

STRICTLY PRIVATE AND CONFIDENTIAL

CORU

INQUIRY UNDER PART 6

OF THE HEALTH AND SOCIAL CARE PROFESSIONALS ACT 2005

(IN PUBLIC)

RE: MR. VARGHESE VADAKKEKKEECHERI DEVESIA

RA023959

HELD AT THE OFFICES OF CORU, FLOOR 2,

INFINITY BUILDING, GEORGE'S COURT,

GEORGE'S LANE, SMITHFIELD, DUBLIN 7

ON FRIDAY, 21ST MARCH 2025

Gwen Malone Stenography
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MS. ESTHER PURCELL

LEGAL ASSESSOR:

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MR. KELLY, BL

INSTRUCTED BY:

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WITNESSES:

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1 THE HEARING COMMENCED (IN PUBLIC) AS FOLLOWS ON FRIDAY,
2 21ST MARCH, 2025 AT 10:51AM:

3
4 CHAIRPERSON: Good morning. This is an Inquiry
5 convened under Part 6 of the Health and Social Care
6 Professionals Act 2005 in respect of Mr. Varghese
7 Devesia, registered Radiographer, registration number
8 RA023959.

9
10 This Inquiry will be conducted in public. The
11 recording or live-streaming of this Inquiry is strictly
12 prohibited. No one is permitted to make any video or
13 audio or other recording or image whatsoever of any
14 part of the Inquiry. This prohibition includes a
15 photograph, screenshot or screen-grab and all like
16 related mechanisms.

17
18 I'm Shane McCarthy and I'm a layperson. I'm not a
19 Registrant of CORU. I'm the Chairperson of this
20 Committee and as Chairperson I'm responsible for the
21 conduct of this hearing.

22
23 I'll begin by introducing the other members of this
24 Committee of Inquiry. Mr. Shane Foley is sitting on my
25 right. He's a registered Radiographer member. Ms.
26 Esther Purcell is sitting on my far left. She's a
27 registered Medical Scientist member. Mr. Tom Hogan,
28 Senior Counsel, is sitting to my left. He's the Legal
29 Assessor to the Committee. The Legal Assessor is not a

1 member of the Committee and the Legal Assessor's role
2 is to assist and advise the Committee in relation to
3 legal issues that may arise during the course of the
4 hearing. The Legal Assessor will provide his legal
5 advice to the Committee of Inquiry in the presence of
6 everyone here today. I will ask the parties to make
7 submissions in relation to the Legal Assessor's advice
8 when tendered.

9
10 I intend to conduct this Inquiry in accordance with
11 natural and constitutional justice and in accordance
12 with fair procedures.

13
14 During the Inquiry, I request the parties or the legal
15 representatives for the parties when making any
16 submissions to the Professional Conduct Committee to
17 address them to me as Chairperson.

18
19 The Committee may retire to make its decisions and will
20 consider the submissions made and any legal advice from
21 the Legal Assessor.

22
23 I'll now take appearances from the parties.

24 MS. DALY: Good morning Chair, Members of the
25 Committee. It's Caoimhe Daly, Counsel, appearing on
26 behalf of the Registrar of CORU.

27 CHAIRPERSON: Good morning.

28 MS. DALY: Sorry, I should say I'm instructed by Hannah
29 Unger of Fieldfisher.

1 CHAIRPERSON: Good morning.

2 MS. DALY: And Mr. Kelly is my devil behind me.

3 CHAIRPERSON: Thank you very much. Ms. Daly, I'm
4 conscious that the Registrant does not appear to be
5 here or does not appear to be online. Can you address
6 us on that?

7 MS. DALY: I can indeed, Chair. In relation to that,
8 we don't anticipate him being here, but in that regard,
9 what I propose to do is to take you through the
10 correspondence, both predating the last adjournment and
11 then the correspondence in between times to keep you up
12 to date as to what's occurred in the intervening
13 period. And in those circumstances, I would suggest
14 that service has been done reasonably and that we
15 should proceed in his absence. That's my submission,
16 but I will take you through the documentation.

17 CHAIRPERSON: I greatly appreciate that, but before you
18 do, has there been any communication from him to
19 explain a non-presence today?

20 MS. DALY: No, there's been communication sent to him
21 and there's been no response to any communication.

22 CHAIRPERSON: Okay, so you might please proceed.
23

24 SERVICE - MS. DALY
25

26 MS. DALY: Thank you, Chair. The Committee should have
27 a bundle of inter partes correspondence, some of which
28 the Committee will be familiar with from the last
29 occasion. And you can see if one turns to page 5 of

1 that correspondence, there is a memo.

2 CHAIRPERSON: Ms. Daly, I'm just conscious as to the
3 manner in which the Committee is composed today.

4 MS. DALY: Indeed.

5 CHAIRPERSON: And you might, for Mr. Foley's benefit,
6 you might take us through from the beginning.

7 MS. DALY: Absolutely, that's what I was intending to
8 do.

9 CHAIRPERSON: Thank you.

10 MS. DALY: Thank you. If one turns to page 5 of the
11 inter partes correspondence, you can see there that
12 there is a memo on the file which is sent from Ms.
13 Cullen, who is a member of Fieldfisher, and it's making
14 contact with a number, a mobile number, that is held on
15 the CORUS registration file for the registrant. And
16 you can see there:

17
18 "A man answered my call and I asked whether it was Mr.
19 Devesia that I was speaking to. The man confirmed it
20 was. I apologised for the late hour of my call,
21 introduced myself and said that I am calling from
22 Fieldfisher solicitors in Dublin. The line was poor."

23
24 And then if one moves two paragraphs down:

25
26 "The man on the phone then stated that he was not in
27 fact Mr. Devesia but his son. I believe that he stated
28 his name was Alan but his line was poor. Due to a
29 language barrier and poor connection it was somewhat

1 difficult to understand Alan. Alan stated that it was
2 best to contact his father via WhatsApp on the
3 number...", the number provided there. "Alan said we
4 can call his father on WhatsApp on this number. I
5 repeated the number back to Alan and he confirmed that
6 I had the correct number recorded. I asked whether his
7 father was at home at the moment and Alan said he was
8 not. I asked whether he knew when his father might be
9 available and he said he did not know. I thanked him
10 for taking my call and confirmed we would try to reach
11 Ms. Devesia on WhatsApp via the number provided."

12
13 And then if one turns over the page to page 6, you can
14 see that there is an email then sent by Mr. Devesia to
15 Ms. Ayesha Ryan, who is a member of Fieldfisher.

16
17 "Greetings, Dear Ayesha.

18
19 Thank you for your invitation to chat with you.
20 Unfortunately, I am not interested to proceed further
21 because my family issues, so my kind request remove my
22 name from the register permanently due to my reasons
23 (physically and financially unfit for work).

24
25 Thank you.

26
27 With kind regards,
28 Varghese Devesia."

1 If one then turns over the page at page 7, you can see
2 that there is an email sent by Ms. Ryan to Mr. Devesia
3 dated the 19th of September, 2024 and attached to it
4 were a series of documentation relating to the Inquiry
5 process. And if one turns over to page 8, you can see
6 the correspondence that was attached. And then at page
7 10, there is a follow-up phone call from Ms. Ryan and a
8 memo.

9
10 "I called a mobile number held by CORU in respect of
11 the Registrant." And the number is set out. "I said
12 hello and introduced myself. I asked if I was through
13 to Mr. VD. The person who answered the phone said no
14 and that VD is not here at the moment. I noted this
15 and asked who I was through to. The person confirmed
16 that the name was Alan, who is VD's son. I noted this
17 and asked AD if he could inform his father, that I had
18 rang, and I also sent VD an email of reply in relation
19 to the email VD sent me. I asked AD to ask his father
20 to reply to my email. AD confirmed that he would do
21 this. I thanked AD and ended the call."

22
23 And then over the page, page 11, we can see further
24 attempts to contact. On page 12, there's a further
25 email sent on the 30th of December, 2024, which is
26 referring to the email of the 19th of September, which
27 you've already had sight of. And then over the page at
28 page 13, there is a reply from Mr. Devesia on the 1st
29 of October, 2024, to Ms. Ryan. And it provides:

1
2 "Dear Ayesha,

3
4 Greetings from India.

5
6 As per your above mail, I am here with attaching the
7 signed consent.

8
9 Looking forward to the voluntary removal confirmation.

10
11 Thank you,

12
13 With kind regards,
14 Varghese Devesia."

15
16 And if one turns over the page at page 14, you can see
17 there that there is a signed undertaking and a series
18 of matters signed there at page 14.

19
20 If one then turns over the page to page 15, there is
21 further correspondence to Mr. Devesia in relation to
22 the holding of a hearing of this matter, and if one
23 turns over to page 16, there is a reply from Mr.
24 Devesia in relation to this, which sets out:

25
26 "Greetings of the day.

27
28 Dear Ayesha,

1 I'm happy to hear from you, however any date I will
2 accept it and I want to remove my name from the
3 Register. Discrimination policy only for the paper. I
4 face the discrimination in my real life in the UK
5 healthcare system and I lose my credibility for the 33
6 years for the professional family life. So I'm not
7 happy to communicate any further at CORU. Once again,
8 thanks for your support.

9
10 Thanking you.

11 With kind regards,
12 Varghese Devesia."

13
14 If then one turns over to page 17, Ms. Ryan further
15 communicates with Mr. Devesia seeking clarification in
16 terms of the correspondence. And then if one turns
17 over to page 18, there's further correspondence from
18 Mr. Devesia on the 2nd of October 2024.

19
20 "Dear Ayesha,

21
22 If it's end of those, I confirm to attend remotely on
23 6th or 9th of December.

24
25 Thanking you.

26 With kind regards,
27 Varghese Devesia."

28
29 Then over the page on the 9th, page 19, there is a

1 further email from Ms. Ryan on the 9th of October to
2 Mr. Devesia.

3
4 "Dear Mr. Devesia,

5
6 By way of update, please note the Inquiry will be
7 scheduled to take place on the 6th of December...", and
8 then set out the composition and who the intended Legal
9 Assessor will be.

10
11 Over the page, at page 20, there's further
12 correspondence on 23rd of October attaching the Cork
13 Book for the Inquiry and then in page 22 we can see
14 that there is a memo of an attempt to telephone call
15 and there was no success although it was answered.
16 There is then a follow-up email on the 4th of November
17 from Ms. Ryan to Mr. Devesia. There is then a further
18 follow-up on the 11th of November to Mr. Devesia from
19 Ms. Ryan and then there's a further follow-up in
20 relation, on the 26th of November from Ms. Ryan by way
21 of email.

22
23 On page 26 there is then a memo of attempts to contact
24 on the numbers that had been provided, both in the
25 register and also provided by his son and ultimately a
26 voicemail was left informing of the 6th of December and
27 mechanisms of contact.

28
29 If one then turns over the page to page 27, you can see

1 that there is a further email again referencing the
2 earlier correspondence and the Inquiry that was
3 scheduled to take place on the 6th of December 2024.
4 On page 28, you can see that there is a memo of a
5 WhatsApp message that was sent to the number on file.
6 We can see then on page 29 that there was a further
7 email sent on the 28th of November, again requesting
8 communication from the Registrant. And then over the
9 page, there is a series of WhatsApp's commencing at the
10 top from Mr. McDowell and then the bottom of it, it
11 sets out:

12
13 "Dear Mr. JP,
14 Greetings from India.

15
16 My name is Alan Varghese, son of Mr. Varghese Devesia,
17 who has been referred to you in your last message. I
18 am writing to elaborate my father's current situation,
19 where he is undergoing treatment down to the
20 psychological torment from HCPC and CORU. We all, the
21 family members, including my sister and mother, were
22 with him in the UK while he was working in the
23 Lincolnshire County Hospital in 2022-23. I myself had
24 witnessed the pain and agony my father had gone through
25 due to the personal professional revenge and racial
26 discrimination by the LCH Higher Authority. We, my
27 sister and me, had to break our studies in between and
28 had to come back to India after my father had resigned
29 the job. Yesterday, I spoke to my father regarding

1 your message and he asked me to reply to it since he
2 can't respond to anybody at the moment. As per my
3 father's opinion, he didn't expect any justice from
4 either CORU or HCPC and hence he is no more interested
5 in any communications or dealings with both these
6 institutions. Moreover, last couple of weeks he has
7 received a mail from the CORU asking him to sign a
8 consent form to end all the proceedings and he did so.
9 Therefore, kindly spare him from any further
10 proceedings since he has no more interest in working
11 under CORU or HCPC.

12
13 Thanking you with kind regards.
14 Alan Varghese."

15
16 Then over the page, at page 33, you can see there
17 correspondence from Ms. Unger attempting to contact Mr.
18 Devesia and then again on page 34, we can see that
19 there is a memo of a further attempt on the mobile
20 phone that had been provided to no avail.

21
22 If one then turns over to page 35 on the 29th of
23 November 2024, there's again a further email sent to
24 Mr. Devesia from Ms. Ryan's email address and then over
25 the page you can see that there's a further whatsapp
26 message sent again to the number that was provided and
27 the body of that is:

28
29 "Dear Mr. Varghese,

1 We are sorry to hear about the toll that this has taken
2 on your father. We have your father's signed consent
3 and undertaking. However, usually the Registrant given
4 the undertaking would be expected to attend the hearing
5 and give his story, so it is recorded on the
6 transcript. This particularly so, the company may
7 require variation on what is required. By your father
8 not being present remotely on the 6th, there is a risk
9 that the Committee won't deal with the application."

10
11 And then it sets out:

12
13 "Therefore, ideally your father would attend remotely
14 on the 6th. Please confirm on or before 1pm tomorrow."

15
16 And then again, there is a follow-up in relation to
17 that over the page. At page 39, there is then further
18 email correspondence sent by Ms. Ryan to Mr. Devesia,
19 again setting out the Inquiry date, again asking him to
20 correspond. And that occurs in advance of the hearing
21 that was due to take place on the 6th of December.

22
23 If one then turns to page 40 of the bundle, it is from
24 this page onwards that we are dealing with the
25 correspondence post the matter being heard on the 6th
26 of December and the last Inquiry date. We can see
27 there the email is dated the 17th of December 2024 and
28 it is sent from Ms. Ryan to Mr. Devesia. Those members
29 of the Committee who were in attendance on the last

1 occasion will recall that Mr. Devesia did not attend,
2 he was not represented and ultimately the hearing was
3 adjourned to a further date in order to, the
4 correspondence and such that there was clarity as to
5 what was occurring on the next hearing date.

6
7 And if one sees there the email of the 17th of
8 December, it says:

9
10 "Please note that the hearing will now take place on
11 the 21st of March 2025 at 10am (Irish time).

12
13 Please confirm that you will attend the Inquiry
14 remotely on the 21st of March. Please note that you
15 will be provided with a Notice of Inquiry very
16 shortly."

17
18 And then it sets out:

19
20 "On the 21st of March, we will plan to open this Notice
21 of Inquiry to the Committee for its consideration. We
22 will then present the relevant evidence to the
23 Committee and you will be provided with an opportunity
24 to make any submissions or indeed give evidence if you
25 wish.

26
27 You are also still entitled to offer the attached
28 undertaking to the Committee on the 21st of March 2025.
29 It will be a matter for the Committee to decide:

1 a. Whether to proceed to make findings in relation to
2 the facts alleged are proven and in relation to whether
3 the facts if proven amount to professional misconduct
4 and or a contravention of the Act in light of the
5 evidence heard, or,

6
7 b. Whether they would be happy to accept an
8 undertaking from you such as the attached in the event
9 that you are still happy to offer same."

10
11 And then you can see thereafter attached is a
12 transcript of that which occurred during the hearing on
13 the 6th of December.

14
15 There is a follow-up email to be found at page 71 and
16 it is sent on the 6th of January.

17
18 "Dear Mr. Devesia,

19
20 I refer to the above matter and to previous
21 conversations, resting with my email below.

22
23 I look forward to hearing from you in relation to same
24 as soon as ever possible."

25
26 At page 72 on the 13th of January 2025. There is then
27 a memo of attempts to make contact over the phone in
28 relation to matters. And then we can see on page 73,
29 there is then a letter sent by registered post and the

1 address to which it is sent is the registered address
2 on CORU's file for the Registrant. And again, you can
3 see:

4
5 "Please confirm whether you will attend the Inquiry on
6 the 21st of March 2025."

