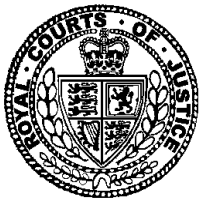

Neutral Citation Number: [2024] EWHC 2945 (Admin)

Case No: AC-2024-BHM-000053

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

Birmingham Civil and Family Justice Centre
33 Bull Street,
Birmingham, B4 6DS

Date: 19/11/2024

Before:

Mr Justice Eyre

- -

Between:

DR SYED FARHAN HYDER	**Appellant**
- and -	
GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

Nicholas Leviseur (instructed by **Stephensons**) for the **Appellant**
Peter Mant (instructed by **the General Medical Council**) for the **Respondent**

Hearing date: 1st November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Tuesday, 19th November by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE EYRE

Mr Justice Eyre:

Introduction.

1. Syed Hyder is a doctor. On 19th December 2023 the Medical Practitioner Tribunal ("the Tribunal") directed that Dr Hyder's name be erased from the Medical Register. That decision followed earlier findings that the Appellant had dishonestly made false representations as to his qualifications and that this amounted to misconduct impairing his fitness to practise. The Appellant appeals against that sanction pursuant to section 40 of the Medical Act 1983.

2. The Tribunal found that the Appellant had dishonestly made a number of false statements to medical employment agencies. Attention focused on the Appellant's statements first, made orally in 2014 that he had passed two parts of the requirements for the Membership of the Royal College of Physicians postgraduate medical diploma ("the MRCP") and was in the process of completing the final part, and second, contained in *curricula vitae* sent to agencies in 2016 and 2017 that he had obtained the MRCP. Although the Appellant had attempted to obtain that qualification he had not done so. The Tribunal found that the Appellant knew that the statements were false and that he had made them dishonestly.

3. The Tribunal had dismissed allegations that as a result of those false statements the Appellant had obtained employment or obtained employment at a higher pay rate than he would otherwise have done.

4. The Appellant accepts the Tribunal's findings of fact. He also accepts the Tribunal's conclusions that those matters constituted misconduct and that his fitness to practise was thereby impaired. The appeal is against the decision to direct erasure.

5. The grounds of appeal were set out in narrative form and advanced a number of points. The Appellant said that the Tribunal had erred in its approach to the questions of his level of insight and the steps taken to remediate the misconduct. He said that the Tribunal had erred in failing to take account of the fact that the dishonesty had not taken place in a professional setting. It was said also to have erred in concluding that there was a risk of repetition and in its approach to the applicability of aspects of the Sanctions Guidance. The Tribunal's assessment of the evidence was said to be flawed by reason of a failure to take account of the effects on the Appellant of his medication and of the consequences of the reactive depression from which he was suffering. Disproportionate weight was said to have been given to the finding of dishonesty with the consequence that the sanction imposed was excessive.

6. In advancing the Appellant's case Mr Leviseur focused on the contention that the Tribunal's approach to the questions of insight and remediation was flawed. He submitted that a proper approach to those matters would have caused the Tribunal to conclude that there was no real risk of a repetition of the conduct underlying the allegations. On that basis the sanction of erasure was excessive and disproportionate and, Mr Leviseur submitted, the sanction should have been that of suspension. The other criticisms of the Tribunal's approach were not abandoned but were subsidiary to that main contention. They were relied on as factors supporting the argument that when the correct approach was taken to the assessment of the risk of repetition erasure was excessive and disproportionate.

The Factual Background.

7. The Appellant qualified as a doctor in Pakistan in 1995 and worked in various hospitals in that country until he moved to the United Kingdom in 2002. The Appellant obtained full registration here in 2007. Thereafter, the Appellant worked in a number of hospital roles in the United Kingdom. He was principally engaged in geriatric medicine. From 2015 onwards he worked as a locum consultant at a number of hospitals for relatively short periods of time. It is of note that there is no suggestion that the Appellant's performance in any of those posts was in any way unsatisfactory.

8. The Appellant obtained at least some of those posts through the work of locum agencies. The principal allegations arise out statements which the Appellant made to two such agencies.

9. The MRCP is a post-graduate medical diploma. Although possession of that diploma is not a prerequisite of obtaining work as a locum consultant it is needed to complete "core medical training". Most UK-based trainees in non-surgical specialties are required to complete that training before going on to the higher specialty training which can lead to the specialist registration which is required for appointment to a substantive consultant post. The diploma consists of two parts. The first is a written examination while the second consists of a written examination followed by the Practical Assessment of Clinical Examination Skills.

10. In the period between 2008 and 2015 the Appellant registered to sit the Part One examination 15 times. He took the examination 7 times: failing on each occasion.

11. Immediate suspension followed each erasure direction. As Mr Leviseur pointed out this has had the effect of the Appellant having been suspended for about 15 months at the time of the hearing before me. The Appellant had been in the process of retraining as a general practitioner at the time of the 2023 erasure decision.

The Allegations and the Findings of Fact.

