

THE HIGH COURT

[2011 No. 492 S.P.]

IN THE MATTER OF THE DENTISTS ACT 1985

BETWEEN

JEHAD AL-SUKHUN

APPELLANT

AND

THE DENTAL COUNCIL

RESPONDENT

JUDGMENT of Ms. Justice Dunne delivered the 21st day of December 2011

This is an appeal from a decision of the respondent dated the 1st June, 2011, finding the appellant guilty of professional misconduct in respect of four allegations, whereby the respondent decided to erase the appellant from the Register.

Originally it was envisaged that there would be a full hearing with oral evidence being given from a number of witnesses but at the outset of the case it was indicated on behalf of the appellant that the focus of the appeal was being narrowed. The appeal was now to focus on the nature of the evidence given at the proceedings before the Fitness to Practice Committee and the documents produced and relied on at that hearing and the contention on behalf of the appellant that there was an absence of fair procedures afforded to the appellant at the hearing.

Background

The appellant qualified as a dentist in the University of Jordan in 1995. Thereafter, he completed a Masters of Science Programme (Oral Surgery) at the University of Manchester in 1997 and a PhD Programme in Dentistry in the area of maxillo facial surgery at the University of London in 2003. He was naturalised as a British citizen in January 2004. He worked briefly at Surrey University Hospital pursuant to a temporary registration on the Dentists Register during the period from the 27th March, 2002 to the 7th August, 2002. In November, 1997, he married a Finnish national and they resided in the UK for a number of years. The appellant applied for full registration in the UK but was refused. He and his wife then moved to Finland and the appellant applied for registration as a dentist in Finland. He also applied to Sweden and Estonia around the same time. He did this to maximise his ability to practice his area of specialisation in those countries.

It appears that the appellant was registered as a general dentist and as a maxillo facial surgeon in Estonia in the 8th September 2004. Following his registration in Estonia, he reapplied for registration in Finland apparently relying on the fact that he was registered in Estonia and he was successful, being registered in Finland in October 2004. He was also registered in Sweden.

Subsequently in 2009, the Finnish authorities revoked the registration of the appellant. This was apparently on the basis of information furnished to them by the General Dental Council in the UK to the effect that the Estonian registration had been obtained through reliance on a false document which stated that the appellant had been registered to practice as a dentist in the UK. The appellant's registration was also cancelled in Estonia and Sweden.

In the meantime, the appellant's marriage had broken down. He moved to this country and was registered here in February 2006. His registration application referred to the fact that he was registered as a dentist in Finland and Sweden. Ultimately, concerns arose in this jurisdiction in 2010 as to the registration of the appellant culminating in the decision of the respondent to erase the name of the appellant from the register.

Central to the decision to remove the appellant's name from the register in the various jurisdictions referred to is a document which appeared to show that the appellant had been registered as a dentist in the UK as opposed to having been temporarily registered there. This document appears to have been relied on by the Estonian authorities in registering the appellant there. The origins of that document and how it came to be in Estonia are in controversy but as I have said it is central to the decisions to remove the appellant's name from the register in the relevant countries.

A notice of inquiry under the Dentists Act 1985 was sent to the appellant in 2010. There was a preliminary hearing on the 8th December, 2010 and a hearing took place on the 9th February, 2011. The appellant did not give evidence at that hearing. The Fitness to Practice Committee found a number of allegations made against the appellant to have been proven and recommended erasure.

The Allegations

The first allegation was as follows:-

"You caused or permitted the registration of your name in the Register of Dentists pursuant to s. 26 of the Dentists Act 1985, on the 6th day of February, 2006, in circumstances where you knew that your registration had been procured:

(a) Dishonestly and /or

(b) By means of an application in which facts material to your application were concealed and/or were not disclosed."

The second allegation made against the appellant was not found to have been proved and I do not propose to refer to that. The third allegation stated as follows:

"You practised as a dentist in Ireland and/or held yourself out as a registered dentist in circumstances where the

registration and/or continued registration of your name in the Register of Dentists maintained pursuant to s. 26 of the Dentist Act 1985, had been procured in the manner set forth in allegations No. 1. and No. 2 below.

