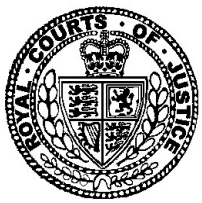

Neutral Citation Number: [2018] EWHC 3582 (Admin) Case No: CO/4172/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Administrative Court in Manchester Manchester Civil Justice Centre 1 Bridge Street West, Manchester, M3 3FX

Date: 20/12/2018

Before :

THE HONOURABLE MRS JUSTICE FARBEY DBE

- -

Between :

THE QUEEN Claimant on the application of DR JOANNE RUDLING - and -

Defendant

GENERAL MEDICAL COUNCIL

- -

Stephen Brassington (instructed by **Eastwoods Solicitors Ltd**) for the claimant

Jenni Richards QC (instructed by **Jane Meloy, General Medical Council**) for the defendant

Hearing date: 11 December 2018

- -

Judgment Approved

The Honourable Mrs Justice Farbey DBE :

Introduction

1.
This is an application for judicial review of a decision of an Investigation Committee of the General Medical Council to admit and consider new material concerning the claimant's probity during the course of regulatory proceedings. The Committee treated the new material as expanding an existing allegation that the claimant's fitness to practice was impaired. The claimant contends that the material amounted to a new allegation and that consequently the GMC was under a duty to grant her the procedural rights that arise before a new allegation is referred to a Committee for its decision.

2.
The particular rights in question are contained in rules 7 and 8 of the GMC (Fitness to Practise) Rules 2004 ('the Rules'). They include the right of a practitioner under investigation to make written representations to Case Examiners (rule 7(1)(c)) and the opportunity to have Case Examiners

recommend that the practitioner be invited to comply with undertakings as opposed to being liable to a more serious sanction (rule 8(3)). Before I turn to the detail of the relevant statutory provisions and the Rules, I shall set out the essential facts.

The Facts

3.
The claimant is a General Practitioner who was involved with the case of Patient A who tragically died of Addison's disease on 8 December 2012 aged twelve. Following concerns raised by Aneurin Bevan Health Board, the GMC's Registrar referred the claimant's case for consideration by Case Examiners. Having done so, the Registrar wrote to the claimant on 17 June 2013 giving details of the allegation that her fitness to practise was impaired, as required by rule 7(1)(a) ('the rule 7 letter'). The matters which appeared at that stage to raise a question of impairment were listed. In broad terms, they concerned two different aspects of the claimant's conduct: (i) clinical competence when Patient A and his mother consulted the claimant on 7 November and 12 November 2012; and (ii) record-keeping in relation to a telephone discussion with Patient A's mother on 7 December 2012. I do not need to deal with the concerns about clinical competence which are not relevant to the issues which I must decide. As to record-keeping, the GMC alleged that the claimant:

i.
Failed to assess Patient A's medical records at the time of the telephone discussion in order to ensure an appropriate assessment of Patient A's presenting symptoms;

ii.
Failed to make a contemporaneous and appropriate record of the discussion; and

iii.
Recorded the discussion in Patient A's medical notes on 10 December 2012 without making it clear on the face of the record that this was a retrospective entry.

4.
The rule 7 letter informed the claimant that she was being given an opportunity to respond in writing. By a letter dated 15 July 2013, the claimant's previous solicitors responded on her behalf. They provided a detailed reply to the matters raised against the claimant. In relation to the telephone discussion with Patient A's mother, the claimant confirmed that it had taken place on the afternoon of Friday 7 December 2012. She had by that time finished her appointments. Works to the flooring of the building were due to take place over the weekend and so she had unplugged her computer and phone. When Patient A's mother telephoned, the claimant was in the reception area. As there were no patients in the surgery building, she decided to speak to the mother in the reception. The solicitors' letter stated:

'Dr Rudling was aware that [Patient A's] mother had telephoned earlier in the day for advice and had spoken to [another doctor] who had provided advice as she had seen a summary of the call that morning. Dr Rudling accepts, with the benefit of hindsight, however, that she should nevertheless have looked at the records at the time she spoke to the mother…

Dr Rudling regrets that she did not follow her usual practice of making a note of the conversation and her advice that evening. This was mainly because her computer had been disconnected and the receptionists were working on their computers. This was an isolated occurrence and it is Dr Rudling's

usual practise to take calls from patients or their relatives in her room with the computer records on the screen in front of her.'

