Neutral Citation Number: [2005] EWHC 2797 ()

Case No: CO/2965/2005

IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/12/2005

Before :

MR JUSTICE BENNETT

- -

Between :

MR DAVID RYELL	**Appellant**
- and -	
THE HEALTH PROFESSIONS COUNCIL	**Respondent**

Ms Jillian Brown appeared on behalf of the Appellant
Mr Michael Caplan QC and Ms Isabel Dakyns appeared on behalf of the Respondent

Hearing date: 29 November 2005

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Approved Judgment

The Honourable Mr Justice Bennett

1. The Appellant appeals the decision of the Conduct and Competence Committee of the Respondent ("the Committee") given on 14 and 15 April 2005 after a hearing on 13 and 14 April that the Appellant's fitness to practise was impaired by reason of both misconduct and for lack of competence. After mitigation by Ms Brown, his Counsel, the Committee imposed a caution order for four years upon the Appellant.

2. The Appellant, through Ms Brown, has submitted in essence that the proceedings were unfair in several respects and that the Committee's decision should be quashed. The Respondent, through Mr Caplan QC and Ms Dakyns, has submitted that the proceedings were fair and the appeal should be dismissed. However, if, contrary to that primary submission, it is held that the proceedings were unfair, then the appeal would have to be allowed; and, it is submitted, the matter remitted to a freshly constituted Committee. Ms Brown opposed any remission.

3. The background is as follows. The Appellant is a registered paramedic and is thus subject to the regulations of the Respondent. Prior to 1989 the Appellant had been in the Army Reserve, employed as a battlefield combat medical instructor and a unit first aid instructor. In 1989, he joined the London Ambulance Service ("LAS"). In about 1994 he was promoted to medical technician. In 1999 he was promoted to paramedic. Following the investigation of a complaint relating to an incident on 24 March 2002 the authority for him to act as a paramedic was withdrawn for a minimum of one year.

4. By letter dated 25 February 2004 the Respondent was notified of an allegation that the Appellant's fitness to practise was impaired. The complaint came from the LAS. Dr. Moore, the LAS' medical director, had concluded that the Appellant should not be allowed to practise as a paramedic.

5. On 5 April 2004, the Respondent notified the Appellant of the allegation and supplied him with a copy of the Standards of Conduct, Performance and Ethics, and the Rules referred to in paragraph 7 below.

6. On 20 May 2004 the Investigating Committee considered the allegation and referred it to the Committee.

7. On 8 June the Committee notified the Appellant (inter alia) that:-

> "Your fitness to practise as a Registered health professional is impaired by reason of your lack of competence and/or your misconduct whilst in the employ of the [LAS]."

Enclosed was a copy of the Health Professionals Council (Conduct and Competence Committee) (Procedure) Rules 2003 ("the Procedure Rules") and Part V of the Health Professions Order 2001.

8. On 28 June 2004 a preliminary meeting was held by the Chairman of the Committee in accordance with Rule 7 of the Procedure Rules. The Appellant and his solicitor attended. Directions were given that the Respondent should serve its bundle of documents six weeks before the final hearing, the Appellant should serve his bundle

fourteen days before the final hearing, and the date of the final hearing be fixed administratively. Subsequently the date of the final hearing was fixed for 13, 14 and 15 April 2005 and notice thereof was sent to the Appellant on 27 December 2004.

9. On 11 February 2005 the Respondent served the Appellant with its bundle of documents together with a detailed chronology of the allegations of misconduct and lack of competence ("the chronology"). A very slightly amended version of the chronology was served on 29 March 2005.

10. On 12 April 2005 the Appellant served his statement of twenty-one pages which dealt in detail, in alia, with the matters set out in the chronology. He also served a bundle of documents.

11. Before I come to the final hearing itself, I should refer to the contents of the chronology. It dealt with fourteen separate incidents starting on 16 May 2000, which were the foundations of the Respondent's case of either misconduct and for lack of competence, i.e. a common theme of complaints by fellow professionals over a period of time.

12. The dates and nature of each complaint are fully set out in the chronology which can be found at p. 395 of the bundle. Broadly speaking they are complaints of offensiveness, rudeness, brusqueness, foul language, and lack of competence, and failing to keep cool in moments of crisis and when under pressure, such that there was a risk to the public.

