Neutral Citation Number: [2025] EWHC 913 (Admin)

Case No: AC-2024-LON-000301

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 April 2025

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

DR SESHNI MOODLIAR — **Appellant**

- and -

GENERAL MEDICAL COUNCIL — **Respondent**

- -

Giles Powell (instructed on a direct access basis) for the **Appellant**
Alexis Hearnden (instructed by the **General Medical Council**) for the **Respondent**

Hearing date: 15 January 2025
Further submissions: 16 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.30 am on 16 April 2025
by circulation to the parties by email and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. Dr Seshni Moodliar appeals against the finding of the Medical Practitioners Tribunal that she had acted dishonestly in her medicolegal work and directing her erasure from the register of doctors.

2. In a wide-ranging attack on the decision of the tribunal, Dr Moodliar argues no fewer than fourteen grounds of appeal. Her grounds can, however, be grouped into seven principal areas of challenge:

2.1 Grounds 1-3 concern the fact that there was evidence before the tribunal about an earlier tribunal's like finding of dishonesty. Dr Moodliar argues that such material was prejudicial and should have been excluded at stage 1.

2.2 Grounds 4-6 concern the tribunal's decision not to recuse itself.

2.3 Grounds 7-9 challenge the tribunal's approach to its findings of fact and the standard of proof.

2.4 Ground 10 criticises the tribunal's reliance on hearsay evidence.

2.5 Grounds 11 and 12 argue that the tribunal gave inadequate reasons for its findings of fact.

2.6 Ground 13 challenges the sanction of erasure.

2.7 Ground 14 argues that the tribunal erred in law as to the question of dishonesty.

THE APPLICATION FOR AN EXTENSION OF TIME

3. This appeal seeks to challenge a decision that was notified to Dr Moodliar by email sent during business hours on Monday 18 December 2023. Dr Moodliar acknowledged receipt of the email the following day. Section 40(4) of the Medical Act 1983 ("the Act") provides that a doctor can appeal to the court "before the end of the period of 28 days beginning with the date on which notification of the decision was served".

4. As required by s.35E of the Act, the decision was sent with a covering letter from the Medical Practitioners Tribunal Service ("the MPTS") informing Dr Moodliar of her right of appeal. The letter advised that the tribunal's decision would be deemed to have been served on 22 December 2023 such that any appeal had to be lodged on or before 19 January 2024. It is common ground that that was bad advice and that the period for appeal expired on 15 January. Nevertheless, ignorant of the mistake and in reliance upon the MPTS's letter, Dr Moodliar filed her appeal during court hours on 19 January 2024.

5. Giles Powell, who appears for Dr Moodliar, argues that in such circumstances the General Medical Council ("the GMC") is estopped from asserting that the appeal is out of time. Alexis Hearnden, who appears for the GMC, rejects that analysis but rightly does not seek to argue that the court should not exercise its limited discretion to extend time in this case.

6. While the time limit imposed by the Act is apparently absolute, s.3 of the Human Rights Act 1998 requires that s.40(4) must be read down so as to confer a discretion or duty to extend time in exceptional circumstances where the strict application of the 28-day limit would "impair the very essence of the statutory right of appeal": Adesina v. Nursing & Midwifery Council [2013] EWCA Civ 818, [2013] 1 W.L.R. 2156; Pomiechowski v. District Court of Legnica [2012] UKSC 20, [2020] 1 W.L.R. 1604; Stuewe v. Health & Care Professions Council [2022] EWCA Civ 1605, [2023] 4 W.L.R. 7.

7. The issue of the MPTS misleading doctors as to the time limit for filing their appeals is not new. In both Gupta v. General Medical Council [2020] EWHC 38 (Admin) and Razoczy v. General Medical Council [2022] EWHC 890 (Admin) judges made clear that they would have been prepared to extend time had the doctors properly lodged their appeals in accordance with the advice given by the MPTS:

7.1 In Gupta, Julian Knowles J said, at [57], that he would "very likely" have granted an extension of time had Dr Gupta properly filed his appeal by the deadline that had wrongly been advised to him. He had not, however, done so.

7.2 In Razoczy, Fordham J took the same view but, as in Gupta, Dr Razoczy had failed to file his appeal by the time advised by the MPTS.

8. I agree with the approach taken by Julian Knowles and Fordham JJ that to refuse to extend time in a case where a doctor properly files an appeal in accordance with the erroneous time calculations advised by the MPTS and is not otherwise at fault, would be to impair the very essence of the statutory right of appeal. In this case, Dr Moodliar lodged her appeal in accordance with the advice given by the MPTS and I consider that this is therefore one of those rare cases where the court should extend time.

9. Accordingly, it is not strictly necessary for me to engage with Mr Powell's alternative estoppel argument. The difficulty, however, with that analysis is that the statutory time limit goes to the question of jurisdiction and the court cannot be bound by the MPTS's false representation as to its jurisdiction. That conclusion is not affected by paragraph 9 of Schedule 8 to the Act which gives the MPTS a limited discretion to extend time in different factual circumstances, namely where it is satisfied that a doctor did not receive a notice sent by post within 14 days.

10. Before leaving this aspect of the case, I expressed my concern to Ms Hearnden that the MPTS appears to have something of a track record of incorrectly advising doctors of their appeal rights. I am grateful to her for her having raised that matter with the GMC. Upon handing down judgment, I am told that the MPTS has changed its practice and henceforth intends only to send out outcome letters by post thereby making it easier to advise doctors accurately as to the deadline for any appeal.

THE BACKGROUND

11. Dr Moodliar graduated in medicine from the University of the Orange Free State in South Africa in 2000 and gained full registration with the GMC in 2002. From 2003, she worked in various mental health roles in the fields of general and forensic psychiatry. In 2012, she qualified as a member of the Royal College of Psychiatry and, from 2015, she worked as a Consultant Psychiatrist in Learning Disability. From the same year, she was on the register for that sub-specialty. She started undertaking medicolegal work in 2005.

12. In 2020, a colleague reported concerns to the GMC in respect of Dr Moodliar's work as an expert witness in two criminal cases. The matter was referred to the MPTS and a hearing was held by a tribunal between 9 and 20 May 2022. The tribunal found that Dr Moodliar had dishonestly copied sections of another expert's report when acting as an expert witness for the prosecution in the case of Patient A at a hearing in 2017. Further, the tribunal found that, when acting as a defence expert in respect of Patient B between September and December 2019, she had failed to assess the patient adequately in that she failed to obtain a detailed history, perform a detailed mental state examination or take steps to check the veracity of the patient's account; she had failed to explore the possibility of insanity, schizophrenia or psychosis; she had failed to prepare a report that was factually accurate; she had acted beyond her training and expertise in that she acted as an expert witness in a murder case without sufficient knowledge of the law of diminished responsibility; and she had failed to make or keep accurate records. The tribunal concluded that Dr Moodliar's fitness to practise was impaired by her misconduct and imposed conditions upon her registration for a period of 18 months.

13. Subsequently further allegations of misconduct in respect of Dr Moodliar's medicolegal practice came to light. The new allegations concerned her work as a defence expert witness in the criminal trial of Patient D in March 2019. The allegations therefore arose from her conduct in another case between that of Patients A and B, and before the 2022 tribunal proceedings.

14. The new allegations were considered by a tribunal sitting on 15 different days between 30 October and 15 December 2023:

    14.1 At stage 1, the tribunal heard evidence and argument about the allegations and on 6 November it handed down its written decision on the facts finding all of the allegations to have been proved.

    14.2 At stage 2, the tribunal heard evidence and argument about the question of impairment and on 13 December it handed down its written decision that Dr Moodliar's fitness to practise was impaired.

    14.3 At stage 3, the tribunal heard submissions as to the appropriate sanction and on 15 December 2023 it handed down its written decision directing the erasure of Dr Moodliar's name from the medical register.

