Neutral Citation Number: [2025] EWHC 820 (Admin)

Case No: AC 2024 LON 002678

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/04/2025

Before :
Mr Justice Dexter Dias

- -

Between :

DR THANGAVELU SENTHIL KUMAR — **Appellant**

- and –

THE GENERAL MEDICAL COUNCIL — **Respondent**

- -
- -

The appellant in person
Leo Davidson (instructed by **GMC**) for the **Respondent**

Hearing dates: 19 February 2025
(*Judgment circulated in draft: 25 March 2025*)

- -

Approved Judgment

Remote hand-down: this judgment was handed down remotely at 10.30 am on 7 April 2025 by circulation to the parties or their representatives by e-mail and release to the National Archives.

- -

THE HON. MR JUSTICE DEXTER DIAS

Table of Contents

Mr Justice Dexter Dias :

1. This is the judgment of the court.

2. To assist the parties and the public to follow the main lines of the court's reasoning, the text is divided into 13 sections, as set out in the table of contents above. The table is hyperlinked to aid swift navigation.

I. *Introduction*

3. This is a statutory appeal under section 40 of the Medical Act 1983 ("the Act"), made as of right, since no permission is required under this provision.

4. The appeal is brought by Dr Senthil Kumar ("**the appellant**") against a decision of the Medical Practitioners Tribunal ("**the MPT**") on 8 May 2024 that Dr Kumar's registration should be suspended for 8 months following a finding that his fitness to practise was impaired due to misconduct, namely dishonesty, along with an immediate suspension order pending the substantive sanction taking effect ("**the decisions**"). The respondent is the General Medical Council ("**the GMC**"), the regulatory body that brought the

charges against Dr Kumar and proved them following a substantial disciplinary trial.

5. Reducing the matter to essentials, the GMC laid 18 disciplinary charges against the appellant. He admitted 17 of them. The one charge he disputed alleged that he dishonestly used the GMC registration of another doctor ("**Dr A**") to gain access to a private online chat group for doctors seeking to return to medical practice during the Covid pandemic. It is this charge that the MPT found proved and which is appealed, along with the sanctions.

6. While Dr Kumar was represented by very experienced counsel at the Tribunal, he appeared in person on appeal. The respondent was represented by Mr Davidson of counsel. The court is grateful to both of them for their submissions.

7. Shortly prior to the appeal hearing, the appellant filed a report detailing his ADHD diagnosis. As a result, the court adjusted its process to accommodate Dr Kumar and ensure he could engage fully with proceedings. It granted him breaks whenever he needed them and permitted him, should he wish, to sit down when addressing the court, if that might make him more comfortable. In the end, he preferred to stand almost all the time when submitting, as was his choice.

II. ***Brief facts***

8. Dr Kumar qualified as a doctor in India in 1996 and has been a registered General Practitioner with the GMC since 2008. At the times of the events that led to the GMC charges, he was seeking a return to clinical practice.

9. The Tribunal found that from around March to June 2020, and thus in the early stages of the Covid pandemic, Dr Kumar falsely presented himself to a private Facebook group as Dr A. This was a group of doctors seeking a return to practice. After a complaint by the group administrator, there was an internal NHS investigation. Due to the finding of gross misconduct, the matter was referred to the GMC. The regulator pressed charges against Dr Kumar. The case went to trial before the MPT.

III. ***Tribunal decisions***

10. While Dr Kumar admitted 17 of the 18 charges brought, he disputed one. On the list of allegations it is "Paragraph 1(c)" and is framed:

> "you gained access to the private Facebook group 'Covid Returning Doctors Support' by providing the GMC number of Dr A"

11. The Tribunal carefully considered the rival evidence on the allegation. It found Dr Kumar's evidence unsatisfactory. For example, at para 27 of its decision it said:

> "The Tribunal noted that there were some inconsistencies in Dr Senthil Kumar's evidence. During his oral evidence, Dr Senthil Kumar stated that during the creation of his company he had suggested the name "[Dr A names]" as the company was doing business in [a European country] and this name sounded suitably [of that European nationality], but in his statement he had said that the company had been set up by a [Dr A's name] and then sold."

12. The Tribunal continued at para 29:

> "The Tribunal considered that these clear inconsistencies undermined Dr Senthil Kumar's evidence and the weight that could be attributed to his version of events."

13. By contrast, the Tribunal could rely on the evidence of the chief witness against Dr Kumar. It said at paras 31-32:

> "31. In terms of Dr McKelvie's evidence, the Tribunal was of the opinion that she was a straightforward and credible witness. Where she was unclear of events or did not know details she conceded this to the Tribunal and her version of events was consistent. Throughout her evidence she maintained that Dr Senthil Kumar's application in the name of Dr A would not have been accepted without the provision of the associated GMC registration number.
>
> 32. The Tribunal considered that it had a substantial amount of evidence demonstrating the application process and the mandatory requirement to answer the three application questions and provide further information as requested. In addition to the copies of the generic application forms and the evidence of Dr McKelvie, the Tribunal was also provided evidence that the third question on the application form for the Covid Group was amended to ensure applicants provided the name linked to their GMC registration number. It noted that the request applicants provide their GMC registration number was not changed from the inception of the group and was a consistent feature requested as a verification for cross-referencing against the GMC website."