12. The first allegation was that in a telephone conversation with the ID Medical locum agency on 15th May 2014 the Appellant had represented: (a) that he had completed Part One of the MRCP; (b) that he had completed the Part Two written examination of the MRCP; and (c) that he was in the process of completing the Part Two Clinical Examination. The Appellant admitted that he had said that he had completed Part One but denied making the other statements. The Tribunal found that the Appellant had made all the statements and had made them knowing them to be false and found, accordingly, that he had made them dishonestly.

13. The second allegation was that between 24th May and 18th October 2016 the Appellant had submitted to the NC Healthcare locum agency (or had allowed to be submitted on his behalf) *curricula vitae* in which it was said that he had obtained the MRCP. The Appellant admitted that the CVs had been submitted in those terms. His case was they had been prepared by his wife who had made a mistake in compiling them and that he had not checked them properly and so did not notice the error. The Tribunal rejected the Appellant's account. It found that he knew that the CVs had contained the false assertion that he had the MRCP and found that he was also dishonest in this regard.

14. The third allegation was in respect of a CV which was submitted to ID Medical on 2nd November 2017 which again stated that the Appellant had obtained the MRCP. The Appellant gave the same explanation as in relation to the second allegation and this was similarly rejected causing the Tribunal to find that the Appellant had made the false statement knowingly and dishonestly.

15. The fourth allegation was that as a result of the false statement in the 2017 CV the Appellant had obtained a locum consultant post and/or received payment at a higher rate than that to which he was entitled. The Appellant denied that allegation and the Tribunal found that it had not been proved.

16. Finally, it was alleged that as at 20th November 2019 the Appellant's LinkedIn profile falsely stated that he had been employed as locum registrar at Medway Maritime NHS Foundation between August and September 2016. The Appellant accepted that the profile had contained false information in that he had, in fact, worked at that foundation as a locum consultant and had done so only in September 2016. The Tribunal accepted that the Appellant had made honest mistakes as to his role and as to the duration of his employment and rejected the allegation that he had been dishonest in this respect.

17. The findings of fact were made in November 2021. The Tribunal sitting in 2021 then found that the Appellant's fitness to practise was impaired and imposed the sanction of erasure. The Appellant appealed against the finding of impairment and the erasure sanction. That appeal was allowed by consent and the questions of impairment and sanction were considered afresh by a differently constituted tribunal in September and December 2023.

The Decision as to Impairment.

18. The Tribunal addressed the question of impairment of the Appellant's fitness to practise at the hearing in September 2023. The Appellant did not give oral evidence on this issue but did provide a Personal Witness Statement, a number of reflective statements, and two testimonials from colleagues.

19. The Appellant began his witness statement with assertions of his longstanding commitment to integrity. He said:

> "I am writing this personal witness statement to provide an insight into my own character, specifically focusing on my honesty, integrity, interpersonal qualities, and moral values. Over the years, I have consistently strived to uphold these qualities, and I believe they are integral to my identity both personally and professionally.
>
> Honesty is a cornerstone of my interactions with others. I believe in being forthright and transparent in all my communications, whether it's in the workplace, with friends and family, or within my community. … I have always made a conscious effort to present information accurately and candidly, even when faced with difficult situations. …
>
> Integrity is a value I hold dear, and I consistently strive to align my actions with my principles. In both my personal and professional life, I have maintained a strong sense of moral rectitude. I take ownership of my responsibilities and decisions, ensuring that they reflect ethical standards and demonstrate a commitment to doing what is right rather than what is expedient. My consistency in upholding my values has helped me build a reputation as someone who can be relied upon to act with integrity even in challenging circumstances.
>
> …

> Central to my character are my strong moral values, which guide my decisions and actions. …"

20. The Appellant then said that he had reflected on the Tribunal's findings. He did not accept that he had in fact been dishonest but said that he could "realise how the Tribunal concluded that my actions were dishonest." He then said:

> "However, I have become much more transparent and clearer in my dealings and communications now, making sure that such mistakes are not repeated ever again."

21. The Appellant began the concluding paragraph of the statement by saying:

> "In short, I can confidently affirm that my honesty, integrity, interpersonal qualities, and moral values are essential aspects of my character".

22. That witness statement was accompanied by reflective statements on dishonesty, the General Medical Council's Good Medical Practice code, and the Sanctions Guidance. Those statements were expressed in general terms.

23. The two testimonials were from colleagues who spoke in very positive terms of the Appellant's qualities including his honesty.