15. Dr Moodliar represented herself throughout the tribunal proceedings. The GMC was represented by counsel.

THE LEGAL FRAMEWORK

THE REGULATION OF DOCTORS

16. Public protection is at the heart of the regulation of doctors. Section 1(1A) of the Act provides:

> "The over-arching objective of the General Council in exercising their functions is the protection of the public."

17. Section 1(1B) adds:

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

18. Allegations of professional misconduct are referred to a Fitness to Practise Panel of the Medical Practitioners Tribunal. The central question for the tribunal is whether the doctor's fitness to practise is impaired: s.35D of the Act. Misconduct was considered by the Court of Appeal in R (Remedy UK Ltd) v. General Medical Council [2010] EWCA Civ 1245. Elias LJ said, at [37]:

> "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."

19. In the event that some impairment is found, s.35D(2) of the Act provides that the tribunal may, if it considers it appropriate, direct erasure, suspension for up to 12 months, or the imposition of conditions for up to 3 years.

APPEALS

20. By s.40 of the Act, a doctor can appeal to the High Court against directions for erasure, suspension or the imposition of conditions. In Bhatt v. General Medical Council [2011] EWHC 783, at [9], and in Yassin v. General Medical Council [2015] EWHC 2955 (Admin), at [32], Langstaff and Cranston JJ respectively explained the proper approach to appeals under the 1983 Act. In Yassin, Cranston J said, at [32]:

> "Appeals under s.40 of the Medical Act 1983 are by way of re-hearing (CPR PD52D, [19]) so that the court can only allow an appeal where the Panel's decision was wrong or unjust because of a serious procedural or other irregularity in its proceedings: [now r.52.21 of the Civil Procedure Rules 1998]. The authorities establish the following propositions:
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> i) The Panel's decision is correct unless and until the contrary is shown: Siddiqui v. General Medical Council [2015] EWHC 1996 (Admin), per Hickinbottom J, citing Laws LJ in Subesh v. Secretary of State for the Home Department [2004] EWCA Civ 56 at [44];
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> ii) The court must have in mind and must give such weight as appropriate in that the panel is a specialist tribunal whose understanding of what the medical profession expects of its members in matters of medical practice deserves respect: Gosalakkal v. General Medical Council [2015] EWHC 2445 (Admin);
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> iii) The panel has the benefit of hearing and seeing the witnesses on both sides, which the [appellate court] 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;
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> 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 W.L.R. 577, [197], per Ward LJ;
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> 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, [47] per Leveson LJ with whom Waller and Dyson LJJ agreed;
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> vii) If the court is asked to draw an inference, or question any secondary finding of fact, it will give significant deference to the decision of the panel, and will only find it to be wrong if there are objective grounds for that conclusion: Siddiqui , paragraph [30](iii).
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> viii) Reasons in straightforward cases will generally be sufficient in setting out the facts to be proved and finding them proved or not; with exceptional cases, while a lengthy judgment is not required, the reasons will need to contain a few sentences dealing with the salient issues: Southall v. General Medical Council [2010] EWCA Civ 407, [55]-[56].
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> ix) A principal purpose of the panel's jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the medical profession so particular force is given to the need to accord special respect to its judgment: Fatnani & Raschid v. General Medical Council [2007] EWCA Civ 46, [19], per Laws LJ."

21. Appeals challenging the tribunal's findings of fact pose particular difficulties for appellants. Leveson LJ observed in Southall:

> "… as a matter of general law, it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable (see Benmax v. Austin Motor Co. Ltd [1955] A.C. 370); more recently, the test has been put that an appellant must establish that the fact-finder was plainly wrong (per Stuart-Smith LJ in National Justice Cia Naviera SA v. Prudential Assurance Co. Ltd (The Ikarian

> Reefer) [1995] 1 Lloyd's Rep. 455 at 458). Further, the court should only reverse a finding on the facts if it 'can be shown that the findings … were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread' (per Lord Hailsham of St Marylebone LC in Libman v. General Medical Council [1972] A.C. 217, 221F more recently confirmed in R (Campbell) v. General Medical Council [2005] 1 W.L.R. 3488 at [23] per Judge LJ."

22. In Gupta v. General Medical Council [2002] 1 W.L.R. 1691, Lord Rodger said, at [10]:

> "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."

(1) THE GROUNDS CONCERNING THE PREJUDICIAL MATERIAL

23. Grounds 1-3 broadly complain that the tribunal had evidence before it of the 2022 tribunal decision at stage 1 of the new case. This basic point is put in several different ways:

    23.1 Ground 1 argues that the GMC improperly and unlawfully advanced and/or that the tribunal improperly and unlawfully considered and heard evidence and material about the 2022 case.

    23.2 Ground 2 argues that this was in breach of the rules of natural justice when Dr Moodliar had been given assurances at pre-hearing reviews that evidence about the 2022 case would not be admitted or heard at stage 1.

    23.3 Ground 3 argues that in further breach of the rules of natural justice and requirements of fairness, Dr Moodliar was not adequately warned by the GMC about the consequences of (a) referring to the previous case; (b) failing to redact references to the previous case; and (c) seeking a good character reference.

THE FACTS

24. At the first telephone listing appointment of the new case on 7 July 2023, Dr Moodliar asked whether the new case could be combined with the review of the 2022 decision that was scheduled for 1 December 2023.

25. At the pre-hearing meeting on 15 August 2023, the three stages of the hearing process were explained to Dr Moodliar. She was told that the tribunal would only find out about the review aspect of the hearing at stage 2 after the tribunal had made its findings of fact. At a further pre-hearing meeting on 27 September 2023, Dr Moodliar was then unable to provide the tribunal with her final position in respect of whether she admitted any of the allegations.

26. The GMC's lawyers explained the position in respect of stages 1 and 2 by an email sent on 9 October 2023:

> "if the allegations are admitted if (sic) full, the MPTS will expect us to provide the stage one and two bundles together in advance of the hearing. The stage two bundle will mainly contain

> the professional development plans and material you have sent my colleague … already and the determinations from the hearing in May 2022 along with any material you rely upon at stage two of the hearing;
>
> if the allegations are not admitted in fall (sic), the hearing bundle for stage one only will be provided to the tribunal in advance of the hearing. The stage two bundle will then be provided to the tribunal once we reach that stage of the hearing."

27. In the same email, the GMC added that, in view of the fact that Dr Moodliar was not represented and "on the assumption that there will be a substantive stage one", some redactions would be necessary to remove references to the review aspect of the hearing at stage 2. Dr Moodliar responded the same day thanking the GMC for explaining the stage 1 and 2 bundles, and agreeing to the suggested redactions.

28. On 13 October 2023, Dr Moodliar sent the GMC a document titled "Dr S Moodliar admissions". By that document, Dr Moodliar unequivocally admitted each and every allegation against her.

29. On 14 October 2023, the GMC emailed draft bundles to Dr Moodliar for stages 1 and 2 of the forthcoming hearing. Stage 1 included the doctor's admissions document and stage 2 contained the papers relevant to the review. Dr Moodliar immediately responded that she had understood that "with full admissions" the case would move immediately to stage 2. After some further correspondence, the MPTS directed that, given Dr Moodliar's confirmation that she intended to make full admissions, the parties should provide the tribunal with both their stage 1 and stage 2 bundles.

30. While purporting to admit all of the allegations and suggesting that her case could move directly to stage 2 (namely consideration of whether the admitted conduct impaired her fitness to practise), Dr Moodliar's 58-page witness statement provided substantial further detail that qualified her admissions.

31. The case came on for hearing on 30 October 2023. Julia Oakford, the legally qualified chair, observed that while Dr Moodliar had apparently made full admissions, her admissions were equivocal when read together with her witness statement. The chair therefore explained that the tribunal were putting out of their minds everything to do with the review hearing and concentrating on the new allegations. She then directed that the GMC should open its case and the tribunal would hear evidence from Dr Moodliar in order to decide which admissions it would accept and whether it would need to make findings of fact.

