GENERAL MEDICAL COUNCIL

FITNESS TO PRACTISE PANEL (MISCONDUCT/PERFORMANCE)

On:
Thursday, 28 July 2011

Held at:
St James's Buildings
79 Oxford Street
Manchester M1 6FQ

Case of:

GORDON ROBERT BRUCE SKINNER
MB ChB 1965 University of Glasgow
Reference 0726922
(Day One)

Panel Members:
Professor B Gomes da Costa (Chairman)
Dr I Berry
Mrs A Granne
Mrs M Obi (Legal Assessor)

MR A HAYCROFT, Counsel, instructed by RadcliffesLeBrasseur, Solicitors, represented the doctor, who was present.

MR B MORWOOD, Counsel, instructed by GMC Legal, appeared on behalf of the General Medical Council.

Transcript of the shorthand notes of
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THE CHAIRMAN: Good morning, everyone. This is a Fitness to Practise Panel operating under the General Medical Council (Fitness to Practise) Rules 2004. The Panel has convened to review the case of Dr Gordon Robert Bruce Skinner, registration number 0726922. Dr Skinner is present and represented by Mr Anthony Haycroft, Counsel, instructed by Ralph Shipway of RadcliffesLeBrasseur, Solicitors. Mr Boyd Moorwood, Counsel, instructed by GMC Legal, represents the Council. The Legal Assessor is Ms Margaret Obi. My name is Professor Brian Gomez da Costa and I am Chairman of this Panel. The other Panel members are Mrs A Granne and Dr Ian Berry.

Are there any preliminary matters?

MR MORWOOD: There are. The current hearing is convened as a review hearing in relation to the case of Dr Skinner. An original Fitness to Practise Panel was convened between 2 and 17 July, 3 and 5 and 8 to 9 of September and 9 to11 November 2007. Consequent upon that Fitness to Practise Panel convening, a decision was made by that Panel that Dr Skinner's fitness to practise was impaired and conditions were then imposed.

It is necessary to bring the Panel's attention to the content of the earlier Fitness to Practise Panel's decision and in order to do that could I ask that the Panel receive a bundle of documents, please, now? *(Same handed to the Panel)*

THE CHAIRMAN: Let the record show this first bundle to be C1.

MR MORWOOD: I am aware that the Panel have not yet received the bundle, and therefore it is necessary to bring the Panel in short measure through the earlier fitness to practise proceedings, before the General Medical Council make an application to adjourn this hearing.

This is the first review hearing after the original Fitness to Practise Panel was convened. Their determination in relation to issues of impairment can be found at page 12 onwards in the bundle before you. By way of background, Dr Skinner acts as a specialist in the treatment of thyroid deficiencies and disorders and works in a private capacity, having patients referred to him through NHS practitioners and other doctors and works without immediate workplace supervision. The original Fitness to Practise Panel were required to defer to issues in relation to four separate patients, and thereon decided whether or not the doctor's fitness to practise was impaired by way of deficient professional performance. As a separate issue were required to defer to particulars that the doctor had failed to undertake a performance assessment and whether or not that amounted to misconduct.

The original Panel's findings in relation to the four patients can be read out in short. At page 12 the Panel will find Patient A is referred to. On 20 December 2002 Mrs A was referred to Dr Skinner by her NHS general practitioner, Dr Cooke. Dr Cooke's referral letter contained the results of two previous blood tests showing Mrs A's thyroid stimulating hormone, TSH, to have been within the reference range. On 16 January 2003 Dr Skinner saw Mrs A as a private patient, took a blood sample for thyroid chemistry results to be obtained and gave Mrs A a prescription for sodium thyroxine 25 µg per day seven days, followed by 50 µg for four weeks. This prescription was provided prior to obtaining biochemical results of the blood test. Dr Skinner suspected a diagnosis of B12

deficiency but failed, in the light of the suspicion, to perform any investigation to assess this as a possibility. He also suspended a diagnosis of secondary hypoadrenalism, but failed in the light of his suspicion to refer Mrs A to an endocrinologist or other relevant specialist for evaluation. On or about 24 January 2003, receiving the biochemical results for Mrs A's blood test showing her TSH and thyroxine level to be within the reference range, on 6 February 2003 he nonetheless prescribed to Mrs A ½ grain armour thyroid per day for one week, followed by 1 grain armour thyroid per day for two weeks, followed by 1½ grain armour thyroid for six weeks. Between 16 January 2003 and 6 February 2003, speaking to Mrs A on the telephone, he made no record of such conversations in her medical notes.

Turning then to Patient B. On 20 March 2003 Dr Skinner saw Ms B as a private patient without a referral from her general practitioner. During that consultation he became aware of the fact that results of her blood test showed her thyroid chemistry to be within the reference range. He provided Ms B with a prescription for sodium thyroxine, to increase to 125 µg per day after 17 June 2003 for three months. After 20 March he next saw Ms B on 21 January 2004, and during that period failed to monitor adequately or at all. Then, on or before 21 January 2004, aware of the results of a blood test, set out in a report dated 9 December, obtained by Ms B's NHS general practitioner. The results of the report showed that Ms B had become biochemically thyrotoxic. This overreplacement was as a result of Dr Skinner prescribing thyroxine.

On 21 January 2004 Dr Skinner provided Ms B with a prescription for sodium thyroxine, 150 µg per day for 150 days, and tertroxin 20 µg per day for a month, and thereafter at 40 µg per day. The Panel found this was inappropriate, unnecessary, irresponsible and not in the best interests of Patient B, and therefore placed Patient B at a risk of harm. After that, on 18 March 2004 Dr Skinner saw Ms B again and provided her with a prescription for sodium thyroxine 75 µg or 100 µg on alternate days, and tertroxin 20 µg per day. Again, the Panel found this was inappropriate, unnecessary, irresponsible, not in the best interests of Patient B and placed her at a risk of harm. On 14 July 2004 Dr Skinner provided Ms B with a prescription for sodium thyroxine 150 µg per day for three months, and again the Panel found that Dr Skinner's prescription was inappropriate, unnecessary, irresponsible and not in that patient's best interests, placing her at risk of harm.

Separately, Patient C. On 6 March 2004 Patient C was again seen as a private patient without a referral from a general practitioner. Dr Skinner took a blood sample for Ms C's thyroid chemistry results to be obtained. On or about 16 March 2004, having received the results of that blood test, which showed, again, that Ms C's TSH and T4 levels were within the reference range. On 6 March 2004, nonetheless, Dr Skinner prescribed Ms C with sodium thyroxine. On 8 May 2004, again seeing Ms C, he provided a prescription, or agreed to the continuation of the prescription, for sodium thyroxine and the Panel found that this was inappropriate and unnecessary. The doctor saw Ms C again on 7 August 2004. On or after 16 August 2004, having received blood tests for Ms C, the blood sample showed, taken following the consultation on 7 August, that Ms C had become chemically thyrotoxic, that Dr Skinner failed to take such steps to reduce or stop thyroid medication. The Panel found that Dr Skinner suspected that Ms C might be suffering from adrenal failure, but then failed to refer her to an endocrinologist to assess that suspicion.

Finally, in relation to the review of patients, Patient D, the Panel found that on 24 August

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2004 Patient D was again seen as a private patient without a referral from her general practitioner. Mrs D told Dr Skinner that a recent blood test had shown her TSH level to be within reference range, and took a blood sample for thyroid chemistry results to be obtained, providing her with prescriptions for thyroxine 25 µg per day for seven days, 50 µg for 21 days, and 75 µg per day for 21 days, eventually culminating in 100 µg per day for 60 days.

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On or about 3 September 2004 Dr Skinner received the results of Mrs D's blood test, and that showed her T4 and TSH levels to be within reference range. In a letter dated 3 September 2004, Dr Skinner wrote to Mrs D's general practitioner, enclosing the results and stating that he:

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> "... would be quite prepared to institute a four month trial of thyroid replacement but will not proceed thus for ten days to allow [the individual] the opportunity to comment on this strategy."

By letter of response of 7 September 2004, three doctors at Mrs D's general practice stated that, amongst other things, "we do not feel it is safe or appropriate for her [Mrs D] to have thyroxine".

D

On 18 November 2004, seeing Mrs D again, Dr Skinner provided her with a prescription for sodium thyroxine for three weeks, followed by a further dose for three weeks and an increased dose then for six weeks. Suspecting a diagnosis of B12 deficiency, Dr Skinner failed, in the light of the suspicion, to perform any investigation to assess that. On or about 6 January 2005, having received further results from the blood sample taken in August of 2004, showing the T3 range to be within the reference range, Dr Skinner on 23 February provided Mrs D with a further prescription of sodium thyroxine for three months, and then the Panel will see further prescriptions through 2005.

