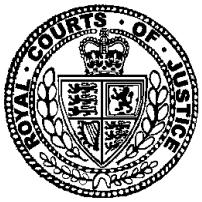

Neutral Citation Number: [2025] EWHC 242 (Admin)

Case No: AC-2024-LON-001121

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/02/2025

Before :

MR JUSTICE FREEDMAN

- -

Between :

DR ABC

Appellant

- and –

THE GENERAL MEDICAL COUNCIL

Respondent

- -
- -

The Appellant appeared in person
Mr David Hopkins (instructed by the **General Medical Council**) for the **Respondent**

Hearing date: 5 December 2024
Judgment handed down in draft: 23 January 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Thursday 6 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

NOTE: This judgment is subject to an anonymity order dated 6 February 2025 which contains a restriction on the publication of names. Reference should be made to the detailed terms of the order.

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MR JUSTICE FREEDMAN:

I Introduction

1. The Appellant appeals, pursuant to s.40 of the Medical Act 1983 against a determination of the Medical Practitioners' Tribunal ("the Tribunal"). The Tribunal found proved that between 2012 and January 2019, the Appellant physically abused his children by the nature, extent, intent and duration of his administering corporal punishment on them. The Tribunal found that his fitness to practise was impaired. It directed that the Appellant's name should be erased from the medical practitioners' register. The direction has not yet come into force because of the appeal, but he is suspended in the interim. The appeal is against all three stages of the determination, namely facts, impairment and sanction.

2. The Appellant submits that the Tribunal made findings of fact which were perverse, made a decision on impairment which was perverse and imposed a (manifestly) excessive sanction. There are also alleged interferences with the Appellant's rights under the European Court of Human Rights ("ECHR"). The Respondent submits that this Court should uphold the determination and denies any interference with the Appellant's rights under the ECHR.

II Findings of the Tribunal

(a) The determination

3. The findings which were made against the Appellant were as follows:

> "1.Between around 2012 and January 2019, you physically abused one or more of the individual(s) set out in Schedules 1, 2, 3, 4 and 5: Amended in accordance with Rule 17(6)
>
> a. In that on one of more occasion you used your hand to smack their:
>
> i. Hand(s), namely the back of their hand(s); Determined and found proved
>
> ii. Bottom(s); Determined and found proved
>
> iii. Cheek(s); Determined and found proved
>
> b. In that on one or more occasion you used a small, thin cane to hit them on their:
>
> i. Bottom(s); Determined and found proved
>
> ii. Feet; Determined and found proved
>
> …

> 10. At all material times the individuals set out in Schedules 1-5 were vulnerable for the reason set out in Schedule 10. Determined and found proved."

4. There were numerous charges before the Tribunal which were found unproved of allegations of violence and coercive and controlling behaviour against the former wife of the Appellant. In detailed reasoning, the Tribunal was dissatisfied with the evidence in support of these allegations and in particular with that of the former wife.

(b) Background

5. As to the background to the allegations, the Tribunal found, at para 2 of its determination on facts:

> "The allegation against [the Appellant] relates to his conduct between 2012 and 2019. Over that period of time [the Appellant] and [his former wife] were members of the Westminster Tradition Church, a Christian organisation based in Malaysia, led by Elijah Chacko, which advocated strict traditional family values and the physical chastisement of children including the use of the cane, for discipline and their spiritual benefit."

6. In relation to Allegation 1, the Tribunal's findings included that the Appellant admitted using his hand to smack his children on the hands bottoms or cheek and using a small thin cane to hit them on their bottoms or feet. The Appellant did not accept that that necessarily constituted physical abuse. Whereas in his Rule 7 response, he initially accepted that these actions did amount to physical abuse, in his submission, he said that his purported admission should not be accepted because he was unaware at the time of making his Rule 7 response of the definitions that the GMC would be relying on. *"The Tribunal concluded that it was a proper inference to draw that [the Appellant's] admissions were based on what he properly considered to be the ordinary meaning of the word abuse/abusive…*[Stage 1/37]". Despite this, when it came to make the decision as to whether the Appellant was guilty of misconduct, it did so based on its assessment rather than on the admission of the Appellant.

7. The Tribunal had regard to an e-mail from Nicola Fitzgerald of National Health Service England dated 17 May 2019 in which there was summarised a telephone discussion with the Appellant the day before. He described his smacking as causing a brief redness but not hard enough to have left a bruise or cause a physical injury. He described this as *"not causing injury but would leave a transient red mark or a small bruise for a brief period."* He also said that he would smack or cane children approximately on a weekly basis. [Stage 1/38]

8. The following are extracts from what was said by the Tribunal at stage 1, the fact findings stage, namely:

"40. The Tribunal was mindful that in England physical chastisement can be lawful in certain circumstances depending on its context and motivation and so long as it is reasonable.

41. In considering whether his actions amounted to physical abuse, the Tribunal bore in mind that the physical chastisement of his children formed part of a sustained and deliberate discipline regime which occurred over a significant period of time. This was advocated by the Westminster Tradition and the principle was embraced by [the Appellant].

42. The Tribunal accepted that taken in isolation, smacking a child on the hand or bottom does not necessarily amount to physical abuse depending on the context and motivation behind it. However, the Tribunal considered it necessary to have regard to the wider context of [the Appellant's] physical disciplining of his children which also included smacks to the face and the use of a cane on the bottom or feet.

[…]

45. The Tribunal noted that [the Appellant] went to Malaysia to buy the canes specifically for the purpose of disciplining his children as they were not available in the UK. The Tribunal also noted that he encouraged Person A to physically discipline the children. In an email he wrote to Person A on 18 May 2016 he advises her to 'Apply the law strongly at home…'

46. The Tribunal bore in mind that the term 'applying the law' was used to refer to the physical chastisement of the children and both [the Appellant] and Person A embraced it whilst in the Westminster Tradition….

47. In oral evidence [the Appellant] stated [that] the motivation for smacking or caning was to discipline his children by inflicting pain. He stated that if the child was not sore as a result, then they would not fear the punishment. He accepted that smacking a cheek/cheeks was also humiliating for the child. He also explained that a cane was a better deterrent as he could warn the children that he would go and get his cane whereas it would not have the same effect if he were to have said he is going to use his hand. He stated that the cane also worked as a visible deterrent which meant that there was less need to use it.

48. The Tribunal also noted that the children, even from the age of two years old, could be smacked or caned for minor misbehaviour including for example, touching their father's books that were placed on a low shelf and within reach of the children. Rather than having the books out of reach, the idea had been to train them not to touch things that were out of bounds. The Tribunal concluded that this was demonstrative of [the

> Appellant] using physical chastisement as a means of punishment for minor misdemeanours and as such, was inappropriate and disproportionate.
>
> […]
>
> 50. The Tribunal considered that the use of physical chastisement, which included the use of a cane which [the Appellant] accepted caused reddening albeit transient, was neither proportionate nor reasonable. [It] considered that a smack on the bottom or hand, in isolation, might not necessarily amount to physical abuse but needed to be considered in its wider context of physical chastisement and the circumstances at the time. As stated above, [the Appellant] accepted that smacking his children's cheeks would be humiliating for them. It also recognised that whether [the Appellant] was prosecuted or convicted was not determinative as to whether or not the facts alleged were proved due to the fundamental differences between the criminal and regulatory jurisdictions which include, but are not limited to, differing standards of proof and differing functions.
>
> 51. The Tribunal found that [the Appellant] had engaged in a deliberate and prolonged period of physical chastisement of his children from age two onwards which included but was not limited to use of a cane. [The Appellant] went to the length of obtaining a cane from Malaysia as he could not buy one in England. [The Appellant] accepted that on the occasions when he caned his children, he would strike them normally between two and four times and, on occasions, up to six times. The use of force was designed to inflict pain and was repeatedly used for what might ordinarily be considered as normal child behaviour. [The Appellant] accepted that, when caning the soles of his children's feet, the children would have to lie on the floor with their feet in the air and, would on occasions have to be restrained. The Tribunal also concluded that [the Appellant] caned the soles of their feet because using similar force on other parts of their bodies might leave marks. Taken in conjunction with [the Appellant's] admissions in his Rule 7 response, the Tribunal concluded that, viewed as a pattern of behaviour, those matters alleged at paragraph 1a and 1b of the Allegation amount to conduct that was physically abusive."

9. The second stage was to determine impairment. The Tribunal found:

As to misconduct:

> "48. The Tribunal considered the gravity of the facts found proved in this case represent a serious falling short of the

> standard expected of a doctor. It involved the deliberate and systematic physical abuse of children from as young as two over a seven year period including with a cane to deliberately inflict pain. The chastisement by caning was carried out in such a way so as to attempt to conceal any visible injury that the punishment might cause. The Tribunal was satisfied that [the Appellant's] actions fell seriously below the standards expected of him as a doctor, particularly paragraph 65 of GMP:
>
> > **"65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession."**
>
> 49. The Tribunal also considered the fellow practitioners would regard [the Appellant's] actions as deplorable.
>
> 50. The Tribunal therefore determined that the facts found proved do amount to misconduct."