13. The Appellant's statement was, as I have said, a detailed document. It complained that the Respondent had not provided a clear statement setting out the grounds of the allegation set out in paragraph 7 above. However, the statement dealt in detail with each alleged incident. As to some of the incidents he broadly accepted the thrust of the complaints. Others he denied. He did not accept that they, individually or cumulatively, merited the finding of misconduct or lack of competence.

14. The final hearing took the following course. Day 1. The Appellant denied the charge of unfitness. Ms Brown submitted that the proceedings were unfair. The bundle prepared by the Respondent and the chronology presented a partial view of the Appellant's capability and conduct. His file with the LAS had been inspected and a number of documents found missing, thus it was unknown what documentation, favourable to the Appellant, was available. The vast majority of the incidents since 2000 were not properly investigated and so it was unknown what the complainants would have said if they had been properly questioned and it the Appellant's version had been put to him. She summarised her submission in these words:-

> "It is not to say that my client is in any way unwilling to answer anything that is put to him. As you have seen, he has put forward a very full witness statement answering all of these matters. As a matter of principle and given that the Human Rights Act and Article 6 does apply to these proceedings, it is a fundamental right for my client to have a fair hearing. On the basis of the documentation that I have seen and on the absence of details of the original allegation, I am extremely concerned that my client will not receive a fair hearing and it is impossible for him to do so on the basis of the evidence that we have."

15. Mr Harding, a solicitor and partner in the firm of Kingsley Napley representing the Respondent, accepted that there was documentation missing. He said:-

> "It is right to say that the first time I, or the Council's solicitors, saw the testimonials was when Mr Ryell's solicitors delivered their bundle to me last week. I had not seen this before. I am not in a position to say (although I thought I was) that you have everything in front of you that was in the personnel file. Clearly, you do not.
>
> "In making those observations, it is, of course, for me to prove the case. What I ought to do is to seek some time to make enquiries to find out what else there is and, if necessary, adjourn the case for you to obtain the full file and place that full file before this Committee.
>
> "In essence, sir, it must be my application to adjourn for me to make enquiries. If you are not satisfied or if you come to the view that I had my chance and have blown it, as it were, you need to rule on the Article 6 point that Ms Brown makes."

16. Ms Brown opposed any application for an adjournment, even apparently for a short time during that day, for Mr Harding to make further enquiries or even issuing a requirement for the LAS to produce the documents missing from the file (Day 1, page 11, lines 16 to 21).

17. The Committee's Legal Advisor gave the Committee advice in the presence of the parties. The Committee, having retired, decided not to grant an adjournment as it "would not achieve any positive result."

18. Ms Brown then sought a ruling that the case should be dismissed on the basis that to proceed would not give the Appellant a fair hearing to which he was entitled under Article 6 of the European Convention on Human Rights, due to the lack of complete documentation.

19. The Legal Advisor then gave her advice. She said:-

> "I think there is also the problem in the case that I should bring your attention to although it has not been raised so far and that relates to the evidence which the Council propose to put before you. As I understand it, there is only one witness who is being called by the Council and who is a person who is employed by the London Ambulance Service, but she cannot testify to any one of the incidents or allegations referred to in the large file of paers that we all have.
>
> "You are permitted under Rule 10 to hear or receive evidence which would not be admissible in such proceedings - - and by "such proceedings" I mean civil proceedings in the United Kingdom - - if it is specified that admission of that evidence is necessary in order to protect members of the public. Therefore, you have a discretion to admit hearsay evidence. This is basically what that is saying.

> "However, you have also seen today Mr Ryell's statement that he has made. You will note that there is a discrepancy between the evidence in his statement and the evidence compiled in the large bundle here. Of course, you will not be able to cross-examine any witnesses because no witnesses have been called. I think that is also another aspect that you should take into account. It is whether you feel able to proceed to hear the case today.
>
> "I have already mentioned Article 6 to you. Again, I would remind you, as both parties have reminded you, that that should be considered."

20. Mr Harding then said, correctly in my view, that hearsay evidence was admissible and that the Committee would have to decide what weight to put on it in the light of all the other evidence.

