

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Health Professions Council,
Park House,
184 Kennington Park Road,
London, SE11 4BU.

Thursday, 31st March 2005.

IN THE MATTER OF MR. PETER R. JELLETT

RECORD OF PROCEEDINGS
of the CONDUCT & COMPETENCE PANEL
-- PHYSIOTHERAPISTS
(RESTORATION HEARING)

DISCIPLINARY PANEL

MR. SANDY YULE
(In the Chair)
MS. KATHRYN KLOET
MR. ROY NORRIS

IN ATTENDANCE

MR. SIMON RUSSEN
(Legal Assessor)

REPRESENTING THE COUNCIL

MR. MICHAEL CAPLAN QC
(of Messrs Kingsley
Napley)

REPRESENTING THE APPLICANT

MR. PATRICK CORDINGLEY
(of Messrs Chattertons)

- - - - -

(Transcript of the Shorthand Notes of Marten Walsh Cherer Ltd.
Midway House, 27/29 Cursitor Street, London EC4A 2LT.
Telephone No: 020 7405 5010. Fax No: 020 7405 5026.)

- - - - -
P R O C E E D I N G S
- - - - -

1 THE CHAIRMAN: Good morning. I am sure we all know one another, but
2 this is formal proceedings, so I will start by introducing
3 ourselves. I am Sandy Yule. I am chairing the panel. I am a
4 radiographer by profession. On my left is Kathryn Kloet, who
5 is a physiotherapy member. On my right is Mr. Roy Norris, who
6 is the lay partner. Mr. Simon Russen is the legal assessor.
7 You know Mr. Michael Caplan and Mr. Cordingley, and of course
8 Mr. Jellett. Michael Guthrie is our hearing officer.

9 I think, before we start, on this occasion, perhaps I
10 will ask the legal assessor to say a few words just before we
11 proceed with the hearing proper.

12 THE LEGAL ASSESSOR: It might be appropriate, just so we set the
13 parameters, to say why we are here today. Very briefly, the
14 background is this. In June 1996, Mr. Jellett was convicted of
15 three offences of indecent assault on female patients. In
16 November of that year, 1996, his name was removed from the
17 CPSM register. He subsequently applied to be readmitted to the
18 CSP register. That application came before this Committee,
19 constituted identically, on 26th August 2004 when this
20 Committee was well aware of the chaperoning arrangements that
21 Mr. Jellett had in place. The Committee decided that it was
22 appropriate to readmit him to the register but did not impose
23 conditions of practice.

24 That decision was challenged by the Council for the
25 Regulation of Health Care Professionals in the High Court. On

1 4th February of this year, 2005, Richards J, in deciding all
2 that challenged by the Council for the Regulation of Health
3 Care Professionals, held, in summary, and I think
4 Mr. Cordingley will take you to the findings in more detail,
5 Richards J held this, that this Committee was entitled to take
6 the view that in the light of the chaperoning arrangements
7 that Mr. Jellett put in place, entitled it to readmit him to
8 the register. The judge held that this Committee had fallen
9 into error in not imposing conditions of practice, therefore
10 remitted that issue, quite a narrow issue, the question of the
11 appropriate conditions of practice, back to the Committee for
12 them to consider and impose, and that is why we are here
13 today.

14 I think that is an accurate summary.

15 It just occurred to me, Mr. Chairman, in view of the
16 narrowness of the issue, I imagine that you and Mr. Caplan
17 will probably launch straight into submissions, but it might
18 help the Committee if you could indicate if there is any
19 further evidence, evidence properly so called, that you want
20 to introduce beyond that which they have already seen in the
21 bundle which of course includes the second statutory
22 declaration.

23 MR. CORDINGLEY: Sir, I do not intend to call or place before you
24 any additional evidence, although certainly I would like the
25 opportunity of putting before you submissions.

1 Whilst I am just dealing with this point, can I say in
2 that bundle you have two statutory declarations from
3 Mr. Jellett; one which you had on a previous occasion and one
4 which is quite recent. Statutory declarations, as I think you
5 must know, have effectively the status of sworn affidavits.

6 You also have in the bundle two witness statements,
7 which were prepared for the appeal proceedings. They were
8 prepared in accordance with the rules of the court on these
9 matters. If I can just deal with it on a fairly broad-brush
10 way. Can I just say, because of those rules of the Court,
11 they have virtually the same status as affidavits as well.

12 In my submission, you can rely upon all of that evidence
13 without having to hear from Mr. Jellett affirming any of that
14 on oath.

15 There is, however, just one very small point. You may
16 recall at the last hearing that I had my attention drawn to an
17 error in Mr. Jellett's statutory declaration. About four or
18 five words were struck out. Mr. Jellett then gave evidence on
19 oath affirming that statutory declaration with those words
20 omitted.

21 What you actually have in the bundle is the unamended
22 version of that statutory declaration. Nothing turns on the
23 point, but, as I am saying, because there are evidential
24 matters to consider in respect of the material in the bundle,
25 I thought I should just draw that to your attention formally.

1 THE LEGAL ASSESSOR: The only reason I asked the question whether
2 there was going to be yet further evidence was it would be a
3 bit untidy to have Mr. Caplan make any submissions initially
4 and then find there might be further evidence which would
5 cause him to act on.

6 THE CHAIRMAN: Thank you, Mr. Russen and Mr. Cordingley.
7 Mr. Caplan?

8 MR. CAPLAN: Perhaps it is best, sir, if I bat first, as it were,
9 at this moment. I think I can be exceedingly brief, certainly
10 at this stage, sir. I think, in addition, you have on your
11 desk in front of you two additional pieces of paper. What
12 those are is a submission on behalf of Mr. Jellett, which
13 Mr. Cordingley has very kindly supplied you with, with
14 suggested conditions for your consideration, no more than that
15 I think it is fair to say, and an additional one piece of
16 paper, which is suggested conditions, again for your
17 consideration only, which is put forward by the Health
18 Professions Council.