As to impairment:

On its determination of impairment, the Tribunal found that [the Appellant's] FtP (Fitness to Practise) is impaired and a finding of impairment was necessary to uphold all three limbs of the overarching objective: see para. 64. The Tribunal's findings of impairment were summarised in the Appellant's skeleton argument, not as an admission, but in order to assist the Court by showing the points which he had to meet on appeal. The summary is as follows:

> "a. The Appellant lacked insight and that this was demonstrated by his reluctance to unequivocally condemn the use of a cane in all cultures and circumstances.
> 'This the Tribunal concluded was demonstrative of a lack of insight into the abusive nature of such chastisement' [Stage 2/54].
>
> b. The Appellant had not fully considered the potential impact his actions could have on his children [Stage 2/55].
>
> c. The Appellant had not meaningfully addressed and therefore demonstrated how his actions might undermine public trust in the profession [Stage 2/57].
>
> d. The Appellant had expressed misgivings about the role of Social Services and therefore the Tribunal had concerns that he might be reluctant to refer a child to Social Services were they to raise concerns about abuse [Stage 2/58].
>
> e. The Appellant had 'a degree of insight' but it was 'not fully developed particularly in regard to the potential harm of his

> actions on his children, as well as the wider public confidence in the profession' [Stage 2/59].
>
> f. Although the Appellant had completed continued professional development (CPD) training, had left the Westminster tradition, and publicly spoken about it, he had not specifically addressed his misconduct. In particular, the Tribunal noted that the Appellant 'had completed a Level 3 Child Safeguarding Course on 8 December 2018 and yet still proceed [sic] to smack a child in January 2019' [Stage 2/61]. The Tribunal was not confident that such safeguarding training would prevent him from using physical chastisement in the future. Therefore, it determined that due to incomplete insight and remediation, there remained an ongoing risk of repetition and that this had a direct bearing on the Appellant's fitness to practise."

10. In its determination on sanction, the Tribunal considered the aggravating and mitigating factors and then addressed each possible sanction in turn, starting with the least serious. It rejected the imposition of a suspension, finding that *"[the Appellant's] misconduct in deliberately and repeatedly physically abusing his children, including with a cane, with the specific intent of causing pain, was fundamentally incompatible with continued registration"* (para. 44) and determined to erase his name from the register [Stage 3/49].

11. The aggravating circumstances were, as the Tribunal reminded itself at [Stage 3/34] *"the gravity of the misconduct which involved repeated acts of physical violence by the Appellant against his children, including with a cane, and with the intention of inflicting pain. It occurred almost weekly unless the Appellant was away from home and the children were fearful of their father. This occurred over a significant period of time and there were attempts to conceal potential visible injuries by using the cane on the soles of the children's feet. The Tribunal also noted the limited insight that the Appellant has into his misconduct as set out in its determination on impairment."*

12. The mitigating circumstances included the lapse of time since the incidents occurred, that there had been no repetition of physical chastisement of his children by the Appellant and the testimonials provided in his support. It was noted that there had been some insight, albeit limited, and that the Appellant had fully engaged with the GMC investigation and these proceedings. He had continued to undertake a number of CPD courses although the Tribunal noted that these did not specifically address the misconduct found proved. The Tribunal took the view that the aggravating factors in the case outweighed the mitigating features [para. 36-37].

13. On sanction, the Tribunal took the view that action was required as a result of the finding of impairment, and there were no exceptional circumstances to take no action. The Tribunal found that *"a period of conditional registration would be insufficient to mark the gravity and the seriousness of the misconduct found and would not uphold the overarching objective"* [Stage 3/41].

14. The Tribunal acknowledged that there was no evidence that serious harm had been caused to the Appellant's children but was mindful of the risk of future serious harm that may manifest itself in future from the Appellant's conduct towards his children as well as a continuing risk to patients. [Stage 3/46]

15. The Tribunal was mindful that the case did not relate to a criminal offence involving violence but concluded that it centred on the Appellant's physical abuse of his children. The Appellant's violent behaviour could quite properly be taken into account when considering whether erasure was appropriate and proportionate [Stage 3/47].

16. The Tribunal had regard to the Appellant's interests noting his submissions relating to the potential financial and personal consequences should erasure be directed. However, given the aggravating features identified, the Tribunal concluded that erasure was the only sanction which would uphold all three limbs of the overarching objective [Stage 3/48].

17. Accordingly, the Tribunal determined that the appropriate sanction would be erasure of the Appellant's name from the medical register.

III The Medical Act 1983

18. The relevant provisions include the following:

Section 1(1A) of the *Medical Act 1983* provides that:

> "the overarching objective of the General Council in exercising their functions is the protection of the public".

Section 1(1B) provides that:

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

Section 35C(2) provides that:

> "(2)A person's fitness to practise shall be regarded as "impaired" for the purposes of this Act by reason only of—
>
> (a)misconduct;
>
> (b)deficient professional performance;
>
> (c)a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;

(d)adverse physical or mental health; or

[not having the necessary knowledge of English (but see section 2(4));

(e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect."

19. The right to appeal and the Court's powers on appeal are set out in the *Medical Act 1983* as follows (irrelevant parts are omitted):

"S.40 Appeals

(1) The following decisions are appealable decisions for the purposes of this section, that is to say—

(a) a decision of a Medical Practitioners Tribunal under section 35D above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;
…

(4) A person in respect of whom an appealable decision falling within subsection (1) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served under section 35E(1) above, or section 41(10) ... below, appeal against the decision to the relevant court.

(4A) A person in respect of whom an appealable decision falling within subsection (1A) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served, appeal against the decision to the relevant court.

…

(5) … "the relevant court"

(c) means the High Court of Justice in England and Wales.

(7) On an appeal under this section from a Medical Practitioners Tribunal, the court may—

(a) dismiss the appeal;

(b) allow the appeal and quash the direction or variation appealed against;

> (c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Medical Practitioners Tribunal; or
>
> (d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court, and may make such order as to costs … as it thinks fit."

IV Case law

(a) Section 40 appeals

20. The Courts have summarised the approach and purpose of the Tribunal in such hearings as follows, per Sir Anthony Clarke MR in *GMC v Meadow* [2006] EWCA Civ 1390:

> "32. In short, the purpose of FTP proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FTP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past."

21. The correct approach to the test in relation to appeals against findings of fact run by way of review was considered by Sharp LJ and Dingemans J in the Divisional Court in *General Medical Council v. Jagjivan* [2017] 1 WLR 4438. The following principles were expounded (at paras. 39-40):

> "The correct approach to appeals under section 40A
>
> 40. In summary:
>
> i) Proceedings under section 40A of the 1983 Act are appeals and are governed by CPR Part 52 . A court will allow an appeal under CPR Part 52.21(3) if it is 'wrong' or 'unjust because of a serious procedural or other irregularity in the proceedings in the lower court'.
>
> ii) It is not appropriate to add any qualification to the test in CPR Part 52 that decisions are 'clearly wrong': see Fatnani at paragraph 21 and Meadow at paragraphs 125 to 128.
>
> iii) The court will correct material errors of fact and of law: see Fatnani at paragraph 20. Any appeal court must however be extremely cautious about upsetting a conclusion of primary fact, particularly where the findings depend upon the assessment of the credibility of the witnesses, who the Tribunal, unlike the appellate

court, has had the advantage of seeing and hearing (see Assicurazioni Generali SpA v Arab Insurance Group (Practice Note) [2002] EWCA Civ 1642; [2003] 1 WLR 577, at paragraphs 15 to 17 , cited with approval in Datec Electronics Holdings Ltd v United Parcels Service Ltd [2007] UKHL 23, [2007] 1 WLR 1325 at paragraph 46 , and Southall at paragraph 47).

iv) When the question is what inferences are to be drawn from specific facts, an appellate court is under less of a disadvantage. The court may draw any inferences of fact which it considers are justified on the evidence: see CPR Part 52.11(4) .

v) In regulatory proceedings the appellate court will not have the professional expertise of the Tribunal of fact. As a consequence, the appellate court will approach Tribunal determinations about whether conduct is serious misconduct or impairs a person's fitness to practise, and what is necessary to maintain public confidence and proper standards in the profession and sanctions, with diffidence: see Fatnani at paragraph 16; and Khan v General Pharmaceutical Council [2016] UKSC 64; [2017] 1 WLR 169, at paragraph 36 .

vi) However there may be matters, such as dishonesty or sexual misconduct, where the court "is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the Tribunal …": see Council for the Regulation of Healthcare Professionals v GMC and Southall [2005] EWHC 579 (Admin); [2005] Lloyd's Rep. Med 365 at paragraph 11 , and Khan at paragraph 36(c). As Lord Millett observed in Ghosh v GMC [2001] UKPC 29; [2001] 1 WLR 1915 and 1923G, the appellate court "will afford an appropriate measure of respect of the judgment in the committee … but the [appellate court] will not defer to the committee's judgment more than is warranted by the circumstances".

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

viii) A failure to provide adequate reasons may constitute a serious procedural irregularity which renders the Tribunal's decision unjust (see Southall at paragraphs 55 to 56)."