21 After a further retirement the Chairman said:-

> "The Panel has decided to proceed with this hearing. In reaching this decision, the Panel has considered Article 6 of the Human Rights Act and has concluded that there is sufficient information in all the documentation which has been submitted by both parties to secure a hearing.
>
> "The Panel has also considered the lack of witnesses to the events surrounding the allegation for the HPC and the consequent need to reply upon the documentary evidence. On this point, the Panel considers that this evidence is necessary in order to protect members of the public and the Panel will give consideration to the weight to be attached to it in due course. That is our decision."

22. Mr Harding opened the case and called his only live witness, Ms Ann Ball, the Deputy Director of Human Resources at the LAS. She had made a statement of 29 March 2005, from which it was apparent, as she orally confirmed, that she had no first hand knowledge of the incidents set out in the chronology.

23. In her cross-examination she agreed there were missing documents. She did not extract any documents from the Appellant's file with the LAS. She was asked questions in which she agreed that the Appellant's recertification in 2002 was satisfactory. She was repeatedly asked why various documents were or were not in the Respondent's bundle, to which she answered that she had not compiled the bundle. Again, she was repeatedly asked why the incidents in the chronology were being relied on as justifying the Appellant not being allowed to practise as a paramedic. She answered that it demonstrated a pattern of events. She could not explain why certain documents in the Appellant's file were missing. Documents from the Appellant's bundle were put to her. She was questioned by the Committee.

24. The Appellant then gave evidence. He confirmed his statement was true. Mr Harding's cross-examination was short. The Appellant agreed that the primary purpose of state registration was to protect the public. He agreed that if the matters in the chronology were true, then he had fallen below the high standard of behaviour required of him. Importantly, in answer the Appellant said at p.61 of the transcript:-

"Assuming they were to be true, which of course I refute, yes – yes, if it were held they were true."

25. He agreed that there was a common theme to the complaints i.e. his manner towards other professionals. He answered:-

"I would say my manner has been abrupt."

26. The Appellant agreed that in his statement he had accepted that his behaviour might have been better in certain instances. He was asked to read out from his statement paragraphs 13 and 14 re 16 May 2000, paragraphs 19 and 20 re 23 July 2000, paragraph 28 re 7 September 2000, paragraph 33 re 19 November 2000 and paragraph 48 re 24 March 2002.

27. Mr Harding then continued questioning and the Appellant answered as follows:-

"Q. You see, it is the Council's case, Mr Ryell, that these instances from a number of different people had a common theme to them and that the documentation, as contemporaneous documents, accurately sets out a course of conduct by you which renders your fitness to practice impaired. What do you say to that?

"A. I would say that since the attitudinal stuff, the directive or assertive way that I talk to people, that was undertaken by a course in 2004 when I successfully took and completed a course in communication skills.

"Q. But in general terms, what do you say about the allegation that these instances, as set out in the chronology, are evidence of your impairment to practice as a health professional?

"A. I refute the term "impairment" because the whole context around clinical practice is one of reflective practice. It is how to learn and better your skills. Sometimes, you may focus on areas more than others.

"Q. But I think you agreed that part of being fit is to practice is that high standard of behaviour. It is not just clinical skill. There is a high standard of behaviour when doing your job.

"A. I would agree with you, but one must also bear in mind that the behaviour where allegations are made is around very serious and very harrowing events during which you do not have time really to meekly and mildly ask things. If somebody needs resuscitation, they need it instantly, not after a four-minute discussion on who is fetching what equipment so you must put things into context."

28. There were then questions from the Committee.

29. Day Two. Ms Brown called two witnesses, Mr Penson and Mr Henty. Mr Harding and Ms Brown made their submissions to the Committee. The Legal Advisor gave her advice to the Committee, who then retired to consider its decision. The Committee

returned and gave its decision which can be found in the transcript at page 33 and at AA1 The important passages are as follows:-