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In a letter dated 31 August 2005, Mrs D's NHS GP stated that the doctors at the practice did not agree that Mrs D should be taking thyroxine and requested that Dr Skinner discharge Patient D from his care. Following that, on 18 November 2005 Dr Skinner provided Mrs D with a further prescription, dated 16 November 2005, for sodium thyroxine at an increased dosage for three months and continued on 24 November, receiving the results of blood tests showing that the patient had become biochemically

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thyrotoxic, the Panel found that that overreplacement was as a result of Dr Skinner prescribing thyroxine.

In relation to the issues of misconduct the Panel then, you will see at page 15, reviewed the invitation by the General Medical Council to Dr Skinner to undertake a performance assessment. Initially, there was agreement in relation to the assessment, but on 6 January

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2005 RadcliffesLeBrasseur, instructed on the part of the doctor, received specific instructions from him to the effect that he no longer agreed to an assessment of his performance being carried out.

The Panel found that in relation to *Good Medical Practice*, relevant sections were that in providing care a doctor must not give or recommend to patients any investigation or treatment which they know is not in their best interests, nor withhold appropriate

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treatments or referral, and also that an adequate assessment of the patient's condition, based on the history and symptoms and, if necessary, an appropriate examination should

be conducted. It noted that the Panel did not make its judgment based on Dr Skinner's personal beliefs as to the methods of treatment, save insofar as those beliefs were shown to have disregarded clinical responsibilities towards patients.

The Panel noted that every doctor who had given evidence at the hearing indicated that they would undertake blood tests when assessing the patient's condition and deciding on future management, but Dr Skinner indicated in his submission that he believed it was not always necessary to check thyroid chemistry prior to initiating or changing a patient's medication. Dr Skinner also indicated that he believed biochemical thyrotoxicity was a misconception. The Panel noted no other clinician at the hearing supported that position. The Panel was most concerned that Dr Skinner's rigid approach put his patients at risk of harm. The Panel found that Dr Skinner repeatedly breached the above principles contained within *Good Medical Practice*. The Panel noted a concern that throughout the hearing Dr Skinner showed a lack of insight into his behaviour. That was demonstrated by a statement provided to the Panel, dated 7 September 2007, in which he set out his reasons for refusing to accept the findings of the Panel. For example, he stated:

> "In fairness to myself, the text should be rewritten and the term biochemical thyrotoxicity, which is a non-concept, removed ..."

That approach had not been supported by any other clinician giving evidence at the hearing.

The Panel was most concerned that Dr Skinner's refusal to acknowledge that approach may be flawed, and demonstrated that he failed to reflect upon his practice. In relation to paragraph 33, the Panel took account of the provisions of the procedure rules, namely whether or not, a practitioner has failed to submit to, or comply with, an assessment, and provided credible evidence, a reasonable request made by the registrar, no reasonable excuse had been made. The middle paragraph at page 16 noted that the doctor's reasons for failure to cooperate with the assessment appeared to be that it was neither necessary nor appropriate, and he felt that such an assessment would constitute tacit agreement to the charges. It was also a concern raised that complaints against the doctor were anonymised and that he had not been provided with full information to identify the patients involved.

It was submitted on the doctor's behalf that the proposed assessment was inappropriate for a doctor in Dr Skinner's position, dealing with a very narrow aspect of general practice. Nonetheless, the Panel found that doctors hold a privileged position in society. Such a position with it brought responsibilities. One obligation was to cooperate with the individual's regulatory body, and cooperation was essential to allow the General Medical Council to carry out its function to regulate doctors and ensure *Good Medical Practice*. The Panel considered that the doctor provided no reasonable excuse for his failure to comply with the assessment and took that into account, together with the professional performance issues in relation to the cases considered at the hearing when assessing the doctor's fitness to practise.

The Panel bore in mind the guidance provided in the Indicative Sanctions Guidance that there was no definition of impaired fitness to practise, but noted at page 17 of the bundle before you that a question of impaired fitness to practise is likely to arise if a doctor's performance has harmed patients or put patients at a risk of harm, and a doctor has shown

deliberate or reckless disregard of clinical responsibilities towards patients. By its findings the Panel found that Dr Skinner's actions had been in breach of both of those principles and, in all the circumstances, found impairment.

Of relevance to the application before you for adjournment is, then, the Panel's determination in relation to the question of sanction and the expectation of what this Panel would then conduct by way of review. The Panel noted at page 18 that in deciding the appropriate sanction to be imposed in the case of Dr Skinner, the Panel restricted itself to considering only Dr Skinner's actions in relation to the facts found proved. It noted that it was not the remit of the Panel to decide on whether or not Dr Skinner's approach to treatment is correct or incorrect, but to determine what sanction is necessary to protect patients and the public interest. It then took into account that conditions were previously imposed. It took into account the question of mitigation, that numerous testimonials were submitted by patients and colleagues and, indeed, took those fully into account.

At the bottom of page 18 it noted:

> "In the light of the Panel's findings of impairment, and in particular your prescribing which put a patient at risk, and your failure to submit to a performance assessment without adequate reasons, it has determined that taking no action in this case would be insufficient to protect patients and the public interest."

The Panel then considered whether conditions should be imposed on Dr Skinner's registration. It noted that following the intervention of the Interim Orders Panel and the Healthcare Commission that the doctor changed his practice since a number of the incidents took place, and noted for example that, without exception, he would only see new patients with a doctor's referral. The Panel noted it was his usual practice to confer with the patient's GP before instigating treatment, and that he would undertake regular ongoing monitoring in tandem with a general practitioner. It is evident from testimonials, notwithstanding the cases considered by the Panel, that liaison with the patient's GP was the doctor's usual practice, even prior to the imposition of the interim order. However, the Panel remained concerned that in the past Dr Skinner had prescribed thyroxine without taking blood tests, without regular review and monitoring.

In addition, it was concerned that he did prescribe without review, knowing that a patient was biochemically thyrotoxic and had palpitations, and that the Panel considered whether conditions could be formulated in order to protect patients. Obviously, those conditions had to satisfy the test of appropriateness of proportionality, workability and measurability, and noted the Indicative Sanctions Guidance, and consequently imposed a number of sanctions, namely that the doctor must notify the GMC promptly of any post which he accepted with which registration with the GMC is required, and provide the GMC with contact details, to allow the GMC to exchange information with the employer, to inform the GMC of any formal disciplinary proceedings, and must inform the GMC if he was to apply for employment outside the United Kingdom, the standard bank of conditions that would be imposed.

Of particular relevance are the remaining conditions, which were that the doctor should only accept new patients for endocrine treatment if they had been referred to him by a

fully registered medical practitioner, and on a six monthly basis must provide to the GMC anonymised copies of patients' referral letters in a separate, paginated and indexed bundle. Prior to initiating or varying any treatment regime, he should ensure that he has communicated the diagnosis and suggested care plan to the patient, his or her general practitioner and any other referring medical practitioner, and on a six monthly basis provide to the GMC copies of the letter sent to the GPs, or referring medical practitioners, in a separate paginated and indexed bundle, that he must keep a contemporaneous log book of all patients seen in relation to work carried out as a registered medical practitioner, the book to identify the patient only by initials and NHS number and contact number. The log book must indicate in the case of a new patient the reason for consultation, and in the case of all patients the reason for any prescribing outside of UK recommended guidelines, and on a six monthly basis provide the GMC with a copy of that log book. Then, finally, to inform the following parties registration was subject to conditions.

The Panel did not find that a performance assessment was necessary.

The direction for the doctor and this reviewing Panel is contained at the bottom of page 20 of your bundle. It notes that:

> "Before the end of the period of conditional registration, a Panel will meet to review your case."

- this Panel.

> "A letter will be sent to you about the review hearing which you will be expected to attend. At that hearing, the Panel reviewing the case will expect to receive from the GMC Caseworker copies of the assessments of the documentation submitted in relation to conditions 5, 6 and 7 above, which should be undertaken on a six monthly basis by a suitably qualified registered medical practitioner appointed by the GMC.
>
> Having directed that your registration be subject to conditions for a period of three years" ...

The Panel then considered whether or not to make an order for immediate conditions.

The GMC have received a large tranche of documentation a regular basis from Dr Skinner, which appears on the ledge behind me and is contained in two bundles copied for each of the Panel members. The Panel will note that the previous Panel found it necessary for the GMC to receive that documentation, and then there was an expectation that that would be reviewed on a six monthly basis by a suitably qualified registered medical practitioner appointed by the GMC. The GMC received such documentation and reviewed it in terms of whether or not the documentation was adequate. It then found that it was necessary to commission an expert to provide an opinion for this Panel, and consequently instructed Professor Bouloux to prepare expert evidence in anticipation of this hearing.

THE CHAIRMAN: How do you spell his name?

MR MORWOOD: B-O-U-L-O-U-X. The General Medical Council notified the doctor that they were to commission an expert to review that documentation, and no objection was taken to that course of action. Indeed, it was felt entirely appropriate to do because of the technical issues involved. Professor Bouloux is a consultant endocrinologist who was thought to have appropriate expertise to conduct an appropriate review of that documentation.

