Neutral Citation Number: [2021] EWHC 2427 (Admin)

Case No: CO/4644/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/06/2021

Before :

MRS JUSTICE ELLENBOGEN

- -

Between :

Dr Malay Haldar	**Appellant**
- and -	
Medical Practitioners Tribunal Service	**First Respondent**
General Medical Council	**Second Respondent**

- -
- -

The Appellant appeared **in person**
The First Respondent did not appear and was not represented
Ms A Hearnden appeared for the **Second Respondent**

Hearing dates: 9th June 2021

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Approved Judgment

MRS JUSTICE ELLENBOGEN:

1) This is Dr Haldar's appeal from the decision of a Medical Practitioners Tribunal ("the Tribunal"), dated 29 October 2020, by which his name was erased from the medical register. He brings his appeal pursuant to section 40 of the Medical Act 1983 ("the Act") and represents himself. The second respondent ("the GMC"), is represented by Ms Alexis Hearnden. The Medical Practitioners Tribunal Service ("the MPTS") has been joined as first respondent. It does not appear and is not separately represented.

Preliminary issue and applications

The appropriate respondent to the appeal

2) The GMC is a body corporate, upon which Parliament has conferred regulatory functions in respect of medical practitioners. Its functions and powers are governed by the Act and by the General Medical Council (Fitness to Practise Rules) 2004 ("the 2004 Rules"). Under section 1(1A) of the Act, the overarching objective of the GMC in exercising its functions is the protection of the public. Section 1(1B) provides that the pursuit of that overarching objective involves the pursuit of the following objectives —

a) to protect, promote and maintain the health, safety and well being of the public;

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

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

3) The scheme created by the Act and the 2004 Rules, so far as material to this appeal, was summarised by Warby J (as he then was), at paragraph 5 of *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin):

> "…
>
> (1) If an allegation is made to the GMC that a registered practitioner's fitness is impaired by reason of misconduct it is investigated. The process is governed by Part 2 of the Rules.

(2) The initial stage is consideration by the Registrar, who determines whether the allegation is one of misconduct within the meaning of s 35C(2) of the Act. In order to make that determination, the Registrar may carry out investigations. If the Registrar considers that the allegation does fall within s 35C(2) then, subject to some exceptions, the allegation must be referred for investigation…

(3) If an allegation is referred, the Registrar must write to the practitioner, giving notice of the allegation, and giving him an opportunity to respond.

(4) The allegation is then considered by the Case Examiners. They may refer the case to the GMC's Medical Practitioners Tribunal Service ("MPTS") or to the GMC's Investigation Committee, which may itself refer the allegation to the MPTS. The MPTS then puts the matter before a Tribunal.

(5) The procedure before the Tribunal is governed by Part 4 of the Rules. The standard of proof is the ordinary civil standard."

4) There is no dispute that, as the statutory regulator of the medical profession, the GMC is a proper respondent to Dr Haldar's appeal. A preliminary issue arises as to whether the MPTS and/or certain named individuals are also appropriate respondents, or should be removed. This issue may be addressed shortly:

a) Section 40(9) of the Act provides:

"On an appeal under this section from a Medical Practitioners Tribunal, the General Council may appear as respondent; and for the purposes of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party thereto, whether they appear on the hearing of the appeal or not".

b) The General Council is defined, by section 1(1) of the Act, to mean the GMC, a body corporate having the functions assigned to it under the Act.

c) Paragraph 9 of schedule 1 to the Act provides:

"It shall be within the capacity of the General Council as a corporation to do such things and enter into such transactions as are, in their opinion, incidental or conductive to the performance of their functions under this Act, including the borrowing of money".

d) By section 1(3) of the Act, the GMC is obliged to have certain specified statutory committees, one of which is the MPTS. Whilst

performing an independent adjudication function, the latter has no legal personality separate from the GMC.

e) Paragraphs 19.1(1)(e) and 19.1(4) of Practice Direction 52D provide that it is the GMC which is to be made respondent to an appeal under section 40 of the Act.

5) In those circumstances, I am satisfied that the MPTS ought not to have been made a respondent to Dr Haldar's appeal and should now be removed, leaving the GMC as sole respondent. I so order. For the same reasons, it is not appropriate for any named individual now to be joined as a respondent to this appeal. A copy of my order is to be served by the GMC on the Chair of the MPTS.

B. Applications made by Dr and Mrs Haldar

6) On 23 February and, again, on 7 April 2021, Dr Haldar applied for summary judgment. Each application was considered on the papers, respectively by Lang J and by me, and was refused:

a) In the reasons for her order of 26 February 2021, Lang J stated:

"The Appellant submits that the Respondents have no real prospect of successfully defending his claim, and there is no other compelling reason why the appeal should be disposed of at a trial. He relies in particular upon the fact that the Respondents have not filed Respondents' Notices, and that a speedy determination is required.

I do not accept this submission. Following a hearing, which the Appellant did not attend, a panel appointed by the First Respondent made serious findings against the Appellant, in his treatment of patients while practising as a locum obstetrician and gynaecologist. It determined that the Appellant should be erased from the medical register and that his registration be suspended with immediate effect, pending any appeal. The exercise of statutory powers of regulation for the medical profession under the Medical Act 1983 is a very different matter to a civil claim which may be summarily disposed of under CPR Part 24, where certain criteria are met, as the public interest has to be protected.

The Second Respondent has stated that it intends to contest the appeal and, in my view, it has good grounds upon which to do so. It is not

required to file a Respondent's Notice and its decision not to do so does not represent any concession. Similarly, the First Respondent is not required to file a Respondent's Notice."

b) At paragraph 1 of the reasons for my order of 4 May 2021, I stated:

"1. The Appellant has made a second application for summary judgment; the first having been dismissed by the Lang Order, dated 26 February 2021. The basis of his most recent application is his contention that the Respondents have breached 'every single deadline' set by the Lang Order. That is not supported by the Court file, but, in any event, the Appellant has previously been informed (in the reasons provided by Mrs Justice Lang) that the appeal is not suitable for summary judgment, where the Second Respondent has advanced good grounds for contesting it and protection of the public interest is in issue."

7) On 17 May 2021, Dr Haldar made a third application for summary judgment, this time on the basis that neither of the respondents had complied with my order of 4 May in failing to have filed a supplemental hearing bundle; and the GMC had not filed a supplemental skeleton argument. By witness statement of the same date, he asserted, in broad summary, that each respondent (amongst others) had failed to adhere to its obligations in connection with the fitness to practise proceedings giving rise to this appeal. At the outset of today's hearing, I refused that application, on the following bases:

a) There has been no breach of my order of 4 May 2021:

i) By email to the Court dated 7 May 2021 (15.43), the Senior Legal Adviser for the GMC stated:

"…

The court directed the Appellant to provide, by 5pm on Wednesday, a list of documents, not already in the bundles, which are relevant to his appeal. The Appellant, as you will have seen, submitted the attached document, 'Comprehensive List of Statutory Disclosures', which is a request for a number of documents to be included in the bundle. Similar requests for disclosure have been made by the Appellant previously, and the GMC has responded, and, in brief summary, and in general terms, the response has been and continues to be that either the GMC does not have the documents in its possession or, where the request is for disclosure of documents on GMC/MPTS letter

headed paper, and the documents signed by certain named individuals, that we will not comply with such a request. In relation to the latter category, the relevant correspondence already appears in the hearing bundle, albeit not on letter headed paper. The GMC does not propose to create 'new' documents on letter headed paper simply to appease the Appellant. As the attached list does not identify any documents from the hearing exhibits (by reference to their hearing exhibit reference number, e.g. C1, D1 etc) or any other documents that are in the GMC's possession already, there are no identifiable additional documents to include in a supplemental bundle.

I note that subsequent to the Appellant's email on Wednesday, he has sent further correspondence, some with attachments (some of which were copied to me and others which were not, but have been passed on to me by GMC colleagues who were recipients). I have considered whether any of those documents, whilst being provided subsequent to the deadline of 5pm on Wednesday, nonetheless ought to be included in a supplemental bundle. The vast majority of those documents are already in the core bundle, or the court prepared Appellant's bundle, and it is not clear to me on what basis these documents have been submitted to the court, as they have not been sent to me in accordance with the directions with a request for them to be included. On that basis I do not propose to compile those documents as a supplemental bundle, although it is of course open to the appellant to do so should he wish.";

ii) The respondents were not obliged to file and serve a supplementary skeleton argument; if electing to do so, the applicable deadline was 10:00am on 10 May 2021; in any event,

b) Irrespective of whether the asserted breaches of my order of 4 May have occurred, it remains the case that the appeal is not suitable for summary judgment, where the second respondent had advanced good grounds for contesting it and protection of the public interest is in issue. It is inappropriate for Dr Haldar to make repeated applications for summary judgment, having twice been so informed; and

c) The matters set out in Dr Haldar's witness statement, so far as material to the issues arising in his appeal, would be considered when determining the latter.

