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IN THE HIGH COURT OF JUSTICE CO/258/2002
QUEEN'S BENCH DIVISION
(THE ADMINISTRATIVE COURT)
(THE DIVISIONAL COURT)

Royal Courts of Justice
The Strand
London WC2

Friday 17 May 2002

B e f o r e:

LORD JUSTICE SEDLEY

and

MR JUSTICE GAGE

- - - - - - -

THE QUEEN ON THE APPLICATION OF PANJAWANI

-v-

ROYAL PHARMACEUTICAL SOCIETY OF GREAT BRITAIN

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(Computer-aided Transcript of the Stenograph Notes of
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MR J DINGEMANS (instructed by CHARLES RUSSELL SOLICITORS, LONDON EC4A 1RS) appeared on behalf of the Claimant.

MR N PLEMING QC (for hearing) and MS A FOSTER QC (for hearing and judgment) (instructed by PENNINGTONS SOLICITORS, LONDON EC4N 8PE) appeared on behalf of the Defendant.

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J U D G M E N T
(As approved by the Court)

1. LORD JUSTICE SEDLEY: This is an appeal to the High Court from the decision of the Statutory Committee of the Royal Pharmaceutical Society that the appellant, Mr Panjawani, had been guilty of misconduct rendering him unfit to remain on the Register of Pharmacists and directing his erasure from the register.

The Statutory Procedure:

2. The registration of pharmacists is governed entirely by and under the Pharmacy Act 1954. Without registration, as one would expect, a pharmacist cannot practise. Section 7 creates the Statutory Committee and schedule 1 spells out its constitution and procedures. Broadly, the Council of the Society appoints the five members and the Privy Council appoints the chairman, who is to have practical legal experience and who, in the period with which we are concerned, has been a distinguished legal figure, Lord Fraser of Carmyllie QC. The Committee is empowered to make regulations so long as the Privy Council approves them.

3. The present regulations are an appendix to Order in Council No. 20 of 1978. They require the Secretary of the Society to submit to the chairman of the Statutory Committee any credible information suggesting that a registered pharmacist has been guilty of misconduct and requiring the chairman to direct an inquiry unless after considering the evidence in support, and any answer offered by the pharmacist, he decides that the allegation need go no further.

4. The case at an inquiry is prepared and presented by a solicitor with or without the services of counsel, and the regulations make careful provision for the pharmacist to have fair notice and a full opportunity of defence.

5. Regulation 21 provides:

> "21. Evidence may be received by the Committee by oral statement, written and signed statement, or statutory declaration. The witness shall first be examined by the person producing him, then cross-examined and then re-examined. The Committee shall disregard oral evidence given by any person who refuses to submit to cross-examination. They may, in their discretion, decline to admit the written statement or declaration of a person who is not present, and shall disregard it if, being present, he refuses to submit to cross-examination."

6. At the conclusion of a hearing the Committee has to proceed in careful stages. Has there been misconduct? If so, is it misconduct such as to render the pharmacist unfit to be on the register? If so, what permitted direction should be made or other sanction be imposed?

7. It might appear strange that somebody who ex hypothesi has been adjudged guilty of misconduct such as to render him unfit to have his name on the register should be able to suffer any sanction less than erasure, but the regulations made by the Privy Council clearly treat the word "may" in section 8, which governs the power of the Committee to direct erasure, as conferring a discretion rather than a power to be exercised, notwithstanding the establishment of conduct rendering the pharmacist unfit to have his name on the register. Accordingly, Regulation 25 calls upon the Committee to proceed in the manner I have broadly described and to consider whether, notwithstanding that conduct of the necessary kind has been proved, there should be a reprimand or admonition or indeed no penalty at all, rather than erasure. No legal point is taken on this construction in the present proceedings and we proceed on the footing that it is correct.

8. Among the directions permitted by section 8 is a direction that a pharmacist who has had his name erased may not apply for restoration save after a specified interval or upon specified conditions. No such direction was made in the present case.

9. Appeal to this court lies under section 10. Section 10 provides inter alia:

> "(1) A person aggrieved by a direction of the Statutory Committee under section eight of this Act or the refusal of an application made under subsection (2) of that section may at any time within three months from the date on which notice of the direction or, as the case may be, of the refusal is given to him appeal to the High Court against the direction or refusal; and the Society may appear as respondent on any such appeal.
>
> (2) The High Court may on any such appeal make such order as the court thinks fit in the matter including an order as to the costs of the appeal and in particular as to the payment of any such costs by the Society, whether or not the Society appear on the hearing of the appeal; and the order of the High Court on any such appeal shall be final."