7
8 And ultimately it sets out what is to happen and how it
9 is to proceed. If one then turns over to page 75, we
10 can see the cover of the letter or the envelop with
11 which it was sent and then we can see over the page at
12 page 76, what was sent by post is then also sent by
13 email. And if one turns to page 77, you can see the
14 letter that I've already drawn your attention to. And
15 for the purposes of the Committee, if one looks at
16 attendance at the Inquiry on the 21st of March and the
17 second paragraph.

18
19 "Please note for the avoidance of doubt that in the
20 event that you are not in attendance at the Inquiry on
21 the 21st of March 2025, the Professional Conduct
22 Committee may decide to proceed with the Inquiry on the
23 21st of March in your absence."

24
25 And then we can see on page 79 there is again a memo of
26 several attempts to contact Mr. Devesia, all of which
27 were to no avail.

28
29 Again at page 80, on the 11th of February, 2025, two

1 further attempts, again to no avail. And then on page
2 81, you can see on the 14th of March, 2025, Ms. Unger
3 again emails Mr. Devesia at the address which he had
4 previously been sending correspondence. Again, asking
5 for him to contact, and you can see in the body of that
6 email it also sets out:

7
8 "Please note if the Committee are satisfied that you
9 have been appropriately served with the Notice of
10 Inquiry and documentation relevant to this complaint,
11 the Inquiry can proceed in your absence."

12
13 Over the page at page 82 there is then further
14 correspondence from Ms. Unger to Mr. Devesia attaching
15 further documentation, documentation which he already
16 was in possession of, but just being updated in a
17 particular format. And then we can see at page 83 is
18 the delivery receipt in relation to that final document
19 that was sent to him.

20
21 So I know that took a bit of time, but that is the
22 relevant material in the context of the communication
23 and service that has occurred in these proceedings.
24 And what is evident from that bundle of documentation
25 is that several attempts have been made to communicate
26 with the Registrant. Those attempts have included two
27 telephone numbers, WhatsApp communications, email
28 communication, and ultimately also written post
29 communication to the registered address that is

1 contained on file. So in terms of the efforts that
2 could be made to ensure his attendance, to make him
3 aware of it, and for him to be on notice of today's
4 proceedings, I don't think there's anything more that
5 could be done by those instructing me to ensure that
6 all reasonable efforts have been done to make him aware
7 of today's hearing.

8
9 That then moves on to the decision of whether to
10 proceed in absence, assuming...

11 CHAIRPERSON: Perhaps before we move on to that, Ms.
12 Daly, I think the Committee would benefit from advice
13 from the Legal Assessor in terms of the applicable
14 rules that the Committee should consider as to whether
15 adequate service has been undertaken here. Are there
16 particular rules for service set out in the Act or in
17 the procedures of Inquiry?

18 MS. DALY: It's that all reasonable efforts should have
19 been done to attain and that the Notice should be
20 provided in sufficient time. I have to get the rule.
21 If you bear with me one second. I'll get the specific
22 rule. So, I'm very grateful to Ms. Unger who brings me
23 to 30.1 of the Rules as provided for which is at tab 4,
24 page 38. Where it sets out:

25
26 "For any Notice that is required to be sent to a
27 Registrant pursuant to Part 6 of the Act, the notice
28 shall be served in accordance with Section 94 of the
29 Act. That is, by prepaid post or electronically to him

1 or at the address stated in the Register."

2 So, what is apparent from the letter, the prepaid post
3 has been done, and also what's apparent from the
4 communication is that there's been several emails sent
5 to him, including if one goes to the back of the
6 bundle, the email at page 76, and then if one goes to
7 page 75. So, 75 is the prepaid post, and 76 is the
8 electronic.

9 CHAIRPERSON: Thank you very much.

10 MS. DALY: I'm grateful.

11 CHAIRPERSON: Do we need further advice on that?

12 MR. HOGAN: well I'll just give you some advice.

13 CHAIRPERSON: Yes, please.

14 MR. HOGAN: Chair, members of the Committee. The
15 situation here is that the Registrant has not appeared
16 and the question arises as to whether the Inquiry
17 should proceed in his absence.

18 MS. DALY: Sorry Chair, I was stopped for making any
19 submissions about proceeding in absence. I was stopped
20 at the point of service.

21 CHAIRPERSON: My apologies.

22 MR. HOGAN: Sorry, my mistake Ms. Daly.

23 CHAIRPERSON: My apologies for any confusion.

24 MS. DALY: Yes, I was stopped.

25 CHAIRPERSON: I think the initial application was in
26 terms of service having been adequate and that you are
27 now proceeding with an application as to whether or not
28 to proceed in the absence of the Registrant.

29 MS. DALY: well I was doing that and then you stopped

1 me because you wanted to hear from Mr. Hogan in
2 relation to that aspect.

3 CHAIRPERSON: And the issues that I wished to have
4 advice from Mr. Hogan, you brought clarity for having
5 it opened, the Rules, to us in relation to service.
6 And if Mr. Hogan wants to advise the Committee on that,
7 it would be greatly appreciated.

8 MR. HOGAN: well, I don't disagree with any of that.
9 Thank you Chair.

10 CHAIRPERSON: Thank you.

11
12 PROCEEDING IN ABSENCE OF THE REGISTRANT

13
14 MS. DALY: Okay, so back to me as it were. So moving
15 on then to proceeding in the absence of the Registrant,
16 Assuming service has been deemed good. Obviously it is
17 a decision that isn't to be taken lightly in any
18 circumstance whether to proceed in the absence of a
19 registrant, but there are important factors that need
20 to be borne in mind when balancing up whether to
21 proceed in his absence or not. One is that he has
22 quite clearly voluntarily absented himself from today's
23 proceedings. So it doesn't follow as an automatic
24 right that he must be here prior to you commencing. He
25 has been offered the opportunity, he's been informed of
26 it, he's been repeatedly informed of it, and
27 notwithstanding all of that, he has chosen of his own
28 volition not to attend. And what's clear from the
29 communication is that he has no intention of attending.

1 So if it were the situation where you were faced with
2 the documentation that says, "oh well, I'm not feeling
3 very well on the next occasion, I will attend", then
4 that might be something that may weigh in the balance
5 for a different decision making. But here there's no
6 indication of that whatsoever. And indeed, you've
7 already adjourned it on one occasion due to a concern
8 as to the lack of clarity. He didn't attend on the
9 last occasion. That clarity has now been achieved and
10 he still isn't here today.

11
12 So there then becomes that balancing exercise between
13 the moving forward of a case as against the
14 Registrant's interest. And Mr. Hogan will advise you
15 in due course of various decisions, but one of such
16 decisions is a case of Adeogba, which is where one must
17 factor in the interest of regulation, the interest of
18 protecting the public, the interest of ensuring that
19 there is an expediency to the Inquiry process and it
20 coming to its conclusion. And that on each occasion
21 there is obviously cost implications as well in having
22 matters to be listed on numerous occasions prior to
23 their being concluded.

24
25 So in a scenario such as this where we are ready to
26 proceed, we have witnesses who are in attendance, the
27 Registrant has not engaged with the process, has
28 voluntarily absented himself, and up to the point at
29 which he engaged in his final communication is that he

1 doesn't want to engage any further. In our submission,
2 there's clearly a case whereby the balance favours
3 proceeding in his absence today.

4
5 And in terms of the Rules in relation to the absence of
6 a registrant, if one, it's page 20, 11, it sets out:

7
8 "Absence of the registrant 11.1. Where a registrant is
9 not present at a hearing, the Committee of Inquiry may
10 proceed with the hearing if the Committee is satisfied
11 that all reasonable steps have been taken to serve
12 notice of the hearing in accordance with Section 57 and
13 Section 94 of the Act."

14
15 So in this instance, service has been done in
16 accordance with the Act. In addition to that, all
17 reasonable steps over and above simply serving in
18 accordance with the Act have been done in the context
19 of numerous communications via email, via telephone,
20 none of which has given rise to his attendance. He's
21 voluntarily absented himself. Any adjournment is not
22 going to secure his attendance and in those
23 circumstances the balance favours proceeding in his
24 absence today.

25
26 LEGAL ADVICE

27
28 MR. HOGAN: Yes, well, Chair, Members of the Committee,
29 the Registrant has a general right to be present at an

1 Inquiry into his or her conduct, but it is a right that
2 can be waived. And in circumstances where a
3 registrant, knowing that an Inquiry is due to proceed,
4 voluntarily absents himself or herself, then it becomes
5 a matter of discretion for the Committee as to whether
6 to proceed in the absence of the Registrant.

7
8 Obviously, that discretion has to be exercised fairly
9 both to the Registrant and to the Regulator. But this,
10 certainly the circumstances of this particular
11 application, it's not a case in which the Registrant
12 has absented himself from the Inquiry and is putting
13 forward reasons or justification as to why the Inquiry
14 shouldn't proceed in his absence. On the contrary, the
15 Registrant has communicated and expressed a desire not
16 to involve himself in the Inquiry any further after his
17 earlier communications.

18
19 You have heard evidence of all of the attempts to
20 secure the attendance of the Registrant and to give him
21 notice under Section 57 of the Act, that the Inquiry
22 would proceed both on the last occasion and on this
23 occasion. He has been communicated to by email, which
24 I think on the 12th of September 2024 he responded from
25 that email address. He has also been given notice of
26 the Inquiry and provided with all of the documentation
27 for the Inquiry by registered post at his address in
28 India, but also a soft copy of the documents again to
29 the email which he has corresponded to.

1 So as I say, you have a discretion as to whether to
2 proceed in his absence, but in circumstances where he
3 knows and has been put on notice that the Inquiry is
4 going to proceed today and has voluntarily absented
5 himself and not responded to any of the communications
6 that have been made with him, it's a matter for you to
7 decide whether it's appropriate and fair to proceed in
8 his absence. Sorry, I'd just add, and obviously I
9 would agree with the submissions from Ms. Daly in
10 respecting the interests of protecting the public, that
11 inquiries obviously have to proceed and can't be
12 adjourned indefinitely to facilitate a registrant who
13 has expressly stated that he doesn't wish to involve
14 himself in the proceedings. They're my advices. You
15 don't have to follow my advices, but should you depart
16 from them, you should give clear and cogent reasons for
17 doing so.

18 CHAIRPERSON: Ms. Daly, do you wish to make any comment
19 on the advice tendered?

20 MS. DALY: No, I agree with the advices given.

21 CHAIRPERSON: Well, in that case, the Committee will
22 rise and deliberate on the applications. Thank you.

23
24 SHORT ADJOURNMENT [11.21AM]

25
26 THE HEARING RESUMED AFTER A SHORT ADJOURNMENT [11.28AM]

27
28 CHAIRPERSON: The Committee, having carefully
29 considered the issue of service, are satisfied that the

1 Registrant has notice of these proceedings. The
2 Committee are further satisfied that it is appropriate
3 in all the circumstances to proceed with the Inquiry on
4 today's date in the absence of the Registrant.

5
6 The Committee's reasons are that the Committee is
7 satisfied that the Registrant has voluntarily absented
8 himself from the Inquiry on the basis of his previous
9 communications wherein he expressly stated that he
10 would not be participating. The Committee believes
11 that it would not be in the public interest for there
12 to be further delay in the hearing and conclusion of
13 this Inquiry.

14
15 APPLICATION BY MS. DALY

16
17 MS. DALY: Thank you, Chair. There are two witnesses
18 for today's Inquiry and the Notice of Inquiry which
19 hopefully the Committee have had sight of, alleges that
20 the Registrant failed to disclose an interim suspension
21 that had been imposed on him in the UK under the HCPC
22 Regulator and that there was an obligation on him to
23 disclose that in this jurisdiction on foot of it
24 occurring and then also when he was reapplying at the
25 annual reapplication stage.

26
27 There are two witnesses for the Inquiry. There is a
28 HCPC representative who is the Head of Legal from HCPC
29 and then there is an individual from the Registration

1 Department of CORU.

2
3 The HCPC representative, there has been difficulties in
4 finding an availability for her to attend. She was not
5 in a position to attend and has then sought to
6 accommodate to try and attend today. Unfortunately,
7 there is a very narrow window within which she is
8 available to prove certain documents. And in those
9 circumstances, the window is unfortunately between half
10 11 to 11.45, and we have just only become aware of the
11 end point of the 11.45, literally a few moments ago.
12 So I'm making what is an unusual application to call
13 this witness in advance of opening the case. The
14 witness is purely proving factual documents, but if we
15 do not call this witness at this point in time, we will
16 then open the case, hear from the registration witness,
17 and then I will have to apply to adjourn so that the
18 relevant documentation can be proven before the
19 Committee. So in those circumstances, it's an unusual
20 application, but it's with a view to proceeding
21 matters, and I don't think any unfairness arises from
22 it.

23 CHAIRPERSON: I'll just ask the Legal Assessor to
24 advise the Committee as to whether there is any
25 unfairness arising to the Registrant, particularly
26 conscious of the fact that he's not here, in acceding
27 to that application.

1 LEGAL ADVICE

2
3 MR. HOGAN: Yes, well, thank you Chair, Members of the
4 Committee. Obviously, the conduct of the Inquiry is a
5 matter entirely within the discretion and power of the
6 Committee. It's for the Committee to decide how the
7 Inquiry should proceed. In the normal course, the
8 matter would be opened on behalf of the Registrar and
9 then evidence would be led.

10
11 The application to you is to effectively to take the
12 evidence of one particular witness as a result of a
13 practical difficulty before the matter has been opened.
14 At the end of the day, the sequencing is not, or I
15 suppose the change in the sequencing of the Inquiry is
16 not going to lead to any unfairness in circumstances
17 where the Registrant is not here and has chosen not to
18 be here. The Registrant would have had the opportunity
19 to cross-examine the witness, but even if that were the
20 case, still the order in which the Inquiry proceeds is
21 a matter for your discretion and it's open to you to
22 take this evidence out of turn, so to speak.

23 CHAIRPERSON: Ms. Daly, have you any comment to make on
24 the Legal Assessors advice?

25 MS. DALY: No, I agree with it.

26 CHAIRPERSON: well, in those circumstances, the
27 Committee is satisfied that there is no unfairness on
28 the Registrant to accede to your application and
29 accordingly we are doing so.

1 MS. DALY: In those circumstances, Ms. Silvestro is in
2 the waiting room and if, with your permission, she
3 could be admitted.

4 CHAIRPERSON: Thank you and have you discussed the
5 manner in which she can be sworn or affirmed?

6 MS. DALY: The affirmation I understand.

7 CHAIRPERSON: Thank you. Good morning. Thank you for
8 attending today, Ms. Silvestro.

9
10 The purpose of the Hearing is to inquire into the
11 conduct of Mr. Varghese Devesia. Your evidence will
12 assist the Committee in its decision making. I now
13 introduce...

14 MS. DALY: I'm not sure she can hear.

15 CHAIRPERSON: There's a sign on the screen that says
16 the microphone does not appear to be engaged. Is there
17 anything I can do to assist Ms. Silvestro in being --
18 in making ourselves heard?

19 MS. SILVESTRO: I can hear you.

20 CHAIRPERSON: Perfect.

21 MS. SILVESTRO: Very, very quiet. It's quite muffled
22 but I can just about make out and hear. So just to
23 make sure I've followed, you've confirmed who the
24 inquiry is about and that my evidence will assist you.
25 It's just quite muffled but I can hear.

26 CHAIRPERSON: well in those circumstances, I'll raise
27 my voice in the hope that it will make it clearer for
28 you.

29 MS. SILVESTRO: Okay.

1 CHAIRPERSON: Thank you for attending today, Ms.
2 Silvestro. The purpose of the hearing is to inquire
3 into the conduct of Mr. Varghese Devesia. Your
4 evidence will assist the Committee in its
5 decision-making.