24. The Tribunal concluded that there remained a risk of repetition of the failings which had given rise to the allegations and that the Appellant's fitness to practise remained impaired. In substance that conclusion was based on the Tribunal's assessment of the Appellant's insight which derived from its reading of the material which the Appellant had provided. The core reasoning was set out thus at [68] – [74]:

> "68. Dr Hyder had set out, in detail, theoretical reflections on a number of topics including the seriousness of dishonesty and the important of adhering to GMP. The Tribunal found that Dr Hyder reflected at length on the principles relevant to his misconduct. It was satisfied that he has a good understanding of the importance of honesty and integrity and its role in maintaining confidence in the medical profession. The Tribunal was satisfied that Dr Hyder had good insight into the importance of doctors always acting with honesty and integrity, as well as the important role of GMP.
>
> 69. However, the Tribunal was unable to conclude that Dr Hyder had developed sufficient insight into his misconduct. Dr Hyder had satisfactorily demonstrated his understanding and reflection about the theoretical importance of honesty, integrity and GMP. He had not demonstrated how he had used those reflections and applied them to his own practice. He had not given examples to reassure the Tribunal that his understanding went beyond the theoretical.
>
> 70. There was no requirement for Dr Hyder to accept that his actions were dishonest. However, without evidence and examples of how Dr Hyder has applied his understanding of honesty and integrity to his practice, the Tribunal could not be satisfied that his insight into his misconduct and its specific impacts, was more than limited.
>
> 71. In his personal witness statement, Dr Hyder asserted that he has made changes to his communication style. He did not provide any example of how these changes have been applied to his practice or their impact. Further, as the 2021 Tribunal had rejected Dr Hyder's evidence that his conversation with ID Medical was simply confused, rather than dishonest, Dr Hyder asserting that he has addressed his communication style does not demonstrate that he understands and has taken steps to remediate the dishonesty found by the 2021 Tribunal.

> 72. Aside from his written reflections, Dr Hyder had provided no evidence of having completed and reflected on relevant courses and/or Continuing Professional Development about Probity and Ethics. The Tribunal considered that Dr Hyder could have undertaken such courses to further his theoretical knowledge and be provided with scenarios within which he might have demonstrated his understanding of how to apply that knowledge either to his current practice or to the findings of the 2021 Tribunal.
>
> 73. Dr Hyder has not accepted that he should have behaved differently in respect of his proven dishonest conduct. He has set out, without examples, that he had made changes to his communications style and no longer permits Ms J to make changes to his CVs. He has not identified why he acted in the way that he did. He has not set out what he would do differently if presented with a similar situation. The Tribunal did not accept that because Dr Hyder had changed specialities a similar situation was highly unlikely to occur again.
>
> 74. The Tribunal accepted that there was no evidence that Dr Hyder acted dishonestly since November 2017, almost six years ago. Two clinical colleagues had provided testimonials setting out how Dr Hyder's proven dishonest conduct did not align with the doctor they knew. However, the Tribunal was not satisfied that the evidence provided by Dr Hyder demonstrated that he had developed sufficient insight into, or remediated, his persistent dishonesty spanning three years. The evidence as to insight and remediation before this Tribunal was, at best, limited. In those circumstances, without a demonstration from Dr Hyder of an understanding about why he acted as he did, and why, those actions had been found to be dishonest, the Tribunal determined that there remained a risk of repetition."

The Sanction Decision.

25. After the Tribunal's decision on impairment the Appellant gave oral evidence, he was cross-examined and also answered questions from the Tribunal members. In light of that the Tribunal considered again the question of his insight. It was critical of the Appellant's evidence and reached the same conclusion as to insight as it had before the oral evidence saying:

> "6. Both Counsel, and then each member of the Tribunal, asked Dr Hyder a series of questions in order to elicit evidence as to the extent and depth of his insight into his dishonest conduct. Dr Hyder's answers were not consistent, he provided a range of possible explanations for his actions at the time of his misconduct. He did not, with any certainty, explain why he acted as he did or what motivated him.
>
> …
>
> 19. At the impairment stage, the Tribunal found that Dr Hyder had demonstrated a theoretical understanding of the importance of GMP and the principles of honesty and integrity and how being found to have breached those can impact on public confidence. He had not yet applied that learning to his own practice or considered its relevance to his proven misconduct. The Tribunal was not satisfied that the documentary evidence provided by Dr Hyder demonstrated that he had developed sufficient insight into, or remediated, his persistent dishonesty spanning three years. The Tribunal found that evidence as to insight and remediation was, at best, limited. It found that without a demonstration from Dr Hyder of an understanding about why he acted as he did, and why, those actions had been found to be dishonest, the Tribunal determined that there remained a risk of repetition.
>
> 20. The Tribunal had regard to Dr Hyder's oral evidence, given the day after its determination on impairment was handed down. Dr Hyder had acknowledged, for the first time on 7 September 2023, that he had acted dishonestly. However, the Tribunal found Dr Hyder's evidence was frequently inconsistent and evasive. He had not

> demonstrated sufficient insight into why he had acted dishonestly, what had motivated him to do so and why, he had, for such a significant period of time, failed to rectify the false information about his MRCP status he had provided to the locum agencies. Whilst it was accepted that there was no evidence Dr Hyder's dishonesty was in pursuit of financial gain, he had provided no evidence of insight into what had genuinely motivated him to act as he did. The Tribunal was unable to conclude, from the evidence before it, why Dr Hyder had decided to be dishonest about his MRCP status.
>
> 21. The Tribunal found that Dr Hyder's insight into his misconduct remained limited. His oral evidence had not provided sufficient reassurance to the Tribunal that he understood or had adequately reflected on his dishonest conduct. The Tribunal concluded that Dr Hyder had developed no more insight into his misconduct than that which had been set out in its determination on impairment."