10. By section 11(1) removal from the register is held in abeyance pending the conclusion of an appeal.

11. The legal impact of these provisions is not in dispute before us. There is no doubt that the Statutory Committee is a public authority within section 6 of the Human Rights Act, and no doubt either that the impact of removal from the register upon a pharmacist's livelihood and standing is such as to attract the safeguards of Article 6 (see Ghosh v General Medical Council [2001] 1 W.L.R. 1915). It follows, especially in the situation to which Mr Dingemans QC for the appellant has drawn attention (that is to say the in-house nature of the statutory procedure with the chairman first considering the accusation, then directing the holding of the inquiry, then chairing an inquiry before a panel appointed by the same body as will have initiated and prosecuted the complaint), that if Article 6 of the Convention is to be respected recourse to this court should be by way of a true rehearing. That this reading of the word "appeal" in section 10 is both a feasable and an appropriate one is made clear by the decision of the Privy Council in Preiss v General Dental Council [2001] 1 WLR 1926.

12. Mr Dingemans derives additional support for this approach in an appeal to the High Court from Civil Procedure Rule 52.11(1). This reads:

> "Every appeal will be limited to a review of the decision of the lower court unless-
>
> (a) a practice direction makes different provision for a particular category of appeal; or
>
> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing."

13. Subparagraph (a) takes one to 52PD.22(3) which by subparagraph (2) provides at least according to the current edition of the White Book:

> "Every appeal to which this paragraph applies must be supported by written evidence and, if the court so orders, oral evidence. And will be by way of re-hearing. And will be by way of re-hearing."

14. The slight hysterical typography will no doubt be corrected in future editions, but the purpose is clear: these particular appeals - and Pharmacy Act appeals are listed for the purpose of the Practice Direction - are to differ in their substance from the run of appeals.

15. Subparagraph (b) of the rule I have quoted indicates why: there may be special considerations requiring less deference than is customary to the first instance decision. It is now clear that among these are cases trenching upon Convention rights where, but for a full appeal to an independent and impartial tribunal, the constitution or procedure of a local or domestic tribunal would not meet the Convention standards of due process. In addition to the General Medical Council and the General Dental Council, this principle has now been applied to county court appeals from local authority housing officers' decisions about homelessness (see Runa Begum v Tower Hamlets London Borough Council [2002] 2 All ER 668).

16. The upshot is that this court can and should substitute its own reasoning or conclusions or both wherever it is satisfied that the Statutory Committee has gone wrong. The Privy Council's decision in Preiss indicates that no specially high standard of proof is imported by this approach. It simply reflects the burden on every appellant to make good his or her grounds (see the decision of this court in Kuforji v Royal Pharmaceutical Society [2001] EWHC Admin 1132). But Preiss also reminds us that there are things that specialist tribunals will know more about than courts (see paragraphs 26 and 27 of the judgment of the Privy Council delivered by Lord Cooke of Thorndon).

17. In the light of these considerations we can turn directly to the present case.

The Issues:

18. The appellant practises from a pharmacy in north west London which is located near a sexual dysfunction clinic run by a Dr Guindi. His turnover of Viagra is commensurately larger, probably a lot larger, than that of comparable high street pharmacists. Viagra is a drug which may lawfully be supplied on prescription only pursuant to the Medicines Act 1968. As the Committee recorded in this case, it is known to have a street value.

19. While the appellant, who has been unwell for a long time, was in hospital, the Society's inspectors entered his pharmacy, as they were entitled to do, on 23rd September 1999 and in the presence of the appellant's locum made an inventory of the contents and records.

20. In circumstances to which I will come, the appellant was never interviewed about the outcome of this search. In August 2001 he was finally served with a notice of inquiry. His defence, to which I will also come, was set out in writing. After a full hearing in September 2001 the Statutory Committee announced its finding that the appellant had been guilty of professional misconduct such as made him unfit to be on the register. It directed his removal, but made no further direction limiting the time within which he might apply for restoration. It reserved its full reasons and gave them in writing on 24th October 2001. It is from this decision that Mr Panjawani now appeals.

21. The notice of inquiry served upon Mr Panjawani included these allegations:

> "2. An investigation into the sale and supply of Viagra from the pharmacy was commenced in August 1999 by the Society's Inspectors, following receipt of information, that Viagra had been supplied to you from another pharmacy, (not your own) in exchange for other medicines.

