Neutral Citation Number: [2022] EWHC 2936 (Admin)

Case No: CO/1010/2022

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

Friday 18th November 2022

Before:
MR JUSTICE FORDHAM

- -

Between:

IBRAHIM IBRAHIM	**Appellant**
- and -	
GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

Mary O'Rourke KC (instructed by Stephensons Solicitors LLP) for the **Appellant**
Peter Mant (instructed by GMC) for the **Respondent**

- -

Hearing date: 3.11.22

- -

Approved Judgment

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

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. This is an appeal pursuant to section 40 of the Medical Act 1983 ("the 1983 Act"), against a decision of a Medical Practitioners Tribunal ("the Tribunal") made on 16 February 2022. The impugned decision was that the Appellant should be erased from the medical register. The appeal is against sanction and the Appellant invites the Court to conclude that the sanction of erasure was wrong and to substitute an order for a 6 month (or up to 12 month) suspension with a review. The statutory scheme is described in detail in the judgment of Nicola Davies LJ (for the Court of Appeal) in Sastry v GMC [2021] EWCA Civ 623 [2021] 1 WLR 5029 at §§5-17. The function of this Court on an appeal of this nature involves addressing by way of a rehearing, with the exercise of this Court's own judgment, whether the sanction was "wrong". That means asking whether it was "excessive and disproportionate"; or whether it was "appropriate and necessary in the public interest". The Court may be able, and it can be appropriate, to evaluate for itself any issues of public protection or issues relating to the reputation of the medical profession. See Sastry §§102, 105-112.

2. After 9 days of oral hearings, the first of which (Day 1) was 26 August 2021 and the last of which (Day 9) was 16 February 2022, the Tribunal issued its Determination. The Determination involved three Stages. Stage 1 was the Tribunal's "overall determination on the facts". That determination had been arrived at by Day 6 (3 September 2021). The Tribunal considered the Allegations against the Appellant. It set out its approach to the evidence and its analysis of the evidence. That included the documentary evidence and the Tribunal's assessment of the witnesses who gave oral evidence and were cross-examined. Stage 2, after the hearing resumed on 14 February 2022, involved the Tribunal's "determination on impairment". This was issued on Day 8 (15 February 2022), after a hearing on Day 7 (14 February 2022). In this part of its Determination, the Tribunal addressed the submissions by both advocates and the relevant legal principles. It made its reasoned determination on "impairment by reference to misconduct and conviction", finding that the Appellant's "fitness to practise" was "currently impaired" by reason of each of these. Stage 3 was the Tribunal's determination on Day 9 (16 February 2022) on sanction, after hearing submissions on the afternoon of Day 8. In this part of the determination the Tribunal summarised the submissions by the two advocates and the relevant legal principles. It explained its "determination on sanction", addressing the aggravating and mitigating features, and addressing in turn the various sanctions which the Tribunal was empowered to adopt: no action; conditions on registration; suspension; and erasure.

3. The context for the issues which the Tribunal was addressing concerned the domestic setting within a family home, involving a married couple: the Appellant and his ex-wife ("Ms A"), living with their young son ("Child B"). What had happened was this. On 17 April 2019 Ms A reported to the police an incident of domestic violence. The Appellant was charged with assaulting Ms A by beating. He denied the charge and pleaded not guilty. He was convicted by the magistrates on 19 September 2019. He was sentenced on 4 November 2019 to a community order with a fine. The conditions of the community order included the "building better relationships" (BBR) programme and a "rehabilitation activity requirement" (RAR). The Appellant complied with those requirements as called on to do. He completed the RAR with its 6 one-hour managing emotions sessions, and 6 one-hour counselling sessions. He completed one module out

of the four modules of the BBR programme, being excused from the rest after the intervention of the Covid-19 pandemic. The community sentence and conditions were confirmed as expired on 22 January 2021. The GMC then took the case up, pursuant to its regulatory procedures, the Appellant having made a self-referral to the GMC on 10 May 2019. Ms A provided evidence to the GMC, to a large extent covering the same ground as "victim impact assessment" evidence which had been before the magistrates' court. In due course, as I have mentioned, Ms A gave oral evidence at the hearing before the Tribunal; as did the Appellant.