19 THE CHAIRMAN: Yes, we have those papers.

20 MR. CAPLAN: Can I say this at this stage, sir, the judge made it
21 quite clear in the High Court, Richards J, that the precise
22 terms of a Conditions of Practice Order are best left to you
23 because it maybe thought appropriate to include, and these are
24 the words of the judge, "one or more conditions with regard
25 the monitoring of chaperoning arrangements, for example, as to

1 the carrying out of a periodic audit, and the detailed
2 formulation of any such conditions is best done in the light
3 of representations both from ourselves and, indeed, on behalf
4 of Mr. Jellett". I am quoting almost entirely word for word
5 from paragraph 67 of the judgment.

6 I do not propose to say anything more about the judgment
7 other than to say, it is very clear that so far as the
8 conditions are concerned, that is a matter entirely for this
9 Committee, you and your colleagues, to determine.

10 So far as the Council is concerned, we have placed
11 before you, and again I stress it is for your consideration,
12 seven potential conditions. However, I say it once, the first
13 four are really taken from Mr. Jellett's own suggestions
14 himself. So I anticipate that there will not be any
15 submissions, but I could be wrong, in relation to numbers
16 1,2,3 and 4 from Mr. Cordingley. Again it is a matter entirely
17 for you.

18 The 5th, 6th and 7th condition which is being suggested
19 for your consideration really go to the question of an audit
20 and monitoring. Again they are suggestions put forward before
21 you. They are there to cover the possibility that there ought
22 to be an audit, they are in fact the words used by the judge
23 of course, and that audit should be carried out by someone.
24 We would suggest it is carried out by a practising
25 physiotherapist, locally. We would consider it would be too

1 much of an onerous for forms to be sent to the HPC and for
2 them to trawl through them. All we are asking is, and we think
3 this is a sensible way forward, that an audit is carried out
4 by a practising physiotherapist from time to time, and we are
5 suggesting a three-month interval. If there is a certificate
6 signed, that could be sent to the Director of Fitness to
7 Practise within 14 days. We use 14 days simply because it
8 cannot be open-ended. We think that again is reasonable. It
9 takes a few days for it to be sent to Mr. Jellett and it could
10 then be sent on to us or sent direct via the practising
11 physiotherapist. Again we are trying to take a sensible
12 approach there. It can then be looked at. That first audit
13 should be carried out within three months and then at
14 three-month intervals. Again we put that forward, we hope, as
15 a sensible suggestion.

16 The sixth condition obviously allows that if that
17 certificate is considered by the Director of Fitness to
18 Practise to give any cause for concern or it is not complied
19 with, in other words they do not come at the intervals that we
20 suggest or, indeed, intervals which you place in any condition
21 should you impose such a condition, that the matter can come
22 before the Committee for review.

23 Of course, we would say that the record should be
24 available at Mr. Jellett's premises for inspection by anyone
25 on behalf of the Director of Fitness to Practise. We do not

1 know whether that will arise. We do not suggest it will. We
2 are simply saying that that should be a way in which there can
3 be control to see whether these conditions are being complied
4 with.

5 Those really, in essence, members of the panel, are our
6 suggestions. I stress again that the question of any
7 conditions are a matter entirely for you, but we would feel
8 that those would adequately meet both what the Court were
9 suggesting in principle and in fact and what we would feel
10 would discharge responsibilities which the Director of Fitness
11 to Practise would have, but I stress again the conditions are
12 a matter entirely for you.

13 THE CHAIRMAN: Thank you, Mr. Caplan. We have not yet had time to
14 read this thoroughly. I am sure Mr. Cordingley has not yet had
15 time to read this thoroughly as well. Just one quick query
16 with respect to paragraph 5 and the final sentence. It says,
17 "The first audit will be due by 31st June". That does not mean
18 it needs to be in the HPC by 31st June? It is just a little
19 bit, to me, ambiguous. It is something we can look at.

20 MR. CORDINGLEY: It is impossible, is it not, because June does not
21 possess 31 days.

22 MR. CAPLAN: In other words, a certificate should arrive, in
23 reality, within 14 days thereafter by the end of June.
24 Looking sensibly, that is what we have in mind.

25 THE CHAIRMAN: Thank you, Mr. Caplan. Mr. Cordingley?

1 MR. CORDINGLEY: Thank you, sir. At the heart of today's meeting I
2 would suggest are Mr. Jellett's chaperoning arrangements. It
3 is my recollection, from our last meeting, that you and your
4 colleagues had more than thoroughly read the documents which
5 are in front of you and seemed at some points to be in advance
6 of everybody else in the room as to their contents. I was
7 hoping that these arrived before Easter and that you had an
8 opportunity of digesting them, reminding yourselves of them
9 and bringing yourselves up to speed in respect of the
10 remainder.

11 I am not going to take you through what is in those
12 documents in any detail about Mr. Jellett's chaperoning
13 arrangements. If I may, I will take that as read.

14 What I would like to do is to ask you to turn to the
15 outline submissions which are in front of you. In my
16 submission, we need to pay considerable attention to the
17 guidance given by the judge. It is necessary for you to
18 understand fully the context in which he gave you that
19 guidance and to understand fully that guidance.

20 The page numbers of this bundle, for our purposes,
21 appear on the top right-hand corner. Could I ask you to look
22 at page 238, which is in section 7 of the bundle. Obviously
23 this is the judgment. We are concerned, on page 238, with
24 paragraph 69. It is really the last two lines. It reads,
25 "But I hope that I have done enough to make clear the

1 relatively narrow parameters within which the CCC's further
2 consideration of the case should fall."

3 I think, as my colleagues have already indicated, this
4 is not something where you have been left to think completely
5 afresh. There are really quite narrow parameters within which
6 you are to reconsider this matter and exercise your
7 discretion.

8 The judge said, at page 238, again paragraph 68, it is
9 the paragraph before that, "I remit the matter not for the
10 purpose of enabling that aspect of the decision to be reopened
11 but only for the purpose of the imposition of a conditions of
12 practice order".

13 So clearly, he flags it up, you are not to decide the
14 question of restoration but only to make a Conditions of
15 Practice Order. You are to make a Conditions of Practice
16 Order. So, not to consider making one, but you are to make
17 one that means.