6
7 I will now introduce myself and the other members of
8 the Committee. My name is Shane McCarthy and I am the
9 Chairperson of the Committee, and I am a layperson. I
10 am not a registrant of CORU. Mr. Shane Foley is
11 sitting on my right. He is a registered Radiographer
12 member and Ms. Esther Purcell is sitting on my far
13 left, who is a registered Medical Scientist member. Mr
14 Tom Hogan, Senior Counsel, is sitting to my left and he
15 is a Legal Assessor to the Committee. His role is to
16 assist the Committee in relation to legal issues that
17 may arise during the hearing and to offer his advice to
18 the Committee in relation to these issues.

19
20 I will now ask Mr. Foley to administer the affirmation
21 to you, Ms. Silvestro.

22
23 MS. SILVESTRO AFFIRMED

24
25 CHAIRPERSON: Thank you very much Ms. Silvestro. You
26 will now be asked questions by Ms. Caoimhe Daly, a
27 Barrister on behalf of the Registrar. The Committee
28 may also have some questions for you after that. Ms.
29 Daly, please.

1 MS. SILVESTRO DIRECTLY EXAMINED BY MS. CAOIMHE DALY AS
2 FOLLOWS:
3

4 1 Q. MS. DALY: Good morning, Ms. Silvestro. I'm putting my
5 hand up here. I don't know if you can see me in the
6 roo?

7 A. Yes.

8 2 Q. I have a series of questions arising from documentation
9 that HCPC have provided to CORU. I understand that you
10 are the Head of Fitness to Practise Legal Services at
11 the Health and Care Professionals Council?

12 A. That's right.

13 3 Q. And in that context, you are familiar with the
14 documentation that is generated whilst proceedings are
15 being undertaken by the HCPC investigating into a
16 registrant?

17 A. Correct, yes.

18 4 Q. And in that context, there comes occasions when the
19 HCPC sends an alert to other regulators in other
20 jurisdictions on foot of action being taken in relation
21 to a registrant in the HCPC?

22 A. That's right, yes.

23 5 Q. And if one turns to page 17 behind tab 1A.

24 A. Yes, I was sent tab 1A, so when I look at page 17,
25 that's the email, 16th of November 2023.

26 6 Q. Indeed, Ms. Silvestro. And that is an email sent by
27 HCPC to CORU. And we can see there in the email it
28 sets out:
29

1 "Thank you for your patience with the HCPC monthly
2 alerts list. We will now recommence the distribution
3 each month beginning with the monthly list for
4 September 2023 and provide the backdated list for
5 previous months from April 2023."

6
7 So, this is an email from your organisation to CORU
8 notifying of any actions that are taking in relation to
9 any registrants that might be of assistance to CORU.

10 A. That's right.

11 7 Q. And if one moves through to page 19, we can see there
12 it sets out:

13
14 "The individuals listed below received interim
15 suspension from the register."

16
17 Do you see that there?

18 A. Yeah, and then other registrants not relevant to this,
19 have all been redacted. So, yes, I can see the page
20 19, that is the table and the side heading. Yes, I can
21 see the list, people with a suspension order.

22 8 Q. And then if one moves over to page 20, we can see there
23 that there is the name of the Registrant, the subject
24 matter of these proceedings, and the fact, because he's
25 underneath that heading, he is subject to an interim
26 suspension.

27 A. Correct.

28 9 Q. And the purpose of this email is to communicate to CORU
29 that that Registrant is now subject to an interim

1 suspension with HCPC?

2 A. Correct.

3 10 Q. On foot of that material being sent to CORU, it came
4 that a request was then made by CORU to HCPC asking for
5 material in relation to this Registrant. And if one
6 turns to page 45 of that tab, we can see an email dated
7 the 3rd of January 2024?

8 A. Correct.

9 11 Q. Sent from Fitness to Practise and then we can see it's
10 sent to two email addresses with HCPC, which is your
11 organisation?

12 A. Yeah, I think there's a spelling mistake in the email
13 address that's carbon copied, which is the Fitness to
14 Practise department email address, but it's sent to the
15 Freedom of Information email address and later on, it's
16 the Freedom of Information Department that have
17 replied. So yes, I can see that email and that is to
18 the HCPC. And as you can see, this is intended to go
19 to two departments. It will have definitely been
20 received by one department. It just won't have been
21 received by the email address that's in the CC.
22 Because there's a little typo, it's just hcpc-ukl.org.
23 I don't think it's relevant, but just to make sure I'm
24 being accurate in answering your questions, it's gone
25 to the one email address FOI.

26 12 Q. Thank you, Ms. Silvestro. And if one then turns over
27 to page 46, you can see that the letter that was
28 attached to the email is set out there and what is
29 apparent from that is that there's a request for a

1 variety of documentation in relation to the Registrant?

2 A. Correct, yes. So at page 46 I can see the letter, the

3 3rd of January with all of the requests. Yes, that's

4 correct.

5 13 Q. And if one then moves on through that bundle to page

6 52?

7 A. Yes.

8 14 Q. We can see there, the FOI department, as you've

9 identified, is sending the material back, requested by

10 CORU?

11 A. Yes.

12 15 Q. And that occurs on the 30th of January 2024?

13 A. Yes.

14 16 Q. And in terms of the documentation that is provided, if

15 one moves on to page 55, we can see:

16

17 "Thank you for your email, 3rd of January, with signed

18 consent from the Registrant. Please find attached the

19 following documents. Interim order application hearing

20 May 2023, bundle and decision, interim order review

21 hearing November '23, bundle and decision."

22

23 And it's fair to say that there's then a significant

24 bundle of documentation that has been provided to CORU

25 by HCPC?

26 A. Correct.

27 17 Q. And that is considered for the remainder of that tab,

28 but for the Committee's purposes and what they have to

29 determine, if one commences at page 61 of that bundle?

1 A. Yes.

2 18 Q. We can see here, what the Committee will know as a
3 complaint form in this jurisdiction?

4 A. Yes.

5 19 Q. But in the HCPC, as I understand it, it's referred to
6 as a Referral Form?

7 A. Yes, so for us, that document that starts at page 61 is
8 the initial form that was submitted to the HCPC,
9 raising a fitness to practise concern that we then
10 started investigating, which then triggered the interim
11 order application.

12 20 Q. Indeed, and if one turns over to page 62, you can see
13 that the complaint is made by the Superintendent
14 Radiographer at the United Lincolnshire Hospital Trust?

15 A. Correct.

16 21 Q. And then if one turns over to page 63, you can see that
17 that complaint relates to the Registrant and the name
18 that we have already seen in the alert email that you
19 provided to CORU?

20 A. Correct.

21 22 Q. And then if one moves over to page 64, we can see that
22 the complaint received by you related to:
23
24 "Ongoing concerns with lack of knowledge and a lack of
25 ability to carry out radiography, lack of understanding
26 in radiographic techniques terminology, numerous
27 radiation incidents that have occurred, further
28 radiation incidents that would have occurred if not
29 stopped by another member of staff, and continuous

1 ongoing mistakes in positioning."

2
3 And that was the summary of the complaint that HCPC
4 received in relation to the Registrant?

5 A. Correct.

6 23 Q. And if one then moves on through that document, we can
7 see at page 65, 66, 67, 68, 69, 70, 71 and on to 72,
8 they are further details in relation to that complaint?

9 A. Correct, as a very standard way of making a referral to
10 us, yes. That is a very standard form summarising the
11 things that underpin the concerns that have led to the
12 referral from that referrer, yes.

13 24 Q. And then we can see on page 74 onwards there's
14 additional information provided in terms of what steps
15 had been taken within the organisation in relation to
16 the Registrant. And then if we turn over to page 77,
17 we can see that it is signed and dated?

18 A. Correct.

19 25 Q. The 25th of August 2022?

20 A. Correct.

21 26 Q. On foot of that complaint, HCPC then go about
22 investigating the complaint?

23 A. Correct.

24 27 Q. And that encompasses communicating with the individual
25 who's made the complaint, obtaining statements and the
26 usual investigative processes that are undertaken?

27 A. Correct.

28 28 Q. And as part of that consideration is also given as to
29 whether an interim order should be obtained in light of

1 the nature of the complaint that has been made?

2 A. Correct.

3 29 Q. And on the facts of this complaint, the decision was

4 made to apply for an interim order and the Registrant

5 was notified of that. And if we turn to page 58?

6 A. Yeah.

7 30 Q. We can see there a letter sent on the 16th of May 2023?

8 A. Yeah.

9 31 Q. And it is sent to the Registrant and we can see it sets

10 out:

11

12 "We have received a concern and information relating to

13 that concern."

14

15 It then sets out:

16

17 "Having reviewed the information, we consider that the

18 concerns about your fitness practise are potentially

19 serious and that it is appropriate to apply for an

20 interim order in this case."

21 A. Yes.

22 32 Q. And then ultimately at the bottom of the page:

23

24 "I am writing to advise you that it's our intention to

25 apply for an interim order on the basis that it is

26 necessary for the protection of the public and/or is

27 otherwise in the public interest."

28 A. Correct.

29 33 Q. So that letter is bringing to the Registrant's

1 attention and we can see over the page what happens
2 next, that he will be notified of the date upon which
3 that interim order application will be made?

4 A. Yeah, we call that the Notice of Intention letter. So
5 when we've decided that we're going to apply for an
6 interim order, we'll tell the registrant that we're
7 going to, and then when it is listed, then they get a
8 Notice of Hearing separately. That letter, the 16th of
9 May, is a very standard letter that we call the Notice
10 of Intention to apply for an interim order letter.
11 Yes.

12 34 Q. And if one then moves on, we can see that ultimately
13 there was an interim order?

14 A. Yes.

15 35 Q. If you bear with me just for one second. And if we
16 turn to page 307?

17 A. Yes.

18 36 Q. We can see that there was an Interim Order Hearing was
19 held on the 30th of May 2023 in relation to the
20 Registrant?

21 A. Yes.

22 37 Q. So, in light of the evidence that you've just given,
23 the Notice of Intention letter was sent, a date was
24 then identified, and it's on that date that then the
25 hearing in relation to any interim order is determined?

26 A. Yes, and if, probably similar to these proceedings, if
27 that hearing commences and the registrant decides not
28 to attend or isn't present, that panel will need to
29 decide if they are satisfied that service has been

1 effected in accordance with the Rules before they carry
2 on. So, yes that document at 307 is the interim order
3 application decision and as part of the preliminary
4 matters they will have satisfied themselves that the
5 Registrant had been served effectively for that hearing
6 even though they weren't there and they proceeded in
7 their absence.

8 38 Q. And I think what you're referring to there, we can see
9 at page 308 the Preliminary Matters and the decision in
10 relation to them are set out there and we can see the
11 reference to service and proceeding in absence?

12 A. Correct.

13 39 Q. And if one then moves on to page 309, you can see there
14 that the background to the Registrant is set out that
15 the complaint was received by HCPC and that ultimately
16 he was employed by the Trust as a band 5 Radiographer
17 in the radiology department at the Trust. His
18 employment at the trust began in December 2021 and he
19 was recruited from overseas and we see that in
20 paragraph 9. Then ultimately if one moves through to
21 page 311 and paragraph 16, we can see there the
22 decision of the Interim Order Committee is set out and
23 ultimately if one moves to the end of that decision, at
24 page 313, there is an order and we can see there it
25 provides:

26
27 "Order. The Registrar is directed to suspend the name
28 of Varghese Vadakkekkecheri Devesia from the Register
29 on an interim basis for a period of 18 months. This

1 order will be reviewed by the 30th of November 2023 or
2 earlier if new evidence which is relevant to the order
3 comes available after it was made."
4

5 So in summary, the interim order was determined and the
6 decision made was that the HCPC was to impose an
7 18-month suspension pending the conclusion of
8 investigations and the hearing of the Fitness to
9 Practise Inquiry?

10 A. Correct, because an Interim Order Committee in our
11 proceedings can only impose an interim order for as
12 long as 18 months. That's the longest they can decide
13 to impose one. And so that's what they did on that day
14 in May 2023, is impose suspension for 18 months. And
15 then we have to keep that under review.

16 40 Q. And in terms of that review, if we turn over the page
17 to 314, we can see that there is an indexed bundle for
18 Interim Order Review hearing dated the 27th of November
19 2023?

20 A. Yeah.

21 41 Q. So a review of that 18-month order then occurred?

22 A. Yes. That was the first review after six months on the
23 27th of November that the index at page 314, yes.

24 42 Q. And in terms of, you've said there, it's the first
25 review, the initial order was imposed on the 30th of
26 May?

27 A. Correct.

28 43 Q. And that was standing for the fact that it's for a
29 period of 18 months. There is a review that occurs

1 within that 18-month period?

2 A. Correct.

3 44 Q. And if one then looks at that bundle and continues on

4 through to page 356?

5 A. Yeah.

6 45 Q. We can see here, similar to the last document review

7 decision for the 30th of May, a similar structure and

8 the 27th of November 2023. There's then the

9 documentation in relation to it, the background, and

10 ultimately, if one moves through to page 366?

11 A. Yeah.

12 46 Q. We can see there the:

13

14 "Interim Suspension Order made on the 30th of May 2023

15 is confirmed. This order will be reviewed by the

16 Committee no later than the 27th of February 2024 or

17 earlier if new evidence which is relevant to the order

18 becomes available after it was made."

19

20 And then it sets out that a right to apply to the court

21 under Article 31.12 is then set out?

22 A. Correct.

23 47 Q. And then in terms of what has happened thereafter, it's

24 right to say that that order has continued to be

25 reviewed?

26 A. Correct.

27 48 Q. And it now has been in fact extended by the High Court

28 for a further period?

29 A. Correct.

1 49 Q. So, as matters stand within your jurisdiction and the
2 governance of the HCPC, the Registrant remains subject
3 to an Interim Suspension Order pending the conclusion
4 of the investigations and determination of the Fitness
5 to Practise Inquiry?

6 A. Correct. And because that initial period can't be
7 determined by our panels for longer than 18 months,
8 that's why it has to be extended by the High Court.
9 So, yes, the Registrant remains suspended and that has
10 been agreed in the jurisdiction of the High Court in
11 England and Wales because of the time period.

12 50 Q. And I think the Committee have a separate bundle which
13 is a witness statement that you have provided and
14 appendices?

15 A. Yeah, yes.

16 51 Q. And in Appendix 4 of that bundle, we can see the order
17 of the High Court is reflected there?

18 A. Correct.

19 52 Q. In addition to that, at tab 3, we can see that there is
20 the public-facing register of this Registrant on the
21 HCPC website?

22 A. Yes, I don't have tab 3 to your bundle book.

23 53 Q. Sorry, appendix 3.

24 A. I think that was an appendix 3.

25 54 Q. Indeed.

26 A. That was sent to me for my statement, so yes. I have
27 definitely seen in materials sent to me for my review,
28 a screenshot essentially of our Register confirming
29 that the public can see that that person is suspended.

1 55 Q. And I think you referred to appendix 3 and the
2 Committee have that appendix?
3 A. Yeah. I think that's right.
4 56 Q. So, your Appendix 3, as matters stand, the current
5 Register reflects the 1st of March 2022 to the 29th of
6 February 2024, is what's reflected in appendix 3 of
7 your statement?
8 A. I think, I haven't got it up in front of me because
9 I've got this tab 1A document in front of me in that
10 order and when I go into this iManageShare document
11 it's now asking me for my password again. But yes, I
12 have definitely last week reviewed what Fieldfisher
13 said to me on behalf of CORU. That public-facing
14 Register, I've seen it and yes, that is what it looks
15 like. I haven't then gone and compared and logged on
16 to the Register myself, but yes, that's what that
17 document shows. I agree. I just don't have it in
18 front of me right this second and I don't want people
19 to think that I'm looking at it on the screen because I
20 haven't, because I was told to make sure I had tab 1A
21 and appendix 4. And I'm just going through the
22 documents now and this file share system is not really
23 being my friend if I'm honest. But I can get it up in
24 front of me if you need me to but --
25 57 Q. You've indicated that you still have tab 1A available
26 to you, did you?
27 A. Yes. Yeah, yeah.
28 58 Q. If you turn to page 23 of that tab, which is the same
29 as your appendix 3?

