EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 77
XA19/18

Lady Paton
Lord Drummond Young
Lord Malcolm

OPINION OF THE COURT

delivered by LADY PATON

in the appeal by

PAMELA J BURTON

Appellant

against

THE NURSING AND MIDWIFERY COUNCIL

Respondent

Appellant: Party
Respondent: P Reid; Nursing and Midwifery Council, George Street, Edinburgh

11 December 2018

A capability assessment followed by disciplinary procedure

[1] The appellant is a nurse with over forty years experience. In 2004 she began working as a "bank nurse" (band 5), which involved placements in NHS Lothian hospitals as and when required.

[2] In October 2015, the appellant was sent to Liberton Hospital. There, concerns arose about some aspects of her work. NHS Lothian requested her participation in a capability assessment, involving placements at several hospitals. The assessment began in February

2016, and continued to the third formal stage in August 2016. On 27 October 2016, before the completion of the assessment, the appellant had a meeting with the bank staff manager Mrs Dodds. Following some discussion, the appellant resigned. In January 2017, NHS Lothian submitted a complaint to the Nursing and Midwifery Council (the respondent) concerning issues which had arisen in the course of the capability assessment. On 27 January 2017 the respondent imposed an interim suspension on the appellant, as a result of which she could not work as a nurse. The respondent also served the appellant with a complaint specifying various charges relating *inter alia* to clinical competences, recognition of limitations, manual handling techniques, awareness of risks, and administration of medication.

[3] A hearing before the Fitness to Practise Committee was arranged for 22 January 2018. That hearing was preceded by considerable correspondence between the appellant and the respondent. The appellant lodged written representations denying the charges, contradicting witness statements, and explaining her position. In the course of correspondence, the respondent advised the appellant to obtain legal advice. The appellant responded stating that she would not attend the hearing, nor would she be represented.

[4] The committee met on 22 January 2018. The members were two lay persons (one being the chair) and one nurse. A legal assessor was in attendance, and a case presenter. The appellant was not present. Matters debated on the first day included amendment of the charges, and the question whether to proceed in the appellant's absence. The chair directed the legal assessor to telephone the appellant. After an initial contact on 22 January 2018, a more extensive telephone conversation took place the following day, 23 January 2018. A report of that conversation was made to the committee and noted in the transcript of the proceedings as follows:

> "…you the Panel broke just before 2.00 pm yesterday, having made a decision to proceed in the Registrant's absence and in order to read the bundle that Ms Comiskey had passed up to you. I can report that during the course of the afternoon, later on, contact was made through the NMC with the Registrant who returned their telephone call. On the basis of that the Registrant indicated she was willing to speak with myself, the Panel Secretary and Ms Comiskey this morning.
>
> That conversation took place just after 9.00 am and what I can report to the Panel is that, firstly, the Registrant made it very clear that she did not wish to attend the hearing this week in person for the reasons that she set out in correspondence that she has previously sent to the NMC. The Registrant did indicate that if there was anything on which the Panel required further clarification from her in terms of the correspondence that she has sent in, she was happy to speak over the course of the telephone. Whether that is with myself, Ms Comiskey and the Panel Secretary, or whether that was to involve the Panel as a whole, is a matter which perhaps can be considered if, in fact, that stage is reached.
>
> Thereafter, Mr Chair, nothing further happened within that telephone call except to say it was made very clear to her by me that at any stage that the Registrant is able to participate in this hearing by either attending in person or, if she wishes, to do so over the telephone, which would of course require communication with the NMC and arrangements to be made for her to be linked in to the hearing in that way…"

[5] The hearing then continued. The case presenter led the evidence of four witnesses: Mrs Dodds, nurse bank staff manager; Mrs Ramaboa, charge nurse at the relevant time at the Royal Infirmary Hospital; Miss McNaught, senior charge nurse at the Astley Ainslie Hospital; and Miss Ferrier, deputy charge nurse at the relevant time at that hospital. Each witness described concerns arising from certain aspects of the appellant's work, including an apparent lack of understanding and/or insight in relation to some of the incidents and the potential risk to patients. The committee questioned each witness, putting the appellant's position and testing the witness's evidence. Examples of such questions can be found in the transcript of the evidence at page 90 (a suggestion that the appellant was not treated fairly by the procedure or by Mrs Dodds); page 104 (a proposition that Mrs Ramaboa was not supportive of the appellant in her placement); page 123 (the possibility that the appellant's reference to the superseded "MIMs" drugs formulary instead of the British National