18 Going back to paragraph 69, and it is about 6 lines
19 down, it reads, "The CCC's findings as to 'fit and proper
20 person' were premised, as it seems to me, on the view that
21 Mr. Jellett's existing practice arrangements, in particular as
22 to chaperoning, were satisfactory. That was, as I have said, a
23 reasonable view". It follows from that that you are entitled
24 to take Mr. Jellett's chaperoning arrangements pretty much as
25 they exist.

1 Reading further on in that paragraph, it reads, "The
2 Conditions of Practice Order should be directed towards
3 ensuring the maintenance of a similar level of protection",
4 that is to say, a similar level of protection as is secured by
5 the existing chaperoning arrangements.

6 It continues, "It does not follow that the CCC is tied
7 to giving continued effect to the precise detail of the
8 existing arrangements". So you have some latitude over the
9 question of chaperoning. Continuing, "An exercise of judgment
10 is required as to the appropriate conditions, and the judgment
11 will have to be exercised on the material before the CCC at
12 the time. The CCC may, for example, be invited to give further
13 consideration to whether and in what circumstances it is
14 appropriate for Mr. Jellett's wife and mother to act as
15 chaperones. But I hope that I have done enough to make clear
16 the relatively narrow parameters within which the CCC's
17 further consideration of the case should fall". I read the
18 rest of that before.

19 So you can give consideration to the extent to which
20 Mr. Jellett's wife and mother should and purposely be
21 involved.

22 If I can ask you to turn back to 237, paragraph 65, last
23 four lines, it reads, "In my judgment, therefore, the
24 effective protection of the public required the CCC to do
25 more, namely to impose a Conditions of Practice Order which

1 would enable the HPC itself", and if I can underline the word
2 'itself' five times, please, "which would enable the HPC
3 itself to police the chaperoning arrangements and to take
4 enforcement action in the event of a failure to comply with
5 the conditions laid down".

6 Going back to page 238, and in particular to paragraph
7 69, can I remind you that you have to look at the question of
8 Mr. Jellett's wife and mother and whether it is appropriate
9 for them to act as chaperones.

10 With that in mind, can I ask you to turn back to page
11 236, paragraph 63, bottom of the page. Mr. Coppel was of
12 course the counsel who appeared at the appeal for the
13 appellants. It reads, "As to Mr. Coppel's criticisms of the
14 fact that Mr. Jellett's wife and, occasionally, his mother act
15 as chaperones, I am not persuaded that there is any hard and
16 fast rule that makes it wrong for a practitioner's relative to
17 act as a chaperone. It may not be appropriate as the primary
18 form of chaperoning; but as a fall-back, if a patient cannot
19 find a chaperone of her own and the patient consents, it does
20 not seem to me to be necessarily objectionable. The fact that
21 in this case the practitioner's wife is herself a state
22 registered nurse is a further relevant consideration. The CSP
23 plainly saw no objection to Mr. Jellett's arrangements, nor
24 did the CCC. There is no sufficient basis for interfering with
25 that judgment on the material before the Court".

1 So whilst the judge said that you should look at the
2 chaperoning arrangements and that you may wish to listen to
3 submissions about the extent to which Mr. Jellett and
4 Mr. Jellett's mother are involved, his position was that there
5 was no objection in principle to their continued involvement
6 in the chaperoning arrangements and certainly not in the
7 secondary way in which you know they have been used
8 throughout.

9 For the purposes of my next point I need to ask you to
10 turn back to the transcript, which is behind Divider 2 and, in
11 particular, to page 130 of the bundle. Towards the bottom of
12 that page Miss. Hughes, who was your legal advisor on the
13 previous occasion said this, "I confirm when you had retired I
14 was asked for information on conditions of practice orders.
15 What I advised the panel was the", and I think the transcript
16 should read "that", "was that conditions should be
17 appropriate, realistic and verifiable".

18 If I can ask you to turn back to the judgment, in
19 particular page 237. Please forgive me. My note is
20 misleading me.

21 THE LEGAL ASSESSOR: Paragraph 66, halfway down.

22 MR. CORDINGLEY: I am grateful to you. Paragraph 66 reads, "Nor do
23 I accept that the legal advice given was wrong or misleading
24 or gave rise to a procedural irregularity". What the judge is
25 saying expressly is that he approved that legal advice.

1 The next point I do not think I need to take you to the
2 bundle, but it is, I think, clear, and it is common ground,
3 that article 30(1) of the Health Professions Order 2001
4 enables you to make a Conditions of Practice Order in the
5 first instance for three years and the Conditions of Practice
6 Order may in the future be renewed for another period of three
7 years and so on.

8 As you know, attached to these notes is my draft
9 Conditions of Practice Order. Perhaps I can take you through
10 that now. The first part, that is to say before paragraph 2,
11 is really a formality. Mr. Jellett has in fact completed the
12 appropriate forms and paid his fee immediately following the
13 last hearing.

14 The first condition, "The Applicant shall not see and/or
15 treat female patients without the presence of a chaperone" is
16 uncontentious.

17 (B) "Unless the chaperone is the husband or partner or a
18 close family member of the female patient's family, the
19 chaperone shall be female". Again I do not think that is
20 contentious.

21 (C) "The Applicant shall procure that each female
22 patient provides her written consent to the presence of a
23 named chaperone prior to being seen and/or treated by the
24 Applicant". Again that is not contentious.

25 (D) "The Applicant shall use his best endeavours to

1 procure that in respect of every female patient who he sees
2 and/or treats, at the conclusion of the treatment session, the
3 chaperone shall sign a written record to confirm his or her
4 presence with that patient throughout the period during which
5 the Applicant saw and/or treated his patient". I put it in
6 terms of using best endeavours because as a matter of
7 commonsense Mr. Jellett is not in a position to coerce. Whilst
8 he can refuse to treat a patient who will not give written
9 consent before the treatment session, he is in no position to
10 compel a chaperone to sign afterwards. There I think, in a
11 point of detail, I differ from the draft which Mr. Caplan has
12 placed before you, but again probably not in any contentious
13 way.