32. There was then this exchange:

> "DR MOODLIAR: I have made full admissions. I can confirm that, but I do understand that the explanations I have provided in my witness statement is in accordance with an explanation of the admission, and as to the circumstances … However, I would like to inform the panel that I have made full admissions and I have admitted all the allegations, as I've stated out in my witness report.
>
> CHAIR: All right. What we'll do is we will note all the admissions, but we won't at this stage find the allegations proved. All right? So, we've noted the admissions. We'll hear evidence from you, Dr Moodliar, in relation only to the facts at the moment, to the factual side, in

> due course. Then we'll decide whether we accept your admissions, whether they're equivocal or not, all right?"

33. Notwithstanding the chair's decision to treat the admissions as equivocal such that there would need to be a hearing at stage 1 and notwithstanding her statement that the tribunal would put the review matter out of their minds, counsel then acting for the GMC proceeded to open the fact of the earlier case. Counsel returned to the theme after opening the new allegations in this case explaining that, despite the similarity in the allegations, it wasn't possible to tie in the allegations concerning Patients A and B with the new allegations concerning Patient D. Counsel added:

> "Clearly, because the matter is up for review, the allegations were found proved and the doctor deemed impaired, and a sanction of conditions was imposed with an immediate order. That's as far as that is relevant for this stage."

34. After opening the GMC's case, counsel explained that she relied on the written evidence and would not be calling live evidence. The chair confirmed again that the tribunal was only dealing with the new allegations and Dr Moodliar was invited to give her evidence.

35. During the course of her evidence, Dr Moodliar returned to the theme of character. She said:

> "So, I fully admit that since I've realised my mistake, that it was dishonest, and it goes against even me as being an honest doctor, and having testimonials of my good character, which I've always maintained throughout my career."

36. That assertion led to the following exchange in cross-examination:

> "COUNSEL: Dr Moodliar, you've referred to yourself as somebody who is of good character, I think is a phrase you've used in your statement, and you've said you're not a dishonest person. Just to be clear, Dr Moodliar, that isn't entirely accurate, is it, because there have been previous findings and admissions at a different version of this tribunal in almost identical sets of circumstances arising out of 2017?
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> DR MOODLIAR: Yes, that case was in May 2022. It was similar allegations and, yes, I was under – I had undergone a fitness to practise hearing of impairment and they did find the allegations were proved, and that has been the case, yes. My understanding when I had said that I'm not a dishonest person, it was out of the context of these cases that I was referring to, and I may – I should have made it clear."

37. Dr Moodliar then started giving evidence about testimonials and there was then this further exchange:

> "COUNSEL: But the point that I'm seeking to make, do you accept the fact that there's been a finding by the Medical Practitioners Tribunal previously that you have acted dishonestly in almost the same circumstances, or very similar circumstances?
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> DR MOODLIAR: Yes, the context of the case was the initial complaint was made. As you have stated in your opening statement, it was initially Dr C and following that his colleague Dr E, which is this current case, so it was similar allegations, and, yes, I do admit to that."

38. In the course of her closing submissions, counsel submitted that the previous fitness to practise findings concerned almost identical issues such that the tribunal should consider the issue of propensity. She added that Dr Moodliar had been found to have been dishonest in the same context in the earlier proceedings.

39. In her closing submissions, Dr Moodliar sought clarification as to the relevance of the previous findings to the fact-finding exercise at stage 1. She explained that she had been assured at the August case meeting that the tribunal would not be made aware of the earlier case. The chair responded:

> "Can I say that the Tribunal, I haven't actually read the review bundle because I considered that when I read it originally that your admissions were not necessarily full admissions, and they were equivocal. I think if my colleagues read some of it, it will be totally put out of our mind. We are going to be dealing with the facts of this allegation before us at this time.
>
> I think the GMC have asked us because there has been a previous finding, they've asked us to say that you've got a propensity to act in a certain way. That will be a matter for the Tribunal to determine, but we are not having regard to – just because you've been found by another tribunal does not mean we will automatically find you now. We will be dealing with it on the evidence we've had in relation to this. So, from that point of view, I don't know why the bundle relating to the previous hearing was provided to us.
>
> I accept it was because you had admitted everything, and you also in your evidence did continue to refer to the 2022 tribunal about that you had done the conditions, you got insight. From that point of view, the tribunal didn't know what you were talking about, but it does not know what you're talking about, but I want to emphasise to you we will deal with the evidence in the matter before us. In relation to propensity, that is a matter for us to decide upon, and we will of course bear in mind that the findings of the previous tribunal were after the date of this allegation."

40. Counsel made a further submission referring to the old findings as background and all but withdrawing her propensity argument. The chair then clarified that she did not intend to give a propensity direction and said that the tribunal should deal with the case on the evidence before it. She then added:

> "We will not be considering propensity. We will not be considering the findings of the other tribunal."

41. Dr Moodliar remained concerned. The chair told her that anything to do with the earlier case was "completely out of their minds" and that she did not need to worry. The chair added that they were a professional tribunal and would deal with the case on the facts and evidence relating to the case before it. A few minutes after that she confirmed that she had not herself read the other papers because she did not consider it to be appropriate to do so. She then said:

> "… what is relevant to this hearing is facts relating to what occurred in relation to the patient in this case and the reports. That is what we will be considering as a tribunal. We will not be reconsidering or in any way at this stage consider anything to do with the previous 2022 hearing. As far as we're concerned there was a hearing, but we have put that completely out of our minds. It will in no way influence us in relation to hearing your case now."

42. Dr Moodliar again expressed her continuing concern and the chair said:

> "Doctor, to a certain extent there was, you admitted everything. Originally you admitted everything in this allegation, didn't you? You said you admitted it. The Tribunal itself considered having regard to what you said that your pleas were equivocal. In normal circumstances, if you've admitted everything, it wouldn't be unusual for the Tribunal to be

> provided with further information, but there is no more I can do other than reassure you, Dr Moodliar, that in the circumstances all we're doing is concentrating on this hearing. I think the issue was raised that you, as GMC counsel said, and they were quite right – when you said you were of good character, they were quite entitled to say actually you're not, and that's how it came to rise, but in relation to the factual side of the other allegation, we're not considering it at all …
>
> Dr Moodliar, in relation to the previous case, I will be advising my colleagues to have no regard to it whatsoever in relation to determination of the facts of this case, and that is the starting point for my determination. The issue that would be different here is that I would not be able to give a good character direction because I am aware that you're not of good character, but apart from that I will say we will have no regard to it whatsoever, but I am trying to be fair to you Dr Moodliar, and say – because initially we've been fair because you admitted everything, and we were not prepared to accept those admissions because they were qualified admissions."

43. On the following morning, Dr Moodliar invited the tribunal to ignore counsel's comments in opening, in cross-examination and in the course of submissions about the previous case.

ARGUMENT

44. Mr Powell argues that the 2022 material was not similar fact evidence and ought not to have been opened or adduced in evidence at stage 1. He argues that its admission was highly prejudicial while this evidence was not probative in respect of the new allegations. Further he complains that the 2022 material was adduced in evidence notwithstanding clear indications at pre-hearing case management meetings that it would not be adduced at stage 1 and that the papers should be redacted to remove references to it. He also argues that Dr Moodliar should have been advised about the consequences of admitting evidence as to the 2022 case or as to the need for redaction or care in asserting her good character.

45. Ms Hearnden submits that there is no absolute rule that knowledge of prejudicial material is fatal to the fairness of proceedings. Further, she points to the repeated assurances given by the chair. She rejects the suggestion that the GMC had breached pre-hearing assurances and asserts that the process had been clearly explained to Dr Moodliar. She submits that both parties prepared for the hearing in the expectation that it would move directly to stage 2 in view of the admissions made, and that it was only because of the chair's caution that there was a need to make findings of fact at stage 1. Further, Ms Hearnden argues that the GMC was under no duty to provide legal advice to Dr Moodliar.