14. At para 36, the Tribunal stated its finding that it found the allegation proved:

> "In light of all the evidence before it, the Tribunal considered that, on the balance of probabilities, Dr Senthil Kumar had completed the application form for the Covid Group using Dr A's GMC

registration number, and accordingly found this paragraph of the Allegation proved."

15. It determined that his conduct overall was dishonest. As a result, his fitness to practise was impaired. The Tribunal stated at paras 42-43 of the impairment stage decision:

> "42. The Tribunal considered that the seriousness of Dr Senthil Kumar's misconduct was increased by the fact that he used a real doctor's name fraudulently and considered that any registered practitioner would be appalled to have their details used publicly and professionally in such a way. It concluded that a member of the public would also find such behaviour deplorable.
>
> 43. The Tribunal therefore concluded that Dr Senthil Kumar's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct that was serious.
>
> Impairment
>
> 44. The Tribunal having found that the facts found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr Senthil Kumar's fitness to practise is currently impaired."

16. The Tribunal imposed the suspension sanctions now challenged. I consider the terms of the suspensions and their rationale in Ground 2.

IV. ***Grounds***

17. The grounds of appeal, to the extent they are ascertainable, are:

> **Ground 1**. Procedural irregularities
> **Ground 2**. Proportionality
> **Ground 3**. Lack of specificity (of allegations)
> **Ground 4A**. Failure to disclose evidence
> **Ground 4B**. Failure to investigate
> **Ground 5**. Failure to follow due process

18. An immediate difficulty is that while trial counsel settled the grounds of appeal, Dr Kumar drafted the skeleton argument for the appeal. The two documents do not formulate the grounds in the same way. In fairness to Dr Kumar, I consider each viable basis within the documents for challenging the decisions of the MPT. I add that the respondent made an application to strike out the appeal on the basis of delay. I address that matter following my examination of the substantive grounds.

V. ***Legal framework***

19. The statutory framework for the GMC and the Tribunal is to be found in the Act, and the General Medical Council (Fitness to Practise) Rules 2004, made under the Act ("the Rules").

20. Section 1(1A) of the Act provides that "the over-arching objective of the General Council in exercising their functions is the protection of the public".

21. Section 35C(2) of the Act provides that:

> "a person's fitness to practise shall be regarded as impaired for the purposes of this Act by reason only of – (a)
>
> misconduct…"

22. The burden of proof is on the regulatory body making the allegation. There is no burden whatsoever on the registrant. Rule 34(12) of the Rules provides that the standard of proof "is that applicable to civil proceedings."

23. Section 40 of the Act makes provision for appeals from Tribunal decisions to, inter alia, the High Court:

> "(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.
> (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.''

24. The appeal test is set out at Part 52 of the Civil Procedure Rules 1998 ("CPR"):

> Hearing of appeals
> **52.21**
> (1) Every appeal will be limited to a review of the decision of the lower court unless—
> (a) a practice direction makes different provision for a particular category of appeal; or
> (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
> (2) Unless it orders otherwise, the appeal court will not receive—
> (a) oral evidence; or
> (b) evidence which was not before the lower court.
> **(3) The appeal court will allow an appeal where the decision of the lower court was—**
> **(a) wrong; or**
> **(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.** *(emphasis provided)*

25. In *Sastry v GMC* [2021] EWCA Civ 623 ("*Sastry*"), Nicola Davies LJ in delivering the judgment of the Court of Appeal set out the approach of the appeal court (here the High Court sitting in an appellate capacity) in section 40 appeals:

> "102. Derived from Ghosh are the following points as to the nature and extent of the section 40 appeal and the approach of the appellate court:
>
> i) an unqualified statutory right of appeal by medical practitioners pursuant to section 40 of the 1983 Act;
> ii) the jurisdiction of the court is appellate, not supervisory;
> iii) the appeal is by way of a rehearing in which the court is fully entitled to substitute its own decision for that of the Tribunal;
> iv) the appellate court will not defer to the judgment of the Tribunal more than is warranted by the circumstances;
> v) the appellate court must decide whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate;
> vi) in the latter event, the appellate court should substitute some other penalty or remit the case to the Tribunal for reconsideration.

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 [34] in *Ghosh*, "the Board will not defer to the Committee's judgment more than is warranted by the circumstances". In *Preiss*, at [27], Lord Cooke stated that the appropriate degree of deference will depend on the circumstances of the case. Laws LJ in *Raschid and Fatnani*, 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 ([20]). In *Cheatle* Cranston J accepted that the degree of deference to be accorded to the Tribunal would depend on the circumstances, one factor being the composition of the Tribunal. He accepted the appellant's submission that he could not be "completely blind" to a composition which comprised three lay members and two medical members.
104. In *Khan* at [36] Lord Wilson, having accepted that an appellate court must approach a challenge to the sanction imposed by a professional disciplinary committee with diffidence, approved the approach and test identified by Lord Millett at [34] of *Ghosh*.
105. It follows from the above that the Judicial Committee of the Privy Council in *Ghosh*, approved by the Supreme Court in *Khan*, had identified the test on section 40 appeals as being whether the sanction was "wrong" and the approach at the hearing, which was appellate and not supervisory, as being whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate.
106. In *Jagjivan* the court considered the correct approach to appeals under section 40A. At [39] Sharp LJ accepted that the "well-settled principles" developed in relation to section 40 appeals "as appropriately modified, can be applied to section 40A appeals." At [40], Sharp LJ acknowledged that the appellate court will approach Tribunals' determinations as to misconduct or impairment and what is necessary to maintain public confidence and proper standards in the profession and sanctions with diffidence. However, at [40(vi)], citing [36] of *Khan* and the observations of Lord Millett at [34] of *Ghosh*, she identified matters such as dishonesty or sexual misconduct as being matters where the court is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the Tribunal.

