



Neutral Citation Number: [2023] EWHC 3189 (Admin)

Case No: CO/1310/2023
AC-2023-MAN-000168

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

Friday, 15th December 2023

Before:
FORDHAM J

Between:
DR SEAMINA KHAN **Appellant**
- and -
GENERAL MEDICAL COUNCIL **Respondent**

The **Appellant** in person
Benjamin Tankel (instructed by GMC) for the **Respondent**

Hearing date: 6.12.23

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

FORDHAM J

FORDHAM J:

Introduction

1. This is a case about an NHS doctor, allegations of dishonesty and the powers of the GMC and the Medical Practitioners Tribunal (“the Tribunal”). On 3 March 2023 Dr Khan was sent the written notification of the outcome of the misconduct case brought against her by the GMC in the Medical Practitioners Tribunal (“the Tribunal”). The Tribunal’s determination, arrived at after a public hearing which had commenced on 1 February 2023, is a 100-page 511-paragraph document. It includes the Tribunal’s determination on facts (arrived at on 24 February 2023), followed by the determination on impairment (28 February 2023), and then the determination on sanction (2 March 2023). The ultimate outcome of the determination was that Dr Khan’s name be erased from the Medical Register.
2. Dr Khan was not present at the hearing before the Tribunal and did not make any representations to the Tribunal. The Tribunal, unassailably, found that it was appropriate to proceed in her absence, pursuant to rule 31 of the General Medical Council (Fitness to Practise) Rules 2004. The referral to the Tribunal had followed an investigation by the GMC, which began in 2020. Dr Khan had been served with the allegations against her on 11 November 2021. She had responded in a sequence of emails. The Tribunal was asked by the GMC to admit a 44-page bundle of those emails and determined that it should do so “to gain a better understanding” of Dr Khan’s position and “to fully and fairly consider the case”.
3. The decision of the Tribunal directing Dr Khan’s erasure from the Register is a decision appealable to the High Court, pursuant to s.40 of the Medical Act 1983 (“the 1983 Act”). The case comes before me as Dr Khan’s s.40 appeal. The High Court will allow an appeal pursuant to s.40 if satisfied that the decision of the Tribunal was “wrong”, or “unjust because of serious procedural or other irregularity in the proceedings”. The statutory right of appeal is unqualified and the High Court’s jurisdiction is appellate. 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 and will not defer to the Tribunal’s judgment any more than warranted by the circumstances.

Mode of Hearing

4. By an email dated 29 November 2023, Dr Khan requested that she be permitted to attend the hearing of her appeal by a video link. The hearing had been scheduled for 6 December 2023 at the Administrative Court in Manchester. Dr Khan did not comply with the mode of application, nor the deadline, which had been explained in the amended hearing notice dated 2 November 2023. Her email request explained that the reason why she wanted to attend the hearing by video link was mainly financial, as a single parent who wanted to be able to do the school run for her daughter. She assured the Court that she could attend by the video link, being at home on time. The GMC adopted a neutral position as to whether a hybrid or remote hearing should be permitted. I decided to accede to Dr Khan’s request and to convene the hearing as a fully remote hearing by MS Teams. Open justice was secured through the publication of the case and its start time on the Court’s cause list, together with an email address usable by any member of the press or public who wished to attend the public hearing.

An Appeal about “Powers”

5. The basis of Dr Khan’s appeal is set out in a 5 page Grounds of Appeal document dated 5 April 2023. Those Grounds explained that the “thrust” of Dr Khan’s case was “solely” one of “jurisdiction”. Dr Khan’s contention is that the GMC and the Tribunal had no power to consider the allegations as they were all matters beyond the lawful remit of the GMC and Tribunal. At the oral hearing, Dr Khan retained the emphasis on the absence of powers on the part of the GMC, and the Tribunal, to consider the allegations against her.
6. As was explained in the opening paragraph of the Grounds of Appeal, Dr Khan had refused – during the proceedings in the Tribunal – to accept that the Tribunal had any lawful authority to deal with the allegations against her. That was reflected in the 44-page bundle of emails. Dr Khan said this in an email dated 28 January 2022:

Cases of Dishonesty can only be investigated by the GMC if the following criteria is met: Patient/Public harm is encountered, Practising Clinical Role in the UK only, not previously investigated. My case does not satisfy a single part of your requirements.

An email dated 3 October 2022 said this:

The Trial, is a Miss from my end as I do not wish to engage with the illegalities committed by the GMC Crew. This case, did, NOT fit the threshold for any investigation according to the GMC Glossary and Legislation.

An email dated 10 October 2022 said this:

If you refer to this case right from the Outset, it does not fit any threshold for investigation. You have chosen to open a case against the interest of the Public Lives, already fully investigated via NHS Fraud/Crown Prosecution Service and not causing any patient/public harm; clearly. So on ALL 3 accounts, you had no legal justification to open this case against me ...

An email dated 12 October 2022 said this:

Why would I attend a trial which does not satisfy the GMC Legislation. This case should never have been opened, right from the beginning. You have conducted an investigation without the legal rights to do so and I can reiterate your breach of conduct as I have reviewed ALL of your policies: Public Lives/interest was not compromised whilst I was registered with my full licence to practice. The case has already been fully investigated via NHS Fraud/Crown Prosecution Service: Hence this prohibits the GMC from initiating any future investigations. Evidentially, the suspension period ended on the 10/3/22, anyway. No Public/Patient harm was demonstrated in this case, whatsoever. I have made these Bullet Points clear in several emails historically ...

7. These contentions about the absence of a power to investigate Dr Khan are reflected in the Grounds of Appeal. I will deal with each of Dr Khan’s key points within the analysis below.