1 A. Yes, that's right. That's right.
2 59 Q. So in that document, that is the public-facing Register
3 of HCPC?
4 A. Yes, that's what I was sent as a copy that had been
5 taken off the website. And because, like you
6 mentioned, there was a date period on there, that's why
7 I went into the file to double check the current
8 position and that's why I sent appendix 4 to show the
9 High Court extension.
10 60 Q. So whilst the public-facing Register indicates that the
11 period completed at the 29th of February 2024, in fact
12 that requires updating as he remains suspended as per
13 the High Court order found in appendix 4 of your
14 statement?
15 A. If that is what it shows on the website at the moment
16 then it needs updating and is different to the
17 information that is notified to the Registrant
18 directly, yes.
19 61 Q. Okay. I've no further questions.

20
21 END OF DIRECT EXAMINATION
22

23 CHAIRPERSON: Thank you very much for attending the
24 Inquiry and giving your evidence today.

25 MR. HOGAN: Sorry, Chair I just -- Ms. Silvestro could
26 you just confirm to the Committee that, obviously
27 you've given evidence in relation to the Register, but
28 could you confirm to the Committee that Mr. Devesia was
29 notified that he had been suspended?

1 MS. SILVESTRO: Correct.

2 MR. HOGAN: He didn't participate in any of the
3 hearings, so if you could just confirm to the Committee
4 that he was notified of the outcomes of both the
5 interim suspension hearing and the application to the
6 High Court to continue the interim suspension.

7 MS. SILVESTRO: Correct, yes, because it's about his
8 registration with us, he must be notified in advance
9 and of the outcome. So the Registrant is notified
10 separately to somebody going onto our website and
11 having a look themselves, the member of the public.
12 So, yes, the Registrant has been notified of the
13 initial application, the decision, and when it's been
14 reviewed and the outcome, and has been notified that
15 that continues to be the case at HCPC Committee reviews
16 and the High Court decision.

17 MR. HOGAN: Thank you.

18 CHAIRPERSON: Thank you very much Ms. Silvestro for
19 attending the Inquiry and giving your evidence today.
20 Your evidence will assist the Committee in making a
21 decision in relation to the allegations which are
22 subject of this Inquiry. Thank you very much.

23 MS. SILVESTRO: Thank you. Am I okay to go now?
24 Unless someone else needs more from me?

25 CHAIRPERSON: You're okay to log off and thank you
26 again for your assistance to the Inquiry.

27 MS. SILVESTRO: Thank you. Thanks very much. Bye.

28 MS. DALY: There's obviously one other witness who's
29 from the Registration department, but I'm conscious

1 that whilst I haven't opened the case, so what I
2 propose to do now, subject to the Committee, is that I
3 will embark on opening the case and go back to the
4 beginning as it were.

5 CHAIRPERSON: And do you wish to do that now?

6 MS. DALY: I'm in the Committee's hands, but that...

7 CHAIRPERSON: Just keep going. Yes, proceed, please.

8 MS. DALY: Thank you.

9
10 CASE OPENED

11
12 MS. DALY: The Committee should have the Notice of
13 Inquiry.

14 CHAIRPERSON: You might direct the Committee to the
15 page.

16 MS. DALY: It's a separate tab, I understand.

17 CHAIRPERSON: Thank you.

18 MS. DALY: And we can see there that a Notice of
19 Intention to hold an Inquiry under Part 6 of the Act,
20 and it's addressed to Mr. Devesia at the address that
21 is held on file for him and the address indeed that you
22 will recognise from this morning in terms of the
23 correspondence being sent to him.

24
25 It then sets out his registration number and it
26 provides thereafter:

27
28 "Whereas the Preliminary Proceedings Committee, having
29 considered all information furnished to them in

1 relation to the complaint of Margaret Hynds O'Flanagan,
2 the then Registrar of the Radiographers Registration
3 Board of Health and Social Care Professionals Council,
4 CORU, the complaint pursuant to Part 6 of the Act was
5 of the opinion that there was sufficient cause to
6 warrant further action being taken in relation to the
7 complaint against you on the grounds of;

8
9 (a) professional misconduct within the meaning of
10 Section 52(1)(a) of the Act as that term is defined by
11 Section 50 of the Act, and;

12
13 (b) poor professional performance within the meaning of
14 Section 52(1)(b) of the Act as that term is defined by
15 Section 50 of the Act and a contravention of the Act,
16 the rules or bye laws within the meaning of Section
17 52(1)(f) of the Act and whereas the complaint was
18 referred to the Preliminary Proceedings Committee
19 pursuant to Section 56(1)(b) of the Act to a
20 Professional Conduct Committee, and whereas you were
21 notified by the Registrar in accordance with the
22 provisions of Section 57(1) of the Act that the
23 complaint had been referred to a Professional Conduct
24 Committee. Now take notice that a Professional Conduct
25 Committee will proceed to hold the Inquiry at 10 a.m.
26 and on dates to be confirmed at the offices of CORU,
27 Infinity Building, George's Court, George's Lane,
28 Smithfield, Dublin 7. And further take notice that the
29 allegations to be considered at the Inquiry are as

1 follows.

2 1. That you, while registered as a radiographer with
3 the Radiographer's Registration Board (the Board),
4 failed to notify the Board, whether as soon as was
5 reasonably practical or at all, that on or about the
6 30th of May 2023, you were made the subject of an
7 Interim Suspension Order by the Health and Social Care
8 Professions Tribunal, sitting at the Investigating
9 Council Committee of the Health and Care Professions
10 Council in the United Kingdom, and/or:

11
12 2. Such further and/or other allegations as may be
13 notified to you in advance of the Inquiry."

14
15 And there are no such further allegations.

16
17 "And further, take notice that it is alleged that the
18 acts and/or omissions and/or patterns of conduct at one
19 or more of allegations 1 to 2 above amount individually
20 and/or in combination and/or cumulatively to acts
21 and/or omissions and/or patterns of conduct that
22 constitute breach/breaches of the following sections of
23 the Radiographer's Registration Breach Code of
24 Professional Conduct and Ethics adopted by the
25 Radiographer's Registration Board which came into
26 effect on the 19th of February 2019.

27
28 5. Comply with obligations regarding registration.
29

1 You must inform the Radiographer's Registration Board
2 within seven days if your employer or another body has
3 suspended you or placed restrictions on your practice
4 because of concerns about your conduct or competence.
5

6 7. Obey laws, regulations and guidelines.
7

8 You must:
9

10 (a) know and work within the laws, regulations and
11 guidelines governing your practice and keep up to date
12 with any changes in legislation or regulation or
13 guidelines.
14

15 (b) obey the laws of the country in which you live and
16 work in both your professional practice and your
17 professional life.
18

19 20. Raise concerns about safety and quality of care.
20

21 You must (e) report any serious breaches of behaviour
22 or malpractice by yourself or others. Malpractice
23 includes negligence and incompetence, breach of
24 contract, unprofessional behaviour, causing danger to
25 health, safety or the environment and covering up any
26 of those issues.
27

28 22. Demonstrate ethical awareness.
29

1 22.1. You must always behave with integrity and
2 honesty. And (c) make sure you read, understand and
3 comply with this Code of Professional Conduct and
4 Ethics and thereby constitutes professional misconduct.
5

6 And further take notice that the said Act or omission
7 at Allegation 1 constitutes a contravention of Section
8 45(1)(d) of the Act. And further take notice that the
9 said Act or omission at Allegation 1 constitutes a
10 contravention of Section 45(1)(e) of the Act.
11

12 And further take notice that the said Act or omission
13 at Allegation 1 constitutes a contravention of Section
14 45(1)(f) of the Act.
15

16 And further take notice that at the hearing before a
17 Committee, the Registrar or any other person with leave
18 of the Professional Conduct Committee shall present the
19 evidence of the complaint. The testimony of witnesses
20 shall be given on oath and there shall be a full right
21 to cross-examine witnesses and call evidence in defence
22 and reply. "
23

24 And Chair, with your leave, I propose to treat the
25 remainder of the Notice read and other than to indicate
26 over the page that the notice was signed by Ms. Claire
27 O'Cleary, Registrar, Radiographer's Registration Board
28 and is dated 30th January 2025.
29

1 And then over the page we can see the indication of
2 representatives or witnesses to be called, a
3 representative of HCPC, the Registration Department and
4 if necessary someone from Fieldfisher to prove various
5 documents, if the Committee so felt it necessary.

6
7 That is the Notice of Inquiry. As the Committee will
8 be aware, the burden and standard of proof rests with
9 the Registrar and it falls to the Registrar to prove
10 beyond reasonable doubt the allegations as alleged in
11 the Notice of Inquiry.

12
13 Moving on from the Notice of Inquiry and the burden and
14 standard of proof. If one then returns to the Cork
15 Book, and I'm conscious that some of this documentation
16 will have already been brought to your attention, but
17 nonetheless, commencing with the complaint form itself
18 in this jurisdiction and the complaint that was made to
19 CORU, that is to be found at page 6 of the Cork Book,
20 and this is a front page to which the Committee will be
21 familiar with. And if one turns over the page to page
22 7, we can see there that the complaint has been made by
23 Margaret Hynds O'Flanagan and the address is the Health
24 and Social Care Professional Council, CORU, Infinity
25 Building, George's Court, George's Lane, Smithfield and
26 then it sets out the email address and telephone
27 contacts.

28
29 If one then moves over to page 9, we can see that that

1 complaint relates to the Registrant and their surname,
2 Devesia, their current work address is unknown, their
3 profession is recorded as a Radiographer and then their
4 registration number is set out and that is provided on
5 the Notice of Inquiry.

6
7 If then one moves over to page 10, we can see:

8
9 "Where do the things you were complaining about happen?

10
11 The decisions taken by the Health and Care
12 Professionals Council and the Health and Care
13 Professionals Tribunal Services took place in the
14 United Kingdom. The underlying events that gave rise
15 to a complaint to the HCPC concerning the Registrant
16 occurred in the Radiology Department of Lincoln County
17 Hospital, Greetwell Road, Lincoln, England.

18
19 What happened?

20
21 I am concerned about the underlying conduct and
22 professional performance that has led to a complaint
23 being made to the HCPC in the UK, which resulted in the
24 HCPTS panel making an Interim Suspension Order against
25 the Registrant on 30 May 2023, reconfirmed on the 27th
26 of November 2023.

27
28 I am also concerned that the Registrant does not appear
29 to have informed the Radiographers Registration Board

1 of matters being investigated by the HCPC and of the
2 HCPTS' s panel 's decision to impose the Interim
3 Suspension Order referred to above.

4
5 This gives rise to concern about the safety of the
6 public and the Registrant' s fitness to practise. "

7
8 If one then turns over the page to page 11, you can see
9 that there is a list of supporting documents that have
10 been included with the complaint form and if one then
11 moves on to the end of that, we can see at page 13 that
12 the document is signed the 2nd of February 2024 and we
13 can see the signature there in electronic form of
14 Margaret Hynds O'Flanagan, the Registrar of the
15 Radiographers Registration Board.

16
17 So that is the complaint that was sent to CORU arising
18 from the information that came from HCPC. And the
19 Committee will be cognisant then at page 17 is the
20 email that alerted CORU to the interim suspension that
21 had been placed on the Registrants registration in the
22 UK. And that email at page 17, it's dated the 16th of
23 November 2023, and is the alert email and as the
24 Committee has already had sight, page 19 sets out the
25 interim suspension individuals and page 20 we can see
26 that the information there in relation to the
27 Registrant.

28
29 And as the Committee will be familiar, there is a

1 mutual understanding and an expectation that when
2 decisions like this are made in relation to registrants
3 and their registration, there's a sharing of
4 information that occurs and that is what occurred here
5 and HCPC shared that information appropriately in this
6 jurisdiction with CORU.

7
8 On foot of this information coming to light, the Case
9 Officer then made attempts and contacted ascertain Mr.
10 Devesia in order to ascertain the correctness or
11 whether it was him. And if one turns to page 33 of the
12 Cork Book, we can see here a series of emails and
13 communications that are in the 5th of December, 2023.
14 And it's an email from CORU to Mr. Devesia. And it
15 sets out:

16
17 "I please find attached a letter for your attention."

18
19 And ultimately over the page, we can see the letter
20 says:

21
22 "I would be grateful if you could confirm whether you
23 are registered with the HCPC in the UK. If you do hold
24 registration with the HCPC, please confirm your
25 registration, the current status of your registration,
26 whether there are restrictions or conditions imposed by
27 the HCPC on your practice, and whether you are the
28 subject of any fitness to practise proceedings by HCPC.
29

1 Please be advised that we may seek to verify any
2 information which you provide to us with the UK
3 Regulator. If necessary, any information that you
4 provide may also be included in a Fitness to Practise
5 complaint about you and could be relied on at an
6 Inquiry."

7
8 In response to that, there is an email back from the
9 Registrant at page 35 and it is sent on the 12th of
10 December 2023 and it provides:

11
12 "Dear Fergus,

13
14 Greetings from India.

15
16 First of all, I apologise for the delay in replying to
17 your above subjected letter. I was quite busy during
18 these days with my routine shifts and ongoing
19 trainings. Whilst I appreciate your Inquiry, you may
20 know the exact reason behind this Inquiry at this point
21 in time? Which would rather help me in giving you a
22 proper reply.

23
24 Thanking you with kind regards,

25
26 Varghese Devesia."

27
28 Over the page then, at page 36, there's a further email
29 from CORU to the Registrant and it sets out:

1
2 "Dear Mr. Devesia,

3
4 Thank you for your email of today. I would be grateful
5 if you could confirm by return if you are registered
6 with the HCPC in the UK and provide me with your HCPC
7 registration number."

8
9 And thereafter, we can see that there's a reply back on
10 the 17th of December 2023.

11
12 "Dear Fergus,

13
14 Good morning from Kerala.

15
16 Thank you for your reply. I'm attaching here with my
17 HCPC registration number, RA77897, as requested."

18
19 And then over the page, at page 38:

20
21 "Dear Mr. Devesia,

22
23 Thank you for your email on the 17th of December 2020
24 and for providing your HCPC registration number.
25 Please find attached a consent for CORU to take up
26 relevant documentation from the HCPC in the UK and I
27 would be grateful if you could sign and date the
28 attached consent and return it to me at your earliest
29 convenience.

1
2 It is open to you to take such advice as you think
3 appropriate. The same password as before."

4
5 And then we can see over the page, page 39 is the
6 consent form. In page 40 there is then a chaser in
7 relation to that documentation and asking that it be
8 returned. And then ultimately on page 41 we can see
9 that there is the email back from the Registrant to
10 CORU on the 3rd of January 2024.

11
12 "Dear Fergus,

13
14 Happy New Year.

15
16 As advised, please find attached the consent letter.

17
18 Thanking you in advance,
19 Varghese Devesia."

20
21 And we can see that on page 42, it's provided there.
22 And then if one moves forward to page 43, there is a
23 further email from Mr. Devesia on the 10th of January,
24 2024, to CORU, stating:

25
26 "Dear sir,

27
28 Good morning.

1 I hope you are doing well and have received my consent
2 form. I'm currently in India working with the
3 Indo-American Hospital. I've received an invitation to
4 attend an Ireland interview for Radiographers on the
5 19th/20th of this month. I just want to confirm
6 whether I can proceed to attend the same. Kindly let
7 me know. Looking forward to hearing from you.

8
9 Kind regards,

10
11 Varghese. "

12
13 And that was the correspondence that the Case Officer
14 engaged in on receipt of the email from HCPC, alerting
15 them to his interim suspension.

16
17 The Committee will be cognisant of the fact that on
18 foot of that information steps were then taken in order
19 to contact HCPC and obtain the relevant information
20 that gave rise to the Interim Suspension Order and the
21 Committee will be familiar at page 46 of the bundle,
22 the request that went to HCPC and the relevant
23 documentation and that was then provided on the 30th of
24 January and that's to be found at page 52 of the
25 bundle. And as the Committee will be familiar with,
26 there was a complaint made, a decision was made to
27 undertake an interim order application. That interim
28 order application gave rise to an interim suspension
29 and the Registrant is currently the subject matter of

1 an Interim Suspension Order in the UK as part of the
2 HCPC's regulating function.

3
4 The correspondence then continues and there is
5 consideration of this material as part of the complaint
6 and on foot of the complaint being made, we can see
7 that if one turns to page 370 of 1A.