26. Having reached that conclusion the Tribunal turned to consider sanction. On 16th November 2020 the Defendant and the Medical Practitioners Tribunal Service had issued revised Sanctions Guidance ("the Guidance"). The Tribunal had regard to this in making its decision on sanction.

27. The Tribunal considered suspension. In that regard it noted, at [31], that:

> "The Tribunal had not received any evidence of meaningful remediation from Dr Hyder. There had also been a three-month adjournment between his oral evidence and the Tribunal determining sanction. Dr Hyder could have utilised that time to demonstrate further insight or remediation for his dishonest conduct. It considered that Dr Hyder had had ample time to complete relevant courses to allow him to go beyond his theoretical understanding of the importance of honesty, integrity and probity in the medical profession."

28. The Tribunal concluded that suspension was not a sufficient sanction because of the risk of repetition and the nature of the Appellant's conduct saying:

> "33. The Tribunal was not satisfied that Dr Hyder had sufficient insight into his misconduct, nor had he completed relevant remediation to mitigate the risk of repetition. Without sufficient insight and remediation, the risk of repetition remains.
>
> 34. The Tribunal acknowledged that Dr Hyder's dishonest conduct did not result in financial gain. However, it was persistent and despite the significant time elapsed, Dr Hyder had not demonstrated sufficient insight into his particular misconduct, and he had adequately remediated."

29. The Tribunal then turned to consider erasure. It had regard to the Guidance saying that paragraphs 108, 109a, 109b, 109h, and 109j were relevant together with paragraph 125d.

30. Against that background the Tribunal concluded that erasure was the only appropriate sanction saying:

> "37. The Tribunal had found that Dr Hyder's misconduct breached multiple paragraphs of GMP. It considered that those breaches were particularly serious because they were repeated on more than one occasion over a three-year period and had related to his qualification status in professional practice. Dr Hyder's dishonesty was persistent, and he had not, despite the significant time elapsed, to demonstrate sufficient insight into the seriousness of his misconduct and its consequences. Having analysed his oral evidence at the sanction stage and concluded that Dr Hyder continued not to demonstrate any depth of insight, the Tribunal concluded that Dr Hyder had persistently been unwilling or

> unable to apply his theoretical understanding to his own actions and their consequences. The Tribunal concluded that Dr Hyder had had ample time to remediate and develop insight into his misconduct and had not done so.
>
> 38. The Tribunal concluded that, in the specific circumstances of this case, Dr Hyder's persistent dishonesty was fundamentally incompatible with continued registration. His actions amounted to a deliberate decision to mislead those connected to locum agencies about his MRCP status. He had not demonstrated sufficient insight into the reasons for his dishonest actions and had not remediated them. A risk of repetition remained because Dr Hyder has not meaningfully engaged with his misconduct or genuinely accepted responsibility for it."

The Purpose of the Regulatory Regime.

31. Section 1(1A) of the Medical Act 1983 provides that the over-arching objective to be pursued by the General Medical Council in the exercise of its function is the protection of the public.

32. At section 1(1B) the Act provides that:

> "The pursuit by the General Council of their over-arching objective involves the pursuit of the following objectives—
>
> (a) to protect, promote and maintain the health, safety and well-being of the public,
>
> (b) to promote and maintain public confidence in the medical profession, and
>
> (c) to promote and maintain profession standards and conduct for members of that profession."

33. A range of sanctions are open to a tribunal which finds that a registrant's fitness to practise is impaired. In the circumstances of this case it is common ground that the choice for the Tribunal lay between suspension and erasure. The Tribunal's power to impose those sanctions derived from section 35D of the 1983 Act and section 35E(3A) provides that in exercising its functions under section 35D the Tribunal was to have regard to the over-arching objective.

34. As noted above the over-arching objective of the disciplinary regime is the protection of the public and that involves the pursuit of the objectives identified in section 1(1B). Punishment is no part of the purpose of the regime. It is necessary for a tribunal (and so for the court on appeal) to focus solely on what is necessary for the protection of the public and the pursuit of the stated subsidiary objectives. This means that a tribunal is not to seek to punish a registrant by imposing a sanction greater than that which is necessary for the over-arching objective. However, it also means that "matters of mitigation are likely to be of considerably less significance … than to a court imposing retributive justice" (*GMC v Jagjivan* [2017] EWHC 1247 (Admin) at [40(vii)] Sharp LJ, as she then was, *per curiam*).

The Approach to be taken to the Appeal.