22. In *Gupta v General Medical Council* [2001] UKPC 61; [2002] 1 W.L.R. 169, the Privy Council stated at [10]:

> "10. The decisions in Ghosh and Preiss are a reminder of the scope of the jurisdiction of this Board in appeals from professional conduct committees. They do indeed emphasise that the Board's role is truly appellate, but they also draw attention to the obvious fact that the appeals are conducted on the basis of the transcript of the hearing and that, unless exceptionally, witnesses are not recalled. In this respect these appeals are similar to many other appeals in both civil and criminal cases from a judge, jury or other body who has seen and heard the witnesses. **In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body.** This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position…." (emphasis added)

23. An oft cited case, which preceded the Medical Act 1983, is *Libman v General Medical Council* [1972] AC 217 ("*Libman*"), but is still cited in decisions since the Act. Lord Hailsham, giving the reasons of the Board of the Privy Council, held at p 220F–H:

> "(1)The appeal lies of right by the statute and the terms of statute do not limit or qualify the appeal in any way, so that the Appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision: see per Lord Radcliffe, Fox v. General Medical Council [1960] 1 W.L.R. 1017, 1020.
>
> (2)Notwithstanding the generality of the above language, the actual exercise of the jurisdiction is severely limited by the circumstances in which it can be invoked. The appeal is not by way of rehearing in the sense that the witnesses are heard afresh or the evidence gone over again (see per Lord Radcliffe). […]"

24. *Sastry v General Medical Council* [2021] EWCA Civ 623; [2021] 1 WLR 5029 ("*Sastry*") concerned two doctors' (separate) s 40 appeals against sanction. Nicola Davies LJ, giving the judgment of the court, held as follows:

> "102 Derived from Ghosh [2001] 1 WLR 1915] 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.
>
> 103 The courts have accepted that some degree of deference will be accorded to the judgment of the Tribunal but, as was observed by Lord Millett at para 34 in Ghosh, "the Board will not defer to the Committee's judgment more than is warranted by the circumstances". […] Laws LJ in Rachid and Fatnani [2007] 1 WLR 1460, in accepting that the learning of the Privy Council constituted the essential approach to be applied by the High Court on a section 40 appeal, stated that on such an appeal material errors of fact and law will be corrected and the court will exercise judgment but it is a secondary judgment as to the application of the principles to the facts of the case (para 20). […]"
>
> …
>
> 109. We agree with the observations of Cranston J In Cheatle that, given the gravity of the issues, it is not sufficient for intervention to turn on the more confined grounds of public law review such as irrationality. The distinction between a rehearing and a review may vary depending upon the nature and facts of the particular case but the distinction remains and it is there for a good reason. To limit a section 40 appeal to what is no more than a review would, in our judgment, undermine the breadth of the right conferred upon a medical practitioner by section 40 and impose inappropriate limits on the approach hitherto identified by the Judicial Committee of the Privy Council in Ghosh and approved by the Supreme Court in Khan .
>
> ….
>
> 112. Appropriate deference is to be paid to the determinations of the MPT in section 40 appeals but the court must not abrogate

> its own duty in deciding whether the sanction imposed was wrong; that is, was it appropriate and necessary in the public interest. In this case the judge failed to conduct any analysis of whether the sanction imposed was appropriate and necessary in the public interest or whether the sanction was excessive and disproportionate, and therefore impermissibly deferred to the MPT."

(b) Misconduct

25. In *Roylance v General Medical Council (No 2)* [2000] 1 AC 311, Lord Clyde, giving the judgment of the House of Lords, held at p 331B:

> *""Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."*

26. In *R (Remedy UK Limited) v General Medical Council* [2010] EWHC 1245 (Admin) ("*Remedy*"), Elias LJ held at para 37:

> "(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. **Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.**
>
> ...
>
> (6) Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of medicine into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.
>
> …
>
> (9) Unlike the concept of misconduct, conduct unrelated to the profession of medicine could not amount to deficient performance putting FTP in question. … **The conduct must be**

> **at least disreputable before it can fall into the second misconduct limb."** (emphasis added)

(c) Impairment of fitness to practise

27. In *Cohen v General Medical Council* [2008] EWHC 581 (Admin) ("*Cohen*") in the judgment at para 62, Silber J said:

> "Any approach to the issue of whether a doctor's fitness to practice should be regarded as "impaired" must take account of the need to protect the individual patient, and the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour of the public in their doctors and that public interest includes amongst other things the protection of patients, maintenance of public confidence in the [profession]. In my view, at stage 2 when fitness to practice is being considered, the task of the Panel is to take account of the misconduct of the practitioner and then to consider it in the light of all the other relevant factors known to them in answering whether by reason of the doctor's misconduct, his or her fitness to practice has been impaired. It must not be forgotten that a finding in respect of fitness to practise determines whether sanctions can be imposed: section 35D of the Act."

28. In *R (Zygmunt) v General Medical Council* [2008] EWHC 2643 (Admin), at para 32, Mitting J agreed and adopted the above passage with the qualification that, in the second sentence, the present tense should be substituted for the past tense.

29. At para 76 of *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council & Grant* [2000] EWHC 927 (Admin), Cox J approved the test from Dame Janet Smith's *Fifth Report from Shipman* as an appropriate test for panels considering impairment of a doctor's fitness to practise, namely:

> "Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:
>
> a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
>
> b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
>
> c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future."

V Evaluation/inference

30. This is a case in large part about the evaluation of the Tribunal of the seriousness of the conduct, impairment and sanction. Despite the case being more about evaluation than about findings of fact, the Tribunal still had an advantage over the appellate court because it heard, saw and appraised the evidence over many days and saw the whole sea of evidence of the trial which provided a greater depth of appreciation of the conduct. Further, whilst this was not an evaluation of a specialist medical issue, there is some advantage of a specialist Tribunal evaluating physical abuse as professionals in the caring community, whether they were doctors or others having contact particularly with vulnerable people. This then impacts among other things on findings about misconduct, impairment including degree of insight and sanction.

31. In this regard, it necessary to consider a contrast made between (a) findings about primary facts which are difficult to contradict or assail by an appellate court which did not have the advantages of hearing the witnesses give their evidence, and (b) an evaluative judgment. Morris J in *Byrne v GMC* [2021] EWHC 2237 (Admin) stated at para. 16 that *"…there may be a relevant difference when the court is considering findings of evaluative judgment or secondary or inferential findings of fact, where the court will show less deference on a rehearing [than] on a review."* Morris J referred to the case of *E I Dupont de Nemours & Co v S T Dupont* [2006] 1 WLR 2793 ("Dupont").

32. There is a spectrum of appropriate respect depending on the nature of the decision of the lower court which is challenged. At one end of the spectrum will be decisions of primary fact reached after an evaluation of oral evidence where credibility is in issue and purely discretionary decisions. Further along the spectrum will be multi-factorial decisions often dependent on inferences and an analysis of documentary material. Rule 52.11(4) expressly empowers the appellate court to draw inferences. The varying standard of review is discussed in the judgment of Robert Walker LJ in *Reef Trade Mark [2003] RPC 101*, paras 17–30: see *E I Dupont de Nemours & Co v S T Dupont* [2006] 1 WLR 2793 at [94].

33. In Reef Trade Mark, Robert Walker LJ said at [26]: *"How reluctant should an appellate court be to interfere with the trial judge's evaluation of, and conclusion on, the primary facts? As Hoffmann L.J. made clear in Grayan there is no single standard which is appropriate to every case. The most important variables include the nature of the evaluation required, the standing and experience of the fact-finding judge or tribunal, and the extent to which the judge or tribunal had to assess oral evidence."*

34. In the instant case, the following points may be made about the evaluation leading to conclusions about misconduct, lack of insight, remediation and impairment. The degree of deference is less than in respect of simply findings of fact on the basis that the appellate court did not hear the evidence. Nevertheless, in the instant case there are factors which require some deference despite primary facts being to a large extent not controversial. The particular factors are as follows:

(i) the evaluation was not removed from the hearing of the oral evidence in that hearing and seeing the witnesses and the whole sea of evidence must have helped the Tribunal to form the evaluative judgments, and especially the findings of only partial insight or impairment;

(ii) the Tribunal had the professional expertise of a regulatory tribunal, in this case combining legal, medical and lay experience of its members, even though not composed of full-time judges. This must not be taken too far because there was no issue of medical specialism, and the Court does not know of particular aspects of the professional experience and expertise of the Tribunal panel which gave them an advantage over and above the general point about professional expertise of a regulatory tribunal.

35. In the spectrum of decisions, the Tribunal's judgment in these matters requires a degree of deferment , albeit much less than that for a tribunal which has decided primary facts on a simple conflict of evidence.

VI The rejected defence case law

36. In oral submissions, the Appellant stated that there was a tension for him between accepting the position that he had been guilty of misconduct, as he did at the Rule 7 stage, and denying the position with the denial being characterised as evidence of lack of insight. He said that he did go back on that admission not because of a lack of insight, but because (a) the GMC accepted that there was no evidence of serious harm to the children, (b) there was no breach of the criminal law and there was no prosecution or caution, (c) the Family Court had decided not to conduct a fact finding hearing, and (d) there were no restrictions going forward about his seeing his children.

