be on the phone, Ms Ryan will be in person and that's how – submissions will be made and the Panel will make their decision following any legal advice.

MR HOYLE: That is absolutely perfect for us, sir. Thank you very much.

PRESENTING OFFICER: Thank you.

CHAIR: Okay, in which case then, unless there is any other matter we need to deal with?

PRESENTING OFFICER: No, thank you.

CHAIR: No? In that case, then, thank you all very much for your attendance today. We will see or hear from you as appropriate on Monday at the various times we have agreed. Until then, have a good weekend.

MR HOYLE: And we are grateful to you all, thank you very much.

(The Panel went *in camera* at 3.49 p.m.)

and the hearing was adjourned until 13 March 2017)