5.
The letter went on to say that Dr Rudling's intention was to make a record of the telephone conversation on the following Monday (i.e. 10 December) when she would have access to her computer. The letter continued:

'On 10 December she backdated the entry of the conversation with [Patient A's mother]… She accepts with the benefit of hindsight that it is better practice to make it absolutely clear on the face of the record that a retrospective entry is being made and the date when the record is being made.'

6.
By way of mitigation, the letter set out the claimant's reflections on the circumstances leading to Patient A's death. The solicitors submitted that the GMC's concerns related to a single patient in an otherwise unblemished career and that the acknowledged errors were not sufficiently serious to amount to misconduct. The claimant was said to have demonstrated insight into her shortcomings both in accepting responsibility for her errors and in remedying those shortcomings.

7.
On 2 August 2013, the Registrar wrote to the claimant to inform her that the Case Examiners had considered all relevant information and reached the provisional view that the case could be concluded with a warning. The claimant was invited to submit any final comments before a decision was made.

8.
Her previous solicitors replied in detail on 27 August 2013 stating that the claimant was not prepared to accept a warning which would be neither appropriate nor proportionate. They submitted that the case should be closed with no formal response or action from the GMC because it involved an isolated error of clinical judgment and 'a single error in relation to a note of a telephone conversation'.

9.
By a letter dated 1 October 2013, the Registrar informed the claimant that, having considered her comments, the Case Examiners had decided to refer the case to the Investigation Committee for a public hearing. The Case Examiners had noted the steps taken by the claimant to remediate and that no other concerns had been expressed by her employer. She had no other history with the GMC. In the view of the Case Examiners, there was no realistic prospect of establishing that the claimant was not fit to practise. It was nevertheless the view of the Case Examiners that the claimant's behaviour represented a 'significant departure from the standards to be expected of a professional doctor such that public confidence in the profession might be undermined if the GMC took no action'.

10.
The hearing before the Investigation Committee was fixed for 7 November 2013 but adjourned pending the outcome of a police investigation which led to criminal charges against the claimant. She was subsequently tried but acquitted of gross negligence manslaughter after the judge (Nicola Davies J as she then was) found that there was no case to answer. The Prosecution offered no evidence on a charge of attempting to pervert the course of justice. The charge related to the claimant's explanation of the circumstances in which she came to make the retrospective entry in Patient A's record and the content of what she put on that record. The criminal proceedings concluded on 24 June 2016.

11.

In the course of their investigation, the police had obtained evidence from Samuel Earl who was an IT expert. Mr Earl told the police among other things that the claimant was logged into the electronic records system and was actively updating a patient's records for ten minutes on 7 December 2012 after the time of the telephone call with Patient A's mother. It will be noted that Mr Earl's evidence is not consistent with the claimant's account that she had not had access to the records system as she had unplugged her computer. Mr Earl also told police that there was no record of the claimant having reviewed a summary of Patient A's telephone consultation with another GP earlier on 7 December. The claimant had told police in interview that she had seen a summary of another consultation and her solicitors had said the same thing in their letter of 15 July 2013.

12.
On 7 June 2017, the GMC wrote to the claimant to inform her that the hearing before the Investigation Committee was to be relisted and would take place on 11 July. The letter said:

'Please be aware that owing to the new information that has been collected since the original referral to an Investigation Committee was made, as reflected within the updated draft particulars…, the GMC will be submitting that the case should be referred to a Medical Practitioners Tribunal hearing'.

13.
The updated draft particulars of the allegation were substantially different to those previously conveyed to the claimant and for the first time impugned her probity. There were three principal elements of the claimant's probity that were in issue.

14.
First, it was said that the claimant's actions in making a retrospective record were intended to: (i) mislead anyone reviewing the record into believing the entry was contemporaneous; and (ii) avoid any criticism about her care and treatment of Patient A when she knew the clinical record would be subject to scrutiny. Secondly, it was alleged that the claimant's statement to the police that she had reviewed a summary of the record made by another GP on 7 December was dishonest. Thirdly, she had dishonestly stated to police that she did not make a contemporaneous entry of her own telephone consultation because her computer had been disconnected.