The Overarching Objective

4. Section 1(1A) of the 1983 Act states that the "overarching objective" of the GMC in exercising its functions is the "protection of the public". Section 1(1B) provides that the pursuit of the overarching objective involves the pursuit of the following objectives: (a) "to protect, promote and maintain the health, safety and well-being of the public", (b) "to promote and maintain public confidence in the medical profession", and (c) "to promote and maintain proper professional standards and conduct for members of that profession". I will refer to these as the three "limbs".

The Sanctions Guidance

5. The relevant non-statutory "Guidance" to which the Tribunal referred in this case is the GMC's "Sanctions Guidance" (November 2020 edition). The Guidance is published and accessible online. It refers to "Good medical practice", a publication setting out core guidance to registered doctors. I will identify here some of the key passages which have had prominence on this appeal. Under the heading "Why do we impose sanctions?" the Guidance includes this:

> ***14. The main reason for imposing sanctions is to protect the public. This is the statutory overarching objective, which includes to: (a) protect and promote the health, safety and wellbeing of the public; (b) promote and maintain public confidence in the medical profession; (c) promote and maintain proper professional standards and conduct for the members of the profession…***
>
> ***16. Sanctions are not imposed to punish or discipline doctors …***

There are sections on "Taking a proportionate approach to imposing sanctions" (§§20-23) and "Mitigating and aggravating factors to consider when deciding on a sanction" (§§24-60), which addresses topics such as "references and testimonials", "insight" and "lack of insight". Under "aggravating factors" there is a paragraph on "conduct in a doctor's personal life" (§56) which includes:

> ***56. Tribunals are … likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive): … (c) inappropriate behaviour towards children or vulnerable adults … (d) misconduct involving violence or offences of a sexual nature …***

In the section on "Deciding what sanction to impose when a doctor's fitness to practise is impaired" (§§66-111), the Guidance includes this about "suspension":

> ***91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor***

from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions…

95. … The suspension will need to be reviewed and therefore a review hearing should be directed. Such a direction should indicate in broad terms the type of action and evidence of remediation … which, if carried out during the period of suspension, may help the tribunal's evaluation at any subsequent review hearing…

97. Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate. (a) A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors. (b) In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining. (c) In cases that relate to the doctor's health, where the doctor's judgement may be impaired and where there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions, or the doctor has failed to comply with restrictions or requirements. (d) In cases that relate to knowledge of English, where the doctor's language skills affect their ability to practise and there is a risk to patient safety if the doctor were allowed to continue to practise even under conditions. (e) No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage. (f) No evidence of repetition of similar behaviour since incident. (g) The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

The Guidance then includes this about "erasure":

108. Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.

109. Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive). (a) A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor. (b) A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety. (c) Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients… (d) Abuse of position/trust… (e) Violation of a patient's rights/exploiting vulnerable people … (f) Offences of a sexual nature, including involvement in child sex abuse materials… (g) Offences involving violence. (h) Dishonesty, especially where persistent and/or covered up … (i) Putting their own interests before those of their patients … (j) Persistent lack of insight into the seriousness of their actions or the consequences…

111. A doctor who has been erased cannot apply to be restored to the medical register until five years have elapsed…

Allegations and Outcomes

6. I will set out here the Allegations which the Appellant faced in the proceedings before the Tribunal. In doing so, I insert in square brackets the annotated outcomes: [DFP] means "determined and found proved"; [AFP] means "admitted and found proved"; and [NP] means "not proved".:

> ***(1) Between 2013 and 16 April 2019 you behaved inappropriately towards Ms A in that you:***
>
> ***(a) on one or more occasion hit Ms A on the: (i) face [DFP]; (ii) body [DFP];***
>
> ***(b) on one occasion hit Ms A on the face causing her nose to bleed [DFP];***
>
> ***(c) threatened Ms A on one or more occasion by saying: (i) "I will take your visa, you will return to Iraq by yourself" [DFP]; (ii) you would remove her visa if she reported any incidents of abuse to the Police [DFP]; (iii) "I will take him [Child B], you will not see him again" [DFP]; (iv) "he [Child B] will live with my family and not with you" [DFP]; or words to that effect;***
>
> ***(d) said to Ms A on one or more occasion "this is not your house this is my house" or words to that effect [AFP];***
>
> ***(e) did not allow Ms A: (i) access to money, other than for Child B's nursery fees [NP]; (ii) to attend family and/or social parties with you [NP];***
>
> ***(f) said to Ms A on one or more occasion in or around 2017: (i) "you are nothing, I want to divorce you and marry a woman better than you" or words to that effect [DFP]; (ii) "she is better than you" or words to that effect [AFP]; (iii) "every woman working is better than you" or words to that effect [DFP]; (iv) when she was starting to use computers (A) "you don't know what you're doing" [AFP]; (B) "you are old fashioned" [AFP]; (C) "you are not fast enough" [AFP] or words to that effect;***
>
> ***(g) on one or more occasion between February 2018 and August 2018 said to Ms A, in relation to having sexual intercourse, "I don't like you, but you are a beautiful woman, I pay the bills so you have to do this for me" or words to that effect [DFP];***
>
> ***(h) arranged for Ms A to travel to Turkey in December 2018 and you: (i) bought a one-way ticket for Ms A [DFP]; (ii) threw Ms A's mobile phone at a television set when she said she didn't want to travel to Turkey [DFP]; (iii) forced Ms A to travel to Turkey [DFP].***
>
> ***(2) On 19 September 2019 at South East Northumberland Magistrates' Court you were convicted of assaulting Ms A by beating on Wednesday 17 April 2019, at Newcastle Upon Tyne, contrary to section 39 of the Criminal Justice Act 1988 [AFP].***
>
> ***(3) On 4 November 2019 you were sentenced to (a) community order with a (i) Programme Requirement [AFP]; (ii) Rehabilitation Activity Requirement [AFP] to be completed by 3 November 2020; (b) restraining order in place until 3 November 2020 [AFP]; (c) fine of £700 [AFP].***

7. These Allegations can therefore be split into three groups, by reference to outcome. First, those which were found not proved [NP]:

> ***(1) Between 2013 and 16 April 2019 you behaved inappropriately towards Ms A in that you: …***
>
> ***(e) did not allow Ms A: (i) access to money, other than for Child B's nursery fees; (ii) to attend family and/or social parties with you.***

Secondly, those Allegations admitted and found proved [AFP]:

> ***(1) Between 2013 and 16 April 2019 you behaved inappropriately towards Ms A in that you: …***
>
> ***(d) said to Ms A on one or more occasion "this is not your house this is my house" or words to that effect; …***
>
> ***(f) said to Ms A on one or more occasion in or around 2017: … (ii) "she is better than you" or words to that effect; … (iv) when she was starting to use computers (A) "you don't know what you're doing"; (B) "you are old fashioned"; (C) "you are not fast enough" or words to that effect…***
>
> ***(2) On 19 September 2019 at South East Northumberland Magistrates' Court you were convicted of assaulting Ms A by beating on Wednesday 17 April 2019, at Newcastle Upon Tyne, contrary to section 39 of the Criminal Justice Act 1988.***
>
> ***(3) On 4 November 2019 you were sentenced to (a) community order with a (i) Programme Requirement; (ii) Rehabilitation Activity Requirement to be completed by 3 November 2020; (b) restraining order in place until 3 November 2020; (c) fine of £700.***

Thirdly, the Allegations denied but found proved [DFP]:

> ***(1) Between 2013 and 16 April 2019 you behaved inappropriately towards Ms A in that you:***
>
> ***(a) on one or more occasion hit Ms A on the: (i) face; (ii) body;***
>
> ***(b) on one occasion hit Ms A on the face causing her nose to bleed;***
>
> ***(c) threatened Ms A on one or more occasion by saying: (i) "I will take your visa, you will return to Iraq by yourself"; (ii) you would remove her visa if she reported any incidents of abuse to the Police; (iii) "I will take him [Child B], you will not see him again"; (iv) "he [Child B] will live with my family and not with you"; or words to that effect; …***
>
> ***(f) said to Ms A on one or more occasion in or around 2017: (i) "you are nothing, I want to divorce you and marry a woman better than you" or words to that effect; … (iii) "every woman working is better than you" or words to that effect; …***
>
> ***(g) on one or more occasion between February 2018 and August 2018 said to Ms A, in relation to having sexual intercourse, "I don't like you, but you are a beautiful woman, I pay the bills so you have to do this for me" or words to that effect;***
>
> ***(h) arranged for Ms A to travel to Turkey in December 2018 and you: (i) bought a one-way ticket for Ms A; (ii) threw Ms A's mobile phone at a television set when she said she didn't want to travel to Turkey; (iii) forced Ms A to travel to Turkey.***

The Tribunal's Assessment

8. The Determination, with its 3 Stages, is a 47-page document containing 239 paragraphs. The findings at Stage 1, as to what was proved and not proved, are reflected in what I have set out above. Given the submissions which are made about it, I am going to set out in some detail some key passages dealing with Stage 2 (impairment) and Stage 3 (sanction).