37. A consideration in respect of insight is whether it is wrong to characterise a doctor who denies misconduct as lacking insight. He felt that his position was supported by the impressive testimonials which he had received: from his father, another doctor who formed a part of his social bubble during lockdown, a barrister who was also a priest and the minister of his new church and a couple who had lived near to him. The question then arises as to whether the finding about lack of insight was unfair and inappropriate because the Appellant was simply in the light of the foregoing following his honest belief on reflection that he had done no wrong.

38. There is case law about rejected defences referred to in *Sawati v General Medical Council* [2022] EWHC 283 (Admin) and a concern of interfering with the right of the doctor to defend themselves. In each case, it will depend upon the nature of the attitude to the underlying allegation. In *Sayer v General Medical Council* [2021] EWHC 370 (Admin), Morris J stated the following:

> "(1) Insight is concerned with future risk of repetition. To this extent, it is to be distinguished from remorse for the past conduct.
>
> (2) Denial of misconduct is not a reason to increase sanction.

> (3) It is wrong to equate maintenance of innocence with lack of insight. Denial of misconduct is not an absolute bar to a finding of insight. Admitting misconduct is not a condition precedent to establishing that the registrant understands the gravity of the offending and is unlikely to repeat it….
>
> (4) However, attitude to the underlying allegation is properly to be taken into account when weighing up insight… Where the registrant continues to deny impropriety, that makes it more difficult for him to demonstrate insight. (5) The assessment of the extent of insight is a matter for the tribunal, weighing all the evidence and having heard the registrant. The Court should be slow to interfere."

39. In *Sawati* at para. 105, Collins Rice J distinguished between a doctor positively denying primary facts (what a doctor did or did not do) with denying secondary facts, the evaluation of primary facts. *"Resistance to the objectively verifiable is potentially more problematic behaviour and more relevant to sanction than insistence on an honest subjective perspective."*

VII Sanction

40. On an appeal under s 40, the court must approach the Appellant's challenge to the sanction imposed by a professional disciplinary committee with some diffidence. However, the court is not limited to the more confined grounds of public law review such as irrationality. The court must exercise its own judgment as to whether the sanction imposed was appropriate and necessary in the public interest or whether the sanction was excessive and/or disproportionate. If the sanction was excessive and/or disproportionate, it was wrong, and the court will allow the appeal.

41. In *Ghosh v General Medical Council* [2001] 1 WLR 1915, 1923, para 34, Lord Millett observed:

> "the Board will afford an appropriate measure of respect to the judgment of the committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the committee's judgment more than is warranted by the circumstances."

42. The jurisdiction is appellate, not supervisory: see *Sastry* at paras 103–105 and 109–112, including the quotations set out above. Whilst there may be a degree of deference to a professional tribunal, the court must not abrogate its own duty in deciding whether the sanction imposed was wrong. It must carry out its own analysis of whether the sanction

imposed was appropriate and necessary in the public interest or whether the sanction was excessive and/or disproportionate. The appellate court will and must intervene if there are good reasons for doing so.

43. In *Gupta v General Medical Council [2002] 1 WLR 1691*, in the judgment of the Privy Council, Lord Rodger of Earlsferry, who delivered the judgment, said the following at para. 21:

> "It has frequently been observed that, where professional discipline is at stake, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned. Their Lordships refer, for instance, to the judgment of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, 517—519 where his Lordship set out the general approach that has to be adapted…. In particular he pointed out that, since the professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction. And he observed that it can never be an objection to an order for suspension that the practitioner may be unable to re-establish his practice when the period has passed. That consequence may be deeply unfortunate for the individual concerned but it does not make the order for suspension wrong if it is otherwise right. Sir Thomas Bingham MR concluded, at p 519: "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price." Mutatis mutandis the same approach falls to be applied in considering the sanction of erasure imposed by the committee in this case."

VIII Grounds of Appeal

44. The Appellant's grounds of appeal are:

> "Ground 1: In the absence of any authority – legal, psychological or otherwise – the Tribunal made perverse findings that:
>
> a. The Appellant's behaviour towards his children was abusive.
>
> b. The Appellant's behaviour was misconduct.
>
> c. The Appellant's fitness to practice was impaired.
>
> Ground 2: The decision to erase the Appellant from the medical register was manifestly excessive.
>
> Ground 3a: Disproportionate interference with the Appellant's Article 8 right to respect for private and family life.

Ground 3b: Disproportionate interference with the Appellant's Article 9 right to freedom of religion and belief."

IX Ground 1a. Finding that behaviour was abusive

(a) The Appellant's submission

45. The Appellant takes issue with the finding that the discipline of his children involved *"the deliberate and systematic physical abuse of children from his youngest of over two years old over a 7 year including with a cane to deliberately inflict pain"*. The effect of the written and oral submission of the Appellant were that the finding of the Tribunal was perverse for the following reasons.

46. First, since there was no criminal offence, then it should not have found that the conduct of the Appellant was physical abuse. It was lawful chastisement. There was no evidence that actual bodily harm or serious harm had been caused to the children. Any speculation, or what the Appellant referred to as guess work, as to serious harm should be avoided.

47. In amplification of the above, the infliction of physical pain to a child by a parent was not *per se* illegal. The position at common law was that it is a good defence that the alleged battery was the correcting of a child by its parents, provided that it was moderate in manner, nature and extent: *Hopley (1860) 2 F. & F. 202.* That was qualified by section 58 of the Children Act 2004 which provides in English law that reasonable punishment is not a defence to various assaults, including (a) assault occasioning actual bodily harm (section 47 of the Offences against the Person Act 1861, (b) the more serious offences under sections 18 and 20 of that Act, and (c) the offence under s.1(1) of the Children and Young Persons Act 1933 protecting children among other things from wilful assaults likely to cause injury to health. In the instant case, there was no evidence that a criminal offence was committed, and in particular there was no evidence of actual bodily harm or worse. Further, it was submitted that the use of a cane as part of reasonable chastisement was not criminal in English law if an offence was committed as a result of its use.

48. Second, it was submitted that the fact that the discipline was deliberate and systematic was not a cause for concern: on the contrary, that was said to be good parenting. There were many cultures and religions or movements where such discipline was encouraged of parents, and it was wrong to treat such behaviour as abusive. That would or may not be an answer if the conduct was criminal in England, but on the basis that it was not criminal, it was wrong to impose in the confines of the home and notwithstanding religious beliefs and practices, some other standard where parental chastisement was said to be physical abuse.

49. In the Appellant's written submissions at para. 5, the Appellant referred to various Scriptural sources (including Hebrews 12: 6-7: *"For whom the Lord loveth he chasteneth, and scourgeth every son whom he receiveth. If ye endure chastening, God dealeth with you as with sons; for what son is he whom the father chasteneth not?"*, Hebrews 12:11: *"Now no chastening for the present seemeth to be joyous, but grievous: nevertheless afterward it yieldeth the peaceable fruit of righteousness unto them which*

are exercised thereby." and Proverbs 13:24: *"He that spareth his rod hateth his son: but he that loveth him chasteneth him betimes."*. It may be that there is a connection between the last quotation and the expression "spare the rod, spoil the child". The Appellant said at para. 26 of his statement, submitted prior to the sanction stage of the hearing, that he is not willing to condemn all physical chastisement as abusive because to do so would be to brand all who physically chastise their children as abusers. He cited polls to the effect that the majority of those interviewed agreed that it was sometimes necessary to smack a naughty child.

50. Third, there was some discussion before the Tribunal about the meaning of abuse. The Appellant complains that it is elusive or imprecise, and. in any event, it was perverse in the circumstances to find that he was physically abusive.

51. Fourth, the absence of harm to his children was evident from the fact that he maintained a good relationship with four of them notwithstanding what on the papers appears to be an acrimonious divorce. Far from being harmed, there were outstanding reports about the eldest child: at least four of the children were happy and secure. The Appellant submitted that the alienation of the fifth child had been caused by his former wife rather than how she had been treated physically. He submitted that the finding of physical abuse was a perverse finding since the Tribunal also found that there was *"no direct evidence of harm being caused to [the Appellant's] children"* and *"no evidence that serious harm had been caused to [the Appellant's] children"*. There was evidence that (a) the conduct was such that the police after investigating the matter decided not to prosecute, (b) in the course of family proceedings, the Appellant's case prevailed by order of HH Judge Robinson over that of his former wife that the children should be permitted to stay with him without restriction, and that an application of the Appellant to have a fact finding inquiry in the Family Court was rejected by HH Judge Scarrett. The GMC also recognised that there was no evidence that serious harm had been caused to the Appellant's children. In the light of all of the above, it was submitted that it was perverse for the Tribunal to make the finding of physical abuse, and any speculation should have been avoided.

52. Fifth, the Appellant submitted that specific findings were contradictory. Whereas at stage 1, the finding was that the Appellant used the cane to the soles of their feet because that would not leave marks, at stage 2 the finding was that the caning was carried out in such a way as to attempt to conceal any visible injury that the punishment might cause. There was no basis for the finding of concealment which was very different from the finding that the Appellant was seeking not to leave marks.