On 16 March 2011 Dr Skinner was informed by the GMC that a report had been commissioned from the expert. On 16 March 2011 that report was received and enclosed under a copy of a letter of that date, and it was notified to Dr Skinner that that report would be included in the papers to be considered at this review hearing, which was scheduled for 28-29 July 2011. The doctor was asked, if he wished to make any comments on the report, to contact the GMC. On 23 March 2011 Dr Skinner replied, acknowledging receipt of the General Medical Council's letter. The doctor noted that he was concerned on the content of Professor Bouloux's report, and appreciated the GMC's invitation to make a detailed critique. The doctor stated:

> "You will appreciate that we cannot proceed without reference to the appropriate case notes and identification of the 15 patients who have been selected out by Professor Bouloux.
>
> We do appreciate that you are probably sinking under a pyramid of administrative matters but I wondered if we might ask you to return the Log Books to enable preparation of our response."

That correspondence was replied to on 6 April 2011 by the General Medical Council, acknowledging receipt of the letters, and stating:

> "Apologies for the delay I had to arrange for the documents to be returned from Professor Bouloux.
>
> Please now find enclosed a copy of the relevant log book and letters. As we will require the documents for your forthcoming review hearing can you return them with your response.
>
> I look forward to hearing from you shortly.
>
> A copy of this letter has been sent to your solicitor."

On 18 April 2011 the General Medical Council sent a further letter to Dr Skinner, stating:

> "The Fitness to Practise Panel are scheduled to review your case on 28 and 29 July of 2011."

It stated:

> "I would be grateful if you would now submit your latest log books and letters as required by conditions 5, 6 and 7. Other than the log books and letters the Panel have not requested any further documentation from you

for the review hearing however I await your comments regarding Professor Bouloux's report.

You are also welcome to submit any further documentation you wish the review Panel to consider.

I look forward to hearing from you shortly.

A copy of this letter has been sent to your solicitor."

Dr Skinner replied on 5 May 2011. I am afraid I have just been handed a copy of this bundle in its redacted form, so attempting to tally both the bundle with the submissions I am making. You will find that letter at page 111 if you wish to follow it.

THE CHAIRMAN: Can I just ask, Mr Morwood, in the bundle the Panel has before it is each of the documents you are reading from contained therein or not?

MR MORWOOD: I have just been handed a copy of the bundle ---

MR HAYCROFT: They are, sir. They start on 106.

MR MORWOOD: 106, thank you.

THE CHAIRMAN: The bundle is not chronologically - it does dodge about a bit.

MR HAYCROFT: It has been redacted from page 91 to 105, and my learned friend is, in effect, starting from 106, the 16 March letter, and he has been reading you the letters from there.

THE CHAIRMAN: I see. That is fine.

MR HAYCROFT: I think it is chronological from that.

THE CHAIRMAN: Thank you, both. *(Pause)*. Where are we?

MR MORWOOD: We are up to 111.

THE CHAIRMAN: Yes. That is the letter of 5 May from Dr Skinner.

MR MORWOOD: Indeed. I have not referred to the contents of that, simply the fact that it was sent. You will note from that letter, as requested following a telephone conversation, the doctor stated in good faith that he had been advising patients that his conditions had been fully satisfied. In actual fact, due to a judicial challenge to the earlier Fitness to Practise Panel, the conditions had not yet expired and there was a misapprehension on the part of the doctor in relation to that issue. Regardless, the referral to the matters which are relevant to your adjournment, the final paragraph notes:

"This would not be the time or place to comment on this report but it is unclear how Professor Bouloux on a snapshot of a practitioners referral letter, my return letter and my clinical notes can possibly without

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> knowledge of any clinical outcome opine on the standard of my medical care. I do not agree with the content of this report and hope that arguments and evidence from witness testimony at the Hearing will ensure my future status as a fully registered medical practitioner."

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The following letter in the bundle refers to a cancellation which took place on 5 February 2010 in relation to other matters that had been referred to the General Medical Council in the interim, but I place no reliance on those and I certainly ask you to disregard any of those matters in your determination of this matter before you today.

On 6 May 2011, at page 115, you will find that the doctor was sent a further letter outlining the effect of the conditions and noting the expiry date for those conditions would be 20 August 2011:

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> "The outcome of the 2007 hearing also explained that before the conditions expired a review hearing would take place and so the fact you have a further hearing should not be a surprise to you.
>
> I note your comments about Professor Bouloux's report and assume your full response will follow shortly together with the relevant log book and referral letters that I recently sent you.

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> A copy of this letter has been sent to your solicitor."

On 11 May, five days later, the doctor requested Professor Bouloux's report regarding cases set out therein. On 16 May 2011 a further letter was sent, replicated at page 117 and 118, noting that the review hearing was listed to take place on this date, 28-29 July, confirming the instruction of those instructing me today. Then in relation to the expert report, notes:

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> "In response to your letter dated 11 May 2011 requesting expert reports please find enclosed reports from Professor Bouloux dated 12 May 2008 and two reports from Professor T W J Lennard who was the expert for the other two cases rather than Professor Bouloux.

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> I would be grateful if you would provide me with a copy of your latest log books and referral letters together with the log book and letters I sent you in order to be able to respond to Professor Bouloux's report.
>
> Please also submit any further documentation you wish the Panel to consider."

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A response was received on 30 May 2011 from Dr Skinner, noting a number of outstanding matters. Firstly confirming receiving the log book and attached documents. Secondly, noting the doctor's patients were concerned with the seriously delayed hearing, confirming that it would be a public hearing located in these offices. Thirdly, noting:

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> "In view of the unusual process leading to this hearing and if a prehearing consensual agreement is not put in place, it will be important that

> Professor Bouloux and of course the relevant patients will be in attendance. These matters are of course under discussion with the Medical Protection Society.
>
> As promised, I have completed comments and arguments in rebuttal of the report by Professor Bouloux --- sent to the Medical Protection Society --- await their feedback prior to forwarding it to [the GMC]."

Fifthly, then:

> "Snap shot documentation which formed the basis of Professor Bouloux's investigation into the satisfactory fulfilment of my conditional registration has been sent to an independent Endocrinologist who has kindly agreed to review this documentation."

I understand that the doctor does not intend to call any expert evidence, should this matter proceed today, from an independent endocrinologist, so the Panel would not be in receipt of any expert evidence on the part of the doctor and, indeed, for the reasons which I am about to outline, nor would it receive any expert evidence from Professor Bouloux in support of the General Medical Council's case.

On 2 June 2011 a further letter was sent to Dr Skinner noting confirmation of receipt of the log book, confirming that this hearing scheduled for the two days waiting to hear a request for Professor Bouloux to attend the hearing and comments on Professor Bouloux's report, together with log book and documentation currently being reviewed by an independent expert, that is expert evidence on the part of the doctor, noting a copy of the letter sent to the doctor.

On 4 June 2011 a reply was received acknowledging receipt of log book H and accompanying documentation, "The MPS have asked that we defer transmission of our rebuttal", perhaps advising the latest date to submit that rebuttal. On 14 June 2011 a further letter was sent to Dr Skinner noting deferment of Professor Bouloux's report, but noting the review hearing was fast approaching and requiring comments as a matter of urgency, together with the log book and documents that the report refers to, and looking forward to hearing a response by 22 June 2011.

On 21 June, page 123, the GMC wrote to Dr Skinner confirming that the hearing may well need longer than the two days, therefore extending the hearing dates until 3 August, asking to submit comments in relation to Professor Bouloux's report and log book as a matter of urgency, and then further to Dr Skinner, a copy of the letter had been sent to his GMC registered address.

Further documentation is relevant to the issue before you, which does not appear to have been copied.

MR HAYCROFT: I have it.

MR MORWOOD: I am obliged. My learned friend may have copies of that. There should be a letter of 24 June from Dr Skinner, a reply from Professor Bouloux dated 27

June, and a letter from RadcliffesLeBrasseur, dated 18 July.

MR HAYCROFT: I have not got the last one.

THE CHAIRMAN: Are these going to be Council documents or defence documents?

MR MORWOOD: I am happy to adduce them. I do not think it makes a material difference.

THE CHAIRMAN: It can be a continuation of C1, in fact. We will treat them as one homologous bundle.

MR MORWOOD: Thank you.

THE CHAIRMAN: Did I just understand that there is a document missing?

MR MORWOOD: You have just been handed it by my learned friend. *(Same handed to the Panel)*. There is one further letter and, possibly, if I could ask for a copy of it.

THE CHAIRMAN: Can we have the lot of it? To me it makes sense to have the whole shooting match.

MR MORWOOD: Yes. Would you like me to proceed in relation to this? I am content to do so. It will be copied before I ---

THE CHAIRMAN: Go ahead.

MR MORWOOD: You will see a concern was raised between Dr Skinner and Professor Bouloux. The letter before you, dated 24 June 2011, I leave you to read that in its totality. *(Pause)*

THE CHAIRMAN: Yes.