The GMC and the Overarching Objective

8. The GMC is the statutory regulator for the medical profession, established under s.1 of the 1983 Act. In the exercise of its functions, its overarching objective is to protect the public. That involves the pursuit of 3 objectives: to protect, promote and maintain the

health, safety and well-being of the public; to promote and maintain public confidence in the medical profession; and to promote and maintain proper professional standards and conduct for members of the medical profession. One of the GMC's functions is to bring disciplinary proceedings in the Tribunal against clinicians. All of this was explained by Julian Knowles J in Arowojolu v General Medical Council [2021] EWHC 2725 (Admin) at §79.

The GMC Register and the Medical Performers Lists

9. The GMC has the function of operating the Register of medical practitioners (s.2 of the 1983 Act). In addition to being registered by the GMC, a medical practitioner is prohibited from performing "primary medical services" in England unless included in the "medical performers list" (reg.24 of the National Health Service (Performers List) (England) Regulations 2013. There is a list for England and a distinct list for London. The same is true for Wales (reg.22 of the National Health Service (Performers List) (Wales) Regulations 2004) and Northern Ireland. In this judgment I will use the shorthand the "Welsh List", the "London List", the "English List" and the "Northern Irish List" for the various Medical Performers Lists.

The Allegations

10. The Tribunal was seized of considering the allegations against Dr Khan by virtue of a referral pursuant to section 35C(5)(b) of the 1983 Act. The substance and detail of the allegations – subject to some later amendments – had all been set out in the letter dated 22 November 2021, Annex A of which was a set of full draft particulars. The allegations related in large part to a number of applications made by Dr Khan, as follows. (1) An application (26 April 2019) to the relevant Aneurin Bevan University Health Board ("the Welsh Board") for inclusion in the Welsh List. That application was refused by the Welsh Board on 3 September 2019. (2) Two applications (17 May 2019) for GP posts at a health centre (Malpas Brook) and a clinic (St Paul's) both in Newport, Wales. (3) An application (26 July 2019) to NHS England for inclusion on the London List. That application was never granted. (4) An application (9 August 2019) to an agency called ID Medical, for work as a locum GP. (5) An application (1 May 2020) to NHS England for inclusion in the English List. That application was refused on 26 June 2020. (6) An application (20 August 2020) for inclusion on the Northern Irish List. In addition, there were allegations about assignments and shifts undertaken by Dr Khan, working as a GP in the period after August 2019. That work was at Medway Maritime Hospital in Gillingham, England and Princes Park Medical Centre in Chatham, England. It followed from referrals made by ID Medical. There were also allegations about emails sent by Dr Khan on 17 January 2020, 14 and 28 September 2020, 3 and 13 February 2021.

Dr Khan's '2014-Closure' Point

11. I can deal at this stage with two of the points raised by Dr Khan in the Grounds of Appeal. The first is that there was a lack of jurisdiction in relation to the allegations, because the "same matter" had been closed by the GMC in December 2014. That is unsustainable. What was closed in December 2014 was a clinical-related complaint raised by a patient. It was plainly distinct from the subject matter of the allegations. It pre-dated them, as is obvious from the dates which I have given.

Dr Khan's 'Extra-Territoriality' Point

12. The second point with which I can deal at this stage in the analysis is that the investigation and consideration of the allegations involve impermissible purported extra-territorial effect, beyond the UK. That too is unsustainable. The answer to it is that the erasure is from the GMC Register, and it falls squarely within the primary legislation. Dr Khan told me that she was relying on impermissible release of data, and slander. The GMC is entitled to operate a public register, and decisions against registration can be communicated to foreign regulators who can reach their own decisions within their own territories. I put this to Dr Khan and she agreed.

The 2016-2019 Undertakings on Dr Khan's Registration

13. In order to understand the other key points which are advanced by Dr Khan, it is necessary to fill in some more detail as to the context and sequence of events. There are a number of strands to be borne in mind. A first strand relates to the position between 2016 and 2019, so far as concerns the GMC and its Register. What had happened was this. On 29 February 2016 was that the Medical Practitioners Tribunal Service notified Dr Khan that its Interim Orders Tribunal – an entity independent of the GMC – had decided that it was necessary to impose an interim order of conditions on Dr Khan's GMC registration, for a period of 10 months. As that February 2016 notification explained, concerns had arisen regarding Dr Khan's mental health. What happened next was this. On 13 April 2016, Dr Khan agreed a schedule of undertakings placed on her registration. Those undertakings remained in place until their revocation by the GMC 3 years later, on 13 April 2019. All of this is fully documented.

The 2018/19 Removal from the English List

14. The second strand relates to the position in 2018 and 2019, so far as concerns the English List. What had happened was this. Dr Khan was originally on the English List. However, on 12 November 2018, NHS England notified Dr Khan that the Performers List Decision Panel of the NHS Commissioning Board had decided to remove Dr Khan from the English List. That course of action had been outlined in a notification dated 2 October 2018, to which Dr Khan had responded by way of written representations. The basis of the 2018 removal from the English List was that Dr Khan had not evidenced or demonstrated having performed primary medical services during the preceding 12 months, having last performed such services in February 2016. The November 2018 notification described Dr Khan's right of suspensive appeal to the First-Tier Tribunal, which she exercised on 6 December 2018. But in correspondence on 2 and 3 April 2019 Dr Khan confirmed that she wished to withdraw that appeal, saying that she was planning to work in the private sector rather than the NHS. That position was recorded in a recital to an order of the First-Tier Tribunal dated 4 April 2019. The removal of Dr Khan from the English List was accordingly effective. The Tribunal found as a fact that Dr Khan had withdrawn the appeal and had been notified on 8 April 2019 of the removal from the List taking effect. That was the same month in which Dr Khan later applied on 26 April 2019 to join the Welsh List.