9. The following passages are taken from the Tribunal's Stage 2 "determination on impairment". Under a heading "Misconduct":

> ***132. In the Tribunal's analysis, the facts found proved demonstrate that Dr Ibrahim had engaged in a course of abusive behaviour towards Ms A which had included violence, verbal threats and coercive behaviour. This behaviour had occurred over a number of years and had culminated in Dr Ibrahim's conviction for assault on 19 September 2019. It noted that there***

was a significant power imbalance between Dr Ibrahim and Ms A particularly given that she was reliant on him for her immigration status. The Tribunal considered that Ms A was therefore particularly vulnerable and that Dr Ibrahim had exploited that vulnerability. It considered that Dr Ibrahim's behaviour towards Ms A had been particularly cruel.

133. The Tribunal noted that, in isolation, some of the words said by Dr Ibrahim in paragraph 1(f) of the Allegation might not be problematic in a different context. However, the Tribunal took the view that they are properly understood in the context of Dr Ibrahim's abusive behaviour. In that particular context his words were evidence of his coercive and abusive behaviour towards Ms A…

135. … [T]he Tribunal found that Dr Ibrahim's actions would be considered deplorable by fellow practitioners and the public and concluded that they amounted to misconduct which is serious.

Under a heading "Impairment by reason of Misconduct":

136. The Tribunal, having determined that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Ibrahim's fitness to practise is currently impaired by reason of his misconduct.

137. The Tribunal … noted that Dr Ibrahim's actions related to one individual, Ms A. However, it considered that his behaviour had comprised a long lasting, entrenched pattern of abusive conduct and that remediation would therefore be difficult.

138. The Tribunal next looked at what steps Dr Ibrahim had taken to remediate. It noted that he had expressed regret and remorse. In addition, he had apologised to Ms A and to his colleagues and the wider profession for the impact of his behaviour.

139. The Tribunal noted that, attached to Dr Ibrahim's community order, there were the following directions: A rehabilitation activity requirement, including 6 x 1 hour managing emotions sessions, and 6 x 1 hour counselling sessions A 'building better relationships' programme (4 modules). The Tribunal noted that whilst Dr Ibrahim complied with the requirements of his sentence, the building better relationships programme was stopped short due to the COVID19 pandemic and Dr Ibrahim completed 1 of the 4 modules.

140. The Tribunal had regard to the letter from a Probation Services Officer, dated 8 April 2020, which stated, 'Mr Ibrahim has already started to explore different skills and strategies, which could assist him to avoid abusive and aggressive behaviours in future. He is encouraged to continue to develop these.'

141. The Tribunal took the view that, other than his counselling sessions and a masculinity and aggression course, there was a significant lack of evidence of Dr Ibrahim demonstrating any actions towards remediation, beyond what was required of him under his community order.

142. The Tribunal noted that Dr Ibrahim had stated that his behaviour had been influenced by the pressures of his job and his career aspirations. It considered the letter from Dr Ibrahim's counsellor, dated 12 February 2022 and noted that it states, 'We are looking both at better management in terms of prevention through mitigation and also relief through the development of coping strategies.' The Tribunal was of the opinion that this demonstrates that this aspect of his remediation is in its early stages and is not yet complete. The counsellor's letter refers to Dr Ibrahim being determined to find a better work life balance and developing coping strategies to deal with the stress of a demanding professional environment. However, the Tribunal was presented with limited evidenced examples of how Dr Ibrahim had implemented any such coping strategies or how he would manage stressful situations in the future, given that his career aspirations remain similar.

143. The Tribunal considered the reflective statements made by Dr Ibrahim at both the facts and impairment stages of this hearing. It took the view that Dr Ibrahim accepts that his behaviour was wrong. He also acknowledges the impact that his actions had on Ms A, Child B,

his colleagues and the wider profession. The Tribunal noted that in the five months since its determination on facts, Dr Ibrahim had the opportunity to demonstrate to the Tribunal that he had made sufficient efforts towards remediation. However, it considered that such evidence was limited. Dr Ibrahim's latest reflective statement expressed apology, remorse and some understanding of his behaviour. However, the Tribunal considered that Dr Ibrahim's words were not matched by evidence of positive action of how he has prevented or would prevent reoccurrence of his abusive behaviour. In the circumstances, the Tribunal considered that Dr Ibrahim's reflections were superficial, lacked specificity and that his insight was incomplete.