35. The appeal is brought as of right under section 40 of the Medical Act 1983 and is subject to the rules in CPR Pt 52. The approach to be taken on such an appeal has been considered in a number of cases. The starting point is now to be found in *Sastry v General Medical Council* [2021] EWCA Civ 623, [2021] 1 WLR 5029 where Nicola Davies LJ delivered the judgment of the court. At [102] Nicola Davies LJ said:

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

36. The court went on to consider the degree of deference to be accorded to the decision of the tribunal. Although there was to be such deference it was not to be more than was warranted: see [103]. The judge hearing the appeal had to determine whether the sanction imposed was wrong or was unjust because of a serious procedural or other irregularity. A sanction would be wrong if it was excessive (in the sense of going beyond what was necessary for the protection of the public) or disproportionate. The question of whether the sanction was excessive or disproportionate is to be determined by the judge exercising his or her own judgement: see [105], [107] – [110], and [112]. Where the impairment in question results from matters of sexual misconduct or dishonesty the court is better placed to assess for itself what is needed to protect the public and to maintain the reputation of the profession than it is when the impairment results from failings in clinical practice or the like. It follows that in cases of the former kind the degree of deference to be accorded to the assessment made by the tribunal is reduced: see [106] and [113]. I will consider below the approach to be taken to a tribunal's assessment of insight in a case such as this.

The Sanctions Guidance.

37. The Guidance is akin to the Indicative Sanctions Policy considered by the Court of Appeal in *Professional Standards Authority v Health & Care Professionals Council and Doree* [2017] EWCA Civ 319. It similarly has no specific statutory provenance or status. As Lindblom LJ (with whom Sharp LJ agreed) explained at [29] a disciplinary panel has to have proper regard to such guidance and to apply it as its own terms suggest unless the panel has sound reasons for departing from the guidance in which case the reasons for departing from the guidance should be stated. A disciplinary panel does not, however, have to "adhere" to such guidance in any more formal sense.

38. In *General Medical Council v Khetyar* [2018] EWHC 813 (Admin) Andrew Baker J addressed the effect of an earlier iteration of the Guidance. As he explained at [21] and [22]:

> "21 … by definition Guidance advice as to when erasure may be or is likely to be appropriate is advice as to where the line is to be drawn between the most serious misconduct because of which a doctor should not be allowed to practise again, and misconduct that falls short of that whilst still being very serious. As Ms Richards put it, such advice is an authoritative steer for tribunals as to what is required to protect the public, even if it does not in any particular case dictate the outcome.
>
> 22 As part of Guidance at the heart of which is the principle of proportionality (weighing the public interest against the individual interests of the particular doctor), such advice is an authoritative steer in particular as to the application of that principle. Again, of course, it remains advice and not prescription: tribunals must ultimately judge each case

> on its own merits, and are entitled in principle to depart from that steer. Doing so, however, requires careful and substantial case-specific justification…"

39. Mr Leviseur emphasised that the Guidance was not to be seen as a straitjacket and argued that as a consequence it was possible for a sanction which accorded with the Guidance to be excessive or disproportionate. It is right that it is not a sufficient answer to an appeal for the General Medical Council simply to say that the decision was in accord with the Guidance and it is also right that it is conceivable that a sanction which accorded with the Guidance could be excessive or disproportionate. However, it will be a rare case in which that is the position. The Guidance is to be seen as a considered assessment of the approach which will be applicable and as giving an "authoritative steer" as to the sanction which will be appropriate in the absence of special circumstances.

40. At paragraphs 45 and 46 the Guidance explained that the presence of insight was a mitigating factor while noting, at paragraphs 51 and following, that its absence was an aggravating factor.

41. At paragraph 108 the Guidance said:

> "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."

42. Then at paragraph 109 it said:

> "Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).
>
> a A particularly serious departure from the principles set out in *Good medical practice* where the behaviour is fundamentally incompatible with being a doctor.
>
> b A deliberate or reckless disregard for the principles set out in *Good medical practice* and/or patient safety.
>
> …
>
> h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128).
>
> …
>
> j Persistent lack of insight into the seriousness of their actions or the consequences."

43. The following parts of paragraphs 120 – 128 are of note for current purposes:

> "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:
>
> …
>
> d inaccurate or misleading information on a CV
>
> …
>
> 128 Dishonesty, if persistent and/or covered up, is likely to result in erasure …"

Discussion.

44. Mr Leviseur's core contention was that the Tribunal's approach to the issues of insight and remediation was flawed. The most important question was whether there was a real risk of the repetition of the offending conduct. That was because the presence or absence of such a risk was crucial to assessing what was necessary for the protection of the public and for the maintenance of public confidence in the medical profession. Mr Leviseur submitted that the assessment of the presence or absence of insight and consideration of whether there had been remediation were to be seen as tools to assist in the exercise of determining whether there was a risk of repetition and the degree of such risk and not as ends in themselves.

45. Against that background Mr Leviseur contended that the Appellant had demonstrated that he knew the importance of honesty on the part of medical professionals; that he knew why such honesty was important; and that he knew the seriousness of a public perception that a medical professional had been dishonest. The fact that the Appellant had demonstrated such knowledge was said to be a significant indication that there was no real risk of a repetition of the offending behaviour. That knowledge combined, it was submitted, with the passage of time since the incidents underlying the allegations and the absence of any finding that the Appellant had made a gain as a result of his behaviour to show that there was no real risk of repetition or, at least, that the degree of risk was not such as to warrant the sanction of erasure. In the absence of such risk that sanction was excessive and disproportionate in light of the passage of time since the misconduct and of the Appellant's qualities as a doctor (as demonstrated by his performance as a locum consultant).