8
9 So, in summary, the correspondence we have is the alert
10 coming in, steps being taken on foot of the alert, the
11 decision being made to then make a complaint on foot of
12 the information that had been obtained, and then once
13 that complaint is made in the usual course, the
14 Registrant is notified of the fact that a complaint has
15 been made against him. And the complaint form is at
16 the outset of the bundle and then here is the letter at
17 page 370 on the 2nd of February 2024 notifying him of
18 the fact that a complaint has now been made on foot of
19 the information that has come to light. And if one
20 moves through that we can see that its at 370, at 374
21 we can see that it has been downloaded, and again we
22 can see at 376 it's been downloaded, and then if one
23 turns to page 378 we can see that on the 9th of
24 February 2024 a memo from Registration was also
25 provided to the Registrant, and if one moves on to page
26 380, we can see that the memo is dated the date of the
27 email, so it is the 9th of February 2024. And in the
28 context of what that memo sets out, it describes the
29 registration process, both generally and in the context

1 of this Registrant and the expectations and obligations
2 on an individual who is on the Register, both at the
3 time of making an application and the ongoing and
4 continuing obligations that occur thereafter.

5
6 So, if we look at the body of that document, we can see
7 that the application was initially made by this
8 Registrant on the 9th of May 2017 and if one turns to
9 appendix 1, which is 386, you can see that in the
10 context of any application being made to be entered
11 onto the Register, there is a declaration that must be
12 made that accompanies that application. And as part of
13 that declaration, which is set out at 386, we can see
14 it provides:

15
16 "I have read, understood and will comply with the Code
17 of Professional Conduct and Ethics for my profession."

18
19 And then if one goes to paragraph 11:

20
21 "I agree to tell the Registration Board if my
22 circumstances change during the course of my
23 registration, especially if the change would have
24 caused me to answer any of those questions differently.
25 In particular, I agree to tell the Registration Board
26 as soon as practical about...", and if one turns to
27 (d), "any change in the status of such licence,
28 certificate or registration, including any conditions
29 attached to it, anything likely to affect my right to

1 such licence, certificate or registration, and anything
2 likely to affect my right to be registered under the
3 Health and Social Care and Professionals Act 2005."

4
5 So in reality, this declaration places an obligation on
6 anyone who has been entered onto the Register to notify
7 their regulator if any circumstances that might alter
8 the manner in which or their right to be registered
9 comes to light, they must notify their regulator. And
10 that is a declaration that if one then turns over the
11 page to page 387:

12
13 "I make this solemn declaration conscientiously and
14 believe all the statements in it are true."

15
16 And we can see then down the page that it is signed on
17 the 4th of May 2017 in the Registrant's addressed city
18 and is signed by him thereafter.

19
20 So, that is a positive affirmation or a positive
21 declaration that is made by the Registrant at the time
22 of registration. And then ultimately, in addition to
23 that, he has to supply a fit and proper purpose test
24 and the appendix at 388 sets it out, but as you can see
25 at paragraph 4 in 381, it sets out a series of
26 questions in terms of your registration, your
27 registration in another jurisdiction and ultimately if
28 there are any pending investigations or inquiries
29 relevant, that ought to be considered.

1
2 In support of his application, there was a number of
3 documents provided and they included a recognition of
4 his qualifications and that is to be found at page 393
5 and ultimately what that gave rise to was a feel that
6 his qualifications met the criteria for him to be
7 entered on the Register. And then ultimately on the
8 29th of June, as one turns to page appendix 4, 395, we
9 can see that ultimately his registration was granted.
10 And if one looks at page 395 and the letter that was
11 sent to the Registrant, and in particular at the bottom
12 of the Register.

13
14 "A registrant shall, as soon as practicable, notify the
15 Registration Board of...", and if one again goes to
16 (d), "any change in the status of such licence,
17 certificate or registration including attachment of
18 conditions to it, (e) any matter likely to affect the
19 registrant's entitlement to such licence, certificate
20 or registration and (f) any matter likely to affect the
21 registrant's entitlement to be registered under this
22 Act.

23
24 You also are reminded that when you signed the
25 statutory declaration page of your application for
26 registration, you agreed to comply with the
27 Radiographers Registration Board Code of Conduct, Code
28 of Professional Conduct and Ethics, a copy of which is
29 enclosed for your records.

1
2 You will be required to renew your registration and pay
3 the retention fee by the 31st of October each year. It
4 is a requirement of your registration to keep CORU
5 informed of any changes to your personal contact or
6 employment details."

7
8 So in reality, members of the Committee, what's clear
9 is at the point of...

10 CHAIRPERSON: Ms. Daly, I'm loath to interrupt you.

11 MS. DALY: There's no difficulty.

12 CHAIRPERSON: I'm conscious it appears that the link
13 through which the Registrant could opt to join, appears
14 to have been closed. Sorry, I'm looking this way. Is
15 there a...

16 MS. MURESAN: So apologies, we just closed it because
17 there was somebody trying to join you. We weren't sure
18 who that was. I thought it was maybe somebody from...
19 Yeah, that's the stenographer. So that's why we closed
20 it. If you have a look at the screen behind you, it's
21 still on. So as we didn't have any more witnesses
22 attending remotely, we thought we would close it so it
23 doesn't disturb the Inquiry.

24 CHAIRPERSON: Perhaps it might be better...

25 MS. MURESAN: Like we still have it up, it's not closed
26 yet. We just closed the screen behind you, so it
27 doesn't disturb the Inquiry.

28 CHAIRPERSON: As long as the option remains open, that
29 should the Registrant be seeking to join, that you

1 would bring it to our attention. I'm happy with that.
2 we don't need for it to be live cast to us, but it is
3 just to ensure that the option for the Registrant to
4 join is there.

5 MS. MURESAN: Yeah, it's up there behind you. We can
6 put that up again if you want.

7 CHAIRPERSON: Thank you.

8 MS. MURESAN: Yeah, no problem.

9 MS. DALY: I think, it has been on, so it's not the
10 case that it has been switched off at any given point,
11 and it seems that someone was trying to access but...

12 CHAIRPERSON: I would just be concerned that perhaps
13 the person trying to access might have been the
14 Registrant and that the option should certainly be open
15 for him to do so.

16 MS. DALY: Indeed, and it hasn't been closed at any
17 point. I think the screen here has been switched off,
18 as it were, but the one behind you has been on.

19 CHAIRPERSON: Thank you very much for that clarity.

20 MS. DALY: In terms of, I was indicating that at the
21 time of application, the expectations and obligations
22 are set out and then having been granted entry onto the
23 Register, the letter at page 395 again reaffirms those
24 matters to which the Registrant had declared that he
25 would ensure that he did.

26
27 In terms of the Code of Conduct, something which he has
28 declared that he will adhere to and again was
29 reaffirmed, the Code is to be found in the Cork Book

1 and section five is of relevance in the context of --
2 and it's at tab 6 of the Cork Book and section 5 is to
3 be found at page 14 and it is clearly stipulated at
4 paragraph (b) on page 14 at section 5.

5
6 "You must inform the Radiographer's Registration Board
7 within seven days if your employer or another body has
8 suspended you or placed restrictions on your practice
9 because of concerns about your conduct or competence."

10
11 In terms of a renewal, there is an obligation on any
12 individual at every annual renewal to make certain
13 declarations and to keep the Regulator informed of any
14 changes. So effectively, there are points in time
15 where if you have not informed a Regulator in
16 accordance with the Code that you must do so within a
17 reasonable period or within seven days, that when it
18 comes to the period of renewal, there is then another
19 opportunity with which you can then inform the
20 Regulator that something has changed. And it suffices
21 to say that again at that point of renewal after the
22 Interim Suspension Order had been imposed, that there
23 was no sharing of information by the Registrant that
24 the interim suspension had come to pass in the UK and
25 that was never shared in this jurisdiction.

26
27 And then in addition to that, not only was it not
28 shared in the email, in the renewal, a trawl has been
29 undertaken of any email correspondence or any

1 information or any contact that was made with the
2 Registrant, with the Registration Board in relation to
3 any changes and no information was shared by the
4 Registrant. So it suffices to say at no stage did the
5 Registrant make CORU and/or the Registration Board of
6 CORU aware that something had changed, something as
7 significant as an Interim Suspension Order.
8

9 So if one then turns to the Notice of Inquiry and what
10 is alleged in the Notice of Inquiry, it is set out:
11

12 "Failed to notify the Board whether as soon as was
13 reasonably practicable or at all, that on or about the
14 30th of May 2020, you were made the subject of an
15 Interim Suspension Order by the Health and Social Care
16 Professionals Tribunal, sitting as the Investigating
17 Council Committee of the Health and Social Care in the
18 United Kingdom. "
19

20 It would seem in our submission that that is the
21 allegation. The facts are there was an Interim
22 Suspension Order and there is no documentation or any
23 communication to indicate that that was shared with
24 CORU as was required and obliged of him. And then it
25 sets out the breaches of the Code and the breaches of
26 the Act and that they amount to misconduct in that
27 regard.
28

29 They are the salient and relevant facts in terms of the

1 Inquiry. There is a witness from Registration to prove
2 that which I've outlined in the course of my opening.
3 There is one matter in advance of doing that that I
4 seek to draw to the Committee's attention and that is
5 the undertaking that was provided by the Registrant in
6 the context of that earlier communication. And the
7 Committee will have seen in the correspondence that
8 post dated the last hearing that it was said to the
9 Registrant that it would be brought to the Committee's
10 attention and in that regard that is what I am doing,
11 as it were. So if, for the sake of completeness, if
12 one goes back to the inter partes correspondence bundle
13 and if one turns to, initially to page 6, we can see
14 there an email from Mr. Devesia saying:

15
16 "I'm not interested to proceed further because of my
17 family issues, so my kind request to remove my name
18 from the Register permanently due to many reasons."

19
20 There then follows further communication and ultimately
21 if one moves forward to page 13, there is an email on
22 the 1st of October 2024 from Mr. Devesia to Ms. Ryan.

23
24 "Looking forward to the voluntary removal
25 confirmation."

26
27 And then over the page at page 14, we can see set out
28 there is the undertaking and it is signed on the 1st of
29 October 2024. And you can see there the various

1 undertakings that are set out and proffered by the
2 Registrant.

3
4 The Committee then if it moves to page 16 of that inter
5 partes.

6
7 "I'm happy to hear from you, however, any date I will
8 accept it and I want to remove my name from the
9 Register."

10
11 And then the Committee will be familiar with the
12 correspondence that I opened earlier and indeed the
13 WhatsApp communication effectively at page 32.

14
15 "Kindly spare him from any further proceedings since he
16 is any more interested in working under CORU or HCPC."

17
18 So I'm drawing that to the Committee's attention
19 because it is something that the Registrant has signed,
20 it is something that the Registrant has indicated that
21 he is cognisant of and also if one turns to the further
22 correspondence that was had with the Registrant
23 subsequent, it is summarised that it was going to be
24 brought to the Committee's attention. And I'm bringing
25 it to the Committee's attention for that purpose, so
26 that they are cognisant of it, they're aware of it,
27 that it's something that the Registrant was keen to
28 engage in, and it sets out certain undertakings that he
29 wishes to provide to the Committee.

1
2 In the context of considering an undertaking, it is
3 something that the Registrar is supportive of, if it
4 was something that the Committee was interested in and
5 it was something that the Committee felt was
6 appropriate. But given that we are where we are, the
7 Registrant was of the thinking that it was going to be
8 provided, I'm bringing it to your attention and it's a
9 matter for the Committee and I think the Committee
10 should consider it out of fairness to the Registrant
11 and if it's the case that the Committee are not minded
12 to proceed the way of undertakings, then I will call
13 the next witness. I suppose in short what I'm trying
14 to say is, it's a matter for the Committee and I'm
15 drawing it to the Committee's attention. And I do
16 think in that context if there was matters in the
17 undertaking that perhaps the Committee felt could be
18 amended to the Registrant's favour, if that was
19 something. I don't think that is something that would
20 necessarily preclude the Registrant from giving the
21 undertaking because ultimately no prejudice would
22 arise. It's something that would be in his favour, but
23 I don't want to take it any further than that.

24 CHAIRPERSON: Thank you. I'm going to ask the Legal
25 Assessor at this point as to the -- that it is for the
26 Committee of Inquiry to request an undertaking. If
27 they feel it appropriate, I am going to ask the Legal
28 Assessor to advise the Committee on what issues that
29 they should properly take into account when considering

1 whether to request such an undertaking. However, I am
2 conscious of the fact that the request would be made to
3 somebody who is not here. I'm also conscious of the
4 fact that the -- in terms of giving the undertaking
5 which would normally be recorded by way of sworn
6 evidence would not be possible in the circumstances in
7 which we find ourselves today and perhaps when the
8 legal advice is given by the Legal Assessor, that
9 perhaps those two issues may also be addressed.

10 MS. DALY: Thank you. And just for the sake of
11 completeness, at page 74 of the inter partes, that sets
12 out where it's drawn to the Registrant's attention,
13 that this was going to be brought to the Committee's
14 attention.

15 CHAIRPERSON: Of course, Ms. Daly, I'll give you the
16 opportunity to comment on any legal advice or
17 otherwise.

18
19 LEGAL ADVICE

20
21 MR. HOGAN: Thank you Chair, Members of the Committee.
22 So, under Section 61 of the Act, a Committee of Inquiry
23 may at any time after a complaint is referred to it
24 request the registrant concerned to undertake various
25 matters including to undertake not to repeat the
26 conduct to which the complaint relates, to undertake to
27 take such educational courses, training or other means
28 of improving competence to practice as may be
29 specified, consenting to undergo medical treatment and

1 finally consenting to being admonished or censured by
2 the Council. Under subsection 2 of Section 61, if a
3 registrant refuses to give an undertaking or consent
4 requested under this Section, the Committee of Inquiry
5 may proceed as if the request had not been made.
6 There's no guidance in the Act as to how a Committee
7 should consider whether or not to make a request of a
8 registrant to give undertakings pursuant to Section 61.
9 But it's clear that the Section affords the Committee a
10 wide discretion.

11
12 what's important to note, is that it is for the
13 Committee to request the registrant concerned to give
14 the undertakings and, if appropriate, consent to being
15 admonished or censured. And it is then up to the
16 registrant to provide that undertaking. If the
17 registrant refuses to provide the undertaking, then the
18 Inquiry proceeds as follows, it just simply proceeds.

19
20 It follows that in order for the Committee to request
21 an undertaking, it follows that from a practical
22 perspective, the Registrant has to be on notice of such
23 a request from the Committee and has to be in a
24 position to consider the nature of the undertakings
25 being requested or consent to being admonished or
26 censured, so that the Registrant can then make an
27 informed view as to whether to give the undertaking and
28 or consent requested.

1 In circumstances where the Registrant has voluntarily
2 absented himself from this Inquiry, it effectively
3 precludes the Committee from, even if the Committee
4 were minded to make a request, it precludes the
5 Registrant from considering that request and either
6 agreeing or refusing to give the undertaking.

7
8 In the slightly unusual circumstances of this case, the
9 Registrant has previously signed an undertaking and
10 consent to being censured. That undertaking and
11 consent to being censured, was effectively negotiated
12 as between the Registrar and the Registrant. Now, as I
13 say, it is for the Committee to request an undertaking
14 and consent. However, as a matter of practice, it is
15 often the case that undertakings and consents are, to
16 some respects, negotiated by the parties and then
17 proffered to the Committee and if the Committee is
18 satisfied that they are appropriate or indeed that
19 other undertakings would be appropriate may then
20 request them from the Registrant. But in circumstances
21 where this matter this matter has previously been
22 effectively negotiated between the parties, but the
23 Registrant is not present at the Inquiry to confirm one
24 way or the other, whereby if the Committee were
25 satisfied that it is an appropriate case to request
26 such an undertaking or indeed to vary the undertakings
27 and request them from the Registrant. It follows that
28 the Registrant would have to be here in order to
29 consider them and to give a decision as to whether to

1 give those undertakings and consent. Moreover, the
2 normal practice is, that the Registrant would not only
3 sign the undertaking but would also either be sworn and
4 affirmed and would give the undertaking and consent to
5 the Committee under oath.

6
7 So, in all the circumstances and given the voluntary
8 absence of the Registrant from the proceedings, my
9 advice is that it would not be appropriate to request
10 either the undertakings that have previously been
11 signed by the Registrant or indeed any undertakings and
12 consent in the absence of the Registrant. Those are my
13 advices.