The Welsh Board/CPS Investigation

15. The third strand relates to the position in 2019 and 2020, so far as concerns the Welsh Board and the CPS. What had happened was this. On 3 September 2019 the Welsh Board had refused Dr Khan's April 2019 application to be included in the Welsh List. Its concerns about that application led it to notify Dr Khan, on 2 December 2019, that she was under investigation for making false declarations or false representations in her attempts to gain entry onto the Welsh List, in relation to which she was wanted for an interview under caution. That investigation by the Welsh Board culminated in a letter dated 8 June 2020. That letter informed Dr Khan that the Welsh Board's investigation into alleged fraud offences was now complete, that a prosecution file had been produced and forwarded to the CPS for its consideration. It explained that the CPS case review had concluded, having regard to all the circumstances, that it would not be "in the public interest" to take further action against Dr Khan "from the perspective of a criminal prosecution". I will need to return (§24 below) to the passage at the end of the letter.

The Tribunal's Findings of Dishonesty

16. As I have explained, Dr Khan's Grounds of Appeal made clear that she seeks solely to raise legal points about legal powers. She took the same course at the hearing before me. But it is important to understand the nature of the Tribunal's adverse conclusions relating to the various allegations of dishonest conduct on the part of Dr Khan. There were other findings by the Tribunal relating to other matters, including for example an inappropriate and threatening series of emails sent to a recruitment agency in 2020 and 2021. Here is a summary of the Tribunal's 12 dishonesty conclusions:
- (i) The first relates to false statements within the April 2019 application to the Welsh Board for inclusion in the Welsh List. In the application form, which Dr Khan had signed on 9 February 2019 and which was subsequently put forward to the Welsh Board in April 2019, she stated that she had never been removed, contingently removed or suspended from any Health Board, Primary Care Trust or equivalent list. Dr Khan gave a declaration that she had never been removed from any Health Board or equivalent list. She also gave a declaration in the application that she had never been subject to any investigation into professional conduct where the outcome was adverse. But she knew that she had been removed from the English List in November 2018. She had appealed against that very decision. She had now withdrawn that appeal and had been notified of the removal from the list. But she knew she had been investigated and was the subject of a schedule of undertakings placed on her registration with the GMC from 13 April 2016 through to April 2019. The Tribunal found that these were all false statements which were dishonest conduct. That is dishonesty conclusion number one.
 - (ii) The second relates to 3 clinical references in support of Dr Khan's April 2019 application to the Welsh Board for inclusion in the Welsh List. These gave positive assessments of Dr Khan's clinical capability, professional integrity, and other competencies. Dr Khan put forward a reference from Dr Caroline Jones of Citiway GP Practice, Rochapel, Kerry, Ireland. Dr Jones's reference described Dr Jones having employed Dr Khan between December 2017 and May 2019. The reference was a PDF sent from an outlook.com email address on 10 June 2019. On 2 July 2019 from an outlook.com email address came a third clinical reference

from Dr John Hitchens at St Thomas's Hospital in London, describing 2 years as an employer and GP trainer between October 2001 and April 2003, and between March and December 2017, assessing the same aspects. On 11 July 2019, from a yahoo.com email address, came a reference purportedly from Dr Johra Jabin (full name Dr Johra Jabin Alam) in Gillingham, describing 4 months as Dr Khan's employer between August and December 2017. The Tribunal found as a fact that there was no Dr Caroline Jones and that Dr Khan had never worked in Ireland. Dr Alam gave a witness statement in the GMC proceedings. Dr Hitchens had made a statement to the NHS Fraud enquiry in February, which statement was in the materials before the Tribunal. The Tribunal found that these 3 clinical references were fabricated by Dr Khan, having been authored by Dr Khan and put forward by her. This was all dishonest conduct. It is dishonesty conclusion number 2.

- (iii) The third relates to two documents which were put forward by Dr Khan in October 2019. This was after it had been communicated by the Welsh Board that the April 2019 application for inclusion on the Welsh List was being refused. At that stage, Dr Khan put forward a letter, purportedly from Dr Caroline Jones in Kerry, Ireland; and a P60 end of year certificate for the tax year to 5 April 2019 referring to Dr Khan as employed at "Dublin NHS Services". In the light of the relevant documentary evidence, the fruits of investigation, and relevant witness statement evidence, the Tribunal found as a fact that both of these documents had been fabricated by Dr Khan. That is dishonesty conclusion number 3.
- (iv) The fourth relates to information put forward by Dr Khan in support of her May 2019 application for the GP post at Malpas Brook. Dr Khan put forward a two-page CV which described her as having worked in December 2017 and between October 2018 and December 2018 as a locum GP at Beacon Way, Sandyford in Ireland, with Dr Caroline Jones. At a subsequent interview, Dr Khan told Malpas Brook's Ms Rossiter and Dr Thomas about her work in Ireland for a locum agency. In the light of the relevant documentary evidence, the fruit the investigation the relevant witness statement evidence, the Tribunal found that this CV and interview information was false and had been put forward dishonestly by Dr Khan. That is dishonesty conclusion number 4.
- (v) The fifth relates to information put forward by Dr Khan in support of her May 2019 application for the GP post at St Paul's. Again, a two-page CV contained the same description of working in 2017 and 2018 as a locum GP at Beacon Way with Dr Caroline Jones. Dr Khan also put forward a one-page reference, purportedly from Dr Jones describing their work together and Dr Khan's qualities. In addition, Dr Khan put forward to St Paul's a letter of reference dated 17 September 2018, purportedly from Professor Moxham, the Dean at Kings Denmark Hill campus at Guy's King's and St Thomas's School of Medicine. The Tribunal had witness statements from Professor Moxon. It found as a fact that the statement in the CV was false, that the two references were fabricated and authored by Dr Khan herself and that this was further dishonest conduct. That is dishonesty conclusion number 5.
- (vi) The sixth relates to information put forward by Dr Khan in support of her July 2019 application for inclusion in the London List. In the online application form, Dr Khan answered "no" to a question about whether she had ever been refused