"Allegation No. 4 provided:

"In or about the month of September 2004, you submitted and/or caused to be submitted and/or relied upon a document you submitted to the Estonian registration authorities, which was fraudulent and/or a misrepresentation in order to obtain registration as a dentist in Estonia."

Allegation No. 5:-

"You procured your registration as a dentist in Finland in or around the month of October, 2004, by fraudulent acts and/or by acts constituting misrepresentation."

The allegations were found to have been proved against the appellant save for the allegation at No. 2. A recommendation was in the following terms:-

"Whereas it is a matter of the Dental Council to decide the ultimate sanction, this Committee will recommend erasure given the gravity of the allegations in the knowledge that Dr. Al-Sukhun could reapply in the future."

The issues

Before setting out the issues before me, I should point out again that the form of hearing on this appeal was not as originally anticipated. It was the expectation of the respondent that the appeal would be in the form of a rehearing. Witnesses were available to the respondent for that purpose. However, it was indicated at the start of the hearing by counsel on behalf of the appellant that the appeal was to proceed on the basis of the evidence given before the Fitness to Practice Committee. In other words, the appellant did not require the respondent to deal with the matter on the basis of oral testimony being provided to the court; that course was decided upon by the appellant shortly before the hearing before me. Counsel on behalf of the respondent explained that because it had been the respondent's intention to call oral testimony in relation to the matters at issue between the appellant and the respondent, no affidavit had been furnished by the respondent in respect of this matter taking issue with the appellant's case. Nevertheless, there was no objection to the matter proceeding before me in that way.

The first issue raised by the appellant in his application to cancel the decision of the respondent related to the fact that the appellant was not provided in advance of the hearing with statements of the witnesses intended to be called before the Fitness to Practice Committee (FTP).

The second issue raised relates to the fact that on the day of the hearing before the FTP there was a change in respect of the anticipated witness to be called, one Evi Lindmae. Instead the evidence in relation to the position in Estonia was given by her superior Mr. Ullar Kaljumae.

The third issue related to the fact that the evidence from a number of witnesses was taken by video link by means of Skype. This was criticised on the basis that the video link provided by means of Skype broke down on a number of occasions and thus the appellant had difficulty in dealing with those witnesses.

The fourth issue related to the fact that it appears that the complaint in respect of the appellant was initiated following the receipt of emails by the respondent from an unnamed individual. These emails were received by the respondent over a period of time. Although the contents to those emails were not put before the FTP, the FTP refused to reveal the identity of that individual. This individual did not appear or give evidence to the FTP. Nonetheless the appellant complains of the fact that the identity of that person was not made known in circumstances where it is contended that that person had knowledge of the Finnish system and might or could have had contact with any potential Finnish witness.

The next issue centres on the objections of the appellant as to the manner in which various documents were dealt with and the approach of the FTP to those documents. Mr. Kilfeather S.C. on behalf of the appellant stated that the substance of the appeal relates to this issue. Mr. Kilfeather made a number of observations in relation to the other points identified as issues. He accepted that he could not, at this stage, complain about the lack of witness statements in circumstances where it was now agreed that this hearing should take place on the basis of the transcript before the FTP. He also accepted that the issue in relation to the identity of the person who appears to have triggered the complaint was one upon which he did not lay great weight but relied on it simply as an example of a breach of fair procedures. The only other matter referred to at this point related to the question of the appropriate penalty in the event that this Court comes to the conclusion that the findings of the respondent in relation to the allegations should not be cancelled.

It will be seen therefore, that the principal complaint of the appellant relates to the use of the documents and the approach of the FTP to those documents at the hearing before it.

Criticism of the hearing before the Fitness to Practice Committee

Mr. Kilfeather examined the allegations made against the appellant. He noted the finding in respect of allegation No. 1, which was that he had caused his name to be registered in the Register of Dentists in this jurisdiction in circumstances where that registration had been procured dishonestly and/or by means of an application in which facts material to his application were concealed or not disclosed. The Committee found those allegations to have been proved beyond reasonable doubt and gave the following reason:-

"The registration was procured dishonestly, because Dr. Al-Sukhun's registration was procured materially on reliance of his registration in Finland. Which, in turn, was procured on reliance of his registration in Estonia, which was, in turn procured by reliance upon the GDC certificate of the 27/03/2000, which the Committee is satisfied was procured by Dr. Al-Sukhun dishonestly and used by him to enable his initial European registration in Estonia"

Mr. Kilfeather noted that the findings in respect of allegation No. 3 and No. 4 followed from the reasoning in respect of allegation No. 1. The question was posed by Mr. Kilfeather as to what evidence there was to show that the registration of the appellant in Estonia was procured by reliance on the GDC document. He submitted that the FTP ought not to have made this finding on the evidence. Mr. Kilfeather then proceeded to examine the transcript of the hearing before the FTP. First of all Mr. Kilfeather referred to the evidence of Mr. Kaljumae. Mr. Kaljumae in his evidence described the system of registration in Estonia. The documentation submitted to him by and on behalf of the appellant was before him. It included a fax purporting to come from London. Mr. Kaljumae in the course of his

evidence explained that the certificate, namely, a document purporting to come from the General Dental Council in the UK, was accepted as evidence of the appellant's entitlement to practice in the EU. Subsequently they discovered that his certificate in the UK related to a temporary registration and not full registration. As a result of the discovery that the document originally presented during the registration process in 2004 was a false document a decision was made to "expel" the appellant from the Register in Estonia. That decision has not been challenged by the appellant.

It was submitted by Mr Kilfeather that there was no evidence to the effect that the document at issue was handed to the Estonian authorities by the appellant or sent by the appellant. Further it was submitted that there was no evidence from the person who received the original documents from the appellant, namely Ms. Evi Lindmae. Given that the standard is one of reasonable doubt, she should have been available to give evidence and on that basis it was submitted that one could not draw the conclusion reached by the respondent beyond reasonable doubt. The fact that there was evidence before the FTP that, subsequent to the decision by the Estonian authorities that the registration procedure in 2004 involved the use of a false document, that the Estonian authorities requested the appellant to provide the original document and that same was not produced by the appellant, and that in those circumstances the Estonian authorities decided that the appellant should be expelled from the Register in Estonia was not sufficient. Mr. Kilfeather submitted that there was no evidence from Mr. Kaljumäe that it was the appellant who produced the document and therefore he strongly urged the view that the FTP in this jurisdiction could not have concluded that the document in question was produced by the appellant thereby procuring his registration in Estonia.

Mr. Kilfeather also examined the evidence of Ms. Pennanen. She gave evidence as to the position in Finland. The appellant had previously applied for registration in Finland but had been refused. She gave evidence to the effect that on the basis of the registration of the appellant in Estonia and his registration in Sweden that he was registered in Finland. Mr. Kilfeather had two criticisms of her evidence. He submitted that there was no evidence as to whether she was or was not the decision maker. Further, he pointed out that there was no evidence from her to the effect that the registration in that country was made because of the false document. In other words he disputed the finding of the Fitness to Practice Committee to the effect that the registration of the appellant in Finland was procured on the basis of the false document. Accordingly Mr. Kilfeather submitted that the evidence adduced from Ms. Pennanen fell short of establishing that the appellant procured his registration on the basis of the false document.

The final point made by Mr. Kilfeather related to the evidence of Mr. O'Flynn. He is the person who has been the Registrar of the Dental Council since July 2009. Complaint was made that he was not the person responsible for the registration of the appellant in 2006. The only person, who was appropriate to give evidence, was the person responsible for the registration of the appellant at that stage.

The only other point made by Mr. Kilfeather on behalf of the appellant related to allegation No.5, namely, that the appellant procured his registration as a dentist in Finland by fraudulent acts and/or by acts constituting misrepresentation in respect of which the FTP found that the allegation had been proved as to the fact that the appellant procured his registration in Finland by acts constituting misrepresentation and gave as their reason the same reasons as applied in relation to allegation No. 1. It was submitted that, again, there was no evidence to establish that the false document had been produced or submitted by the appellant.