15.
The claimant's present solicitors were instructed. On 20 June 2017, they wrote to the GMC complaining that the significant allegation of dishonesty 'was not in the rule 7 allegations presented to Dr Rudling in 2013'. The claimant had had no opportunity to consider or respond to the new material. It was unfair for the GMC to circumvent rule 7 in this way. The prospect of judicial review proceedings was raised unless the GMC proceeded with only the 2013 allegations. The letter did not deal with substantive issues: the claimant did not deny dishonesty.

16.
The GMC rejected the solicitors' representations in a letter dated 27 June 2017 and the case proceeded to the hearing before the Investigation Committee on 11 and 12 July 2017. Both the claimant and the defendant were represented by Counsel (who did not appear before me). The Committee read the new material and made the following determination:

'The Committee did consider that the new material from Mr Earl raised the question of probity and since this is plainly a serious matter the Committee considered that the allegation should be extended to include a charge of dishonesty, to which this evidence, together with the statements you provided to the police, are relevant. The Committee considered that it was in its powers to admit this evidence

under Rule 34(1) and that it was fair to adduce this evidence, even though it had not formed the basis of a Rule 7 letter or your response'.

17.
The Committee reached this view because of the gravity of the alleged conduct and the obligation of the GMC to protect the interests of the public. Rejection of the evidence of lack of probity 'would only prolong matters because it would be open to the GMC to take fresh proceedings in relation to alleged dishonesty'. The claimant had had notice of the allegations, sufficient to allow her to respond, and accordingly the prejudice to her was limited.

18.
In light of the Committee's decision to admit the new material, the claimant indicated that she wished to apply for judicial review. Consequently, the Committee adjourned its consideration of the case pending the outcome of the present proceedings.

19.
The claimant's solicitors sent a letter before claim on 27 July 2017 in which it was emphasised that the allegations had never been put to the claimant under rule 7. As the rule 7 procedure was mandatory, the Committee had no power to consider the claimant's probity before that procedure had been undertaken.

20.
Responding to the letter before claim, the GMC accepted that it had sought to adduce significant new material for the consideration of the Investigation Committee. It was accepted that the amended particulars had not undergone the rule 7 process and that there had been no decision by the Case Examiners under rule 8 as to how the newlyraised concerns should proceed. The letter stated:

'it is the GMC's stance that the particulars in relation to Dr Rudling's probity are not an entirely new allegation. The particulars relate to the same matter which the [Investigation Committee] were originally asked to consider in November 2013, namely Dr Rudling's misconduct in relation to the death of Patient A. The probity particulars are therefore sufficiently linked to the original particulars and…should therefore be considered alongside the original allegations in the interests of justice and fairness'.

The letter confirmed that the claimant would be afforded the opportunity to respond to the allegations and to provide any documentary or oral evidence to the Committee.

21.
The claim form was filed on 12 September 2017. Permission to apply for judicial review was refused on the papers by a Deputy High Court Judge but granted by Moulder J following a hearing.

Legislative framework

22.
The legislative cornerstone is s.1 of the Medical Act 1983 as amended. By virtue of s.1(1A), the over-arching objective of the GMC is the protection of the public. Under

s.1(1B), the pursuit by the GMC of the over-arching objective involves the pursuit of the following objectives:

'(a) to protect, promote and maintain the health, safety and well-being of the public,

(b)
to promote and maintain public confidence in the medical profession, and

(c)
to promote and maintain proper professional standards and conduct for members of that profession'.

23.
Under s.35C(4) of the Act, the function of the Investigation Committee is to investigate allegations against those registered with the GMC and to decide whether they should be considered by a Medical Practitioners Tribunal. An allegation is defined as an allegation that a practitioner's 'fitness to practise is impaired' (s.35C(1) of the Act; rule 2 of the Rules).

24.
Under s.35C(2), a person's fitness to practise shall be regarded as impaired by reason only of:

'(a) misconduct;

(b)
deficient professional performance;

(c)
a conviction or caution…for a criminal offence; (d) adverse physical or mental health;

(da) not having the necessary knowledge of English…;

(e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect'.