14 (E) "For the above purposes the Applicant shall use the
15 consent form attached hereto or such modification thereof as
16 the HPC shall approve in writing". It may be convenient to
17 just turn over two pages to the consent form. You have seen
18 similar versions of this before. There are two in the bundle.
19 Mr. Jellett, at least in the interests of saving paper, always
20 has two consent forms on one A4 sheet, which is why you have a
21 duplication here as well. The additions are, from what you
22 have seen before, first of all, in the middle immediately
23 above the space for the patient to sign, the words "This
24 consent form may be disclosed to the Health Professions
25 Council", that is directly dealing with an obvious

1 confidentiality point.

2 Secondly, a small box towards the top right-hand corner
3 with the letters "HPC" underneath it, that really is for HPC
4 use in auditing, verifying, whichever term you wish to use.

5 It could be a ticked box, an initial box, et cetera.

6 The reasons that both of those are there is clear from
7 paragraph (F) of the Conditions of Practice Order. "Within 14
8 days of the end of each six month period, the first such
9 period, starting 1st April and ending 30th September 2005, the
10 applicant shall deliver to the HPC's Director of", and picking
11 up Mr. Caplan's draft, it would be the Director of "Fitness to
12 Practice. And the consent forms for all female patients
13 treated by the applicant during such period".

14 We envisage a photocopy of the appointments' diary for
15 the relevant period and either photocopies or the original
16 consent forms. The diary can go because the diary does not
17 contain confidential information. The diary has to be copied
18 because of course it is in daily use. The original cannot be
19 sent. It does not really matter whether it is the original or
20 photocopies of the chaperoning forms. They can be sent because
21 the patient has agreed to waive confidentiality in this
22 respect and they contain the necessary detail.

23 The forms identify the name of the patient, the sex of
24 the patient, the occasion of the treatment, one consent form
25 for each treatment session, the identity of the chaperone who

1 was present, the relationship which the chaperone has to the
2 patient, whether that be a member of their family or a carer
3 or, in the case of Mr. Jellett, his wife or his mother, then
4 their identity and details would be inserted.

5 There is provision for the chaperone to sign at the end
6 of the session underneath the words "I am the chaperone named
7 above and I confirm that I was in the room and acted as
8 chaperone throughout the treatment today". That signature has
9 to be made at the end of the treatment session, not at the
10 beginning. It is for that reason that I say that Mr. Jellett
11 is not in a position to coerce or compel that signature, only
12 to use his best endeavours. Also, there is a note of the
13 clothing which was removed on that occasion.

14 That, in my submission, would be sufficient to enable
15 HPC to satisfy itself by means of audit or otherwise of
16 compliance with the Conditions of Practice Order.

17 I would have no objection to Mr. Caplan's paragraph 6 or
18 something of that nature anyway. It is a mechanism. It is an
19 appropriate mechanism. I would have no objection, or
20 Mr. Jellett would have no objection to Mr. Caplan's number 7,
21 which is a fall-back position.

22 What I say about Mr. Caplan's number 5 is really this.
23 First of all, the judge has made it clear that it is for HPC
24 to satisfy itself as to compliance, not for Mr. Jellett to
25 find somebody else who will provide a certificate for HPC.

1 That would not, in my submission, meet the judge's ruling on
2 that point and the guidance which he has given here.

3 Secondly, if I am wrong on that point, Mr. Caplan refers
4 to a local physiotherapist. Certainly on the basis that
5 inspecting these sort of records on a three-monthly basis does
6 involve somebody who is local, then it is fairly obvious that
7 in a small community like Louth, that places Mr. Jellett in
8 conflict with his local peers and, frankly, people who are his
9 commercial competitors. It is an intrusive requirement. It
10 also involves expense which, in the nature of a regulatory
11 profession, or a regulatory body such as HPC, is an expense
12 which ought to fall on a central body, not on the
13 physiotherapist.

14 In my submission, what I place before you are conditions
15 of practice which are appropriate, realistic and verifiable. I
16 do not invite you to look into other possibilities, but should
17 you feel inclined to do that, then you may take some
18 inspiration and some cue from what the Chartered Society of
19 Physiotherapists did in terms of their own monitoring and
20 mentoring exercise. That monitoring and mentoring being
21 effectively two sides of the same coin, but that involved
22 face-to-face visits to Mr. Jellett's surgery and a degree of
23 telephone contact and a further sampling by means of
24 questionnaire of Mr. Jellett's patients.

25 I would suggest really that we have got past that stage

1 and that it is simply a matter of being able to verify that
2 the monitoring arrangements are in place and that they are
3 being complied with. In my submission, submitting extracts of
4 the records in the way in which I suggest directly to the
5 HPC's Director of Fitness to Practise will be quite sufficient
6 together with the mechanisms and fall-back positions which are
7 mentioned in point 6 and 7 of Mr. Caplan's draft.

8 Unless I can assist you any further, that is all I would
9 like to say at this stage. I do not know whether Mr. Caplan
10 will come back, and if he does I may just beg a few moments to
11 deal with any points which arise.

12 THE LEGAL ASSESSOR: Mr. Cordingley, could I ask you for a point of
13 clarification about one of your submissions, which is that you
14 say the guidance given by the judge, I am not quoting you
15 directly, but if I understand the thrust of your submission it
16 is that the guidance given by Richards J was that the
17 mechanics of undertaking the audit should fall upon HPC. I
18 think you asked the Committee to metaphorically underline
19 those words at the end of paragraph 65. But if we look at
20 paragraph 65, is it your submission that that is what he is
21 saying there or is he simply saying there that this Committee
22 fell into error by relying on the conditions that the HPC had
23 imposed, if you read the whole paragraph from the beginning of
24 it, not just the final line?

25 MR. CORDINGLEY: It is both, in my submission. I say both in this

1 sense, he is saying initially that the Committee fell into
2 error in not making a Conditions of Practice Order.