14 CHAIRPERSON: Ms. Daly before I give you the
15 opportunity to comment on that advice, I'm just going
16 to ask my fellow Committee members whether they have
17 any questions. I don't have any questions arising out
18 of the legal advice either. Do you wish to make any
19 further comment?

20 MS. DALY: well, I've taken the Committee through the
21 correspondence as to how the undertaking has come to
22 fruition and why it's being brought to your attention.
23 And beyond that, I'm not going to make any further
24 submissions.

25 CHAIRPERSON: The Committee will rise and deliberate on
26 the application. It is now 20 to 1. I would suggest
27 that the Committee would deliberate over lunchtime on
28 it and that if we resume at half past one? Does that
29 suit everybody?

1 MS. DALY: I'm in the Committee's hands. No
2 difficulty. I'm grateful.

3 CHAIRPERSON: Thank you.

4
5 LUNCHEON ADJOURNMENT [12.40PM]

6
7 THE HEARING RESUMED AFTER LUNCHEON ADJOURNMENT
8 [13.46PM]

9
10 CHAIRPERSON: Ms. Daly are you ready?

11 MS. DALY: Yes we are.

12 CHAIRPERSON: Or would you prefer another 5 minutes?

13 MS. DALY: No, no we're good to go. Thank you and
14 apologies for keeping you waiting.

15 CHAIRPERSON: The Committee note the invitation to
16 consider requesting an undertaking from the Registrant
17 at this stage. However, the Committee of Inquiry are
18 satisfied that it would not be appropriate to consider
19 requesting an undertaking in the absence of the
20 Registrant.

21 MS. DALY: Thank you, Chair. If we could then move to
22 calling our next witness who is a representative from
23 the Registration Department.

24 CHAIRPERSON: Thank you. And the name of this witness?

25 MS. DALY: Stephen Ovington.

26 CHAIRPERSON: Stephen Ovington.

27
28 MR. STEPHEN OVINGTON SWORN

1 CHAIRPERSON: Thank you for attending today Mr.
2 Ovington. The purpose of the hearing is to inquire
3 into the conduct of Mr. Varghese Devesia and your
4 evidence will assist the Committee in its decision
5 making. I now introduce myself and the other Members
6 of the Committee. My name is Shane McCarthy and I'm
7 the Chairperson of the Committee and I'm a layperson
8 and I'm not a registrant of CORU. Mr. Shane Foley is
9 sitting on my right, he is a registered Radiographer
10 member. Ms. Esther Purcell is sitting on my far left,
11 who is a registered Medical Scientist member. Mr. Tom
12 Hogan, Senior Counsel, is sitting to my left, who is
13 the Legal Assessor to the Committee. His role is to
14 assist the Committee in relation to legal issues that
15 may arise during the hearing and to offer his advice to
16 the Committee in relation to these issues.

17
18 You will now be asked questions by Ms. Caoimhe Daly,
19 Barrister, on behalf of the Registrar and you may then
20 be asked questions by the Committee and by the Legal
21 Assessor to the Committee. Thank you.

22
23 MR. STEPHEN OVINGTON DIRECTLY EXAMINED BY MS. DALY AS
24 FOLLOWS

25
26 62 Q. MS. DALY: Good afternoon. Could you set out for the
27 Committee your role within CORU?

28 A. MR. OVINGTON: I am the Operations and Project manager
29 in the Registration Department.

1 63 Q. And by virtue of that role, you're familiar with the
2 registration documentation, the process of registration
3 and the register itself?
4 A. I am, yes.
5 64 Q. You're aware that this case relates to a particular
6 Registrant, namely Mr. Devesia?
7 A. Yes.
8 65 Q. And you've had sight of his registration and a copy of
9 it is to be found at the last page behind 1A, which is
10 page 414 of the overall pagination?
11 A. Yes.
12 66 Q. And we can see there, there's an extract from the
13 Register of the Radiographers Registration Board and we
14 can see that as of the 7th of February 2024, Mr.
15 Devesia was entered on the Register?
16 A. Yes.
17 67 Q. And that remains the case as of today's date, he
18 remains on the Register?
19 A. Remains on the Register, yes.
20 68 Q. We can see that there is a date due for annual
21 retention and that is recorded as 31st of October 2024?
22 A. Yeah. Every year.
23 69 Q. Every year. And so the next date upon which Mr.
24 Devesia has to renew his registration is the 31st
25 August?
26 A. Yes, this year.
27 70 Q. This year. And we can see there that the date of entry
28 of the Register, was the 29th of June 2017?
29 A. Yeah.

1 71 Q. In terms of Mr. Devesia's application to enter on the
2 Register, if you turn to page 386?
3 A. Yes.
4 72 Q. We can see there a statutory declaration?
5 A. Yes, the applicant needs to get that before they can go
6 on the Register.
7 73 Q. Sorry, just in terms of your... would you mind bringing
8 the microphone... I think you said every applicant
9 needs to fill that in before they...
10 A. To get on the Register, every applicant needs to
11 complete a statutory declaration and needs to be
12 certified by a solicitor or notary public or a
13 commissioner of the oaths.
14 74 Q. So, in conjunction with the other documentation that's
15 provided as part of the application process, this
16 declaration must be included?
17 A. Must be included, yes.
18 75 Q. And if one looks at the declaration that one can see
19 there at 386, we can see it's in the name of the
20 Registrant, who is the extract we've just looked at?
21 A. Yes.
22 76 Q. And we can see at number 2, it set out:
23
24 "I have read, understood and will comply with the Code
25 of Professional Conduct and Ethics for my profession."
26
27 You see that there?
28 A. Yes.
29 77 Q. And then in relation to paragraph 11, we can see it

1 sets out:

2 "I agree to tell the Registration Board if my
3 circumstances change during the course of my
4 registration, especially if the change would have
5 caused me to answer any of these questions differently.
6 In particular, I agree to tell the Registration Board
7 as soon as practicable about...", and if one looks to
8 number (d), "any change in the status of such licence,
9 certificate or registration, including any conditions
10 attached to it, (e) anything likely to affect my
11 rights, such as licence, certificate or registration.
12 And (f), anything likely to affect my right to be
13 registered under the Health and Social Care Professions
14 Act 2005."

15
16 And they are factors that impose a positive obligation
17 on a registrant to correspond with your Department if
18 something changes?

19 A. Yes.

20 78 Q. And if one then turns over the page to page 387, we can
21 see then that the declaration is made:

22
23 "I make this solemn declaration conscientiously and
24 believe all the statements in it are true."

25
26 And we can see Mr. Devesia's declaration and ultimately
27 that it's signed and dated the 4th of May 2017?

28 A. Yes.

29 79 Q. So that was received by the Registration Department?

1 A. Yes.

2 80 Q. And in due course Mr. Devesia's registration was
3 granted and your Department at page 395 communicated
4 with Mr. Devesia that he had been granted registration
5 onto the Radiographer's Registration?

6 A. Yes, on 29th of June.

7 81 Q. And the letter as you indicated dated the 29th of June,
8 and within that letter it again sets out the legal
9 obligations in accordance with the Health and Social
10 Care Professionals Act 2005, Section 45. And in
11 particular the letter specifies:
12
13 "That a registrant shall as soon as practicable notify
14 the Registration Board of....", and then we can see
15 (d), (e) and (f) and that marries with the content of
16 the declaration that was signed and submitted that
17 we've been through earlier?

18 A. Yes.

19 82 Q. And we can see also that the letter also states:
20
21 "You are also reminded that when you sign the statutory
22 declaration page of your application for registration,
23 you agree to comply with the Radiographer's
24 Registration Board Code of Professional Conduct and
25 Ethics, copy of which is included for your records."

26 A. Yes.

27 83 Q. So, in summary, at the point of application and at the
28 point of being appointed onto the Register, you're
29 reminded and declare what your rights and obligations

1 are in terms of that registration process?

2 A. Yes.

3 84 Q. And it's an ongoing obligation?

4 A. Yes.

5 85 Q. If one then looks to the Code itself and tab 6, page 14

6 of tab 6, which is the second book?

7 A. I've only one book here. Thank you.

8 86 Q. We can see at tab 6 there's the Radiographers

9 Registration Board Code of Professional Conduct and

10 Ethics?

11 A. Yes.

12 87 Q. And this is the document that is referred to in both

13 the declaration and the letter granting registration?

14 A. Registration, yes.

15 88 Q. And if one turns to page 14, the bottom of page 13,

16 Section 5 deals with:

17

18 "Comply with obligations regarding registration."

19

20 And then there is a, "you must", which sets out a

21 positive obligation, is that correct?

22 A. Yes, yes.

23 89 Q. And then over to page at (b):

24

25 "You must inform the Radiographer's Registration Board

26 within seven days if your employer or another body has

27 suspended you or placed restrictions on your practice

28 because of concerns about your conduct or competence."

29 A. Yes.

1 90 Q. So the Code places a positive obligation in language of
2 "must" to inform if there is a suspension.
3 MR. HOGAN: Sorry, Ms. Daly, I don't know, in terms of
4 this witness being a factual witness, obviously they
5 are matters that you can submit to the Committee in
6 terms of the legal interpretation of the Code and
7 whether it's mandatory or not, but this witness can't
8 really give evidence in relation to his opinion of
9 whether it's mandatory or not. Obviously, he can read
10 it like anyone else.

11 91 Q. MS. DALY: Okay. It says "you must". You can confirm
12 that?

13 A. Yes I can confirm that.

14 92 Q. If we then move on in terms of the obligation for
15 renewals?

16 A. Yeah.

17 93 Q. You've indicated that there's an annual obligation to
18 renew on any individual who is on the Register?

19 A. Yes.

20 94 Q. And in terms of that process, can you assist the
21 Committee in terms of how that works?

22 A. The emails and letters go out to all applicants telling
23 them that they need to go online, renewal, they go on,
24 they complete the registration renewal, they complete
25 the declaration -- well they confirm that all the
26 information about themselves are correct, you know,
27 address, email address, whatever, and then they have to
28 go through the declarations and statements and they
29 have to tick those boxes. If they have an issue there,

1 they have to contact us and that's the way it goes.

2 95 Q. So in terms of what they need to tick and the boxes, if

3 one turns to page 397?

4 A. Yes.

5 96 Q. Is this the exercise that you've just described?

6 A. Yes.

7 97 Q. And we can see here, it commences:

8

9 "Please read and respond to the statements below when

10 you confirm you've read the terms and conditions and

11 then make your payment. And then when you successfully

12 complete your payment, the system will automatically

13 issue confirmation by email to the address that has

14 been recorded on the Register."

15

16 And then you've said, part one sets out declarations:

17

18 "Confirm the statements below by ticking the boxes if

19 correct. My details are correct and up to date. I've

20 read and understand and will comply with the Code of

21 Conduct and Ethics for my profession. And I know no

22 reason why the Registration Board should not grant me a

23 renewal of my registration under the Health and Social

24 Care Professionals Act. I have provided the necessary

25 written declaration to the Registration Board."

26

27 And in terms of this Registrant, what did he tick in

28 relation to each of those?

29 A. Well, he was granted renewal, so he would have had to

1 proceed through all these ticking, yes.

2 98 Q. So they would have been ticked, "yes, yes, yes"?

3 A. Yeah.

4 99 Q. In relation to part 2:

5

6 "I am not the subject of proceedings of any sort either

7 in the Republic of Ireland or in any other jurisdiction

8 which could lead to conditions being imposed on my

9 registration or licence or my registration or licence

10 being suspended, withdrawn or removed."

11

12 So it says, "I am not". And then it sets out:

13

14 "I am not the subject of proceedings in the Republic of

15 Ireland which could lead me to being convicted of an

16 offence triable. I am not the subject of proceedings

17 in another jurisdiction which could lead me to be

18 convicted of an offence. I am the subject of

19 proceedings referred to in one or more of the above

20 three bullet points which I declared to CORU in a

21 previous CORU registration renewal process and there

22 has been no material change to the matter since."

23

24 So taking the first three of those first where there is

25 a, "I am not", what did Mr. Devesia tick?

26 A. He would have had to tick yes. Tick the box.

27 100 Q. Tick the box. In relation to the final one, "I am the

28 subject of these proceedings", what did Mr. Devesia...

29 A. He would have had to leave it blank.

1 101 Q. He would have had to leave a blank?
2 A. Yeah.

3 102 Q. And in terms of the retention of, this is a pro forma
4 document as it were, which is not ticked or un-ticked,
5 in terms of how you know what Mr. Devesia did when he
6 did his renewal. Can you just assist the Committee?
7 A. Well, he wouldn't have been able to proceed through to
8 paying his renewal fee if he hadn't ticked it, ticked
9 the box as I just stated. We would have had, we would
10 have received some sort of email communication from
11 him. A full email check was conducted on him and we
12 didn't receive anything.

13 103 Q. And in terms of the retention of the renewal
14 documentation, at the time at which the 2023 renewal
15 was done, was there a retention?
16 A. No, there was not.

17 104 Q. And so in terms of how you are satisfied as to what was
18 ticked or not ticked, how do you satisfy yourself?
19 A. Again, that we haven't received any additional
20 communication and that he successfully renewed that
21 year.

22 105 Q. So if he had ticked it in any way other than what you
23 have said, he wouldn't have been able to renew?
24 A. Yeah.

25 106 Q. You've indicated there that you've gone through your
26 emails or the systems emails in terms of Mr. Devesia
27 and his correspondence with the Registration
28 Department. Did you find anything in terms of
29 communication about information about a HCPC

1 suspension?
2 A. No.
3 107 Q. I have no further questions.
4
5 END OF EXAMINATION
6
7 MR. OVINGTON WAS QUESTIONED BY THE COMMITTEE AS
8 FOLLOWS:
9
10 108 Q. MS. PURCELL: Just with the "I am" subject to
11 proceedings, if they tick that, do they tick that every
12 year then if they made it four years ago, five years
13 ago?
14 A. MR. OVINGTON: If they had one, yes, they would have
15 had to tick it.
16 109 Q. MS. PURCELL: And each time they wouldn't be able to
17 register?
18 A. They would have had to renew, yes. They're already
19 registered. Renewal is what they're doing at this
20 stage.
21 110 Q. MS. PURCELL: Yes. And the Part 2 statement, the
22 fourth option where, "I am a subject of proceedings".
23 So, that's an ongoing kind of, over several years, is
24 it?
25 A. Yeah. They would have be communicating it through
26 email about that.
27
28
29

1
2 MR. OVINGTON RE-DIRECTLY EXAMINED BY MS. DALY AS
3 FOLLOWS:
4

5 111 Q. MS. DALY: I think in relation to that final tick, if
6 it had been ticked, that causes an impediment?

7 A. Yeah, it causes an impediment. And it's a very limited
8 number of people, so we're actually dealing with them
9 individually.

10 112 Q. And if it had been ticked in that manner, he wouldn't
11 have been allowed to renew?

12 A. Yeah.

13 113 Q. And there would have been a different process which
14 would have been embarked on.
15

16 CHAIRPERSON: I have no further questions. Are there
17 further questions from members of the Committee?
18

19 MR. OVINGTON WAS RE-QUESTIONED BY THE COMMITTEE AS
20 FOLLOWS:
21

22 114 Q. MR. HOGAN: Mr. Ovington, when did Mr. Devesia last
23 renew?

24 A. MR. OVINGTON: So he would have renewed last 31st
25 October 2024. I don't have the actual date he paid
26 renewal, but he would have had to pay the renewal fee
27 for that year.

28 115 Q. MR. HOGAN: But by that stage, CORU were already aware
29 that he had been suspended?