MR MORWOOD: Could I also ask you to read the letter in reply, dated 27 June 2011. *(Pause)*

THE CHAIRMAN: I assume both letters have been read.

MR MORWOOD: Yes, thank you.

THE CHAIRMAN: We are waiting for a third ---

MR MORWOOD: Indeed.

THE CHAIRMAN: Robin is going to bring them back in a moment.

MR MORWOOD: Yes. *(Same handed to the Panel)*. *(Pause)*

THE CHAIRMAN: Yes, Mr Morwood.

MR MORWOOD: Could I also ask you to read the letter of 18 July, please? *(Pause)*

THE CHAIRMAN: Yes.

MR MORWOOD: It was apparent to the Council, from the letter dated 27 June 2011 from Professor Bouloux to Dr Skinner, that there were grounds to substantiate the issues raised by Dr Skinner in relation to the approach that Professor Bouloux had, and consequently a meeting was convened following receipt of RadcliffesLeBrasseur's letter of 18 July 2011 to consider the issue of whether or not reliance could be placed on Professor Bouloux. It was thought inappropriate in all the circumstances for the General Medical Council to tender Professor Bouloux as an individual giving expert evidence, given the issues raised, and, consequently, given the specialist was not able to give evidence, the General Medical Council turns its mind as to whether or not an alternate expert could be instructed. The speciality is, as reflected in Dr Skinner's letters, not necessarily widespread and, consequently, there was no hope held out that an alternative expert could be instructed and review the documentation before the commencement of this fitness to practise hearing.

The General Medical Council, therefore, had anticipated being able to provide this Panel with expert evidence to address the issues raised by the original Fitness to Practise Panel, and to provide this Panel with an expert view as to whether or not Dr Skinner had now addressed those issues raised in relation to his impaired fitness to practise previously found, and, indeed, had acted appropriately in the intervening period between the original fitness to practise was convened and your review. At present, the General Medical Council find itself unable to present any expert evidence in relation to that issue and, consequently, if this Panel are to convene they will not be in receipt of any expert evidence on the part of the General Medical Council nor, indeed, am I to understand that the doctor is in a position to call expert evidence.

In my submission, it is therefore not open to the Panel, of its own motion, to undertake an assessment of the matters submitted by Dr Skinner in the intervening period, nor come to a proper or adequate view as to whether or not there remain issues arising in relation to Dr Skinner's continued impaired fitness to practise. The previous Panel obviously found an expectation that this Panel would review such matters, and this Panel, in my submission, are simply not in a position to undertake such a review. Whether or not there is prejudice to both parties, well, obviously, there would be prejudice to Dr Skinner in terms of having this review hearing put back were this Panel to grant an adjournment. However, in terms of the balance of prejudice, in my submission, the Panel is prejudiced. Certainly, the General Medical Council find itself in a position of prejudice because there is no expert evidence to put forward before it to assist in its determination and therefore, in my submission, the balance of prejudice would weigh in favour of granting an adjournment.

In relation to the reason for the adjournment, were it not for the issues raised by Dr Skinner as of 18 July 2011, this Panel would be able to convene and hear evidence from Professor Bouloux. The Panel will note that requests were made at a late date for the personal attendance of Professor Bouloux. I am given to understand that he would have been in a position to attend the hearing in next week's dates in person, and would have been able to provide evidence remotely on these dates were the hearing to continue, so were it not for the issues raised by way of letter of 18 July, in my submission, this

Panel would have been able to convene and to proceed and, therefore, it is not an intentional matter on the part of the General Medical Council, or a matter of its own omission, which has caused this delay and the application, but, indeed, an unfortunate set of circumstances which could not have been foreseen by the General Medical Council.

In my submission, the previous Panel quite clearly found that Dr Skinner had acted contrary to *Good Medical Practice*, had placed patients at a risk of harm, and therefore, given his position as a private practitioner without immediate workplace supervision, had expected for a safeguarding period to occur. In my submission, it would be wrong and inappropriate simply to continue this hearing and not receive such evidence directed to that issue. Consequently, for all of those matters, in my submission, it would be in the interests of the public and the profession to grant such an adjournment.

I have been obliged by my learned friend's cooperative attitude in relation to the question of whether or not this Panel have the ability to adjourn and impose further conditions at this period, and both counsel are in agreement that there is jurisdiction for the Panel to take such action. The Panel should be aware, as they have already had their attention directed, of course, that the conditions are due to run out, I believe, on 20 August of this year and, consequently, if this adjournment was to be granted the Panel would have to turn its mind to whether or not the conditions previously imposed should continue until such a hearing was convened.

THE CHAIRMAN: I am slightly concerned about one thing. If the Panel does that, is it the view of both yourself and your learned friend that the Panel would have formally to open the case? At the moment the case has not been opened. We are hearing preliminary arguments. I stand to be corrected on this, but it seems to me that a Panel cannot impose or continue directions before the case has been formally opened. Do you concur with that?

MR MORWOOD: If I could just have a moment, please. *(Pause)*

THE CHAIRMAN: Mr Haycroft, I will give you an opportunity to address that matter in due course.

MR HAYCROFT: I am sure the answer is in Rule 29(1).

THE CHAIRMAN: Bear with me one moment while I look at the Rules and Section D. *(Pause)*. I read that as dealing with postponement. My query, if I have understood the position correctly, was in relation to anything - and there is purely an in principle argument because, clearly, it is something that the Panel will have to decide as a Panel, but as Chairman I am seeking to hear from both of you whether any actions such as conditions can be taken if the case has not been formally opened, and I will seek formal guidance in a minute from the Legal Assessor as well, but at this stage what do the two of you say?

MR HAYCROFT: 29(2), I meant, sir, "at any stage in their proceedings". The issue there is whether or not the proceedings have started. One hears preliminary argument before a case is opened and decisions are made, and the proceedings have started ---

THE CHAIRMAN: I am clearly expressing myself very badly. I think it is common, all

of us would agree, that we are hearing preliminaries and the case has not been opened. My understanding was that Mr Morwood was suggesting that if, in fact, the case were to be adjourned, and that is hypothetical, no decision has been made on that yet, that this Panel would be in a position, for example, to continue the present conditions. My worry is that I am not sure that the Panel has jurisdiction to do that, and I am not stating it dogmatically, I am asking it as a question, whether a Panel has jurisdiction to do that before a case has been formally opened. I do not think it is an entirely stupid question.

MR HAYCROFT: Absolutely not, sir. Having thought about it, I am sure the answer is in the Medical Act.

MR MORWOOD: It is. I believe there is a power under 35D.

THE CHAIRMAN: In the Act itself?

MR MORWOOD: Yes.

THE CHAIRMAN: Can we just turn that up? Yes. Which section of 35D?

MR MORWOOD: Under Section 35D it refers to a Fitness to Practise Panel, if they think fit, having the ability to direct, for example, a period of conditions. That would fall, for example, under 35D(12). This is a Fitness to Practise Panel. You have an unbridled power under the Act to make such orders if you think fit, and consequently that would arise and be triggered even before the hearing is convened.

THE CHAIRMAN: I have to say I am uncomfortable with that. I am a lay Chairman, and I think before we are all very much older some serious thought ought to be devoted to that, in the absence of a formal opening of a case, whether, in fact, we are seized of the matter. You are quite convinced, are you, Mr Morwood, that you are?

MR MORWOOD: We are. Thought has been given to it before I make that submission.

THE CHAIRMAN: Mr Haycroft, what do you say?

MR HAYCROFT: Sir, I, too, am confident of that. I am looking at Rule 22 now, which is the procedure at this hearing, "proceedings at a review hearing", which this is:

> "The order of proceedings at review hearing shall be as follows -
>
> (a) ..."

- which is where we are now -

> "... the FTP Panel shall hear and consider any preliminary legal arguments;
>
> (b) the Chairman ... shall -
>
> (i) ... require the practitioner to confirm his name and" ---

THE CHAIRMAN: Which we have not done.

MR HAYCROFT: I agree with that entirely, sir. The proceedings have started. There does not seem to be any magic to it. If you can adjourn at any time and you can impose conditions, you are seized of the matter, it seems to me, under (a). One manner of dealing with it would be to proceed to (b). I do not see there is any impediment to an application for adjournment being made at any time. It can be made after you are seized of the matter, so you could get my client to confirm his name and number ...

THE CHAIRMAN: This is the very point that I am making.

MR HAYCROFT: ... and then adjudicate and then hear my submissions on adjournment.

THE CHAIRMAN: I certainly would feel more comfortable if we did it that way. Would there be any objection from the GMC if we were to do it that way?

MR MORWOOD: No.

THE CHAIRMAN: My colleagues may now have questions they want to ask. Dr Berry, who is a medical member of the Panel. Dr Berry.

DR BERRY: It seems to me that one of the more important implications of actually opening the case is that would then require this same Panel to reconvene.

THE CHAIRMAN: Of course.

DR BERRY: Which might incur extra delay.

THE CHAIRMAN: What do you say to that, gentlemen?