3 THE LEGAL ASSESSOR: In reliance on the CSP?

4 MR. CORDINGLEY: Yes. And that what the Committee had to do in
5 order to protect the public was to impose a Conditions of
6 Practice Order which would enable the HPC itself, and that was
7 the word I say should be underlined five times, to please the
8 chaperoning arrangements and to take enforcement action in the
9 event of a failure to comply with the conditions laid down. So
10 it is the HPC which must be able to police the chaperoning
11 arrangements and the HPC which must be able to take
12 enforcement action. What the judges say is unless a
13 Conditions of Practice Order enables both of those things to
14 be done, then the Committee is in error.

15 THE CHAIRMAN: Mr. Russen, I appreciate what you are saying. I
16 might be agreeing with you, however, HPC itself as opposed to
17 the Chartered Society of Physiotherapists? I did not read it
18 as HPC itself had to do it but HPC itself had to impose
19 conditions which would satisfy itself as opposed to relying on
20 the CSP conditions.

21 THE LEGAL ASSESSOR: It boils down to what is meant by "police",
22 how far the active, ongoing involvement of HPC is required in
23 order for the HPC to police.

24 MR. CORDINGLEY: May I suggest how it would read if the alternative
25 was the intention. It would read along these lines, "required

1 the CCC to do more, namely to impose a Conditions of Practice
2 Order which could be policed and enable HPC to take
3 enforcement action in the event of failure.

4 THE LEGAL ASSESSOR: I suppose the relevant question is were the
5 Committee to feel tempted to adopt Mr. Caplan's version of
6 requiring Mr. Jellett to find a physiotherapist to undertake a
7 periodic audit, would you say that if that happened the HPC
8 would not be policing the chaperoning?

9 MR. CORDINGLEY: Yes, I would say that.

10 THE CHAIRMAN: Mr. Caplan, you are being very quiet.

11 MR. CAPLAN: I was waiting my turn, sir. I do not think I, on
12 behalf of the Council, will be best assisting the Committee by
13 trying to interpret and pick over particular words in the
14 judgment. The reality of the situation that appears to us,
15 sir, is that the judge left open to this Committee as to the
16 appropriate conditions which this Committee thinks should be
17 imposed on this occasion drawing upon, no doubt, if I may say
18 so, that the Committee has, as its constitution today, as it
19 did on the last occasion, not only experience but, in
20 particular, express experience in the field of physiotherapy.
21 No doubt you will call upon that when you retire to consider
22 the appropriate conditions.

23 So our approach to this is that rather than pick over
24 particular words, the conditions are a matter for you sensibly
25 trying to impose the nature of the conditions which Richards J

1 had in mind which we all know about which are set out
2 extensively in the proposed conditions for your consideration.

3 So that is our approach; it is entirely a matter for
4 this Committee. I do not think I will be assisting you in
5 trying to determine what particular words were meant in the
6 judgment.

7 As to the specific conditions, we have these comments to
8 make, and I make them on behalf of the Council. Firstly, we
9 are concerned about the words "best endeavour" in the
10 suggested condition 4. Our concerns are, which is perhaps
11 slightly ironic, is that if there is going to be some
12 certainty that the arrangements are going to be complied with,
13 then there must be an onus, however difficult, but there must
14 be that onus upon Mr. Jellett to ensure that those forms are
15 signed. That way if we said, "Well what happens if they are
16 not signed?", we understand that position. No doubt an
17 appropriate note could be made.

18 Commonsense would dictate that that would be taken into
19 consideration, obviously, but we are troubled that it is left
20 with the words "best endeavour" which are very difficult to
21 interpret. We do not know how to interpret them.

22 We will not have the resources or the powers to
23 determine whether in the unlikely event on one occasion "best
24 endeavours" were used and on another occasion they were not.
25 We do not want to get into that specific detailed argument. We

1 do not think it assists anyone.

2 So that is why we would advance to you, with respect,
3 that we would like a consideration given to a requirement, an
4 onus, and that is what it is, upon Mr. Jellett to ensure. If
5 he cannot ensure, he cannot ensure. A note would have to be
6 made and consideration taken of that in due course. That is
7 what we say about that aspect.

8 The second aspect is the audit. In fact, "audit" is the
9 actual word used by Richards J on more than one occasion. We
10 say that we can best carry out that audit by having a
11 certificate completed by a local physiotherapist. We, of
12 course, hear what Mr. Cordingley says about the commerciality
13 of the situation, but, regrettably, we do not think that a
14 consideration. The fact of the matter is, we think we can
15 properly and practically carry out the policing requirements
16 by having an audit completed and sent and submitted to the
17 Health Professions Council periodically. We suggested that be
18 carried out on a three-month period.

19 Additionally, of course, the safeguard which we would
20 have is that we could carry out an inspection. We do not think
21 we need to, from a policing or from a practical point of view,
22 have sent to us a considerable number of forms for us to tick
23 a box. We say that can best be done by trusting, as we do,
24 another member of the profession to complete an audit and send
25 it to us on a periodic arrangement. We think we can best do

1 that on that basis.

2 Those are our submissions to you, sir.

3 THE CHAIRMAN: You may want to answer, Mr. Cordingley, but I was
4 also going to ask what would happen if the chaperone refused
5 to sign it in the end. If six chaperones refused to sign it,
6 then Mr. Jellett may find himself, not through his fault,
7 having a problem. Would it be possible to make sure that the
8 chaperone was asked to sign it, not to sign it before the
9 chaperoning, but to be made aware that they would be asked to
10 sign the form following the treatment.

11 MR. CAPLAN: Forgive me, sir, just one point before Mr. Cordingley
12 has the floor, so to speak, so he can come back on this as
13 well. Of course, it would always be open to Mr. Jellett to
14 come back before the Committee on a review under article 30
15 subarticle 2 to say, "I just cannot comply with this. There
16 is a difficulty". Sensibly the matter can be looked at if
17 that arose. I simply add that aspect so Mr. Cordingley can
18 answer that as well if he wishes to.

19 THE CHAIRMAN: It may be better, Mr. Cordingley, if any of my
20 colleagues have any questions, then you could possibly answer
21 them all at once.

22 MS. KLOET: You refer to the CSP's intervention in terms of their
23 policing and the mentoring and the professional support that
24 was given. Can you just clarify if that support is ongoing to
25 date?