1 A. Yes. Well, I can't speak to that. I don't actually
2 know.
3 MR. HOGAN: Thanks, Mr. Ovington.
4 116 Q. CHAIRPERSON: But, Mr. Ovington, in terms of your
5 evidence, was that Mr. Devesia remains on the Register?
6 A. Yes.
7 117 Q. CHAIRPERSON: And, but you don't, you can't give us any
8 evidence as to when he last completed these forms?
9 A. I can say that he completed his 2024 renewal. I don't
10 actually have the date that he paid. He could have
11 paid, like we can pay up to six weeks before that 31st
12 of October. He can pay up to a month or two after
13 that.
14 118 Q. CHAIRPERSON: So it is your evidence that he would have
15 paid this, to renew in October?
16 A. He paid his October renewal fee. I don't have the date
17 that he paid it. I can get that.
18 119 Q. CHAIRPERSON: Is it the Registrar's position also that
19 the renewal will... I'm just conscious of the fact that
20 the proceedings were already in trail at that point.
21 MS. DALY: That's absolutely correct, but ultimately
22 it's the Registration Department and the registration
23 process so he filled in his declaration and that's the
24 evidence.
25 CHAIRPERSON: The evidence is that he filled in a
26 declaration in October 2024 and paid --
27 MS. DALY: And 2023.
28 120 Q. CHAIRPERSON: -- his renewal fee, in both 2023 and
29 2024, Mr. Ovington, that's what you saying?

1 A. He would have, yes.

2 MS. DALY: We can clarify the date of the payment if

3 that assists the Committee, but his evidence is that he

4 completed it.

5 CHAIRPERSON: Yeah, I think it would require that

6 clarification.

7 121 Q. MR. HOGAN: But the, just to be clear, CORU received

8 the alert email from the HCPC on the 16th of November

9 2023 which would have been after his 2023 application

10 for registration. Is that right, Mr. Ovington?

11 A. Sorry, say the date again.

12 122 Q. MR. HOGAN: So in 2023 he would have had to register by

13 the 31st of October 2024. Isn't that right?

14 A. Yes.

15 123 Q. MR. HOGAN: But in fact CORU were only notified of the

16 alert email that he had been suspended from the

17 Register in England and Wales on the 16th of November

18 of 2023 which post dated his registration for 2023?

19 A. Yes.

20 124 Q. MR. HOGAN: Is that right?

21 A. It sounds right, yes.

22 125 Q. MR. HOGAN: But the same can't be said of 2024. The

23 complaint was already in being when he re-registered

24 and filled out the form in the way in which he did?

25 A. By those data, yes.

26 MS. DALY: This is a registration witness so he's

27 giving evidence as to the registration documentation

28 that was provided by the Registrant in the context of

29 his obligations in terms of registration.

1 MR. HOGAN: It's claimed that he failed to properly
2 declare that he was the subject of a suspension with
3 the HCPC. But he did that after the complaint had
4 been... He didn't... Sorry, he did it in 2023. The
5 information was also incorrect, notwithstanding that
6 the alert hadn't been made. Isn't that right?

7 MS. DALY: It's occurred twice where the obligation is
8 on him to communicate in a particular manner with his
9 Regulator.

10 MR. HOGAN: Yeah.

11 MS. DALY: And he has twice at the renewal indicated
12 that he is not the subject matter of any restrictions
13 on his registration.

14 CHAIRPERSON: And the twice is 2023, October 2023 and
15 October 2024?

16 MS. DALY: Indeed, and the 2023 predates the alert.

17 MR. HOGAN: Yes.

18 MS. DALY: And the 2024 post-states the alert.

19 MR. HOGAN: Yes, but he had been suspended since the
20 30th of May of 2023.

21 MS. DALY: Indeed.

22 MR. HOGAN: Notwithstanding that CORU didn't know that.
23 And when he made the declaration then in October, 31st
24 of October 2023, he answered the questions in the way
25 in which this witness has described. He had to, to get
26 registration.

27 MS. DALY: As he did in 2024 as well.

28 MR. HOGAN: Yes, okay.

29 MS. DALY: In order to get the clarification in terms

1 of the date of payment for 2023 and 2024, that is
2 required, I think we're going to need a couple of
3 minutes just to clarify the date he paid, but it is
4 confirmed that he is on the Register and did renew, but
5 we can get the dates of payment.

6 CHAIRPERSON: well, in that case, Mr. Ovington, I'd
7 remind you, you remain a sworn witness and not to
8 communicate with others pending the resumption of the
9 hearing.

10 MS. DALY: we might take five minutes.

11
12 SHORT ADJOURNMENT [14.06PM]

13
14 THE HEARING RESUMED AFTER A SHORT ADJOURNMENT [14.17PM]

15
16 CHAIRPERSON: Are we ready to resume, Ms. Daly?

17 MS. DALY: we are. I'm grateful for that time.

18 CHAIRPERSON: Not at all.

19
20 CONTINUATION OF RE-DIRECT EXAMINATION OF MR. OVINGTON
21 BY MS. DALY

22
23 126 Q. MS. DALY: You've had an opportunity to review payments
24 that have been made by Mr. Devesia in terms of the
25 renewal process?

26 A. MR. OVINGTON: I have.

27 127 Q. And in terms of the October 2023 renewal, you located a
28 payment and the date of it?

29 A. Yeah, on the 6th of October 2023 he paid his renewal

1 fee.

2 128 Q. And in terms of 2024 it appears that in fact there is

3 no renewal and no payment?

4 A. Exactly, and we looked at his registration and it says

5 his next renewal date is 31st October 2024 which

6 implies he hasn't actually paid the 2024 renewal fee.

7 129 Q. So in terms of what you said earlier it appears that

8 there's only one renewal post the suspension in the UK

9 in May 2023?

10 A. Yes.

11 130 Q. I have no further questions.

12

13 THE COMMITTEE RE-QUESTIONED MR. OVERTON AS FOLLOWS:

14

15 131 Q. CHAIRPERSON: Just a small bit of further

16 clarification, Mr. Overton?

17 A. Yes.

18 132 Q. CHAIRPERSON: You say that the next renewal on the

19 computer, on your system is showing October 2024?

20 A. Yes.

21 133 Q. CHAIRPERSON: But he currently remains on the Register?

22 A. Yes.

23 134 Q. CHAIRPERSON: Despite the fact that he did not complete

24 the renewal process?

25 A. Yes.

26 135 Q. CHAIRPERSON: Can you just give an additional piece of

27 information as to how that is the situation?

28 MS. DALY: I think we just -- in terms of, maybe Mr.

29 Hogan can assist in this regard.

1 136 Q. MR. HOGAN: Ms. Ovington, I take it, would you be aware
2 that once a complaint is outstanding against somebody
3 that they can't actually, they must remain on the
4 Register while the complaint is outstanding?
5 A. Exactly, yes.
6 MR. HOGAN: Okay.
7 CHAIRPERSON: I've no further questions Mr. Ovington.
8 Thank you very much for attending the Inquiry and
9 giving your evidence, which will assist the Committee
10 in making a decision in relation to the allegations
11 which are the subject matter of this Inquiry. Thank
12 you very much.
13 MR. OVINGTON: Thank you.
14 MS. DALY: Chair, that concludes our evidence in terms
15 of the Notice of Inquiry. So what I propose, subject
16 to the Committee directing otherwise, is to make very
17 short submissions on closing and then thereafter
18 findings are made in relation to the Notice of Inquiry
19 that I make brief submissions on sanction thereafter.
20 Subject to the Committee directing otherwise.
21 MR. HOGAN: would you like to make submissions on
22 sanction at the same time?
23 MS. DALY: I'm entirely in the Committee's hands, I
24 have no difficulty in that regard.
25 MR. HOGAN: Given that the Registrant isn't going to be
26 making any, leading any evidence or making any closing
27 submission, it might be just more expedient just to
28 make your closing submissions including any submissions
29 in relation to any recommendation that the Committee

1 might make in relation to sanction. Just do it
2 together.

3 MS. DALY: I have no difficulty with that at all.

4 CHAIRPERSON: Are you in a position to do that now?

5 MR. HOGAN: Sorry if it's convenient, yeah.

6 MS. DALY: There's no difficulty.

7
8 CLOSING SUBMISSION BY MS. DALY

9
10 MS. DALY: Members of the Committee, you've heard, I
11 suppose, quite a bit of evidence this morning in terms
12 of the registration process and the HCPC process, but
13 actually the factual matrix at issue and alleged in the
14 Notice of Inquiry is quite net. And if I can take you
15 to the Notice of Inquiry itself, and ultimately what it
16 sets out is:

17
18 "A failure to notify the Board, whether as soon as was
19 reasonably practicable or at all, that on or about the
20 30th of May, 2023, you were made the subject of an
21 interim suspension order by the Health and Social Care
22 Professionals' Tribunal, sitting as the Investigating
23 Council Committee of the Health and Care Professionals'
24 Council in the United Kingdom."

25
26 So what is alleged factually is that Mr. Devesia was
27 suspended on an interim basis on the 30th of May 2023
28 by HCPC. And you've heard direct evidence that that is
29 factually correct and that was given to you via video

1 link this morning. So as a fact, Mr. Devesia was given
2 an interim suspension on the 30th of May 2023. And
3 that is there and uncontroverted evidence.
4

5 In terms of what happens then on foot of that
6 occurring, the Committee needs to look at what happened
7 in terms of his registration here, that interim
8 suspension having occurred. And the short answer to
9 that is, from Mr. Devesia's perspective, nothing. No
10 steps were taken to inform CORU and no contact was made
11 in that regard.
12

13 And if one then moves on from the facts as in
14 allegation 1 and look at the obligations that are
15 imposed and why it was a failure to not do so. If one
16 looks at the Code in Section 5, it says, "you must".
17 And Mr. Hogan interjected that I, the registration
18 witness, needed not to give opinion evidence in terms
19 of his interpretation. But in any event, the language
20 of the Code is that you must. So it's not, you may,
21 you might, you think. It is, you must. So that means
22 under all circumstances, you have to do something.
23 It's not within your discretion. It's not within your
24 thinking. It is a positive assertive obligation. And
25 within that Code, it sets out a timeframe. So it says
26 within seven days. So in terms of the 30th of May
27 2023, that's when the interim suspension was imposed
28 and within seven days there is a positive obligation
29 for CORU to be notified. And that was never adhered

1 to. It just never happened. And furthermore, that is
2 what's in the code. If one then looks at the
3 declaration that is signed at the point of
4 registration, and members of the Committee will have
5 seen it most recently in the direct evidence that was
6 just given a few moments ago. But if one looks at the
7 declaration, as also appears in the Act and also
8 appears in the correspondence confirming registration,
9 there is:

10
11 "I agree to tell any change in the status of such
12 licence, certificate or registration, including any
13 conditions attached to it, anything likely to affect my
14 right to such licence, certificate or registration,
15 anything likely to affect my right to be registered
16 under the Health and Social Care Professions Act."

17
18 So we have the code that says you must inform within
19 seven days if there is a suspension. We have a
20 declaration that appears at registration that sets out
21 if there is a change. So it need not necessarily be a
22 suspension, it's something that may affect your
23 registration and it's there at (d), (e), and (f) in the
24 declaration form. It is then further emphasised in the
25 document that's sent, page 386. It's then further sent
26 in the confirmation, again reaffirming the expectations
27 and the obligations incumbent on a registrant. And
28 it's an ongoing obligation. And needless to say,
29 Members of the Committee, there's logic to that and

1 there's sense to that. Because if one is registered
2 and then it's an indefinite period without any checking
3 or verifying, anything could happen. And the
4 Registrant is thereby placed on an onus and a
5 responsibility, and a responsibility that is derived
6 from the privilege of being registered in the first
7 place. So that onus requires him to make known those
8 matters that others may not know without his
9 assistance. And he's told, he declares he'll do it,
10 he's then informed he will do it, and then it is
11 re-emphasised at the declaration process in the renewal
12 process, where you have to confirm by the tick or not
13 ticking to let CORU know what is occurring. So in any
14 view, there is clearly a failure, and it's set out by
15 the Code, by the Act, by the Declaration, and by the
16 Communication and the Renewal. That is in relation to
17 allegation 1.

18
19 Allegation 2, as it were, the notice sets out to the
20 breaches of the Code and that it amounts to
21 professional misconduct. And the Codes that are set
22 out there clearly have been breached because there's
23 been a failure to comply with the obligations regarding
24 registration. There's been a failure to abide with the
25 laws and guidelines because he hasn't adhered to the
26 Act and what's set out and the guidelines and the Code
27 that's been provided for. It raises concerns about
28 safety and quality of care. And then finally, it
29 demonstrates an ethical awareness, always behave with

1 integrity and honesty. And what's very clear here is
2 that he has declared that he will do something. He has
3 not done it. And not only has he not done it, when the
4 renewal process is undertaken, he has positively
5 asserted something that is not the case. And that is a
6 positive assertion with your Regulator, the person and
7 the entity with whom trust of the profession is
8 dependent on. So if you are not engaging truthfully
9 with your Regulator, you are going to the very core of
10 acting with integrity and in honesty. So if you can't
11 tell the truth to your Regulator, what chance does the
12 public have?

13
14 In terms of that amounting to professional misconduct,
15 it clearly amounts to professional misconduct. It is a
16 breach of the Code, which is what is the definition of
17 professional misconduct, and it clearly is serious
18 because it is not acting honestly and openly and
19 truthfully with your Regulator.

20
21 And the Committee will have seen in the correspondence
22 and exchange at the initial stages that when the Case
23 Officer was interacting with the Registrant, inquiring
24 as to whether he was the individual that was being
25 referred to in the HCPC correspondence, he actually
26 emailed to say, "I have a job interview in Ireland, can
27 I still go for it?" So there was no, "there's an
28 interim suspension on me". The response was, "can I go
29 for my interview in Ireland?" So that I think is

1 actually a very integral piece of information and
2 documentation and correspondence from Mr. Devesia in
3 terms of the openness and honesty and integrity. And
4 thereby, clearly, all of it amounts to professional
5 misconduct.

6
7 If one then turns to the final three allegations in
8 terms of the allegations amounting to a breach of the
9 Act, you'll have noticed and seen within the notice,
10 there's the referrals on poor professional performance,
11 professional misconduct, and a breach of the Act. And
12 if one turns to Section 45 of the Act, which is to be
13 found at tab 5, page 63. And this marries with what is
14 contained within the declaration and also in the
15 correspondence that is provided on foot of
16 registration. And what one can see there is:

17
18 "Updating of registrant information and correction of
19 errors."

20
21 So the Act provides for the ongoing obligation that is
22 included in the registration documentation.

23
24 "A registrant shall, as soon as practicable, notify the
25 Registration Board concerned of...".

26
27 And then the first allegation is in relation to
28 45(1)(d):
29

1 "... any change in the status of such licence,
2 certificate or registration, the attachment of
3 conditions to it."

4
5 And it's quite evident from the evidence that you've
6 heard that the Registrant did not notify CORU of any
7 change in his status, namely the suspension, interim
8 suspension, as soon as practicable. By the time of his
9 renewal, which was some six months after the initial
10 suspension, he had not notified. On the contrary, he
11 gave rise to a positive assertion, the opposite of what
12 had happened.

13
14 And then the same can be said in relation to (e), which
15 is:

16
17 "Any matter likely to affect the registrant's
18 entitlement to such licence, certificate or
19 registration".

20
21 The same factual matrix arises and the same in relation
22 to (f).

23
24 "Any matter likely to affect the registrant's
25 entitlement to be registered under this Act."

26
27 So on the facts as heard by the Committee, as I've
28 indicated, you've clear evidence there was a
29 suspension, you've clear evidence that it wasn't

1 notified to CORU at any time in advance of the renewal
2 and/or at the time of the renewal, when at the time of
3 the renewal, the opposite was being told to CORU. So
4 factually, it's there, the professional misconduct is
5 clearly made out, and then the breaches of the Act in
6 our submission are also clearly made out beyond
7 reasonable doubt and all should be found proven.

8
9 That then brings us to the issue of sanction, and the
10 Committee will be familiar with the guidance on
11 sanction as has been provided and dated the 29th of
12 June 2023. Sanction is a matter for the Committee and
13 there is a wide variety of sanctions that are available
14 to a Committee in any given case. But one needs to be
15 cognisant of the facts in the case when determining
16 what is the appropriate sanction.

17
18 In imposing sanction, it is protection of the public is
19 paramount, but protection of the public encompasses a
20 wide spectrum of conduct and activity. So it's not
21 solely about the relationship with the patient per se
22 in terms of providing direct patient care. It
23 encompasses the upholding proper standards, upholding
24 confidence in the profession and also sending out a
25 deterrent and message to other members of the
26 profession.