ANALYSIS

46. In my judgment, mistakes were made in the GMC's handling of this case:

    46.1 First, it is unfortunate that the GMC's lawyers did not themselves identify that there was some tension between the apparently unequivocal admissions document and Dr Moodliar's witness statement. Had that been identified, it would have been prudent to have ensured that the stage 2 paperwork was not provided to the tribunal until after the position was clarified and the tribunal had made its findings of fact at stage 1.

    46.2 Secondly, once the tribunal identified that Dr Moodliar's admissions were equivocal such that it would be necessary to hear evidence and argument at stage 1 and made clear that the tribunal would not consider the previous matters at that stage, counsel then instructed by the GMC should not have opened the fact that there had been a previous disciplinary case. While described as background, it was not essential to the understanding of the new allegations and counsel should therefore have found a way to excise that material from her opening.

47. Against that, Dr Moodliar was insistent both before and at the hearing that she was making full admissions. While not a lawyer, she is an intelligent professional and it had been clearly explained to her that, unless there were full admissions, references to her previous case should be redacted and not provided to the tribunal at stage 1. It cannot have been lost on her that that was to prevent the fact-finding tribunal from being influenced by the previous findings. Further, it was Dr Moodliar who, after submitting her admissions document, made the point that the case could now proceed straight to stage 2. In addition, her statement made references to previous findings of dishonesty and of acting as an expert without experience thereby putting those matters in evidence.

48. Furthermore, and importantly, Dr Moodliar attempted to adduce evidence of good character. She directly asserted that she was of good character and an honest person in her witness statement. In my judgment, the GMC was plainly entitled to challenge such assertions, which otherwise were liable to create a false impression, by cross-examining her as to the 2022 findings against her.

49. While, in the course of her closing submissions, counsel argued that the tribunal should consider the previous case as evidence of propensity, she subsequently backed away from this argument. Great care must always be taken before seeking to argue that bad character evidence should be admitted when, necessarily, the submission has to be made to the tribunal of fact. Here, however, the genie was already out of the bottle since counsel had quite properly cross-examined on character to correct the false impression created by Dr Moodliar's evidence.

50. There is no absolute rule that knowledge of prejudicial information is fatal to the fairness of proceedings. Rather the test is whether the risk of prejudice is so grave that no direction by the trial judge could reasonably be expected to remove it: Montgomery v. HM Advocate [2000] 1 A.C. 641; R (Mahfouz) v. General Medical Council [2004] EWCA Civ 233, at [22].

51. Ultimately, the chair plotted a very careful and wise course through these issues. She neither directed the tribunal as to propensity nor that Dr Moodliar was of good character. Further, she repeatedly made clear that she had not read the stage 2 bundle and assured the parties that the tribunal would not take into account the previous allegations or findings when making its own findings of fact at stage 1.

52. I reject the argument at grounds 1 and 2 that the tribunal improperly considered the 2022 case at stage 1. Indeed, the chair was repeatedly at pains to make very clear that the tribunal would not consider this evidence at stage 1. Further, the tribunal's written decision was equally clear. True to the chair's direction to the panel, the tribunal's written findings of fact at stage 1 analysed the evidence on the new allegations while making no reference to the previous allegations or tribunal proceedings. Accordingly, I consider that any potential prejudice (which was in no small measure caused by Dr Moodliar's own reference to the earlier case in her witness statement and exacerbated by her unwise claim to be of good character) was properly removed by the chair's careful directions.

53. In addition, I gain some confidence in the tribunal's conduct of this case by its very fair decision not simply to accept the admissions document at face value but to recognise that some of the admissions were equivocal and then to investigate carefully those issues before accepting Dr Moodliar's admissions at stage 1. Further, I observe that the chair herself identified from the very outset of the hearing that the tribunal should put the 2022 case out of its mind at stage 1.

54. As to ground 3, the three stages of the tribunal process were explained to Dr Moodliar and she was fully involved in discussions both in pre-hearing meetings and correspondence as to the redaction of all matters relating to the 2022 case at stage 1. There was no further duty to provide Dr Moodliar with legal advice as to the proper conduct of her own case. Furthermore, it should have been obvious to any honest professional against whom very similar allegations have previously been proved and findings of dishonesty made, that that one should not give misleading evidence of good character and probity to the tribunal.

(2) THE RECUSAL GROUNDS

55. Grounds 4-6 broadly arise from the failure of the tribunal to recuse itself:

55.1 Ground 4 complains that the tribunal failed to recuse itself.

55.2 Ground 5 argues that the tribunal failed properly to apply the apparent bias test when considering whether to recuse itself.

55.3 Ground 6 argues that in breach of the rules of natural justice, the tribunal failed to allow Dr Moodliar to address it on apparent bias and recusal, and that it failed properly to explain apparent bias to her as an unrepresented party.

THE FACTS

56. As already recounted, Dr Moodliar expressed her concerns that the tribunal should disregard the 2022 case. While she did not directly formulate or make an application that the tribunal should recuse itself, she did express her concern as to the tribunal members' ability to put the matter out of their minds. She said:

> "… my feeling at this moment in time is that I am considering that whilst madam Chair is reassuring me that the panel is obviously not affected by and not looking at that evidence or have not – is not considering it, my concern is it has become knowledge because of various cross-examination and information that was made available to the panel. So, again, still to be honest my feeling is that how can I be 100% certain that either of the panel members would not consider this, that I've had a previous hearing and it has come to light of the outcome of that?"

57. On the following morning, Dr Moodliar expressed her concern that the tribunal was not impartial because weight had already been placed on the issue of character. In responding on behalf of the GMC, counsel identified that Dr Moodliar was in effect suggesting that the tribunal was prejudiced, and that it might be necessary for the panel to recuse themselves and for the case to be heard afresh. In response to that implicit suggestion, counsel observed that it had been the doctor who had opened up her character and that she had been entitled to rebut the suggestion of good character.

58. The chair then asked Dr Moodliar whether she was arguing that the panel should consider her to be of good character. After her response, there were then these final exchanges before the tribunal withdrew to consider the issues raised:

> "CHAIR: We've heard what you said. I think in some ways GMC counsel is concerned that you are saying that you're not going to have a fair trial and maybe we should not sit on the case. I think it's fair – we'll go into camera, but I think it's fair that I just refer to the case of Porter v. Magill, which I'm sure GMC counsel will be aware is what the fair-minded and informed observer would have thought and whether his conclusion would have been there was a real possibility of bias by us. This issue is whether it's fair and whether there's a real possibility of bias. The issue in this case of course, Dr

> Moodliar, is that you yourself have introduced in the documentation that we have before you, the agreed bundle, you have introduced the fact that there was a previous hearing, and you have referred to the remediation etc that you've done in relation to that, so you did introduce it.
>
> In relation to good character, good character means that there hasn't been a criminal conviction – there has been no criminal conviction or no finding by a previous tribunal. If you were legally represented now, it's likely – and I can't say what they would say, but a good character in my experience of giving directions for many years would be that no good character would be given because you have a previous finding.
>
> In relation to your clinical work, testimonials, the Tribunal note and will consider what they've said about you, but in relation to the legal position is that we can't classify you as good character because you have a previous finding. However, the GMC have not asked me to give a propensity direction, which means that because you've done something before you're likely to do it again, what we could call bad character, so that's out the window. All it is, is you've got a previous finding and the Tribunal is aware of that and so will not give a good character direction, but it will properly assess the evidence before it in relation to this allegation.
>
> I've already said the bundle that we received will be put out of our minds, but the key thing for us is you introduced this information, and to be fair to the GMC, you admitted in fact you said in evidence today that you admitted the allegations, so we have been fair to you to say, 'Well, actually we think from what you've said that maybe it's fair that we hear the evidence and we evaluate it.' So, that's our situation, but we will go into camera to consider it, and we will do a short determination on it. [Counsel], do you have anything else to say?
>
> COUNSEL: No, thank you, ma'am."