8) On 26 May and 1 June 2021, application notices in the name of Dr Haldar's wife, Mrs Sreela Haldar, were sent to the court, which have not been issued. Mrs Haldar is not

a party to these proceedings. The relief sought in each case is not clear, though Dr Haldar has agreed that it amounts to summary judgment; a request that fresh notices of hearing be issued; and that my orders of 4 and 11 May 2021 be reissued, being otherwise invalid. The application notice of 26 May seeks summary judgment on the additional bases that two named individuals have not justified why the MPTS should not be a respondent to Dr Haldar's appeal and are themselves respondents to the appeal. If and insofar as these inchoate applications are made or adopted by Dr Haldar, they necessarily fail: (i) the matter is not suitable for summary judgment (see above) and neither of the individuals named was under an obligation to justify the joinder of the first respondent to Dr Haldar's appeal, nor was he or she a respondent; (ii) my orders of 4 and 11 May 2021 were valid and compliant with CPR 40.2, which does not include a requirement, asserted by Dr Haldar, that they be printed on HMCTS headed stationery, or take the form of the order made by Lang J on 26 February 2021 — indeed, Dr Haldar's third application for summary judgment of 17 May 2021 necessarily takes as its premise that my order of 4 May was valid; (iii) there is no need for a further notice of hearing — on 11 May 2021, I ordered that the hearing of Dr Haldar's appeal be adjourned and re-listed to be heard today, for the reasons set out in my order of that date. That order took effect when made, per CPR 40.7, and the court listing office notified all parties of the revised hearing date by email, on 11 May 2021 at 15.08. It is not, and could not be, suggested that Dr Haldar was unaware of the re-listed hearing, which he has attended today.

9) Before turning to consider the substantive appeal, I note that Dr Haldar's primary submission before me today was that he had not brought a statutory appeal and could not do so in the absence of the documentation itemised at section 12 of his notice of appeal. As the GMC made clear, in particular by email to Dr Haldar dated 22 January 2021, at 17.55, and has repeated by counsel today, such documents as exist and are not privileged have been disclosed to Dr Haldar. Thus, the hearing of his appeal, as set out in his notice of appeal and documents respectively headed 'Grounds of Appeal 1' and 'Grounds of Appeal 2', has necessarily proceeded as listed today. Of course, in the absence of any appeal, the determination of the Tribunal would stand.

The nature of an appeal under section 40 of the Act

10) So far as material, section 40 of the Act provides:

> "40(1) The following decisions are appealable decisions for the purposes of this section, that is to say –
>
> (a) a decision of a Medical Practitioners Tribunal, under section 35D above, giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration; …"

11) CPR 52.21 provides:

> "(1) Every appeal will be limited to a review of the decision of the lower court unless —
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> (a) a practice direction makes different provision for a particular category of appeal; or
>
> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
>
> (2) Unless it orders otherwise, the appeal court will not receive —
>
> (a) oral evidence; or
>
> (b) evidence which was not before the lower court.
>
> (3) The appeal court will allow an appeal where the decision of the lower court was —
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
>
> (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
>
> (5) At the hearing of the appeal, a party may not rely on a matter not contained in that party's appeal notice unless the court gives permission."

12) Practice Direction 52D, paragraph 19.1 provides:

> "(1) This paragraph applies to an appeal to the High Court under —
> …
>
> (e) section 40 of the Medical Act 1983;
>
> …
>
> (2) Every appeal to which this paragraph applies must be supported by written evidence, and, if the court so orders, oral evidence, and will be by way of rehearing.
>
> ..."

13) The nature of an appeal under section 40 of the Act, and the role of the High Court as appellate tribunal, has been the subject of recent consideration in *Sastry & Okpara v General Medical Council* [2021] EWCA Civ 623, in which judgment was handed down on 30 April 2021. Having reviewed prior authority, at paragraph 102 Nichola Davies LJ held:

> "Derived from *Ghosh*[1] are the following points as to the nature and extent of the section 40 appeal and the approach of the appellate court:
>
> i) an unqualified statutory right of appeal by medical practitioners pursuant to section 40 of the 1983 Act;
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> ii) the jurisdiction of the court is appellate, not supervisory;
>
> iii) the appeal is by way of a rehearing in which the court is fully entitled to substitute its own decision for that of the Tribunal;
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> iv) the appellate court will not defer to the judgment of the Tribunal more than is warranted by the circumstances;
>
> v) the appellate court must decide whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate;
>
> vi) in the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration."

14) In *Ghosh* itself, as Nicola Davies LJ had earlier cited, at paragraph 19 of *Sastry*, Lord Millett had identified the jurisdiction and powers of the appellate tribunal (then, the Judicial Committee of the Privy Council — "the Board"), at paragraphs 33 and 34:

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[1] *Ghosh v General Medical Council* [2001] 1 WLR 1915, PC

"33. Practitioners have a statutory right of appeal to the Board under section 40 of the Medical Act 1983, which does not limit or qualify the right of the appeal or the jurisdiction of the Board in any respect. The Board's jurisdiction is appellate, not supervisory. The appeal is by way of a rehearing in which the Board is fully entitled to substitute its own decision for that of the committee. The fact that the appeal is on paper and that witnesses are not recalled makes it incumbent upon the appellant to demonstrate that some error has occurred in the proceedings before the committee or in its decision, but this is true of most appellate processes.

34. It is true that the Board's powers of intervention may be circumscribed by the circumstances in which they are invoked, particularly in the case of appeals against sentence. But their Lordships wish to emphasise that their powers are not as limited as may be suggested by some of the observations which have been made in the past. In *Evans v General Medical Council* (unreported) *19 November 1984* the Board said:

'The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee… The committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards.'

For these reasons the Board will accord an appropriate measure of respect to the judgment of the committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the committee's judgment more than is warranted by the circumstances. The council conceded, and their Lordships accept, that it is open to them to consider all the matters raised by Dr Ghosh in her appeal; to decide whether the sanction of erasure was appropriate and necessary in the public interest or was excessive and disproportionate; and in the latter event either to substitute some other penalty or to remit the case to the committee for reconsideration."

15) In *Yassin v General Medical Council* [2015] EWHC 2955 (Admin), Cranston J considered the scope of an appeal under section 40 at paragraph 32, the following extract from which is material, for current purposes:

> "Appeals under section 40 of the Medical Act 1983 are by way of re-hearing (CPR PD52D) so that the court can only allow an appeal where the Panel's decision was wrong or unjust because of a serious procedural or other irregularity in its proceedings: CPR 52.11. The authorities establish the following propositions:
>
> i) The Panel's decision is correct unless and until the contrary is shown: *Siddiqui v. General Medical Council* [2015] EWHC 1996 (Admin), per Hickinbottom J, citing Laws LJ in *Subesh v. Secretary of State for the Home Department* [2004] EWCA Civ 56 at [44];
>
> ii) …
>
> iii) The Panel has the benefit of hearing and seeing the witnesses on both sides, which the Court of Appeal does not;
>
> iv) The questions of primary and secondary facts and the over-all value judgment made by the Panel, especially the last, are akin to jury questions to which there may reasonably be different answers: *Meadows v. General Medical Council* [197], per Auld LJ;
>
> v) The test for deciding whether a finding of fact is against the evidence is whether that finding exceeds the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible: *Assucurazioni Generali SpA v. Arab Insurance Group* [2003] 1 WLR 577, [197], per Ward LJ;
>
> vi) Findings of primary fact, particularly founded upon an assessment of the credibility of witnesses, will be virtually unassailable: *Southall v. General Medical Council* [2010] EWCA Civ 407, [47] per Leveson LJ with whom Waller and Dyson LJJ agreed;
>
> vii) If the court is asked to draw an inference, or question any secondary finding of fact, it will give significant deference to the decision of the Panel, and will only find it to be wrong if there are objective grounds for that conclusion: *Siddiqui*, paragraph [30](iii).
>
> viii) Reasons in straightforward cases will generally be sufficient in setting out the facts to be proved and finding them proved or not; with exceptional cases, while a lengthy judgment is not required, the reasons will need to contain a few sentences dealing with the salient issues: *Southall v. General Medical Council* [2010] EWCA Civ 407, [55]-[56].
>
> ix) …"

16) Whether a registrant has shown insight into his misconduct, and how much insight he has shown, are classically matters of fact and judgment for the professional disciplinary committee in the light of the evidence before it, per Lindblom LJ (with whom Sharp LJ agreed), at paragraph 38 of *Professional Standards Authority v The Health and Care Professions Council & Doree* [2017] EWCA Civ 319.