46. Mr Leviseur said that the Tribunal erred in attaching importance to the fact that the Appellant was unable to explain why he had made the false statements. He submitted that such an explanation was not necessary for the Appellant to demonstrate insight and was not relevant to the prediction of the risk of repetition.

47. In addition, it was submitted that the Tribunal had failed to take account of the Appellant's state of health at the time of the hearing.

48. The effect was said to be that the court should not defer to the Tribunal's assessment of the Appellant's level of insight. That was in part because of the Tribunal's flawed approach in attaching weight to the absence of an explanation for the making of the statements. In addition, Mr Leviseur submitted that because the court had the transcript of the oral evidence given by the Appellant it was as well-placed as the Tribunal to make an assessment of the Appellant's insight. In that regard Mr Leviseur submitted that the limited weight to be given to a witness's demeanour meant that the fact that the Tribunal saw the Appellant giving his evidence was of little importance.

49. I agree with those submissions to the extent that questions of insight and remediation are primarily relevant as assisting in assessing the level of risk of repetition of the behaviour in question. However, I reject the next steps in Mr Leviseur's argument. The presence or absence of an explanation from the Appellant as to why he made the false statements and of a demonstration of an understanding of what caused him to act in that way are very significant elements in the assessment both of the level of the Appellant's insight and of the risk of repetition of the misconduct. It is necessary for insight to be particular rather than general and of practical application as well as merely theoretical. The relevant insight has to be with reference to the particular actions and the particular misconduct of the doctor whose conduct is in question. As Andrew Baker J said in *Khetyar* at [49]:

> "… insight requires that motivations and triggers be identified and understood, … and any assessment of ongoing risk must play close attention to the doctor's current understanding of and attitude towards what he has done."

50. The presence or absence of an understanding as to why he or she acted in a particular way on the part of a doctor guilty of misconduct is a very important factor in determining whether the doctor might act in the same way in the future. For a doctor to show that he or she knows that they acted wrongly is only part of the process or rather such knowledge will only be sufficient as an indication of insight in certain limited circumstances. Thus, if the doctor did not know at the time of the action in question that the action was wrong then evidence that the doctor now knows that it is wrong might be potent evidence as to the risk of repetition. That might be the position if the misconduct was in respect of a matter of clinical performance or professional etiquette. Normally, however, it will be necessary for the doctor to show that he or she understands why they did what was wrong. That will be particularly so where the misconduct involves dishonesty.

51. Here the Appellant did not suggest that in the period from 2014 to 2017 he did not know that it was wrong to make false statements about his qualifications and that he has now learnt for the first time that such conduct is wrong. The Appellant's case was in fact quite the reverse of that. As noted above in his personal witness statement the Appellant said that "honesty is a cornerstone of my interactions with others"; that he had "consistently" striven to uphold qualities of honesty and integrity; and that his "consistency in upholding [his] values" had enabled him to obtain a reputation for acting with integrity. The Appellant was asserting that he knew of the importance of honest dealing and that he had been committed to it over the years. Therefore, it cannot be said that it was only after the making of the allegations that he had learnt that what he had done was wrong.

52. In light of that the presence or absence of an explanation of why the Appellant acted as he did was a matter of some importance. The personal statement and the accompanying documents were expressed in the most general of terms. The Tribunal was rightly concerned to investigate whether the sentiments expressed in those documents were genuine or were instead a statement of what the Appellant believed he should say and of what he believed the Tribunal would want to hear. It was also necessary to consider whether the Appellant's understanding of the importance of honesty in the relevant matters went beyond the theoretical. Mr Leviseur was right to say that the question of whether there had been remediation of the misconduct is of less importance in cases of dishonesty than in some other forms of misconduct. However, I do not accept that this

means that the Tribunal was wrong to attach weight to the absence of an explanation of why the Appellant acted in a way which he knew was wrong.

53. The issue of the level of insight as demonstrated by the Appellant in his oral evidence is a matter where the court is to pay significant deference to the Tribunal's assessment. As Lindblom LJ said in *Doree* 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".

54. In this case the Tribunal's assessment of the Appellant's level of insight was initially made at the stage of the impairment decision. At that time it was based on the documents alone. The Appellant then gave oral evidence and the assessment of his insight which was made for the purposes of determining the sanction took account of that oral evidence. As noted above the Tribunal was critical of the Appellant's evidence which they characterized as "frequently inconsistent and evasive". Mr Leviseur was right to say that care is needed in taking account of a witness's demeanour. However, that does not mean that no account is to be taken of demeanour. Nor does it mean that an assessment can be made by this court solely by reference to the transcript just as well as could be done by the members of the Tribunal who heard and saw the Appellant give evidence. Inevitably, there is a risk that there will be nuances which are not apparent from the transcript. The court must be cautious before concluding from a transcript that those who heard the evidence were wrong to characterize it in a particular way or that it was not properly open to them to draw inferences from and reach conclusions based on that evidence. It is also important to note that the issue here was the Appellant's current state of understanding with a view to assessing the risk of repetition. That was a very different exercise from making findings as to past events. In the latter exercise contemporaneous documents and inherent likelihood will very often be a better guide to what happened than a witness's recollection or demeanour (with the consequence that less weight may be given to the assessment by those who heard the evidence) but that was not the exercise being undertaken here.