> "David Ryell was employed by the London Ambulance Service from April 1989. He was initially employed as an EMT until he qualified as a paramedic in November 1996. Following the investigation of a complaint relating to an incident on the 24th March 2002, Mr Ryell's authority to practice as a Paramedic within the London Ambulance Service was withdrawn for a minimum period of a year. In a letter dated 7th January 2004, Mr Ryell was informed that his status as a Paramedic would not be restored and the matter would be referred to the HPC.
>
> "Complaints about Mr Ryell's adherence to protocols and attitude generally were received from May 2000. Mr Ryell has acknowledged that he can be very direct in his language but has justified this in the light of the high pressure environment in which Paramedics work.
> "The Panel acknowledges that these complaints were not investigated at the time and that no disciplinary action was taken.
>
> "Following a complaint in November 2000 made by a Police Officer accusing Mr Ryell of swearing at him, a preliminary investigation was instituted which concluded that the actions and conduct of Mr Ryell had resulted in bringing the service in to disrepute.
>
> "A further complaint was reported in March 2002 in relation to a call-out to attend a member of the public who was 'fitting'. An investigation took place and it was recommended that Mr Ryell face disciplinary action. At the disciplinary hearing in December 2002, a final warning was imposed for a period of 18 months and Mr Ryell's authority to practice as a Paramedic with the London Ambulance Service was withdrawn for a minimum of 1 year. Mr Ryell has acknowledged that he exceeded the number of cannulations by one attempt. Two further complaints were reported in 2003 but no investigations followed.
>
> "Mr Ryell had passed the Paramedic re-certification course in February 2002. In his witness statement, he refuted the complaints and gave his own explanations for events. He referred to the root cause of many of the difficulties as being the merger of the Brixton and Oval Ambulance Services.
>
> "Ms Brown submitted that there was no specific allegation from the London Ambulance Service. Having heard from Mr Harding and taken legal advice, the Panel is satisfied that there is no specific format for the framing of an allegation, and it accepted that the course of conduct contained in the file from the London Ambulance Service constituted a single allegation relating to Mr Ryell's fitness to practice as a Paramedic.
>
> "The Panel finds a lack of competence by reference to the HPC standards of proficiency for Paramedics. It concludes that there is evidence, in four of the episodes listed in the chronology of events, of a lack of competence. This, in the Panel's view, cumulatively amounts to a finding, on the balance of probability, of a lack of competence.

"In addition, by reference to the standards of conduct, performance and ethics, the Panel concludes that there is evidence, in five of the episodes listed in the chronology, of misconduct. This, in the Panel's view, cumulatively amounts to a finding, on the balance of probability, of misconduct.

"Accordingly, the Panel is satisfied that Mr Ryell's fitness to practice is impaired by reason of both misconduct and lack of competence.

"In reaching this decision, the Panel was mindful of the lack of witnesses to the fact and placed greater reliance on events where there were signed witness statements. It was also noted that there were inconsistencies in the different statements signed by Mr Ryell and in the patient report forms.

"The Panel finds the allegation that Mr Ryell's fitness to practice is impaired by reason of misconduct to be well founded. In addition, the Panel finds the allegation that Mr Ryell's fitness to practice is impaired by reason of lack of competence to be well founded."

30. Ms Brown then asked the Committee to identify which of the incidents referred to in this decision related to misconduct and which to lack of competence, so that she could tailor her mitigation accordingly. The Chairman told her that the incidents of lack of competence were 16 May 2000, 19 November 2000, 24 March 2002 and 13 February 2003. The incidents of misconduct were 23 July 2000, 7 September 2000, 19 November 2000, 24 March 2002 and 20 January 2003.

31. Ms Brown asked the Committee, again for the purpose of mitigation, in what way lack of competence or misconduct had been established in relation to each of the above incidents identified by the Chairman. The Chairman then, for each incident, identified the Standard of Conduct, Performance and Ethics in question e.g. 16 May 2000, Standard 2 b.

32. Day Three. Ms Brown mitigated. At page 5 she said to the Committee:-

"I am proposing to offer relatively limited mitigation this morning, the reason being that I am not clear which of the facts arising out of each dates have been accepted or rejected by the Panel. I am going to mitigate, therefore, on the assumption that the majority of Mr Ryell's evidence has been accepted with regard to those matters and address you on that basis."

33. The Committee then considered what penalty to impose and imposed a caution order for four years.

34. Ms Brown advanced seven grounds of appeal. All, bar the last, questioned the fairness of the proceedings. The seventh ground was that decision of misconduct and/or lack of competence was perverse. There was no appeal against the penalty of a caution order. I shall deal with each ground in turn as they were advanced by Ms Brown, who emphasised that they should be looked at not just individually but cumulatively.