Formulary (BNF) was a slip of the tongue or of the memory); page 145 (a suggestion that the appellant simply fitted in with an already-existing lax record-keeping culture in the ward); and page 147 (the possibility that the capability assessment process itself may have caused some deterioration in the appellant's performance). The committee also put questions concerning possible risks to patients. Each witness responded by confirming the observed failings and reiterating their concerns, including concerns about the appellant's apparent lack of insight and lack of appreciation that there had been failings and/or risks.

[6] Having heard the evidence and submissions from the case presenter, the committee dealt with the question whether it was necessary to contact the appellant again in order to clarify any matters. They ultimately concluded that it was not, as set out at page 150 of the transcript:

> "…When we broke, the panel was going to discuss whether we believe that before we take the NMC's closing submissions we should communicate directly with the Registrant on any matter. The panel has considered this very carefully and our view is that, in all of the very substantial amount of written correspondence from the Registrant, there is an absolute consistency in the way that she expresses her position in regard to the allegations, there is no ambiguity which would benefit from exploration directly with the Registrant and we do not believe that her position would change from that that she has expressed numerous times in the written correspondence. The fact that she would not be attending the hearing but only be on the end of a telephone responding to specific questions rather than presenting her case and giving evidence means that the panel would gain little additional information regarding her demeanour and attitude and therefore our decision is that, with regard to fact, we do not believe that we would gain any useful information or demonstrate any greater level of fairness than we already have done to the Registrant who has been communicating about her attendance on numerous occasions, not least two days ago, and has consistently declined to attend. We do not believe that we are going to demonstrate any greater fairness to her or gain any additional information by further communication with her with regard to fact. That is not to say that we might not wish to communicate with her when it comes to the next phase, if that is appropriate, and we will make that decision when we come to it. At the moment, colleagues, unless either of you wishes to add anything if I have missed anything crucial there, our position is that we are ready to go into the NMC's closing submissions, please."

[7] The committee then considered the evidence, the submissions, and all the papers

including productions and the appellant's written representations. As set out in their decision letter dated 31 January 2018, they assessed the credibility and reliability of the witnesses. If a witness's evidence conflicted with the appellant's written representations, they decided which account they preferred and accepted. They found certain facts proved. They then considered whether any lack of competence had been established; if so, whether the appellant's fitness to practice was impaired, bearing in mind the importance of the protection of the public; and finally any question of sanction.

[8] As set out in their decision letter, the committee found all the charges proved, except charge 2.5 which was unsupported by sufficient evidence. They concluded that a lack of competence had been established, and that the appellant's fitness to practise was impaired. They then considered a range of possible disposals, starting at the lower end. They ultimately decided, for the reasons set out in the letter, to suspend the appellant for a period of 12 months with effect from 1 March 2018. Meantime they imposed a further interim suspension of a maximum of 18 months, pending any appeal.

The appellant's appeal

[9] The appellant appealed to the Court of Session against the committee's decision in terms of section 60 of the Health Act 1999 and articles 29(9) and 38 of The Nursing and Midwifery Order 2001. Those articles provide *inter alia*:

> "29(9) The person concerned … may appeal to the appropriate court against an order made under paragraph (5) and article 38 shall apply to the appeal …
>
> 38(1) An appeal from –
>
> (a) any order or decision of the Fitness to Practise Committee other than an interim order made under article 31, shall lie to the appropriate court …
>
> (3) The court or sheriff may –

> (a) dismiss the appeal;
>
> (b) allow the appeal and quash the decision appealed against …
>
> (c) substitute for the decision appealed against any other decision the Fitness to Practise Committee … could have made …
>
> (d) remit the case to the Fitness to Practise Committee … to be disposed of in accordance with the directions of the court or sheriff,
>
> and may make such order as to costs (or, in Scotland, expenses) as it, or he, as the case may be, thinks fit.