> 107. The court in *Bawa-Garba* (a section 40A appeal) at [60] identified the task of the High Court on an appeal pursuant to section 40 or section 40A as being whether the decision of the MPT is "wrong". At [67] the court identified the approach of the appellate court as being supervisory in nature, in particular in respect of an evaluative decision, whether it fell "outside the bounds of what the adjudicative body could properly and reasonably decide". It was this approach which was followed by the judge in the appeal of Dr Sastry and which led to the ground of appeal upon which Leggatt LJ granted permission. In so granting, Leggatt LJ stated that there was a real issue as to whether the judge deferred unduly to the Panel's view by approaching the appeal, in effect, as a challenge to the exercise of a discretion when arguably the judge was required to exercise her own judgment as to whether the sanction imposed was excessive and disproportionate. The words and reasoning of Leggatt LJ reflect the approach of the court to section 40 appeals identified in *Ghosh* and approved in *Khan*.
> 108. We endorse the approach of the court in *Bawa-Garba*, as appropriate to the review jurisdiction applicable in section 40A appeals. We regard the approach of the court in section 40 appeals, as identified in *Ghosh* and approved in *Khan*, as appropriate in section 40 appeals which are by way of a rehearing."

26. On appeal, the question for the court is whether the Tribunal was wrong, or the decision unjust because of serious procedural or other irregularity (CPR 52.21(3)). Further, an appeal under section 40 is a full appeal by way of re-hearing (CPR 52.21(1)(a) and Practice Direction 52D, para 19). The appeal court will interfere with findings of primary fact in limited and defined circumstances, as helpfully summarised by Morris J in *Byrne v GMC* [2021] EWHC (Admin) 2237 ("*Byrne*") at para 15:

> "where "any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusions": per Lord Thankerton in *Thomas v Thomas* approved in *Gupta*;
> - findings "sufficiently out of the tune with the evidence to indicate with reasonable certainty that the evidence had been misread" per Lord Hailsham in *Libman*;
> - findings "plainly wrong or so out of tune with the evidence properly read as to be unreasonable": per in *Casey* at §6 and Warby J (as he then was) in *Dutta* at §21(7);
> where there is "no evidence to support a … finding of fact or the trial judge's finding was one which no reasonable judge could have reached": per Lord Briggs in *Perry* after analysis of *McGraddie and Henderson*."

27. The approach to fact-finding was also summarised by Cranston J in *Yassin v GMC* [2015] EWHC 2955 (Admin) ("*Yassin*") at para 32:

> " iii) The Panel has the benefit of hearing and seeing the witnesses on both sides, which the Court of Appeal does not;
>
> iv) The questions of primary and secondary facts and the over-all value judgment made by the Panel, especially the last, are akin to jury questions to which there may reasonably be different answers: *Meadows v. General Medical Council* [197], per Auld LJ;
>
> v) The test for deciding whether a finding of fact is against the evidence is whether that finding exceeds the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible: *Assucurazioni Generali SpA v. Arab Insurance Group* [2003] 1 WLR 577, [197], per Ward LJ;
>
> vi) Findings of primary fact, particularly founded upon an assessment of the credibility of witnesses, will be virtually unassailable: *Southall v. General Medical Council* [2010] EWCA Civ 407 ["*Southall*"], [47] per Leveson LJ with whom Waller and Dyson LJJ agreed."

VI. ***Ground 1 – prejudicial information***

28. Dr Kumar complains that the "independence of the MPT has been breached". This is because of two people. Samantha Bedford is a case manager within the MPT. Yet she also is employed by the GMC. The metadata shows that the statement of a key GMC witness Dr Victoria Reay was in fact "prepared" by a Ms Bedford, who also works for the MPT. This has resulted, as Dr Kumar puts it, in

> "several instances as laid out as evidence within the bundle, [where] several GMC and MPTS personnel were wearing several hats and were simply changing hats to act as Complainant, Police, Judge, Jury, Enforcer. That is exactly what had happened in my case with open and blatant disregard to separation of powers and justice. Justice was simply buried deeper as "GMC has absolute power and Absolute power corrupts absolutely!!!" and in my case has facilitated perjury"

29. These are very serious allegations. They are also false. While this point was raised below in correspondence from Dr Kumar's then-counsel, it was not taken during the Tribunal hearing. That is for good reason. However, it is raised now on appeal and I consider its merits. It is simply resolved. Ms Bedford's email puts the issue beyond doubt. It is dated 9 April 2024, and she says:

> "As you identify, I am a legally qualified Case Manager at the MPTS, and have been since August 2015. Prior to that, I held various roles in the GMC's Legal team from March 2009 to July 2015. While working in one of those roles I was responsible for producing a number of precedent and guidance documents, including various blank templates. I do not know whether the GMC continues to use those templates, but that is the only explanation I can identify for my name being attached to any document produced by the GMC's Legal team after July 2015. For the avoidance of doubt, I have had no involvement in any GMC FTP investigation since I left the GMC's Legal team in July 2015. Consequently I confirm that I have not produced or otherwise worked on the documents you mention below, nor can I recall seeing them before this morning when I viewed the copies we hold on file after reading your email."