> 3. Because it was known that Viagra has a street value, the Society's Inspector Ms Hutchinson, attempted to carry out an input-output inquiry beginning with a stock-take in Autumn 1999 to establish whether all the Viagra sales and supplies from the time that it became available to Mr Panjawani, that is 6 August 1998, until the time of the stock-take, could be accounted for by means of valid prescriptions, signed orders and other wholesale transactions.
>
> 4. The investigations into the sales and supplies of Viagra from the pharmacy was protracted, information requested from you having been provided piecemeal over a period of about one year.
>
> 5. On or about 23 September 1999, the Society's Inspectors Mr Staton and Mr Snewin visited the pharmacy..."

22. There follows a detailed account of what the inspectors found. On analysis, and on presentation at the hearing, the bottom line was a shortfall of 339 100mg tablets of Viagra as between the records of what the appellant had received and the records of what he had dispensed. There were also inconsequential discrepancies relating to 25mg and 50mg Viagra tablets.

23. The notice went on to set out in detail a series of deficiencies, to which I will come later, in the appellant's record-keeping and accounting. It then alleged:

> "11. Also in the course of Ms Hutchinson's investigations she established that you had an arrangement with Dr Guindi that he would see patients, supply them with Viagra, and write out a prescription for them. At the end of the week, Dr Guindi would take the prescriptions to the pharmacy and receive the Viagra from the pharmacy. You treated these as prescriptions, entering them into your prescription register.
>
> 12. However, both in respect of the Tenuate Dospan supplied via Dr Hamilton and the Viagra supplied by Dr Guindi, you had had no contact with the patient. In respect of the supply by Dr Guindi of Viagra, the supply to the patient preceded the dispensing of the prescriptions at the pharmacy."

24. It is not clear to what extent the remaining allegations featured in the ultimate findings, but the central ones fell into the two blocks that I have recounted.

25. The appellant's defence to the first and gravest allegation, that is to say the shortfall of 100mg Viagra tablets, was that the supposedly missing tablets had in fact been put aside by him, for Dr Guindi to collect, in a box on the first floor and that the inspectors had simply missed them. Plainly, therefore, it was necessary for the Council to prove in proper form what the inspectors had found and had not found on their inspection.

26. Their counsel, Mr Bradly, did not call either Mr Staton or Mr Snewin and the appellant's counsel Mr Aaronberg QC did not ask for them to be called. Mr Bradly relied instead on their written report. This was on a typed schedule signed by them, dated 23rd September 1999 and containing manuscript entries against a printed list and under printed heads. Against the printed line "Stock in storeroom" is written, "None found on first floor. All cupboards and drawers searched".

27. The appellant's first submission is that this evidence was inadmissible, with the result that there was no proper evidence of the critical figures upon which the first and worst charge

was founded. The respondent Society says that the report comes comfortably within the requirement of Regulation 21, which I have quoted, that a statement of evidence be written and signed in order to be admissible.

28. In its decision in Korsner v Royal Pharmaceutical Society, Divisional Court, 19th February 1999, this court drew attention to the dated character of the Royal Pharmaceutical Society's procedures and to the need to modernise them. Since then the coming into force of the Human Rights Act has made it necessary to read into the Pharmacy Act so far as possible the relevant standards of due process demanded by the Convention and to disregard the Regulations in so far as they do not conform to and cannot be read in conformity with those standards. Very probably before 2nd October 2000, but certainly since, it has been implicit in Regulation 21 that in an area of inquiry as sensitive as this, any but the most obviously pointless application that the Statutory Committee should decline to admit a written statement unless the author is made available for questioning ought to be acceded to.

29. Mr Pleming QC for the Society readily accepts that it is so. For reasons which will become apparent, I would add that the Committee itself needs to be alert to the possibility that it will be handicapped if crucial evidence is not taken orally and the deponent tendered for questioning.

30. Subject to this, however, the purpose of Regulation 21, is to ensure that if written evidence is to be accepted it must be in a form which is readily communicable and which enables its maker to be held to account for its contents. In my judgment the report not only fits the literal requirement for a written and signed statement: it fulfils the evident purpose of the Regulation.

31. Mr Dingemans' endeavour to assimilate Regulation 21 to the requirements of the Civil Procedure Rules and of the Criminal Justice Act 1967 and the Magistrates' Court Rules for statements of truth to be made in a solemn form is, if I may say so, scholarly and ingenious, but not realistic. The point of including a statement of truth is no doubt to focus the deponent's mind on the fact that an untruth may amount to perjury. It does not give any special status to the document. The real issue, the need to have oral evidence from a deponent whose testimony is under scrutiny and may be crucial, is a separate one.

32. No application was made to the Committee to exclude the schedule in the present hearing unless the authors were called. The appellant was represented by counsel. In such a situation there can in my view be no criticism of the Committee for having proceeded on the footing that the contents of the statement were a true account of what the inspectors had found. That, however, did not exclude the possibility of oversight on the inspectors' part and it was precisely this which formed the basis of the defence. Had the Committee found the defence initially credible they would have had to consider for themselves whether they could fairly infer error on the inspectors' part without first having the inspectors orally questioned. Fairness to the inspectors, one would think, would have demanded no less. But for reasons to which I now turn, this point was not reached.

33. The second and more complicated submission on this appeal is that Dr Guindi, who was called on behalf of the Council to give oral evidence, confirmed the appellant's defence. Dr Guindi gave evidence that he had asked the appellant to set aside enough Viagra for his patients' requirements at a time when the appellant was to be away in hospital. The Statutory Committee accepted that a relationship of this kind existed, but found the account of the transactions to be casual, confused and unsatisfactory, not least (and I will return to this under the third submission) because it was first advanced many months later.

34. Staying for the present with the second ground, what the Committee said about it in its fully-reasoned decision was this. They recorded that the appellant was in hospital on the date of the visit, 23rd September 1999, leaving a locum in charge of the pharmacy, and that the inspectors had had unimpeded access to the storeroom upstairs. They then said:

> "The discrepancies over 25mg and 50mg strength tablets were relatively minor. We were not particularly concerned to attempt to achieve a reconciliation of the figures of the tablets at these strengths, or to come to a view as to whose figures were to be preferred. It was over the 100mg Viagra tablets that the greatest discrepancy emerged. As I said, the Royal Pharmaceutical Society calculation was of an unexplained shortfall of 339. Mr Panjawani disputed this, claiming that 360 tablets of this strength had been stored upstairs and had erroneously, or otherwise, been left out of the Royal Pharmaceutical Society's calculations. If this was true, then clearly there was no shortfall on the 23rd September 1999, that is to say the date of the Inspectors' visit.
>
> It was Mr Panjawani's account to us that prior to his admission to hospital in early September, he had personally taken this quantity of Viagra upstairs and stored them in an unmarked box on the floor, and had done so in anticipation of orders from a certain Dr Guindi to come in the following month of October. The locum or locums were not told of this separate stock, although there was some suggestion from him that his wife may have known of them. Curiously it was Mr Panjawani's account that this total of 360 was not ordered in one or more batches in the months immediately preceding the Inspectors' visit. He had this to say: "They were built up over the period".

35. At times it was difficult to follow Mr Panjawani's account, even upon such simple matters as to when it was that he was discharged from hospital. Contradictory accounts emerged, and his explanation for this purpose of separating out this alleged stock of Viagra was even more opaque. At the end of the day, we simply did not believe this stock ever existed. The Inspectors' schedule of search notes a search of the first floor in which all the cupboards and drawers were searched and showed nothing found. Mr Panjawani's attempt at an explanation for this being overlooked was that the Viagra was in unmarked boxes on the floor. Far from enhancing his credibility on this matter, it simply punctured it further. On a number of other matters Mr Panjawani's credibility was shown to be suspect. For example on one relatively minor matter there was a question over a prescription written in Hebrew. He claimed nothing would ever have been supplied against this prescription, but offered no real explanation and exhibited some shock when the patient's medication record was displayed to him, showing that there had indeed been a dispensing against this prescription."

36. Mr Dingemans submits that Dr Guindi's evidence was not to be so readily marginalised and that properly understood it corroborated the appellant's account.

37. We were taken in some detail through the transcripts of evidence, but it is unnecessary to traverse them again in this judgment. In sum, Dr Guindi confirmed that he bought Viagra in bulk from the appellant at irregular intervals and in irregular amounts for dispensation by him to his own patients. This we understand is contrary neither to law nor to accepted practice. Dr Guindi testified that he would telephone his requirements to the appellant and that he or his secretary would subsequently collect them, handing over a written order and paying cash for them. Sometimes, he said, he might collect some tablets first and the rest of the order later.

38. Mr Dingemans has submitted boldly that Dr Guindi's evidence destroyed the case against the appellant. Mr Pleming without undue difficulty has demonstrated that Dr Guindi's evidence was far from conclusive in the appellant's favour. Dr Guindi had gone between saying that he telephoned his orders and that he would go round with a written order in his hand. He had been vague about the three orders which were central to the appellant's defence and about the relatively low price at which he was buying Viagra from the appellant; and the appellant's own evidence differed from it and was internally contradictory as well.