(4) In this article "the appropriate court " means –

> (a) in the case of a person whose registered address is (or, if he were registered, would be) in Scotland, the Court of Session …"

[10] The appellant appeals against the finding of incompetence, and the sanction of 12 months suspension. In the course of the hearing in the Court of Session, the appellant represented herself, and referred *inter alia* to a typed appeal document with attachments; a typed note of argument dated 3 June 2018; and a typed letter to the court dated 24 July 2018.

Submissions by the appellant

[11] The appellant confirmed having spoken to someone representing the committee on 23 January 2018. She accepted that she was again invited to attend the hearing at the NMC offices in George Street, Edinburgh, or alternatively to participate by way of telephone or telephone conferencing. She explained that she had not wanted to be at the hearing, with all those witnesses. She had understood that the committee would phone again the next day, but a further call never came.

[12] The appellant submitted that there was insufficient evidence, and in any event no clear evidence of incompetence. The nurse bank staff manager had not looked into certain

allegations, which were in fact untrue. The NMC had not been fair. The witnesses had given inaccurate, unfair, untrue and unjust statements. The committee had failed to take her representations into account, leading to an unfair judgment. The appellant was not incompetent. It had been unfair to impose a suspension which caused her stress, health problems and financial difficulties. She had been a good nurse for over 40 years. The capability assessment itself had caused stress. She had been allocated to acute wards, when her experience was of non-acute wards. She had been expected to be in charge, a position which she had never previously experienced, except for brief periods. In addition, she had at times been unwell. A letter from her general practitioner was referred to. A few errors had occurred, which she recognised, but they had been blown out of all proportion. No-one had been hurt as a result of any error, and she had apologised for any that had occurred. A second chance in a non-acute ward, with supervision, was the appropriate disposal. While she had planned to retire at age 72 in 2019, and while therefore she could not undertake much further work, she could do some work. As for re-training or undergoing courses, she was not sure what sort of re-training was being referred to, and in her note of argument she stated that she could not afford any such courses.

[13] The appellant moved the court to allow the appeal; quash the finding of incompetence; quash the suspension and impose, if necessary, a conditions of practice order. In her written representations, the appellant also sought compensation for financial loss caused by the suspension.

Submissions for the respondent

[14] Counsel for the respondent submitted that the appeal should be refused.

[15] ***Fairness:*** The proceedings had been fair. In the circumstances, the committee were

entitled to proceed in the absence of the appellant. Reference was made to rules 20 and 21 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004; *R* v *Jones* [2003] 1 AC 1, paragraphs 6 and 13; *Tait* v *Royal College of Veterinary Surgeons* [2003] UKPC 34, paragraph 5. The appellant's absence had been voluntary, and an adjournment was unlikely to secure her attendance. The protection of the public had to be taken into account (*GMC* v *Adeogba* [2016] 1 WLR 3867, paragraph 23). The appellant had received adequate notice and opportunity to challenge the case against her. The committee members had tested the evidence, posing the type of question which counsel acting on her behalf would have put (cf *AD* v *Nursing and Midwifery Council* 2015 SC 282, paragraph 21). The committee had taken the appellant's written representations into account.

[16] ***Sufficiency of evidence:*** The evidence of the four witnesses, taken with the productions, was sufficient to prove all the charges, excepting charge 2.5 which the committee properly rejected on the basis of lack of evidence. The committee were entitled to accept the witnesses' evidence and to prefer it to the information provided by the appellant. In their decision letter, the committee fully explained their reasoning and conclusions.

[17] ***Sanction:*** In their decision letter, the committee explained their rejection of any lesser disposal (cf *Ghosh* v *GMC* [2001] 1 WLR 1915, paragraph 34, and *Mallon* v *GMC* 2007 SC 426). The sanction imposed was reasonable and appropriate in the circumstances. If the court were minded to allow the appeal to the extent of altering the sanction, the case should be put out for a By Order hearing before any specific alternative sanction was imposed.