25.
If the Investigation Committee decide that the allegation ought to be considered by a Tribunal, they are under a duty to give a direction to that effect to the Registrar (s.35C(5)). If the Committee decide that the allegation ought not to be considered by a

Tribunal, they may nevertheless decide to give a warning to the practitioner regarding future conduct or performance (s.35C(6)). In deciding whether to give a warning, the Investigation Committee must have regard to the over-arching objective (s.35C(6A)).

26.
The procedure for dealing with an allegation against a practitioner is found in the

Rules. As with other schemes for professional regulation, it is multi-staged. In broad terms, an allegation is initially considered by the Registrar (rule 4(1)). If the Registrar considers that the allegation concerns fitness to practise, he shall refer the matter to Case Examiners for consideration, a Case Examiner being an officer of the GMC appointed by the Registrar for the purposes of exercising the functions of the Investigation Committee (rules 2 and 4(2)).

27.
Rule 7(1) provides that as soon as is reasonably practicable after referral of an allegation for consideration to Case Examiners, the Registrar:

'shall write to the practitioner –

(a)
informing him of the allegation and stating the matters which appear to raise a question as to whether his fitness to practise is impaired;

(b)
providing him with copies of any documents received by the General Council in support of the allegations;

(c)
inviting him to respond to the allegations with written representations within the period of 28 days from the date of the letter; and

(d)
informing him that representations received from him will be disclosed, where appropriate, to the maker of the allegation (if any) for comment'.

28.
Rule 8(2) provides that the Case Examiners may decide:

'(a) that the allegation should not proceed further;

(b)
to issue a warning to the practitioner in accordance with rule 11(2);

(c)
to refer the allegation to the Committee under rule 11(3) for determination under rule 11(6); or

(d)
to refer any allegation…for determination by a Medical Practitioners Tribunal'.

29.
Alternatively, under rule 8(3), the Case Examiners may decide to recommend that the practitioner be invited to comply with undertakings. Where the practitioner confirms that he is prepared to comply with undertakings, no further action is taken.

30.
Rule 11 deals in more detail with warnings. If the Case Examiners determine to issue a warning but the practitioner does not agree to accept it, the Case Examiners may refer the allegation to the Investigation Committee for an oral hearing (rule 11(3)(b)). Where such a referral is made, the Registrar is under a duty to give notice to the practitioner 'particularising the allegation against the practitioner and the facts upon which it is based' (rule 11(5)(a)).

31.
When considering an allegation referred to them by Case Examiners, the Investigation Committee may admit any evidence which they consider fair and relevant to the case before them (rule 34(1)) and may adjourn for further investigations to be carried out (rule 11(7)(d)). They have a power of joinder: they may consider and determine together two or more allegations against the same practitioner where it would be just to do so (rule 32).

32.
By virtue of rule 11(6), the Committee have power to:

'(a) determine that the matter should not proceed further;

(b)
dispose of the allegation by issuing a warning; or

(c)
where new information adduced into evidence at the hearing indicates that to do so would be appropriate, refer the allegation…for determination by a Medical Practitioners Tribunal'.

33.
I do not need to consider in detail the final stage – determination by a Medical Practitioners Tribunal – because it has not been reached in the claimant's case. It is sufficient to note that even after referral to a Tribunal, the Registrar is empowered to carry out appropriate investigations (rule 13A). The Registrar is under a duty to notify the practitioner of the allegation which the Tribunal will consider and the facts upon which it is based (rule 15(1)(a)(i)). At the hearing itself, the Chair of the Tribunal is under a duty to enquire whether the GMC wishes to amend the particulars of the allegation and, if so, to consider whether they should be amended (rule 17(2)(c)). Thereafter, the allegation or the facts upon which the allegation is based may be amended at any time provided that no injustice would ensue (rule 17(2) (c)).

The Parties' submissions

34.
On behalf of the claimant, Mr Stephen Brassington submitted that the Investigation Committee's decision to admit new material relating to the claimant's probity had deprived the claimant of the statutory protections afforded by rules 7 and 8 at the stage when allegations are considered by Case Examiners. The procedural safeguards laid down in rule 7(1) were expressed in mandatory terms: the use of the word 'shall' in rule 7(1) imposed a duty on the GMC to undertake the various steps listed in rule 7(1)(a)-(d). By taking the probity allegations directly to the Investigation Committee without undertaking the mandatory rule 7 process, the GMC were acting outside their jurisdiction.