35. Ground One – Failure to give notice of the issues/lack of specificity.

Ms Brown submitted that the letter of 8 June 2004 (see paragraph 7 above) did not give any particulars. The provision of a large bundle of documents was not the giving of

particulars. As for the chronology she submitted that it was more confusing than helpful. The chronology did not identify whether any of the incidents went to misconduct or lack of competence or both, nor what in each incident constituted the misconduct and/or lack of competence.

36. Mr Caplan, for the Respondent, accepted that neither the letter of 8 June 2004, nor the provision of a bundle of documents was adequate and that the charge had to be particularised. The chronology set out, in detail, the relevant dates and allegations of fact, and cross-referenced each incident to the pages in the bundle of documents provided by the Respondent. If it had been really considered that the charge was inadequately particularised the Appellant was entitled to ask the Chairman on 28 June 2004 or at any time thereafter in a further hearing for an order for proper particulars, see Rule 7 of the Procedure Rules 2003. Indeed such an application could have been, but was not, made to the Committee at the start of the final hearing.

37. Furthermore, the sufficiency of the chronology as particulars is demonstrated by the Appellant's own statement which went into each incident in detail.

38. Overall he submitted the procedure adopted by the Respondent of providing a bundle and a detailed chronology was not confusing and was adequate and sufficient for the Appellant to meet the case against him.

39. Ground Two – Failure to produce relevant evidence.

Ms Brown submitted that all the relevant documentary evidence was not produced. Ms Ball had not herself compiled the Respondent's bundle and that someone other than her had decided to omit documents from the bundle favourable to the Appellant. In particular there must have been documents recording decisions of the Respondent not to proceed with disciplinary hearings in the past. However Ms Brown accepted that a) no documents were excluded which went to the facts of each incident and b) the Appellant himself had filed a bundle of documents which brought to the Committee's attention the documents said to be favourable to the Appellant. Documents were missing from the Appellant's file with the LAS. The Committee had not granted an adjournment. Neither the Appellant nor the Committee knew whether the bundle of documents of the Respondent was complete.

40. Mr Caplan in essence made four points. First, the documents omitted from the Respondent's bundle were all in the Appellant's bundle. Second, as to the "missing" documents i.e. where the Respondent had decided in the past not to bring disciplinary charges in relation to any of the incidents, they were in any event irrelevant if not inadmissible. Third, no documents had been identified which were in the possession of the Respondent, which adversely affected the Respondent's case or supported the Appellant's case and which were withheld from the Committee. Fourth, in any event Mr Harding had offered to seek to trace, and if possible produce, any missing documents, had asked for an adjournment for that purpose, but that request was vehemently opposed by Ms Brown. Her opposition persuaded the Committee not to grant the adjournment asked for.

41 Ground Three – Lack of cross- examination.

Ms Brown submitted that, taking into account the lack of specificity (see paragraph 35 above), the Appellant was not, but ought to have been, cross-examined on the information in the Respondent's bundle and/or was not cross-examined at all on the incidents of 23 July 2000, 7 September 2000 and 13 February 2003. None of the Standards, later identified by the Committee (see paragraph 31 above) were put to the Appellant in cross-examination. The fundamental point put to me by Ms Brown was whether the Committee's decision was made on the matters cross-examined to or upon the admissions made by the Appellant.

42. Mr Caplan submitted that the Appellant had the opportunity, both in his statement which stood as his examination-in-chief and in his examination-in-chief to give evidence about any or all of the incidents. He effectively did so through his statement and his bundle of documents. The Appellant was not deprived of a fair trial by any "failure" to cross-examine him. Furthermore in respect of the incidents 16 May 2000, 23 July 2000, 7 September 2000, 19 November 2000 and 24 March 2002, his own admissions in his statement were put to him. In relation to the incident of 16 May 2000, 19 November 20000 and 24 March 2002 questions were put to him by various members of the Committee. In relation to the incident of 20 January 2003 the Appellant had admitted his actions in a meeting in early 2003 and had never resiled from that. In relation to the incident on 13 February 2003 the Appellant had again made admissions in his statement.

43. Mr Caplan further submitted that there was no obligation for the Appellant to have put to him the relevant standards of conduct. The Appellant must be presumed to have known of them. On 5 April 2004 a copy of the standards was sent to him.