Discussion

The scope of the appeal

[18] This is a full appeal, not restricted to points of law, or to the type of review expected in

a judicial review. Guidance in relation to the scope of appeals of this nature can be found in *Mallon* v *General Medical Council* 2007 SC 426, paragraphs [19] and [20]; *Professional Standards Authority* v *Nursing and Midwifery Council* 2017 SC 542, paragraph [25]; *Suddock* v *The Nursing and Midwifery Council* [2015] EWHC 3612 (Admin), paragraph 35; and *Hindmarch* v *The Nursing and Midwifery Council* [2016] EWHC 2233 (Admin), paragraph 3. The authorities emphasise that, despite the broad nature of the appeal, a court should be slow to interfere with findings of credibility and reliability, and findings in fact based on such assessments. Further, special place must be given to the judgment of a tribunal such as the Fitness to Practise Committee in respect of findings which reflect professional judgment concerning standards of professional practice and conduct.

Procedural fairness

[19] Rule 21 of The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 provides:

> "**Absence of the practitioner**
>
> … (2) Where the registrant fails to attend and is not represented at the hearing, the Committee –
>
> (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
>
> (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
>
> (c) may adjourn the hearing and issue directions."

Documentation was produced which satisfied the committee that the appellant had been duly served with notice of the hearing and all the necessary documents, in compliance with

rules 11 and 34 of the Nursing and Midwifery Council (Fitness to Practise) Rules 2004, as amended. The committee therefore had the power competently to proceed in the appellant's absence. The question is whether it was fair to do so.

[20] As Lord Bingham explained in a criminal appeal, *R* v *Jones (Anthony)* [2003] 1 AC 1, paragraphs 6 and 13, such a power (or discretion) must be -

> "exercised with great caution and with close regard to the overall fairness of the proceedings; a defendant afflicted by involuntary illness or incapacity will have much stronger grounds for resisting the continuance of the trial than one who has voluntarily chosen to abscond … The Court of Appeal's checklist of matters relevant to exercise of the discretion (see paragraph 22(5) of *R v Hayward* [2001] QB 862) is not of course intended to be comprehensive or exhaustive, but provides an invaluable guide …"

The Court of Appeal's checklist in paragraph 22(5) of *R* v *Hayward cit sup,* also a criminal appeal, includes the following:

(1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.

(2) Those rights can be waived … by the defendant himself. They may be wholly waived if, knowing … when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him …

(3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.

(4) That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.

(5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case, including, in particular: (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial … and in particular whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear; (ii) whether an adjournment might result in the defendant being caught or attending voluntarily … (iii) the likely length of such an adjournment; (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation … (vi) the extent of the disadvantage to the defendant in not being

> able to give his account of events, having regard to the nature of the evidence against him … (ix) the general public interest … that a trial should take place within a reasonable time of the events to which it relates …
>
> (6) If the judge decides that a trial should take place or continue in the absence of an unrepresented defendant, he must ensure that the trial is as fair as the circumstances permit. He must, in particular, take reasonable steps, both during the giving of evidence and the summing up, to expose weaknesses in the prosecution case and to make such points on behalf of the defendant as the evidence permits …"

Lord Bingham's guidance, and the Court of Appeal's checklist, have been referred to and applied in professional disciplinary cases: see, for example, *Tait* v *The Royal College of Veterinary Surgeons* [2003] UKPC 34 at paragraph 5; and *General Medical Council* v *Adeogba* [2016] 1 WLR 3867 (with the *caveat* that the analogy between criminal proceedings and regulatory proceedings should not be taken too far, as the latter has as its objective the safety of the public and, unlike a criminal court, lacks the power to enforce the attendance of the professional under scrutiny: paragraphs 17-18 and 23).

[21] In the present case, the appellant corresponded with the respondent during the period leading up to the hearing. She received copies of the relevant papers. She sent written representations to the respondent, making it clear that she denied the charges, that there had been no incompetence on her part and certainly no lack of fitness to practise. The appellant was given proper notice of the date and the address in Edinburgh (the city where she lived) at which the Fitness to Practise Committee hearing was to take place. The appellant wrote to the respondent explaining that she would not be present at the hearing.

[22] On the first day of the hearing, 22 January 2018, four witnesses were present, waiting to give their evidence. The chair of the committee decided that telephone contact should be made with the appellant, and that she should again be invited to participate in person or by telephone communication such as telephone conferencing. A telephone conversation

between the appellant and the legal assessor duly took place on 23 January 2018, all as described in the transcript quoted in paragraph [4] above. The appellant was thus again alerted to the existence of the proceedings and the invitation to attend. She again stated, without any hesitation or qualification, that she would not attend. She explained that she was unable to obtain legal representation. She did not ask for an adjournment.