27
28 So, that then brings us to look at the conduct itself
29 and factually what you are dealing with is an

1 individual who has not disclosed something to their
2 Regulator when they ought to have disclosed it and then
3 on top of that, positively declared something other
4 than the truth in the context of, "I'm not subject to
5 any conditions", when he knew that he was. So at the
6 heart of what you are contending with is someone who
7 has not acted openly and honestly with their Regulator.
8 And that is what you have to consider. That is what
9 you have to consider in terms of upholding public
10 confidence in the profession. What would members of
11 the public think of an individual that they are being
12 treated by who cannot openly and honestly interact with
13 their Regulator?

14
15 That then flows to other members of the profession and
16 in terms of ensuring that there's a deterrent and a
17 message sent to other Radiographers that you must
18 always act openly and honestly with your Regulator.
19 And if you do not do so, it is treated seriously and is
20 recognised as a serious transgression. And they are
21 factors that go beyond the direct patient interaction.
22 They go to the profession as the whole, upholding the
23 confidence in the profession and thereby sending a
24 message and ensuring proper standards, as well as
25 ensuring confidence in the regulatory process, such
26 that when serious matters come before a Regulator and
27 before a Committee such as this, they are viewed
28 seriously and treated seriously.

1 And that ultimately when one looks at the sanctions and
2 the factors to be considered, we can see at page 6, it
3 sets out the primary purpose of sanction which
4 encompasses that which I've just summarised and set out
5 to you. And then it lists out factors that have to be
6 taken into account, namely proportionality, mitigation,
7 aggravating factors, outcome and insight. And having
8 regard to those factors, the Registrant has not
9 attended, has not indicated his position in relation to
10 the matters set out, and ultimately there is limited
11 insight, if no insight available to the Committee based
12 on the correspondence that you've seen.

13
14 In terms of the approach to sanction, one will be
15 advised by Mr. Hogan in due course, but you start at
16 the least restrictive first, moving your way up until
17 such time as you reach one that fits the circumstances
18 at issue. But it is important to note that when one is
19 dealing with issues of honesty, integrity and
20 relationship with a Regulator, that this in our
21 submission is something that should be viewed seriously
22 and considered as such in the context of one's
23 registration.

24
25 In terms of the factors to be considered in that
26 regard, we can see that pages 9 and 10 of the Guidance
27 deal with these factors and the Committee will be aware
28 of them and mindful of them in determining what is the
29 appropriate sanction.

1
2 LEGAL ADVICE
3

4 MR. HOGAN: Chair and Members of the Committee. I'd
5 firstly just remind you what your role here is. It's
6 firstly to consider the allegation that has been made
7 against the Registrant. In this case, it's a single
8 factual allegation. And I'll come back to that
9 shortly.

10
11 So you must consider the allegation, you obviously must
12 review the evidence that has been tendered to you,
13 that's both the oral evidence on behalf of the
14 witnesses that were called by the Registrar, together
15 with the documentary evidence that has been adduced
16 during the course of the Inquiry. And ultimately, you
17 must consider and decide whether the allegations have
18 been made out and substantiated, and if so, go on to
19 make findings as appropriate.

20
21 I would remind you that the onus of proof remains at
22 all times on the Registrar to prove the allegation, the
23 subject matter of the complaint. There is no burden on
24 the Registrant to disprove the allegation that was made
25 against him. Effectively, the Registrant enjoys a
26 presumption of innocence.

27
28 Furthermore, I would remind you that no adverse
29 inference can be taken from the fact that the

1 Registrant didn't give evidence or indeed didn't appear
2 or participate in the proceedings.

3
4 The standard of proof for the Inquiry which is agreed
5 by the Registrar is beyond reasonable doubt. That is
6 the criminal standard of proof. It may be helpful to
7 contrast the criminal standard of proof with the civil
8 standard of proof which is on the balance of
9 probabilities. That is just simply that something is
10 more likely than not to have happened. The standard of
11 beyond reasonable doubt is more onerous. It doesn't
12 amount to a certainty. If you have doubt in your minds
13 and it's reasonable, then the Registrant is entitled to
14 the benefit of that doubt. If the only doubt in your
15 mind is a remote possibility, which is possible but not
16 in the least probable, the standard is not. But
17 ultimately, if you were in any doubt, the Registrant is
18 entitled to the benefit of that doubt.

19
20 In considering the allegations and the evidence, you
21 must firstly decide whether the facts supporting the
22 allegation are proven beyond a reasonable doubt and
23 then you must go on to decide whether the allegation,
24 the factual allegation is proved, then constitutes
25 misconduct or a contravention of the Act in this
26 particular case.

27
28 It's important that you consider all of the evidence,
29 but also that you confine yourself to the evidence that

1 has been adduced before you, and you don't stray
2 outside of the evidence. Ultimately the weight that
3 you attach to any particular piece of evidence is a
4 matter for you. If there are conflicts in the
5 evidence, then you must decide where that conflict
6 lies. You can resolve those conflicts and in doing so
7 you are entitled to make inferences from the evidence.
8 Ultimately, the weight that you give to any particular
9 piece of evidence is a matter for you. But you may
10 look at the consistency of any particular piece of
11 evidence with other evidence or in particular
12 documentary evidence that has been adduced at the
13 Inquiry.

14
15 The allegations in this Inquiry involve allegations of
16 both professional misconduct, that is a breach or
17 breaches of the Code and also a contravention of the
18 Act. That is a contravention of the obligations that
19 are provided for under Sections 45(d), (e) and (f),
20 effectively obligations to update the Registration
21 Board in relation to any material facts affecting
22 registration.

23
24 In relation to the allegation, I would remind you or
25 perhaps highlight to you that the single allegation
26 made against the Registrant is that he failed to notify
27 the Board, whether as soon as was reasonably
28 practicable or at all, that on the 30th of May he was
29 made the subject of an Interim Suspension Order by the

1 HCPC. And I would just observe that that is the
2 allegation, failing to notify the Board of the
3 suspension. It is not, for example, alleged against
4 him that he made false declarations during the course
5 of registering. Obviously, the declarations that he
6 made are matters that you can take into account in
7 considering whether he failed to bring those matters to
8 the attention of the Board. But the allegation is not
9 that he made false declarations, but rather that he
10 failed to notify the Board of the fact of the
11 suspension.

12
13 In relation to the breaches of the Code, or I should
14 say, the obligation which it is alleged the Registrant
15 failed to comply with is threefold.

16
17 Firstly, there are obligations that are contained in
18 Section 45(d), (e) and (f) and further there is the
19 mandatory obligation contained in Clause 5 of the Code
20 of Professional Conduct and Ethics, which provides that
21 a registrant, in order to comply with obligations
22 regarding registration, must inform the Radiographer's
23 Registration Board within seven days if your employer
24 or another body has suspended you or placed
25 restrictions on your practice because of concerns about
26 your conduct or competence.

27
28 And furthermore, there are obligations which the
29 Registrant undertook when he was first registered in

1 the solemn statutory declaration that he made to the
2 same effect as those obligations that are contained in
3 Section 45.

4
5 So the obligations on the Registrant that it is alleged
6 that he failed to comply with are found in those
7 different places. And it is claimed that breaching the
8 Code amounts to misconduct, not only in relation to
9 Clause 5, but in relation to Clause 7, obeying laws,
10 regulations and guidelines. Clause 20, raising
11 concerns about safety and quality of care. In other
12 words, reporting any serious breaches of behaviour or
13 malpractice by yourself, including incompetence or
14 alleged incompetence. And 22, demonstrating ethical
15 awareness and always behaving with integrity, honesty,
16 and making sure that you comply with the Code of
17 Professional Conduct.

18
19 Ultimately, you have to consider whether the
20 allegations are made out to the standard of proof.
21 That is, beyond a reasonable doubt.

22
23 Ultimately, when you have considered the allegations
24 and made your findings, you should prepare a report to
25 be submitted to the Board in which you should specify
26 the nature of the complaint, specify the evidence
27 presented and specify your findings as to whether any
28 of the allegations have been substantiated. And you
29 should provide reasons for your findings.

1
2 Under the Act, you may also include such matters as you
3 consider appropriate. And as a general practice,
4 Committee's if findings are made, generally make
5 recommendations to the Board, or sorry, excuse me, to
6 the Council in relation to sanction.

7
8 And in considering any recommendation on sanction, the
9 sanctions available to the Committee are those set out
10 in Section 66 of the Act, which I'll just quickly
11 remind you of. Starting with the so called minor
12 sanctions in ascending order of seriousness, the
13 Committee may recommend firstly an admonishment or
14 censure, secondly the attachment of conditions to the
15 registration including restrictions on the practice of
16 the designated profession by the registrant. Thirdly
17 the suspension of his or her registration for a
18 specified period. Fourthly the cancellation of his or
19 her registrations and fifthly, a prohibition from
20 applying for a specified period to restore for
21 restoration to the Register.

22
23 In relation to any recommendation that you might make
24 in relation to sanction, I'll just quickly remind you
25 of the principles in relation to sanction. And
26 firstly, remind you that the primary purpose of
27 sanction is to protect the public, but also to maintain
28 the standards of the profession and to maintain public
29 confidence in the profession and the regulatory

1 process. And the fundamental principle of sanction is
2 proportionality. That is on the one hand to protect
3 the public while on the other hand protecting the
4 interests of the Registrant, that is the interests of
5 the Registrant to a good name and also the ability to
6 earn a livelihood.

7
8 Allied to the principle of proportionality is the
9 principle of leniency. You should try and be as
10 lenient to the Registrant as possible, should you make
11 findings against him.

12
13 ultimately, you should have regard to the seriousness
14 of the conduct in question and all of the circumstances
15 of the case. But then you should go on to consider
16 whether there are any mitigating factors on the one
17 hand or any aggravating factors over and above the
18 seriousness of the conduct in question that should be
19 taken into account.

20
21 In this case, ultimately the Registrant has not engaged
22 in the process, has voluntarily decided not to appear
23 at the Inquiry. However, you may think that it's
24 important to take into account the earlier interactions
25 between the Registrant and the Registrar in which the
26 Registrant was willing to give undertakings that he
27 wouldn't repeat the conduct complained of and to come
28 off the Register and not to reapply to the Register and
29 also to consent to being censured. And a signed

1 undertaking was offered by the Registrant and I think
2 that's something that you can take into account in
3 showing some level of insight on the part of the
4 Registrant in trying to deal with the matter at that
5 particular time. So, I think certainly that's
6 something that you can take into account in terms of
7 mitigation.

8
9 ultimately, as I say, you should be as lenient to the
10 Registrant as possible. A stepwise approach is
11 suggested whereby you start with the lowest sanction
12 and you move up until you find a sanction that you
13 believe to be appropriate and proportionate in all the
14 circumstances. And even at that stage, you should
15 stand back and ask yourselves, could we be more lenient
16 in all the circumstances.

17
18 But ultimately you should not lose sight of the
19 ultimate aim, which is to protect the public and
20 maintain the standards of the profession. And as has
21 been submitted to you, that includes deterring other
22 members of the profession from engaging in similar
23 conduct.

24
25 In relation to your recommendations on sanction, as you
26 must give reasons for your findings in relation to the
27 allegations, you should also give your reasons for your
28 recommendations in relation to sanction. As always,
29 you are not obliged to follow my legal advice, but

1 should you depart from my legal advice you should give
2 clear and cogent reasons for doing so. Those are my
3 advices.

4 CHAIRPERSON: Ms. Daly, do you wish to comment on any
5 of the advice that has been tendered to the Committee?

6 MS. DALY: Not in relation to specific advices, but in
7 relation to the comments made about the factual
8 allegations and there being no allegation in terms of a
9 submission in relation to the annual retention, as it
10 were. I do note in relation to the Code that the
11 Registrant is expected and obliged to adhere to, which
12 is fundamental to the case, is a necessity that he
13 always acts with integrity and honesty. And that is
14 encompassed when one is failing to notify. That's the
15 only comment that I would make.

16 MR. HOGAN: Just because the Registrant isn't here, Ms.
17 Daly, I just want to be, everyone has to be, I suppose,
18 as fair to the Registrant as possible. If it were
19 alleged that actually not only had the Registrant
20 failed to notify the Board of the fact of his
21 suspension but also that he had dishonestly misled the
22 Board as to the true factual position by making false
23 declarations. That's not in the case.

24 MS. DALY: There's no allegation of that nature. But I
25 think it's crucial that the Committee are mindful that
26 there is a Code obligation that a registrant must
27 interact with their Regulator open and honestly. And
28 that is part of the Code.

29 MR. HOGAN: But it's not a factual allegation that he

1 acted dishonestly.

2 MS. DALY: well, it's not alleged that he submitted
3 forms...

4 MR. HOGAN: Knowing that it was false.

5 MS. DALY: There's no allegation of that kind, but
6 there is an expectation.

7 MR. HOGAN: No, yeah. So in terms of... and had he
8 done that, obviously, that then might in turn have been
9 a breach of his obligation of integrity and honesty
10 under the Code.

11 MS. DALY: I think there's a breach of integrity and
12 honesty, in any event, because of the obligation to
13 interact openly and comply. And it's quite
14 prescriptive in terms of the declaration. It's also
15 prescriptive in terms of the letter that's sent
16 thereafter. And also in terms of the contents of what
17 is happening, that there is an ongoing obligation on a
18 registrant to engage with their Regulator in a manner
19 that discloses what is occurring in their registration.
20 And I think that is an integrity part, that is an open
21 part, and that doesn't require a positive factual
22 allegation of the kind that you're indicating in order
23 for it to be part of the case. It's an ongoing
24 obligation that someone has to act with integrity and
25 that encompasses notifying someone when they have been
26 suspended.

27 MR. HOGAN: Okay. I suppose, my advise to the
28 Committee and we can disagree on this, if there was to
29 be an allegation, a specific allegation of dishonesty,

1 it should have been spelt out in the Notice of Inquiry.
2 That's my advice. It's not to say that the obligations
3 aren't clear under the Code, under the Act, but were
4 there to be an allegation of dishonesty, in my
5 respectful advice, it would have to be clearer in the
6 Notice of Inquiry. That's my advice.

7 MS. DALY: I think we may be slightly at cross purposes
8 in terms of the submissions that we're making.

9 MR. HOGAN: Okay.

10 CHAIRPERSON: There are no further comments on the
11 advice. Are there any questions? No. In that case
12 the Committee rise and consider the matters. Ms. Daly,
13 I'm conscious of the fact that it's a Friday afternoon
14 and that we're at the end of our day. What we're going
15 to do is we're going to rise for 10 minutes at which
16 stage we should be in a position to give you an outline
17 of what times we would expect to be in a position to
18 come back in.

19 MS. DALY: There's no difficulty with that, thank you.

20
21 SHORT ADJOURNMENT [14.52PM]

22
23 THE HEARING RESUMED AFTER A SHORT ADJOURNMENT [14.58]

24
25 CHAIRPERSON: The Committee will proceed to deliberate
26 on the matter now. However, the decision will not be
27 handed down today. Instead, all parties will be
28 notified in writing of the decision in due course.
29 Thank you.

1 MS. DALY: Thank you.

2 CHAIRPERSON: Ms. Daly, it's just been pointed out to
3 me, that the decision has to be delivered in public and
4 we have given a date to the Secretariat in terms of
5 when we will be available to do it. Unfortunately
6 there seems to be a clash with the availability of the
7 room.

8 MS. DALY: Okay.

9 CHAIRPERSON: So, what we will do is we will go and
10 pick another date and we will come back to you in that
11 regard.

12 MS. DALY: That's fine.

13 MR. HOGAN: The deliberations, they are not going to
14 conclude today. We'll just have to find a better date.
15 Andreea, perhaps if you joined us with the availability
16 for the room, we'll come back.

17
18 SHORT ADJOURNMENT [15.01PM]

19
20 THE HEARING RESUMED AFTER A SHORT ADJOURNMENT [15.10PM]

21
22 CHAIRPERSON: Thank you, the Committee will proceed to
23 deliberate on the matter now. However, the decision
24 will not be handed down today. Instead all parties
25 will reconvene online on Friday 28th March at 11.30 at
26 which stage the decision will be announced. Thank you.

27 MS. DALY: I'm grateful. Thank you.

28
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