admission, conditionally included in, suspended from, removed or contingently removed from any primary care list or equivalent list; and “no” to a question about whether she had ever been removed or was currently suspended from or had ever been refused inclusion in or included subject to conditions, in any list. The Tribunal found as facts that she had agreed the April 2016 Schedule of Undertakings on her GMC registration, that she had been notified in November 2018 of removal from the English List, that she had withdrawn her appeal against that decision and been notified that the removal from that list was effective. In the July 2019 application Dr Khan also stated that she had worked as a GP at Beacon Way surgery in Ireland and gave details of Dr Caroline Jones and Dr Alam as purported employers. Dr Khan also put forward another two-page CV stating that she had worked in Sandyford, Ireland with Dr Jones. In subsequent email correspondence with NHS England and NHS Improvement, in July 2020, Dr Khan stated that she had always been on the English List right from the start of her career in August 2002; that she had recently been removed from the list in April 2019 because of an IT system updating issue; and that she was working for an NHS surgery in Ireland within 2017 and 2019. All of these statements in all of these documents were found as a fact to be false and dishonest. That is dishonesty conclusion number 6.

- (vii) The seventh relates to Dr Khan’s August 2019 application to join ID Medical. In her application form she said that she had been investigated by the GMC who had reopened a closed file and was due to award her monetary compensation in the near future; she said she had worked with Dr Caroline Jones as a locum GP at Beacon Way; and she gave as her referees Dr Jones and Dr Alam. She put forward another CV which recorded having worked with Dr Jones at Beacon Way. She then put forward six references: 3 from Dr Jones, 2 from Dr Alam and one from Dr Hitchens. All of this information was found as a fact to be false, the references were found to have been fabricated and authored by Dr Khan, all of which was further dishonest conduct. That is dishonesty conclusion number 7.
- (viii) The eighth relates to the GP work which Dr Khan undertook between September 2019 and July 2020, at Medway Maritime and Princes Park, following referrals from ID Medical. The Tribunal found as a fact that Dr Khan had undertaken more than 100 GP assignments and more than 200 GP shifts. It found as a fact that Dr Khan undertook that work at a time when she was not on the medical practitioners list, having been removed from the English List in November 2018, having withdrawn her appeal in April 2019, and having received notification on 8 April 2019 that the listing removal become effective. The Tribunal found that Dr Khan knew that she should not have been working as a GP as she was not on the English List. This action was dishonest, which is dishonesty conclusion number 8.
- (ix) The ninth relates to emails sent by Dr Khan in January 2020. The first was dated 3 January 2020 and sent as a “cc” to her revalidation officer. It was purportedly sent to Dr Alam at his email address and its contents falsely implied that Dr Khan had worked with Dr Alam. The second was dated 17 January 2020 and was sent to the revalidation officer, purportedly by Dr Alam from his email address. It falsely stated that Dr Khan and Dr Alam had worked together. The Tribunal found as facts that Dr Khan and Dr Alain had never worked together, that the

email address portrayed as belonging to Dr Alam was not his, and that the email purportedly from Dr Alam had been sent by Dr Khan. All of that conduct was found to have been dishonest, which is dishonesty conclusion number 9.

- (x) The tenth relates to Dr Khan's May 2020 application for inclusion on the English List. In the application form Dr Khan stated that she had been on the English List until September 2019 when administration errors had occurred; and that she should never have been removed. By email dated 4 May 2020 Dr Khan made a signed declaration which stated that she was not the subject of any investigation by any regulatory body or other body which included an adverse finding, nor the subject of any investigation by the holder of any list which might lead to her removal. Then, in an email dated 28 June 2020, Dr Khan told NHS England and NHS improvement that the Welsh Board's investigation had died down with no further action deemed necessary, that she had been interviewed in that investigation which had concluded that her work history within the NHS was without doubt 100% genuine; and that the Welsh Board had advised her to proceed with her application process. All of these statements in all these documents were found as a fact to be untruthful and dishonest. That is dishonesty conclusion number 10.
- (xi) The eleventh relates to Dr Khan's August 2020 application for inclusion in the Northern Irish List. In that application Dr Khan answered "no" to the question whether she had been refused admission, conditionally included in, suspended from, removed or conditionally removed from any primary care or equivalent list; and "no" to the question whether she had been subject to an investigation into her professional conduct by any licensing, regulatory or other body where the outcome was adverse; "no" to the question whether she was currently subject to any investigation into her professional conduct by any licensing, regulatory or other body; and "no" to the question whether she was the subject of any investigation or proceedings by another board or equivalent body which might result in her being disqualified, conditionally disqualified, removed or suspended from a list or equivalent list. She stated that she had worked as a salaried GP at Beacon Way; that she had been the subject of the sanction of a conditions of suspension because NHS England had forwarded her case to the GMC in error due to a communication breakdown; that the GMC had closed this case in December 2014 but it had then been re-opened for unknown reasons; that GMC had confessed its mistakes and pushed the blame onto NHS England; and that NHS England were trying to reinstate her name on the English List, having accidentally put her on the dentists lists. All of these answers and statements were, found the Tribunal, false and dishonest. The Tribunal found as a fact that Dr Khan had been removed from the English List in November 2018, confirmed in April 2019; had been notified on 3 September 2019 of the Welsh Board's refusal of her entry onto the Welsh List; had been informed in January 2020 that she was under investigation by ID Medical; that she had never worked at Beacon Way; and that none of the other statements were true. All of this was further dishonest conduct. That is dishonesty conclusion number 11.
- (xii) The twelfth and final finding of dishonesty relates to an email written by Dr Khan on 28 September 2020, requesting a reference, for an interview with the Medical Council of Ireland. That email stated that NHS England had created an unwanted

delay, but had eventually resumed with Dr Khan on their portal system in around mid-August 2020, that the whole delay had arisen from a historical cycle of GMC undertakings which had led to Dr Khan being removed from the English List, that Dr Khan had received an authorised letter from the GMC confirming that she could perform her duties as a GP with ID Medical; and that the GMC had admitted pandemic-related reasons for delay. All of those statements were found as a fact by the Tribunal to be false and dishonest. That is dishonesty conclusion number 12.