MR MORWOOD: I had not wanted to raise that, but that is one of the reasons why, in fact, I was asking for it to be determined before you convene, but if the substance of the objection is whether or not you have an appropriate statutory basis of so acting, in my submission it would be wrong to refuse the application simply because the Panel are concerned that they should either make the decision before or after opening the case. I do not think that should weigh on your mind when you determine whether or not to make such an order, full stop, because I do not believe that that should really weigh in the overall scheme of things.

THE CHAIRMAN: I would ultimately need to call on the Legal Assessor to give us advice, but it is worth trying to tease this out. I do not think I am hearing the same arguments from both sides of the table. I think you are saying, Mr Haycroft, that we do need to open the case to have jurisdiction, or you are neutral at least?

MR HAYCROFT: I am neutral on it. May I suggest that I will address you on the substantive matters? We can take it in stages.

THE CHAIRMAN: Still within preliminary matters?

MR HAYCROFT: At the moment. You do not have to make a decision. You can hear

what I say. You can have preliminary discussions about it. While that is doing, and before you come to a concluded view - because the issue of whether or not you can impose conditions will be a relevant factor, it seems to me, to your determination, in any event. While you are simply considering the matter in the round, my learned friend, myself and the Legal Assessor can double-check and be absolutely clear on what is the position, if you do not open it this is what happens, and if you do open it. It is a perfectly proper and, if I may say so, important issue for us to get right. Both my learned friend and I were of that view, but as it has been raised I think it is much better to double-check that.

THE CHAIRMAN: What I propose to do, Mr Haycroft, is now to take a 15 minute break which will actually enable the Legal Assessor and your good selves to get together to discuss this, which I think will, ultimately, be helpful to the Panel.

MR HAYCROFT: Sir.

THE CHAIRMAN: Let us now take a 15 minute break.

(*The Panel adjourned for a short time*)

MR HAYCROFT: Sir, the learned Legal Assessor will no doubt give her advice in due course, but can I say all three lawyers are *ad idem* that at this stage you can make your determination on an adjournment and have the power to impose conditions if you think fit. 35D(2) says that a Fitness to Practise Panel can impose conditions, and that is what happened in 2007. Condition having been imposed, 35D(12) says, "a Fitness to Practise Panel", which is you, "may, if they thinks fit", extend that. There is no limitation as regards when that may be done. It may have been more helpful if Parliament had said "at any time", but that, clearly, is the implication of it. When you read that with Rule 29(2) that allows you to adjourn ---

THE CHAIRMAN: 35D?

MR HAYCROFT: (12).

THE CHAIRMAN: "In such a case, a Fitness to Practise Panel may, if they think fit". I am looking at the wrong .... 35D(12)?

MR HAYCROFT: Yes. If you look at 35D - I think it starts at (11), to say where conditions have been imposed in any given case, and it refers to 35D(2), which is this case. Then (12) goes on, "a Fitness to Practise Panel", and that is you, sir, so where conditions have been imposed in the past a Fitness to Practise Panel, i.e. you, may if it feels fit extend those conditions. There is no hindrance in terms of the case having been opened or anything.

THE CHAIRMAN: Which you are suggesting is a purely procedural matter?

MR HAYCROFT: Yes. As was helpfully pointed out by Dr Berry, in fact, if you opened it you would then be seized of it, which would actually delay matters, because if the matter were adjourned it would have to be not simply the date when was convenient for the GMC as a body but you as a Panel.

THE CHAIRMAN: Mr Morwood.

MR MORWOOD: We are in agreement.

THE CHAIRMAN: Legal Assessor, now I call you to give your formal advice to the Panel.

THE LEGAL ASSESSOR: Thank you, Chairman. I agree with the submissions that have been made by counsel from the GMC and those from counsel representing Dr Skinner. For the avoidance of doubt, although it may be repetitious, it seems appropriate that I set out my advice for the purposes of the record. It is clear that primary legislation clearly takes precedence over the Rules, and so I specifically refer you to 35D11(a) of the Medical Act, subsection (2), which has already been mentioned, and you will see there it states:

> "Where a direction that a person's registration be subject to conditions has been given under -
>
> (a) subsection (2) ...
>
> (b) ... subsection (12) below applies."

Section 35D(12)(c) states:

> "In such a case, a Fitness to Practise Panel may, if they think fit -
>
> ...
>
> (c) direct that the current period of conditional registration shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction".

There was no restriction in the Act as to when an extension can or should be directed. To put it more positively, you can extend the condition from the time it would otherwise expire at any time.

I now turn to the Rules. You will see that you are at the present time considering whether to grant the adjournment, as requested by the GMC under Rule 29(2). Again, that refers to that being considered at any stage. Also, the stage reached as we presently are at is under Rule 22(a), which is under preliminary arguments. As has already been stated, it is clear that you do not have to formally open these proceedings in order to direct that a condition is extended if you so decide that the application by the GMC is to be granted. There are, of course, practical difficulties if you were to do that, and my advice would be that you consider the application to adjourn on its merits, and make a decision once you have heard from counsel for Dr Skinner.

That is my advice.

THE CHAIRMAN: Let me just check, Mr Morwood, that you had finished your submissions on adjournment?

MR MORWOOD: I have, although I reserve a right to reply for any new matters that are raised.

THE CHAIRMAN: Of course. That goes without saying. Mr Haycroft, we have not heard you in full. We have the advice. We will park it there, hear you, see whether Mr Morwood wants to come back on anything that you might have raised, and then we will make a decision as to how to proceed.

MR HAYCROFT: Thank you very much, sir. Sir, I was going to start my submissions by, in fact, covering the points we have covered now in terms of there being no impediment to you making the application to adjourn or not, you have power to do so, and if you were minded to adjourn no difficulty in extending the conditions as a matter of jurisdiction. Whether it is right to do so is what I will be addressing you on.

In terms of the application, there are a number of matters I want to put before you. The first is this, that this is a situation, I regret to say, which is of the GMC's own making. They should have known that Professor Bouloux was not an appropriate expert to use, in any event. It is not as if this has happened recently. I say that for this reason: Professor Bouloux was an expert that the GMC used back in 2008 against Dr Skinner, and that is clear from C1, page 117.

You will see that in response to Professor Skinner's request for reports, Professor Bouloux had provided a report to the GMC in 2008 which, along with another expert, had led to various complaints which are set out on page 112 to 114, which my learned friend very fairly has said he does not rely upon, and neither do I in terms of the content, but if you notice that letter on page 112 is a letter of February 2010, in effect cancelling cases on counsel's advice against Dr Skinner, cases that were considered based upon expert evidence, including from Professor Bouloux. In February 2010 the GMC decided to cancel cases against Dr Skinner, based on counsel's advice, which had been investigated as a result of opinions given from experts, including Professor Bouloux. They then chose to use Professor Bouloux to review these cases. In my respectful submission, that was a fundamental error on their part. Professor Bouloux, on any view, had formed a view about Dr Skinner in relation to other cases.

THE CHAIRMAN: Mr Haycroft, forgive my interrupting you: can I just ask you to clarify something for me? The cases which, ultimately, it was found unsafe, or otherwise unwarranted to deal with, were they simply investigated or are they cases that were adjudicated on by a previous fitness to practise panel?

MR HAYCROFT: No, sir. You have the four cases that were the subject of the 2007 determination, for which you are reviewing.

THE CHAIRMAN: Yes.

MR HAYCROFT: There were then three other cases which the GMC separately looked at with the benefit of expert evidence, including from Professor Bouloux, but having taken counsel's advice on it ---

THE CHAIRMAN: It was never brought to Panel.

MR HAYCROFT: They were cancelled. There was no adjudication on them. The GMC thought it was inappropriate to proceed on those. The point is that Professor Bouloux had looked at some of Dr Skinner's work and had formed a view. That is not an appropriate expert to use when you then come to look at other work. I was doing an inquest two days ago and the coroner was very careful with each person that was put forward as an expert to ask them not only their expertise and experience but, "Have you in any way been involved with anyone in this case before". It is very important that the independence of an expert is upheld. There are protocols in place as regards how an expert should proceed.

Just as a side comment, if this case had proceeded with Professor Bouloux I would have been asking extensive questions about his report. You have not got his report, but there is a complete failure to comply with any expert protocol in it, there is not even declaration of truth in the report, but be that as it may, he was the wrong expert to use. He was guilty of apparent bias, whether express or otherwise, because he had already adjudicated in his own mind on Dr Skinner's practice. The suggestion that this has all somehow arisen out of the blue, it has in relation to what happened in June but this was doomed from the beginning.