The facts

17) Dr Haldar is a consultant obstetrician and gynaecologist, who was working as a locum at the time of material events. The Tribunal considered various allegations in relation to four patients, respectively referred to as Patients A, C, E and G. Patients A and C had been treated at the Princess Alexandra Hospital, in Harlow, Essex, and Patients E and G at Birmingham Women's Hospital. In broad summary, the allegations found proven were as follows:

a) Patient A (who had undergone a vaginal hysterectomy, with anterior and posterior vaginal wall repair, on 21 November 2016): Dr Haldar had failed to carry out an adequate pre-operative clinical assessment and had carried out a perineal reconstruction, despite explicit refusal of that procedure by Patient A. Additional failings were found to have occurred in relation to communication; consent; poor decision-making and performance during the procedure; inadequate record-keeping, and inappropriate comments;

b) Patient C (who had undergone a laparoscopic ovarian cystectomy, on 19 December 2016, during which Dr Haldar had mistakenly removed part of her ureter): Dr Haldar had conducted an inadequate pre-operative consultation; failed to plan the surgery; carried out surgery without seeking appropriate assistance; demonstrated poor decision-making as to how to manage the bleed which had occurred during the procedure; and failed to keep adequate records, including as to blood loss;

c) Patient E (whose baby Dr Haldar had delivered on 8 February 2018): Dr Haldar had failed to obtain appropriate consent during the procedure for a vaginal examination; instrumental delivery; and the insertion of a rectal repository. He had undertaken a manual rotation of the presenting part of the baby without explanation; and conducted

delivery of the baby without taking adequate precautions. Further failures in the care and treatment of Patient E were found, being those to obtain an adequate history; to provide adequate pain relief; and to maintain an adequate clinical record; and

d) Patient G (who had suffered a third degree tear following a forceps delivery, after an unsuccessful ventouse procedure, on 22 February 2018): Dr Haldar had failed to obtain appropriate consent for a vaginal examination and sequential instrumental deliveries; to take an adequate history; and to carry out an episiotomy in a timely manner. He had also failed to recognise a post-partum haemorrhage and the third degree tear; had placed a suture in Patient G's rectum; and had failed to call for appropriate assistance and to escalate her care elsewhere. He had made inappropriate comments to Patient G.

18) A tribunal's investigation proceeds in three stages. At stage one, it makes findings as to which of the factual allegations (if any) has been proven; at stage two, it determines, on the basis of the proven allegations, whether the medical practitioner's fitness to practise is impaired; at stage three, it makes a determination as to sanction. Under section 35D of the Act, the possible sanctions following a finding of impairment are: (i) erasure from the medical register; (ii) suspension of registration for a period of up to 12 months; or (iii) the imposing of conditions on continued registration.

19) The Tribunal's careful and thorough decision ran to 150 pages, including annexes. At paragraphs 29 to 34 of its stage one decision, it summarised the oral and documentary evidence which it had received on behalf of each party. It recorded (at paragraphs 31 and 32) that Dr Haldar had not attended to give oral evidence on his own behalf, relying on his own unsigned and undated witness statements in relation to each patient, together with an undated and unsigned advisory report concerning his treatment of Patient A, prepared by Mr Ellis G R Downes MB ChB FRCOG. At paragraph 35, the Tribunal recorded:

"The tribunal was assisted by Dr Haldar attending and cross-examining for part of the GMC's case. He did not attend the hearing for the evidence of Patient A, Patient C, Patient G, Dr D, Dr I, Dr J, Dr H, Ms F (save when she was recalled) nor for that part of the evidence of Dr Rao which included Tribunal questions and re-examination. He did not attend the hearing to make final submissions on facts."

20) The Tribunal first reminded itself of the burden and standard of proof in relation to its decision on the facts (paragraph 36), before analysing the evidence relating to each substantive allegation made in connection with each patient and stating whether it found the relevant allegation proven. One of the allegations made in connection with Patient A (paragraphs 48 to 55); two of the allegations made in connection with Patient B (paragraphs 174 to 188); six of the allegations made in connection with Patient E (paragraphs 285 to 291; 303 to 321; 325 to 328; and 354 to 356); and four of the allegations made in connection with Patient G (paragraphs 377; 384; and 480 to 487) were found not to have been proven.

21) The Tribunal then moved to stage two, considering whether, on the facts found to have been proven, Dr Haldar' fitness to practise was impaired by reason of misconduct. It stated (at paragraphs 2 and 3) that it had had regard to all of the evidence received during the facts stage of the hearing, together with a determination by the Health Care Complaints Commission of New South Wales, Australia ("the HCCC"), following a hearing on 23 and 24 June 2011; and a letter sent by the GMC to Dr Haldar, dated 14 February 2012, advising him of information received from the HCCC and of the Case Examiners' decision and the reasons for it. The Tribunal recorded the HCCC's findings of fact, that, in October 2007 and February 2008, Dr Haldar had:

a) failed to keep proper records of consultations with six separate patients prior to surgery;

b) breached an undertaking not to perform a Tension Vaginal Tape procedure, and

c) performed a vaginal hysterectomy, pelvic floor repair, and labiaplasty procedures, the latter without fully informing the relevant patient of the nature of the operation and its consequences.

22) The Tribunal observed (at paragraph 4) that Dr Haldar had admitted those allegations and that, although he had apologised for them and shown remorse and insight, he had received the sanction of a caution for breach of his undertaking. In February 2012, the

GMC had closed the case by issuing advice to Dr Haldar, by which he had been referred to paragraphs 3, 36 and 57 of *Good Medical Practice (2006)*:

> "3. In providing care you must:
>
> …
>
> f. keep clear, accurate and legible records, reporting the relevant clinical findings, the decisions made, the information given to patients and any drugs prescribed or other investigation or treatment;
>
> g. make records at the same time as the events you are recorded, or as soon as possible afterwards
>
> …
>
> 36. You must be satisfied that you have consent or other valid authority before you undertake any examination or investigation, provide treatment or involve patients in teaching or research. Usually this will involve providing information to patients in a way they can understand before asking for their consent. You must follow the guidance in seeking patients' consent: The ethical considerations, which includes advice on children and patients who are not able to give consent.
>
> …
>
> 57. You must make sure that your conduct at all times justifies your patients' trust in you and the public's trust in the profession".

23) The Tribunal further noted (at paragraph 6) that Dr Haldar had submitted an email, dated 27 October 2020, and attachments, but that, in the absence of Dr Haldar speaking to such documents and explaining their content, the Tribunal was not able to understand them, or to attach any significance to them.

24) Having recorded the GMC's submissions, the Tribunal reminded itself that there was no burden or standard of proof at that stage of the proceedings and that the decision as to impairment was a matter for its judgment alone. It noted that it was obliged to determine whether Dr Haldar's fitness to practise was then impaired, taking into account his conduct at the time of events and any relevant factors since then, such as whether matters were remediable, had been remedied, and any likelihood of repetition (paragraphs 16 to 19). At paragraphs 20 to 23 of its stage two decision, it found:

"20. As mentioned, Dr Haldar did not attend to make submissions in relation to misconduct. Nor did he make such submissions in the numerous emails which he has sent to the Tribunal. The Tribunal was therefore concerned to analyse whether there may be any facts relating to the matters which it has found proved which represent an explanation or an amelioration of his behaviour. At all times it bore in mind that he was a Consultant in Obstetrics and Gynaecology, albeit a locum. So far as Patient A is concerned, the Tribunal took into account that the information which Dr Haldar had in respect of the prolapse surgery and vaginal hysterectomy operation was very limited and broadly unhelpful. It did not appear that Patient A had been consented for the operation by the referring consultant before the surgery. So far as Patient C is concerned, the Tribunal accepted that the clinical notes did not clearly set out that she had the condition of endometriosis, though that condition could easily be identified on a thorough reading of the notes. So far as Patients E and G are concerned, there was a significant element of urgency. In respect of Patients C, E and G it appeared that Dr Haldar did not enjoy the confidence of those with whom he was working.