144. The Tribunal considered the risk of repetition. Given it had found the process of remediation to be incomplete and that Dr Ibrahim's insight is limited, it found that there remains a significant risk of repetition.

145. The Tribunal went on to consider the overarching objective. It was satisfied that there was no evidence that Dr Ibrahim's behaviour had impacted patients or that there was an ongoing risk to patient safety or wellbeing. The Tribunal was satisfied that Dr Ibrahim's behaviour had been confined to his relationship with Ms A. It found therefore, that the first limb of the overarching objective, namely 'Protect, promote and maintain the health, safety and wellbeing of the public' was not engaged in this case.

146. The Tribunal next considered the wider public interest which includes upholding trust and confidence in the medical profession and upholding proper standards of behaviour. It noted that Dr Ibrahim had accepted that his fitness to practice is impaired on these two limbs of the overarching objective.

147. The Tribunal considered the gravity of Dr Ibrahim's behaviour. It concluded that if a finding of impairment were not made, the need to uphold proper professional standards and public confidence in the profession would be seriously undermined.

148. The Tribunal therefore concluded that Dr Ibrahim's fitness to practise is currently impaired by reason of his misconduct.

Under the heading "Impairment by reason of Conviction":

149. The Tribunal noted that Dr Ibrahim had admitted all allegations relating to his conviction on 19 September 2019 at South East Northumberland Magistrates' Court.

150. The Tribunal was of the view that whilst this conviction was for a single incident, it needed to be considered in the context of the other facts found, which show this incident to be part of a longstanding pattern of abusive and violent behaviour. The Tribunal reminded itself that Dr Ibrahim's offence involved physical violence towards Ms A and was committed in the presence of a child.

151. The Tribunal considered that Dr Ibrahim's conviction breached paragraphs (1) and (65) of Good medical practice: 1. Patients need good doctors. Good doctors…act with integrity and within the law. 65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.

152. The Tribunal noted that it had documentary evidence that Dr Ibrahim has discharged the obligations of his sentence in relation to this conviction. However, for the reasons set out above in relation to Dr Ibrahim's wider misconduct, the Tribunal considered that Dr Ibrahim's insight was limited and that his attempts at remediation were at an early stage.

153. The Tribunal was of the view that, for the reasons set out above, the limbs of the overarching objective engaged in relation to his conviction relate to the wider public interest in the profession.

> ***154. The Tribunal was of the opinion that given the seriousness of the offence a member of the public with all the facts would consider Dr Ibrahim's conviction to be deplorable and unbefitting of a medical professional.***
>
> ***155. The Tribunal concluded that public confidence in the profession would be seriously undermined if a finding of impairment were not made in relation to his conviction.***
>
> ***156. Therefore, the Tribunal determined that Dr Ibrahim's fitness to practise is impaired by reason of his conviction.***

10. These following passages are taken from the Tribunal's Stage 3 "determination on sanction". Under the heading "The Relevant Legal Principles":

> ***185. The Legally Qualified Chair reminded the Tribunal that the decision as to the appropriate sanction, if any, is a matter for this Tribunal's own independent judgement. The Tribunal was reminded that it should consider the least restrictive sanction first, before moving on to consider more serious sanctions. The Tribunal should also consider proportionality by weighing Dr Ibrahim's interests against the interests of the public.***
>
> ***186. In reaching its decision, the Tribunal should take into account the Guidance and the statutory overarching objective, which includes protecting and promoting the health, safety and wellbeing of the public, promoting and maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct. The Tribunal should avoid putting excessive weight on any particular limb of the overarching objective.***

Under the heading "The Tribunal's Determination on Sanction", sub-heading "Aggravating and mitigating factors":

> ***189. The Tribunal has already set out its determinations on facts and impairment, which it took into account during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Ibrahim's registration, the Tribunal considered and balanced the aggravating and mitigating factors in this case.***
>
> ***190. The Tribunal considered the following to be aggravating features of Dr Ibrahim's case: (a) Dr Ibrahim's abusive behaviour towards Ms A spanned several years; (b) Ms A was in a vulnerable position particularly in relation to her immigration status; (c) The presence of Child B during the assault on 17 April 2019.***
>
> ***191. The Tribunal identified the following mitigating factors: (a) Dr Ibrahim has shown some insight and has evidenced some, but limited, remediation; (b) Dr Ibrahim has apologised through the Tribunal for his behaviour towards Ms A and to the wider profession; (c) He has expressed regret and remorse.***
>
> ***192. The testimonials from Dr Ibrahim's colleagues attest to the fact that he is a skilled clinician and well-regarded colleague. However, the Tribunal was mindful that there had never been any clinical concerns or suggestion that patient safety or wellbeing was at risk. Consequently, the Tribunal considered that the testimonials were of limited weight.***

