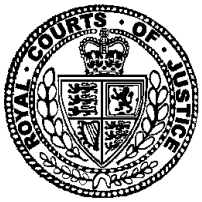

Neutral Citation Number: [2026] EWCA Civ 1206

Case No: CA-2026-000794

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Richard Clayton KC (sitting as a Deputy High Court Judge)
AC-2024-LON-000537

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/09/2026

Before :

LORD JUSTICE PHILLIPS
and
LADY JUSTICE FALK

- -

Between :

SULEMAN PATEL	**Applicant**
- and –	
GENERAL OPTICAL COUNCIL	**Respondent**

- -
- -

Matthew Winn-Smith (instructed by **Akin Palmer LLP**) for the **Appellant**
Samantha Paxman (instructed by **Browne Jacobson LLP**) for the **Respondent**

Hearing date: 2 September 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday, 22 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Phillips:

1. On 5 January 2024, following a 17-day hearing, the Fitness to Practise Committee ("the FPC") of the respondent ("the GOC") determined that the applicant, Mr Patel, was guilty of serious misconduct involving dishonesty and that his fitness to practise as a registered optometrist was currently impaired. Mr Patel was suspended from practice for 9 months, but that suspension was not to take effect pending any appeal.

2. Mr Patel appealed that determination to the High Court pursuant to s. 23G(3) of the Opticians Act 1989, the appeal being heard in the Administrative Court on 20 November 2024 by Richard Clayton KC ("the Deputy Judge"). By a written judgment handed down on 17 March 2026 the Deputy Judge dismissed the appeal. To date, however, no order has been made following that decision, with the consequence that the suspension imposed by the Committee has still not taken effect.

3. Mr Patel now applies for permission to appeal against the Deputy Judge's decision by way of a second appeal. Although an attempt was made to file the Appellant's Notice in good time, it appears that certain required documents were not filed successfully, as a result of which the application was one day out of time when issued. No point has been taken by the respondent in this regard, so we granted the required extension of time.

4. The sole ground of appeal is as follows:

> "The general handling of the appeal by the [Deputy Judge] and the court under his direction raises serious concern that the [applicant's] appeal has not been dealt with to the standard to be expected of the court such that the judgment is not reliable".

5. On reviewing the application on paper, I understood this ground of appeal to be an assertion that the decision below was unjust because of procedural irregularity (CPR 52.21(3)(b)), rather than an allegation that it was wrong (CPR 52.21(3)(a)). That understanding was reinforced by the skeleton argument in support which made no attack on the Deputy Judge's reasoning or decision, but raised criticisms of the conduct of the hearing before him and the subsequent process of production of his judgment and orders.

6. I directed that the application be listed for oral hearing (with no attendance by the GOC required), inviting submissions from Mr Patel on how the procedural irregularities identified in the application were said to have given rise to injustice to Mr Patel given that there was no attack on the merit of the judgment ultimately delivered.

7. At the hearing Mr Winn-Smith, counsel for Mr Patel, confirmed that the sole ground of appeal was that the decision was unjust by reasons of procedural irregularities. In the course of his submissions, however, Mr Winn-Smith sought to challenge the Deputy Judge's substantive reasoning and decision, contending that the alleged errors were arguably "injustice" resulting from the procedural irregularities. We refused to permit that line of argument, holding that it was not open to Mr Patel to make such challenges without advancing them by way of grounds of appeal or otherwise giving proper notice.

No draft amended grounds of appeal were put before us, but it would in any event have been unfair to permit new grounds to be advanced at such a late stage and when the GOC had had no opportunity to respond in writing and had not attended, through Counsel, with a view to meeting such arguments.

8. I would refuse permission to appeal for the following reasons.

The relevant procedural history

The hearing of 20 November 2024

9. The hearing of 20 November 2024, of which we have a full transcript, was conducted remotely whilst the Deputy Judge was reclining in bed at home as he was recovering from surgery on a ruptured Achilles tendon. At a hearing of consequential issues on 20 January 2026 (referred to below) he explained that he had returned from hospital on 19 November, but had been advised that he could not stand for 8 days. He clarified that at the time he was taking standard painkillers (paracetamol) and had "cleared the position with the senior staff at the Administrative Court".