It is no fault of Dr Skinner that this has arisen, and, of course, one does not know to what extent - we have not been given disclosure - of how this cancellation was communicated to Professor Bouloux, because he may have thought he was going to be part of another case. He is simply asked to then review a number of cases in this case, and then while that is happening, and we are given the report in March of this year, in June, and if you look at the continuation of C1 you can see how it has arisen, in June - I have not got the precise dates because you can appreciate Dr Skinner, to begin with, was looking at this from a professional to professional basis. He has a mutual patient who comes to him and complains that another doctor has been making comments about him personally. Then, of course, he phones him, it is clear from the letter of 24 June. The patient makes that revelation to him about a week, I am instructed, later. Dr Skinner phoned Professor Bouloux, complaining on a professional to professional basis, to say that he did not think it was appropriate. He hears nothing from him and, therefore, about a week later writes this letter, so it all happens within June. He writes a letter on 24 June saying, "As I have not received an apology from you, I have taken --- advice", and then Professor Bouloux writes the letter back on 27 June. There is enough information there to show that he has not acted in an appropriate way, if I can put it neutrally, for an independent expert.

Then that is followed up with us providing to the GMC a witness statement from the patient, which you can see the summary of it in the letter from those instructing me on 18 July, to the effect that, according to the patient, Professor Bouloux said words to the effect, "We have him", which if correct, and of course I am conscious of the fact it is no part of your function to make a finding of that, and Professor Bouloux is not here to answer for it ---

THE CHAIRMAN: Are you going to produce the actual witness statement or are you content ---

MR HAYCROFT: I have it. My learned friend has it. That letter you have is an accurate reflection of it.

THE CHAIRMAN: You concur with that, Mr Morwood?

MR MORWOOD: I would, sir, yes.

MR HAYCROFT: It would be wrong for you to make a determination on it because Professor Bouloux is not here to answer himself. To be fair to my learned friend, can I make this absolutely clear: the GMC could have said, well, we are going to proceed anyway; I would have then cross-examined Professor Bouloux and called this witness before you to undermine Professor Bouloux, and you may then have been in a position to form a view. The law is quite clear, an expert does not have to be biased, in fact. If there is an appearance of bias his independence is undermined, and my learned friend, quite properly, has applied that test and taken the view on this material there is an appearance of bias. One does not need to go any further than that, and it would be wrong to do so. I simply say that this unfortunate circumstance, the seeds of it were there in 2008 because he had already been used. We did not know he was going to be used until this has become apparent. That is the first point.

Secondly, as a matter of timing, this is most regrettable. The FTP hearing was three and a half years ago, and here we are being asked to be adjourned for another period of time. You will have seen from the determination that Dr Skinner has been under conditions since June 2005, so he has been subject to conditions now for six years. No doubt when my learned friend responds he may like to say something about timing, because for how long is it now suggested that these conditions should be further extended? As a matter of law, you have the power to extend them up to a further three years. That would be grossly unfair to go to that period of time, but what are we talking about? One would have thought at least six months, if one thinks about the process. Even if my learned friend had somehow miraculously - and I appreciate his position - even if he had managed to identify an expert, that expert had been able to review the papers and somehow provided a report, well, the defence has to look at it. That whole exercise is likely to take, I would have thought - and for the GMC to be available for a number of days - at least six months. It may be longer than that. That is a factor that should weigh with you, and these matters are hanging over him and he has, as you know, an Article 6 right that his case should be heard within a reasonable time in any event, and I invite you to take that into account.

The third factor is this, and this covers two aspects, the present circumstance for the application, but also, if you are against me in terms of whether you accede to the application, I would like to put a marker down as regards the type of expert evidence we are dealing with. You will have noticed from RadcliffesLeBrasseur's letter of 18 July that not only do they deal with Professor Bouloux as an appropriate expert, but they make the comment in the second paragraph:

> "We are concerned about the way in which the Council is approaching its case. The scheduled hearing is a review hearing to determine Dr Skinner's compliance with the conditions imposed on his registration."

- to be fair, I should add "and review his current fitness to practise". That is what Rule 22 requires.

> "Professor Bouloux's evidence is not relevant to that issue. We are concerned that the Council is seeking to treat the review hearing as a performance assessment, which is entirely contrary to the express decision of the original Panel who considered and rejected such an approach."

It goes on to deal with his availability as an expert, and I will come back to that. Then over the page:

> "In light of all of the above, we seek confirmation that the Council intends to rely upon [him]. Please explain the relevance of [his] evidence to the issue of ... [the review]. Will the Council have made complete disclosure in adequate time ..."

As regards the relevance of Professor Bouloux's report, and I am conscious of the fact you do not have it, but I can say neutrally that it amounted to an analysis of 15 cases chosen from the logs that were provided, and it comments on diagnoses and methodology, we were very concerned that that was, in effect, a performance assessment. We are concerned that if this matter is adjourned we will simply be in the same position whereby the GMC are going, in effect, to ask an expert to comment on Dr Skinner's performance in terms of these cases, and, for reasons I will come on to, that is not an appropriate case to proceed upon. If you refuse the adjournment and proceed, it would be my submission that that is not what your function should be, in any event, either.

Can we look, therefore, at my next point which covers this, which is the conditions. A review hearing is to consider whether the doctor has complied with the conditions and his current fitness to practise. There are eight conditions imposed by the last Panel ---

THE CHAIRMAN: Can we turn those up?

MR HAYCROFT: Certainly, sir. They are on page 19 and 20. 1 to 4 are the normal background conditions one expects. 5 is, you will remember from the determination my learned friend read, that there had been a failure to act on referrals in the past historically, although Dr Skinner had modified his practice, and the Panel on the last occasion wanted to make sure that that new change of practice was complied with , "You must only accept new patients", on referral and therefore on a six monthly basis, "you must provide to the GMC ... copies of ... referral letters."

So that is condition 5.

6, there must be liaison between Dr Skinner and the GP and, "Prior to initiating or varying any treatment", there has to be that communication in terms of care plan, and, again, six monthly, you have to provide those letters. 7, "You must keep a contemporaneous logbook of all the patients seen", identify them and provide copies; then 8 is the normal informing.

There can be no doubt that if Dr Skinner had not complied with the mechanics of those conditions you would have heard about it, and/or the GMC would be in a position to

present that evidence before you. What my learned friend has quite clearly and fairly said, he is not in a position to put any evidence before you beyond what he has put in this bundle. There is no evidence that he has not notified people, there is no evidence that he has not provided log books and, indeed, if you go through the bundle you will see references to thank you for the log books, and it is our submission that those conditions have been fully complied with.

You will have noticed from those conditions that they only require Dr Skinner to do what he had been failing to do historically, namely to deal with patients through referrals. What they do not deal with is require him to provide the GMC with the full medical history of these patients. It is simply to make sure that the procedure has been started off appropriately. For example, if you were to look in the log book and look at the supporting information that was required to be provided to the GMC, you will get certain information about that patient, you will get the referral letter, you will get the initial treatment plan as agreed between Dr Skinner and the GP. You will not get a full medical history because the medical notes are not there. You will not get information about other doctors that may have been in touch with them. You will not get, if there are, blood test results. You will not get the full history of the treatment then provided for that patient. Therefore, any expert, and this is what Professor Bouloux, in our submission, did, but taking him out of the equation, what you could never be in a position to do as a Panel, with or without Professor Bouloux, is to analyse a particular patient's care from start to finish and to assess it. In fact, for reasons I will come to, that would be inappropriate to do that. It would be inappropriate (a) because you were unable to do so because you would be doing it on false information, because you would not have the complete picture, and, secondly, because the Panel on the last ---

THE CHAIRMAN: False information or lack of information?

MR HAYCROFT: Sir, lack of.

THE CHAIRMAN: You said false information.

MR HAYCROFT: Lack of information, I am sorry, will give you a false picture, an incomplete picture, and, therefore, how can you do it? How can you do it? You simply do not know what the position is down the line.

The Panel, you will have noticed, specifically - and my learned friend has very fairly highlighted this - on page 15, two thirds of the way down, it says:

> "The Panel has not made its judgment based on your personal beliefs as to methods of treatment save in so far as these beliefs have shown disregard of clinical responsibilities ---"

For example, you will have noticed in the four patients that were read to you that Dr Skinner was giving treatment, although they were within the reference range. In other words, many doctors would not give treatment at all. To that extent, on any view, his method of treatment is not completely in line with the mainstream, and he acknowledges that. If the matter proceeded you will have a bundle running up to 400-odd pages. Page 125 through to 400-odd are testimonials from patients in exactly that position, saying how much better they are as a result of the treatment. That replicates in new patient testimony

evidence that was before the last Panel, and you will have seen 17 patients were called and umpteen testimonials to like effect. The Panel specifically said, "We are not making a judgment based on your methodology". What they were concerned about was because there was not a check between, historically, him and the GPs, and there had not been monitoring of blood tests, that that caused errors in the past.

They went on, and you will see that they specifically found that - I think it is paragraph 18, sir ---

THE CHAIRMAN: Is it the top paragraph of page 18:

> "It is not the remit of this Panel to decide on whether your approach to treatment is correct or incorrect ---"

Is that the passage you are looking for?

MR HAYCROFT: It does follow on from that, sir, but it then says specifically that they have decided not to conduct a - order a performance assessment.