21. The Tribunal accepted [the GMC's] submissions as to the effect Dr Haldar's conduct had on each of the patients, the subject of the factual determination.

22. The Tribunal accepted the evidence set out by Dr Rao in his reports that the factual findings identified by [the GMC] amounted to conduct seriously below the standard expected of a Consultant in Obstetrics and Gynaecology. The relevant paragraphs were as follows:…

23. Further, it accepted [the GMC's] representations that Dr Haldar breached a significant number of paragraphs of [Good Medical Practice], namely, 1, 2, 15a, 16d and e, 17, 18, 21a-d, 22a and b, 31, 32, 35, 36, 44a, 46, 47, 49a and 73, as set out below ..."

25) At paragraphs 25 to 32, the Tribunal went on to make the following findings:

"25. Having found that the facts found proved amounted to misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Haldar's fitness to practise is currently impaired.

26. The Tribunal noted that Dr Haldar did not admit a single allegation. When he was present at the hearing, he challenged the evidence of all the GMC witnesses who gave evidence. In the challenges which he made to their evidence, he did not appear to accept that his own behaviour was in any way at fault. There were a significant number of witnesses, including three of the patients involved, called by the GMC whom he did not challenge because he deliberately did not attend the hearing when they were called. The explanation which he

gave for his absence appeared to relate to his inability to countenance those witnesses in his presence. In short, during the factual enquiry, Dr Haldar maintained his position of not accepting any part of the GMC case at all.

27. As mentioned in several of the annex determinations, Dr Haldar has written numerous emails to the MPTS and the GMC during the course of the hearing. In none of those emails has he expressed any remorse or contrition for his conduct, nor any understanding that his conduct may have been properly called into question.

28. So far as the attachments to the email dated 27 October 2020 are concerned, the Tribunal has already set out the difficulty which it has in comprehending them. In the absence of explanations from Dr Haldar, it does not consider that they amount to any evidence that he has sought to address any of his failings or remediate them in any way. In consequence, the Tribunal concluded that he has not demonstrated any insight into his behaviour.

29. The Tribunal commenced its consideration on whether Dr Haldar's fitness to practice is impaired by considering the principles to which Dame Janet Smith in the Fifth Shipman Report referred. It has reached the conclusion that Dr Haldar has, by his actions which have been found proved, caused the patients in this case to be at risk of harm. He has failed to comply with numerous paragraphs of GMP. It is therefore proper to conclude that he has breached fundamental tenets of the profession. The Tribunal considered that he has brought the profession into disrepute by his conduct.

30. The Tribunal considered that the failings of Dr Haldar which it has identified, could be capable of remediation. However, Dr Haldar has not shown any insight nor appetite to address them. Moreover, the evidence before the Tribunal does not suggest that he has begun to appreciate the nature and extent of his misconduct. Dr Haldar does not appear to have heeded the advice which he received from the Case Examiners of the GMC in 2012. That is a conclusion which is fortified by the fact that the matters which have been found proved in relation to his conduct in respect of Patients A and C in 2016, and Patients E and G in 2018, appear in no small measure to replicate his behaviour in 2007 and 2008, which caused him to be referred to the HCCC in NSW. Dr Haldar therefore has not remediated his conduct.

31. In these circumstances, the Tribunal has concluded that Dr Haldar's fitness to practice is impaired on public protection grounds. A finding of impairment is necessary to protect, promote and maintain the health, safety and wellbeing of the public.

32. Further, the Tribunal has considered whether a finding of impairment is appropriate on broader public interest grounds, namely, the promotion and maintenance of public confidence in the

medical profession and proper professional standards and conduct for members of that profession. It has taken into account both the nature and extent of the misconduct which it has found and the attitude which Dr Haldar has demonstrated towards the case brought by the GMC and his failure to address his shortcomings and to engage with the MPTS in a meaningful and constructive way. On both these grounds, the Tribunal has concluded that a finding of impairment of Dr Haldar's fitness to practice is also appropriate in the public interest."

26) Finally, the Tribunal turned to consider the appropriate sanction, reminding itself of the applicable legal principles. At paragraph 21 of its stage three decision, it identified the following mitigating and aggravating factors:

"Mitigating factors

- As set out in its determination at Stage 2, the Tribunal considered that there may have been some systemic issues at both Princess Alexandra Hospital in Harlow in Essex and at Birmingham Women's Hospital which may have contributed to but did not excuse Dr Haldar's behaviour which the Tribunal has found proved;

- The Tribunal acknowledged that, in respect of Patients C, E and G, it appeared that Dr Haldar did not enjoy the confidence of those with whom he was working;

- The medical staff, including Dr Haldar, were obliged to communicate with Patient E through Patient E's husband as she was non-English speaking. This may have caused delay and confusion;

- There may have been personal and professional matters, such as work-related stress.

Aggravating factors

- Lack of remorse and contrition;

- A complete lack of insight;

- No evidence of any remediation;

- The finding in 2011 against Dr Haldar by the Health Care Complaints Commission of New South Wales, Australia, in respect of similar matters;

- No evidence of any reflection;

- Dr Haldar has demonstrated that he is capable of an apology as he has previously apologised to Ms F, in relation to the way he spoke to her regarding his behaviour in the case of Patient E. However, once these proceedings started, Dr Haldar did not offer any apology to any of the patients, indeed he did not attend the hearing whilst they were giving evidence, nor show any signs of contrition. The only consistent behaviour which he did demonstrate was outrage that the case was brought against him by the GMC;

- Dr Haldar did not demonstrate any signs of learning from these matters;

- Failure to work collaboratively with colleagues to maintain or improve patient care. This includes doctors and the nursing staff;

- Dr Haldar abused his position of trust. In respect of Patient A, he carried out a perineal reconstruction contrary to Patient A's explicit refusal. He disregarded Patient A's wishes, thinking he knew better;

- Dr Haldar caused physical harm as follows:

— In relation the Patient A, in consequence of the perineal reconstruction, he narrowed the introitus to her vagina and this has left her with a difficulty in passing urine normally;

— In relation to Patient G, following Dr Haldar's failure to carry out an episiotomy, which caused a third-degree perineal tear, she has the very embarrassing problems of leaking faeces and loss of bowel control.

- The Tribunal determined that all four patients suffered trauma and/or psychological harm."

27) Against that background, the Tribunal considered each available option. Under the heading 'Erasure', it stated as follows, going on to conclude that an immediate order was appropriate in order to meet the overarching objective, specifically on public protection grounds and in the public interest:

"28. The Tribunal went on to consider paragraphs 109a, b, c, d, e, j and 130 of the [Sanction Guidance (November 2019): "SG"], which state:

'109 Any of the following factors being present may indicate erasure is appropriate…

a. A particularly serious departure from the principles set out in *Good medical practice* where the behaviour is fundamentally incompatible with being a doctor.

b. A deliberate or reckless disregard for the principles set out in *Good medical practice* and/or patient safety.

c. Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients …

…

d. Abuse of position/trust (see *Good medical practice*, paragraph 65: '*You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession'*).

e. Violation of a patient's rights…

…

j. Persistent lack of insight into the seriousness of their actions or the consequences.

…

130. A particularly important consideration in these cases is whether a doctor has developed, or has the potential to develop, insight into these failures. Where insight is not evident, it is likely that conditions on registration or suspension may not be appropriate or sufficient.'

29. The Tribunal considered these paragraphs of the SG to be engaged in this case. It remained mindful of its previous determinations, and of the mitigating and aggravating factors of this case. It considered that Dr Haldar deliberately disregarded the principles of GMP, and that his misconduct was a serious departure from proper professional standards of conduct. It also determined that Dr Haldar had shown no evidence of acceptance or insight into his actions.

30. The Tribunal has concluded that, in all the circumstances of this case, Dr Haldar's conduct and behaviour is fundamentally incompatible with that of a registered medical practitioner and that erasure is the only appropriate sanction.

31. The Tribunal determined that, having found Dr Haldar to have breached fundamental tenets of the medical profession and undermined the public confidence in the profession, erasing Dr Haldar's name from the medical register was the only appropriate sanction in this case. It determined that this sanction would protect patients, maintain standards and uphold confidence in the medical profession."