44. Ground Four – witnesses not called.

It is common ground that the Respondent called no witnesses as to the facts of any of the incidents. The Respondent relied upon the documents to substantiate the factual matrix of each incident. Ms Brown submitted that these complaints had not been investigated at the time save for 19 November 2000 and 24 March 2002. As none of the witnesses were called the Appellant could not test their evidence by cross-examination. Although Ms Brown specifically accepted that hearsay evidence was admissible before the Committee and is not prohibited by European jurisprudence (see Clingham v. Kensington and Chelsea RLBC [2003] 1 AC 787), admission of hearsay evidence may render a trial unfair if a criminal conviction is based wholly or mainly on such evidence (see Unterpertinger v. Austria (1986) 13 EHRR 175). Ms Brown further submitted that it was a very dangerous course never to call witnesses and thus to put forward the evidence of untested witnesses. Furthermore, the Committee decided to proceed in the absence of any witnesses as to the incidents of that was unfair.

45. Mr Caplan submitted that the evidence was properly admissible under section 3 of the Civil Evidence Act, 1995 and Rule 10 (1) (c) of the Procedure Rules in that the Committee said (see AA2) that it was satisfied:-

> "that the admission of that evidence is necessary in order to protect members of the public".

No submissions were made to the Committee that it did not have this power or that the admission of the evidence would be a wrongful exercise of the discretion vested in the

Committee. Ms Brown never raised the question of admissibility of hearsay. The Legal Assessor did raise the issue – see Day One p.17 – yet Ms Brown made no application that it should be excluded.

46. Furthermore, there was no obligation upon the Respondent to call the witnesses live. It was open to the Appellant to apply at the hearing itself, or more conveniently at a preliminary hearing, for an order or direction that the named individuals should attend and be cross-examined. Ms Brown accepted that that was open to the Appellant and the Committee had the necessary powers, either under the Procedure Rules or CPR 33.4 (1). No such application was ever made.

47. Ground Five – Hearing within a reasonable time.

Ms Brown's complaint under this head was that the proceedings were unfair in that there was too big a time gap between the date of the incidents, the earliest being May 2000, to April 2004, the first notification to the Appellant of a possible charge. An Appellant can only react once a complaint is notified. Ms Brown, rightly in my judgment, did not seek to maintain any point that there had been unfair delay since the inception of proceedings.

48. Mr Caplan referred me to Aaron v. The Law Society (The Office of the Supervision of Solicitors) [2003] EWHC 2271, a decision of the Administrative Court of Auld L.J and Goldring J. In July 2002 the Disciplinary Tribunal found the appellant, Mr Aaron, guilty of seven allegations relating to non-payment of fees to counsel that had been accrued between 1987 and 1991. The Court had to consider whether Article 6 of the ECHR was engaged at all. Article 6, the Court held, applied to disciplinary proceedings and that a failure to determine proceedings within a reasonable time may violate Article 6 without proof of prejudice to the accused [paragraph 25]. The Court also held [see paragraph 28] that the elapse of time between the institution of disciplinary proceedings and determination, between three and a half and four years, did not reach the high threshold of Article 6 delay referred to by Lord Bingham of Cornhill in Dyer v. Watson [2002] 3 WLR 1488 at paragraph 52. As to the common law, the period of potentially relevant delay is wider than under Article 6; it runs from the date of the alleged improper conduct to final determination of the matter. The Court said further at paragraph 30:-

> "But....there is still a strong common law tradition that, in order to secure a stay of the proceedings for delay amounting to abuse of process, it is necessary to show prejudice."

49. So he submitted there was no prejudice to the Appellant. The Appellant compiled a detailed statement which dealt fully with the allegations. The delay in Aaron was much greater than in the instant case.

50. Ground 6 – Reasons for the decision.

The law, both domestic and European, submitted Ms. Brown, imposed on the Committee an obligation to give a decision in which, according to the judgment of the Divisional Court (Lord Bingham CJ and Kay J) in Pullum v Crown Prosecution Service [2000] Crown Office Digest 206:-

> "....the minimum which the appellant was entitled to expect was a clear statement as to what evidence the court had accepted, a clear statement that it had, as described in the case stated, based itself specifically on Mr. Docherty's evidence of what had occurred at the assault stage, that no question of self defence or accident arose, and that any evidence of provocation was immaterial. Had the court announced its decisions in approximately the terms of the case stated the appellant would have had no possible grounds of complaint."