One final point emphasised on behalf of the appellant was that when it came to his registration in Estonia, the appellant was registered not just as a dentist but as a maxillo facial specialist. On this basis it was emphasised that the exercise carried out in Estonia was not a rubber stamping exercise. The only other point made by Mr. Kilfeather that should be noted is that his instructions from the appellant are that the appellant did not submit the document at issue purporting to show that he was a registered dentist in the UK.

The Submissions on behalf of the Respondent

Mr. Murphy first examined the application made by the appellant to the Estonian authorities. He did so by referring to the transcript of evidence from p. 99 onwards. Mr. Kaljumäe in his evidence when asked about the document at issue noted it contained a licence number 10195 and appeared to emanate from the General Dental Council in the UK. Mr. Kaljumäe stated that the document was received from the appellant. He stated that the document was submitted together with the application as a copy. He confirmed that the document was furnished by facsimile. It emanated from a branch of Ryman's. The document was received by the Estonian authorities on the 2nd August, 2004. At that time the Estonian authorities did not require original documents to be produced. Mr. Kaljumäe confirmed that he was the person who made the decision to register the appellant. Mr. Kaljumäe then described how it came to be that the appellant ceased to be registered in Estonia. A letter was received from the General Dental Council in the UK from Mr. Higgs pointing out that the appellant did not have unrestricted registration as a dentist in the UK. When that came to light, the Estonian authorities concluded that the document originally presented during the registration process in 2004 was a false document and on that basis, an applicant who provides false data may be expelled from the State Register. The authorities in Estonia before reaching that decision asked the appellant for an explanation as to the document and the appellant responded by writing a letter indicating that everything presented by him was true. The Estonian authorities asked for the original of the document purporting to show that the appellant was registered as a dentist with the General Dental Council. As the original was never presented by the appellant, the decision was made to "expel" the appellant from the Register in Estonia in 2006 and the appellant did not appeal from that decision.

Mr. Murphy in reviewing the evidence of Mr. Kaljumäe emphasised that there never was an original document in the form provided to the Estonian authorities. Ultimately the decision of the Estonia authorities was communicated to the appellant. He did not challenge the decision.

Mr. Murphy then examined a series of documents furnished to the Estonian authorities in respect of the appellant's application in that jurisdiction. He commenced with a letter of the 1st August, 2004. In the course of that letter the following paragraph appears:-

"The General Dental Council in the UK recognised my primary degree and granted me registration to practice as a dentist (see enclosed documents)."

He submitted an application for registration in Estonia and in the document concerned at para. 3.1 the appellant having set out his qualifications also stated:-

"Licence to practice as a dentist in United Kingdom (General Dental Council) and Jordan (Jordan Dental Association)."

Further on in the application form, he was asked to specify: "number and term of validity of activity licence". Under this heading he referred to the licence to practice in Jordan and more importantly he referred to the following:-

"Licence 10195, General Dental Council (UK)."

At the foot of the application form, the appellant signed the following certificate: "I hereby certify that all information entered in this application is true". Appended to the application was a list of documents provided by the appellant and in that list reference was made to registration certificates granted by the Dental Authorities in the UK and Jordan.

The document at the heart of these proceedings is a document headed "General Dental Council". It gives the address of the General Dental Council and then provides as follows:-

"Certificate No. 10195

Date: 27th March, 2000.

This to certify that:

Mr. Jehad Al-Sukhun having shown to the satisfaction of the Registrar that he holds the Diploma of

BDF Jordan 1995

Be registered in the Dentists Register under No. (10195) and allowed practice dentistry in United Kingdom."

A signature then appears and underneath that the words "for Registrar" are written together with the address of the General Dental Council. It is interesting also to examine the top of that document. It bears the information that appears on a facsimile document namely the date and time of transmission and phone number from which the fax was sent. It also bears the name Ryman which is a well known chain of stationers in the UK. The number of the page is apparently p. 23 and a number of other documents were furnished to the Estonian authorities by the same means including the letter of the 1st August, 2004, the list of documents to which I have already referred, a CV in respect of the appellant, copies of his academic transcripts and degrees.