30. In light of that response, very experienced counsel who represented Dr Kumar replied the same day with thanks and left the matter there. He was plainly right to. Therefore, the statement template that Dr Reay used was created some years ago by Ms Bedford when she worked for the GMC. This is why her name appears in the metadata. Dr Kumar complains further that Ms Bedford's email should be disregarded as it is not in a witness statement with a statement of truth. The fact is that this point was explored below and then not pursued. That is why Ms Bedford did not formalise her account with a statement of truth – there was no need to. But beyond this, it is entirely uncontroversial and common knowledge within our increasingly digital age that the name of the person who creates a template document and appearing in the metadata (often the "Properties") may not be the same as the person who later adapts and fills in the template. That is so much part of our experience of the modern world that it needs no expertise to support it. Ms Bedford's response is therefore entirely in accordance with common sense and experience of modern digital life.

31. As to other "prejudicial" information being before the Tribunal, the complaint is that the Tribunal was given information about Dr Kumar involving "other allegations that were withdrawn". His submission is based on the IOT twice recusing itself because it was aware of other proceedings involving Dr Kumar. There is no evidence whatsoever that the Tribunal panel that sat on his trial received any of the material or was aware of any of its contents. When asked whether any evidence of such contamination exists, Dr Kumar said, "I can't say that they read it because I am not with them 24 hours a day." He then submitted that "one cannot say that they did not". This is obviously groundless supposition and conjecture.

32. Ground 1 is misconceived. It is dismissed.

VII. ***Ground 2 – proportionality***

33. There are two complaints within this ground. First, the imposition of 8 months was disproportionate. Second, that the imposition of an immediate order meant that his effective suspension was 9 months, even more disproportionate.

34. Dr Kumar stated that other professionals who have "done more serious matters have received less serious sanctions". As he says, "doctors deceive one another and there is such a thing as 'therapeutic lying'". The appellant said that what he did was dishonest, but it was "not that serious, and this is a sledgehammer to crack a nut". He had tried to join a chat group in his own name and was refused entry. People were dying "all around him" during the Covid crisis and he wanted to "find out what was going on" but he was excluded because "I am dark". No patient or any other person was harmed by Dr Kumar's admitted dishonesty, and the Tribunal accepted that this case does not involve "patient safety". In fairness to Dr Kumar, this last point is correct.

35. The Tribunal recognised in its reasoning that not all dishonesty is the same. The question for this court is whether, standing back, it can be said that the 8-month suspension was disproportionate and therefore "wrong". The proper approach to sanction following findings of dishonesty was considered in *Moneim v GMC* [2011] EWHC 327 (Admin) by Lloyd-Jones J (as he then was). He said at paras 109-110:

> "109. I approach this submission bearing in mind the particular respect which is normally due to the view of the expert professional tribunal as to appropriate sanctions, not least because the Tribunal is concerned with the reputation and standing of the medical profession rather than with the punishment of individual doctors. (See e.g. **Raschid v General Medical Council** [2007] 1 WLR 1460, cited at paragraph 17 above.)
>
> 110. The GMC Indicative Sanctions Guidance indicates that where there is a finding of dishonesty the likely sanction would be one of striking off. Having regard to the nature and extent of the findings of dishonest conduct in this case, I am quite unable to conclude that the sanction of suspension for 12 months was wrong. Accordingly the appeal on Ground 3 will be dismissed."

36. This court can for recognised reasons have regard to the judgment of an expert tribunal. However, since this is a matter of dishonesty, something this court has accumulated expertise in, it can also consider the matter more widely. Having done so, I have no hesitation in concluding that the suspension term of 8 months was neither wrong nor disproportionate. In similar vein, Carr J (as she then was) said in *PSA v HCPC, Ghaffar* [2014] EWHC 2723 (Admin) at para 44:

> "There are, of course, numerous authorities emphasising the public interest in maintaining the standards and reputations in the professions. The importance of honesty to the health and care professions is underlined by the fact that striking off may be an appropriate sanction under the indicative sanctions

> guidance. It will often be proper, even in cases of one-off dishonestly (see *Nicholas-Pillai v GMC* [2009] EWHC 1048 (Admin) at paragraph 27). It has been said that where dishonest conduct is combined with a lack of insight, is persistent, or is covered up, nothing short of striking off is likely to be appropriate (see *Naheed v GMC* [2011] EWHC 702 (Admin)).”

37. The MPT did not erase Dr Kumar’s name. The lesser sanction of suspension was unarguably correct (not wrong). The term of 8 months was appropriate and not excessive or disproportionate.

38. I turn to the immediate order. The Court of Appeal has very recently restated that there are two distinct powers based on two separate statutory provisions (*General Dental Council v Aga* [2025] EWCA Civ 68). Nicola Davies LJ made clear the powers and rationales for them at para 42:

> “In my judgment, and as a matter of law and of fact, a direction for suspension and an order for immediate suspension are distinct.”