51. In Brabazon-Drenning v UK Central Council for Nursing Midwifery and Health Visiting [2001] HRLR 91 the Divisional Court of the Queen's Bench Division of the High Court (Rose LJ and Elias J.) considered the failure of the Professional Conduct Committee to give any reasons for its decision. Elias J. with whom Rose LJ agreed, referred in paragraphs 24 to 29 of his judgment to the failure, and its consequence, of the PCC to give reasons for its decision. He referred to the Privy Council decision in Stefan v General Medical Council [1999] 1 WLR 1293 and quoted a passage from the judgment of Lord Clyde [see paragraph 25]. At paragraph 26 of his judgment Elias J in referring to Lord Clyde's judgment said:-

> "His Lordship held in that case that there were three factors in particular which were of a general nature and which justified reasons being given. These were the fact that the decision affected the appellant's right to practice her profession; that there was a right of appeal which pointed to the view that reasons should be given, so that the grounds of appeal could be properly identified and articulated; and that a consideration of the nature and functions of the Committee demonstrated that it was, in many respects, akin to a court of law which was expected to give reasons. Each of these factors applies here. Indeed, in my view this is an a fortiori case, given the fact that a finding of misconduct unlike an adverse finding on health, also affects the reputation and professional standing of the individual."

52. At paragraph 27 Elias J referred to Lord Clyde's emphasis that it was only necessary to give reasons in a relative summary way in order to tell the parties in broad terms why the decision was reached. A very few sentences should suffice. They did not have to be elaborate or detailed.

53. Ms Brown, basing herself on those authorities, submitted that what the Committee said in their decision (see paragraph 29 above) was insufficient. The Committee failed to indicate, briefly, what facts it had found proved in respect of each of the seven incidents (and the incidents were not justified) or why what they had found amounted to misconduct and/or lack of competence on the part of the Appellant. Even when the Committee orally identified the dates of the incidents it "found" proved, no details were given of the facts which it found to be established or why they amounted to misconduct or lack of competence of the Appellant. What the Committee ought to have done was to set out clearly and shortly what facts it found proved, whether the account of each incident on the part of the Respondent or the Appellant was broadly accepted and why that amounted to misconduct and/or lack of competence. As to the incidents, upon which there was no cross-examination, the Appellant was left in the dark whose version of the facts the Committee accepted.

54. Ms. Brown took me through each incident relating to it the various parts of the Appellant's statement. In some incidents the conflict of facts was starker than in others.

Overall Ms Brown submitted that there were sufficient differences of fact for the Committee to be under an obligation to set out which version they accepted. She asked rhetorically what facts re 16 May 2000 justified a finding of lack of competence? As to 19 November 2000 did the Committee find that the Appellant used obscene language and abused a police officer? Or was the Appellant reasonably entitled to insist on the attendance of the emergency helicopter service as he insisted in paragraphs 29 to 33 of his statement? He denied swearing. As to 23 July 2000, did the A deliberately refuse to move his ambulance which was apparently blocking the path of another ambulance carrying an emergency patient? Or, as the Appellant asserted (paragraphs 16 to 21 of his statement), did he give the keys of his ambulance to a police officer and ask him to move his ambulance as he himself had a patient to attend to, who had been stabbed in the chest? What facts did the Committee find and why were they misconduct? In relation to 13 February 2003, there was no indication by the Committee why it found lack of competence in the light of the evidence in the documents that his patient was not caused undue distress by the fact that the Appellant was unable to cannulate the patient or administer an IV analgesic. Ms. Brown gave examples in relation to other incidents which supported her submission that it was incumbent upon the Committee to state briefly what were the facts it found and why they amounted to misconduct and/or lack of competence.

55. Mr. Caplan conceded that the paragraphs at AA3 beginning "The Panel finds a lack of competence…." and "In addition, by reference to the standards of conduct….." was inadequate. The Committee should have, where there was conflicting evidence, said which evidence it preferred, which it accepted, and what standards were breached. However, the requests by Ms. Brown thereafter for further information and/or the failure of Ms. Brown to ask for further information cured any defect. The Committee correctly directed itself as to the lack of witnesses and the weight to be attached to hearsay evidence, and, it can be inferred, made findings upon the basis of the Appellant's admissions. Mr. Caplan submitted that there was no lack of information from the Committee which deprived the Appellant of a fair hearing including the making of an appeal in relation to the Committee's findings.