(b) Discussion

53. I am satisfied that the Tribunal was entitled to find that the conduct of which they had heard amounted to physical abuse. In so doing, they took into account the whole sea of evidence before them which included the following facts and matters, namely:

(i) repeated acts of physical violence by the Appellant against his children, including with a cane, and with the intention of inflicting pain;

(ii) particularly egregious was the slapping the cheeks of the children and the use of the cane on the bottom and on the bare soles of the feet;

(iii) the fact that it happened over such a long period of over 6 years between 2012 and early January 2019;

(iv) the fact that it occurred almost weekly whilst the Appellant was at home;

(v) the attempts to conceal potential visible injuries by using the cane on the soles of the children's feet;

(vi) this was a sustained and deliberate regime in which children from the age of two could be smacked or caned for minor misbehaviour including touching their father's books which were placed deliberately within their reach.

54. I shall refer to the points by reference to the numbered points in the summary of the arguments of the Appellant.

55. First, the Tribunal was not characterising all forms of smacking of parents on a child as amounting to physical abuse. It depended on context and motivation and as long as it was reasonable [Stage 1/40, 42 and 50]. By contrast, smacks to the face and the use of a cane on the bottom or bare feet and deliberately intending to inflict pain so that the child feared the punishment was, as a pattern of behaviour, physically abusive [Stage 1/42, 47, 48, 50 and 51]. This was not a decision about corporal punishment in general administered by a parent or about certain kinds of such punishment, but about a specific course of conduct on the facts as found by the Tribunal which included but was not limited to the characteristics referred to in paragraph 48 above. The findings said to amount to physical abuse support the finding of physical abuse. It was the sustained and deliberate nature of the conduct and the cumulative nature and effect of each of the features of the conduct.

56. Should the Tribunal have taken the view that if the conduct was not criminal, it could not therefore be characterised as disreputable conduct on which to give rise to a charge of serious misconduct before the Tribunal?

57. These are different considerations in different contexts. The Tribunal recognised correctly that the question whether the Appellant could be prosecuted or convicted for this conduct was not determinative because of *"fundamental differences between the criminal and regulatory jurisdictions which include, but are not limited to, differing standards of proof and differing functions.* [Stage 1/50]*"* Likewise, the approach of the Family Court is not determinative because their considerations were different from a regulatory tribunal, for example because the latter was especially concerned about the safeguarding responsibilities of a doctor within the community to be vigilant about, and, if appropriate, call out circumstances where the vulnerable might be at risk.

58. Applying the law in *Remedy*, serious misconduct may be outwith professional practice provided that it is disreputable, in other words it brings disgrace upon the doctor and thereby prejudices the reputation of the profession. Did the findings of the Tribunal amount to this? Whilst the Tribunal did not use these precise words, they used words

to the same effect. Reference is made to the words in Stage 1/48-49 and to the following:

(i) the *"gravity of the facts…fell seriously below the standards expected of him as a doctor"*;
(ii) that included failing to ensure that the conduct of the doctor justified his patients' trust in him and the public trust in the profession;
(iii) fellow practitioners would regard the conduct of the Appellant as deplorable.

59. When the decision is read as a whole and particularly in the respects set out in the preceding paragraph, it falls fairly and squarely within the second category of cases referred to by Elias LJ in *Remedy* at [37], quoted above. It comprises conduct of a morally culpable or otherwise disgraceful kind occurring outwith the course of professional practice which brings disgrace upon the doctor and thereby prejudices the reputation of the profession. Even if these precise words were not used in the decision, words to the same effect were used. Even if they were not words to the same effect, an appellate court should avoid narrow textual analysis as to the meaning and effect of the Tribunal's reasons, especially when considering the reasoning of a tribunal not composed of professional judges: *Piglowska v Piglowski* [1999] 1 WLR 1360 per Lord Hoffmann at p 1372F–H and *General Medical Council v Donadio* [2021] EWHC 562 (Admin) per Collins Rice J at para 45.

60. The Tribunal assessed the course of conduct and reached the conclusion which they did on the basis of the evidence as a whole. It was not an answer that many parents slap their children from time to time or that opinion polls might say that a majority of the population would be against a blanket ban on any slapping of children as part of parental discipline. The Tribunal made a distinction between the conduct which they found in respect of the Appellant and *"physical chastisement [which] can be lawful in certain circumstances depending on its context and motivation and so long as it is reasonable"* [Stage 1/40]. In the judgment of the Tribunal, this conduct went far beyond that, particularly the slaps to the face and any use of the cane, and especially the caning to the bare soles of the feet with intent to cause pain, and also physical chastisement following minor misbehaviour which was inappropriate and disproportionate [Stage 1/48, 51].

61. Since most of the facts were established, this is not a case where the appeal is about findings of fact, where it is very difficult to overturn the findings given the advantages of the Tribunal in seeing and appraising the witnesses. There were some exceptions to this which were about findings of fact, such as the incident about the books placed in low shelves where the finding was based on the evidence of the former wife of the Appellant whose evidence was rejected on many other matters [Stage 1, 48, 49]. It does not follow that a Tribunal is bound to accept or reject every part of a witness's testimony, nor is it a reason for an appellate court to treat the finding as perverse.

62. This is a case in large part about the evaluation by the Tribunal of the seriousness of the conduct. Despite the case being more about evaluation than about findings of fact, the Tribunal still had an advantage over an appellate court because it heard, saw and appraised the evidence over many days and saw the whole sea of evidence of the trial which gave them a greater depth of appreciation of the conduct.

63. The Appellant submitted that there was no evidence that this conduct would give rise to his being held in public disgrace or that the reputation of the profession would be damaged by his actions. That is not an answer. This evaluation is made in the first instance by a professional tribunal based on their evaluation of the conduct in question. It was appropriate for the Tribunal to make this assessment on the basis of the evidence before them.

64. Even without deference to the Tribunal, this appellate court on the rehearing finds that the particular conduct entirely justified the finding that the conduct was physically abusive. That is by considering the matter afresh and even without showing deference to the evaluation of the professional tribunal whether due to its having seen the evidence being given over many days or due to its being a specialist tribunal.

65. Second, in answer to the point about religious motive, the decision was based on an objective appraisal of the behaviour rather than by reference to the motive of the Appellant. It is not an answer that there was a religious motive, that is induced by as the teachings of the Westminster Tradition or that such conduct is said to be more prevalent in other cultures of other parts of the world or was historically so in this country. Even if there can be adjustments to take into account other cultural and religious norms, the particular conduct fell outside any reasonable adjustments. By reference to the normative understanding of what is physically abusive in England at this point in time in the twenty-first century, the Tribunal was entitled to characterise the course of conduct as deplorable and amounting to physical abuse. Approaching the matter on a rehearing, this appellate court reaches the same conclusion.

66. Third, there was nothing wrong with using the term "physical abuse." The Tribunal was entitled to form the view that it was well understood by the Appellant who accepted that he had been physically abusive in his Rule 7 response and that he understood what it meant [Stage 1/36-37]. The term is well understood, particularly in connection with safeguarding of children, which is an area which is fundamental to health care professionals such as a general practitioner. This appellate court carrying out its own analysis and evaluation on a rehearing also finds that the conduct as a whole is rightly described as amounting to physical abuse.

67. Fourth, the findings were not contradictory. The reference to *"no direct evidence of harm being caused to his children"* was in the context that the Tribunal had not heard evidence directly from the children. That was not inconsistent with the Tribunal finding in the same sentence that *"the Appellant's chastisement of his children was abusive and the potential for its harmful impact on his children to manifest itself in the future is real"* [Stage 2/56]. In respect to the statement that "*no evidence that serious harm had been caused to [the Appellant's] children"*, the Tribunal was entitled to have regard to *"the risk of serious harm that may manifest itself in future from [the Appellant's] conduct towards his children as well as a continuing risk to patients as identified in its impairment determination."* [Stage 3/46]

68. Fifth, there is no contradiction in respect of the remarks about marks on the sole of the foot. The two remarks can be understood on the basis that the expectation was that there would be no marks on the sole of the foot, but if there was a mark, then it would be hidden. Whilst there was no evidence of actual bodily harm (if the particular transient reddening of the skin is not to be treated as amounting to actual bodily harm which will be assumed in this case), it is an incident of even controlled violence that

the harm might be greater than intended or expected. Even if, contrary to this, there was any contradiction, such a point of detail does not make any difference to the coherence of the overall finding that the decision and reasoning of the Tribunal was that the conduct as a whole amounted to physical abuse.

69. In short, the ground of appeal about the evaluation of the conduct amounting to physical abuse must fail. There has been no perversity. The Tribunal did not abuse the advantage available to them. Considering these matters afresh by way of a rehearing and undertaking its own analysis and evaluation, with some degree of deference to the Tribunal to the limited extent set out above or even without deference, the appellate court agrees with the approach and the conclusions of the Tribunal.