39. Similarly, Stuart-Smith LJ addressed the issue, fleshing it out at paras 55-57:

> “55. Briefly, there is no basis for aggregating the substantive suspension and the immediate suspension and then treating the aggregated period as if it had been passed as a single substantive suspension. They are clearly different. The substantive suspension is imposed by a direction pursuant to section 27(B)(6)(b) and it is that direction that is not to exceed 12 months (though, as Nicola Davies LJ has pointed out, there are other provisions by which the initially directed period may be extended pursuant to section 27C).
>
> 56. I do not understand what the Judge meant by saying that an order for immediate suspension is “parasitic” upon a direction imposing a substantive suspension. I agree with Nicola Davies LJ that a direction imposing a substantive suspension is a necessary pre-requisite to an order for an immediate suspension; but that does not seem to me to give meaning to the word “parasitic” in this context.
>
> 57. An order for immediate suspension is made pursuant to section 30 and is not subject to the time limit of 12 months mentioned in section 27B(6)(b), which is specific to a direction under that subsection that there should be a substantive suspension. The duration of an immediate suspension is determined by section 30(3) There is a clear difference between the two procedures. With a substantive suspension pursuant to section 27B(6)(b), what is done is that the registrar is directed to amend the register. With an immediate suspension, the order does not require any action by the registrar for the order to be effective. An order for immediate suspension is not susceptible to an appeal pursuant to section 29; but

> it is open to a dentist in respect of whom an immediate suspension has been ordered to apply to the court for an order terminating it: see section 30(7), which has been set out by Nicola Davies LJ above."

40. There was a high degree of need to impose an immediate suspension order on Dr Kumar, given the finding of dishonesty made by the MPT with a view to safeguarding the public and protecting public confidence in the medical profession and its regulation. Dr Kumar submits that the Tribunal "fell into the trap of treating all dishonesty cases the same." Evidently the Tribunal did not. As seen, doctors can be erased following a dishonesty finding. He was not. That the Tribunal took a nuanced approach is evident from its decision on impairment at para 45:

> "The Tribunal was of the opinion that whilst dishonesty can be difficult to remediate, Dr Senthil Kumar's misconduct was capable of remediation."

41. But risks remained, as the Tribunal explained at para 56:

> "The Tribunal determined that in light of Dr Senthil Kumar's incomplete insight and remediation a risk of repetition remained. Whilst Dr Senthil Kumar states that he accepts the findings of the Tribunal, he appears to step back from this when he is required to apply his insight and remediation to the specifics of his own misconduct."

42. Despite its obvious concerns about Dr Kumar, and justifiably so, the Tribunal rejected the GMC's call for erasure. It stated in its sanction decision at paras 33-34:

> "33. The Tribunal concluded that whilst Dr Senthil Kumar's misconduct was serious, his actions were not fundamentally incompatible with continued registration. Whilst he did demonstrate a reckless disregard for the principles set out in GMP, extenuating circumstances have been identified and the Tribunal was satisfied that Dr Senthil Kumar did not abuse his position of trust or pose a risk to patient safety.
>
> 34. The Tribunal was therefore of the opinion that a period of suspension would be sufficient to mark the seriousness of the misconduct found and uphold the second and third limbs of the overarching objective and concluded that erasure would be disproportionate in all the circumstances."

43. As to duration of suspension, the Tribunal carefully weighed the competing considerations and concluded at para 35:

> "The Tribunal considered that a period of eight months would serve to mark the seriousness of the misconduct found and send a signal about the standards expected of registered practitioners, upholding the second and third limbs of the overarching

> objective. It considered that this period would also allow Dr Senthil Kumar sufficient time to assimilate the findings of this Tribunal, engage in further remediation and prepare for a review hearing."

44. As to immediate suspension, the Tribunal concluded at paras 8-9 of its decision on this:

> "8. … that it would be inappropriate not to impose an immediate order in this case, given its finding of serious misconduct and dishonesty and that suspension was necessary to uphold the second and third limbs of the overarching objective.
>
> 9. The Tribunal therefore determined that public confidence in the profession would be undermined and that it would be failing to uphold the statutory overarching objective if an immediate order were not imposed in this case."

45. Finally, the Tribunal said at para 11:

> "This means that Dr Senthil Kumar's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded."

46. No credible basis exists to hold that the separate periods of suspension imposed were either wrong in principle or materially excessive, nor the imposition of both orders anything but necessary and proportionate.

47. Ground 2 is dismissed.

VIII. ***Ground 3 – Lack of specificity (of allegations)***

48. Dr Kumar complains the GMC's allegations were insufficiently "specific". There was little to support this submission in either his skeleton argument or in oral argument. His submission was that since he accepted 17 of 18 allegations, why would he dispute one unless he was not guilty of it? This is a "jury" submission. It adds nothing of value on appeal.