1 MR. CORDINGLEY: No, it is not, no.

2 MS. KLOET: There is no intervention whatsoever?

3 MR. CORDINGLEY: That has ceased when Mr. Jellett became a member
4 in good standing, they being satisfied that he has complied
5 with those requirements. His undertaking, as to chaperoning,
6 remains in force permanently as far as CSP are concerned.
7 They have made it clear that they reserve the right to make
8 such enquiries as they may feel appropriate. They made it
9 clear in a letter to the Court that they did actually nothing
10 in respect to that.

11 MS. KLOET: And since that date there has been no contact from the
12 CSP on that basis, just as a point of clarification.

13 THE CHAIRMAN: We have no questions, Mr. Cordingley.

14 THE LEGAL ASSESSOR: Could I just raise a point on the "ensuring"
15 as opposed to "best endeavours" in respect to the ex post
16 facto signed by the chaperone which was the point raised by
17 Mr. Caplan a moment ago. Your basic submission is you cannot
18 impose a condition on Mr. Jellett over which he has no control
19 essentially, is it not? He can urge somebody to do it, but
20 they cannot ensure they pick up a pen and sign it.

21 MR. CORDINGLEY: I am actually just a little surprised at this
22 point.

23 THE LEGAL ASSESSOR: Can I just finish?

24 MR. CORDINGLEY: I am sorry, I had not realised you had not.

25 THE LEGAL ASSESSOR: It may be if the panel thought there was

1 substance in that, they thought it not appropriate to impose a
2 condition on somebody over which they, at the end of the day,
3 have no control, that that might be a good point, saving them
4 having to come in and invite further submissions. If the
5 consequence of that led them to think if such a circumstance
6 arose, would it then be appropriate to impose a condition on
7 Mr. Jellett to decline to offer any further treatment to the
8 patient whose chaperone had declined to sign? What would be
9 your submission on that?

10 MR. CORDINGLEY: Can I just deal with the context in which, as a
11 naturally cautious lawyer, I use "best endeavours" rather than
12 a word such as "ensure". Can I say, first of all, that
13 Mr. Jellett's position is that there has never been an
14 occasion when he has been unable to secure the chaperone's
15 signature. So we are dealing simply on the basis of
16 experience, and Mr. Jellett has many years of experience of
17 these chaperoning forms. We are dealing with a fairly remote
18 circumstance, but I included these words simply out of
19 caution.

20 Can I just suggest one or two possible scenarios. The
21 chaperone has a heart attack and an ambulance is called. It
22 is not appropriate then to get the chaperone's signature.
23 Perhaps some other emergency intervenes. It may be the
24 patient. It could even be Mr. Jellett. Again an ambulance is
25 called and it is not appropriate to deal with these, may I

1 say, clerical details.

2 There is the other remote possibility, which for one
3 reason or another the chaperone decides that he or she will
4 not sign. In the first of the examples I have given, it is all
5 transparently innocent, is it not? In the last circumstance
6 there is a possibility that the chaperone has declined to sign
7 for some good reason which is, as it were, to Mr. Jellett's
8 prejudice. If this were to happen often, somebody suggested if
9 it happened on six occasions, it would be cause for concern.

10 I think it is a good technical point that it is wrong to
11 impose a condition which Mr. Jellett is personally unable to
12 ensure that it is fulfilled, but I do not think that is a
13 practical reason for objecting to it. In my submission, the
14 way forward here is to use some words which give a little bit
15 of latitude which are equivalent to "best endeavours".

16 I am surprised that Mr. Caplan finds any difficulty with
17 "best endeavours". It simply means that you must do your very
18 best, you must do your level best in the circumstances. It is
19 nothing more than that.

20 The onus is upon Mr. Jellett to satisfy that he did his
21 best but still could not obtain the signature. He would easily
22 satisfy that in the ambulance circumstances which I have
23 mentioned. He would have huge difficulty in the other
24 circumstance which I mentioned.

25 In my submission, "best endeavours" are in fact the

1 appropriate words used in the circumstances, but if anybody
2 has any other suggestions, then we will look at those as
3 constructively as possible and try to be as helpful as we can
4 on this issue. I am just really trying to cover cautiously
5 what I think are remote possibilities. I am not trying to
6 give Mr. Jellett any unsatisfactory get-out.

7 THE CHAIRMAN: I think Mr. Caplan, to be fair, was thinking of
8 Mr. Jellett's interests, that if an unsigned form came into
9 the HPC, if that was the route we decided on, it might make it
10 a bit difficult for Mr. Jellett. So I think Mr. Caplan, in
11 this instance, may have been thinking of Mr. Jellett in
12 addition to the HPC.

13 MR. CORDINGLEY: Is it not the onus then upon Mr. Jellett to
14 explain why there is not a signature. The explanation may be
15 quite innocent, the ambulance examples for instance.
16 Otherwise, I would suspect, he has potentially considerable
17 difficulties and it is going to flag every concern which the
18 HPC would doubtless wish to look into until it was satisfied.

19 THE CHAIRMAN: Thank you, Mr. Cordingley. Sorry, is there
20 something else?

21 MR. CORDINGLEY: There was just one other point I wanted to
22 mention. I do not in any way resile from what I say about the
23 HPC's responsibility over the policing issue here, but if you
24 do not accept that point, and if you accept Mr. Caplan's
25 point, that the policing can be arranged by Mr. Jellett with

1 another physiotherapist, in my submission it really does not
2 matter then whether it is a physiotherapist or a member of a
3 suitable profession for the reasons which I explained. In a
4 small community like Louth, it would actually be very
5 difficult to engage in other physiotherapists. So if you
6 think along the lines of the verification by somebody of the
7 HCP, might I invite you to think about some of the other
8 possibilities in which that may be satisfied.

9 I did address you pretty much off-the-cuff on the last
10 occasion about some of the ways in which other people could
11 provide that audit. It is not something which is within the
12 inclusive preserve of a physiotherapist to see that consent
13 forms had been properly signed, signed also by chaperones and
14 inspection of the professional diary. There are many ways in
15 which that point could be verified by a third party who is not
16 a physiotherapist but obviously somebody who has appropriate
17 professional standing. I am not suggesting that the man in
18 the street at large, as it were, be given that responsibility.