Mr. Murphy also referred to a document submitted by the appellant to the Dental Council in this jurisdiction. In the course of that document at p. 4 a reference was made by the appellant to the fact that his primary degree was from the University of Jordan and he went on to state: "the degree was recognised for the purpose of practicing dentistry the Swedish and Finnish health authorities and I was given full, unrestricted registration (please see attached documents)". On that basis it was submitted by Mr. Murphy that the appellant was aware of the distinction between a restricted and full registration.

Mr. Murphy emphasised the rules of evidence in relation to the production of public documents. He referred to a number of passages from McGrath on *Evidence* and in particular para. 5-114 which states:-

"Therefore public documents are considered to be sufficiently reliable to be admitted as proof of their contents. The requirement of necessity is satisfied by the possible unavailability through death or illness of the public official who brought the document into being and, more generally, by the administrative inconvenience of requiring public officials to attend court to give evidence of the matters recorded in the document. There is also the added consideration that, in most instances, the public official is likely to have little if any recollection of the matters the subject of the public document independent of the document itself. The public document is, therefore, the best evidence of the matters recorded therein."

He also referred to the first sentence in para. 5-114 to the following effect: "At common law, there is a wide ranging exception to the hearsay rule that permits the admission of public documents as *prima facie* evidence of fact stated therein."

Mr. Murphy then went on to say that it was uncontested in this case that the appellant made an application, supplied documentation and that the documentation supplied by the appellant, stated that he was a registered dentist in the UK. The evidence of Mr. Higgs established that the General Dental Council document was false. The fact that that document was false has never been disputed. There is nothing to say that public documents have to be proved by a specific witness and the requirement in relation to the burden of proof does not affect the situation that applies in this case. There is no evidential gap as contended for on behalf of the appellant. The evidence of the Finnish witness Ms. Pennanen is of relevance. She was involved in the annulment procedure in Finland. The decision to annul the registration of the appellant in that jurisdiction was based on the fact that it is possible under Finnish law to correct a decision based on false information. The appellant appealed the decision to annul the registration of the appellant to the Helsinki Administrative Court which affirmed the decision of the Finnish authorities. In the course of his submissions, Mr. Murphy then referred to the decision made in Finland by the National Authority for Medical Legal Affairs. In the course of that decision it was noted that the General Dental Council (UK) had informed the national authority for medical legal affairs in July of 2006, that the certificate No. 10195 had been falsified and that the decisions in Estonia and Sweden had been made on the basis of the falsified General Dental Council. Thus, it was contended by Mr. Murphy, there was clear evidence before the respondent as to the documentation relied on by the Finnish and Estonian authorities.

I was referred also to the evidence of Mr. Higgs from the General Dental Council in the UK. He carried out an examination of the Register of the General Dental Council in the UK in relation to the appellant and was in a position to give evidence that the appellant never held a full and unrestricted registration with the General Dental Council. The only type of registration he held was the temporary registration under supervision between March and August 2002.

He stated that the document at issue was not one on file at the General Council, that there was no record of it having been issued and that it was not a standard document and contained information which was incorrect.

Mr. Murphy concluded his submissions by acknowledging that the onus of proof rested on the respondent. However, he indicated that a number of public documents had been proved appropriately and fully by the relevant officials. The annulment process that took place in other jurisdictions made it clear that the appellant was annulled because of the falsification of the document. If the evidence was probative of that fact, it was admissible and in those circumstances the respondent was entitled to make the decision under appeal. It was submitted that the respondent's proofs were fully in order in relation to the matter. There had been a domino effect in relation to the registration of the appellant. The Estonian decision brought into existence the application of the EU Directive. That decision was tainted and as a consequence all of the other decisions which followed on from the making of that decision were likewise tainted. Therefore the respondent was entitled to have made the decision herein.

Decision

I have read the transcript of evidence and I have considered the documentation contained in the booklet of documents.