59. The tribunal then handed down a written decision. It decided not to recuse itself and confirmed that a good character direction would not be given. On the recusal issue, the tribunal explained:

> "The Tribunal considered the test in Porter v. Magill and decided that it would not be prejudicial to Dr Moodliar for it to continue with the hearing having regard to the fact that the previous hearing had been referred to by Dr Moodliar herself, she had constancy (sic) admitted the entirety of the Allegation and the Tribunal was well able to decide the case only on the evidence it has received relating to the Allegation. Further, it is of particular note that evidence at this stage is only being considered because the Tribunal wished to be fair to Dr Moodliar in only noting her admissions."

ARGUMENT

60. Mr Powell argues that the tribunal should have recused itself. He submits that the tribunal erred by considering only whether Dr Moodliar was prejudiced and failing to consider the key question in respect of apparent bias, namely the public perception as to the possibility of unconscious bias. He argues that the tribunal took no account of the assurances that Dr Moodliar had been given by the case manager and the GMC, the absence of warnings from the GMC, and the fact that she was unrepresented. Further, Mr Powell contends that the tribunal failed properly to explain the concept of apparent bias and failed to allow her to address the tribunal further on that issue.

61. Ms Hearnden observes that the GMC's counsel accurately identified that the implicit submission made by Dr Moodliar was that the tribunal should recuse itself. She observes that the chair accurately recited the fair-minded and informed observer test before the panel retired to consider its ruling. She argues that Dr Moodliar had clearly set out her concerns and that it was not necessary for her to be called on to make further submissions. Further, she argues that the tribunal properly applied the law.

ANALYSIS

62. As is so often the case, the issue in Porter v. Magill [2002] 2 A.C. 357 was not whether the auditor was actually biased but whether he should have recused himself because of the appearance of bias. In that case, the House of Lords held that the appropriate test in determining an issue of apparent bias is to ask whether the fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the tribunal was biased.

63. In my judgment, the tribunal properly understood that the key issue in this case was apparent bias. Indeed, at the end of the open session before retiring to consider the tribunal's ruling on the point, the chair expressly referred to Porter v. Magill and accurately identified that the issue was whether the fair-minded and informed observer would conclude that there was a real possibility of bias. Further, the tribunal again accurately cited the test of apparent bias at paragraph 8 of its written ruling. In those circumstances, I do not accept the submission that the panel then fell into error when applying the test. In my judgment, when the tribunal confirmed that it had considered the test in Porter v. Magill at paragraph 12 of its ruling, that can only sensibly be construed as indicating that it had applied the test that had already been accurately cited both in the open session and at paragraph 8 of the same ruling. Accordingly, while the matter could have been put more clearly, I construe the tribunal's conclusion that it "would not be prejudicial to Dr Moodliar for it to continue with the hearing" as a finding that the fair-minded and informed observer with knowledge of the facts would not conclude that there was a real possibility of bias.

64. In any event, I consider that the tribunal was right to conclude that a fair-minded and informed observer would not conclude that there was a real possibility of bias in this case. Far from demonstrating apparent bias, such observer would be impressed that this tribunal had not rushed to judgment against Dr Moodliar on the basis of her admissions document but was insistent on carefully scrutinising the evidence in order to make its own findings of fact. Further, such observer would note that the tribunal had consistently resisted invitations to consider the 2022 material (whether as background, as evidence of propensity, as evidence showing the insight that Dr Moodliar now claimed to have, or as evidence rebutting Dr Moodliar's claimed good character) and had throughout maintained that it would decide the case at stage 1 purely on the basis of the evidence in respect of the new allegations.

65. It is true that the chair only called on counsel after articulating the Porter v. Magill test. Taking, however, the submissions in the round, Dr Moodliar went first on day 3, counsel responded, the tribunal asked a question of Dr Moodliar, and the chair invited counsel to add anything before they retired to consider their decision. In my judgment, the chair conducted a conspicuously fair hearing in which Dr Moodliar had ample opportunity to address the panel on both days 2 and 3 before the tribunal ruled on the recusal issue.

(3) THE GROUNDS CONCERNING THE APPROACH TO THE EVIDENCE

66. Three grounds criticise the tribunal's approach to its findings of fact:

66.1 Ground 7 argues that the tribunal failed to remind, advise or caution itself as to the proper and full approach to the evidence in making its findings of fact.

66.2 Ground 8 argues that the tribunal failed to apply such approach in making its findings of fact.

66.3 Ground 9 argues that the tribunal failed to remind, advise or caution itself as to the proper approach to the standard of proof.

THE DECISION

67. Before turning to the evidence, the tribunal set out the chair's advice at paragraphs 22-32 of its decision at stage 1. Such advice covered the following matters:

67.1 First, the chair advised that the standard of proof required was whether the facts in issue more probably occurred than not. This supplemented the accurate statement of the law just before the chair's advice at paragraph 21 as to the burden and standard of proof.

67.2 Secondly, the chair advised of the need to the evaluate all written and oral evidence and give it such weight as the tribunal determined. She added that the tribunal could come to common-sense conclusions based on the evidence but must not allow itself to be drawn into speculation.

67.3 Thirdly, she referred to the case of R (Dutta) v. General Medical Council [2020] EWHC 1974 (Admin) as authority for two propositions:

> "- Tribunals should base factual findings on inferences drawn from documentary evidence and known or probable facts and use oral evidence to subject the documentary evidence to critical scrutiny. The Tribunal should assess the evidence in the round.
>
> - Tribunals should not assess a witness's credibility exclusively on their demeanour when giving evidence. A witness's veracity should be tested by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case."

67.4 Fourthly, the chair referred to Khan v. General Medical Council [2021] EWHC 374 (Admin) for two further propositions:

> "- The Tribunal should consider all of the evidence before coming to a conclusion about a witness's credibility.
>
> - It is open to a Tribunal not to rule out the whole of a witness's evidence based on credibility as credibility can be divisible."

67.5 Fifthly, the chair advised that the expert evidence formed part only of the evidence before the tribunal and that it would need to evaluate all of the evidence. She added that the tribunal should give its reasons if it did not accept an expert's opinion.

67.6 Sixthly, the chair advised the tribunal as to the issue of dishonesty at paragraphs 27-29. Those directions will need to be considered separately when addressing ground 14 below.

67.7 Seventhly, the chair advised that tribunal should read the stem of each allegation together with the relevant sub-paragraph. It should then consider each allegation separately and decide whether it is proved or not proved.

67.8 Eighthly, the chair advised at paragraph 31 as to the interpretation of the allegations.

67.9 Ninthly, she advised that the tribunal should give sufficient reasons so that the parties could understand its reasoning.

ARGUMENT

68. Mr Powell argues that while the tribunal partially set out the principles and observations in R (Dutta) v. General Medical Council, it failed to set them out in full or to remind itself of the "full aspects" of the Dutta principles and observations. Further, it failed to address delay.

ANALYSIS

69. These grounds are, in my judgment, hopeless. As set out above, the chair carefully and concisely advised the tribunal as to the proper approach to its findings of fact.

70. As to the matters now argued, I agree that it would have been an error had the tribunal reasoned that the more confident a witness had been in their recollection, the more likely it was that their evidence was accurate. Further, I agree that demeanour is not a reliable pointer to the honesty of a witness, that memories are fluid, malleable and fallible, that a witness's credibility should be assessed by reference to objective facts proved independently of their evidence, that oral evidence should not be considered in isolation from the other evidence in a case, and that the litigation process subjects to memories to powerful biases.

71. The tribunal did not, however, fall into such errors. Indeed, the chair properly cautioned the tribunal against over-reliance on demeanour and the importance of testing witness evidence against objective facts. By its decision at stage 1, the tribunal properly assessed Dr Moodliar's written and oral evidence to the tribunal against the matters of fact that she had recorded six days after interviewing patient D in her expert report, contemporaneous records of her visit to Broadmoor, and Dr Moodliar's evidence to the Crown Court less than two weeks after her visit to Broadmoor. Further, the tribunal relied on expert evidence and an objective comparison between Dr Moodliar's expert report and the report that she was accused of having plagiarised.