X Ground 1b. Finding that the behaviour was misconduct

70. The argument of the Appellant is that if the finding of abuse was perverse, then the finding of abuse is likewise perverse. For the reasons set out above, the finding of misconduct was not perverse. On the contrary, it was a finding which was justified on the facts before the Tribunal. As noted above, serious misconduct may be outwith professional practice provided that it is disreputable, and the Tribunal was entitled to reach the conclusions about disrepute which it did. Considering the matter afresh, this appellate court reaches the same conclusion. This ground 1b is therefore also rejected.

XI Ground 1c. Finding that the Appellant's fitness to practice was impaired

(a) The Appellant's submission

71. In respect of impairment, the written submissions of the Appellant were as follows:

> "17. …the finding of present impairment on fitness to practice was perverse because:
>
> a. The Tribunal showed intolerance to the Appellant expressing anything other than condemnation of all physical chastisement even though the law allows for reasonable chastisement.
>
> b. The Tribunal viewed the Appellant's denial that his children were abused and not looking for trauma as signs of an ongoing lack of insight despite not having evidence of such abuse or trauma…. Furthermore, the Tribunal cited evidence wrongly when deciding that the Appellant smacked or caned his small children for touching his books. The Appellant's ex-wife did not state that he smacked his children for touching his books. The witness is quoted saying she was 'supposed to prevent the children from touching them' not that she had to cane them.
>
> c. The Tribunal did not put sufficient weight on the fact that the Appellant had not physically chastised his children for in or around five years and assured the Tribunal he would not in

> the future. Actions speak louder than words and therefore, this should have been considered to have more weight in the Tribunal's decision-making.
>
> d. The Tribunal did not put sufficient weight on the remediation the Appellant completed.
>
> e. The Tribunal relied too heavily on the witness statement of 'Person A', the Appellant's ex-wife, despite finding that 'inconsistency in Person A's evidence which undermined the reliability of her evidence generally'…"

(b) Discussion

72. Reference must be made to the reasons of the Tribunal for finding impairment. The Tribunal expressed the correct legal principles [Stage 2/42-46], including reminding themselves of the definition of impairment provided by Dame Janet Smith in the Fifth Shipman Report as quoted above. It reminded itself that it must take into account the Appellant's *"conduct at the time of the events such as any relevant factors since then, whether the matters are remediable, have been remedied and any likelihood of repetition."* [Stage 2/44].

73. With reference to the first submission on impairment of the Appellant (para. 17a. of his submissions), the Tribunal did not show intolerance to the Appellant expressing anything other than condemnation of <u>all</u> physical chastisement. This is apparent from the ruling set out above at [Stage 1/40 and see also 1/42 and 1/50] quoted above that *"in England physical chastisement can be lawful in certain circumstances"*.

74. With reference to the second submission on impairment of the Appellant (para. 17b. of his submissions), the submission that the denial of the Appellant that his children were abused as a sign of an ongoing lack of insight first begs the question as to whether there was abuse. For the reasons above stated, the Tribunal was entitled to conclude that his conduct was physically abusive. The Tribunal first considered the Appellant's insight into his misconduct setting out passages from his own evidence: see Stage 2/52-53. As the Tribunal noted, *"during his oral evidence to the Tribunal, [the Appellant] continued to maintain that his actions were reasonable at the time"* [Stage 2/54].

75. The next paragraphs 57-59 were of particular importance in explaining the concerns of the Tribunal:

> "57. Furthermore, the Tribunal concluded that [the Appellant] has not meaningfully addressed and therefore demonstrated how his actions might undermine public trust in the profession.
>
> 58. The Tribunal also considered that in his oral evidence, [the Appellant] expressed misgivings about the role of Social Services. Furthermore, [the] Tribunal was not satisfied that he

> was familiar with and fully understood his safeguarding responsibilities as set out in the GMC Guidelines: Protecting children and young people**.** It was concerned that if a child raised concerns about abuse, and particularly where the child is from a background where physical chastisement is culturally accepted, he may be reluctant to refer the matter to Social Services.
>
> 59. The Tribunal therefore concluded that whilst [the Appellant] does have a degree of insight, it considered that it was not fully developed particularly in regard to the potential harm of his actions on his children, as well as the wider public confidence in the profession."

76. The concern about social services (repeated in the submissions before the Court) and the concern about not wishing to treat as abusive those from other cultures, particularly conservative religious circles, who employ some degree of physical chastisement, gave rise to the entirely legitimate and reasonable concern of the Tribunal that the Appellant may be reluctant to refer the matter to Social Services.

77. The concern in respect of the evidence as regards the touching of the books has been considered above. It was a factual finding and there is no reason to treat the finding as not properly made. There is no real distinction in context between being '*supposed to prevent the children from touching"* the books and using the usual form of punishment for this. Those words take their meaning and effect on the basis of the context and the evidence as a whole as to which the Tribunal was in a far better position than the appellate court.

78. With reference to the third submission on impairment of the Appellant (para. 17c. of his submissions), namely that the Appellant had not hit his children for 5 years, and that actions speak louder than words, the Tribunal correctly took into account the lack of repetition of the misconduct. The concern of an ongoing risk of repetition was expressed in this way at [Stage 2/62]:

> "Given that the Tribunal has found that [the Appellant's] insight and remediation is limited, it determined that there remained an ongoing risk of repetition. It considered that this risk was mitigated more by dint of [the Appellant] accepting that such actions are not culturally appropriate in the UK, rather than because he has full insight into the unacceptability of his actions and the impact they could have on his children and the wider public confidence in the profession."

79. As regards insight and remediation, in this case, the references to insight and remediation are to be seen as amounting to more than simply denying or not admitting an allegation. They have the following features, namely:

(i) They are about denying secondary facts, that is to say why the course of conduct is to be seen as amounting to physical abuse. They are then telling because they reflect a lack of understanding of why the course of conduct was regarded as disreputable and amounting to physical abuse.

(ii) They are about equating such behaviour to all forms of corporal punishment, even a light smack on the hand or the bottom. That is entirely unrealistic, given the difference between that conduct and the misconduct which has been found. Not to see the difference is to show a lack of insight into his conduct.

(iii) They are about treating such behaviour as reasonable chastisement from the perspective of many religions and cultures, whilst having some recognition that it may not be culturally appropriate in the United Kingdom. The repeated emphasis on other religions and cultures supporting such conduct carries with it the risk of inadequate safeguarding. That is to say that in the event that the Appellant found out that a child had been hit in the same way as he did his children, particularly where it was explained due to religious or cultural reasons, there was a serious risk that the Appellant would accept this instead of recognising and acting on a serious safeguarding issue. It is not an answer that this had not been a problem in the past: there was no identified instance in which the problem had arisen. That is not to say that then problem was theoretical: it was not. The area of safeguarding is so important that the public expects a high level of vigilance on the part of caring professionals in the community, and in the case of the Appellant, there was a serious risk that he would not be vigilant in such situations.

(iv) They are about being negative about the role of social workers in general because of instances where social workers have failed in the past. These negative attitudes bring with them the risk that the Appellant would be circumspect about referring to social workers in child safeguarding cases.

80. These are matters about attitude to the allegation and the kind of conduct which the Tribunal was entitled to take into account when weighing up insight and remediation. It is important to note that this concern is not in a vacuum but is against the background of proven misconduct. The importance of insight and remediation is about conduct in the future reflecting the same attitude both to children and to his approach to the vital issue of safeguarding. It was a part of the duty of the Tribunal to consider these factors as well as mitigation.

81. Returning to the case law above as to whether it is wrong to characterise a doctor who denies misconduct as lacking insight, which engages a concern of interfering with the right of the doctor to defend themselves. In this case, which is largely about denying the evaluation of primary facts, that consideration is less problematic. By continuing to deny what Collins Rice J referred to as the *"objectively verifiable"* in *Sawati* (above cited), the Appellant showed a lack of insight into his actions in the past and the concerns for the future. There is reason for some deference to the Tribunal's assessment of the extent of insight ,the tribunal havingweighed all the evidence and having heard the doctor. In my judgment, the conclusions about limited insight and remediation were ones where the Tribunal had a particular advantage having weighed all the evidence

and having heard the Appellant. They are conclusions which were available to the Tribunal on the evidence.

82. With reference to the fourth submission on impairment of the Appellant (para. 17d. of his submissions) that the Tribunal did not put sufficient weight on the remediation of the Appellant, the Tribunal had regard to the fact that he had not hit the children since January 2019 and to the courses undertaken [Stage 2/60–61]. As regards the courses, the Tribunal took the view that much of it was generic and took into account the smacking of a child in January 2019 shortly after attending a child safeguarding course in December 2018 (Stage 2/61). The Tribunal referred to insight and remediation together which were limited (Stage 2/62) and incomplete (Stage 2/63).

83. With reference to the fifth submission on impairment of the Appellant (para. 17e of his submissions), that the Tribunal relied too heavily on the evidence of the former wife bearing in mind the findings which led to the rejection of her evidence about the charges which were found not to be proven. This has been considered in connection with the issue about the books on the lower shelves, and the criticism has been rejected for the reasons set out above. In any event, most of the factual findings against the Appellant did not turn upon her evidence, and the evaluation of the Tribunal was not such as this Court finds to be unjustified. There is no reason to disturb the conclusion of the Tribunal on impairment.