The first point raised on behalf of the appellant related to the issue of fair procedures and the fact that the inquiry in this case appeared to have been initiated after the receipt of emails from an unnamed individual. The appellant was anxious to know the identity of the author of the emails and to ascertain whether the person concerned had any contact or connection with any of the witnesses, particularly those from Finland. The emails in question were not going to be produced before the Fitness to Practice Committee and were not going to form part of the case against the appellant. In those circumstances the Fitness to Practice Committee ruled that the name of the author of the emails was not going to be revealed.

In the course of argument in relation to this matter I had some discussion with Mr. Kilfeather in relation to the privilege that attaches to an informer. I referred in that context to the decision in the case of *Director of Consumer Affairs v. Sugar Distributors* [1991] 1 I.R. 225. It seems to me, that the author of the emails comes within the type of category which has come to be described as informer privilege and in such circumstances the identity of the informer is not something which must be disclosed. In the context of this case, I see no breach of fair procedures in the decision of the Fitness to Practice Committee not to disclose the identity of the author of the emails. There is a useful passage on the subject of informer privilege in the *Criminal Process* by Thomas O'Malley at para 18.18 to para. 18.20, but I do not think it is necessary to set out the passage concerned as I am satisfied that there was no breach of fair procedures in failing to disclose the identity of the author of the emails.

Another point was made in the course of the submissions on the absence of fair procedures in that the manner in which the evidence was taken via Skype was unsatisfactory and that it made it difficult to cross examine witnesses when the communication broke down from time to time. In all four witnesses were heard. Of those, three gave evidence by Skype. The transmission did break down in the course of the evidence. However, having read through the entirety of the transcript, it seems to me that the breaks in transmission were minor in nature, infrequent and not such as to unduly interfere with the cross examination of any witnesses. The one thing that can be said for sure is that there is no suggestion at all in the transcript to the effect that the appellant or his legal team were in any practical way hampered in the conduct of the hearing before the Fitness to Practice Committee. It is worth noting that the respondent and its legal team had to face the same problem.

The next point that was made on behalf of the appellant related to the substitution of Mr. Kaljumae for Ms. Lindmae. It was anticipated by both sides that Ms. Lindmae would be the witness giving evidence. She was substituted at the eleventh hour. Mr. Kaljumae is the Director General of the Estonian Health Care Board which is responsible for the registration of professionals including dentists and other medical professionals. His evidence makes it clear that he was very much involved with the registration of the appellant. It seems to me that there is no basis on which it can be suggested that he was not an appropriate witness to give evidence in relation to this matter. There is nothing in the transcript to suggest that the substitution of Mr. Kaljumae as opposed to Ms. Lindmae created any real difficulty for the appellant. Mr. Kaljumae was a witness who was in a position to give full evidence about all of the events that occurred in Estonia. One of the curious aspects of this case is the fact that it was not shown who faxed the false document to the Estonian authorities but there is nothing to suggest that Ms. Lindmae could have thrown any greater light on this issue than that provided by Mr. Kaljumae. It is inevitable that in the conduct of an inquiry such as this, there may be difficulties from time to time in having a particular witness available to give evidence. On the facts of this case, there does not appear to be any evidential deficit or disadvantage as a result of the substitution of the witness. The most that could have been said by her is that when she met the appellant in person, he did not produce the false document. However, it was never suggested that he produced it in person. It has always been the case that it was transmitted by fax. In the circumstances it does not seem to me that there is any basis for suggesting that the substitution of the witness amounted in some way to a breach of fair procedures.

Mr. Kilfeather then turned to an examination of the evidence in respect of the allegations, particularly that in relation to allegation No. 1, from which the findings in respect of the other allegations flow. He contended that there was an evidential gap in establishing beyond reasonable doubt that the appellant's registration in Estonia was procured on the basis of the GDC document. The evidence of Mr. Kaljumae is central to that finding. In his evidence he described the receipt of the application from the appellant. It was signed by the appellant on the 4th August, 2004. His application certified that the information contained therein was true. In the course of the application form, he referred to licence 10195 General Dental Council UK. A number of documents were supplied by the appellant in person and it is clear that he attended personally in Estonia for the purpose of making the application. It is also the case that a number of documents were furnished to the Estonian authorities by Facsimile. At that time, Mr. Kaljumae indicated that it was not necessary to furnish the originals of documents to the Estonian authorities.