49. He chief complaint on the disputed charge appears to be that the allegation of giving a GMC number to "gain access" to the private chat group "could mean anything". This is unconvincing. It is absolutely plain what was meant by the charge. His defence at trial was that he did not give the other doctor's number. There was no uncertainty about what gain access meant, nor could there be. Indeed, if these allegations were unclear or vague, it is puzzling how, while represented by very

experienced and specialist counsel, he admitted almost 95 per cent of them. On this, Dr Kumar alleges that the Tribunal was biased, and suffered from "cognitive bias" and "subtle microaggressions". It performed a tokenistic "tickbox exercise", and he explained that you have "no chance if you are a man". He also makes another jury point that while he used an abbreviation of the other doctor's name in his group messaging, there is no evidence that the doctor ever called himself by that shortened name. If this were an attempt to deny that he had impersonated the other doctor, it is not only misplaced on appeal, but fails on the known facts. Dr Kumar admits that he had been pretending to be the other doctor and that was his admitted dishonesty. As he says in the skeleton argument at para 14, "I understood impersonating another Doctor was a very silly thing to do and that was when the charges were brought and exercised my duty of Candour and I accepted the truthful charges against me and not those vexatious framed and fabricated by the regulator."

50. If he is suggesting that he never gave the doctor's GMC registration number, he was directed to the extensive records of the group chat where he does precisely that. To the extent that his claim is that he did not give the registration number to gain access to the group, that was a finding open to the Tribunal to make preferring the evidence of the group's administrator Dr McKelvie to his. He failed to explain either why that finding was not reasonably open to the MPT, nor how it relates to the complaint of lack of specificity. Despite the unfocused nature of the submission, I deal with a point of importance to Dr Kumar. The core of his contesting of the access allegation is that it is possible to gain access to the group without it. However, it was pointed out to him that at page 427 of the "Reading List" bundle (further documents) that he filed, messaging is recorded contrary to his point. A person called SCX states that they "forgot that we had to give GMC numbers for the group". Dr Kumar points to page 302 of the bundle where someone called Lx Tx joined without a GMC number. But Dr McKelvie's evidence was that the GMC number was provided in a separate form so it would not be posted directly into the group chat, rather it was separately considered and verified by the group administrator. It was open to the Tribunal to accept this evidence. It did.

51. That said, as Mr Davidson fairly recognised, a gap in the evidence exists as the form Dr Kumar filled in to access the group does not exist anymore. Nevertheless, the Tribunal received oral evidence on the dispute from Dr McKelvie and Dr Kumar. Both were challenged under cross-examination. The Tribunal considered the rival evidence carefully and preferred the evidence of Dr McKelvie for reasons explained in its decision. The Tribunal was entitled to prefer that witness. That finding cannot be faulted or impugned on appeal. The appellant was asked several times by the court why the Tribunal was not entitled to reach the conclusion that it did. He did not provide any answer and there is not a plausible one. The Tribunal reached a decision on the allegation to the requisite civil standard, entirely properly.

52. The disputed charge was clear and very specific. Dr Kumar's complaint is baseless.

53. Ground 3 is dismissed.

IX. ***Ground 4A - failure to disclose evidence***

54. It remains unclear what the details of the complaint are under this head. It appeared at one point that the suggestion was that the full group chat was not disclosed. That claim cannot survive the extracts from the trial transcript:

> "Mr Powell of counsel: "there's a criticism of Dr Kumar, which I assume is said to aggravate the situation, that he was posting derogatory comments in relation to that. We haven't burdened you with every aspect of those WhatsApp messages but you will have seen from the extracts you have yourself that I've described them, in places, as light-hearted and people expressing themselves in ways which were nothing to do with the profession.'"

55. Therefore, the appellant had the full chat log. It is clear, as happens in chat groups frequently, that some messages are deleted. Dr Kumar has not explained beyond conjecturing that there "may have been things that help his case in the deleted messages" what the assistance could be. It was open to Dr Kumar to have put the full chat log before the Tribunal. He chose not to. However, there is nothing in the full chat, which I read in total (drawing certain passages of relevance to the attention of the parties at the appeal hearing), that assists the appellant. There is nothing to suggest that the Tribunal could or should have reached a different conclusion on the one disputed allegation if the full chat were before the court below. It is before this court. I cannot see how it would make any material difference to the determination of the disputed issue. Indeed, in important respects it supports the GMC case: see the above message by SCX, another group member, and the passage where Dr Kumar supplies the other doctor's registration number.

56. Ground 4A is dismissed.

X. ***Ground 4B - failure to investigate***

57. Dr Kumar submits that "The only authority capable providing an independent answer is Facebook corporation to whom the GMC has failed to enforce its investigatory powers to get the real copy of 'A GMC number was never given' evidence. Until then there is no proof." This is wrong factually. There was evidence that the Tribunal supported the proving of the allegation from Dr McKelvie.

58. As to the failure to investigate to try to obtain further evidence, the GMC did send Facebook notices, but did not pursue the process to the High Court. There is no failure of disclosure as the evidence was not in the GMC's control. The material was not in the United Kingdom which is the limit of the GMC's jurisdiction but in Palo Alto, California.

59. Dr Kumar submits that the GMC failed to investigate the allegations properly. For example, Dr McKelvie was not contacted for three years. In the grounds of appeal at para 35, the appellant states:

> "The FTP panel heard the appellant and Dr McKelvie and concluded Dr McKelvie is a [more] credible witness than the

> appellant without truly and properly considering the evidence before them. The panel rejected the Appellant's evidence and regarded Dr McKelvie's evidence even when there was obvious proof that Dr McKelvie was insincere to testify that she had only one Facebook ID whilst she had two and was presented in the evidence bundle. The panel had overlooked this important information when determining the credibility. Hence the finding of the panel is concerning and questionable and must not be relied on."