72. The tribunal did not expressly refer to the effect of delay on Dr Moodliar's recollection but plainly had this point in mind when comparing her evidence to the tribunal with what she recorded six days after the interview at Broadmoor.

73. Ground 9 is also unarguable. The chair specifically advised the panel as to the standard of proof at paragraphs 21-22. Further, the tribunal expressly referred to the standard of proof as being the balance of probabilities in its findings of fact at paragraphs 50 and 53.

(4) THE GROUND CONCERNING THE POLICE EVIDENCE

74. Ground 10 argues that the tribunal failed properly to account for the evidence in respect of allegations 2(a), 3(a)-(b), 4 and 5(a) and that it failed to conclude that the evidence was inadequate and unconvincing.

ARGUMENT

75. Mr Powell argues that the only evidence in support of allegations that Dr Moodliar had dishonestly misrepresented the amount of time taken to see and assess patient D, and that she had inadequately assessed the patient was Detective Constable Coddington's evidence. Such evidence was, he submits, hearsay and in places second and thirdhand hearsay.

76. Ms Hearnden submits that DC Coddington essentially put business records in evidence that would therefore be admissible. In any event, she points out that rule 34 of the General Medical Council (Fitness to Practise) Rules Order 2004 provides that the tribunal may admit "any evidence they consider fair and relevant to the case" regardless of whether such evidence would be admissible in a court of law.

ANALYSIS

77. DC Coddington's evidence is that on making enquiries by phone, he was told by an unidentified member of staff that Dr Moodliar had attended Broadmoor at 10:55 and left the site at 11:43. Such evidence is hearsay in that DC Coddington's evidence is that he was told by an unidentified person at Broadmoor what had presumably been recorded in some log of professional visits to the hospital.

78. DC Coddington then adds that the unidentified person to whom he spoke made enquiries with the ward manager who stated that they recalled Dr Moodliar having been on the ward for approximately 30 minutes. This is again hearsay in that DC Coddington's evidence is that he was told that the ward manager had told his unidentified informant that they recalled Dr Moodliar having been on the ward for approximately 30 minutes.

79. I do not accept that the first part of the officer's evidence would have been admissible in a criminal court as hearsay evidence of the records kept by Broadmoor. It was not putting in evidence those records directly, but someone else's interrogation of such records. Further, a criminal court would not have allowed the ward manager's recollection to have been adduced in evidence by the officer's account of what he had been told that an unidentified informant was told by an unidentified ward manager.

80. That said, I accept that the tribunal was entitled to admit DC Coddington's evidence pursuant to r.34 provided it was fair and relevant to the case. Evidence that Dr Moodliar did not spend anything like 90 minutes interviewing Patient D was obviously relevant to the case.

81. I reject Mr Powell's argument that the only evidence in support of these allegations was the officer's untested hearsay evidence:

    81.1 First, and most obviously, Dr Moodliar admitted these factual allegations both in writing and in her sworn evidence to the tribunal. She told the tribunal:

    > "With regard to this allegation, I accept and I admit this allegation. I did not spend the 1½ hours which I've written and also which I gave testimony on."

    81.2 Secondly, such admissions did not depend simply on the officer's evidence but accorded with Dr Moodliar's own memory. She explained that Broadmoor had not been aware of her planned appointment with Patient D and that there had been a delay while arrangements were made and while she went through security. Further, she explained that the patient had refused to co-operate with her assessment and that it did not therefore run for the planned 1½ hours. While the tribunal rejected her evidence that the patient was uncooperative and terminated the interview early (it being flatly contradicted by her own contemporaneous report), Dr Moodliar nevertheless clearly admitted that she had not seen Patient D for 1½ hours.

    81.3 Thirdly, the tribunal was not simply reliant upon Dr Moodliar's recollection in December 2023. She had given expert evidence to the Crown Court on 18 March 2019 just 13 days after attending Broadmoor and then also accepted that she had not spent 1½ hours with the patient.

82. In these circumstances, I do not consider that the tribunal erred in admitting the officer's evidence. Had that been the only evidence to gainsay Dr Moodliar's claim to have spent 1½ hours with Patient D then I would have had deep reservations as to the reliance on the officer's untested hearsay evidence to support these allegations. But that was not the position given that it was Dr Moodliar's own case, and her own evidence to both the Crown Court and the tribunal, that she had not spent 1½ hours with the patient. Indeed, I suspect that the matter was not taken further by either the police or the GMC precisely because Dr Moodliar had accepted the proposition that she had not spent anything like 1½ hours with Patient D.

(5) THE GROUNDS CONCERNING THE ADEQUACY OF THE REASONS

83. Two grounds are pleaded:

83.1 Ground 11 argues that the tribunal failed properly to address or take account of specific aspects of the evidence and/or the submissions made.

83.2 Ground 12 argues that the tribunal gave inadequate reasons for its approach to the determination of the facts.

84. In English v. Emery Reimbold [2002] EWCA Civ 605, [2002] 1 W.L.R. 2409, the Court of Appeal clarified the circumstances in which an appeal might be allowed on the basis that a court or tribunal had failed to give adequate reasons for its decision. Lord Phillips MR observed, at [16], that justice will not be done if it is not apparent to the parties why one has won and the other has lost. Approving earlier dicta that reasons need not be elaborate, that there is no duty to deal with every argument presented by counsel and that it is sufficient if the judgment shows the parties and the appellate court the basis on which the judge acted, Lord Phillips added, at [19]:

> "It follows that, if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the judge to identify and record those matters which were critical to his decision. If the critical issue was one of fact, in may be enough to say that one witness was preferred to another because the one manifestly had a clearer recollection of the material facts or the other gave answers which demonstrated that his recollection could not be relied upon."

85. The approach in English was applied to a complaint of a lack of reasons in professional discipline case against a doctor in Phipps v. General Medical Council [2006] EWCA Civ 397. Further, as already set out above, even in more complex cases, tribunals do not need to provide more than a few sentences setting out their critical reasoning.

86. In my judgment, the tribunal's decision at stage 1 clearly identified the matters that were critical to the tribunal's findings of fact and there is no merit in grounds 11 and 12.

(6) THE DISHONESTY GROUND

87. Ground 14 argues that the tribunal erred in law in its application of the dishonesty test in Ivey v. Genting Casinos [2017] UKSC 67, [2018] A.C. 391.

88. Mr Powell argues that the tribunal was wrong to find that Dr Moodliar could not have been unintentionally dishonest and that the panel thereby misapplied Ivey.

ANALYSIS

89. In Ivey, Lord Hughes explained the test for dishonesty:

> "When dishonesty is in question, the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

90. Ivey concerned whether a professional gambler's conduct in a game of cards at a casino was dishonest. In Ivey, Lord Hughes explained the test for dishonesty in that context as follows:

> "The judge found that Mr Ivey gave factually frank and truthful evidence of what he had done. The finding was that he was a professional gambler who described himself as an 'advantage player', that is one who, by a variety of techniques, sets out to reverse the house edge and to play at odds which favour him. The judge found that he does so by means that are, in his opinion, lawful. He is jealous of his reputation and is adamant that what he does is not cheating. He described what he did, with Ms Sun, as legitimate gamesmanship. The judge accepted that he was genuinely convinced that what he did was not cheating. But the question which matters is not whether Mr Ivey thought of it as cheating but whether in fact and in law it was."

91. The expression "unintentionally dishonest" came from Dr Moodliar. It was her constant refrain in writing and in her oral evidence that she accepted that she had acted dishonestly but that she had done so unintentionally. It is not a particularly helpful construct in terms of considering dishonesty:

    91.1 The first stage is to determine subjectively the individual's knowledge or belief. Applying that to this case, one would, for example, consider whether Dr Moodliar genuinely believed that her interview with patient D had taken 1½ hours. If she genuinely believed that she had interviewed patient D for 1½ hours (perhaps because she had made a simple mistake and lost track of time), then she might have unintentionally misled readers into believing that the interview had taken 1½ hours but there would be no question of her having acted dishonestly.