84. Thus, the Tribunal concluded in view of the foregoing and given the seriousness of the misconduct proved, public confidence required a finding of impaired fitness to practise [Stage 2/63]. The three limbs of the overriding objective would not be met if a finding of impairment was not made, namely 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 that profession.

85. The Tribunal came to a view about impairment which was not wrong. Even without deference to the view of the professional experience of the Tribunal, the finding of impairment was justified on the basis of the evidence as a whole. This was a balancing and evaluative exercise of the Tribunal, and there was nothing to show that their conclusion was perverse or otherwise wrong. In any event, approaching the matter by way of a rehearing, the decision of impairment was entirely justified in the circumstances of the case.

XII Ground 2: the decision on erasure was manifestly excessive

86. The submission of the Appellant was that the sanction of erasure was "manifestly excessive" even if the appeal on Ground 1 (perversity of findings of abuse, misconduct and impairment) fails. Before considering the Appellant's submissions at paras.22-25 of his skeleton argument, there is a preliminary point. The Appellant as a litigant in person has identified what he has to prove at too high and a restrictive level. If this had been an appeal against sentence to the Criminal Division of the Court of Appeal, which is a court of review, then it would be necessary for an appellant to prove that the sentence of the lower court was manifestly excessive. This is not required in an appeal from the Tribunal. The case law is to the effect that it suffices to show that the sanction

was excessive and/or disproportionate. The adverb "manifestly" is an additional hurdle such as to apply only to cases where the original sentence was not just excessive but well outside a range of sentences which were available to the court or tribunal. Despite the formulation on the part of the Appellant, this judgment will consider the matter on the lesser hurdle of whether the sentence was disproportionate and/or excessive.

87. At para.22, the Appellant submitted that the fact that there was no evidence that the Appellant had failed in his duties to safeguard his patients made it inappropriate to suggest that he might fail in his safeguarding duties to patients and the public, particularly having regard to his CPD training. The answer to this is that it is unsound to say that a lack of evidence of actual failures to safeguard patients precluded the Tribunal from evaluating that there was a risk of the same in the future. The Tribunal found that that there was a risk and they were entitled to form that view on their evaluation of the case and for the reasons which they gave, as discussed above.

88. At para. 23, the Appellant submitted that the Tribunal should have been assured from the absence of physical chastisement on his part over the last five years. The second part of this paragraph goes on to consider the position of opinion polls (referred to above), medical professionals smacking their children and not having an impact on public confidence in the medical profession. Here too, the Appellant has confused the case of the person who intermittently gives a smack to a naughty child with the physical abuse found and discussed above. This was a part of the lack of insight on the part of the Appellant, discussed both in the findings and above in this judgment, which was a specific reason for the lack of confidence of the Tribunal in the future conduct of the Appellant. It is regrettable, that at a part of the reasoning in which he is challenging the assessment of his future conduct, the Appellant has again demonstrated this lack of insight.

89. At para.24, the Appellant submitted that actions within the law should not be a concern for the GMC. This is inconsistent with the case of *Remedy* quoted above. It does not follow that the categories of disgraceful or disreputable conduct must be confined to conduct which is criminal. The Tribunal was entitled to treat the conduct as amounting to physical abuse and to regard such matters, albeit not necessarily amounting to the criminal and outwith professional practice, as a matter of concern for the GMC. In *Professional Standards Authority v Social Work England & JS* [2023] EWHC 926 (Admin) per Garnham J, it was recognised that neglect of children *could* amount to misconduct at [64], but this had not been the subject of the charge. The submission that actions that are not criminal law cannot properly form the basis of a finding of misconduct or impairment is rejected.

90. At para. 25, the submission was made that there was a disparity between the treatment of the Appellant (erasure) and that of the former wife of the Appellant (a warning). The submission was that the lesser penalty suggests that the sanction of erasure is manifestly excessive. In a submission following the oral hearing (referring to cases on human rights relevant to issues 3a and 3b), it is also said that the disparity is discriminatory (without identifying the particular form of discrimination). These points are rejected. This was not a case of two people being disciplined before the same tribunal at the same time for the same offence. In any event, the submission is not developed in that there is no information about the process which led to the warning being provided other than it is known that she referred herself. There is no information about the findings against the former wife, about her admissions and about her insight

and any distinguishing features between the two cases. There are therefore not the basic building blocks of the argument to find a disparity (or a discrimination) argument. It follows that the comparison with the former wife does not assist in the consideration of whether the sanction for the Appellant was excessive or disproportionate or provide any other basis for the appeal.

91. There is an additional consideration. In a regulatory matter dealing in part with the protection of the public, different considerations apply from retributory punishment in the criminal courts. It therefore follows that a disparity argument as deployed in criminal cases might not have the same application in a regulatory case save in support of an argument that a sanction is excessive. In the light of the above, the argument does not provide support for the Appellant's appeal.

92. At para. 26, the submission is made that there was a failure to take into consideration the good character of the Appellant as evidenced in particular by the character witness statements speaking highly of the Appellant. It has often been said that mitigation is a matter that is less significant in the regulatory context than in a criminal court because the emphasis is the protection of the public: see *General Medical Council v. Jagjivan* [2017] 1 WLR 4438 at para. 40(vii) above. As regards the significance of his leaving the cult and not hitting the children, this has been dealt with elsewhere. Whilst this showed some insight and assisted his case, in the evaluation of the Tribunal, the risk of repetition was mitigated more by dint of the Appellant accepting that such actions were not culturally appropriate in the UK rather than full insight into the unacceptability of the actions: see [Stage 2/62] quoted above. This has been discussed at length above and will not be repeated, and it was this lack of limited insight and remediation which ultimately led to the decision on impairment. As regards other mitigation including the potential financial and personal consequences of his being unable to practise medicine, this was taken into account [Stage 3/47], but the aggravating features were such that erasure was the only sanction which upheld all three limbs of the overarching objective [Stage 3/48]. As noted above in the reference to *Bolton v Law Society*, considerations which would normally weigh in mitigation of punishment have less effect in the regulatory jurisdiction because of the nature and purpose of this jurisdiction.

93. At para. 27, there was discussion about the Appellant's account of the good relationship between four of his children and him, and a failure of the Tribunal adequately to consider his submission that his not seeing the other child was the result of parental alienation. Insofar as these matters are said to show that the conduct was not misconduct, this was evidently not accepted by the Tribunal. The Tribunal acknowledged that there was no evidence of serious harm caused to the children, but nevertheless the findings were that (a) the chastisement was abusive for the reasons set out above, and (b) there was potential for its harmful impact on the children to manifest itself in the future [Stage 2/56]. It was not speculation to take into account the consideration of the future, but a legitimate consideration resulting from the protracted nature of the course of conduct. After carrying out an analysis and evaluation of the case on the appeal by way of rehearing, there is no reason for the appellate court to find that the decision was wrong or to depart from the findings.

94. The Tribunal applied the correct legal principles to the question of erasure: see Stage 3/29-32. As noted above, it balanced the mitigating and the aggravating features, and took the permissible view that the aggravating features outweighed the mitigating features: see Stage 3/34-37. It bore in mind the Sanctions Guidance (February 2024

edition). It particularly took into account paras. 56c and 56d thereof which stated as follows:

> "Conduct in the doctor's personal life
>
> 56. Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as...
>
> c. inappropriate behaviour towards children...
>
> d. misconduct involving violence or offences of a sexual nature."

95. The Tribunal adopted the staged approach of considering and excluding first no action, then conditions and then suspension. Having done that, it concluded that only erasure upheld the three objectives of the overarching objective.

96. The conclusion of the Tribunal set out at Stage 3/44 was as follows:

> "The Tribunal reminded itself of the serious nature of the misconduct and the aggravating factors it has identified. Notwithstanding the time that has elapsed without incident, it concluded that [the Appellant's] misconduct in deliberately and repeatedly physically abusing his children, including with a cane, with the specific intent of causing pain, was fundamentally incompatible with continued registration."

97. The major matter which led to the sanction of erasure was the course of conduct as summarised at Stage 3/44 above. The concerns about limited insight and remediation were matters which provided concerns for the future in the event of a penalty other than erasure. For all of the reasons set out above, the appellate court should not disturb the conclusion of the Tribunal on erasure and should reject Ground 2. The decision was neither disproportionate or excessive, but it was appropriate and necessary in the public interest. This conclusion is reached on a rehearing having carried out a fresh evaluation of the appellate court, but having shown some deference to the assessment of the professional tribunal. Even without that deference, the appellate court reaches the same conclusion.

XIII Ground 3a: Disproportionate interference with the Appellant's Article 8 right to respect for private and family life

98. Article 8 of the ECHR reads as follows:

> "Article 8: Right to respect for private and family life

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

99. The Appellant submitted that the facts proven relate exclusively to actions carried out by the Appellant in his private and family life. There has not been a criminal prosecution or a caution from the police. Further the Family Court has not prevented him from seeing his children. The submission was therefore that *"Actions which do not relate to a criminal offence are not actions which the GMC, public body, should have been investigating"* (Appellant's skeleton para. 30).