55. I am, therefore, to exercise caution before finding that either the Tribunal's characterization of the Appellant's oral evidence or its conclusion as to the level of insight shown by the Appellant was wrong. I have, however, taken account of the fact that the Tribunal's conclusion was, in part, based on the documents provided by the Appellant. The degree of deference to be attached to the conclusions which the Tribunal drew from those documents is markedly less than that to be accorded to their assessment of the oral evidence. The Tribunal was not materially better placed than I am to assess the effect of those documents.

56. I have considered the Appellant's personal witness statement and the accompanying documents together with the transcript of his oral evidence. The Tribunal's assessment that the Appellant was inconsistent and evasive in the course of that evidence is entirely consistent with the transcript. In those circumstances the Tribunal was entirely justified in emphasising the absence of an explanation from the Appellant for his conduct and in regarding that as being relevant to the question of insight and, therefore, to the risk of repetition. The Tribunal was also justified in regarding the Appellant's oral evidence as indicating that the personal witness statement and the accompanying documents demonstrated at best a theoretical understanding of the importance of honesty. The matter can be put shortly. The Appellant had stated that he had valued honesty and

integrity throughout his personal and professional life but had failed to explain how in the light of that it had come about that he had repeatedly and dishonestly made false statements about his qualifications over a period of some years. The Tribunal cannot be criticised for concluding in those circumstances that there was a lack of insight.

57. On behalf of the Appellant it is said that the Tribunal failed to take sufficient account of his evidence that he had suffered from reactive depression and that at the time of the hearing he was taking medication to address that condition. In the grounds of appeal it was said that "those who are under significant stress and who are additionally being treated with psychotic drugs may not always give logical or coherent explanations for their behaviour". I do not accept this argument. The latter point is an assertion in the most general of terms and even if it were to be accepted as a general proposition (which would depend on expert evidence) it would not advance matters. What would be necessary would be some indication that the Appellant's evidence was or could have been affected in this way by the medication he was taking. The Appellant told the Tribunal of the medication he was taking but also said that he had been "making steady progress" in terms of his reactive depression. The Appellant did not seek to argue at the Tribunal hearing that he was unfit to give evidence and still less was there any medical evidence to the effect that his ability to give evidence was in some way impaired or that his answers might be unreliable. In those circumstances it cannot be said that the Tribunal's decision was flawed by a failure to take those matters into account.

58. Mr Leviseur emphasised that the allegation that the Appellant's dishonesty had enabled him to obtain a position and remuneration which he would not otherwise have obtained had not been established. However, that was not a material consideration in circumstances where the Appellant had not provided an explanation of why he had in fact acted dishonestly. It certainly did not mean that the Tribunal's assessment of the risk of repetition was wrong. Similarly, the absence of further misconduct since 2017 was of little weight when account is taken of the fact that the Appellant had engaged in repeated dishonesty over a period of 3½ years.

59. The Appellant contended that the Tribunal was wrong to take account of the fact that he had not provided further evidence of remediation in the period between the close of the hearing on impairment in September 2023 and the determination of sanction in December 2023. He submits that this was unfair because there was no scope for him to give further evidence and he had in fact undertaken "further training and reflective work" in that period. There does appear to have been some misunderstanding as to whether there might be further evidence. The transcript records comments from the Tribunal Chair at the September hearing which appear to contemplate that further evidence might be adduced at the later hearing. Mr Leviseur says that it was not the understanding of those acting for the Appellant that he would be able to advance further evidence. Mr Leviseur has acted throughout and I accept his account of his understanding at the time. In passing, I note that this misunderstanding demonstrates that a transcript will not always give a complete picture of the atmosphere of a hearing: a point which is relevant to the consideration above of the weight to be given to the Tribunal's assessment of the Appellant's insight.

60. The misunderstanding in respect of further evidence was unfortunate but it does not come close to showing that the Tribunal's conclusion was wrong or that there was some form of procedural irregularity. In reality the Tribunal's comments on the absence of further evidence amounted to the Tribunal saying that the Appellant had not given an

adequate explanation of his actions in the oral evidence he gave in September 2023 and that he had failed to do so even after an interval of time. There might have been force in this aspect of the Appellant's case if he had been saying that by December 2023 he had been in a position to give a credible explanation of why he had acted dishonestly in the period 2014 to 2017 and to show his understanding in that regard. However, that was not the position: the fact that he had gone on further courses or engaged in training in respect of ethics and honesty did not advance matters. It does appear that the Tribunal were of the view that further courses might have been relevant. I am not persuaded that evidence of such courses would in fact have assisted on this point. I come back to the conclusion that unless the Appellant was in a position to demonstrate, in a way which he had failed to do in his oral evidence, that he understood why he had acted dishonestly the further evidence would not have assisted.