10. At the start of the hearing the Deputy Judge stated that he was "sitting prone in bed which makes it pretty difficult, I suspect, for me to navigate some of the PDF bundles. I have, however, read all the relevant material...We will just have to see how we go". Shortly afterwards the Deputy Judge informed the parties that he was "holding my computer and I just cannot take a note of what is going on", indicating that he would ask for a short supplementary skeleton dealing with legal points, including paragraph references. Later he said "This has turned out to be far more difficult, I'm afraid, than I had anticipated because I am handicapped by an ability [sic] to write anything down". However, at several points thereafter the transcript records the Deputy Judge indicating that he was taking a "proper note" of what was being said.

11. Also early in the hearing the Judge noted that it was not an easy case, that it was not a two-hour case (as estimated) and that it was "testing my stamina significantly". Towards the end of the hearing the Deputy Judge stated that he was getting tired and that adjourning for a five minute break "would be more effective". The transcript records that there was then a short adjournment.

12. At the end of the hearing the Deputy Judge apologised "for the problems at the beginning" and explained that "it has been quite tricky but not impossible to deal with the hearing largely from a non-sitting position".

13. The Deputy Judge informed the parties that he would not deliver a reserved judgment, but would read out a decision remotely, which he would then correct and amplify. He indicated that no attendance was required.

The hearing of 6 December 2024

14. At a further remote hearing on 6 December 2024, which the parties did attend, the Deputy Judge delivered a "draft" oral judgment. He informed the parties that a written copy would be provided for them to submit a list of corrections, following which a formal hand down of the final judgment would be arranged. Neither party has produced a note of the hearing, so the precise terms of the "draft" oral judgment are not known.

15. There was no argument as to consequential matters at this hearing and no order was made. It seems to me that the sole purpose of the hearing was to obtain a transcript of the Deputy Judge's draft judgment, rather than it being typed out of court in the usual way.

Events in 2025

16. In January 2025 the GOC wrote to the court seeking the Deputy Judge's written draft of the judgment. In February 2025 the court asked the parties for a draft order from the 6 December 2024 hearing, but the parties were in agreement that no orders were made.

17. Between April and September 2025 the GOC continued to chase for the written draft judgment. Eventually a further hearing was listed for 3 December 2025.

18. In the course of preparation for that hearing Mr Winn-Smith came across what purported to be an approved judgment in the matter on Westlaw, complete with Neutral Citation number. It was not, however, to be found in the National Archives and had not been provided to either party. It was duly sent by Mr Patel's lawyers to the GOC on 2 December 2025 and an adjournment of the hearing listed for the next day was agreed.

19. On 22 December 2025 the parties sent a schedule of errata to the court in relation to the judgment found on Westlaw.

The "Consequentials" hearing of 20 January 2026

20. The further hearing was re-listed for 20 January 2026. On 16 January Mr Patel's solicitors expressed concern to the court that the parties still did not have a final version of the judgment and that the agenda for the hearing was unclear. The only response from the Administrative Court was an email informing the parties that the hearing "has now been changed to [a] Consequential hearing" before the Deputy Judge.

21. At the hearing on 20 January 2026 the Deputy Judge did not hand down a final version of his judgment. He stated that he had not received any of the emails chasing his written judgment. He could not remember what had happened with the draft judgment, but that when he "got the intimation that people were unhappy" he wrote to the transcribers to remove it from all official sources. He noted that there were "lots of errors" in the draft, but they were all typographical, none of substance.

22. The Deputy Judge then dealt with Mr Patel's application for permission to appeal, refusing it on all grounds advanced, including criticisms of his conduct of the hearing on 20 November 2024. In an order dealing with consequential matters (but not disposing with the appeal itself) the Judge extended time to apply to this Court for permission to appeal until 21 days after receipt of the final written judgment and directed that the parties lodge further written submissions by 23 January 2026 addressing (i) the court's power to remit the question of sanction to the FPC due to matters that had arisen subsequent to the FPC's decision; (ii) costs; and (iii) a stay of execution pending appeal to this Court. An agreed draft of that order was filed by the parties on 27 January 2026 and sealed by the court on 11 March 2026.