Dr Khan's 'ID Medical-Arrangements' Point

17. Having filled in that further detail, I can turn now to a third key point made by Dr Khan. It concerns the arrangements made when Dr Khan obtained GP work with Medway Maritime and Princes Park, through her August 2019 application to join ID Medical. Within the Tribunal's 44-page bundle of emails from Dr Khan is a document written by Dr Khan on 26 November 2021. It was a response to part of the allegation which became the twelfth finding of dishonesty, namely the statement in the 28 September 2020 email stating that Dr Khan had received an authorised letter from the GMC confirming that she could perform her duties as a GP with ID Medical. The 26 November 2021 email said this:

ID MEDICAL had written correspondence direct from the GMC sent to my recruitment consultant Mr Shirish Sonar. This stated that I could only work with ID Medical if ALL of my appraisals and Revalidation Files could be facilitated via this recruitment agency. ID Medical Agreed to Undertake my appraisal portfolio and revalidations. GMC immediately added this information to my GMC PORTAL account to verify that I was assigned to a DESIGNATED Regulatory Body via ID MEDICAL. This verification gave me the full rights to practise as a Doctor in the UK. I even clarified this information with 3 independent GMC Officers working in the Revalidation/Appraisals Team. Meanwhile whilst I was working via ID Medical for MEDDOC Out Of Hours Service, Shirish Sonar advised me to rejoin the ENGLAND NHS Performers List as this would be in the Best Interest For All. After all, MEDDOC was an Out Of Hours Emergency NHS Service.

18. An email dated 28 January 2022 from Dr Khan to the GMC said this

After returning to work on the 2/9/19 from this ordeal, and registering with the GMC Portal it was decided that I could work for the NHS Services using ID Medical Recruitment as my Revalidation/Appraisal Service. This was agreed via the GMC and ID Medical. The GMC Portal is evidence of this.

19. In her oral submissions on this appeal, Dr Khan put her essential point in this way. She had been told by the GMC that she could work within the NHS, through ID Medical, without being on the Medical Practitioners List. She said this was said at the end of August 2019 and again in an email from the GMC dated 7 September 2019. She told me she no longer has these emails.
20. I reject this contention. Dr Khan has produced no document which records her being advised by the GMC that she could work within the NHS, through ID Medical, without being on the Medical Practitioners List. The GMC and Dr Khan were both able to produce contemporaneous documents dated 7 September 2019. Those documents concern an aspect of the arrangements in working within the NHS, through ID Medical. Both documents relate to revalidation. The GMC's letter told Dr Khan that she no longer needed to "complete and submit an annual return" or "sit a revalidation

assessment” because of her “connection to a designated body or approved Suitable Person”. That is a distinct point. The legal position was that Dr Khan did need to be on the Medical Practitioners List.

21. I add this. One part of the case against Dr Khan – which became the eighth finding of dishonesty – was that she worked for Medway Maritime and Princes Park without being on the List, in circumstances where “you knew that ... you should not have been working as a GP through ID Medical as you were not on the MPL for England”. Dr Khan could have given evidence at the hearing before the Tribunal on that question of knowledge. She had a full and fair opportunity to contest that knowledge, to explain why she believed she did not need to be on the List, and to produce any document relied on. She did not do so. This is not a point about the GMC’s powers to investigate, still less the Tribunal’s powers to adjudicate.

Dr Khan’s ‘June 2020 Completed-Investigation’ Point

22. I can now deal with a fourth point which has been raised in Dr Khan’s Grounds of Appeal. This point was the principal argument advanced in Dr Khan’s oral submissions. Dr Khan submits that there was a lack of power on the part of the GMC to investigate, and the Tribunal to consider, the allegations against her, because in June 2020 the CPS had decided to take no further action. She says this means the “threshold” for investigation was not satisfied. She says the CPS had “cleared” the references which she had used in April 2019 application to join the Welsh List.
23. Dr Khan developed this argument at the hearing. She submitted as follows. On receiving notification in August 2020 she had gone onto the GMC’s national website. She found the published policy guidance on “GMC thresholds”. It clearly stated three criteria. The third of these was that if a case of dishonesty or fraud had already been investigated by a regulatory authority or by the police or CPS, it could not be reinvestigated by the GMC. That was the policy guidance applicable to the GMC investigation in her case. She retained the policy guidance on her computer. She sent it by email to the lawyer (Mr Abhinav Mohindru of James Bowden solicitors) who represented her, in her absence, at the Interim Suspension Order hearing before the Interim Orders Tribunal (“IOT”) on 11 September 2020. Mr Mohindru produced that policy guidance document at that hearing and relied on it as his first point, giving it great emphasis. The point was ignored by the IOT whose reasons make no mention of it, or the point raised. Dr Khan never sent the policy guidance document to the GMC, but it was what she was referencing in her emails about “criteria” and “the threshold” and “GMC Legislation” (§6 above). Realising that the document would be important for the appeal hearing, Dr Khan looked for it on her computer but could not find it. She looked for the email to Mr Mohindru but could not find that email either. Appreciating, on 24 November 2023, that she no longer had the policy guidance, she sent an urgent Freedom of Information Act request to the GMC asking for all pre-June 2020 “GMC Thresholds” policy guidance. On 30 November 2023, the GMC sent her 11 sets of GMC’s threshold guidance “active in June 2020 and prior”. None of these contain the criteria which she recalls. Her position is that these documents have been fabricated by GMC, with the purpose of defeating this appeal.
24. I reject these contentions. The fact that CPS decided that it would not be in the public interest to take further action “from the perspective of a criminal prosecution” did not