35.
The outcome for the claimant was unfair because, in particular, she had not had an opportunity to make written representations to the Case Examiners on the probity allegations under rule 7(1)(c). The claimant had been denied the opportunity to give explanations, denials or mitigation to the Case Examiners. In addition, the possibility of the clamant giving undertakings under rule 8(3) was foreclosed because only the Case Examiners have the power to recommend that a practitioner give appropriate undertakings.

36.
Mr Brassington submitted that the GMC's case about the claimant's probity amounted to a new allegation that was additional to allegations made during the rule 7 process in 2013. The Act and the Rules permit more than one allegation to be mounted against a practitioner at the same time. Lack of probity was a discrete and different issue to anything raised previously. The charge of lack of probity could not rationally be regarded as simply augmenting the GMC's existing case but ought as a matter of law to be regarded as a new and different allegation in relation to the claimant's fitness to practise. In these circumstances, the rule 7 process was mandatory.

37.
Even if the probity material simply augmented the GMC's case, the rule 7 process applies not only to allegations but to 'all matters' which appear to raise a question in relation to fitness to practise (rule 7(1)(a)). The probity material was plainly such a matter and so fell within the rule 7 process.

38.
On behalf of the GMC, Ms Jennifer Richards QC submitted that the Act and the Rules clearly contemplate an ongoing duty to investigate fitness to practise in the public interest. The Committee's duty to investigate under s.35C is a general duty and is not time-limited. In accordance with the statutory duty, the scheme of the Rules bestows appropriate powers on the GMC to keep cases under review and to expand an allegation - and the matters on which an allegation is based - in light of all the available evidence which may change over time. There is no suggestion in the Rules that the passing of time or the gathering of fresh evidence in accordance with the GMC's statutory duty should lead back to the beginning of the regulatory process or trigger a second rule 7 process.

39.
Ms Richards submitted that the definition of an allegation – which is that a person's fitness to practice is impaired – is very broad. The Investigation Committee was not precluded as a matter of jurisdiction from considering two different events each of which contributed to a single, overall allegation. As a matter of jurisdiction, the Committee could consider events separated in time and subject-matter as different strands of the overall allegation of impaired fitness to practise.

40.
Ms Richards submitted in the alternative that the matters relating to the claimant's probity were reasonably and lawfully regarded as being part of the original allegation. They related directly to the allegation in relation to Patient A and to the explanations given by the claimant about the timing of her entries on Patient A's records. The particulars of the original allegation had been expanded and no new allegation had been introduced. The procedure which the Investigation Committee had followed was to be found in rule 11 which expressly contemplates that new information may be adduced into evidence. This power to introduce new evidence was fatal to the claimant's case.

41.
Ms Richards submitted that the claimant had suffered no unfairness. The Rules are designed to enable the Committee to exercise its powers fairly. The practical effect of the claimant's approach would be to prevent the Investigation Committee from considering the totality of the case in circumstances where the underlying facts relate to one patient and one incident. There would be the risk that differing aspects of the case would be considered by different decision-makers on different material, which would undermine the GMC's over-arching objective.

Analysis and conclusions

42.
Both Counsel agreed that there is no direct authority on the points of statutory interpretation which arise. Other cases have considered similar statutory words but in the context of schemes for the regulation of other kinds of health professional or in the context of earlier incarnations of the GMC Rules. I agree that the case law cannot be read across from other or earlier schemes. A number of broad principles nevertheless emerge as to the approach I should take.