THE CHAIRMAN: Take your time and see whether you can find the actual quote you need, Mr Haycroft.

MR HAYCROFT: My note says page 18, but I cannot find it.

MR MORWOOD: It is page 20.

MR HAYCROFT: Thank you very much. Page 20, thank you. After the conditions:

> "The Panel has considered whether it would be appropriate to order an assessment of your professional performance as part of any sanction ---"

They said:

> "The Panel has determined that it would not be appropriate, based on the findings of fact, to order a performance assessment."

THE CHAIRMAN: Is that further down the paragraph?

MR HAYCROFT: Yes, it is further down that same paragraph.

THE CHAIRMAN: Yes.

MR HAYCROFT: Then they go on to say you may be expected to cooperate with any such thing. The last Panel did not order a performance assessment and therefore any review, whether today, tomorrow, or if it is adjourned, itself, irrespective of any other matter, should not be a performance assessment. One can quite see that given what they have ordered and the limited nature of what the previous Panel ordered, you, sir, would not be in a position to undertake that, in any event, and it would be inappropriate to do so. Our concern is that what the GMC have, certainly with Professor Bouloux, but it would be a concern if it was adjourned, would, by the back door, seek to bring about a

performance assessment which it would not be appropriate. If you were minded to grant an adjournment I would invite you to reiterate that point.

What we had expected from the determination, and it is page 21 of the bundle, if I start right at the bottom of 20:

> "Before the end of the period of conditional registration, a Panel will meet to review your case. A letter will be sent to you ... At that hearing, the Panel reviewing the case will expect to receive from the GMC Caseworker copies of the assessments of the documentation submitted in relation to conditions 5, 6 and 7 above, which should be undertaken on a six monthly basis by a suitably qualified registered medical practitioner appointed by the GMC."

Sir, if you see behind my learned friend you will see there are seven bundles labelled A through to H. Those are the documentation information that Dr Skinner provided on a six monthly basis over the last three years. *These* are the log books for all the patients. What we had expected was that the GMC would, as each six month goes by, look at those and have a suitably qualified registered medical practitioner assessing them. We have not heard, and we have not been disclosed, anything untoward. Dr Skinner has just been proceeding along the assumption as each six months goes by, or perhaps, rather, after a year, so the GMC have had time to look at the previous six months that whatever he is doing he is doing correctly. There does not appear to have been that exercise done, so we are concerned whether what Professor Bouloux was asked to comply with this, and whether what is now being suggested will comply with this. It is an assessment of whether he is complying with the conditions, not a performance assessment but an assessment of those. We are concerned for today and for any adjournment in relation to that.

Concerns that this is not a matter that has simply arisen out of the blue, this was a flawed process to begin with; secondly, a concern that time has marched on and will continue to march on, and as my learned friend very fairly said, that is of prejudice to Dr Skinner, the more time this is hanging over his head. Concern that the GMC would not have been in a position to proceed properly, in any event. Today and tomorrow were the original two days given. We were given to understand, and as my learned friend has said, Professor Bouloux could not attend in person until next week in any event, so he was never going to be here in person.

You should always proceed on the assumption that if you instruct an expert they are available for a hearing. You cannot assume that the other side is going to (a) agree with their evidence, how can they until they have seen it and analysed it, or (b) be satisfied for them otherwise to be present in court. I can certainly say that in many cases video evidence, although not the best evidence, is sometimes acceptable. In a case like this I would have had a lot of cross-examination for Professor Bouloux as regards his suitability as an expert in any event, irrespective of what then transpired with his patient. That can only be done properly and effectively, from a defence point of view, if I can be forgiven the colloquial expression, for you to look and see the whites of his eyes as I cross-examine him. That is what forensic examination of a witness is, and that is totally lost on video when it is not simply a question of analysing what somebody says, it is the way in their demeanour in doing it. It was very unsatisfactory that he was not available

for today and tomorrow. I understand he is in Cannes in the south of France. We have asked for disclosure of when he was told of this hearing, for example, but, again, it is very unsatisfactory.

There is clear prejudice to the GMC; of course there is. We say it is of their own making and that the prejudice is more on Dr Skinner. What my learned friend has said, and it is a matter for you to look at, and it is right for him to mention and it is right for you to consider it, is to what extent you are able to undertake and fulfil your duties under Rule 22 in considering whether he has complied with the conditions; secondly, whether his current fitness to practise is impaired or not. You will not have medical expert evidence before you. The GMC have not got expert evidence. We are not putting expert evidence before you; there is no need to. Professor Bouloux, there is nothing to answer. You will have noticed that the letter from RadcliffesLeBrasseur, 18 July, I can tell you that we had a conference on 30 June and a response to Professor Bouloux's report was prepared and was ready to be delivered. It is redundant now, unfortunately, and the work that has been done on that is redundant because the GMC are not relying on his report. It is not for the defence to independently put that forward to you, in any event, especially as the whole thing was geared towards a rebuttal, and it was headed rebuttal of his report, and standing alone makes no sense.

The fact is you will not have any expert evidence. The only evidence that you could have no doubt would be the logs, the correspondence that you have and the information. That would show, in my submission, that he has complied mechanically with the conditions in that regard, but it is a matter for your judgment whether or not, first of all, you could carry out that assessment and, secondly, you then have to weigh that in the balance in terms of whether it is appropriate, given the prejudice to Dr Skinner, that that means that overrides his prejudice in some way that there should be an adjournment. I am trying to deal with all the points and put them before you as properly as I can.

THE CHAIRMAN: Though, again, Mr Haycroft, at this stage we have to make a decision about adjournment or not adjourning and concentrate our minds in the first instance on that issue, without regard to the rest of the points that you are making. You are making those points contextually, I take it?

MR HAYCROFT: I am making them contextually, sir, and I am responding to my learned friend's submissions. My learned friend has made the submission that you need to consider the position from your perspective, what position you would be in if you refused his application. I cannot say that that is an irrelevant consideration for you. I am conscious of the fact that you have to weigh up public interest as much as a party interest. I can, quite frankly, say that if this were a civil case the position would be very straightforward because I would simply say, well, I am sorry, the other side have not got their house in order, that is the end of the matter. Most civil judges, that would weigh very, very heavily with them because they would say, well, this is completely unfair on the defendant, and that is the thing I have to look at. If the judge was of the view, "This is of your own making", he probably would not have to go beyond that. He would not look at, "How do I decide the case", because it is simply a partisan case. If it is a money judgment then he does not worry about that aspect and say, "Well, I refuse your application to adjourn". The other side then says, "Well, I present no evidence", and the judge says, "Well, that is judgment against you".

It is not as straightforward as that. You have a public duty to fulfil a function under Rule 22, and you have to look at that and the practicalities, and feed that into the prejudice, it seems to me. That is what my learned friend has said. I cannot say that is a totally irrelevant consideration, but it is a contextual matter, of course, and you do not have the full information in relation to that. That is why I have tried to present it as neutrally as I can, without making submissions as regard to if you were to hear the case this is what you would find. I cannot possibly say that because that is a matter for you, and a matter for you to hear the evidence. My learned friend has said in terms it would not be open to the Panel if it refused an adjournment to assess these matters. That is a matter, without determining that, to weigh into account. If that is absolutely correct you have to consider that as a factor. It may or may not be determinative, given my other submissions, and my main submission is that this is not of Dr Skinner's making. He is prejudiced. We are six years down the line: how much further down the line are we going to be?

Sir, unless there is anything specific, those are my submissions.

THE CHAIRMAN: Do you want to say any more about on what evidential basis in principal we could or could not determine the doctor's fitness to practise, because that was the second limb? That does seem to me to be important and a matter that the Panel must consider. Can I invite your submissions on that?

MR HAYCROFT: To an extent, my learned friend has touched upon that by dealing - he used the word "assessment". I do not think he meant in the form of a performance assessment, but your assessment of the case, your reviewing duty, as it were. In my respectful submission, the information you have is the physical information you have here, I would be calling Dr Skinner to describe his compliance in that regard, but it would simply be on the basis of an absence of evidence to show that his fitness to practise is not impaired, subject to him giving evidence and your view/assessment in that sense of him, but there is no - and there will be no - positive evidence to say he has done this safely or he has done that unsafely. I accept that. That is not my remit though, is it, sir, in that regard?

THE CHAIRMAN: No. It is for the Council to prove.

MR HAYCROFT: Yes.

THE CHAIRMAN: Does that take care of your remarks?

MR HAYCROFT: Yes.

THE CHAIRMAN: Mr Morwood, you reserved your right to come back.

MR MORWOOD: There are five points in reply. The first is the context of this determination. I bow to my learned friend's experience in relation to judges in civil context. Adjudicating on cases where one party has an expert where bias has a potential to be raised, in my submission those cases are very few and far in between, and it would be wrong to draw an analogy between this context and a civil case, in any event, but to counter what my learned friend says in terms of his experience, my experience is that a judge would be very sympathetic to a party whose expert, not themselves, would disqualify themselves by way of potential bias. The context of this case is whether or not

you, acting pursuant to the Medical Act in terms of protecting the public and protecting the profession, should permit an adjournment. I ask you to bear in mind the reason why you are sitting in review in relation to this case. It is not a civil context, it is a disciplinary context.