    91.2 The second stage is to determine whether the individual's conduct was dishonest by the standards of ordinary decent people. Taking the same example, provided it was shown at the first stage that Dr Moodliar did not herself genuinely believe that the interview lasted 1½ hours then it is irrelevant whether she considered her conduct to be dishonest since the question is whether objectively she had acted dishonestly.

92. The tribunal in this case plainly understood the subjective and objective tests identified in Ivey. Indeed, the chair gave an impeccable direction to the panel at paragraphs 27-29. Further, the tribunal was right to exercise real caution before accepting Dr Moodliar's qualified admissions that she had acted dishonestly. By way of example, it cited the issue at paragraphs 13 and 17 of the decision at stage 1:

> "13. She admitted the dishonesty by recording that she assessed patient D for 1½ hours, instead of documenting the actual time and duration. She stated that whilst she admitted dishonesty, this was an honest mistake and an error on her part …
>
> 17. Dr Moodliar admitted she was dishonest to write that she had assessed patient D for 1½ hours, however she explained that the circumstances of the appointment, including dealing with a challenging patient who was not expecting her and not having her phone and watch with her, affected her perception of time, which appeared longer due to the emotionally flustered state she was in."

93. This was a nonsense. If Dr Moodliar had made a genuine and honest mistake in recording the time of the interview, whether because she did not have her phone or her watch with her, or because she was emotionally flustered, then the allegation of dishonesty fell at the first (subjective) hurdle.

94. Rather than misapply Ivey, the tribunal's findings at paragraphs 62-63 properly applied the two-stage test:

94.1 First, the tribunal found as a fact that Dr Moodliar knew that she had not seen patient D for 1½ hours.

94.2 Secondly, it found that ordinary and decent people would consider her actions in writing the wrong length of time and in maintaining that position when giving evidence on oath in the Crown Court to be dishonest.

95. Likewise, the tribunal properly applied Ivey at paragraphs 66-67 in also finding that she had dishonestly plagiarised another doctor's work.

96. There is accordingly no merit in this ground.

(7) THE SANCTION GROUND

97. Ground 13 argues that the sanction of erasure was wrong and procedurally unfair.

THE FACTS

98. The tribunal considered the evidence of insight. It found that Dr Moodliar sought to minimise her conduct by apparently conceding her dishonesty but insisting that it was unintentional or mistaken, or that it might have "come across as dishonest" and might have "come across that [she] plagiarised" another expert's report. The tribunal concluded that there remained gaps in Dr Moodliar's remediation that required addressing and that she fundamentally did not understand why what she had done was misconduct.

99. The tribunal found that Dr Moodliar regretted the position in which she found herself rather than the impact her dishonesty had had on the public interest or the profession. Further, she had provided testimonials but admitted that she had not informed the colleagues who provided the testimonials that they would be used in the professional conduct hearing, of the previous findings against her, or of the new allegations.

100. The tribunal considered the Sanctions Guidance. It identified aggravating factors being Dr Moodliar's lack of insight, her lack of genuine understanding, her inadequate remediation, the previous finding of impairment, and the seriousness of her conduct. By way of mitigation, it

identified her attempts at remediation, her compliance with previous conditions, her co-operation with the investigation, the lapse of time since the incidents, and her expressions of regret and remorse.

101. The tribunal concluded:

> "32. The Tribunal took account of Dr Moodliar's dishonesty which took place over two cases and involved potentially vulnerable patients. While there was no evidence that there was an active cover-up on her part, Dr Moodliar has maintained a position in which she describes her dishonesty as unintentional or an error.
>
> 33. The Tribunal noted Dr Moodliar has been under a period of conditions for 18 months. This is a long enough period to have complied with the request for evidence of insight and remediation but Dr Moodliar has not adequately done so. This is more so given the nature and seriousness of the misconduct itself, Dr Moodliar had repeated opportunities to fully remediate and thereby restore public confidence in the medical profession as a whole and, while she has completed a number of courses, she has not undertaken any meaningful remediation nor produced significant relevant reflections that go to the causes of her misconduct and specific steps that she has in place to ensure it is not repeated. There was no basis or evidence upon which the Tribunal could conclude that Dr Moodliar would be prepared to engage in any meaningful remediation or that any such engagement would be successful.
>
> 34. The Tribunal determined that her conduct was a particularly serious departure from the principles set out in Good Medical Practice and, her failure to engage in meaningful remediation of that misconduct, it was fundamentally incompatible with continued registration. The Tribunal was of the view that honesty with their professional regulator is the duty of every doctor. It is an important part of upholding professional standards, so that the public could have confidence in all doctors.
>
> 35. In all of the circumstances, the Tribunal determined that erasure was the only sanction that would be sufficient to uphold the statutory overriding objective, to protect patients, maintain public confidence in the profession, and uphold professional standards."

ARGUMENT

102. Mr Powell argues that the tribunal took no account of the fact that there had only been three instances of misconduct and that they were dated. He submits that the tribunal wrongly criticised Dr Moodliar for defending the case and failed to give sufficient weight to its finding that the conduct was capable of remediation. He argues that the tribunal placed undue weight on the requirement of public trust in the profession and the promotion and maintenance of professional standards without properly balancing Dr Moodliar's rights and the impact of the loss of her profession and reputation. Mr Powell contends that an appropriate sanction in the circumstances of this case would have been a period of suspension.

103. Ms Hearnden submits that the Sanctions Guidance makes plain that erasure may be appropriate where there has been dishonesty, and that dishonesty that is persistent or covered up is likely to result in erasure. In this case, Ms Hearnden argues that Dr Moodliar had been found to have plagiarised another expert's report in criminal proceedings and had given dishonest evidence to the Crown Court. Her misconduct would plainly undermine confidence in the medical profession and, Ms Hearnden submits, only erasure could properly mark the seriousness of her case.

ANALYSIS

104. Erasure is the most serious sanction available to a tribunal. A doctor who is erased from the medical register cannot apply to be restored to the register for five years and will only be restored if a tribunal is satisfied that they are then fit to practise: s.41(2)(a) of the Act.

105. The Sanctions Guidance issued by the General Medical Council provides that the tribunal may erase a doctor from the medical register where this is the only means of protecting the public, and that erasure may be appropriate even where the doctor does not present a risk to patient safety but where such sanction is necessary to maintain public confidence in the profession. At paragraph 109 of the guidance, the list of non-exhaustive factors that may indicate that erasure is appropriate include "dishonesty, especially where persistent and/or covered up" and "persistent lack of insight into the seriousness of their actions or the consequences". The first point is repeated at paragraph 128.

106. Paragraph 120 of the guidance provides:

> "Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession."

107. A finding of dishonesty will always be very serious. In Nkomo v. General Medical Council [2019] EWHC 2625 (Admin), Julian Knowles J rightly observed that dishonesty by a doctor is "almost always extremely serious" and such findings lie at the top end of the spectrum of gravity of misconduct. Furthermore, dishonesty is harder to remediate than poor clinical performance. As Carr J, as she then was, observed in PSA v. HCPC, Ghaffar [2014] EWHC 2723 (Admin), at [44]:

> "The importance of honesty to the health and care professions is underlined by the fact that striking off may be an appropriate sanction under the indicative sanctions guidance. It will often be proper, even in cases of one-off dishonesty … 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."

108. In Bawa-Garba v. General Medical Council [2018] EWCA Civ 1879, the Court of Appeal held that the Divisional Court had been wrong to interfere with the sanction imposed by the specialist tribunal. In a joint judgment, the appeal court described, at [61], the tribunal's decision on sanction as "an evaluative decision based on many factors". There was, the court observed, "limited scope" for an appellate court to overturn such decisions. The court added, at [67]:

> "That general caution applies with particular force in the case of a specialist adjudicative body, such as the tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts … An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide."