60. To the extent that the failure to investigate alleged contains an associated criticism of the findings of the Tribunal, I reject it. On appeal it is rare to disturb findings of fact made by the primary fact-finder. Findings of primary fact, particularly founded upon an assessment of the credibility of witnesses, will be "virtually unassailable" (*Southall,* para 47 per Leveson LJ with whom Waller and Dyson LJJ agreed). That is the position here.

61. Dr Kumar then turned to alleging unfair treatment because of his activities as a "whistleblower". He said that the Tribunal was told that he made a protected disclosure about defects in the Test and Trace programme during the pandemic. He maintained that whistleblowers are treated "more harshly". There is no evidence before either this court, or before the Tribunal previously, to support this assertion in respect of him. Dr Kumar accepts that he had dishonestly impersonated another doctor (putting aside the use of the GMC number for a moment). So it is impossible to understand how one could, as Mr Davidson puts it, "draw a line" from the protected disclosure to the outcome in the Tribunal. The appellant had every opportunity to put his case before the Tribunal and challenge any aspect of the charges brought by the GMC. He chose to dispute one allegation. Having looked at its decision, it is plain that the Tribunal considered this dispute very carefully. There is no indication of bias, discriminatory treatment because of his whistleblowing, or any other malfeasance.

62. Ground 4B is dismissed.

XI. ***Ground 5 - failure to follow due process***

63. The nature of the complaint under this ground changed. In his grounds of appeal, the appellant speaks of a conflict of interest involving Dr Helen McGill, Responsible Officer of NHS Professionals and her removal from the NHS Professionals internal process. It is unclear what relevance any of it has to the appeal. The point was not taken before the Tribunal, does not appear in the appellant's skeleton argument and not argued before this court. This is probably because on 31 October 2023 the GMC contacted Dr McGill to be thorough. Dr McGill replied on 7 November 2023:

> "Thank you for your e-mail and the query about my involvement in the internal investigation on Wednesday 1st July 2020 into concerns about the conduct of Dr Kumar, subsequent disciplinary hearing Wednesday 12th August 2020 both of which I believe

> predated the referral to the GMC on the 24th August 2020 following advice from my ELA at the time.
>
> At NHS Professionals we have clear guidelines on carrying out investigations and disciplinary hearings which have been designed to meet the highest standards of the ACAS code of best practice. Whilst I did not personally know Dr Kumar, I was the Responsible Officer for the organisation. As an organisation our processes are designed to provide an independent and fair process which is free from any possible bias and are supported by impartial parties. As Responsible Officer I did not get involved in either the investigation hearing or the disciplinary hearing. As my role as Responsible Officer could have been perceived as conflicted and to avoid any potential conflict of interest affecting the independence of both the hearings I did not take part in either.
>
> It may be that my language was not explicit in this respect when I made the referral to the GMC for which I apologise if this has caused any confusion. I was not removed from the process for any other reason than to not take place in a process that has been designed to be scrupulously fair."

64. There is nothing in this. Mr Davidson trenchantly styled it as another example of the appellant "clutching at straws".

65. Next, the appellant changed course and complained that he was not "allowed to prepare properly for his case". However, he was represented by very experienced counsel who specialises in regulatory matters, including representing doctors in GMC cases at first instance and on appeal. There is no evidence to indicate that Dr Kumar was prejudiced or disadvantaged. One only has to examine the detail of proceedings below to refute such a claim.

66. Next Dr Kumar complained that "the GMC and the MPTPS did not investigate any exculpatory matters. It is the duty of the Panel and it was missed." Once more, there is nothing to support such a far-reaching claim.

67. Ground 5 is misconceived. It is dismissed.

68. I add that in his skeleton argument, but not before me, Dr Kumar "invited" the court to find that his fitness to practise was not impaired. He does not explain or explain adequately why it was not open to the Tribunal to reach the impairment finding. It appears based on his grounds succeeding and thus demonstrating on his analysis that "the findings are unsafe". All his grounds have been rejected. Nevertheless, I have separately considered the matter and conclude that the decision was not wrong. It was not only a decision open to the Tribunal, but a conclusion that was indisputably correct.

XII. ***Application to strike out appeal***

69. The respondent applied to strike out the appeal. The court has jurisdiction to hear an appeal of MPT decisions brought within the statutory time limit, but not if the strict time limit is not complied with unless the court exceptionally grants an extension in its discretion. The appellant's notice must be filed within 28 days of notification of the decision under challenge. There must be compliance with rules under the CPR (*Gupta v GMC* [2020] EWHC 38 (Admin) at para 57).

70. The basis of the GMC's application is that the appeal was not lodged in time and the court should not exercise its narrow discretion to grant an extension.

71. There are two questions (1) whether the appellant filed his appeal in time (2) if not, whether the court in its discretion should extend time.

72. The facts can be simply stated. The parties proceeded in the argument on the basis that the deadline was midnight on 12 June 2024. At 23:58 hours on that day, Dr Kumar emailed the Administrative Court general office email. He claims in the email that he "attached" his appeal. It is clear that at the bottom of his email there is writing stating "High_Court_Appeal_Bundle.pdf". Dr Kumar submits that this complies with the filing requirements.