43.
In Zia v General Medical Council [2011] EWCA Civ 743; [2012] 1 WLR 504, the court considered the purpose of the Rules. Jackson LJ held (at [35]) that their primary function is to protect, promote and maintain the health and safety of the public. There is an additional function to provide proper protection of the doctor against whom accusations are made. Tomlinson LJ agreed with Jackson LJ in the following terms (at [46]):

‘I have no doubt that the process is intended and designed to be fair, and it is axiomatic that in conducting the process the various persons invested with powers under the 2004 Rules are required to act fairly. However, the judge, in my view, approached the matter from the wrong starting point. The starting point is, as Jackson LJ has pointed out, that pursuant to section 1(1A) of the 1983 Act the main objective of the GMC in exercising its functions is to protect, promote and maintain the health and safety of the public. Thus I do not, for my part, approach the construction of the 2004 Rules on the basis that the various stages described therein should be regarded as prescribed for the protection of the person against whom the allegation is made. I approach the task of construction of the Rules rather on the footing that the Rules are intended to provide a framework for the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners’.

I must therefore approach the interpretation of the Rules in this purposive way, taking the public interest – not fairness to the claimant – as the primary yardstick by which to measure my conclusions.

44.
In R (Ireland and another) v Health and Care Professional Council [2015] EWHC 846 (Admin), this court considered the legality of a decision to introduce new allegations into regulatory proceedings against two psychologists. Jay J held (at [44]) that the legality of the decision of the Health and Care Professional Council was a matter of jurisdiction not fairness to the practitioners, observing that the regulator’s decision would ‘only be unfair if it acted without jurisdiction. If, on the contrary, the [regulator] was empowered to act as it did, then…the claimants cannot maintain a separate fairness challenge’. Applying Jay J’s reasoning, the concept of fairness cannot defeat an otherwise proper construction of the Rules. The elevation of the rule 7 process to an indefeasible requirement of fair procedure cannot form the starting point for my consideration of whether the GMC has acted outside its jurisdiction to bring forward material relating to the claimant’s probity.

45.
In my judgment, the mandatory language of rule 7(1) does not imply that a properly constituted GMC Committee should treat an allegation as frozen in time. Detailed provisions for further investigation and further evidence are made at each stage of the regulatory process. The Registrar may investigate the allegation that is referred to him (rule 4(4)) and may do so even after he has referred matters to the Case Examiners (rule 7(2)). The Investigation Committee may adjourn for further investigations to be carried out (rule 11(7)(d)). The Registrar’s investigations may continue after the allegation has been referred to the Tribunal (rule 13A). Despite these opportunities for new facts and matters to emerge at each stage, the Rules are silent as to the need to refer new material to Case Examiners. Had that been the Rules’ intention, it would have been stated.

46.
Nor do I accept that a practitioner in the claimant’s position would stand to suffer procedural unfairness from the GMC’s submission of new material to the

Investigation Committee. In relation to a matter as serious as probity, the practitioner has the right to know the full extent of the allegation made against him or her (Professional Standards Authority for Health and Social Care v The Nursing and Midwifery Council and David Andrew Dalton [2016] EWHC 1983 (Admin) at [19] and [30]). However the claimant knows and has been provided with a detailed account of what is alleged (in accordance with rule 11(5)(a)). She has been provided with the evidence on which the GMC relies. She has had, and will have at the resumed hearing, the right to attend and be represented by Counsel (rules 11(5)(c) and 33). She is entitled to submit any written

representations or other documents that she wishes to provide (rule 11(7)(b)(i)). All these procedural safeguards are founded on the Rules and ensure adequate protections for practitioners.

47.
I also accept Ms Richards's submission that a requirement to re-start the rule 7 process after an allegation has been referred to the Investigation Committee would add delay. As Tomlinson LJ observed in Zia, the expeditious and efficient disposal of regulatory proceedings is part of the objective of the Rules. Delay is contrary to the public interest. The expeditious disposal of allegations against doctors promotes public confidence in the regulator which in turn promotes public confidence in the medical profession. It would be contrary to the Medical Act's over-arching objective for this court to imply a duty to re-start the rule 7 procedure.

48.
Mr Brassington urged upon me that the claimant would, in the absence of a further rule 7 procedure, lose the opportunity of having the Case Examiners consider the case in the round with a view to recommending that she be invited to comply with undertakings. There is no right to apply to give an undertaking but doubtless her solicitors could, if given the opportunity, make representations to that effect. Leaving aside the plausibility of this claimant being invited to give undertakings in relation to the serious allegations of dishonesty, the primary purpose of the Rules is to uphold the public interest and not to provide practitioners with any form of disposal at any stage of the proceedings. In my judgment, the loss of the opportunity to give undertakings is not a sufficiently potent factor that it calls for the Rules to be interpreted as Mr Brassington sought.