Further steps

23. The parties duly filed further written submissions on 23 January 2026.

24. The Deputy Judge's judgment on consequential matters was provided to the parties on 12 March 2026, requiring a list of corrections by 18 March 2026 and any further submissions by 1 April 2026.

25. On 16 March 2026 both parties emailed the court pointing out that they had still not received the final written judgment from the hearing on 6 December 2024, nor a determination of the matters on which submissions were submitted on 23 January 2026.

26. On 17 March 2026 the court sent the parties the final version of the judgment on the substantive appeal, still bearing the date 6 December 2024.

27. The next day the parties submitted a schedule of errata in relation to the draft consequentials judgment as directed.

28. On 1 April 2026 Mr Patel filed his Appellant's Notice in this Court.

29. On 8 April 2026 the GOC again pointed out to the court that issues remained unresolved, including costs, and re-sent the submissions of 23 January 2026.

30. Notwithstanding that the issues addressed by those submissions remained unaddressed by the Deputy Judge, on 14 April 2026 the court emailed the parties stating "The Judge was wondering if he could expect a draft order from counsel".

31. It appears that the parties failed to respond to that message. To this day there is no order disposing of the appeal to the Deputy Judge, no determination of the outstanding consequential issues, including costs, and no final version of the judgment delivered on 20 January 2026.

Mr Patel's contentions

32. Although not specifically identified, Mr Patel's skeleton argument appeared to complain of the following matters as procedural irregularities:

    i) the practical difficulties the Deputy Judge had at the hearing of 20 November 2024 with reading PDFs and taking notes;

    ii) the apparent fact that the Deputy Judge was not in "an ideal state" to hear the case, as evidenced by his reference to the case not being easy and to being tired;

    iii) the difficulties and delays in the production of judgments and orders; and

    iv) the overall appearance that the case was not handled properly and reliably, in breach of the principle recognised in *R v Sussex Justice, ex p McCarthy* [1924] 1 KB 256 at p. 259 that justice "should manifestly and undoubtedly be seen to be done".

33. In his oral submissions, Mr Winn-Smith did not pursue the first point, and rightly so. Although the Deputy Judge indicated at the outset of the hearing on 20 November 2024 that he might have difficulties navigating PDFs and taking notes, it is apparent that he overcame those difficulties, albeit that it may have been a slower and more taxing exercise than usual for him. Further, there is no suggestion made that he failed to take on board a document or a submission.

34. Mr Winn-Smith did maintain (as a subsidiary argument) the second point listed above, namely, that the Deputy Judge was not in a fit state to cope with the hearing, referring to his recorded comments. I see no merit in that point. Judges frequently observe that cases are more difficult, complex, or heavier than expected, but that is not an acceptance that they cannot cope with them. Equally, there is nothing wrong in a judge recognising that a break is needed, provided that the break is then taken. In my judgment the transcript shows that the Deputy Judge was fully engaged with the materials and the arguments throughout the hearing and had a full grasp of them. A draft judgment was given shortly after the hearing, of which no substantive criticism is being made. Even though the circumstances of the hearing were unusual and certainly less than ideal, I see no injustice to Mr Patel in what occurred at the hearing.

35. Mr Winn-Smith's main contention, however, was the third point listed above, namely, that Mr Patel suffered injustice through the delay in receipt of the Judge's final written judgment on the appeal, eventually provided to the parties 16 months after the hearing. He relied upon the speech of Lord Hope of Craighead in *Porter v Magill* [2002] 2 AC 357 at [106], confirming that both at common law and under article 6(1) of the ECHR a party is entitled to determination of their civil rights within a reasonable time and that there was no requirement to show prejudice to establish a breach of that right.

