Neutral Citation Number: [2019] EWHC 905 (Admin)

Case No: CO/5110/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/04/2019

Before :

The Honourable Mr Justice Lewis

- -

Between :

Dr NATALIE BLAKELY	**APPELLANT**
- and -	
THE GENERAL MEDICAL COUNCIL	**RESPONDENT**

- -
- -

Kieran Galvin (instructed by direct access) for the **Appellant**
Alexis Hearnden (instructed by **GMC Legal**) for the **Respondent**

Hearing dates: 20 March 2019

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Approved Judgment

The Honourable Mr Justice Lewis:

INTRODUCTION

1. This is an appeal under section 40 of the Medical Act 1983 ("the Act") against a decision of 19 November 2018 of the Medical Practitioners Tribunal ("the Tribunal") following a review when the Tribunal determined that the Appellant, Dr Blakely's, fitness to practise remained impaired by reason of misconduct and determined that her registration as a doctor should be suspended for a further period of nine months.

2. The Appellant had been found at an earlier hearing to have acted dishonestly by providing misleading information to patients which was untrue and known by her to be untrue. She contends that it was wrong, and unfair, to find that her fitness to practise remained impaired because she maintained the position that she had taken at the earlier hearing, namely that she had not acted dishonestly. She contends that the decision was wrong as it was substantially based on questioning about her evidence at the first tribunal hearing. The Appellant also contends that the decision to suspend her registration for a further nine months was wrong and disproportionate. She contends that the Tribunal was wrong to hold that the public interest in suspension outweighed the Appellant's interests and, it is said, the Tribunal failed to have regard to the public interest in allowing a competent doctor to return to practice after a period of suspension. She contends that there was no need to impose a further period of suspension and that the period itself was too long.

THE FACTS

3. The material facts can largely be taken from the determination of facts made on 14 May 2018 by the Tribunal at the first hearing in this matter. The Appellant qualified as a doctor and, from 2007, specialised in aesthetic cosmetic treatments. At the material time, she was the medical director of a clinic specialising in cosmestic injectable treatments such as Botox. Another doctor joined the clinic. There was concern on the part of the Appellant about the charging or accounting practices of the other doctor. In essence, it appears, he had a practice of discounting treatment costs, that is he charged less than should have been charged for the treatment being carried out. The Appellant was concerned that his practice was causing a significant financial loss to the clinic. The Appellant arranged for a firm of private detectives to undertake covert recordings of consultations between the doctor and patients, that is neither the patients nor the doctor knew that the consultations, which were meant to be confidential as between the patient and the doctor, were being recorded and would be listened to by others. Prior to this, the Appellant telephoned the General Medical Council ("the GMC") anonymously and told them what she intended to do. She also telephoned the Care Quality Commission ("the CQC"). When patients learned of the covert recordings and complained, the Appellant e-mailed them to say that she had been advised by the GMC and the CQC to do what she had done.

The Hearing on 14 May 2018

4. There were two sets of allegations made against the Appellant at the hearing on 14 May 2018. The first (contained in paragraphs 1 and 2 of the allegation) concerned the fact that the Appellant caused or permitted the recording of patients without the consent of either the doctor or the patient. This was admitted and found proved.

5. The second set of allegations concerned the response made by the Appellant to complaints made by patients when they discovered that they had been covertly recorded. Those allegations are set out in paragraphs 3 to 5 of the allegations in the following terms:

> "3. In May 2016 you engaged in email correspondence with a number of the Patients, during which time you asserted that:
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> a. advice was sought and taken from the GMC and the CQC following which the Recordings were made;
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> b. the GMC were aware that the Recordings were being made.
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> 4. Your actions as described at paragraph 3 above were intended to provide those Patients with information that was:
>
> a. untrue;
>
> b. known by you to be untrue.
>
> 5. Your actions at paragraphs 3 and 4 above were:
>
> a. misleading;
>
> b. dishonest. "

The Findings of Fact

6. The Appellant admitted paragraph 3a and b of the allegations. In relation to the other paragraphs, the Tribunal found that the Appellant had telephoned the GMC and the CQC but these calls were brief and were made anonymously. The Appellant did not provide her name, the name of the clinic or the other doctor's name and the Tribunal's view was that she provided scant detail of the situation. The Tribunal concluded this did not constitute seeking advice and the Appellant's telephoned the GMC and CQC to inform them of her intention to conduct covert recordings rather than actively to seek advice.

7. At paragraphs 32 and 33 of its determination, the Tribunal said:

> "32. The Tribunal determined that Dr Blakely was aware that the information she used in her emails to the patients of May 2016 with regard to seeking and taking advice from the GMC and CQC was untrue. It did not accept Dr Blakely's assertion that just making the telephone call was sufficient for her to state that she had sought and taken advice. The Tribunal noted that in an email to Patient B, dated 18 May 2016, Dr Blakely stated that the Clinic had '…sought advice from all the relevant authorities and then acted as instructed.' It found that this mention of the word 'instructed', which has a stronger meaning than 'taking advice', reinforced its view that Dr Blakely was

> aware that she needed to defend her position with regard to making the covert recordings, and was not being truthful in the information she was providing to patients in order to do so.
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> 33. In the light of the above, the Tribunal determined, on the balance of probabilities, that Dr Blakely's actions were intended to provide Patients B, C and D with information that was untrue and which she knew to be untrue. It therefore found sub paragraphs 4a and 4b proved in relation to sub paragraph 3a."

8. The Tribunal then considered whether the Appellant had acted dishonestly in responding in the way she had to patients who complained. It considered the claim that the Appellant had been naïve and found:

> "38….. the Tribunal was satisfied that any naivety should not have led to her choice to use untrue wording when referring to the GMC and the CQC. Instead, it found that, against the background of the difficult position in which she found herself with regard to the dispute with [the other doctor] and having received complaints from patients, Dr Blakely knowingly used untrue statements to pacify those patients and to defend her actions in the making of the covert recordings.
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> "39. The Tribunal was satisfied that using such untrue information to respond to the queries of patients who were expressing concerns as to whether or not their consultations had been covertly recorded and their confidentiality compromise, would be considered dishonest by the objective standards of ordinary decent people.
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> 40. The Tribunal found that Dr Blakely's actions at paragraph 2 and 3 were misleading and dishonest. It therefore found sub paragraphs 5a and b provide in relation to sub paragraphs 3a, 3b, 4a, and 4b."

The Finding of Impairment By Reason of Misconduct

9. The Tribunal then found that the Appellant's actions in arranging for covert recording of patients' consultations would be regarded as deplorable by fellow practitioners. In relation to the separate allegations relating to the response to patients who complained, the Tribunal said:

> "21…..Honesty is a fundamental tenet of the profession and the Tribunal noted that Dr Blakely was dishonest when writing to a number of patients and false informing them that she had sought and taken advice from the GMC and CQC, and to Patient B that the GMC were aware of the Recordings being made. It was of the view that members of the public would be shocked and concerned at such dishonest in communication with patients. In these circumstances, the Tribunal was satisfied that her dishonesty constituted misconduct that was serious."

10. The Tribunal found that the Appellant's fitness to practise was impaired by reason of misconduct. It concluded that the risk of the Appellant making further covert recordings was negligible. In relation to the findings of dishonesty, whilst recognising that the Appellant had the right to contest the allegation against her, it was of the view that:

> "26. With regard to the finding of dishonestly, The Tribunal considered that this is difficult to remediate. It was concerned that, although she made some concessions about misleading patients through the information in her emails, Dr Blakely did not accept that what she had written was untrue. Although the Tribunal acknowledged that she has the right to contest the allegation against her, it was of the view that Dr Blakely demonstrated limited insight into her dishonesty. It was not satisfied that, if Dr Blakely were to be placed in a situation responding to patients' complaints, that she would not act in a similar manner once more. It therefore determined that, with regard to this aspect of misconduct, public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances of this case.
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> 27. In all the circumstances, the Tribunal considered that a finding of impairment was necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper profession standards and conduct for members of the profession."

Sanction

11. The Tribunal then considered sanction. It did not consider it could take no action in relation to the Appellant's registration and did not consider that there were appropriate workable conditions that could be imposed. It determined that suspension was an appropriate sanction, as erasing her registration would be disproportionate and punitive. It said:

> "26. In all circumstances, the Tribunal was determined to suspend Dr Blakely's registration for a period of time, it took into account the seriousness of her actions and the need to demonstrate clearly to her, the profession and the public that her actions were unacceptable. It determined that a suspension of this length would promote and maintain both public confidence in the profession, and standards and conduct for members of the profession. Further, it was satisfied that this period away from medical practice will provide Dr Blakely with sufficient time and opportunity to properly reflect on, and gain insight into, her dishonesty, such that she will not repeat it."

12. There was no appeal against any of the findings of fact by the Tribunal nor of its decision on impairment or sanction.

<u>The Review</u>

13. Provision is made by section 35D of the Act for a review of a suspension. The procedure is governed by Rule 22 of the General Medical Council (Fitness to Practise) Rules 2004 ("the Rules"). The approach at a review is described by Blake

J. in *Abrahaem v General Medical Council* [2008] EWHC 183 (Admin) where he indicated that the relevant rule

> "makes clear that there is an ordered sequence of decision making, and the Panel must first address whether the fitness to practice is impaired before considering conditions. In my judgment, the statutory context for the Rule relating to reviews must mean that the review has to consider whether *all* the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the Panel's satisfaction. In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments."

14. The review hearing was held on 19 November 2018. The Tribunal had before them a written document, undated but apparently prepared in June or July 2018, containing the Appellant's reflection on her conduct. Paragraph 4 of that document noted that the e-mails sent, after legal advice, were not comprehensive enough. At paragraph 4 of the document, the document recorded that the Appellant now accepted that the e-mails were misleading in that they gave the impression that the GMC and CQC knew exactly what the Appellant was doing.

15. The Appellant was represented by counsel at the Tribunal hearing and gave evidence. There is a complete transcript of the evidence available to this court. The Appellant was cross-examined about paragraph 4 of the reflection document. She was asked in relation to the e-mails if it was more than an impression being given that the GMC were aware of her actions and was in fact an assertion that she had taken advice and that that assertion was untrue. The Appellant responded by saying that this had been dealt with at the initial hearing in May 2018. She said that she had called the GMC and had been advised to make the recordings and, in her mind, the GMC were aware. The Appellant was then asked whether she accepted that the e-mails said that she had sought advice from the GCM and the CQC but, in fact, she had not done so. The Appellant responded by accepting that the CQC had no policies and therefore she had not taken advice from then. She said she had telephoned the GMC and discussed it with them and they recommended speaking to others. The question was repeated by reference to a particular paragraph of the determination. The Appellant responded by saying, in summary, that at the heart of the accusation was a claim that she was a fundamentally dishonest person and she was not. She said that she did what she was advised to do and believed it was the correct thing to do and did not know what alternative course of action she could have taken. The Appellant said that she wished the situation had not arisen, that the recordings had never been made, and that she had not written to the patients in the terms she had.

16. One of the members of the Tribunal then asked if she accepted that she had been dishonest in respect of the e-mails she had sent. The Appellant said that she conceded that the CQC had no policies so she had been wrong to use that and, on reflection, such a statement was wrong. In relation to the GMC, she said that she believed she had spoken to the GMC and did not accept that she had been dishonest.

17. The Tribunal first dealt with impairment. It concluded that:

> "24. The Tribunal determined that there was a discrepancy between Dr Blakely's written statement and her oral evidence.

> Whilst in her written statement she said "I accept the tribunal's findings and have done my best to learn from them", in her oral evidence made it clear that she did not accept the May 2018 Tribunal's finding that she had been dishonest. The Tribunal wished to emphasise that it is not its place to determine whether or not Dr Blakely is a dishonest person, but rather it determined that Dr Blakely's evidence demonstrated that she did not accept the May 2018 Tribunal's findings. Further, whilst Dr Blakely has expressed regret and remorse for her actions, this seemed to be restricted to the personal impact of these proceedings and her suspension. The Tribunal has seen no evidence that she understands the seriousness of her actions, nor their impact on public confidence in the medical profession and the profession's reputation.
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> …..
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> 26. Taking all of the above into account, the Tribunal still has serious concerns with respect to Dr Blakely's insight and determined that the evidence in support of her remediation was insufficient. It was not convinced that the concerns identified by the previous Tribunal have been allayed and that there remains a risk that Dr Blakely could repeat her dishonest misconduct if similar circumstances arose in the future. As such, it determined that a finding of impaired fitness to practise was necessary in order to uphold public confidence in the medical profession, and proper professional standards and conduct for the medical profession."

18. The Tribunal then dealt with sanction. It said that it had taken account of the submissions made and the Sanctions Guidance issued by the GMC. It noted that the purpose of imposing sanctions was not punitive but to protect the public interest. That include, amongst other things, maintaining public confidence in the profession and upholding proper standards of conduct and behaviour. The Tribunal stated that it took account of the principle of proportionality and had weighed the Appellant's interests against the public interest and had considered aggravating and mitigating factors. In terms of mitigating factors, the Tribunal took into account the unique circumstances which led the Appellant to make the covert recordings, the fact that she had shown some insight and that she was a well-regarded doctor. In terms of aggravating factors, it said that:

> "7. It determined that the key aggravating factor was that, in her oral evidence, Dr Blakely did not accept the dishonesty which was found proved by the May 2019 Tribunal. Additionally, her expressions of remorse and regret in her written statement made no mention of the impact that her actions had on the reputation of the medical profession and public confidence in the profession. The Tribunal determined that this demonstrated poor insight on the part of Dr Blakely."

19. The Tribunal considered that it could not take no action and there were no appropriate conditions that it could impose. It considered suspension and referred to relevant parts of the Sanctions Guidance. It concluded that:

> "14. As such, the Tribunal determined that a further period of suspension was required in order for Dr Blakely to engage in meaningful reflection on her actions, not just for the impact they have had on her, but for the wider profession and public confidence. Additionally, it determined that she should be afforded the opportunity to gather documentary evidence, the type of which was suggested by the May 2018 Tribunal but was not provided at this hearing. It determined that 9 months would be a sufficient period to achieve this.
>
> 15. The Tribunal took into account the impact that this sanction may have upon Dr Blakely. However, in all the circumstances the Tribunal concluded that her interests were outweighed by the public interest."

20. Accordingly, it determined to suspend the Appellant's registration for a period of 9 months. It directed that a review hearing be convened shortly before the end of that period. It set out the evidence that would assist the Tribunal including evidence that the Appellant had reflected on the findings of the May 2018 tribunal findings and that she had developed further insight into her misconduct (specifically, the sending of the e-mails to patients in May 2018) and that she had reflected on the impact of her misconduct on public confidence in the profession and the reputation of the profession. It also indicated that it would be assisted by evidence of relevant profession development activities and that the Appellant had kept her medical knowledge and skills up to date.

THE APPEAL

21. The Appellant appealed pursuant to section 40 of the Act. There were six grounds of appeal, namely that

    (1) The determination on impairment was wrong and substantially based on the questioning of the Appellant about her evidence at the first tribunal hearing;

    (2) The decision to impose a further period of suspension was wrong and disproportionate;

    (3) The Tribunal had wrongly held that the public interest outweighed the Appellant's interest;

    (4) The Tribunal failed to have regard to the public interest in allowing a competent doctor with no concerns over her clinical ability to return to practise after a period of suspension;

    (5) There was no need to impose a further period of suspension;

(6) The period of suspension was wrong.

THE FIRST GROUND – THE FINDING OF IMPAIRMENT

22. Mr Galvin, who appeared pro bono for the Appellant, submitted that it was wrong and unfair of the Tribunal to find that the Appellant's fitness to practise was impaired simply because she maintained her position that she had not acted dishonestly. He relied upon the decision of Walker J's decision in *Amao v National Midwifery Council* [2014] EWHC 147 (Admin) where he held that it was unfair, in the circumstances of that case, to focus on whether the respondent in that case agreed with the panel's findings on each of the factual allegations. He also relied upon the decision of Yip J. in *Yusuff v General Medical Council* [2018] EWHC 13 (Admin).

23. Ms Hearnden, for the Respondent, relied upon the decision of the Court of Appeal in *Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879, especially at para. 67 where the Court held that an appeal court should only interfere with an evaluative decision by a tribunal such as the present Tribunal if there had been an error of principle on the part of the tribunal or if the decision was wrong, that is, the decision fell outside the bounds of what the tribunal could properly and reasonably decide. Here, the Tribunal had formed a judgment on whether the Appellant had demonstrated sufficient insight into why her conduct, particularly in respect of sending the e-mails to patients phrased in the way that they were, amounted to misconduct undermining public confidence in the profession. Here, the real issue was whether the Appellant understood, that is had insight into, why members of the public would regard sending the e-mails in those terms would undermine trust. The Tribunal formed the view, having heard the Appellant give evidence and having read her written reflection, that she did not understand, or have sufficient insight, into why members of the public would regard it as unacceptable to say that she had been advised to undertake the recordings by the GMC when, in fact, she had not been advised by them to do so.

Discussion

24. In the present case, the Tribunal had initially determined that the sending of the e-mails involved dishonestly providing misleading information which was untrue and known by the Appellant to be untrue. That amounted to serious misconduct and the Appellant's fitness to practise was impaired. A period of suspension was imposed in order to uphold public confidence in the profession and to promote and maintain proper professional standards. A suspension of that period was considered to be necessary to demonstrate to the Appellant, the public and the profession that her actions in this respect were unacceptable and to give the Appellant sufficient time to reflect on and gain insight into her dishonesty so that she would not repeat it. The dishonesty referred to is knowingly making statements to patients which were untrue. The underlying concern was to ensure that the Appellant understood why her actions were unacceptable so that, if the Appellant was placed in a similar situation where complains were being made to her, she would not respond in a similar fashion, i.e. by making statements that were untrue and known to be untrue.

25. The issue that arises this case is that the Appellant submits that it was wrong and unfair to focus on the fact that she did not accept that her actions were dishonest and to conclude from that that her fitness to practise remained impaired. A summary of

principles relevant to this issue was set out by Yip J. in paragraph 20 of her judgment in *Yusuff v General Medical Council* [2018] EWHC 13 (Admin) in the following terms:

> 20. I conclude having reviewed all the relevant authorities that at a review hearing:
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> 1. The findings of fact are not to be reopened;
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> 2. The registrant is entitled not to accept the findings of the Tribunal;
>
> 3. In the alternative, the registrant is entitled to say that he accepts the findings in the sense that he does not seek to go behind them while still maintaining a denial of the conduct underpinning the findings;
>
> 4. When considering whether fitness to practise remains impaired, it is relevant for the Tribunal to know whether or not the registrant now admits the misconduct;
>
> 5. Admitting the misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it;
>
> 6. If it is made apparent that the registrant does not accept the truth of the findings, questioning should not focus on the denials and the previous findings;
>
> 7. A want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in looking at impairment.

26. Applying those considerations to the present case, the essential question is how to reconcile the need to ensure that the doctor in question has acquired the requisite insight into his or her conduct so that there would not be an unacceptable risk of repetition with the fact that a doctor cannot be required to accept that he or she has had done something when this is denied, or, on the facts of this case, when the conduct is regarded as dishonest by the Tribunal but is not accepted as dishonest by the doctor.

27. In such cases, remediation, and insight, may be demonstrated in a number of ways. These include, by way of example, the following. A doctor may accept that, with the benefit of hindsight, what he or she did was wrong (or dishonest) even though the doctor did not consider at the time consider that he or she was acting dishonestly. Alternatively, the doctor may accept that members of the public would view the conduct as dishonest and undermining their trust in the doctor even if the doctor considers that the conduct, viewed in context, was excusable or not dishonest.

28. In relation to the e-mails, the fundamental problem was that the Appellant had said in the e-mails to patients that she had been advised and instructed by the GMC to do what she did. In light of the findings of fact by the Tribunal that was not factually accurate. The Appellant had not sought advice from the GMC or the CQC (her evidence had been that she intended to inform them of what she was doing). In any event, she did not give sufficient details to the GMC or the CQC to enable them to provide advice on the course of action she was proposing. In all those circumstances, the Tribunal considered that making factual statements which were untrue to respond to patients expressing their concerns about being covertly recorded and their confidentiality comprised would be considered dishonest by the objective standards of ordinary decent people. It was that conduct that the Appellant had to have insight into.

Unless the Tribunal were satisfied that the Appellant had sufficient insight into why that conduct was considered unacceptable on the part of a doctor, there was a risk that it would be repeated.

29. There were ways in which the Appellant could have demonstrated sufficient insight. The Appellant might have accepted at the review hearing that, with the benefit of hindsight her actions were dishonest even if she had not appreciated that at the time. Even if she were not prepared to accept that, she might have demonstrated that she understood why the Tribunal took the view that member of the public would regard such action as dishonest and why, therefore, that conduct could not be repeated.

30. In this case, the Appellant did recognise, in effect with the benefit of hindsight, that it was wrong of her to say that the CQC had advised her to record the patients covertly as the CQC had no policies on this issue and she could not have been acting on advice from them. The Tribunal did not, however, consider that she had demonstrated such insight into the statements she made in relation to having been advised by the GMC to do what she did. Instead, however, the Tribunal considered that the Appellant was not able to accept or recognise that the making of untrue statements in response to serious complaints would, or could, be regarded as dishonest by objective standards. She was not able to separate out her view of her actions from the view that others could or would take nor was she able to recognise how responding to patients in this way would undermine public confidence in the profession. The Tribunal were entitled to conclude, on the material before them, that the Appellant needed a further period of time to engage in meaningful reflections on her actions "not just for the impact they have had on her, but for the wider profession and public confidence".

31. It may well be a difficult exercise to balance concerns about ensuring that the doctor understands why conduct is unacceptable, so that there is no risk of repetition, but not forcing the doctor to admit guilt for something that he or she does not accept doing. A bland reference by the doctor to accepting the findings of the Tribunal may be insufficient. The individual doctor may accept the findings in the sense that it is not possible to go behind those findings and they stand as the adjudication on the conduct. The doctor, however, has to demonstrate how, given those findings, he or she can reassure the Tribunal that sufficient insight has been acquired and the doctor knows and understands why the conduct was considered unacceptable and cannot be repeated. That is subtly different from the doctor having to accept that he or she did what they are accused of (or, as here, that the conduct fell below objective standards of honesty). Questioning of appellants by legal advisers or members of the Tribunal may need to bear this distinction in mind when dealing with insight at a review hearing.

32. In the present case, however, and having considered the transcript and the determinations of the Tribunal, the decision was not wrong. The Tribunal did not allow, or conduct, any unfair questioning. The central issue was whether the Appellant could understand the problems in stating to a patient something as fact which was not correct. That is why counsel for the GMC focussed on whether she accepted and understood why it was not factually accurate to say in the e-mails to patients that the GMC had advised her to do what she had done (i.e. covertly record patients' confidential consultations with their doctor). There was nothing unfair about those questions and the Tribunal were entitled to view her responses as not demonstrating sufficient insight into that issue. The questioning by the member of the

Tribunal about dishonesty, read fairly and in context, and in the light of the intervention of the chairman, was addressed to whether the Appellant now accepted that the sending of e-mails containing false assertions would be seen as dishonest. It may be that the questions could have been better, or more clearly, phrased but there was no unfairness. The Tribunal were entitled to determine, on the material before them, and having heard the Appellant give oral evidence, that her fitness to practise remained impaired. In those circumstances, the first ground of appeal fails.

THE SECOND TO SIXTH GROUNDS OF APPEAL – THE APPROPRIATE SANCTION

33. In the light of the conclusions on the first ground of appeal, the second to sixth grounds of appeal can be dealt with relatively shortly. In truth, there was little further submissions on grounds 2 to 5 at the hearing.

34. The task of the Tribunal initially, given the finding that the Appellant's fitness to practice was impaired, was to determine what sanction would appropriately meet the statutory objective of protecting the public. That objective included promoting and maintaining public confidence in the medical profession and promoting and maintaining proper professional standards and conduct: see *Babwa-Garba v General Medical Council* [2018] EWCA Civ 1879 at paragraph 76. The Tribunal is concerned with the reputation or standing of the profession rather than the punishment of the doctor, although, inevitably, the imposition of sanctions may have an adverse effect on the individual doctor.