49.
In Ireland, Jay J held (at [50]) that the rules in question contained an implied power to amend 'as regards deletion…reformulation, reconstitution and expansion' of an allegation. In the present case, the Rules provide for the particulars or matters that underlie an allegation to be notified to the practitioner at various stages after the rule 7 process has been completed (see rules 11(5)(a), 11(10) 15(1)(a)). Although the Rules do not state a power to amend allegations in the terms governing amendments by the Tribunal (at rule 17(6)), I agree with Ms Richards that the notification provisions would be otiose if there was not at the least an implied power to amend an allegation after the completion of the rule 7 process.

50.
Mr Brassington submitted that the addition of matters relating to the claimant's probity went beyond amendment and amounted as a matter of law to a new allegation. In my judgment, it was reasonable for the GMC to treat the probity matters as part of

the existing allegation. They relate to the same patient. They relate to the same record-keeping. They form part of the same course of conduct, namely the claimant's actions from 7 to 10 December 2012 in relation to Patient A and his mother. I am in no doubt that the probity matters are an expansion of the existing allegation and are permissible.

51.
In short, the probity matters plainly amended the existing allegation and did not amount to a new allegation. As that is my conclusion on the facts of this case, I do not need to delineate in any broader way when new facts and matters become a new allegation. I would have concluded that, as a matter of common sense, allegations separated in time and subject-matter could amount to discrete assaults on a practitioner's fitness to practice and, as such, would amount to discrete allegations. Contrary to Ms Richards's submissions, nothing in the Medical Act or in the Rules would have inclined me to the view

that there may only be one charge of impairment against a practitioner with all conceivable facts and matters to be potentially reduced to a single allegation. As I have set out above, the Rules themselves make provision for joinder of different allegations. To that extent, I would have preferred Mr Brassington's submissions.

Delay in the present case

52.
Mr Brassington emphasised the delay between the conclusion of the criminal proceedings in June 2016 and the letter giving notice of the Committee hearing which was sent to the claimant in June 2017. He submitted that the delay constituted ample time for a rule 7 process and ample time for the GMC to afford the claimant an opportunity to make written representations on the probity material. I do not agree that the fact of delay in this particular case has relevance to the proper interpretation of the Rules or to the general question of the Committee's jurisdiction to consider the probity material, which are questions of law. Conversely, Mr Brassington's interpretation of the Rules would lead to the risk of some systematic delay contrary to the over-arching objective.

53.
In relation to the facts, I was not directed to any part of the evidence showing that the claimant had complained about delay or that she had asserted any prejudice from the timescale of the GMC proceedings. In my judgment, the question of delay does not advance the claimant's case.

Rule 12

54.
Mr Brassington raised the possibility that the claimant's case could be remitted under rule 12(1)(b) which empowers a Registrar to review a decision of the Case Examiners not to refer an allegation to the Tribunal. This discretion may be exercised in particular if new information has come to light and was described in the claimant's skeleton argument as a simple solution to the problem of how to return the case to earlier procedural safeguards.

55.
The argument relating to rule 12 was raised for the first time in the claimant's skeleton argument. She has certainly never asked for her case to be remitted in this way. Ms Richards made the point that there has never been a decision not to refer the case to the Tribunal. The decision of the Case Examiners was to refer the case to the

Investigation Committee – which is not the same thing. I agree and would find that

this part of the skeleton argument does not raise an error of law or approach by the GMC.

Rationality challenge

56.
In his written submissions, Mr Brassington advanced the separate argument that the Investigation Committee had relied on irrelevant considerations in deciding to admit the probity allegation. Among other things, those considerations included the gravity of the new allegation (which was said not to justify procedural impropriety) and the fact that a rule 7 procedure would cause further delay (which was said to prejudice only the claimant). Mr Brassington did not press this part of his argument orally and I did not call upon Ms Richards to reply to it. It lacks merit. The factors which the Committee took into account were relevant to its decision and in my view properly fell to be considered.

57.
For these reasons, this application is dismissed. I should record that I am grateful to both Counsel for excellent submissions.