39. In particular, the appellant had asserted that 360 100mg tablets, more than enough to explain the shortfall found by the inspectors, had been set aside by him to meet the three orders which Dr Guindi had intimated to him earlier in September 1999 and were duly collected during October. Sure enough, there were three receipted orders from Dr Guindi during October totaling 360 tablets. Understandably, the chairman at the hearing said to the appellant's counsel:

> "It seems to me, where the explanation has been developed, that it is actually a relatively short ambit, because so far as 100mg is concerned, it is reconciled by 360, which either was there or was not there. That seems to be a matter of credibility."

40. Later the chairman remarked in relation to the 360 tablets:

> "So we have to accept your word or reject your word about that",

with which the appellant agreed. The chairman then took up something which really it had been for the advocates to canvass, namely the reliability of the inspection described in the report. He said to the appellant:

> "So we have got to take your word for it, against the way they have put it, that none were found on the first floor..."

41. The appellant replied that the inspectors had missed some prescriptions too which were in the drawers upstairs. A little later the chairman said:

> "Did it not occur to you that if these inspectors, in the course of their search, had failed to discover a significant quantity of Viagra, that it would have been appropriate for you to have brought that to the attention of the Royal Pharmaceutical Society?"

42. The appellant replied:

> "I did not know what to do. I was not myself."

43. The chairman shortly after said:

> "I still do not entirely understand why, when there was such a significant quantity, which if the presence had been revealed at the time would have provided a pretty complete answer to much of the allegation against you, that you did not, as soon as you possibly could, draw that to their attention?"

44. The appellant replied:

> "I should have done what you are suggesting but, like I say--"

45. It is clear, in my judgment, that no very safe conclusion was or probably could be arrived at on Dr Guindi's evidence, whether taken alone or in combination with the appellant's. The mode of dealing which they undoubtedly practised was consistent with the appellant having set aside a sizable quantity of Viagra for Dr Guindi to pick up while the appellant was in hospital. If, however, no such quantity had been set aside in late September there was no explanation for the shortfall except the obvious and serious one, and the conclusion of the Committee will have been amply justified. Everything, therefore, as the chairman pointed out, hung on whether the inspectors might have missed a quantity of Viagra in the first-floor storeroom where the appellant says it was.

46. Neither the appellant nor Dr Guindi was capable of persuading the Committee that the inspectors must have missed it and I have no difficulty at all for my part in seeing why. But it was wholly unsatisfactory for the issue then to be determined by counterposing the written schedule against the appellant's and Dr Guindi's evidence. One can make an educated guess at why Mr Aaronberg chose not to press for the inspectors to be called. While he might get them to accept that they could have missed a couple of sizeable boxes, he would be taking the risk that they would instead close any possible gap and be believed by the Committee when they did so. He no doubt regarded his defence as better conducted by putting the appellant's and Dr Guindi's evidence into the scales against a bare piece of paper.

47. If Mr Bradly, for the Council, was not going to call the inspectors in that situation, it seems to me that the Committee should have required him to do so or have done it themselves. What was important was not who was able to outmanoeuvre whom forensically, but whether the inspection had been sufficiently thorough to eliminate the possibility that the missing drugs were boxed on the floor upstairs awaiting collection.

48. It is very possibly for this reason that the Statutory Committee did not base their conclusions simply on their reservations about the system described by the appellant and Dr Guindi. What they next said in their written reasons was this:

> "What was particularly telling was that Mr Panjawani never raised the existence of this very substantial quantity of Viagra on his return to the pharmacy, a matter of days after the inspection, and only did so first in March or April, once he had ascertained the shortfall being alleged by the Society. Mr Panjawani would appear to have had then extraordinary powers of precognition in setting aside in September the 360 tablets for Dr Guindi for the month of October. As we have seen from prescriptions provided, on 12th October 192 tablets were ordered; on 19th October, 68 were ordered and on 26th October a further 100, making precisely the total of 360. We do not believe he possesses such powers and believe that his selection of 360, matching the total orders for October, was simply an attempt to give a greater credibility to his account.
>
> While we would hesitate on the evidence before us to characterise the transactions between Mr Panjawani and Dr Guindi as irregular or indeed unlawful, they were casual and confused and even taken at their face value, wholly unsatisfactory. For example, three signed orders, dated 25th August, 1st September and 17th September were only disclosed in March 2000 and had not been entered up as of 23rd September, the date of the Inspectors' visit."

49. Thus, while I do not accept Mr Dingemans' argument that Dr Guindi's evidence put the appellant in the clear - very far from it - it is necessary to turn to Mr Dingemans' next

argument which concerns the reliance placed by the Committee, as visibly it was placed, on the appellant's failure to explain the discrepancy much sooner than he did.