61. The other matters raised on behalf of the Appellant go to the issue of whether the sanction of erasure was disproportionate or excessive and I now turn to that. It is necessary to look at the position in the round keeping in mind the over-arching objective and the subsidiary objectives subsumed within it and remembering that the purpose of the regime is the protection of the public and not the punishment of the Appellant.

62. The factors standing in favour of erasure are:

i) The seriousness of any act of dishonesty by a doctor particularly when the dishonesty in question involves a false assertion as to the doctor's qualifications. In *General Medical Council v Theodoropoulos* [2017] EWHC 1984 (Admin) Lewis J, as he then was, noted that "findings of dishonesty lie at the top end of the spectrum of gravity of misconduct" [35] and that "honesty and integrity are … fundamental in relation to qualifications and the system of applying for medical positions" [36]. There have been repeated judicial statements to the same effect and I have had regard to the judgments in *R (Farah) v General Medical Council* [2008] EWHC 731 (Admin), *Makki v General Medical Council* [2009] EWHC 3180 (Admin), *Naheed v General Medical Council* [2011] EWHC 702 (Admin), and *Ranga v General Medical Council* [2022] EWHC 2595 (Admin). Even if the dishonest statements were not made for gain they were nonetheless serious. However, as *Makki* demonstrates, dishonesty does not necessarily and as a matter of course mean that erasure must follow.

ii) Here the Tribunal was concerned not just with one occasion on which the Appellant had dishonestly claimed to have a qualification which he did not have but a number of such occasions occurring over a period of 3½ years.

iii) The absence of insight on the part of the Appellant was a matter of real significance. I have already explained that the Tribunal's conclusion that the Appellant lacked insight cannot be faulted. In light of that there was considerable scope for doubt as to the reliability of the Appellant's assertions as to the importance he attached to honesty and a consequent concern as to the risk of repetition.

iv) Imposition of the sanction of erasure was consistent with the Guidance. Mr Leviseur submitted that the Tribunal had misunderstood and misapplied the guidance when it treated paragraph 109(h) of the Guidance as engaged. In that regard he pointed out that the Appellant's dishonesty had not been covered up.

That is true but it does not mean that paragraph 109(h) was not engaged. That paragraph was concerned with dishonesty which was "persistent and/or covered up". It is clear that the paragraph is engaged if the dishonesty in question is either persistent or covered up. Dishonesty does not need to be continuous to be persistent. Here the Appellant engaged in repeated acts of dishonesty over a prolonged period and the Tribunal was entirely justified in treating that as persistent conduct. The short point is that the Appellant engaged in repeated serious dishonesty and the decision to direct erasure was entirely consistent with the Guidance.

63. What are the factors which fall into the other side of the balance?

i) It is right that there has been no further allegation of any dishonest conduct in the period since November 2017. By the time of the sanction determination that was a period of just over 6 years. However, that is a factor of very limited weight particularly when account is taken of the Appellant's lack of insight.

ii) In the grounds of appeal the Appellant prayed in aid the fact that the dishonesty "did not take place within a professional setting" and that the dishonest statements were not made "to any fellow professional or patient". I do not accept this analysis save for the point that the statements were not made to patients. The dishonest statements related to the Appellant's qualifications and were made in a setting closely related to his work namely to locum agencies who were putting him forward for medical positions. The importance of honesty when a doctor is stating his qualifications has been repeatedly emphasised by the courts. The Appellant's case was very different from that of a doctor who had been dishonest in some matter wholly unrelated to his life as a doctor (though even such dishonesty is to be seen as an important matter).

iii) There is no suggestion that the Appellant is anything other than a competent doctor. It is, indeed, a grave matter to deprive the public of the services of a competent doctor and a grave matter to deprive a professional of his livelihood. Those are considerations of weight but they cannot be determinative.

iv) Mr Leviseur pointed out that the effect of the disciplinary process had been to preclude the Appellant from practising as a doctor for periods totalling about 15 months and had caused his move to qualify as a general practitioner to be put on hold. The submission was that this was to be seen as sufficient to mark the gravity of the Appellant's conduct. The point would have some force if the purpose of the disciplinary regime was the punishment of defaulting medical professionals but it is not. The point has some limited relevance when considering what is necessary for the purpose of upholding professional standards but is not relevant to the objectives of protecting the public (where the crucial consideration is the risk of repetition) and is of minimal, if any, relevance to that of maintaining proper professional standards.

64. Looking at the case in the round the Tribunal's decision was not wrong. In particular, the sanction of erasure was neither excessive nor disproportionate. The Appellant repeatedly made false statements as to his qualifications. He did so dishonestly over a period of 3½ years in the context of making statements to locum agencies. The Appellant failed to provide any adequate explanation of why he acted in that way let

alone provide any real assurance that there was no real risk of repetition. Far from being excessive erasure was an entirely appropriate sanction.

Conclusion.

65. It follows that the appeal is to be dismissed.