56. In my opinion Ms. Brown has established Ground 6. The Committee did not either in their decision or in the supplemental information given (orally) at the request of Ms. Brown, spell out, in relation to the incidents "found proved", what facts it found and why they amounted to misconduct and/or lack of competence. Nor was it sufficient, in my judgment, to refer to the Standards without spelling out which part of the Standard in question was breeched by the Appellant. I agree with Ms. Brown that the paucity of the Committee's information did not meet the minimum requirements spoken of in Pullum, and, moreover, has made it impossible for the Appellant to mount an appeal against those findings, whether of fact or of opinion, of the Committee. I agree, respectfully, with the reasoning of the Divisional Court in Pullum and of Elias J in Brabazon-Drenning. Thus, in my judgment, the establishing of Ground 6 must itself lead to the Committee's decision being quashed.

57. I will express my opinion in the other grounds briefly. I reject Ms. Brown's submissions on each. Ground 1 – the chronology was sufficient particulars. The Appellant was able, without difficulty, to give evidence in relation to each. If the Appellant, or his legal team, really considered that further particulars should have been

given, they should have asked for them from the Respondent; and in default of an answer, sought an order from the Committee either at the final hearing or before.
Ground Two – I accept Mr. Caplan's submissions (see paragraph 40 above). In any event this ground struck me as the Appellant trying to have his cake and eat it. Mr. Harding offered to try to obtain the very documents the Appellant wanted. Ms. Brown spurned that offer and persuaded the Committee not to grant an adjournment. Any unfairness created by the Committee's decision could be said to be aggravated by the Appellant's stance.

58. Ground Three – I do not consider there is anything in this point for the reasons given by Mr. Caplan (see paragraphs 42 and 43 above). Cross-examination is not carried out to enable the Appellant to put his case. That is the function of examination-in-chief. No unfairness was caused to the Appellant.

59. Ground Four – Again, I have to say there is nothing in this point. Mr. Caplan, in my judgment, is right in his submissions (see paragraphs 45 and 46 above). The Appellant was well aware that the Respondent proposed to call no live witnesses as to the incidents. He did not seek to exclude the hearsay evidence. He did not ask for any of the complainants to be made available for cross-examination.

60. Ground Five – I agree with Mr. Caplan's submissions (see paragraphs 48 and 49 above). The ability of the Appellant to deal with each the incidents demonstrates that he suffered no prejudice. In any event the lapse of time between the incidents and April 2004, even April 2005, came nowhere near amounting to an abuse of process.

61. Ground Seven – perversity. Ms. Brown submitted that the decision of the Committee was perverse as no sufficient reasons were given by the Committee. I do not think it possible to characterise its decision as perverse. For, as Ms Brown successfully submitted, the Committee gave inadequate reasons. Thus it is not possible to say whether the Committee's decision was, or could amount to being, perverse. I make no finding on this ground.

62. Ms Brown submitted that if I quashed the decision, it should be left at that and I should not remit the matter to a freshly constituted Committee for a further hearing. The Appellant, if the matter is remitted, could be exposed to the risk of a greater penalty. The Appellant would have to bear the cost of a fresh hearing and he would continue to be under a professional cloud. I sympathise with those submissions but I am not persuaded. I have quashed the decision on only one, albeit important, ground and rejected the others. The procedure of the Committee was not so flawed as to make it unjust for there to be a rehearing. I doubt if the risk of a greater penalty is likely to materialise. The Appellant will have powerful mitigation that he has had to go through a rehearing, and if the Committee had given in April 2005 short and sufficient reasons, its decision may well have stood, and thus his penalty (which he did not appeal) would have stood as well. In my judgment it would be a brave, and perhaps unwise, Committee to seek, after a rehearing, to impose a penalty greater than that imposed in April 2005. In any event if in principle the risk of a greater penalty after a rehearing was sufficient to prevent a remission, the power given to this court under Article 38 of the Health Professions Order 2001 to remit a case would be rendered nugatory.