109. The principal purpose of the tribunal's jurisdiction to impose a sanction for misconduct that impairs the doctor's fitness to practise medicine is the preservation and maintenance of public confidence in the medical profession. Accordingly, there is particular force in the need to accord special deference to the tribunal's judgment on sanction: Fatnani & Raschid, at [19], per Laws LJ.

110. Paragraph 25 of the guidance recognises that insight and attempts to address or remediate misconduct can provide mitigation. Such matters could include admissions by the doctor, apologising to any patient affected by misconduct, and making efforts to prevent recurrence. The guidance also identifies a lack of insight as an aggravating factor at paragraph 51. One situation in which a doctor may lack insight is when he or she fails to tell the truth during the hearing.

111. Care does, however, need to be taken with any suggestion that a doctor's fitness to practise is impaired because of a refusal to accept allegations that have been proved:

111.1 In Amao v. Nursing & Midwifery Council [2014] EWHC 147 (Admin), a nurse's refusal at the impairment stage to accept the panel's findings of fact at stage 1 contributed to a finding that there was a high risk of repetition which led to a finding of impairment and, in turn, to the nurse being struck off the register. Walker J observed, at [161]:

> "Ms Amao was perfectly entitled to say that she did not accept the findings of the panel: she had a right of appeal which she was entitled to exercise. In all the circumstances it was thoroughly inappropriate, almost Kafkaesque, to cross-examine Ms Amao in a way which implied that she would be acting improperly if she did not 'accept the findings of your regulator'."

111.2 In General Medical Council v. Awan [2020] EWHC 1553 (Admin), Mostyn J rejected the GMC's argument that in imposing the sanction of suspension the tribunal had failed to reflect the way in which Dr Awan had conducted his defence. The judge held, at [38], that an accused professional has the right to advance any defence he wishes and is entitled to a fair trial of that defence without facing the jeopardy, if the defence is disbelieved, of further charges or enhanced sanctions.

111.3 In Towuaghantse v. General Medical Council [2021] EWHC 681 (Admin), Mostyn J distinguished between the blatantly dishonest defence of a case and the evaluative assessment at stage 2. He said, at [71]-[72]:

> "71. I can see, were a defence to be rejected as blatantly dishonest, then that would say something about impairment and fitness to practise in the future. But there would surely need to be a clear finding of blatant dishonesty for that to be allowed. Absent such a finding it would, in my judgment, be a clear encroachment of the right to a fair trial for the forensic stance of a registrant in the first phase to be used against him in the later phases.
>
> 72. In my judgment a distinction should be drawn between a defence of an allegation of primary concrete fact and a defence of a proposed evaluation (or exercise of discretion) deriving from primary concrete facts. The former is a binary yes/no question. The latter requires a nuanced analysis by the decision-maker with a strong subjective component. If a registrant defends an allegation of primary concrete fact by giving dishonest evidence and by deliberately seeking to mislead the MPT then that forensic conduct would certainly say something about impairment and fitness to practise in the future. But if, at the other end of the scale, the registrant does no more than put the GMC to proof then I cannot see how that stance could be held against him in the impairment and sanctions phases. Equally, if the registrant admits the primary facts but defends a proposed evaluation of those facts in the impairment phase then it would be Kafkaesque (to use Walker J's language) if his defence were used to prove that very proposed evaluation. It would amount to saying that your fitness to practise is currently impaired because you have disputed that your fitness to practise is currently impaired."

111.4 In Ahmedsowida v. General Medical Council [2021] EWHC 3466 (Admin), Kerr J also referred to the trap of finding that a doctor's fitness to practise is impaired because he has disputed impairment by not admitting to the dishonesty found against him.

112. There is plainly some tension between the assessment of a doctor's insight and honesty with the tribunal, which is relevant to the prospect of remediation and can provide mitigation, and the need to avoid either finding that a doctor's fitness to practise is impaired because they do not accept impairment or imposing a more severe sanction by reason of the doctor's refusal to admit misconduct. In my judgment, this tribunal did not fall into the traps of finding a lack of insight and honesty with the tribunal or of imposing a more severe sanction because of the fact that she defended these proceedings or because of a refusal to accept impairment.

113. Standing back, this was a doctor who had accepted instructions to give expert evidence in a murder trial for which she did not have either the experience or training; who wrote an expert report for the court in a murder trial despite having spent insufficient time with the patient to conduct an adequate assessment and failing to make adequate notes; who dishonestly claimed in her report to have assessed the patient for 1½ hours; who repeated that dishonest claim when giving evidence on oath to a High Court Judge and jury in a murder trial; who dishonestly plagiarised another expert's work and passed it off as her own; whose report failed to address the patient's offence, any information obtained from the patient or from other sources, or the issue of insanity; who sought to mislead the tribunal by claiming to be of good character; and who produced testimonials to the tribunal from colleagues without disclosing the fact of her tribunal case, the earlier findings against her, or the detail of the new allegations that she was facing. Further, this was a doctor who lacked insight into the seriousness of her misconduct and who had already been the subject of an earlier finding of impairment (albeit after this conduct was committed).

114. In my judgment, erasure was amply justified by this very serious and dishonest misconduct which risked serious harm to patients in the criminal justice system. Quite apart from patient safety, the tribunal was clearly justified in concluding that erasure was necessary to maintain public confidence in the profession.

115. Accordingly, there is, in my judgment, no basis for disturbing the evaluative decision of this expert tribunal as to sanction.

FURTHER POST-HEARING SUBMISSIONS

116. After the hearing, Mr Powell submitted brief further written submissions in which he sought to argue that there is statistical evidence that doctors without legal representation face harsher sanctions. He invites me to consider material hyperlinked to his further submissions and simply submits that this is a "troubling feature".

117. Not surprisingly, Ms Hearnden objects to the late submission of this material and submits that the further argument is not properly open to Dr Moodliar. She submits that the court is concerned with the fairness of this tribunal's decision and not with some wider review of the MPTS. If, against that primary position, the court were minded to consider the new argument then Ms Hearnden seeks permission to file further evidence and make further submissions. Given that I have not invited the GMC to submit evidence or further argument on the point I should, in fairness, make clear in this public judgment that the GMC does not accept the broad proposition (if indeed it be Dr Moodliar's case) that unrepresented doctors experience any general unfairness in the fitness to practise process.

118. Appeals are heard on the basis of pleaded grounds that are argued upon the evidence placed before the court. Nevertheless, I have considered the hyperlinked material. It does not comprise statistics issued by the GMC but rather commentary dating from November 2018 and October 2024 by the

Medical Protection Society Limited upon raw information (which has not been provided to me) said to have been obtained from the GMC through two freedom of information requests. The commentary points out the society's concerns as to the differential outcomes of unrepresented doctors, the perils of navigating fitness to practise proceedings without legal representation, and encourages doctors to become members of a medical defence organisation such as the society.

119. I agree with Ms Hearnden that there is a significant difference between a focused argument as to the procedural and substantive fairness of the decision of an individual tribunal and a broader challenge as to the systemic fairness of the fitness to practise process in cases involving unrepresented doctors. Even if Dr Moodliar were able to make good the proposition advanced in these two articles, the issue for this court would remain whether the decision in her case was wrong or unjust.

120. In any event, there is no application for permission to rely on evidence that was not before the tribunal (as required by r.52.21(2)) or upon a matter not contained in Dr Moodliar's appellant's notice (as required by r.52.21(5)). I acknowledge that had the point been taken earlier, it would almost inevitably be necessary for Dr Moodliar to seek to rely on evidence that had not been before the tribunal. I would not, however, have allowed the evidential basis for the argument to have been these articles.

121. Accordingly, I refuse to consider Mr Powell's additional argument which, even if made out, does not establish that the tribunal's decision in this case was either wrong or unjust.

OUTCOME

122. For these reasons, I extend time but dismiss this appeal.