



Delaying Fitness to Practise Proceedings when there are Concurrent Criminal Proceedings

Often, a professional regulatory body (GMC, HCPC, NMC *etc.*) will be investigating a matter which has also given rise to criminal proceedings. Notably, a regulator may be given some leeway when it comes to finalising their case against a registrant, even after criminal proceedings have come to an end.

In professional discipline matters involving criminal allegations, the regulator will usually delay its final determination of the Fitness to Practise process until after any criminal proceedings have concluded. Although this is not a hard and fast rule, it often makes sense, bearing in mind, among other things, the higher standard of proof in the criminal proceedings.

If the allegations in a professional disciplinary matter are serious, as they inevitably will be in the event of concurrent criminal proceedings, the regulator may wish to impose an interim order, (for example) if one is necessary for the protection of the public. Therefore, a professional might find himself suspended or subject to conditional registration for some time, albeit on an 'interim' basis, before his criminal case is heard.

However, the regulator can usually only impose an interim order for 18 months, after which it will have to apply to the High Court for an order extending it. If the criminal proceedings are ongoing, an accused professional will often agree to such an order by consent.

But what happens when the criminal proceedings were kicked out six months before the regulator seeks a second High Court extension?

This was the matter to be determined in a case in which I was recently instructed by David Staniforth of Norrie Waite & Slater Solicitors. The application to the High Court was brought by the General Pharmaceutical Council ('the GPHC').



The learned Mr Ian Goldsack was instructed in the criminal case, which resulted in acquittal on 6th January 2016.

(Details of those colleagues mentioned above can be found at www.norriewaite.co.uk/david-staniforth.html and <http://stjohnsbuildings.com/people/ian-goldsack>).

One might be justified in thinking that the regulator had plenty of time to get its case in order within six months of the collapse of the criminal case. And if the GPHC had not managed to have its regulatory case ready within the passing six months, why should my client be prejudiced by the apparent failure of the regulator? Why should he still be subject to an interim order?

To answer these questions, one must bear in mind that, when consider an extension, the High Court will apply the same criteria as those applied by the regulator's interim orders panel (*GMC v Hiew*), namely that the order sought is:

- Necessary for the protection of members of the public;
- Otherwise in the public interest; and/or
- In the interests of the accused/registrant.

In determining the application, the factors which the Court will consider include:

- The gravity of the allegations;
- The nature of the evidence;
- The seriousness of the risk of harm to patients;
- The reason why the case has not been concluded; and
- The prejudice to the registrant if the interim order is continued.



In a well-reasoned judgment, the Court found that, although the case was finely balanced, the interim order (of conditional registration) remained necessary for the protection of the public.

The allegations were undoubtedly serious and the regulator had given assurances that it would imminently be in a position to serve its final evidence upon the accused. The prejudice to the accused was significant but, regrettably, this did not outweigh the other factors.

The fact that the criminal case had fallen flat did not, of itself, mean that the regulator's case would do likewise, bearing in mind the different standards of proof.

As stated at the outset, a regulator will usually be permitted to delay their case until parallel criminal proceedings have concluded, and may also be given considerable leeway when it comes to finalising their case against a registrant, even after the criminal proceedings have come to an end.

This is not to say that a regulator's application to the High Court for an extension ought not to be challenged. Where appropriate, it certainly should be.

Finally, it is (as ever) important to consider whether the regulator intends to seek its costs if its application is opposed but succeeds. Likewise, bear in mind that, even if the application for extension is refused, i.e. you succeed in opposing it, your costs may not follow the event.

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October 2016
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