73. It does not. This is a link to Google drive. Therefore, the requisite appeal documentation was not attached as is required under PD 5B, paras 2.1 and 3.2:

> "2.1 Subject to paragraphs 2.2 and 2.3, a party may e-mail the court and may attach or include one or more specified documents to or in that e-mail.
>
> 3.2 Subject to paragraph 3.3, correspondence and documents may be sent as either text in the body of the e-mail, or as one or more attachments."

74. Instead, the court administration was invited to click a link to an external website through a hyperlink. This court has found that appeal notice filing by hyperlink is impermissible (per Lavender J in *R (ETM Contractors Limited) v Bristol City Council* [2024] EWHC 2263 (Admin)). This is due to the obvious data security and system integrity issues that hyperlinks may produce.

75. The appellant claims that a hyperlink that will click through to a PDF is equivalent to an attachment. It plainly is not. Therefore, on the first question, I have little difficulty in determining that the appeal was not lodged in a valid format in time. On that Mr Davidson is correct. I turn to the second question.

76. The discretion conferred on the court to grant extensions is narrow. The statutory time limit may only be extended in exceptional circumstances. The fault here - and it is a fault clearly attributable to the appellant - was leaving it until a few minutes before the midnight deadline. I agree with Mr Davidson that this brings the case very close to what was said in the seminal and often-cited case of *R (Adesina) v Nursing*

and Midwifery Council [2013] EWCA Civ 818. The Court of Appeal considered an appeal against the first instance decision of Hickinbottom J (as he then was) who held that the appeal was time-barred. Maurice Kay LJ said at para 16:

> "Mr Pascall may have won the legal battle but he does not come within a country mile of winning the forensic war. **On the now undisputed facts, these two appellants simply left it too late**. In accordance with the usual practice of the Council, the adverse decisions were in the presence of each appellant. They had immediate knowledge of the result. In Mrs Adesina's case, time began to run on the day after the day on which her decision letter was posted by first-class post, 30 January 2012. Time therefore began to run on 31 January. Although her factual case was that the letter had not been posted until 9 February and she produced an envelope bearing such a date stamp, the judge found that that envelope had contained a different letter on a different matter. She had not instructed solicitors at the time but she sought the advice of a barrister to whom, on request, a copy of the decision was sent on 2 February. Her notice of appeal was not lodged until 9 March. **It is utterly impossible to see her case as exceptional or her delay as blameless**." (emphasis provided)

77. What might constitute exceptional circumstances was reviewed in *Gupta* at para 47:

> "In these decisions a wide range of circumstances were rejected by the Court as amounting to exceptional circumstances justifying an extension of time to comply with Article 6. These include (a) difficulties in obtaining legal advice or legal aid (*Adesina; Kabba*); (b) inability to raise funds to pay the court fee in time (*Daniels*); (c) a degree of ill health or stress (*Pinto*); (d) where the delay in question was very short, ie, one or two days after the deadline (*Adesina; Adegbulugbe; Parkin; Darfoor*)."

78. On 18 June 2024, the ACO DUC sent Dr Kumar links to an online folder for him to upload documents. According to an email, the appellant tried uploading two documents on 18 June 2024. In response to a GMC query email about the documentation, Dr Kumar replied on 2 August 2024, *"*Please find enclosed the proof of uploading the document on 18 June 2024*."* On 7 August 2024, the Administrative Office emailed Dr Kumar saying, *"*Thank you for your application via the DUC. It has now been issued (attached with the receipt letter)."

79. Here, therefore, the delay is at a minimum six days. His case is that he did file his appeal in time. He did not. He alternatively submits that he "genuinely believed he filed the appeal in time". That is not the test. Dr Kumar relies on the judgment of Sheldon J in *Pandian v General Medical Council* [2024] EWHC 629 (Admin) at paras 27-28. However, this does not assist him. That case involved the registrant being advised of the "wrong" deadline by the tribunal. Here I have considered the question of time limits on the basis that midnight on 12 June 2024 is the operative

deadline. The risk in deciding to attempt to file an appeal until minutes before a 28-day statutory time limit is that you have no time to remedy a defective filing. This is a risk Dr Kumar chose to take.

80. Julian Knowles J put the question for the court in this way in *Gupta* at para 57:

> "I turn to the question whether this case is one of those rare and exceptional cases in which it would be proper to extend the time limit."

81. One focuses on the justification for the delay rather than the substantive merits of the grounds of appeal. Using that measure, there is nothing rare or exceptional in Dr Kumar's case. His delay here is culpable. Accordingly, I refuse to exercise my discretion to extend time. That determines question 2.

82. The consequence of my decisions on questions 1 and 2 is that the respondent's application succeeds. This deprives the court of jurisdiction to hear the appeal as it is time-barred. The appeal must be struck out. I emphasise, however, that I have carefully considered the substantive merits of the grounds advanced and have independently dismissed each of them.

XIII. ***Disposal***

83. The court's prime decisions on the issues arising for determination are:

Ground 1. Dismissed
Ground 2. Dismissed
Ground 3. Dismissed
Ground 4A. Dismissed
Ground 4B. Dismissed
Ground 5. Dismissed

Application to strike out appeal. Granted. Appeal struck out.

84. Therefore, the appeal is struck out. However, on the substantive merits, each ground is dismissed, and the appeal is alternatively dismissed on that basis.