Mr. Kaljumae made the decision to register the appellant in September, 2004. He confirmed that in doing so, he considered all of the documents submitted by or on behalf of the appellant. Sometime later correspondence was received from Mr. Higgs of the GDC.

Mr. Kaljumae confirmed that in 2004, the appellant would not have been entitled to be registered in Estonia based on his primary degree from Jordan. He would have had to do an examination. Registration in another EU country would have benefited his registration. He confirmed that the GDC certificate was accepted as evidence of entitlement to practice within the EU and on that basis a final decision would be made. The correspondence from Mr. Higgs indicated that the appellant did not have unrestricted registration. Mr. Kaljumae was very surprised to discover this. It was concluded subsequently by the Estonian authorities that the document presented as the GDC certificate was a false document. Ultimately on that basis, the appellant was expelled from the Estonian Register. The appellant never produced an original of the certificate at issue. He lodged no appeal in Estonia. He confirmed that registration in an EU country was not conclusive but was supportive of an application. The Estonian authorities accepted the copy of the GDC document or as he put "we trusted that document from General Dental Council as a copy, since we had already experience with such kind of documents". He then dealt with the registration of the appellant in the Specialist Register. The evidence of Mr. Kaljumae is very clear.

It is fair to say that there was no evidence before the Fitness to Practice Committee as to who furnished the document at the heart of these proceedings to the Estonian authorities. Having said that, it was included with a number of documents submitted by facsimile to the Estonian authorities including the application for registration in Estonia; also included in the documents furnished by facsimile was the letter of the 1st August, 2004. Reference has already been made to the letter in which the following paragraph appeared: "The General Dental Council in the UK recognised my primary degree and granted me registration to practice as a dentist (see enclosed documents)". There was also the email of the appellant to the Estonian authorities of the 23rd July, 2004, in which the appellant stated: "I have practiced as a dentist in the UK and Finland".

I think it is important to consider again the terms of allegation No. 1. It was in the following terms:

"You caused or permitted the registration of your name in the Register of Dentists pursuant to s. 26 of the Dentists Act 1985, on the 6th day of February, 2006, in circumstances where you knew that your registration had been procured:

(a) Dishonestly and/or

(b) By means of an application in which facts material to your application were concealed and/or were not disclosed."

The finding of the Committee in relation to that allegation was in the following terms:

"The Committee finds these allegations are proved beyond reasonable doubt in that the Registration was procured materially on reliance of his registration in Finland, which, in turn, was procured on reliance of his registration in Estonia which was, in turn procured by reliance upon the GDC certificate of the 27/03/2000, which the Committee is satisfied was procured by Dr. Al-Sukhun dishonestly and used by him to enable his initial European registration in Estonia. The Committee has accepted the evidence of Registrar's witness to this effect."

I have no doubt whatsoever that the FTP and ultimately the respondent in accepting the recommendation of the FTP were entitled to make the findings set out above in respect of the evidence before the FTP. There was an abundance of evidence on foot of which the Fitness to Practice Committee was entitled to come to the findings set out above. Having regard to the evidence given, in particular by Mr. Kaljumäe but also having regard to the documentation which was submitted to the Estonian authorities, I have no doubt whatsoever that the GDC certificate or document was crucial to the appellant's success in being registered in Estonia. In my view there is no evidential gap disclosed. The findings made by the FTP were open to them to make on the evidence before the FTP. There is no basis for upsetting the findings of the FTP.

In those circumstances, it seems to me that I must reject the appellant's application to cancel the decision of the respondent herein. It was indicated to me at the outset of the hearing that in the event that the appellant was unsuccessful in the application to have the decision cancelled, that counsel wished to address the issue of sanction. I will hear the parties further on this issue.