The second point is in relation to the matters raised by my learned friend, that this is of the GMC's own making. For one moment I have not stated that it is by reason of the doctor that this situation has arisen, of course, but I do not accept that this is of the GMC's own making, and my learned friend appears to suggest that by previously instructing Professor Bouloux, either by inference the GMC may well have known that such an issue could arise, well, it clearly would not be foreseeable, the situation would not have arisen and, indeed, when it did arise the GMC acted appropriately in stating they would not rely on his evidence before you. In my submission, that point is not of effect.

To suggest that Professor Bouloux would be somehow, potentially, prejudiced against Dr Skinner by reviewing other matters, indeed, again, in my submission, is incorrect. It is entirely appropriate for an expert to review another's actions if, indeed, he is acting pursuant to his own professional duty. It is quite often the case that experts give evidence in relation to the same subject matter on a number of occasions, so, in my submission, he would not have been susceptible to attack on that basis in this context if he were here to give evidence before you.

The suggestion that because the GMC have used him in a case which was subject to cancellation, again, when looked at in the context of the letter at page 113 of your bundle, you will see that the cancellation in relation to those matters was because two of them were historical and predated the last fitness to practise hearing, and the other charge that was due for consideration, counsel advised that it was likely that the same conditions would be imposed by a fitness to practise hearing were that matter to be brought to a fitness to practise hearing, and it was on that basis that cancellation occurred. Therefore, it is of no relevance to the question of whether or not Professor Bouloux is an appropriate person to give evidence on behalf of the GMC, that those matters were counselled other otherwise.

Can I move on, please, to the next question of prejudice. The GMC are prejudiced by having no ability to mount a case as to whether or not this doctor has complied with the conditions, or whether or not he continues to be impaired. The prejudice to the doctor is stated to be that he continues to remain under conditions and, of course, attention has been drawn to the voluminous documentation in relation to the individual patients before you, but that is over a substantial period of time, it concerns a number of patients, and, in my submission, would be coextensive with the amount of documentation that would normally be engendered to the amount of patients, in any event, and it is not onerous on Dr Skinner in any shape or form.

The previous conditions imposed do not prevent the doctor from practising, and it is quite clear from the number of individuals here that he continues to be well supported regardless of the conditions imposed upon his practice. The factor that he will continue to remain under conditions, in my submission, should not particularly weigh on your mind in terms of the prejudice to him. It is obvious that he continues to practise, and does so supported by his patients regardless of whether or not he has those conditions imposed upon him or not.

THE CHAIRMAN: Is that your submission in relation to the Article 6 point that was made?

MR MORWOOD: Yes. When weighing the balance on both sides, in my submission, an adjournment, and in relation to the amount of time that would be involved, would not be of sufficient length to cause Article 6 to be engaged, in this case preventing an adjournment. It is not to say that it is wrong, of course, to weigh up the further time period involved, but it is only an extension for six months. It would be wrong to determine it in the context of the last Panel's determination, which allowed for three years of conditions being imposed. It is an extension of six months alone, and that is the context that you should view it within. Is six months inappropriate - well, I say six months, I take that as a starting point for the time that would be required before a hearing would have to come back, but if six to eight months was afforded, for example, I am sure that the Panel could then reconvene to determine the matters. Is a six to eight month period inappropriate? In my submission, it is not.

THE CHAIRMAN: Remind us, if you will, please, of the date from which the conditions started?

MR HAYCROFT: 20 August 2008.

MR MORWOOD: Thank you.

MR HAYCROFT: I think they expire on 20 August 2011.

MR MORWOOD: They do, yes. The imposition of the conditions are not relevant to your determination - the period that the conditions have been extant for, in my submission, are not relevant to the question of whether or not a further adjournment should be considered. It is the length of time that it would now be required to bring it back before a further review Panel.

Turning, then, to what can occur if you reject the application. The Panel, in my submission, would be left in an invidious position, with no expert evidence before it to determine whether or not Dr Skinner has complied with his conditions, or whether or not he continues to be impaired. My learned friend suggests that the Panel could determine whether or not he has complied with his conditions. That would require the Panel to look as to whether or not the individual patients were being provided with treatment and were within the reference range for treatment, but would also require the Panel to determine whether or not the doctor has appropriately stated why he has made a clinical decision where his treatment has gone outside that reference range, because if you review the conditions, where he prescribes outside the reference range he is required to provide substantiation of the same, so you would be required to review that issue and, in my submission, you cannot do so simply by hearing the evidence of Dr Skinner himself. You would need an expert to ask you in that regard if you are to take an independent view of the case.

In relation to the question of impairment, the Panel before you clearly found that there was a potential risk of harm to patients by the doctor acting outside the guidance for a treatment, where patients were within the reference range in relation to the thyroid, that

he failed to act on concerns that there was a potential risk to a patient and, therefore, found it appropriate to impose conditions. In my submission, you cannot ignore that. You may well start from the position that where impairment has been found it is for the doctor to now show, by way of evidence, that he is no longer is impaired. In my submission, the Panel would require assistance in that regard.

The final issue raised, please, I move on to, is the effect of the conditions. The GMC are not asking this Panel to direct a performance assessment in relation to this doctor if the matter is postponed and, indeed, in relation to the manner in which the next review panel would expect expert evidence to be received, in my submission you can give directions as to how you would feel the next reviewing panel would be assisted by expert evidence, namely reviewing the conditions that have been previously imposed and deferring to the question of impairment.

I think I have answered those matters raised and responded to by my learned friend. I am happy to assist the Panel further if they feel the necessity to do so.

THE CHAIRMAN: Is there anything in law there that you want to respond to?

MR HAYCROFT: Can I make two observations? One is simply a correction, if I may, and it is to assist my learned friend. I was not seeking to draw an analogy with the civil law, I was trying to explain that whatever the position in civil law is it would be more straightforward, but I was acknowledging the point that you have a public interest aspect to look at, so it is not straightforward, however straightforward, and one may argue about that.

The only matter of law is, in my respectful submission, it is not for a doctor under any circumstances to show he is or he is not impaired. There is no burden in terms of impairment. I see my learned friend nodding. It is a matter for a Panel's independent judgment on the evidence that happens to be adduced before it. That is why I said Dr Skinner would be giving evidence, because a doctor who does not adduce any evidence at all, the Panel may say, "Well, we cannot be satisfied that your fitness to practise is not impaired". There is not a burden in law; it is a matter for the Panel on the evidence that it hears. If both parties do not call any evidence, both parties are at risk of the determination.

THE CHAIRMAN: We cannot indulge in an endless ping pong match, but I will just give you the opportunity to come back if you would like to.

MR MORWOOD: There is no burden on the doctor. It is a matter for the Panel, I entirely accept.

THE CHAIRMAN: I specifically asked Mr Haycroft about that.

MR MORWOOD: You have a determination from a Panel which has shown impairment. The question would be whether or not, in my submission, the doctor can now show that he is no longer impaired in light of the previous Panel's determination, but I accept that there is no burden one way or another in relation to that issue.

THE CHAIRMAN: Thank you. At this juncture I call on the Legal Assessor to advise

the Panel.

THE LEGAL ASSESSOR: Thank you, Chairman. The starting point is fairly simple: Dr Skinner is entitled to a fair hearing, and the GMC are entitled to a reasonable opportunity to present their evidence. It is also clear that if you are to grant an adjournment one side or the other will be prejudiced in one way or the other, and you have heard arguments on both sides as to where that prejudice lies.

You have an absolute discretion under Rule 29(2) to agree to or refuse the application, and you will do that by considering all that you have heard from both sides and also by balancing all of the competing interests.

In particular, I wish to draw your attention to the clear desirability that hearings are dealt with as quickly as possible, in the public interest, and also in the interests of the profession. I would ask you to bear in mind the interests of Dr Skinner, and the submissions that you have heard with regards to the prejudice to him, and also the risk, perhaps, of reaching the wrong conclusion if you were to proceed without hearing the expert evidence, which the GMC say they need in order to present their case.

I would also ask you to finally bear in mind that your primary objective is to do what is just in this case, and in doing that you will need to weigh up the arguments you have heard on both sides and the factors you have heard.

That concludes my advice.

THE CHAIRMAN: Do either counsel have any comment to make on the advice just tendered?

MR MORWOOD: No.

MR HAYCROFT: No, thank you.

THE CHAIRMAN: Then the Panel will go into private session.

STRANGERS THEN, BY DIRECTION FROM THE CHAIR, WITHDREW AND THE PANEL DELIBERATED IN CAMERA

(The Panel later adjourned until 9.30 am on Friday 29 July 2011)