mean that the GMC and the Tribunal lacked jurisdiction to consider concerns relating to the April 2019 application to join the Welsh List. In fact, this had been made very clear. The 8 June 2020 Welsh Board letter (§15 above) concluded with a passage which told Dr Khan:

this decision to take no further action against you criminally, does not however, preclude any action that may be taken by your professional body, the General Medical Council, should they choose to investigate the matter further.

Ten days later, on 18 June 2020 the Welsh Board formally notified the GMC, precisely so that the GMC could consider the matters. Dr Khan was on the GMC's Register. The GMC was a regulator with statutory functions in relation to misconduct and impairment. Less than a month later, on 13 July 2020, the GMC opened an investigation into the matters which had been brought to its attention.

25. There is absolutely nothing to support or substantiate Dr Khan's contention that there was a policy guidance document as at June or August 2020, which stated a criterion that, if a case of dishonesty or fraud had already been investigated by a regulatory authority or by the police or CPS, it could not be reinvestigated by the GMC. She accepts that, at no stage in any of the representations which she made in her emails, did she ever send the policy guidance document on which she was relying, and which she tells me she had on her computer and sent to Mr Mohindru. None of the emails identify the policy guidance or quote from it. Dr Khan has documents and emails, but she says she no longer has the email sending this policy guidance to Mr Mohindru. She told me she has not contacted Mr Mohindru asking for his assistance with the document she says she sent him. There is no evidence that he produced the document to the IOT. There is no reference to this point in the IOT's reasoned decision. There is plainly no substance in the contention that a FOIA request was responded to – within a few days – by sending 11 separate pdf documents comprising more than 100-pages of fabricated policy guidance documents, fraudulently created so as to defeat a point which Dr Khan wanted to make in this appeal.
26. If Dr Khan wished to mount an abuse of process application in the Tribunal proceedings, based on an argument that the GMC's investigation was inconsistent with its own published policy guidance, she had a full opportunity to do so. If, as she says, a lawyer was in a position to make the argument based on the published policy before the IOT in September 2020 when an interim order was being considered, all the more reason why she could have raised the point in the context of the Tribunal and the main hearing. She did not do so. Dr Khan has pointed to no instrument governing the Tribunal's jurisdiction with which the Tribunal acted incompatibly. Arguments about the GMC's departures from published GMC policy could, in my judgment, bite on the Tribunal's jurisdiction only through an abuse of process application. None was made. Nothing has been identified which could have sustained such an application, had it been made.
27. There are two footnotes to this part of the case. First, Mr Tankel points out that the GMC can investigate, and the Tribunal could consider, allegations which have been the subject of prosecution and acquittal. He cited Bhatt v GMC [2011] EHC 783 (Admin) at §53, which he told me was a sexual misconduct case. It is impossible to think of a reason of principle why the GMC should be able to investigate when an allegation has unsuccessfully been prosecuted, but not able to investigate when it has been decided

not to prosecute. Nor can I accept Dr Khan's submission that there is something special about dishonesty which requires only the forensic investigative capabilities of the police and CPS, and which cannot be handled by the GMC and Tribunal. The present case illustrates this. Many of the allegations involved fabricated references where the professionals put forward told the GMC and Tribunal that they had neither written the references, nor had the email addresses, attributed to them. The second footnote is that even if I posit a published policy guidance, as alleged by Dr Khan, it would remain guidance. In this case, that is important because the CPS and Welsh Board decisions were communicated as being without prejudice (§24 above) to the GMC's ability to investigate and therefore deal with the public interest concerns.

The July 2021 Policy Guidance

28. Linked to the point which I have just addressed, there is this. Dr Khan has referred to published GMC policy guidance, on the GMC's national website. She has pointed to the email submissions made, in particular, in January 2022 and October 2022. By that time, there was a new published GMC policy guidance entitled "GMC Thresholds". It was published in July 2021. It says this at §8:

Concerns of low level violence or dishonesty outside a doctor's professional practice 8 Doctors are among the most trusted professionals and trust is critical to the doctor/patient relationship. In view of this, concerns of violence and dishonesty carry a presumption that, if proven, they will lead to the doctor's fitness to practise being impaired and therefore are likely to meet the threshold to be referred to us. However, the range of behaviours which fall into these two broad categories can vary considerably and the nature of some violence and dishonesty concerns that occur outside a doctor's professional practice can be such that they are unlikely to raise a question of impaired fitness to practise. We are likely to close these cases without taking any further action when the concerns relate to conduct that: (a) is minor in nature and less likely to pose a risk to patients, public confidence or proper professional standards and conduct; and (b) has been investigated by the police or another relevant body, such as the doctor's employer.

29. It refers (at §9) to further "guidance to help our decision makers assess the risk posed by a doctor to public protection as a result of low level violence or dishonesty". The hyperlink gives access to that further published policy which (at §§8-9) says:

Doctors are among the most trusted professionals and trust is critical to the doctor/patient relationship. In view of this, violence and dishonesty allegations carry a presumption of impaired fitness to practise and therefore should normally be promoted for a full investigation so that the case examiners can consider whether the nature of the allegations are such that the presumption of impairment is rebutted or, if not, require referral for a hearing. However, the range of behaviours which fall into these two broad categories will vary considerably and the nature of some violence and dishonesty allegations are such that they are unlikely to raise a question of impaired fitness to practise and therefore require a full investigation. The conduct that gives rise to such allegations: (a) will be minor in nature and less likely to pose a risk to patients, public confidence or proper professional standards and conduct; and (b) will have occurred outside the doctor's professional practice; and (c) will have been investigated by the police or another relevant body, such as the doctor's employer. If all these factors are met, the allegations are unlikely to raise a question of impaired fitness to practise and to meet our threshold for investigation.