19 THE CHAIRMAN: As Mr. Russen said, we do not want to come backwards
20 and forwards asking as to what is acceptable or not, so I
21 think in this instance, Mr. Caplan, have you any comment on
22 the fact that a non-physiotherapist may be able to audit the
23 forms?

24 MR. CAPLAN: May I take a moment to take instructions. Sir, in
25 answer to the point, we understand of course what is being

1 said. We would ask the Committee perhaps to consider, if you
2 accepted what was said by Mr. Cordingley, whether the person
3 who would audit it could be another registered health care
4 professional. On that basis, of course, it would be someone
5 who comes under the umbrella of the Health Professional
6 Council. We think it would be difficult to extend it beyond
7 that, but we do understand what is said from a commercial
8 point of view. But that would be our suggestion. But again,
9 sir, it is a matter for the Committee.

10 THE CHAIRMAN: There is one point for clarification.

11 MS. KLOET: Just at the risk of labouring this detail, could you
12 just clarify if there is a large district general hospital or
13 NHS physiotherapists in the immediate vicinity.

14 MR. CORDINGLEY: There is a small general hospital in Louth. It is
15 really a branch of Lincoln Hospital. There are physiotherapy
16 services at the hospital.

17 MS. KLOET: I am just thinking, that may remove the commercial
18 conflict.

19 MR. CORDINGLEY: It would certainly remove the commercial conflict,
20 but whether that is the sort of task which they are able to
21 undertake is perhaps another thing, is it not?

22 THE CHAIRMAN: Thank you. Mr. Russen, have you any advice before
23 we retire?

24 THE LEGAL ASSESSOR: I think the only thing we have not yet
25 articulated is the power that you are exercising arises under

1 article 33, which is the restoration to the register article
2 of the Health Professional Order, but in relation to the
3 conditions of practice, it refers back to article 29. In
4 article 29, there is a maximum three year period, as
5 Mr. Cordingley says in his submissions in the first instance,
6 that is to say the maximum duration of a Conditions of
7 Practice Order you can make today is three years. Before the
8 expiry of that, it will be reviewed.

9 Another thing which arises from Mr. Cordingley's
10 submissions, because he has included it as one of the
11 proposals, is that you also have the power to make an order
12 that there should be no application to vary or revoke the
13 order within a specified period. The maximum period which you
14 can specify within which it cannot be made is two years, and
15 that is the period that Mr. Cordingley has written in.

16 MR. CAPLAN: That is absolutely right.

17 THE CHAIRMAN: Thank you, Mr. Russen. We will retire.

18 (The Committee retired)

19 (After a short break)

20 THE LEGAL ASSESSOR: Could I just say before the decision is read,
21 the panel has asked me to assist it with the wording, but the
22 decision itself is the panel's.

23 THE CHAIRMAN: Thank you everybody for your patience.

24 MR. CORDINGLEY: You are about to read something out. I just
25 wondered if there were copies available for us to read.

1 THE CHAIRMAN: Before I read it out? There will certainly be copies
2 after I read it out.

3 MR. CORDINGLEY: It would be helpful to have a copy in front of me
4 as you read it, sir.

5 THE CHAIRMAN: I will certainly read it slowly. You will have a
6 copy, Mr. Cordingley. Mr. Caplan, are you all right?

7 MR. CAPLAN: Yes, sir.

8 D E C I S I O N

9 THE CHAIRMAN: This hearing was to restore Mr. Jellett to the
10 register with appropriate conditions. The decision of the
11 panel is:

12 Following the direction of Richards J, we have today
13 considered the appropriate conditions of practice to impose on
14 Mr. Jellett following our earlier decision that he be restored
15 to the register.

16 In the circumstances, we do not give reasons for the
17 imposition of conditions, but we add a few words to explain
18 why we have decided upon the specific conditions we are about
19 to impose.

20 That there must be a chaperone present when Mr. Jellett
21 treats a female patient is not in doubt. The debate today has
22 concerned the most appropriate way in which the HPC should
23 police compliance with the chaperoning requirement.

24 Our conclusion is that Mr. Jellett should have the
25 responsibility for arranging and supplying the audit of his

1 documentation confirming compliance. We do not accept
2 Mr. Cordingley's submission that in order to follow the
3 guidance of Richards J that the auditing should take place
4 within the HPC's Fitness to Practise Department. In deciding
5 that Mr. Jellett should retain the obligation for arranging
6 the audit, we not only consider that this is the most
7 appropriate method of ensuring compliance (requiring, as we
8 do, that a registered HPC practitioner should undertake it),
9 but we also consider that placing the responsibility on Mr.
10 Jellett is consistent with the trust we have already expressed
11 in his professionalism by restoring him to the register.

12 ORDERS

13 Mr. Jellett be restored to the register subject to the
14 following conditions of practice for a period of 3 years from
15 today's date.

16 (1) that you do not see and/or treat female patients
17 without the presence of a chaperone;

18 (2) that unless the chaperone is the husband or partner
19 or a close family member of the female patient's family, the
20 chaperone will be female;

21 (3) that you ensure that all female patients provide
22 their written consent to the presence of a named chaperone
23 prior to being seen and/or treated by you;

24 (4) that you use your best endeavours to ensure that in
25 respect of every female patient that you see and/or treat, the

1 chaperone signs a written record confirming his or her
2 presence with that patient throughout the period during which
3 you saw and/or treated her. If for any reason the signature
4 of the chaperone is not obtained pursuant to this condition,
5 then within 4 days you are to notify the Director of Fitness
6 to Practise in writing of that fact and your understanding of
7 the reason or reasons for it;

8 (5) At six-monthly intervals, commencing on 6th April
9 2005, you are to ensure that an HPC registered practitioner
10 undertakes an audit of your records and satisfies himself or
11 herself, from your records, that conditions 1 to 4 above are
12 being complied with at all times. Within one month of the end
13 of a six-monthly period being audited, you are to ensure that
14 the Director of Fitness to Practise is supplied with written
15 confirmation, signed by the HPC registered practitioner, that
16 your records do confirm such compliance. This written
17 confirmation must also clearly state the name, profession and
18 HPC number of the person who is to undertake the audit;

19 (6) the Director of Fitness to Practise will be
20 responsible, on receipt of the written report of the audit,
21 for determining whether the above conditions have been met. In
22 the event that an audit report is not received by the required
23 date, and if an audit report raises concerns, the matter shall
24 be deferred back to the Committee for review. Otherwise this
25 order will be reviewed by the Committee prior to its

1 expiration;.