The grounds of appeal

28) Dr Haldar filed an undated appellant's notice, together with two separate documents, respectively headed 'Grounds of Appeal 1' and 'Grounds of Appeal 2', each of which dated 2 December 2020. He has sent extensive correspondence to various individuals in the court office, including, subsequent to the order which I made on 4 May 2021, paragraph 2 of the reasons for which stated:

"The Appellant has sent a significant volume of correspondence and attachments to the Court. It is not appropriate for an appeal to be conducted in this way. If and to the extent that the matters which he has raised in correspondence are considered to be material to his grounds of appeal, those matters should be set out in a supplementary skeleton argument, which must be carefully focused on the grounds of his appeal".

In so doing, Dr Haldar has variously accused court staff of misconduct, including fraud and race discrimination. Those allegations have included assertions that the orders which I made on 4 May 2021, together with the matters which were communicated to him at my direction on 7 May 2021, had not in fact originated from me. Such allegations were both unfounded and inappropriate. The orders and directions which were sent to him were those which I had made. I refer to such matters here because they are indicative of the way in which Dr Haldar has chosen to conduct his appeal. I am satisfied that he has at all times understood the nature of the hearing, but, rather than focus his written and oral submissions on the substantive matters with which it ought to be concerned, has decided to engage in protracted and tendentious correspondence. As noted earlier in this judgment, he has made three applications for summary judgment. At the eleventh hour, he applied for an adjournment of the hearing of his appeal (originally listed to take place on 11 May), without disclosing any grounds for such an application; an application which I, therefore, refused on 7 May. I granted a subsequent application, made on the morning of 11 May, on medical grounds, re-listing the appeal to be heard today. Contrary to the order which I made on that date, Dr Haldar has not filed or served a copy of the discharge summary in the form provided by the hospital which he attended to his GP, whilst acknowledging that his GP received such a document on or around 15 or 16 June 2021, and that he (Haldar) was informed that it was available to be collected from the surgery, located 1.2 miles from his home.

29) In such circumstances, the GMC has done its best to discern the grounds of appeal from the appellant's notice, grounds of appeal and two skeleton arguments filed by the appellant. I am satisfied that grounds 1 to 3 have been appropriately distilled from that documentation. In my judgment, a fourth ground of appeal also arises. All such grounds are summarised below, although, in his oral submissions before me today, Dr Haldar has focused on procedural matters:

a) (ground 1) a challenge to some of the Tribunal's findings of fact;

b) (ground 2) complaint of various alleged procedural irregularities, said to comprise:

i) the content and format of the Tribunal hearing bundle;

ii) inadequate disclosure by the GMC;

iii) the non-receipt by the Tribunal of a letter under rule 8 of the 2004 Rules;

iv) the Tribunal's non-compliance with rules 17 and 31 of the 2004 Rules;

v) the Tribunal's failure to issue an 'IMI' (Internal Market Information) alert, relating to restrictions and prohibitions on a doctor's practice; and

vi) the need for the Tribunal to remove its decision from the public domain, said to derive from the Human Rights Act 1998 and/or the Equality Act 2010;

c) (ground 3) an unparticularised challenge to the Tribunal's findings as to impairment; and

d) (ground 4) a challenge to the Tribunal's approach to sanction.

30) I address each such ground of appeal, in turn, below.

Ground 1: findings of fact

31) As Ms Hearnden observes on behalf of the GMC, it is not clear which of the Tribunal's detailed findings of fact is the subject of criticism by Dr Haldar. In the opening paragraph of his first skeleton argument, dated 2 December 2020, which concludes with a statement of truth, Dr Haldar states, "*At the outset, Claimant would like to refer to a number of paragraphs in the Tribunal Determination in the Public Record where very pertinent information were fundamentally untrue, confirmed lack of candidness of the Tribunal, and also unsubstantiated yet defamatory comments including about claimant's conduct and probity".* Only three examples follow:

a) The first is paragraph 1 of the stage one decision, under the heading 'Background', in which the Tribunal stated:

"Dr Haldar was working as a locum Consultant Obstetrician and Gynaecologist at the time of the events under consideration by this Tribunal. The Allegation that has led to Dr Haldar's hearing can be broadly summarised as alleged deficiencies in his practice in his treatment of four patients: Patients A and C at the Princess Alexandra Hospital in Harlow in Essex ('PAH') in November and December 2016 respectively, and Patients E and G at Birmingham Women's Hospital in February of 2018, (BWM).";

b) The second is paragraph 27 of the stage one decision, in which the Tribunal set out the allegations made against Dr Haldar in connection with each patient. It is said that such 'determination' ran contrary to paragraph 73 of Domain 4 of Good Medical Practice, which provides, *"You must cooperate with formal inquiries and complaints procedures, and must offer all relevant information while following the guidance in Confidentiality*." It is further said that the paragraph is *"factually incorrect and both defamatory and falsely confirmed my breach of probity"*;

c) The third is the Tribunal's finding that there had been no evidence of any remediation. Whilst the paragraph reference for this finding is given as 132, in fact it was identified at paragraph 30 of the stage two decision, which addressed impairment, and as an aggravating factor, at paragraph 21 of the stage three decision

(see above). Dr Haldar asserts that he had outlined a number of remedial steps which he had taken since the alleged events, although he does not identify what those were said to be, whether in his original skeleton argument or in his supplementary skeleton argument, dated 7 May 2021.

32) Addressing each of those allegations in turn:

a) Paragraph 1 of the Tribunal's decision is simply a broad and fair summary of the allegations giving rise to the hearing. There is no error identified or apparent.

b) Paragraph 27 simply contains a list of each allegation faced by Dr Haldar. There is no inaccuracy demonstrated or apparent, nor is the relevance of paragraph 73 of Domain 4 of Good Medical Practice explained or apparent.

c) As noted above, the evidence of remediation on which it is said that Dr Haldar sought to rely, has not been identified, and, as the Tribunal recorded, he did not give oral evidence or make submissions on impairment or sanction. In such circumstances, it is unsurprising that the Tribunal reached the conclusions as to remediation which it did.

33) It follows that ground 1 of the appeal fails: there is no demonstrable error in the Tribunal's careful findings of fact.

Ground 2: procedural irregularities

Hearing bundle

34) From the correspondence in the appeal bundle, it is clear that, on 17 October 2019, Dr Haldar was provided with a draft two-part hearing bundle (incorporating the GMC's proposed redactions), together with a separate medical records bundle. In the course of extensive correspondence thereafter, it appears that he raised no specific objection to the bundle, or the proposed redactions. The final hearing bundle was uploaded on 26 November 2019, in accordance with earlier case management directions. On the same date, a hard copy was sent to Dr Haldar, by special delivery. In each case, it was made

clear that the redactions had not been agreed. Ms Hearnden informed me that the bundle content largely comprised material previously sent to Dr Haldar at the rule 7 (investigation) stage of proceedings, by letter dated 15 April 2019. There is no procedural irregularity identified, or identifiable, here.

Disclosure

35) A large part of the concern expressed by Dr Haldar (both here and before the Tribunal) is the alleged inadequacy of the GMC's disclosure. In essence, Dr Haldar contends that, because he received documents from the GMC which were not in a particular format, or on its headed paper, or which did not make reference to particular provisions of the Act, the 2004 Rules, and/or contain a "wet signature" of the registrar (as opposed to any other appropriate member of GMC staff), the documents in question were not authentic and the proceedings before the Tribunal were invalid. He seeks "disclosure" of documents having the form and content which he asserts to be appropriate. The GMC's position is that there is no requirement that the documents in question take the form, or have the content, for which Dr Haldar contends and that, in any event, it cannot give disclosure of documents which have never existed, or be expected to generate new documents for the purposes of this appeal. It informed Dr Haldar of that position, as I have previously noted, by email dated 22 January 2021.

36) A party cannot disclose documentation which does not exist. Furthermore, Dr Haldar has been unable to point to any provision, in the Act or the 2004 Rules, which requires that the referral documentation in question take the form alleged. He was, at all times, aware of the nature of the proceedings and allegations which he faced and does not suggest otherwise. This ground of appeal lacks any merit.

Rule 8

37) Rule 8 of the 2004 Rules provides, in full:

> "**Consideration by Case Examiners**
>
> 8. — (1) An allegation referred by the Registrar under rule 4(2) or 5(2) shall be considered by the Case Examiners.

(2) Upon consideration of an allegation, the Case Examiners may unanimously decide —

(a) that the allegation should not proceed further;

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

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

(d) to refer the allegation for determination by a FTP Panel.

(3) The Case Examiners may unanimously decide to recommend that the practitioner be invited to comply with undertakings in accordance with rule 10(2) and, where they do so and the practitioner confirms he is prepared to comply with such undertakings in accordance with rule 10(3), they shall make no decision under paragraph (2) accordingly.

(4) As soon as reasonably practicable, the Case Examiners shall inform the Registrar of their decision, together with the reasons for that decision, and the Registrar shall notify the practitioner and the maker of the allegation (if any), in writing, accordingly.

(5) If the Case Examiners fail to agree as to the disposal of an allegation under paragraph (2), or whether to recommend that the practitioner be invited to comply with undertakings under paragraph (3), they shall notify the Registrar accordingly, and the Registrar shall refer the allegation for consideration by the Committee under rule 9.

(6) If, at any stage, one of the Case Examiners is of the opinion that an Interim Orders Panel should consider making an interim order in relation to a practitioner, he shall direct the Registrar accordingly."

38) Dr Haldar's complaint is that the MPTS did not receive correspondence from the GMC regarding the referral which it made under rule 8, a fact which is not disputed. Rule 8 requires no such step to be taken. Rule 8(4) requires only that the Registrar notify the practitioner and the maker of the allegation (if any), in writing, of the specified matters. The referral which follows the Case Examiners' rule 8 decision is achieved administratively by the creation of a hearing record on the GMC's data system, "Siebel". The GMC and the MPTS share access to certain parts of Siebel, for the purposes of hearing administration, and the hearing record is created on the shared interface. It is the creation of that record which notifies the MPTS that there has been a referral by the Case Examiners, pursuant to rule 8, and that arrangements for a hearing should be made. There is no procedural irregularity and no unfairness demonstrated.

39) In any event, as the GMC submits, a substantive challenge to a referral under rule 8 of the 2004 Rules must proceed as a claim for judicial review: see, for example, *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin), which must be brought promptly and, in any event, within three months of the act of which complaint is made. No such claim has been brought and it would now be well out of time, given that the decision to refer was made on 17 June 2019. As the matter was put by Mitting J, at paragraph 11 of *R (Kashyap) v General Medical Council* [2009] EWHC 2873 (Admin), *"The claimant had a choice of remedy: to seek to apply for judicial review or to contest the allegations on their merits. He chose the latter. He must abide by his choice. It is far too late now to bring a claim for judicial review on this ground".* This ground of appeal fails.

Rule 17

40) Dr Haldar next complains that, when rehearsing the allegations against him (at paragraph 27 of its stage one decision), the Tribunal made no reference to the Act, *"as required under rule 17(1)"* of the 2004 Rules.

41) Rule 17(1) provides:

> "**Procedure before a FTP Panel**
>
> 17. — (1) A FTP Panel shall consider any allegations referred to it in accordance with these Rules, and shall dispose of the case in accordance with sections 35D, 38 and 41A of the Act."

42) The Case Examiners' decision to refer was communicated to Dr Haldar by the GMC's letter dated 17 June 2019. Annex A to that letter contained the Case Examiners' detailed decision and Annex B set out the allegations which would be considered at the hearing. Annex C contained a hyperlink to the 2004 Rules and some information about them. At paragraph 27 of its stage one decision, the Tribunal recited the allegations which Dr Haldar faced. Rule 17(1) does not require that the Tribunal refer to the Act when reciting the allegations which it must determine. This ground of appeal lacks any merit.

Rule 31

43) Rule 31 of the 2004 Rules provides:

> "**Absence of the practitioner**
>
> 31. Where the practitioner is neither present nor represented at a hearing, the Committee or Panel may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules."

44) In his original skeleton argument, Dr Haldar objects that, *"The Hearing continued under rule 31 without GMC made any referral or sought MPT Hearing to reconvene in September or initially sought at any time."* The point being advanced here is opaque. As I have previously found, a referral to a tribunal need not take a particular form. If the complaint is, in fact, that the Tribunal ought not to have proceeded at any given stage of the proceedings in Dr Haldar's absence, I reject it, for the reasons which follow.

45) The hearing took place over 31 days: 19 days on the facts; two days on impairment; one day on sanction, and the balance spent in camera, deliberating. The Tribunal was obliged to consider whether to adjourn, or continue in Dr Haldar's absence, on five separate occasions, reaching a reasoned decision at each such stage, set out in annexes to its substantive decision, summarised as follows:

a) Annex B — 11 December 2019: on day three of the hearing, the Tribunal noted that Dr Haldar had not attended and, instead, had informed the GMC and the MPTS that he had returned to London and was not intending to return to the hearing until such time as the documents which he had requested had been disclosed to him. Only then, he had stated, could he instruct an expert witness to assist him. Additionally, Dr Haldar sought an adjournment in order that he might be represented for the balance of the hearing. The Tribunal noted that it had already reached a decision on Dr Haldar's preliminary submissions as to documentation, set out at Annex A, which it could not go behind. It further noted that Dr Haldar had previously been represented by solicitors and counsel and that he had not suggested that he was actively seeking legal representation (rather than expecting the MPTS or the

Tribunal to provide it). He had been given proper notice of proceedings and had attended the first two days of the hearing; made no suggestion that he would attend at a later date, were proceedings to be deferred; and given no medical reason for his absence. The Tribunal concluded:

> "4. … The reason for his absence appears to be his disappointment with the ruling made by the Tribunal considering his preliminary points. The Tribunal therefore comprehends his absence as being voluntary. Dr Haldar has an obligation as a professional to engage with his regulator. So long as he remains voluntarily absent, he is not discharging that obligation. The Tribunal of course has a duty to act in the interests of justice in relation to the very serious decision as to whether it should proceed in the doctor's absence. Fortunately, in this case Dr Haldar has submitted statements and other material which set out his version concerning the various incidents which the Tribunal has seen.
>
> 5. The Tribunal must not only have regard to Dr Haldar's interests but also to those of the GMC who bring this case on behalf of the general public, including the patients who have allegedly been the subject of a lack of professional behaviour by Dr Haldar. Three of the patients to whom this allegation relates are witnesses and in addition there are a number of other witnesses all of whom are scheduled to give evidence. In these circumstances the Tribunal considers that it is appropriate and in the interests of justice to proceed in the absence of Dr Haldar. Of course, the Tribunal very much hopes that he will return to the hearing as it unfolds in succeeding weeks so that he may play a full part in it."

b) Annex C — 13 December 2019: following a further application for an adjournment, made on day four, on the basis that legal representation by leading counsel might be forthcoming, the Tribunal delayed until the afternoon and then decided to proceed when no representation (or further information) was forthcoming. It stated:

> "4. In the light of the history concerning representation recited herein and in its determination concerning Dr Haldar's first application for an adjournment, and in the context of the Tribunal receiving no confirmation or indication that a lawyer had been instructed to represent Dr Haldar, the Tribunal did not accept the premise of the application for this second application for an adjournment. It was not impressed by Dr Haldar's stance that he would or might instruct a lawyer if and when he had achieved the objective for which he argued as a preliminary issue. There was always much more to the case than the preliminary issue; it therefore behoved Dr Haldar to achieve a

state of readiness for the case in the event that he did not succeed on the issues which he raised. Moreover, it might be said that, if he was willing to instruct a lawyer, that should have been done so that he would have been able to articulate his case on the preliminary issue.

5. Dr Haldar could attend the hearing himself, supported by his wife if he wished. He has chosen not to do so.

6. The Tribunal must approach an application for an adjournment by reference to the interests of justice. It has the power to adjourn if it considers that justice lies in the granting of the adjournment. It must take into account both the interests of Dr Haldar and those of the GMC who effectively represent the general public and it should have regard to the overarching objectives.

7. The Tribunal has reached the conclusion that it should reject Dr Haldar's second application for an adjournment. It does not have confidence that he will obtain representation. It does not consider that it would be exercising its duty to be fair to both parties.";

c) Annex E — 18 December 2019 (day eight): this was Dr Haldar's third application for an adjournment, in order to seek further witness evidence and transcripts of the evidence given on days three to six, over which he had voluntarily absented himself from the hearing. By this stage, the GMC had been about to present the expert evidence of Dr Rao. The application was rejected on the bases, variously, that the evidence which Dr Haldar sought time to produce was irrelevant; unnecessary; a matter for submissions; and that, in any event, at such time as it was produced, the Tribunal had the power to recall Dr Rao. Regarding Dr Haldar's asserted need for transcripts, the Tribunal held:

"8. … Apart from the fact that Dr Haldar was responsible for not attending the hearing when evidence from several of GMC's witnesses was given, the Tribunal considers that the important point is that Dr Haldar is aware of the case which he is advancing. The hearing has not reached the stage when the Tribunal would be deciding the facts. It has only reached the stage of the GMC completing its evidence by calling Dr Rao.";

d) Annex H — 7 September 2020: a fourth application to adjourn was made on day 16 of the hearing. The Tribunal recorded Dr Haldar's submission that he had not received formal notification of the resumed hearing; had not received confirmation

that documents which he had requested were not in existence, alternatively could be disclosed; and had not obtained legal representation. It stated:

"3. The Tribunal treated the application for an adjournment and the issue of proceeding in absence at one and the same time. It applied the principle of the interests of justice to both issues. It bore in mind that the General Medical Council had an interest in completing the hearing and that it had a witness, namely Dr Rao, in attendance for Tribunal questions. The Tribunal also recognised that Dr Haldar had been absent for a period of time at the beginning of the hearing but had re-attended and been able to cross examine GMC witnesses.

4. The Tribunal has determined to reject Dr Haldar's application and has decided to proceed in his absence. Dr Haldar has, in truth, not advanced any compelling reason to adjourn. He has not stated that he had problems with his health or that attending in the context of the pandemic is posing a problem to him. In view of the fact that he has had the transcripts, he should have been in a position to understand the stage that the hearing has reached. The Tribunal is not impressed with the point that the Notice of Hearing was not singed in ink. Although it was sent by post, it was electronically signed…" (sic);

e) Annex K — 27 October 2020: on day 29 of the hearing, the Tribunal decided to proceed in Dr Haldar's absence, following the handing down of its determination of the facts, at a time when it was sitting in open session, with a view to hearing submissions and/or evidence in respect of impairment. It held:

"3. The Tribunal has carefully considered the submissions advanced by Mr Moran. It has borne in mind that it should be guided by the main statutory objective of the GMC, namely, the protection, promotion and maintenance of the health and safety of the public; further, that fair economical, expeditious and efficient disposal of the allegations made against a registrant is of very real importance; third that fairness includes fairness both to the practitioner and to the regulator which represents the public interest.

4. Over the course of the last seven days, the Tribunal has either seen or received at least 21 emails from Dr Haldar. In those emails which, in this sequence, commence on 23 September 2020, he has continued to make a number of points which include complaints about the decisions made by the Tribunal concerning disclosure of documentation, the proposition that the hearing should be cancelled, the assertion that he will attend the hearing with a lawyer and an expert once the documentation which he requests is obtained. He has advised that he is aware that the hearing is going ahead and has argued that it should not go ahead until the disclosure of the documentation. He is aware that he can attend the hearing virtually and indeed that the Tribunal has given him permission to do so and indicated that it would welcome his attendance. In the course of these emails he has continued to make allegations against GMC staff, in particular the legal adviser, and against MPTS staff, in particular a Case

Manager and he has threatened to take action and refer this matter to the police, alternatively the High Court.

5. The Tribunal does not underestimate the difficulties and stresses which a practitioner may endure in experiencing an inquiry into his fitness to practise at the MPTS. This Tribunal is well aware of the difficulties and upset which Dr Haldar clearly was undergoing at times when he attended the hearing. The Tribunal endeavoured to accommodate Dr Haldar as best it could in this inquiry into his fitness to practice. At all times, the Tribunal has been at pains to explain to Dr Haldar how a hearing unfolds, the participation which he could have in the hearing and its wish that he would indeed participate.

6. When this Tribunal sat on Dr Haldar's case in September, Dr Haldar chose not to attend. In consequence he did not give evidence on his own behalf and did not address the Tribunal on the factual issues it had to determine. When it went into camera, having received Mr Moran's submissions on facts, the Tribunal was simply continuing the process of reaching a determination in relation to facts. That process has now come to an end. It hoped that Dr Haldar would once again participate in the hearing.

7. The Tribunal has carefully considered Mr Moran's submissions. It accepts all of them. By his emails, Dr Haldar has demonstrated no intention to return to the hearing. The Tribunal cannot repose any confidence in his ever doing so, although of course it hopes that he will change his mind and assist the Tribunal in reaching its conclusions in relation to the matters it still has to determine.

8. The Tribunal has therefore determined to proceed in Dr Haldar's absence. It directs that this determination be served on Dr Haldar at the same time as it is handed down in open session to Mr Moran."

46) It is the GMC's position that all such determinations were properly made, balancing the respective interests of Dr Haldar against those of the GMC. It relies upon the following observations of Sir Brian Leveson, in *General Medical Council v Adeogba* [2016] EWCA Civ 162 (affirmed in *General Medical Council v Hayat* [2018] EWCA Civ 2796):

> "61 … An adjournment was highly disruptive: the members of the Panel, the legal assessor, the staff and the accommodation had been set up… Organising another hearing would have been both disruptive and inconvenient. No regulatory system can operate on the basis that failure to attend should lead to an adjournment on the basis that the practitioner might not know of the date of the hearing (rather than having disengaged from the process or even adopted an 'ostrich like attitude'): any culture of adjournment is to be deprecated…
>
> …

63. … the system simply could not operate efficiently or effectively and although attendance by the practitioner is of prime importance, it cannot be determinative."

47) There is no suggestion that all reasonable efforts had not been made to serve Dr Haldar with notice of the Tribunal hearing, in accordance with the 2004 Rules. At each stage, he was aware of the hearing; indeed, had sought to adjourn, or made a deliberate decision not to attend, it. No legitimate criticism may be made of the substantive decisions which the Tribunal took, having carefully and appropriately considered and balanced the interests of Dr Haldar and the GMC. Rule 31 of the 2004 Rules empowered the Tribunal to proceed in Dr Haldar's absence. Its decisions were neither wrong in substance, nor procedurally or otherwise irregular. This ground of appeal fails.

IMI alert

48) Dr Haldar complains that, "*The GMC registration service did not issue any notification or IMI alert in the line of Tribunal outcome issued under MPTS Ref: … on a white paper.*" IMI is the European Commission's internal market information system, to which, prior to 31 December 2020, the GMC would send alerts relating to restrictions and prohibitions on a doctor's practice. As explained to Dr Haldar by Ms Crook, the GMC's Senior Legal Adviser, by email sent on 22 January 2021, at 17.55:

"As a result of the Brexit implementation period coming to an end on 31 December 2020, the UK no longer has access to IMI, and to the best of my knowledge all previous IMI alerts for GMC registered doctors have been deactivated. As such I am not able to access IMI, and even if I was, I would not be able to provide you with a copy of the alert, as it is my understanding that it no longer exists."

49) In any event, it is difficult to see how Dr Haldar's concern, if legitimate, would demonstrate that the Tribunal's decision was wrong, or unjust because of a serious procedural or other irregularity. This ground of appeal lacks merit.

Breach of The Human Rights Act 1998 and The Equality Act 2010

50) In his original skeleton argument, Dr Haldar states (with emphasis added):

"Ahead of considering my appeal for a decision, as a matter of priority; I trust the High Court will immediately order withdrawal of Public Order of Hearing from the MPTS Public Domain to address Claimant's dignity, respect and potential breaches of Human Rights (1998) and Equality Act (2010) pending completed with factual details and only disclosures of a case concluded public record as mandate in law."

51) On its face, that does not appear to be a basis for appeal, and the provisions of each statute on which reliance is placed have not been particularised. In any event, as Ms Hearnden submitted, the publication of tribunal decisions is governed by the GMC's "*Publication and disclosure policy, fitness to practise"* (7 September 2020) and the overarching objective. That policy reflects the GMC's statutory obligations under sections 35B(4) (as qualified by sections 35B(5)) and 38 of the Act, which provide, so far as material:

> "35B(4) Subject to subsection (5), the General Council shall publish in such manner as they see fit —
>
> (a) decisions of a Medical Practitioners Tribunal that relate to a finding that a person's fitness to practise is impaired (including decisions in respect of a direction relating to such a finding that follow a review of an earlier direction relating to such a finding);
>
> (b) decisions of a Medical Practitioners Tribunal to make an order under section 38(1) or (2) below;
>
> …
>
> (5) The General Council may withhold from publication under subsection (4) above information concerning the physical or mental health of a person which the General Council consider to be confidential.
>
> …
>
> 38 **Power to order immediate suspension etc**
>
> (1) On giving a direction for erasure or a direction for suspension under section 35D(2), (10) or (12) above …, in respect of any person the Medical Practitioners Tribunal, if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration in the register shall be suspended forthwith in accordance with this section.