35. In the present case, the appropriate sanction was found to be suspension. Section 35D(4) of the Act provides that, in those circumstances, the Tribunal may direct that the suspension is to be reviewed by a Tribunal prior to the expiry of the period of suspension, as happened here. In those circumstances, section 35D(5) of the Act provides that the Tribunal "may, if they think fit" direct that the current period of suspension is extended, or direct (save in certain types of cases) that the person's name be erased from the register, or impose conditions on registration or end the suspension.

36. On a review, as indicated in the passage from *Abrahaem v General Medical Council* set out above, the Tribunal will in essence be considering whether the doctor has addressed the concerns leading to the finding of impairment and, if it is not satisfied of this, whether further steps (such as an extension of the suspension period or the imposition of conditions or in certain circumstances erasure of the registration) are required to safeguard the public. A decision on sanctions, including an extension of the period of supervision is an evaluative decision, requiring consideration of a number of factors. This Court on appeal should only interfere with such a decision if there was an error of principle or the decision was wrong in that it exceeded the bounds of what the Tribunal could reasonably and properly decide: *Babwa-Garba v General Medical Council* [2018] EWCA Civ 1879 at paragraph 67.

37. Contrary to ground 2, 3 and 5 of the grounds of appeal, the Tribunal did not err in principle and its decision to impose a further period of suspension was not wrong. The Tribunal reminded itself that the purpose of sanctions was not punitive but to protect the public interest. The Tribunal expressly stated that it had weighed the Appellant's interests with those of the public. In relation to ground 4, the Tribunal expressly took the fact that the Appellant was a well-regarded doctor into account. The determination

on sanctions does not demonstrate any error of principle in its approach. Furthermore, the Tribunal determined that the Appellant had shown inadequate insight into the dishonest conduct and so could repeat it should similar circumstances apply. The Tribunal considered that there remained a risk to public confidence in, and the reputation of, the profession. There is no realistic basis upon which the Tribunal decision could be said to be wrong in the sense of being outside the range of decisions reasonably open to it on the evidence that it had heard. The fact is that the Appellant had not shown sufficient understanding into why the provision of untrue information in response to complaints from patients would undermine trust and confidence in the profession. The Appellant may have believed that she was not a dishonest person. But the facts were that she stated as fact things that were not factually accurate, namely that the GMC had advised her to carry out the covert recordings when it had not. The Tribunal were entitled to come to the conclusion that a further period of suspension was required to enable her to reflect on her actions and the impact of those actions not just for her but for the wider profession and the public.

38. In relation to ground 6, the initial period of suspension was 6 months and the further period of suspension was 9 months. The Appellant submits that this is too long. Ultimately, the period of suspension is linked to the time that the Tribunal considered that the Appellant needs, in particular in this case, to demonstrate insight into her actions. It is not a penalty or punishment. The fact that the period is longer than the period initially imposed does not of itself make the period of suspension wrong. The question is whether the Tribunal were entitled to conclude that a period of 9 months was necessary to demonstrate that she has reflected properly on her dishonest conduct. In all the circumstances of this case, and bearing in mind the advantage that the Tribunal had in seeing and assessing the Appellant give evidence, it cannot be said that a period of suspension for 9 months was wrong in this case. For all of those reasons, none of the grounds of appeal in grounds 2 to 6 are established.

CONCLUSION

39. On the review the Tribunal did not err in its assessment that the Appellant's fitness to practise remained impaired. The Tribunal were entitled to conclude that the Appellant had not demonstrated sufficient insight into why knowingly making untrue and misleading statements to patients in response to complaints would undermine public confidence in, and the reputation of, the profession. The questioning in the present case had not been unfair. The decision to impose a further period of suspension of 9 months was not wrong or disproportionate. The Tribunal properly bore in mind that sanctions were intended to protect the public, not to be punitive, and correctly considered the interests of the Appellant and the fact that she was a well-regarded doctor. Ultimately, however, it was entitled to conclude that a further period of suspension was required to enable the Appellant to acquire sufficient insight into why her conduct was unacceptable so as to avoid the risk of future repetition. The decision to impose a further period of suspension was not wrong and the length of the suspension was not, given all the circumstances, wrong. This appeal is therefore dismissed.