2 (7) your records should be available at your premises at
3 any time during working practice hours for inspection by
4 someone acting on behalf of the Director of Fitness to
5 Practise.

6 And, finally, no application for review of this order
7 shall be entertained within a period of 2 years from today's
8 date.

9 Those are the conditions for restoration to the
10 register. So we direct the registrar to restore Mr. Jellett's
11 name to the register.

12 MR. CORDINGLEY: Might I raise one point of clarification?

13 THE CHAIRMAN: Certainly.

14 MR. CORDINGLEY: Can I go to number 5.

15 THE CHAIRMAN: These are the conditions, but we will clarify them.

16 MR. CORDINGLEY: I am obliged. It reads, "At six-monthly intervals
17 commencing 1st April 2005 you are to ensure that an HPC
18 registered practitioner undertakes an audit" and so forth. To
19 my mind at any rate there is an ambiguity there. It is not
20 clear to me whether that audit is to take place initially on
21 1st April or on the termination of the six month period which
22 starts on 1st April and which would end on 30th September.

23 Can I ask you to clarify what was your intention.

24 THE CHAIRMAN: I better consult my Committee, but the intention is
25 the audit takes place at the end of that period. We are not

1 asking for it to be audited throughout the period.

2 MR. CORDINGLEY: I wonder, therefore, if you would like to
3 reconsider the wording, because I believe there is an
4 ambiguity there. I expressly drafted my own corresponding
5 paragraph which is (f) with a view to avoiding that ambiguity.
6 I use the words "within 14 days of the end of each six month
7 period, the first such period starting 1st April and ending
8 30th September 2005".

9 THE CHAIRMAN: We do not want any ambiguity. I cannot see any
10 ambiguity.

11 MR. CAPLAN: I think the position, I would have thought, is really
12 very clear, that the six month period is to start from 1st
13 April, otherwise it would be a complete, frankly, nonsense.
14 You are not inviting the audit on 1st April. You are inviting
15 the audit at the end of that first six month period.

16 THE CHAIRMAN: It says, "At six-monthly intervals commencing 1st
17 April". And then, "Within one month of the end of the
18 six-monthly periods" is what the second sentence starts with.
19 I cannot see any ambiguity. I would not like there to be any
20 ambiguity.

21 MR. CORDINGLEY: Well I would not like there to be any ambiguity
22 either, which was why I asked you to reconsider the wording,
23 to just make that point absolutely crystal clear.

24 THE CHAIRMAN: Mr. Legal Assessor?

25 THE LEGAL ASSESSOR: I am labouring under the disadvantage of not

1 having a copy of it.

2 THE CHAIRMAN: It is paragraph 5. We do not want there to be any
3 ambiguity.

4 MR. CORDINGLEY: I am not trying to be difficult. I just foresee a
5 difficulty. I am aware that we have somebody else looking over
6 your shoulders.

7 THE CHAIRMAN: Certainly our intention is that the audit takes
8 place at the end of the six months. We do not want it audited
9 throughout the six month period.

10 MR. CAPLAN: I think I can say this with some confidence, that as
11 far as the policing, to use a word that has been used in this
12 case before, that bites at the end of that six-month period,
13 30th September. The Director of Fitness to Practise will be
14 looking for the audit report following that period, and I
15 think you indicated it should be submitted within one month.

16 THE CHAIRMAN: Yes, to give time for the audit to be undertaken,
17 for the person to look at it, sign it and it to be posted to
18 the HPC, and that is why we agreed on a month.

19 MR. CORDINGLEY: These additional words would meet my point, if it
20 were to start "At the end of each six-monthly interval".

21 THE CHAIRMAN: We all agree to the spirit of the condition.

22 THE LEGAL ASSESSOR: There cannot be any harm in doing that, but
23 given that the second sentence begins with "Within one month
24 of the end of the six-monthly periods", if there is an
25 ambiguity there ---

1 MS. KLOET: Can I ask, is Mr. Jellett clear as to what is required
2 of him or not?

3 MR. CORDINGLEY: Mr. Jellett is clear now that it has been
4 clarified what is required of him. With respect, my duty is to
5 protect his interests and to make such submissions as I think
6 are appropriate in order to protect his interests. At the end
7 of the day you are the people who make the decisions.

8 THE CHAIRMAN: I certainly do not want to come back in a month's
9 time and go through the whole procedure again.

10 THE LEGAL ASSESSOR: There is no harm in writing what
11 Mr. Cordingley has suggested.

12 THE CHAIRMAN: What was your suggestion, Mr. Cordingley?

13 MR. CORDINGLEY: "At the end of each six monthly interval".

14 THE LEGAL ASSESSOR: Yes. So it will read, "At" and insert the
15 words "the end of each" and "intervals" will then become
16 "interval".

17 MR. CORDINGLEY: I am obliged.

18 THE CHAIRMAN: My panel members agree. Mr. Caplan, have you got
19 that?

20 MR. CAPLAN: Yes, I have already entered that on this copy, sir.

21 THE CHAIRMAN: I will ask Mr. Guthrie if he could amend that and
22 then I will sign it. We do not want to come back in another
23 two months' time for clarification of the conditions.

24 So those are the conditions imposed. The registrar will
25 be instructed to restore Mr. Jellett's name to the register

1 with the following conditions.

2 The hearing is now closed. Thank you, everybody.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ERROR: undefinedfilename
OFFENDING COMMAND: c

STACK: