Neutral Citation Number: [2021] EWHC 3278 (Admin)

Case No: CO/4870/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/12/2021

**Before** :

**THE HONOURABLE MR JUSTICE CALVER**

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**Between :**

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| **SEKINAT BAKARE** | **Claimant** |
| **- and -** | |
| **GENERAL MEDICAL COUNCIL** | **Defendant** |

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**Matthew McDonagh** (instructed by **Foster and Coleman Ltd.**) for the **Claimant**
**Alexis Hearnden** (instructed by **GMC Legal**) for the **Defendant**

Hearing dates: Thursday 2nd December 2021

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# JUDGMENT

**Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Friday 3rd December 2021 at 2:00 pm**

**Mr Justice Calver :**

***The appeal***

1. On 27 November 2020, a Fitness to Practise Tribunal of the Medical Practitioners Tribunal Service ("the MPT") concluded a Fitness to Practise hearing that lasted 18 days. The Appellant was represented by counsel before the MPT and she attended some, but not all, of the sitting days[1].

2. The MPT was provided with expert evidence as well as documentary evidence from 16 lay witnesses. Four witnesses gave live evidence on behalf of the Respondent ("the GMC"). The Appellant provided a witness statement dated 27 October 2020 and gave oral evidence.

3. In the light of its findings, the MPT directed that the Appellant's name be erased from the medical register; an immediate order for suspension was not deemed necessary. The Appellant accordingly remains on the register until the outcome

[1] The Appellant did not attend on day 1, 3, 5 or 6 out of 17 due to ill health. Her counsel took regular instructions (which facilitated a number of admissions mid-hearing) and the Appellant attended remotely to give evidence on day 9 (3 November 2020).

of this appeal.

4. The Appellant now appeals against the sanction imposed by the MPT pursuant to section 40 of the Medical Act 1983 ("the Act"), and invites the court to quash the sanction and substitute a "lengthy" suspension[2] which the Appellant submits is sufficient to maintain public confidence in the profession and maintain proper professional standards.

***The Allegations before the MPT***

5. The allegations against the Appellant which were referred to the MPT related to a number of separate incidents at different times. They can be summarised as follows (together with the Appellant's responses):

*Clinical care allegations*:

(1) Clinical care concerns in respect of Patient B (Jan 2014) and Patient C (March 2015). These charges were admitted and found proved. The Tribunal found that these allegations either did not amount to misconduct or that they did not amount to current impairment. These allegations have no relevance to the sanction of erasure that was imposed in this case.

*Falsity allegations*

(2) (a) Scheduling leave from a tutorial with her education supervisor at Langham Place Surgery on the basis that she was undertaking an out of hours session on 10 November 2011, which she did not in fact attend. This was admitted and found proved by the Tribunal but it found that this did not amount to misconduct.

(b) Falsely stating during a tutorial on 24 November 2011 with her trainer at Langham Place Surgery that she had attended a Vocational Training Scheme session. This was admitted (although dishonesty was denied) and was found proved. The Tribunal considered that the lie about her attendance and the embellishment about what had taken place at the session amounted to misconduct. However, the Tribunal did not consider that current impairment was made out in relation to these findings and it did not have a material bearing upon the sanction of erasure that was imposed.

(3) Making false statements about her qualifications on an application form and in interview in 2014 for the post of Specialty Doctor in sexual health at Kingston Hospital. The Appellant denied this charge. The Tribunal concluded that whilst the Appellant had stated incorrectly that she was a "Speciality Registrar" in her current job, this was not dishonest and did not amount to misconduct. None of the other charges under this Heading were proved. The findings under this heading did not have a material bearing upon the sanction of erasure that was imposed.

[2] Under section 35D(2)(b) of the Medical Act 1983 the MPT may direct a suspension for a period not exceeding 12 months.

(4) Falsely stating on two application forms and one declaration form in respect of posts at Central and North West London NHS Foundation Trust ("CNWL") (on 11 November 2014, 19 December 2014, 23 April 2015) that she was not currently the subject of fitness to practise investigations (in respect of the matters in sub-paragraphs (1) and (2) above). This false statement was made on an application form, a further declaration during the course of the pre-employment screening process and an application for an extension to the post. The Appellant admitted making the false statement (that she was not subject to an ongoing fitness to practice investigation when applying for the post of specialty doctor at CNWL) but denied dishonesty, saying she had made a mistake. The Tribunal determined that the Appellant had made these statements knowing that they were untrue and that this was dishonest. This dishonesty amounted to misconduct and to current impairment, engaging concerns about public confidence in the medical profession and upholding proper professional standards. These findings were material to the sanction of erasure that was imposed.

(5) The Appellant ceased working as a trainee at Langham Place Surgery under her Educational Supervisor, Dr. Greening, in about December 2011.When she left this placement the Appellant failed to return one of Dr Greening's prescription pads which she had in her possession. Some three years later, in October 2014 a prescription from that prescription pad was written out by her in an attempt to obtain a substantial quantity of vitamins from a Boots chemist. The prescription was given by the Appellant to a friend of hers visiting from Nigeria, but she wrote it in the name of her mother but with her sister's address. She also forged the initials of Dr. Greening. The Appellant was charged with (i) failing to return another doctor's prescription pad; (ii) which was used to write out a prescription in the name of a family friend and (iii) which was signed by her in another doctor's name. This was only admitted by her on day 4 of the tribunal hearing itself (and that she thereby acted dishonestly). The MPT found that this amounted to misconduct and to current impairment, engaging concerns about patient safety, public confidence in the profession and the promotion and maintenance of proper standards within the profession. These findings were material to the sanction of erasure that was imposed.

6. The Appellant only (belatedly) admitted dishonesty in respect of the prescription charge (paragraph 5(5) above); dishonesty was otherwise denied by her (save in respect of paragraph 5(2)(a) above, where there was no allegation of dishonesty).

7. In relation to the two relevant courses of dishonest conduct for present purposes, namely paragraphs 5(4) and (5) above, the following matters are relevant factual background in considering the sanction imposed by the MPT.

*The falsified prescription – finding of impairment*

8. So far as paragraph 5(5) above is concerned (the falsified prescription), the matter was referred to the police after the level of vitamin D prescribed was queried by the pharmacist with the GP surgery. The MPT specifically referred to the fact that when challenged by the police, the Appellant denied any involvement, claimed she had lost the pad (she said it had been stolen) and agreed to take part in an ID parade to prove her innocence (knowing full well that she would not be identified because she had not presented the prescription at the pharmacy and she knew the identity of the individual who had done so, namely her Nigerian friend):

> "*Her pretence at assistance to the police was so thorough that the officer in charge of the case subsequently commended her for the cooperation she had provided. These events amounted to a deliberate and prolonged course of dishonesty, which Dr Bakare subsequently succeeded in covering up by lying to the police. But for those lies she would almost certainly have been convicted of fraud. There can be no doubt that these actions were serious misconduct. Any fellow practitioner would describe her actions as deplorable"* (impairment determination, para.29) (emphasis added).

9. Having been successfully misled by the Appellant, the Police wrote to the GMC on 23 February 2015, stating that their investigation into the Appellant's possible fraudulent use of the prescription pad was closed. At the start of the MPT hearing - six years after the prescription was presented at the pharmacy - this charge was denied by the Appellant (i.e. that she dishonestly wrote out and signed a prescription in another doctor's name). The GMC case was therefore opened on that basis and it submitted that by lying to the police the Appellant had "kept digging" in a pattern of escalating dishonesty.

10. The GMC's expert handwriting witness was due to give oral evidence on day four of the tribunal hearing (13 October 2020) in which she would confirm that the likelihood was that the handwriting on the prescription pad belonged to the Appellant. Faced with the prospect of that evidence, on the morning of day four this charge was admitted by the Appellant. She then confirmed this admission in a witness statement served on day 8 of the hearing, dated 27 October 2020 (at paragraph 165). The MPT observed as follows so far as the Appellant's insight into her dishonesty was concerned:

> *"The Tribunal again has considered what insight into these actions has been demonstrated by Dr Bakare. It is to her credit that she made admissions and admitted her dishonesty. However, those admissions only came at the latest possible stage when the doctor was confronted at the hearing with not only having to explain the handwriting evidence, but also the details on the prescription related to close family members. In her statements and in her evidence, Dr Bakare repeatedly stated how sorry she was for doing what she did. However, she has failed to give any detailed explanation for why she behaved in the way that she did even when invited by the Tribunal to do so. The Tribunal has before it no evidence of remediation over a period of time in the form of reflective statements or evidence of having discussed the incident with colleagues or a mentor. The Tribunal concluded therefore that her insight and remediation in respect of this matter is at a very early stage. Further, the Tribunal concluded that a finding of impairment was necessary*

*to uphold public confidence in the profession and maintain proper professional standards. It considered that all three limbs of the statutory objective are relevant in this case"* (impairment determination, para.30) (emphasis added).

11. The MPT's reference to the Appellant being sorry for what she did is a reference to her evidence given on day nine. Under cross-examination, when asked about the prescription pads, she said:

"*It was so wrong. I don't know what I was thinking about when I did it. I don't know how I could have…I've never done that before and I don't know how and why I did it but after I did it I was so scared. I didn't know how to correct it".*

12. Of course, the simple way to correct it would have been to admit to her wrongdoing. But instead she lied not just to the GMC but also to the police. On day 4 of the MPT hearing she admitted lying to the police by telling them she had lost the prescription pad with a doctor's bag in 2012. When her dishonesty to the police was put to her, she again said "*I was just afraid and I panicked"* but she also accepted that the lies that she told to the police were not mentioned in her witness statement of 27 October 2020.

*False and dishonest statements – item (2)(b) (no finding of impairment) and item (4) (finding of impairment)*

13. In re-examination the Appellant also admitted to dishonesty in relation to paragraph 5(2)(b) above, namely falsely stating during a tutorial with her trainer at Langham Place Surgery that she had attended a Vocational Training Scheme session.

14. The MPT accordingly found that the Appellant was dishonest in respect of the lies which she told her tutor, Dr Greening, at Langham Place Surgery on 24 November 2011, stating:

"*Whatever the quality of the relationship, and whatever the stresses a doctor is under, it is important that doctors are honest with each other. In this case the lie was not simply a bare assertion that she was at the training course the previous day, it involved embellishment that included reference to other professional colleagues being present at the training. The Tribunal concluded that a fellow doctor would find it deplorable that a trainee GP would lie to their tutor in this way. The Tribunal determined this was a serious breach of GMP*[3] *and amounted to misconduct"* (impairment determination, para.22).

15. However, if that had been the only allegation which it had found to be proved the MPT would not have made a finding of impairment:

"*the incident took place a very long time ago. The dishonesty was brief in time and not premeditated and did not involve patient safety. The misconduct was not of such gravity that a finding was in the public interest. Had it stood alone, the public interest could have been met with a warning to the doctor.*

[3] Good Medical Practice

> *Accordingly, the Tribunal did not find [the Appellant's] fitness to practise to be currently impaired by reason of this misconduct"* (para.23).

16. However, as the MPT rightly observed, this was not an isolated incident.

17. As to item (4) above (falsely declaring on 3 separate occasions that she was not the subject of fitness to practise investigations), the MPT found as follows in its impairment Determination:

> *"26…Dishonesty in this context has the potential to undermine patient safety and bring the profession into disrepute as it undermines the integrity of the selection process for medical jobs. At the time Dr Bakare first applied to CNWL she had not been working for some months. The obvious motive for failing to disclose the fact of the investigation on the application forms was that she was fearful that disclosure might adversely affect her applications. In other words, she feared that someone else would get the job. Non-disclosure of a GMC investigation also reduces public confidence in the regulatory process itself. Her repeated actions in failing on three occasions to disclose the investigation, and her delay in telling her employer about it until July 2015, when she effectively could not avoid it, were a clear breach of GMP, and a serious breach of a fundamental tenet of the profession. It would be considered deplorable by members of the profession. The Tribunal determined that such actions fell so seriously short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct.*
>
> *27. The Tribunal considered the extent of Dr Bakare's insight into this repeated dishonesty. The fact that such dishonesty has not been repeated does demonstrate Dr Bakare understands her actions were wrong. <u>However, there has been no acknowledgment on her part that her actions were dishonest, and she has shown no reflection on what caused her to act in the way that she did. Dr Bakare has yet to carry out any remediation, such as discussing her actions with her mentor.</u> As her insight is far from complete the Tribunal concluded that these breaches of a fundamental tenet of the profession mean her fitness to practise is currently impaired. The Tribunal also considered that the circumstances and repetition of her dishonesty on three separate occasions meant that a finding of impairment was necessary to uphold the public interest by maintaining confidence in the profession and upholding proper professional standards. Accordingly, it found Dr Bakare's fitness to practise currently impaired by reason of this dishonesty"* (emphasis added).

***Sanction imposed by MPT***

18. When considering sanction, the MPT referred to the Sanctions Guidance (November 2020)[4] ("the SG").

19. The GMC submitted that only erasure from the register would reflect the seriousness of the dishonesty in this case. In his submissions on behalf of the

[4] This states that "this document will be used by medical practitioners tribunals from 16 November 2020"; the MPT concluded its hearing on 27 November 2020.

Appellant on this appeal, Mr. Matthew McDonagh realistically accepted that the submission made on the Appellant's behalf before the Tribunal that she was not currently impaired was entirely without merit. He further accepted that the Appellant's dishonesty was a serious breach of Good Medical Practice and that the seriousness of the dishonesty allegations made a finding of current impairment inevitable.

20. He further accepted, rightly in my judgment, that the submission made by Counsel on behalf of the Appellant before the MPT, to the effect that the appropriate sanction in this case was the imposition of conditions, was "*entirely unrealistic*". The choice that the MPT had to make was, in reality, a choice between suspension or erasure. Mr. McDonagh submitted that the MPT was given no assistance in *that* decision as the Appellant's counsel merely contended that the correct sanction was to impose conditions.

21. However, I do not accept Mr. McDonagh's submission in this respect, which is not factually correct. As the MPT records in paragraph 12 of its Determination on Sanction:

> *Mr Dawson [for the Appellant] submitted that an order of conditions could be appropriate to protect the public interest. He submitted that conditions could be drafted that would address the doctor's needs relating to occupation health and her mental health. If the Tribunal was to consider that an order of conditions was not appropriate, then it must move to consider an order of suspension. Mr Dawson submitted such an order should be for a very short duration as it would have an adverse effect on her training and there is no risk to patient safety or the public. He submitted that erasure would be wholly inappropriate given all the circumstances of this case.* (emphasis added)

The MPT then went on in paragraphs 22-25 to consider whether or not suspension was the appropriate sanction on the facts of this case.

22. In reaching its decision, the Tribunal took account of the mitigating and aggravating factors in this case as follows:

> "***Mitigating and Aggravating Factors***
> *16. The Tribunal first considered the mitigating factors in this case.*
> *• Dr Bakare has, on more than one occasion, apologised for her behaviour. She understands her actions fall below the standards of conduct reasonably to be expected of a doctor. Dr Bakare understands she should have been more open and honest with employers and fellow colleagues. The Tribunal did not doubt the sincerity of Dr Bakare's remorse for her actions. However, as the Tribunal has previously noted Dr Bakare's insight is at an early stage and she has shown no insight or reflection into the reasons why she behaved as she did;*
> *• Dr Bakare has no previous disciplinary findings;*
> *• The testimonials in support of Dr Bakare;*
> *• The length of time since the incidents occurred is almost 6 years, without any further repetition of the misconduct;*

*• Dr Bakare has suffered serious ill health and other personal misfortunes in recent years;*
*• The impact of a sanction on her training contract.*

*17. The Tribunal then considered the aggravating factors in this case.*
*• Dr Bakare wrote a prescription for a friend without full access to her medical history;*
*• Dr Bakare has abused her professional position by using a prescription pad that she had failed to return to Langham Place Surgery;*
*• Dr Bakare forged the signature of a previous professional colleague;*
*• Dr Bakare covered up this dishonesty by lying to the police when interviewed;*
*• The false statements submitted to CNWL related to job applications, potentially undermining the selection process and also the GMC regulatory framework;*
*• The false declaration was repeated on three separate occasions over a period of six months.*"

23. The MPT then considered the possible sanctions available to it, which were whether to take no action; to impose conditions; to suspend the Appellant; or whether erasure from the Medical Register was necessary. The decision was in reality between suspension and erasure.

24. In the event, suspension was rejected on the basis that the dishonesty and misconduct were serious breaches of the Good Medical Practice (GMP) and the Appellant's misconduct was fundamentally incompatible with continued registration. Moreover:

> *"The Tribunal has been presented with little evidence that Dr Bakare's misconduct has been remediated. The evidence of insight and remediation that has been provided has not been timely, some of it produced at a late stage, and it remains very far from complete. The doctor's scope to begin the task of remediation has been undermined by her failure to admit her dishonesty either until this Tribunal or at all."* (Sanction Determination, para.25).

It followed that a period of suspension would not be sufficient to maintain public confidence in the profession and promote and maintain proper professional standards and conduct for members of the profession.

25. The MPT accordingly directed that the Appellant's name be erased from the register. It stated that it had regard to paragraphs 108 and 128 of the SG:

> *"108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*

*128 Dishonesty, if persistent and/or covered up, is likely to result in erasure."*

26. The MPT considered that the dishonesty in respect of the false statements concerning the fitness to practise investigation was *persistent* having been repeated on 3 separate occasions over a period of 6 months. The dishonesty was serious because the false declarations related to applications for employment and the existence of an investigation into the doctor's practice by her regulator.

27. The dishonesty in respect of the prescription written for a friend was also serious, involving the writing of false details in the prescription and the forging of a former colleague's signature. This dishonesty was then *covered up* by lies to the police which had the effect of allowing the doctor to avoid criminal prosecution for fraud. Further still, the Appellant only admitted this conduct during the course of the hearing before the MPT.

28. The Tribunal considered that these actions amounted to two separate courses of serious dishonesty. The Tribunal was satisfied that the nature of the misconduct found proved in this case was fundamentally incompatible with continued registration. Erasing the Appellant's name from the medical register was the only appropriate sanction. While the MPT bore in mind the effect that such a sanction would have on her career, and the doctor's personal circumstances, it determined that erasure was necessary to protect patients, uphold confidence in the medical profession and maintain proper professional standards.

***Grounds of appeal***

29. The Appellant challenges the MPT's decision on sanction on five grounds as follows:

(1) The sanction was wrong;
(2) The MPT was wrong to conclude that the misconduct was fundamentally incompatible with continued registration;
(3) The MPT failed to take into account (adequately or at all) personal mitigation; personal and professional context; the impact those matters had on the Appellant's capacity for insight; and the particular circumstances around the prescription;
(4) The MPT was wrong to reject the sanction of suspension as appropriate and proportionate;
(5) The MPT failed to give adequate reasons.

***The law***

*(i) The correct approach to section 40 appeals*

30. Section 40 of the Medical Act 1983 ("the Act") provides a right of appeal to the High Court against a sanction imposed by the MPT. Section 40 of the Act provides, so far as material, that:

*(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;*
>
> ...
>
> *(7) On an appeal under this section from a Medical Practitioners Tribunal, the court may—*
>
> *(a) dismiss the appeal;*
>
> *(b) allow the appeal and quash the direction or variation appealed against;*
>
> *(c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Medical Practitioners Tribunal; or*
>
> *(d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court,*
>
> *and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.*

31. By section 1(1A), the over-arching objective of the Respondent in exercising its functions is the protection of the public.

32. By section 1(1B), the pursuit by the Respondent of its over-arching objective consists of the following aims—
    (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.

33. Furthermore, by virtue of paragraph 19.1 of *CPR PD52D*, an appeal under section 40 of the Act is by way of re-hearing[5]. Applying *CPR r.52.21*, the court should allow the appeal if the decision of the MPT was wrong or unjust because of serious procedural or other irregularity in its proceedings[6]. Mr. McDonagh made clear in his submissions that he was not suggesting that the decision of the MPT was unjust because of serious procedural or other irregularity in its proceedings. The only issue was whether it was wrong.

34. The approach to be taken by the court in a section 40 appeal was recently considered by the Court of Appeal decision in *Sastry v General Medical* [2021] EWHCA Civ 623. Nicola Davies LJ, giving the judgment of the court, identified the following points as to the nature and extent of a section 40 appeal and the correct approach of the appellate court to such an appeal at [102]:

    a. There exists an unqualified statutory right of appeal by medical practitioners pursuant to section 40 of the 1983 Act;

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[5] The Court is fully entitled to substitute its own decision for that of the MPT (see *Ghosh v GMC* [2001] 1 WLR 1915 per Lord Millett at [33]).“*It is a re-hearing without hearing again the evidence*”: see Foskett J in *Fish v General Medical Council [2012] EWHC 1269 (Admin)* (para.28).

[6] *Sastry v General Medical* [2021] EWHCA Civ 623 at [98].

b. The jurisdiction of the court is appellate, not supervisory;
c. 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;
d. The appellate court will not defer to the judgment of the Tribunal more than is warranted by the circumstances[7];
e. The appellate court must conduct an analysis as to whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate;
f. In the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration.

35. Nichola Davies LJ accordingly explained at [105] that the test on a section 40 appeal (following *Ghosh* (supra) and *Khan*[8]) is therefore whether the sanction was "wrong" and whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate.

*(ii) The legal significance of findings of dishonesty*

36. A separate body of case-law has developed addressing the significance of findings of dishonesty in the case of doctors.

37. The reason for this may be as Sharp LJ explained in *GMC v Jagjivan* [2017] 1 WLR 4438 at [40(vi)]:

> "*matters such as dishonesty or sexual misconduct [are]matters where the court is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the Tribunal."*

Nichola Davies LJ adopted these observations in *Sastry* at [106] and [113].

38. The courts attach importance to the honesty and integrity of persons working in the healthcare professions. Much of the relevant case-law in this area was helpfully summarised by Julian Knowles J in *Simawi v GMC* [2020] EWHC 2168 (Admin) at [46ff]:

> *"46. First, the decision of Carr J in Professional Standards Authority v Health Care Professions Council and another [2014] EWHC 2723 (Admin), [44]:*
>
> *"[44] There are, of course, numerous authorities emphasising the public interest in maintaining the standards and reputations in the professions. The importance of honesty to the health and care professions is underlined by the fact that striking off may be an appropriate sanction under the indicative sanctions guidance. It will often be proper, even in cases of one-off dishonesty (see Nicholas-*

[7] In *Ghosh*, Lord Millett stated at [34] that "*the [Court] 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 [Court] will not defer to the committee's judgment more than is warranted in the circumstances.*"

[8] *Khan v General Pharmaceutical Council* [2017] 1 WLR 169

*Pillai v GMC [2009] EWHC 1048 (Admin) at paragraph 27). It has been said that where dishonest conduct is combined with a lack of insight, is persistent, or is covered up, nothing short of striking off is likely to be appropriate (see Naheed v GMC [2011] EWHC 702 (Admin)). It is pertinent to note that in Naheed (supra) a bogus CV was submitted by cutting and pasting from a colleague's career history. At paragraph 21 Parker J said this:*

*'Dishonesty acts which compromise the integrity of job applications are acts which undermine something fundamental to the system of medicine. In my view that submission is supported by Macey v GMC [2009] EWHC 3180 (Admin) at paragraphs 43 to 44 by Irwin J.'"*

*47. Also, in Khan v General Medical Council [2015] EWHC 301 (Admin), [6], Mostyn J noted that:*

*"6. The decisions from this court have demonstrated that a very strict line has been taken in relation to findings of dishonesty. This court and its predecessor, the Privy Council, has repeatedly recognised that for all professional men and women, a finding of dishonesty lies at the top end of the spectrum of gravity of misconduct; see Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 at paragraph 13.*

*7. Dishonesty will be particularly serious where it occurs in the performance by a doctor of his or her duties and/or involves a breach of trust placed in the doctor by the community. Both elements are serious and aggravating features and both are present in a case of dishonestly using prescription forms to obtain drugs. See R (Rogers) v GMC [2004] EWHC 424 (Admin) per Mitting J at [28–30].*

*8. In cases of proven dishonesty, the balance can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the doctor concerned. See Nicholas-Pillai v GMC [2009] EWHC 1048 (Admin) per Mitting J at [27] where he stated:*

*"That sanction will often and perfectly properly be the sanction of erasure, even in the case of a one-off instance of dishonesty."*

*9. Where proven dishonesty is combined with a lack of insight (or is covered up) the authorities show that nothing short of erasure is likely to be appropriate. As Sullivan J put it in R (Farah) v GMC [2008] EWHC 731 (Admin), a case which involved the theft and forgery of prescription forms in order to obtain drugs, at paragraph 21:*

> *'... given the nature of the appellant's dishonesty and given the Panel's finding that there had been a persistent lack of insight into that dishonesty, whatever the mitigating factors were, the inevitable consequence was that erasure from the register was an entirely proportionate response to the appellant's conduct. The Panel was entitled to come to the view that where a doctor had engaged in deliberate dishonesty and abused his position as a doctor and then had shown a persistent lack of insight into*

> *that conduct, he simply could not continue to practise in the medical profession. Thus, the Panel's conclusion as to sanction was in practical terms inevitable once it had reached the conclusion it did about the appellant's lack of insight into his dishonest conduct. For these reasons, this appeal must be dismissed.'"*
>
> *48. Also of relevance, I hope, is what I said in Nkomo v General Medical Council [2019] EWHC 2625 (Admin), [35]:*
>
> *"35. The starting point is that dishonesty by a doctor is almost always extremely serious. There are numerous cases which emphasise the importance of honesty and integrity in the medical profession, and they establish a number of general principles. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct: Theodoropolous¸ supra, [35]. Where dishonest conduct is combined with a lack of insight, is persistent, or is covered up, nothing short of erasure is likely to be appropriate: Naheed v General Medical Council [2011] EWHC 702 (Admin), [22]. The sanction of erasure will often be proper even in cases of one-off dishonesty: Nicholas-Pillai, supra, [27]. The misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, the appropriate sanction: Theodoropolous, supra, [35]. Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance: Yeong v General Medical Council [2009] EWHC 1923, [50]; General Medical Council v Patel [2018] EWHC 171 (Admin) at [64]; In such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member: Bolton v Law Society [1994] 1 WLR 512 at 519; General Medical Council v Stone [2017] EWHC 2534 (Admin) at [34], supra, [47]."*

39. In *Sanusi v GMC* [2019] EWCA Civ 1172, Simler LJ at [86] made the following observations in respect of dishonesty both in the performance of a doctor's duties and also in the context of applications for medical positions:

> "*86. The finding of serious and deliberate dishonesty made by the Tribunal has not been appealed. Honesty and integrity are of fundamental importance in relation both to the performance of a doctor's duties and to the system for applying for medical positions. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct and where there is a finding of deliberate dishonesty coupled with a lack of insight, the case law recognises that in practical terms, a finding of erasure may be inevitable: see GMC v Theodoroupoulos … (Lewis J at paragraphs 35 to 40), which helpfully summarises the importance of honesty in the medical profession from a regulatory perspective."*

40. In *GMC v Theodoroupoulos [2017] EWHC 1984 (Admin)*, Lewis J (as he then was) gave the following summary of the relevant principles:

> 35. *The importance of honesty and integrity on the part of members of a profession, including the medical profession is generally recognised in the case law: see, e.g., Bolton v Law Society [1994] 1 WLR 512; Makki v General Medical Council [2009] EWHC 3180 (Admin) at paragraph 43. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct: Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34 at paragraph 13.*
>
> 36. *Dishonesty will be particularly serious where it occurs in the performance of a doctor's duties or involves a breach of the trust placed in a doctor by the community: see Khan v General Medical Council [2015] EWHC 301 (Admin). Honesty and integrity are also fundamental in relation to qualifications and the system of applying for medical positions. Thus, in Makki v General Medical Council [2009] EWHC 3180 (Admin), the court dealt with a registered medical practitioner who had misrepresented the extent of his experience when applying for a post in a hospital. Irwin J. as he then was said at paragraph 44 of his judgment:*
>
> > *"The degree of dishonesty here and its nature, affecting not registration but qualification and the integrity of the system of job applications, affects something which is every bit as fundamental to the proper respect for the system, to the proper operation of the system of medicine and of appointments to medical positions, as is the system of registration."*
>
> 37. *Similar views were expressed by Parker J. in Naheed v General Medical Council [2011] where a doctor applied for a post and dishonestly included someone else's career as her own in her application. At paragraph 25 of his judgment, Parker J sad that:*
>
> > *"…the authorities make clear that for a doctor honesty, certainly in the matter here involved, is indeed fundamental and it does not appear to me that the panel acted in any way disproportionately in deciding that, having regard to the mitigating features that I have outlined, nonetheless erasure from the register would be justified".*
>
> 38. *Furthermore, the case law recognises that where a doctor engages in deliberately dishonesty and lacks insight, erasure may, in practical terms, be inevitable. In Farah v General Medical Council [2008] EWHC 731 (Admin) , the court was dealing with a doctor who had been convicted of one offence of theft and five of using a false instrument. He had stolen 18 prescriptions and forged five of them to obtain drugs for his own use. The panel imposed a sanction of erasure of the practitioner's name from the register…*
> 39. *The importance of dishonesty is recognised by the document entitled "Good Medical Practice" issued by the Council which describes what is expected of doctors. The precise status of the document as a matter of law is not clear*

*but, as a minimum, it represents the view of the Council which is the body charged with the over-arching objective of the protection of the public in this field by section 1 of the Act. Paragraph 66 states that doctors "must always be honest about [their] experience, qualifications and current role*".

41. Finally, so far as mitigation in regulatory proceedings is concerned, I bear in mind the observation of Sharp LJ in *Jagjivan* at [40(vii)] that:

> *"Matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public."*

42. To similar effect, in *GMC v Chandra* [2018] EWCA Civ 1898 at [54]ff, King LJ stated as follows, applying *Bolton v Law Society* [1994] 1 WLR 512:

> *54. The paradigm case in relation to solicitors is Bolton and, in particular, the judgment of Sir Thomas Bingham MR at p518C:*
>
> > *"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust…"*
>
> *55. The Master of the Rolls continued at p 519H:*
>
> > *"The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been,*

> *seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.*
>
> *Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.*

56. *The Privy Council has, on two occasions, subsequently adopted the words of the Master of the Rolls in Bolton when considering sanction cases in respect of doctors who had been guilty of serious professional misconduct.*

57. *In Gupta v General Medical Council [2002] 1 WLR 1691, Lord Rodger referred [21] to Lord Bingham's judgment in Bolton as "set(ting) out the general approach which has to be adopted". A little later in Patel v The General Medical Council, Privy Council Appeal No. 48 of 2002, Lord Steyn said:*

> *"Their Lordships consider that the Professional Conduct Committee was right to be guided by the judgment in Bolton v Law Society…It is true that in that case misconduct of a solicitor was at stake. But the approach there outlined applies to all professional men. There can be no lower standard applied to doctors: Gupta v General Medical Council…For all professional persons including doctors a finding of dishonesty lies at the top end in the spectrum of gravity of misconduct…"*

*58. Finally, as recently as this year in General Medical Council v Bawa-Garba [2018] EWHC 76 (Admin), [2018] 4 WLT 44; Ouseley J said in a sanctions case in relation to clinical negligence:*

> *10…contrary to a suggestion from Mr Larkin QC for Dr Bawa-Garba, [that] the comments of Sir Thomas Bingham MR in Bolton apply to doctors as much as to solicitors".*

*59. In my judgment not only do the Bolton principles apply equally to doctors as solicitors, but the same principles and approach apply equally to both sanctions and restoration…*

*60. … the approach is likely to be different (and may be completely different) in clinical error/negligence cases as opposed to those cases in which the offending behaviour is central to the function of the applicant as a doctor, such as in cases of dishonesty or sexual misconduct."*

*The Sanctions Guidance*

43. The SG (to which the MPT referred in the present case), reflects the approach of the Court in *Chandra*, in particular paragraphs 120, 124-5 and 128 of the SG as follows:

> *"120 Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession.*
> *…*
> *124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.*
>
> *125 Examples of dishonesty in professional practice could include:*
> *a defrauding an employer*
> *b falsifying or improperly amending patient records*
> *c submitting or providing false references*
> *d inaccurate or misleading information on a CV*
> *e failing to take reasonable steps to make sure that statements made in formal documents are accurate.*
>
> *128 Dishonesty, if persistent and/or covered up, is likely to result in erasure (see further guidance at paragraph 120–128)."*

***The parties' submissions***

44. In his skeleton argument served in support of the appeal, Mr. McDonagh did not develop his submissions by reference to the grounds of appeal as formulated. Instead, he reformulated the grounds of appeal as follows.

*Ground 1: The Tribunal acted disproportionately in considering that it was necessary to protect patients, uphold confidence in the medical profession and maintain proper professional standards to make an order of erasure*

45. Mr. McDonagh submitted that there was no evidence before the Tribunal to indicate that a sanction of erasure was necessary to promote the first limb of the overarching objective set out in section 1 of the Medical Act 1983, namely, protecting, promoting and maintaining the health, safety and well-being of the public. The clinical allegations in this case, he submitted, were not material to the Sanction Determination. He submitted that the dishonesty allegations do not engage the first limb of the overarching objective.

46. I consider this to be a misreading of the MPT's Determinations. In paragraph 26 of its Determination on Impairment, the MPT explained how the Appellant's dishonesty in stating that she was not subject to an ongoing fitness to practise investigation *did have* the potential to undermine patient safety. In my judgment that is obviously so. Employing a doctor in ignorance of the fact that they are subject to a fitness to practise investigation plainly has the potential to undermine patient safety in that it risks exposing patients to a doctor who may *not* be fit to practise medicine. In this sense, the dishonesty allegations did indeed engage the first limb of the overarching objective.

47. But in any event, the MPT's conclusion in paragraph 27 of its Determination on Impairment so far as the false statements concerning the ongoing fitness to practise investigation are concerned, was that a finding of impairment was necessary *to uphold the public interest by maintaining confidence in the profession and upholding proper professional standards*. I consider that that is obviously so.

48. In addition to the dishonest statements, the Appellant was also guilty of serious dishonesty in relation to the false prescription. So far as that was concerned, the Tribunal again concluded that a finding of impairment was *necessary to uphold public confidence in the profession and maintain proper professional standards*. I consider that also to be obviously so.

49. The combination of these findings in respect of both the false statements and the false prescription is no doubt why, in paragraph 29 of its Determination on Sanction, the MPT found, compendiously, that "*erasure was necessary to protect patients, uphold confidence in the medical profession and maintain proper professional standards*."

50. Moreover, I accept the submission of Ms Hearnden for the GMC that dishonesty may also, in general, engage the first limb of the overarching objective – patient safety. If patients do not trust their doctors, care may be compromised. Moreover, the surrounding circumstances to the false prescription (writing a prescription written for a family friend without access to medical records) could also give rise to a risk to patient safety. As noted by the MPT at para.26 of the impairment determination, "*these [the CNWL forms] were important documents…Dishonesty in this context has the potential to undermine patient*

*safety and bring the profession into disrepute as it undermines the integrity of the selection process for medical jobs*".

51. It follows that there is nothing in the first reformulated ground of appeal.

*Ground 2: It was wrong to conclude that the nature of the misconduct in this case was fundamentally incompatible with continued registration*

52. Next, Mr. McDonagh submits that the Tribunal gave no reason why they determined that the Appellant's misconduct was fundamentally incompatible with continued registration (Determination on Sanction, paragraph 25). He accepts that the Appellant made mistakes – some of them undoubtedly serious – however, he asks rhetorically why does this serious breach of Good Medical Practice necessitate a sanction of erasure rather than suspension?

53. He accepts that the Tribunal concluded, obviously correctly, that the dishonesty in this case reflected two separate courses of serious dishonesty. However, he submits that the Tribunal did not set out the reasons why such dishonesty could not be dealt with by a lengthy period of suspension – such as 12 months - instead. That would, he submits, have met the concerns raised by the overarching objective and the Appellant's misconduct was not incompatible with continued registration.

54. In my judgment there is nothing in this ground either. The MPT *did* give reasons as to why they determined that the Appellant's misconduct was fundamentally incompatible with continued registration and why suspension was not an appropriate sanction, in particular in paragraphs 24-25 and 28-29 of its Determination on Sanctions. In those paragraphs the MPT expressly referred to the fact that there were two separate and serious courses of dishonesty in this case:

(1) The Appellant's dishonesty in respect of the false statements concerning the ongoing fitness to practise investigation:
(a) was both "*persistent and repeated over a period of six months*" as well as being covered up, in that it was a further two months before the Appellant revealed the GMC investigation to her employers; and
(b) was "*serious because the false declarations related to applications for employment and the existence of an investigation into the doctor's practice by her regulator*".

(2) The Appellant's dishonesty concerning the false prescription was:
(a) "*serious*" because it involved writing false details in the prescription and forging a former colleague's signature;
(b) "*covered up by lies to the police which had the effect of allowing the doctor to avoid criminal prosecution*"; and
(c) only admitted during the course of the hearing (when the appellant was faced with the handwriting evidence).

55. Indeed, it was only as a result of Dr Greening querying why the police had dropped the investigation into the fraudulent use of the prescription pad that the

GMC decided to re-open its investigation into this incident (which it had closed) in April 2017. The Appellant very nearly dishonestly escaped censure entirely.

56. In addition, in paragraph 24 of its Determination on Sanctions the MPT referred back to its summary of the facts and its impairment determinations, as well as to the aggravating features. It explained that as a result of these factual matters the Appellant's dishonesty and misconduct amounted to serious breaches of GMP. Furthermore, the MPT stated that it had been presented with little evidence that the Appellant's misconduct had been remediated. The evidence of insight and remediation that had been provided had not been timely, some of it produced at a late stage, and it remained very far from complete. The doctor's opportunity to begin the task of remediation had been undermined by her failure to admit her dishonesty either until the Tribunal hearing or at all. Accordingly, a period of suspension would not be sufficient to maintain public confidence in the profession and promote and maintain proper professional standards and conduct for members of the profession.

57. I find that the reasons given by the Tribunal were more than sufficient for the appellant to understand why it reached the decision that it did. The MPT explained its decision and how it reached it in such a way that the parties before it could understand clearly why they had won or lost: see *Phipps v GMC* [2006] EWCA Civ 397 at [85] per Wall LJ.

58. In any event, in my judgment the decision that the Tribunal reached cannot be said to be wrong and indeed was undoubtedly correct for the following reasons.

59. The seriousness of the two separate dishonest courses of conduct is self-evident.

60. So far as dishonesty concerning the *false statements* relating to the ongoing fitness to practise investigation is concerned, the Appellant made three written separate false declarations over a five month period. As Parker J stated in *Naheed* : "*Dishonest acts which compromise the integrity of job applications are acts which undermine something fundamental to the system of medicine;*" and as Lewis J stated in *Theodoroupoulos*, "*Honesty and integrity are … fundamental in relation to qualifications and the system of applying for medical positions*."

61. Deliberately concealing an ongoing investigation into one's fitness to practise as a doctor when applying for the post of Specialty Doctor in sexual health demonstrates a serious lack of honesty and integrity and conduct lying at the top end of the spectrum of the gravity of misconduct. It potentially endangers patient safety. It undermines public confidence in its having access to trustworthy and properly qualified doctors.

62. Moreover, the dishonesty in this case - deception to gain employment as a doctor - occurred in the (anticipated) performance by the Appellant of her duties. That makes it particularly serious, although the misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, the appropriate sanction: *Theodoropolous* at [35].

63. The dishonesty in respect of *the prescription pad* and the consequent misleading of the police (what Mr. McDonagh himself called "*the egregious chutzpah of lying to the police*") amounts to a particularly serious form of dishonesty. This involved a breach of trust placed in the doctor by the community. Furthermore, the Appellant's actions potentially endangered patient safety (prescribing without access to the patient's full medical history). They demonstrated a complete lack of candour towards fellow professionals (both the doctor whose initials were forged as well as the prescribing pharmacist) as well as law enforcement personnel. Misconduct of this seriousness profoundly impacts upon the reputation of the profession and, indeed, is harder to remediate than poor clinical performance: *Yeong v GMC* [2009] EWHC 1923 (Admin).

64. Moreover, the covering up of the dishonesty for so many years and the failure to admit the dishonesty until confronted with handwriting evidence at the hearing suggests a complete lack of insight into her actions. Whilst the Tribunal recognised that during this period of time the Appellant suffered from bouts of mental and physical illness, she clearly had plenty of time to reflect on her actions and admit her dishonesty. But she chose not to do so. As the MPT stated: "… *there has been no acknowledgment on her part that her actions were dishonest, and she has shown no reflection on what caused her to act in the way that she did. Dr Bakare has yet to carry out any remediation, such as discussing her actions with her mentor."* [9]

65. As the Tribunal rightly stated, the Appellant's admissions came very late in the day; and she failed to give any detailed explanation as to why she behaved in the way that she did even when invited by the Tribunal to do so. She merely said she was afraid and panicked (as to which, see the further discussion below).

66. This is therefore a case where seriously dishonest conduct is combined with a lack of insight and an attempt to cover up the dishonesty (particularly in the case of the prescription fraud). That made suspension an inappropriate sanction. Sullivan J considered in *R(Farah) v GMC* that nothing short of erasure is likely to be appropriate in such a case, whatever the mitigating factors might be.

67. Furthermore, in such a case personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member: *Bolton v Law Society* at 519.

68. In all the circumstances the decision of the MPT has not been shown to be wrong. Indeed, in my judgment it is undoubtedly correct.

*Ground 3: Matters of mitigation not or not adequately taken into account by the MPT*

69. By the third ground, Mr. McDonagh submits that the Appellant was of good

[9] I bear in mind in this respect what was said in *PSA v Doree* [2017] EWCA Civ 319 per Lindblom LJ at [38]:"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. Some of the evidence may be matters of fact, some of it merely subjective. In assessing a registrant's insight, a professional disciplinary committee will need to weigh all the relevant evidence, both oral and written, which provides a picture of it".

character, held positive testimonials and was considered a good doctor. Notwithstanding the difficulties that she had experienced over many years and the uncertainty caused by this case, she had continued to work at an appropriate standard and there was no suggestion of any repetition of her misconduct in those six years. Mr. McDonagh submits that it was incumbent upon the Tribunal to consider why an otherwise good doctor, with a positively good character, had behaved in the dishonest way that she had done and then did not make an early admission as to her misconduct. He suggests that it failed to do so.

70. Mr. McDonagh referred to the fact that in her evidence to the Tribunal the Appellant said that she was afraid:

> *"I think fear was something that I was – that really, really sort of kept me back from completely opening up because of the fear of what happened with the police, and over and over again, I guess I – may be because I did not have any Counsel – I probably would have opened up earlier. I didn't have any Counsel and, because I was unwell a long time, I didn't really engage as much as I should have engaged. So I think, looking back now, I should have admitted it much earlier, but I recognise, and I have full understanding, I mean I made up my mind and there was just no point of carrying the guilty and carrying the burden of not being open completely and being honest, so I recognise completely what I have done."*

71. He further referred to the fact that the Appellant described how the false prescription charges reflected foolishness on her part. She described a thoughtless act with no regard to the consequences, although she realised that the prescription was for medication that could be purchased over the counter in any event. She concluded that it was indeed a *"mindless act."*

72. Again when asked why the she maintained her lie to the police and during the GMC investigation, the Appellant reiterated why she did so: -

> *"It was fear. It was fear… I was just afraid, I was very afraid, and sometime I think, looking back now, I did very foolish things because of fear and I didn't know how to handle the situation…".*

73. Mr. McDonagh submits that whilst the Tribunal were quick to identify that they had been provided with little evidence the Appellant's conduct had been remediated, the Tribunal failed to consider *why* this might have been the case. An understanding of the fear and hopelessness that the Appellant felt, and the reason for it, was required to assess the apparent lack of insight or limited remediation that she had undertaken. He submits that such fear and hopelessness were undoubtedly exacerbated by the real health and other personal difficulties endured by the Appellant, both before and after her dishonest behaviour, and before her Tribunal hearing.

74. My difficulty with these submissions is that, as I have already observed, in a case such as this personal mitigation should be given limited weight, as the reputation of the profession in such a serious case of dishonesty is more important than the fortunes of an individual member. That stated, the MPT

did in any event take full account of the mitigation put forward by the appellant in paragraph 16 of its Determination on Sanction, in which it specifically referred to the fact that she had suffered serious ill health and other personal misfortunes in recent years (as it did elsewhere in its Determinations).

75. Mr. McDonagh referred to that as only cursory consideration. However, there was little or no evidence before the MPT and little or no evidence before this court as to the reason why the Appellant behaved in the way that she did. The Appellant did not, for example, place before the MPT or this court an expert report from a specialist doctor, such as a psychiatrist, seeking to explain her mental state at the time of the offences or thereafter. That may be because, as Ms Hearnden explained, the Appellant does not suggest that any adverse health condition meant that at the time of the index allegations she did not know what she was doing. Any issues of poor health relate solely to issues of mitigation, as the Tribunal correctly concluded.

76. There were a handful of doctor's letters concerning the Appellant before the Tribunal which revealed a relationship breakdown in 2010; various mental health stresses in 2011 which however did not render her unfit for work in the opinion of her doctor; continued mental health symptoms related to the relationship breakdown in 2013 but which again did not render her unfit for her current role according to the referral doctor; a doctor's letter in 2016 saying that she was making good progress; neck pain in 2018; major abdominal surgery in 2019 from which she was making good progress; neck pain and a phased return to work in 2019.

77. In addition, a letter dated 1 March 2021 was put before the court from a Professor Gerada, a medical director from NHS Practitioner Health. She suggests that the Appellant did "*not find a space where she could discuss her difficulties in an open and honest way*" and that for the last 5 years she had either been physically or mentally unwell or "*working hard as a doctor to meet her financial responsibilities as a soul [sic] wage earner*." I do not consider that this comes close to meeting the difficulties in the Appellant's account which the Tribunal itself pointed out, in particular that she has not shown any reflection as to what caused her to act as she did. That gives rise to obvious concerns that she may so act again in the future. This was far from an isolated incident or a "moment of madness". The prescription pad fraud, in particular, was carefully calculated, in that the Appellant used her mother's name, her sister's address and forged Dr Greening's initials. She then denied it until she had no option but to admit it during the MPT hearing in the light of the expert handwriting evidence in particular.

78. Both dishonest courses of conduct were deliberate and persistent. To say that she did not confess her dishonest courses of conduct (and indeed sought to conceal it in the case of the prescription fraud) because she was fearful as to what would happen to her (someone else would get the job; or the GMC would erase her from the register and/or the police would prosecute her) if she did so, affords little or no mitigation for her actions.

79. In short, whilst it is clear that the Appellant has regrettably suffered from serious health problems and personal problems over the years as the Tribunal itself expressly recognised in paragraph 16 of its Determination on Sanction, her explanation which she gave to the Tribunal for her behaviour – essentially that she did foolish things and was then fearful of being caught out – carries little weight when viewed against the seriousness of her two dishonest courses of conduct.

80. The fact that there has been no repetition of her misconduct in the past six or so years is obviously a mitigating feature[10] but conversely, six years having passed, it is not to her credit that she continued to deny dishonesty in respect of the false prescription until part way through the tribunal hearing. As the MPT itself recognised, that demonstrates a lack of insight and appreciation on the Appellant's part as to the serious nature of her dishonesty. In any event, as I have stated, matters of personal mitigation are of less significance in a case of serious dishonesty such as the present.

81. In the circumstances, this ground of appeal also fails.

*References made to the Sanctions Guidance*

82. Finally, Mr. McDonagh submits that the Appellant's account as to her dishonesty was not considered by the Tribunal who dismissed the limited insight and remediation. He submits that rather than her committing gratuitous and repeated acts of dishonesty, "*the Appellant had made two grave errors of judgement … [H]er actions reflected genuine fear, a lack of engagement caused by serious physical and mental health issues and personal matters*".

83. This submission is in truth the same as the submission which Mr. McDonagh makes in relation to the mitigation ground of appeal. It is not correct to assert that the Appellant's account as to her dishonesty was not considered by the Tribunal. It expressly did consider her account of ill health but correctly considered that it went to mitigation.

84. In any event, in my judgment this is certainly not a case of the Appellant making merely "two grave errors of judgment". The dishonesty consisted of two dishonest *courses of conduct* which were persistent and which the Appellant sought to cover up (in the case of the prescription pad, cover up for a very long period of time and by positively misleading the police). As Mr. McDonagh rightly accepts in paragraph 42 of his skeleton argument:

> *"Undoubtedly, she compounded the gravamen of her actions by failing to admit her dishonesty and by taking steps to avoid the consequences of that dishonesty."*

85. In short, the suggestion that "*her actions reflected genuine fear, a lack of engagement caused by seriousphysical and mental health issues and personal matters*" amounts merely to unsubstantiated assertion. Even if this were proven, in view of the seriousness of the dishonest courses of conduct in this

[10] As indeed the Tribunal itself pointed out at paragraph 16 of its Determination on Sanction

case, it would not in my judgment have been led to a different outcome, namely erasure from the register (rather than a lengthy period of suspension, which would have been wholly inadequate).

***Conclusion***

86. In all the circumstances, this appeal must be dismissed. The sanction imposed by the MPT has not been shown to be wrong. Indeed, I consider it to be clearly correct. The sanction which has been imposed by the MPT has been shown to be both appropriate and necessary in the public interest, and neither excessive nor disproportionate.

***Costs***

87. The GMC is entitled to its costs. Mr. McDonagh did not oppose the amount claimed and accordingly I summarily assess those costs in the sum of £8,854.55.