50. First, a little more history. Telephone contact was made by the appellant with Mrs Hutchinson towards the end of 1999, but he was still unwell and awaiting further surgery. In March 2000 Mrs Hutchinson told them that she wanted to interview him about discrepancies on his Viagra stock. The appellant asked her how much was missing and she replied that she could not discuss this unless the appellant had first been given the protection of a formal caution. Mrs Hutchinson asked the appellant shortly afterwards for certain documents and he responded with copies of 14 prescriptions and orders. In the event, the appellant was never interviewed. Late in May 2000 the missing number was given to him as 423 and he responded with the explanation about his dealings with Dr Guindi.

51. Mrs Hutchinson pursued her investigations and eventually notice of inquiry was given. For very understandable reasons no criticism is made of the time it took to complete these investigations. In response to the notice of inquiry, the appellant again set out the defence which he still maintains is true.

52. In his skeleton argument Mr Dingemans set up an elaborate edifice of reasoning on this issue. The appellant, he said, had a right of silence which was impermissibly compromised by the Statutory Committee's drawing of an adverse inference from his exercise of it. Possibly in the face of Mr Pleming's cogent written argument in response, Mr Dingemans at the hearing abandoned this in favour of a simpler and more direct argument that the appellant had not been in a situation where it was either logical or fair to expect him to offer any explanation, and that when the case on discrepancies was finally put to him he did offer the explanation which still constitutes his defence.

53. Before I turn to that straightforward argument it may be of assistance in relation to future cases to explain why, in my judgment, Mr Dingemans was right to abandon the more elaborate argument. Article 6.1 of the European Convention on Human Rights begins by providing:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

54. The right of silence is nowhere apparent on the face of Article 6. It has been read not into the entirety of the Article but only into the determination of criminal charges. Secondly, while professional disciplinary hearings are undoubtedly of sufficient seriousness to attract at common law strong procedural safeguards, they are not criminal proceedings. Third, the drawing of an adverse inference from silence in proper circumstances is not forbidden either by the Convention or by the Convention's jurisprudence. Fourth, while in England and Wales a caution should be given under the PACE codes at the start of an interview which results in criminal proceedings (see Police and Criminal Evidence Act 1984 section 67(9)), the same is not true of an interview which results in civil or domestic proceedings. The reason why Mrs Hutchinson was sensible to anticipate an interview under caution was that it could not be known in advance whether the interview might result in criminal as well as disciplinary proceedings.

55. But when one turns to the simple question of why it was that the appellant could have been expected, as the Committee thought he could have been, to put forward his explanation much sooner than he did, Mr Pleming has not been able to offer us a tenable answer. It is not possible to answer an allegation or a query until, broadly at least, you know what it is. The

appellant did not know what discrepancies, if any, had been found on the inspection. If in that situation he had volunteered the information about his arrangement with Dr Guindi and the 360 tablets, Mr Bradly would have had the lethal point against him that he evidently knew what was wrong before anybody from the Royal Pharmaceutical Society told him what it was. It cannot be fair that in the converse situation the appellant is criticised for not answering a query which had not yet been raised with him. Yet it was just such a criticism which clinched the case against him in the reasoning of the Statutory Committee.

56. In my judgment, the decision for that reason cannot stand, at least to the extent that it is founded on an unexplained discrepancy of 339 100mg Viagra tablets. The explanation that the tablets were upstairs and had been missed by the inspectors was rejected on grounds which in critical part were logically flawed.

57. In relation to Mr Pleming's fallback submission that even if this brick is removed from it the wall remains sound, the lucid way in which the decision was reasoned shows that this finding was a keystone. For my part, I could not be certain that without it the written schedule of the inspection, unsupported as it was by oral evidence, was necessarily to be preferred to the explanation - broadly consistent though discrepant in detail - given by the appellant and supported by Dr Guindi.

58. I would add that the reference by the Committee to Mr Panjawani's apparent prescience in setting aside the 360 tablets is also, in my judgment, not reasoning which I would be prepared to follow. It was perfectly consistent with the somewhat amateur system described by him and Dr Guindi that Dr Guindi would collect whatever was available, without Mr Panjawani's necessarily knowing in advance Dr Guindi's precise requirements.

Outcome:

59. Thus far, therefore, the appeal succeeds. But there remain unshaken findings of misconduct in relation to the state of the appellant's record keeping and the now unresolved issue about a possible major stock discrepancy. We have discussed with counsel in open court the pros and cons of sending the case back for retrial on the latter issue, but there is a major problem to which this court, through the judgment of Brooke LJ, drew attention in the case of Korsner which I mentioned earlier.