30. The observation that can be made is this. At the time when Dr Khan was making her email submissions in 2022 (§6 above), there was published policy guidance which referred to patient/public harm ("risk to patients"), clinical role ("a doctor's

professional practice”) and previously investigated (“investigated by the police or another relevant body”). This July 2021 policy guidance post-dates GMC’s investigation (which commenced in 2020) and does not assist Dr Khan. It makes very clear that it is concerned with “low level” or “minor” dishonesty, and it is a general guide (“likely” and “unlikely”). Dr Khan is adamant that she had not in fact accessed this policy guidance when making her points in 2022. The earlier policy guidance provided by the GMC, in response to the FOIA request, does not assist Dr Khan because they did not contain passages about conduct investigated by the police or another body. As I have explained, Dr Khan is quite unable to substantiate her assertions about the previous policy which she describes.

Dr Khan’s ‘Scope of the Welsh Board/CPS Investigation’ Point

31. The next and fifth point relied on by Dr Khan is this. She says that all of the allegations which the GMC was investigating, and which the Tribunal was considering, were in substance within the scope of the CPS decision not to prosecute her. Dr Khan says three things. First, that the Welsh Board investigation which ended on June 2020 extended to alleged dishonesty in making the July 2019 application for inclusion in the English List, the August 2019 application to join ID Medical, and the September 2019 to July 2020 work for Medway Maritime and Princes Park. Secondly, insofar as there was alleged dishonesty falling outside the Welsh Board investigation, it involved materially equivalent conduct: answering equivalent questions in applications and putting forward equivalent CVs and references. Thirdly, that the CPS decision not to prosecute, once it is recognised as barring GMC investigation, therefore barred the GMC from investigating any of the allegations.
32. I cannot accept any of this. But I make clear that none of it goes anywhere, because the CPS decision not to prosecute did not – to any extent – bar the GMC from investigating. I cannot accept that the Welsh Board was investigating alleged dishonesty in making the July 2019 application for inclusion in the English List, the August 2019 application to join ID Medical, or the September 2019 to July 2020 work for Medway Maritime and Princes Park. The Case Examiner’s decision (24 August 2020) gives a clear description of what was referred to the GMC by the Welsh Board, as relating to the April 2019 application and October 2019 communication (which became dishonesty conclusions (i), (ii) and (iii): §16 above). Dr Khan was adamant that she was interviewed by the Welsh Board in January 2020 about topics including her August 2019 application to join ID Medical (which became dishonesty conclusion (vii): §16 above). I have searched the transcript of the interview in vain for any reference to ID Medical. It is therefore quite impossible to say that the six allegedly fabricated references in the application to ID Medical, for example, were already within the scope of the CPS’s decision. I was shown no document which supports that conclusion. It follows that there were serious allegations to which the CPS discontinuance decision could never, on any basis, be an answer; still less a complete answer. And, as I have explained, Dr Khan could have made an abuse of process argument in the Tribunal, if she felt she had a good objection. She could, of course, have defended the case and answered the allegations of dishonesty directly.

Dr Khan’s ‘Clinical-Complaints’ Point

33. I can turn now to a sixth point which has been raised in Dr Khan's Grounds of Appeal. She submits that further threshold criteria for the GMC to have power to investigate concerns, and the Tribunal to have power to consider them, required that there be (i) a "complaint" from a patient (ii) relating to "clinical performance" or "clinical conduct". This fails for the same reasons as does the 'June 2020 Completed-Investigation' Point (§§25-26 above). There is no support for Dr Khan's suggested published policy guidance. There is no restriction to complaints, or clinical conduct, or both. That is for very good reason (§§35-36 below).
34. As I have explained, the case against Dr Khan arose largely from concerns as to how the various applications had been made by her; together with conduct in undertaking GP NHS work and in sending various emails. Dr Khan is able to point out that there is no evidence of any direct harm caused to any patient; and that Dr Khan's clinical skills were not being called into question in the allegations before the Tribunal. In fact, both of those points were made by the Tribunal in the determination. They were points which could be put in Dr Khan's favour on the merits, in considering impairment and sanction.
35. But there is no jurisdictional restriction or threshold criterion which limits the GMC and the Tribunal to concerns relating to "clinical performance" or "clinical conduct"; nor to dealing with complaints from patients. That is for very good reason, reflected in the overarching objective (s.1 of the 1983 Act). The GMC and the Tribunal are not simply 'patient complaints' mechanisms. They are not simply 'clinical concerns' mechanisms. They are concerned with regulatory action, for the protection of the public, in the public interest. The statutory overarching objective makes clear that it is not restricted to a narrow focus on protecting promoting and maintaining health safety and well-being of the public. It expressly and specifically extends to two further limbs: the promotion and maintenance of public confidence in the medical profession; and the promotion maintenance of proper professional standards and conduct for members of the profession. That broader perspective is reflected throughout the regulatory framework, for obvious good reason in the public interest. Dr Khan has been unable to point to any document which supports her position on the narrow "criteria" for investigation and action. The allegations in her case compellingly show why there is no such restriction. It would plainly be contrary to the public interest, if the GMC and Tribunal were unable to act in the context of allegations such as these.
36. It is sufficient to take one example. As Lewis J explained in GMC v Theodoropolous [2017] EWHC 1984 (Admin) at §§35-40: the case law recognises the importance of honesty and integrity on the part of members of the medical profession; findings of dishonesty like the top end of the spectrum of gravity of misconduct; honesty and integrity remain fundamental, including in relation to qualifications, and in relation to systems of applying for medical positions; dishonesty is just as fundamental to the integrity of a system of applications as it is to a system of registration; and where a doctor engages in deliberate dishonesty and lacks insight, erasure may in practical terms be inevitable. That is this case.