…"

52) With the exception of those relating solely to a doctor's health, decisions are published on the MPTS website, for one year. Once again, no error, or serious procedural or other irregularity is established, and this ground of appeal, if such it be, fails.

53) It follows that all elements of ground 2 of Dr Haldar's appeal are dismissed.

Ground 3: impairment

54) Ms Hearnden rightly submits that the scope of Dr Haldar's challenge to the Tribunal's findings as to impairment is unclear. Insofar as criticism is made of paragraph 27 of its stage one decision, and its conclusions as to remediation, that has already been addressed at paragraphs 32(b) and (c), above. No other alleged error, or serious procedural or other irregularity, has been identified. It follows that this ground of appeal, too, must be dismissed.

Ground 4: sanction

55) At paragraph 14 of his original skeleton argument, Dr Haldar contends that the Tribunal *"did not exercise any of the mandatory sections/subsections* [of the Act] *yet imposed erasure and immediate suspension by unlawfully applying rule 17(2)(n) and 17(2)(o)* [of the 2004 Rules] *in isolation"*, before setting out section 38 of the Act.

56) I have set out section 38(1) of the Act, at paragraph 51, above. The remaining sub-sections do not arise for consideration in the circumstances of this appeal. So far as material, section 35D of the Act is set out below:

"**35D Functions of a Medical Practitioners Tribunal**

(1) Where an allegation against a person is referred under section 35C(5)(b) above to the MPTS —

(a) the MPTS must arrange for the allegation to be considered by a Medical Practitioners Tribunal, and

(b) subsections (2) and (3) below shall apply.

(2) Where the Medical Practitioners Tribunal find that the person's fitness to practise is impaired they may, if they think fit —

(a) except in a health case or language case, direct that the person's name shall be erased from the register;

(b) direct that his registration in the register shall be suspended (that is to say shall not have effect) during such period not exceeding twelve months as may be specified in the direction; or

(c) direct that his registration shall be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Tribunal think fit to impose for the protection of members of public or in his interests.

…"

57) A combined reading of sections 38(1) and 35D(2)(a) indicates that a tribunal may direct that a practitioner's name shall be erased from the medical register, and may order that his registration in the register shall be suspended forthwith, if satisfied that that is necessary for the protection of members of the public, or is otherwise in the public interest, or is in the best interests of that person.

58) Rules 17(2)(n) and (o) of the 2004 Rules respectively provide:

"(2) The order of proceedings at the hearing shall be as follows —

…

(n) the FTP Panel shall consider and announce its decision as to the sanction or warning, if any, to be imposed or undertakings to be taken into account and shall give its reasons for that decision;

(o) where the FTP Panel considers that an order for immediate suspension or immediate conditions should be imposed on the practitioner's registration, it shall invite representations from the parties before considering and announcing whether it shall impose such order, together with its reasons for that decision.

…"

59) Nothing in the Act, or in the above provisions of the Rules, requires a tribunal expressly to state that it is applying the statutory provisions which are engaged; the requirements are to apply the test for which they provide, and give reasons for its decision.

60) The Council of the GMC has approved sanctions guidance, developed by a steering group of MPTS and GMC staff. It is for use by tribunals, in cases referred by the MPTS for hearing, when considering what sanction to impose following a finding that the doctor's fitness to practise is impaired, and is updated from time to time. At the date with which this appeal is concerned, the applicable guidance was that in use from 18 November 2019. As is made clear at paragraph 3, on page 6 of the latter, *"This guidance makes sure that the parties are aware from the outset of the approach that the tribunal will take to imposing sanctions. The tribunal should use its own judgment to make decisions but must base its decisions on the standards of good practice established in Good medical practice and on the advice given in this guidance."*

61) As set out at paragraphs 26 and 27 above, in this case the Tribunal carefully considered the options available to it, having regard to the then applicable sanctions guidance, concluding (stage three decision, paragraphs 30 and 31) that erasure was the only appropriate sanction. The Tribunal went on to consider whether to make an immediate order, in accordance with rule 17(2)(o) of the 2004 Rules. It set out its decision on that matter in seven numbered paragraphs, in the third of which it faithfully recited the test imposed by section 38(1) of the Act. At paragraph 4, it went on to set out the related paragraphs of the sanctions guidance, before finding, at paragraph 5:

"5. The Tribunal determined that due to the seriousness of its findings, and the reasons for its substantive decision to erase Dr Haldar's name from the Medical Register, an immediate order of suspension is necessary to meet the overarching objective in this case, specifically on public protection grounds and in the public interest".

No error or irregularity is demonstrated in its approach; this ground of appeal is dismissed.

62) Against the background of the concerns raised as to sanction, and in accordance with the approach set out in *Sastry*, I have given independent consideration to whether the sanction imposed by the Tribunal was appropriate and necessary in the public interest, or was excessive and disproportionate. There is no basis for disturbing the Tribunal's findings of fact, at stage one, or its findings as to impairment by reason of misconduct. Having regard to those findings, and to the applicable provisions in the Act; the 2004

Rules; and the GMC's sanctions guidance, I am satisfied that the sanction of erasure from the medical register was appropriate and necessary in the public interest, essentially for the reasons given by the Tribunal, and was not excessive and disproportionate.

63) In those circumstances the sanction imposed by the Tribunal stands and Dr Haldar's appeal fails on all grounds.

Matters outwith the scope of the appeal

64) In his 'Grounds of Appeal 2' and/or his supplementary skeleton argument, Dr Haldar raises concerns about three further matters, addressed, in brief, below:

Data protection

a) alleged breaches by the GMC of data protection principles: those are not properly the subject of this statutory appeal;

Interim orders

b) earlier interim orders made by the Interim Orders Tribunal, or a Medical Practitioners Tribunal, under section 41A of the Act: those orders ought to have been challenged, if at all, by a CPR Part 8 claim, under section 41A(10), the decision of the court on such an application being final. In this case, interim conditions were imposed on Dr Haldar on 14 September 2017 and 29 March 2018. Upon review, they were varied on 26 June 2018 and maintained on 17 January 2019. The interim order was extended by the court on 29 March 2019; varied, upon review, on 16 April 2019; maintained on 27 September 2019; extended by the court on 17 December 2019; maintained, upon review, on 30 January 2020 and on 3 June 2020; extended by the court on 24 June 2020; maintained, upon review, on 4 September 2020; and revoked by the Tribunal once its immediate suspension order had taken effect (see its stage three decision, under the heading 'Determination on immediate order', at paragraph 7). In such circumstances, any such claim would now be otiose;

c) The court's and the GMC's approach to the above application, to which he refers as an outstanding judicial review: in fact, it was the GMC's application for an extension of an interim order, as to which see the analysis at sub-paragraph (b), above. Alleged breaches, advanced under this heading, of rules 4 (initial consideration and referral); 7 (investigation of allegations); and/or 8 (consideration by case examiners) of the 2004 Rules, face the additional difficulty identified at paragraph 39, above.

Costs

65) Dr Haldar has been unsuccessful on all grounds of appeal and there is no reason why costs should not follow the event, in the ordinary way. I have received submissions from Dr Haldar, essentially stressing his impecuniosity. Nonetheless, he has brought an unmeritorious appeal which has incurred the GMC in legal costs. I am satisfied that the costs set out in the GMC's schedule were properly incurred and I, therefore, summarily assess those costs in the total sum of £11,854.70 (comprising solicitors' and counsel's combined fees of £10,629.30; VAT on Counsel's fees of £880; and travel expenses of £345.70), to be paid by Dr Haldar, in cleared funds, within 21 days of today's date, that is by 4:00pm on Wednesday, 30 June 2021.

66) When adjourning the hearing of this appeal, on 11 May 2021, I reserved the costs of and occasioned by that adjournment. On behalf of the GMC, Ms Hearnden does not seek an order for those costs today and I, therefore, make no order in relation to them.