> "It is greatly to be hoped that the Society will be able to take effective steps, with the co-operation of the Statutory Committee, the Privy Council and Parliament, to modernise the operation of its disciplinary processes so that the Statutory Committee can cope with their contemporary workload in a manner which accords with the modern standards of justice to which the courts are now rightly aspiring. Quite apart from the small membership of the Statutory Committee (which makes it impossible, incidently, for this court to remit a case for hearing before a different committee) there are features of the regulations contained in the 1978 Order in Council which bear a rather dated air."

60. The passage concludes:

> "The need for a fair and properly expeditious disciplinary process will, of course, be accentuated when the Human Rights Act 1998 comes into force."

61. The disciplinary structure of the health professions is, Mr Pleming tells us, under review at present and may eventually be brought under a single authority. Meanwhile, however, the

Pharmacy Act structure remains in place. Recognising that remission would have to be to the same or a similarly constituted body, more than one of whose members had taken a vigorous part in the questioning which led to Mr Panjawani being disbelieved and all of whom had concurred in the adverse judgment of his credibility, Mr Pleming has taken the wise course of not inviting remission.

62. It needs to be said at once that although, for my part, I concur in this, it casts no shadow whatever on the probity of the members of the Committee. The law's concern, which Mr Pleming clearly had in mind, was, as it so often is, with appearances and appearances alone.

63. Mr Pleming has proposed in this situation as the least bad solution, and Mr Dingemans has understandably accepted, that we should treat the allegation about the missing tablets as not established against the appellant and should proceed ourselves to reconsider and set the penalty. This we have discussed and are willing to do, notwithstanding that as a court we lack the experience and knowledge of the Statutory Committee. Our options are erasure, reprimand, admonition or no order. Mr Dingemans seeks a reprimand.

64. The state of the appellant's practice is described in the notice of inquiry in terms which are not factually disputed and which can be summarised, in terms from which Mr Dingemans did not substantially dissent, as a practice in chaos. In an urban pharmacy such incompetence is dangerous.

65. Before I turn to the detail, it is relevant to record that the appellant, as the Statutory Committee knew, had been convicted and reprimanded not long before for professional misconduct. In 1992 and 1993 it was found on trial at Wood Green Crown Court that he had been guilty of selling medicinal products without a wholesale licence and he was fined £4,500. On the basis of this conviction the Committee found professional misconduct and ordered him to be reprimanded.

66. The Committee accepted that the present matter was wholly different from the subject matter of the conviction. It is important, however, to appreciate that there is a statutory requirement for the upkeep of a register recording pharmaceutical sales and supplies on the day of sale or supply and a further provision exempting wholesale dealing provided that the order or invoice is retained. Here there were two books. There was Book G, a register for private prescriptions from September 1996 to December 1998 and Book H, for the same purpose, for January 1999 to September 1999. The problem that we are looking at therefore was a different form of professional misconduct, and Mr Dingemans is entitled to make the point. But the notice of inquiry detailed a number of breaches of the Regulations which are set out in paragraph 10 of the notice.

67. The register was not up-to-date when it was seized. It was incomplete in respect of prescription-only medicines. Entries of prescription-only medicines were not always made on time. Sometimes a time-lag running into months was found. Prescriptions and orders relating to Viagra were not stored for inspection. Two prescriptions did not bear the patient's address. Loose pages were stapled into the back of the register which was required by law to be kept in a bound book for reasons which are obvious and extremely important. Loose pages of the register contained late entries. A number of prescriptions for Tenuate Dospan, a controlled drug, had been entered late. These breaches dated back to 1998.

68. Although there were arguments on detail, the substance of these accusations was made out principally by acceptance before the Committee. Mr Panjawani's counsel accepted that he was unable properly to account for the way in which things were recorded and that his record-keeping was lamentable.

69. The Committee in its written decision recounted that the appellant accepted the following proven failures: failure to ensure that prescriptions ordering Viagra against which the product was supplied were correctly written; a failure to make accurate records or to ensure accurate records of Viagra supplies; a failure to identify and remedy poor practices relating to the recording of supply of prescription-only medicines; involvement on the appellant's part in arrangements whereby medicines liable to misuse dispensed against prescriptions were collected by the doctor for transmission to the patient without further involvement of the pharmacist; and a failure to endorse with the date of supply prescriptions for controlled drugs, together with partial acceptance of a failure to ensure that prescriptions ordering controlled drugs were dispensed only within their period of validity.

70. There is no question that this was a serious set of failings made markedly worse by the fact that not very long before the appellant had been first convicted and then reprimanded for another by no means trivial breach of his professional obligations.