[23] In those circumstances the committee were, in our view, entitled to proceed in the appellant's absence. The appellant had been kept fully informed. She voluntarily chose to be absent from the hearing. An adjournment was unlikely to result in her attendance. The need to protect the public required the hearing to proceed in order that the concerns raised about the appellant could be properly explored (cf *General Medical Council* v *Adeogba* [2016] 1 WLR 3867, paragraphs 17-18 and 23).

[24] The proceedings during the hearing were recorded. A transcript of the recording was available for this appeal. Having read that transcript, we note that evidence was elicited by a fair and thorough process. After the evidence of each witness had been led, the committee asked further questions, designed to put the appellant's position to the witness (see paragraph [5] above). Thus the appellant's position as set out in her written representations was kept very much at the forefront of the proceedings, and each witness's evidence was tested (cf the observations in paragraph 21 of *AD* v *Nursing and Midwifery Council* 2015 SC 282).

[25] Having heard submissions, the committee retired to consider their decision. They reached conclusions about credibility and reliability, which was one of their functions. Where there was a conflict between the appellant's written representations and the oral evidence, the committee decided which they preferred, as they were entitled to do. Ultimately, they found certain facts proved. On the basis of those facts, they considered whether a lack of

competence had been proved; if so, whether the appellant's fitness to practise was impaired, having regard to the public interest; and if the answer to that question was in the affirmative, what, if any, sanction should be imposed. Their reasoning and conclusions are set out in full in their decision letter, and cannot, in our opinion, be criticised.

[26] In the result, we have been unable to identify any procedural unfairness.

Sufficiency of evidence

[27] The committee had the appellant's written representations. Four professional witnesses gave oral evidence at the hearing. There were also productions. In our opinion, there was ample evidence which, if accepted, entitled the committee to make the findings in fact which they did. As already noted, the committee were entitled to find a witness or witnesses credible and reliable. They were entitled to prefer the evidence of a witness or witnesses to a written representation made by the appellant. We are not persuaded that there was insufficient evidence to support the conclusions reached by the committee.

Issues of competence and fitness to practise

[28] On the basis of the facts found, the question whether there was any lack of competence, and if so whether, having regard to the public interest, the appellant's fitness to practise was impaired, were very much issues for the expert tribunal. As Lord Justice Clerk Gill explained in *Mallon* v *General Medical Council* 2007 SC 426 at paragraph [19]:

> "[19] … we have to apply the test set out in *McMahon v Council of the Law Society of Scotland* (paras 13-16); that is to say, we should look at the decision of the panel in the light of the whole circumstances of the case, always having due respect for the expertise of the panel and giving to its decision such weight as we should think appropriate. However, as the court observed in that case (para 16), in following this approach it is good sense to keep in view the obvious reasons that have been repeated over the years for according respect to the views of specialist tribunals in appeals of

> this kind. When invited to disturb a finding of serious professional misconduct, we have to defer to the judgment of the panel to whatever extent is appropriate in the circumstances (*Meadow v General Medical Council,* Auld J, para 197). In applying this agreed test we are entitled to substitute our own judgment on the facts for that of the panel; but whether such interference on our part is justified will often depend, in our view, on the nature of the misconduct …
>
> [20] The spectrum of serious professional misconduct can range from conduct that is entirely non-clinical, such as defrauding the National Health Service or sexually harassing an employee or colleague, to conduct in the course of clinical practice, such as the carrying out of a reckless surgical procedure. In a case of the former kind, a court might conclude that there was little to inhibit it from substituting it own judgment for that of the panel if it should have cause to differ from it. In a case of the latter kind, which involves a technical question of medical malpractice, the court is, we think, at a serious disadvantage to the panel whose decision is impugned …"

Similar observations were made in *Professional Standards Authority* v *Nursing and Midwifery Council* 2017 SC 542, at paragraph [25]:

> "[25] … There is a well-established body of jurisprudence relating to the proper approach to appeals from regulatory and disciplinary bodies. The general principles can be summarised as follows. In respect of a decision of the present kind [namely, the administration of the wrong drug to a patient, depriving him of 24 hours of pain relief], the determination of a specialist tribunal is entitled to respect. The court can interfere if it is clear that there is a serious flaw in the process or the reasoning, for example where a material factor has not been considered. Failing such a flaw, a decision should stand unless the court can say that it is plainly wrong or as it is sometimes put, 'manifestly inappropriate'. This is because the tribunal is experienced in the particular area, and has had the benefit of seeing and hearing the witnesses. It is in a better position than the court to determine whether, for example, a nurse's fitness to practise is impaired by reason of past misconduct, including whether the public interest requires such a finding. The same would apply in the context of a review of a penalty …"

[29] The specialist committee in the present case gave careful consideration to the incidents which had been found proved. On that basis, and for the reasons they gave, they concluded that a lack of competence had been established. Further they concluded that the appellant's fitness to practise was impaired, giving full reasons for that conclusion. Nothing which the appellant drew to our attention has persuaded us that the committee erred in any of these stages of their deliberations.

Sanction

[30] The committee considered that a sanction was necessary. That conclusion cannot be criticised, bearing in mind the need to maintain professional standards and provide adequate protection to the public (*Ghosh* v *General Medical Council* [2001] 1 WLR 1915 paragraph 34). As set out in their decision letter, they commenced their deliberations relating to sanction at the lower end of the scale of possible disposals. For the reasons they give, they concluded that any sanction less severe than a suspension for a period of 12 months was insufficient. The committee were concerned about the appellant's lack of insight, and the risk of repetition. In their view, there was such a risk, even with a conditions of practice order, partly because the concerns about the appellant had arisen during a capability assessment, which was virtually equivalent to working under supervision. The committee also took into account the fact that the imposition of conditions of practice might not be workable if the appellant could not understand why the procedure was being gone through, and/or if her future employer (whose identity could not be known at the hearing) did not have the appropriate mechanisms or staff to supervise the appellant, for example, during the routine administration of medication. Noting the reasons given by the committee, we consider that the sanction of suspension for a period of 12 months fell well within the range of reasonable disposals open to them on the basis of the facts found established. We also consider that it was reasonable for the committee to consider it necessary for the protection of the public to impose an interim suspension order of a maximum of 18 months, to allow for the possibility of an appeal.

Decision

[31] For the reasons given above, we dismiss the appeal. We continue any question of expenses.

Postscript

[32] If a nurse wishes to appeal against a decision of the Nursing and Midwifery Council, an interim period of suspension is imposed, ending upon the resolution of the appeal or a period of 18 months, whichever is earlier. If the appeal is unsuccessful, the interim suspension is followed by the original sanction, which might be 12 months suspension (as in the present case).

[33] While accepting that the *rationale* underlying such an approach includes the need to protect the public, we consider that there may be an appearance of unfairness, for two reasons. First, time spent on interim suspension does not count towards the period of suspension ultimately imposed as a sanction; and secondly, a nurse with a valid appeal point may be discouraged from making an appeal on the view that doing so would simply prolong the unwanted absence from work. We note that in other areas of the law, where an interim sanction is imposed pending the completion of procedural steps, it is usual to have the interim period count towards the period of the final sanction, provided first, that the two are similar in nature and secondly, that the interim period is not taken into account when the final sanction is imposed. The underlying principle is that reasonable procedural steps taken by a party, such as a right of appeal, should not have an effect on the total sanction that is imposed.

[34] To counter these concerns, the Nursing and Midwifery Council might wish to consider altering the relevant part of the decision letter (page 28 in the present case) to make

it clear (i) that the period of interim suspension would not exceed 18 months (unless there was an extension); and also (ii) that in terms of articles 30 and 31 of The Nursing and Midwifery Order 2001 it is always open to a nurse during suspension to seek review of interim and substantive suspension orders, on the basis of such additional information thought to be relevant and appropriate. For example, the nurse might rely on the completion of a training course undertaken following upon the disciplinary hearing and decision. In that way, a nurse previously thought to have demonstrated a lack of certain skills, or a lack of insight into her situation, might be able to persuade the committee that she had developed the skills or acquired a greater appreciation of her circumstances; that she had achieved what the professional tribunals refer to as "remediation"; and that there was no need for further suspension.

[35] Consideration might also be given to the question whether time spent on interim suspension should count towards any period of suspension imposed as a sanction.