Dr Khan's '2019/20-Working' Point

37. That leaves one final key point which features in Dr Khan's Grounds of Appeal. She says that the GMC lacked the power to investigate, and the Tribunal lacked the power

to consider, matters relating to (a) her August 2019 application to join ID Medical and (b) her period of working between September 2019 in July 2020 for Medway Maritime and Princes Park. She submits as follows. That work between September 2019 and July 2020 was work found in consequence of referrals made by ID Medical. It was work undertaken at a time when an NHS worker “Smartcard” had been issued to Dr Khan. In all the circumstances, there was full awareness that Dr Khan was working in 2019 and 2020. No agency, authority or employer raised any complaint. ID Medical cannot have been “misled”. Indeed, ID Medical “cleared” the references on which Dr Khan had relied. It cannot be open to the GMC to investigate, or the Tribunal to consider, these matters.

38. Like the other points, this contention is without substance. There is no lack of power to investigate and consider these matters. What the GMC were considering, and what the Tribunal came on to consider, was the honesty of Dr Khan’s actions in making the various applications. That included the August 2019 application to join ID Medical. It included the status of Dr Khan when she worked in those NHS GP roles between September 2019 and July 2020. It included what Dr Khan did, and what she knew. It was plainly open to the GMC and the Tribunal, and indeed vital in the public interest, that those matters could be properly investigated and considered.

The Opportunity to Engage

39. All of which brings me to what is really the most important feature of this case. Dr Khan knew perfectly well what the allegations were that had been raised against her. She knew perfectly well the evidence relied on in support of the allegations. She knew what the documents were and what the witness statements said. She knew she was facing a series of multiple and serious allegations of dishonesty. She knew that her own conduct was of central relevance, as were questions about her knowledge. If Dr Khan had points to make, and evidence to give, she had every opportunity during the GMC investigation and in the Tribunal proceedings. So, she would be able to make points about whether or not what she did was misleading or misled; whether or not references were cleared; whether the authorities were aware of the facts and were satisfied; why the issuing of an NHS Smartcard assisted her defence. If there were factual and evidential points, she had every opportunity to raise and explain these, and make any points so that they could be included and considered. She chose not to answer the allegations and give an explanation. She chose to take points about legal powers and remit. None of the points she has made begin to be a basis for saying that the GMC or the Tribunal acted beyond their legal powers.

Judicial Review

40. I record that Dr Khan’s Grounds of Appeal purport to reserve the right to bring a challenge by way of judicial review. It is important to be clear. There is no prospect that the legal points which Dr Khan has raised and identified could constitute viable grounds for judicial review, either of the GMC or of the Tribunal.

Conclusion

41. I have already dealt with each of the key points which feature in the Grounds of Appeal. I have summarised the Tribunal’s key findings on dishonest action (§16

above). Based on its adverse findings of fact, the Tribunal went on to find that there was misconduct, and impairment of fitness to practise; and that the necessary and appropriate sanction was erasure. It is sufficient to quote this unimpeachable passage from the Tribunal's determination on sanction:

The Tribunal noted that Dr Khan's dishonest conduct represented a serious departure from GMP [Good Medical Practice] and that her dishonesty was persistent. The Tribunal identified minimal mitigating factors. There was no evidence of remorse, insight, or remediation and the Tribunal therefore considered that Dr Khan's actions were likely to be repeated. It took the view that evidence of clinical competency was not enough to outweigh her persistent pattern of dishonesty. The Tribunal took the view that Dr Khan's conduct is incompatible with continued registration. The Tribunal concluded that erasure is the only appropriate sanction to protect patients, promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.

42. I have dealt with all of Dr Khan's points about the GMC and the Tribunal's legal powers. Beyond making those points, Dr Khan has not – as I have explained – challenged any of the findings. It is appropriate that I should say this. In my judgment, it is clear that the Tribunal's findings were fully justified, on the documentary evidence and the witness statement evidence from multiple individuals; and that the findings of misconduct, impairment and appropriate sanction are unassailable. The sanction of erasure was plainly appropriate and necessary in the public interest. It was neither excessive nor disproportionate. The Tribunal's decision was lawful and there is no basis for interfering with it. The appeal is dismissed.
43. Having circulated this judgment in draft, I am able to deal here with contested consequential matters. There are two. First, I will make an order for Dr Khan to pay the GMC's reasonable costs, which I will summarily assess at £7,500. The GMC has succeeded in full and costs should follow the event (CPR 44.2(2)(a)). It is no answer that Dr Khan says she is unable to pay. The appeal was brought at clear costs risk, and it caused the GMC to incur the legal costs. I have made a broad-brush reduction from £8,121.60 in the costs schedule, to reflect the fact that I am not ordering costs on an indemnity basis. Secondly, I refuse Dr Khan's application for permission to appeal. As her notice of appeal recognises (section 2) this would be a second appeal. That means permission to appeal is solely a matter for the Court of Appeal: see s.55 of the Access to Justice Act 1999 and CPR 52.7. To avoid misunderstanding, I am not saying that Dr Khan's permission to appeal skeleton argument – which repeats features of her case – raises any ground with a real prospect of success, any important point of principle or practice, or any other compelling reason for the Court of Appeal to hear an appeal.