71. Mr Dingemans has stressed to us that there is much to be said in the appellant's favour. He has shown us a bundle of testimonials which are high in their praise for Mr Panjawani's courtesy and consideration towards his customers and towards the public. One of the testimonials perhaps puts its finger on the problem. The author writes: “If he does have a fault then it can only be that he is too nice and obliging”. It may well be a problem that Mr Panjawani is easily put upon; but the results of being put upon by others in this field of practice can be of great seriousness to the profession and the public.

72. We know also that Mr Panjawani has suffered for many years, possibly because of a road accident in the early 1990s, from distressing physiological symptoms ultimately found to be connected with damage to a cervical disc. It was in relation to these problems that he was in hospital at the time of the inspection, and in the early part of the following year a cervical laminectomy relieved not only the symptoms but, importantly, the intellectual deficit which had also been diagnosed and which, whether symptomatic or not of the cervical disc problem, appears to have remitted together with the physical symptoms, at least in part.

73. We were told that a reprimand is regarded within the pharmaceutical profession as the usual penalty for a failure to keep proper records. It seemed to us that we should inform ourselves as best we could of the scale of values of the statutory Committee because, while any appeal to us has to be considered afresh, it would be quite wrong for us to approach penalty on a basis that was unfairly out of kilter with the Committee's practice.

74. Miss Foster QC, deputising this morning for Mr Pleming, has helpfully put before us tables of the penalties imposed. It is not appropriate to analyse these in detail. What they show, it seems to us, is that while in a great many cases bad record-keeping is the subject of a reprimand, there is no uniform practice of the Committee of never going above this, and there are cases in which, no doubt because factors undisclosed by the schedule have made them graver, the Committee has erased a practitioner's name on charges of this kind. It seems to us that the right approach is to regard erasure for the sorts of failing that I have catalogued as at the top end, but not an inaccessible end, of the scale.

75. The medical history which I have mentioned is of course mitigation in one sense. But it is aggravation in another sense, because it appears to us that Mr Panjawani was continuing to practise in circumstances in which he could not maintain proper professional control of the pharmacy. The heavy reliance on locums is evidence of this. It seems to us that there are many pointers to a need for him not to be in charge of a pharmacy until he is judged fit to be, and fit to be in charge without over-reliance on locums. It remains to be seen too, we think, whether the improvement in his psychological and intellectual state is sufficient and

sufficiently sustained to justify his readmission to practice.

76. Mr Dingemans has reminded us, and we remind ourselves, how central the now failed charge in relation to the 360 Viagra tablets was to the decision to direct erasure. We have looked consequently with very great care indeed at what is left to see if it still justifies erasure. We note in particular in this regard that at the conclusion of the determination in 1996 that Mr Panjawani should be reprimanded, the chairman said this:

> "Obviously, from what we have heard, we think it is highly unlikely that Mr Panjawani is going to let this happen again. He must not allow any of his procedures, record keeping and the like to fall behind whatever his personal circumstances and difficulties. It is extremely important that everything is maintained properly. We are told by Mr Panjawani that he has no wholesale business of any significance at all now, so no question arises of him applying for a wholesale dealer's licence and, as I say, we consider that a reprimand is sufficient in this case."

77. There could not have been a closer warning shot across Mr Panjawani's bows; and yet within three years the record-keeping of the practice is back in chaos.

78. In our judgment this remains a sufficiently serious case, even with the subtraction of the principal element of the charges, to warrant Mr Panjawani's removal from the register as a person who is guilty of professional misconduct. Like the Statutory Committee, we would not propose to place any time limit on any application that he might make for restoration, and since the grounds for his removal are on any view less grave in total than they were, he may expect to be able to apply sooner than would otherwise have been the case for restoration. That perhaps is the real mitigation in this case. Much, though not everything, will no doubt then depend upon his medical condition.

79. Mr Panjawani has thus won the battle but lost the war. In those circumstances, Mr Dingemans has accepted that Mr Pleming's proposal that there should be no order as to costs is the right one and I, for my part, would so order.

MR JUSTICE GAGE: In so far as the first part of my Lord, Sedley LJ's judgment deals with the merits of the appeal against the Committee's findings in relation to professional misconduct and costs, I agree. So far as the penalty is concerned his judgment is, as I understand it, a judgment of the court, but for the avoidance of doubt I agree with that as well.

LORD JUSTICE SEDLEY: Is there anything remaining to be decided?

MR DINGEMANS: No, my Lord, I am grateful.

LORD JUSTICE SEDLEY: We are both indebted to you for the help we have had from both sides.