36. A breach of that undoubted right does not entail, however, that a judgment or order should automatically be set aside for delay in its production, regardless of the circumstances. That would not be a proportionate outcome where the decision is otherwise correct and no injustice is caused by the delay (other than that inherent in the delay itself): a re-hearing would only lead to further delay for no arguable benefit. As explained by Sir Geoffrey Vos C in *Bank St Petersburg PJSC* v Arkhangelsky [2020] EWCA Civ 408 [2020] 4 WLR 55 at [78-79], the question is whether the delay is, in itself, enough to require a retrial, which in turn depends on whether the judge's conclusions are unsafe as a result of the delay. At [80] Sir Geoffrey cited the dictum of Lord Scott of Foscote in *Cobham v Frett* [2001] 1 WLR 1775, 1784, that, if excessive delay is to be relied on in attacking a judgment, "a fair case must be shown for believing that the judgment contains errors that are probably, or even possibly, attributable to the delay. The appellate court must be satisfied that the judgment is not safe and that to allow it to stand would be unfair to the complainant".

37. In the present case the Deputy Judge gave reasons orally within 16 days of the hearing. Whilst there is no note of the precise terms of those reasons, it has not been suggested that they differed in substance from the draft judgment found on Westlaw or the final version handed down on 17 March 2026. Further, Mr Patel is not in a position to assert an error in the final judgment, and certainly none that has resulted from delay.

38. It follows that, although the production of the final judgment in this case was fraught with issues and deprived the parties of their right to a prompt decision (a right which is still being breached by the failure to produce an order), there is no arguable basis for setting the judgment aside.

39. Mr Winn-Smith also advanced the argument that justice had not been seen to be done in this case by the overall conduct of the matter. I agree that there are a number of unusual and unsatisfactory aspects to the procedures adopted. But at the end of the day, there was a full and careful consideration of Mr Patel's appeal by the Deputy Judge and prompt and unobjectionable reasons for its dismissal. The surrounding irregularities

have no doubt been frustrating, but have ultimately resulted in one objectionable aspect only, which is delay. Any injustice arising from that delay could not be cured by allowing Mr Patel's appeal to this Court and ordering a remittal of the matter.

Conclusion

40. Whilst there were and continue to be a number of procedural irregularities in the conduct of this matter before the Deputy Judge, there is no real prospect of an appeal succeeding as there is no arguable case of injustice. Neither is there an important point of principle or practice or some other compelling reason to grant permission to appeal.

Postscript

41. The Deputy Judge is to be commended on his willingness to hear a case whilst recovering from injury and his fortitude in doing so in bed, in trying circumstances. However, I consider that, save in exceptional circumstances, such as great urgency or where a matter can only be heard by a specific judge, a judge should only undertake a hearing (and a hearing should only be listed before them) when they have the essential tools to undertake the task properly and professionally. In addition to ready access to the documents in the case (electronically and/or on paper), those must include proper working space and an ability to make electronic or written notes without impediment. That is necessary both so that the judge can properly perform their function, but also so that they are seen to be able to do so.

42. Although it did not cause any injustice in the present case, in my judgment the Deputy Judge should not have sat on the present case whilst encumbered by his injury. There was no great urgency and other arrangements could and should have been made. I do not say that a judge should never undertake a hearing whilst in bed or otherwise than at a desk or table, but it should be a last resort, where the matter cannot sensibly be listed before a judge sitting in the conventional way. Even then, of course, a judge should not sit if they are suffering from illness or infirmity that impairs their ability to hear the matter fairly and properly.

43. I would add that it is incumbent on a judge who has provided a draft judgment to the parties to oversee and ensure the finalisation of that judgment and its formal handing down. Further, the practice of reading out a draft judgment orally, which I have not come across before, should be discouraged as it is apt to lead to confusion, as it did in the present case. Again, no injustice was caused in the present case, but the delays and uncertainties that resulted were unfortunate.

44. It is also unacceptable that repeated emails from the parties to court seeking to finalise the judgment and the order went unanswered, and (in the case of consequential matters and the final order on the appeal below) continue to go unanswered. It may be that those emails have not reached the Deputy Judge, but in my judgment a judge should in any event make arrangements (through a clerk if not personally) to follow up after any decision to ensure that any further submissions are received and that an appropriate order is made.

45. In view of the general comments above, I would direct that this judgment may be reported and cited notwithstanding that it is delivered on an application for permission to appeal.

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Lady Justice Falk:

46. I agree.

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