100. The answer to this submission is that Article 8 of the ECHR is a qualified right. The appropriate structure for analysing the application of a qualified Convention right such as that in Article 8 was set out by the Court of Appeal in relation to the analysis of Article 10 of the ECHR in *Adil v General Medical Council* [2023] EWCA Civ 1261:

> "(1) Is what the defendant [that is, the registrant] did in exercise of one of the rights in art 10?
>
> (2) If so, is there an interference by a public authority with that right?
>
> (3) If there is an interference, is it 'prescribed by law'?
>
> (4) If so, is the interference in pursuit of a legitimate aim as set out in para 2 of art 10?
>
> (5) If so, is the interference 'necessary in a democratic society' to achieve that legitimate aim? This question will in turn require consideration of the well-known set of sub-questions which arise in order to assess whether an interference is proportionate:
>
> (a) Is the aim sufficiently important to justify interference with a fundamental right?
>
> (b) Is there a rational connection between the means chosen and the aim in view?
>
> (c) Are there less restrictive alternative means available to achieve that aim?

(d) Is there a fair balance between the rights of the individual and the general interest of the community, including the rights of others?"

101. The GMC accepts that the answer to questions (1) and (2) is yes in respect of Article 8, and it is prepared for this appeal to accept that Article 9 is also engaged. This will be assumed for the purpose of this judgment, but since there has been no argument about it, it is no more than an assumption and not a finding of the Court.

102. As to question (3), the Court accepts the submission of the GMC that for interference to be prescribed by law, the law must be adequately accessible and a citizen must be able to foresee the consequences a given action may entail: see *Sunday Times v United Kingdom* (1980) 2 EHRR 245 at para. 49. In the instant case, it was foreseeable to the Appellant from the GMC's published guidance about good medical practice and protecting children and young people that physical abuse of children would be regarded as misconduct and lead to a disciplinary sanction.

103. As to question (4), the legitimate aims pursued by a sanction imposed by the GMC in respect of the Appellant's misconduct are the interests of public safety and the protection of health and the protection of children. In answer to question (5), the aims of public safety and the protection of health and the protection of children are sufficiently important to justify interference and a sanction directed at a doctor by a regulator is rationally connected with those aims. What remains to be answered are questions 5(c) and 5(d), namely whether there are less restrictive alternative means available to achieve the aims and whether there is a fair balance between the rights of the individual and the general interest of their community including the rights of others. The answers to those sub-questions turn on the same issues as have been discussed above, namely whether the sanction was appropriate and necessary in the public interest or excessive and disproportionate. In consequence, ground 3a and 3b stands or falls with ground 2. For the reasons given in respect of ground 2, ground 3a should also be rejected.

104. Since the hearing, and with the consent of the Court, further authorities were notified to the Court. The Appellant notified three authorities relied upon mainly in connection with Article 8 rights about privacy. They are *Dudgeon v United Kingdom* (1982) 4 EHRR 149 (about legislation then in Northern Ireland under which private acts between consenting male homosexual acts remained illegal), *ADT v United Kingdom* (2001) 31 EHRR 33 (about a prosecution and a conviction for gross indecency about the filming of private sexual activity between consenting homosexuals not for public dissemination) and *Lustig-Prean v United Kingdom* (2000) 29 EHRR 548 (investigations into the homosexuality of members of the Royal Navy and their discharge on the sole ground that they are homosexual). These cases were very different from the instant case. The first was about the lawfulness of legislation, the second was about a prosecution, and the third was about inquiries into a person's sexuality with a consequence of discharge from their chosen occupation. In related ways, there was no necessity for the legislation, the prosecution/conviction and the bar to serving or continuing to serve in the army. None of this has application to the instant case.

105. The instant case occurs not in the context of criminal law, but in the context of regulatory concerns. In that context, the legitimate aims have been identified above, being the interests of public safety and the protection of health and the protection of children. In this context, it is legitimate for the Tribunal to treat as misconduct matters which are not necessarily criminal and/or which are outside the professional activities of the doctor. The sanction directed at a doctor by a regulator is rationally connected with those aims and is appropriate and necessary in the public interest, and not excessive or disproportionate. The factors identified in the discussion of *Adil* above apply such that the result is that there is no breach of the qualified Article 8 rights.

XIV Ground 3b: Disproportionate interference with the opponents Article 9 right to freedom of religion and belief.

106. Article 9 of the ECHR is in two parts. It reads as follows:

> "Article 9: Freedom of thought, conscience and religion
>
> 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

107. The submission is the Appellant's belief that mild physical chastisement has been used to argue that he is not fit to practise, but that is said to be an interference with his religious beliefs and the manifestation of those beliefs. To that end, he relies upon the Bible being the final authority and the rule for faith and life as stated in the Westminster confession of faith 1646. He relies on the Biblical references identified from Hebrews and Proverbs mentioned above.

108. The Appellant relies on the case of the European Court of Human Rights of *Bayatyan v Armenia* (Case No. 23459/03) which concerned the imprisonment of an Armenian citizen who was a Jehovah witness and as such was a conscientious objector to serving in the armed forces. This gave rise to a conviction in Armenia. The European Court of Human Rights held that this offence and the punishment had violated the right to freedom of thought, conscience and religion. At para. 126 of the Judgment, it was stated that *"Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position."* On the facts of that case, it was held that the balance ought to have been in favour of the

individual who had offered to provide civilian service to society for the duration of what would otherwise have been his armed service. This option was not available despite Armenia having previously indicated that it would implement an alternative of civilian service but had not done so.

109. The Appellant submitted that there was a failure in the instant case to take into account the religious convictions of minorities such as those parents who believed as a matter of religious belief and conviction that they should be able to administer non-criminal chastisement on their own children in the privacy of their own home. It was contrary to freedom of thought, conscience and religion then to say that a doctor who had acted in his private life pursuant to that belief was guilty of physical abuse. Likewise, it was contrary to those freedoms to find that the Appellant was not fit to practise or that he should be erased because of his conduct. Further, it was wrong to make findings about impairment and sanction that did not respect the freedom of thought, conscience and religion of those who maintained that non-criminal chastisement of their own children was permitted or mandated.

110. As stated above, the freedoms under the Articles 8 and 9(2) are qualified rights. There is a balance in each case. As regards a regulator concerning itself with the legitimate aims identified above, namely the interests of public safety and the protection of health and the rights of the vulnerable, namely children. In achieving that balance, it is appropriate in the instant case for a Tribunal and this court to reach the conclusions above as to misconduct, impairment and sanction for the reasons given. This is notwithstanding, to the extent that it is the case, that some minorities might have religious beliefs favouring or even mandating such conduct. This is not a blanket prohibition to the public at large, but it is a responsibility taken up by members of the medical profession which is necessary in order that the above mentioned legitimate aims are upheld.

111. There is no limitation on the Appellant's religious or other beliefs (Article 9(1)). If and to the extent that the physical abuse against the vulnerable is a manifestation of religious or other belief (Article 9(2)), that is subject to such limitations as are prescribed by law. The interference with the manifestation of belief is in the pursuit of legitimate aims pursued by the GMC, namely the interests of public safety and the protection of health and the protection of the rights of children, whether within the family or in the community in the context of the safeguarding responsibility of a doctor in the community. Those aims are sufficiently important to justify interference and the sanction directed at a doctor by the regulator is rationally connected with those aims.

112. A further submission of the Appellant was to give an example that some doctors are publicly vocal about their support for physician assisted dying. Doctors are not subject to professional sanctions implying that they are granted freedom of belief and can be trusted to dissociate their beliefs from their clinical practice.

113. The example of doctors supporting assisted dying does not assist. It is not said that these doctors have practised or would practise assisted dying for so long as it was contrary to the law. There was therefore no manifestation of the belief in that case or any risk that they would do so. By contrast, the Appellant has engaged in a course of conduct which has been found to be physically abusive. In addition to this, he denies that it is abusive or that it impairs his fitness to practise, thereby giving rise to concerns

about limited insight and remediation and concerns about safeguarding in the community.

114. The analysis set out in the discussion above in respect of Article 8 apply to the discussion in respect of Article 9. It follows for these reasons that the case of interference with protected rights under Article 9 falls away, just as does the case in respect of Article 8. Thus, both Ground 3a and 3b must be rejected.

XV Conclusion

115. It follows that each of the grounds of this appeal must be rejected, that the findings of physical abuse, misconduct and determination of impairment to fitness to practise must stand, and that the sanction of erasure must also stand. The grounds contending disproportionate interference with the rights of the Appellant under the ECHR are also rejected. It follows that the appeal is dismissed.

116. The parties were asked to draw up a draft order to give effect to this order. The parties were also asked to consider what was to occur to protect the interests of the children of the Appellant whether by anonymisation or the like. The question arose as to whether the Appellant's name should appear in the title or whether it should be anonymised. The Court asked for the views of the parties of how to achieve this in a manner consistent with open justice. In the event, the parties adopted the anonymisation of the Appellant in the draft. This was to avoid identification of the children and protect their privacy interests. In my judgment, these interests prevail over the publication of the name of the Appellant. There is liberty to apply in the usual way.