Under the sub-heading "Suspension":

> ***196. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Ibrahim's registration. The Tribunal gave careful consideration to the paragraphs of the Guidance on suspension.***
>
> ***197. The Tribunal considered paragraph 97 of the Guidance, and the factors which may indicate suspension as an appropriate sanction. It noted in particular the following paragraphs: (a) "A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration" (e) "No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful***

attempts or a doctor's unwillingness to engage". (f) "No evidence of repetition of similar behaviour since incident". (g) "The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour".

198. Whilst the Tribunal accepted that there had been no repetition since April 2019, it noted its earlier findings that Dr Ibrahim's insight was not fully developed and that he had produced limited evidence of remediation. It also noted its finding that there was a significant risk of repetition.

199. The Tribunal noted the very serious nature of Dr Ibrahim's behaviour. It reminded itself of its findings at the impairment stage, namely that, 'Dr Ibrahim had engaged in a course of abusive behaviour towards Ms A which had included violence, verbal threats and coercive behaviour. This behaviour had occurred over a number of years and had culminated in Dr Ibrahim's conviction for assault on 19 September 2019. It noted that there was a significant power imbalance between Dr Ibrahim and Ms A particularly given that she was reliant on him for her immigration status. The Tribunal considered that Ms A was therefore particularly vulnerable and that Dr Ibrahim had exploited that vulnerability. It considered that Dr Ibrahim's behaviour towards Ms A had been particularly cruel.'

200. The Tribunal carefully considered Dr Ibrahim's two reflective statements together with the mitigating features in this case and balanced them against the aggravating features. Having done so, the Tribunal concluded that Dr Ibrahim's behaviour was so serious that it was fundamentally incompatible with continued registration. It therefore determined that suspension would not be appropriate, proportionate or meet the public interest concerns.

Under the sub-heading "Erasure":

201. The Tribunal considered whether it would be appropriate and proportionate to erase Dr Ibrahim from the medical register. It carefully considered the factors set out in paragraph 109 of the Guidance that sets out factors which may indicate erasure as an appropriate sanction: (a) "A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor". (c) "Doing serious harm to others". The Tribunal noted the multifaceted abuse suffered by Ms A. It also noted that it had the benefit of seeing Ms A give evidence in person. It had found her to be compelling in her evidence and noted that she had not overstated the impact that Dr Ibrahim's behaviour had had on her. The Tribunal was satisfied that Ms A had been significantly harmed by the actions of Dr Ibrahim, beyond the physical injuries she sustained. (e) "Violation of a patient's rights/exploiting vulnerable people". The Tribunal noted that there was a significant power imbalance between Dr Ibrahim and Ms A, owing in particular to her reliance on him for her immigration status. It was satisfied that Dr Ibrahim had exploited this vulnerability by making threats to her security in this country and to her having her child taken away. (g) "Offences involving violence". The Tribunal considered that Dr Ibrahim had been convicted of assault and that it had found there to have been a persistent pattern of violent behaviour towards Ms A over several years. (j) "Persistent lack of insight into the seriousness of their actions or the consequences". The Tribunal accepted that there had not been a persistent lack of insight but noted that it was incomplete and had been slow in developing.

202. The Tribunal considered the need to take a proportionate approach to imposing sanctions. It balanced the interests of Dr Ibrahim, who is a good clinician and valued colleague against the public interest. The Tribunal accepted [Counsel for the Dr Ibrahim's] submission that the need to retain good and competent doctors is in the public interest. However, it considered that such a need, given the seriousness of Dr Ibrahim's behaviour, was outweighed by the need to promote and maintain public confidence and uphold proper professional standards in the profession.

203. The Tribunal was satisfied that Dr Ibrahim's behaviour is fundamentally incompatible with continued registration.

204. In all the circumstances, the Tribunal determined that erasure was the only necessary and proportionate sanction. It concluded that this was necessary in terms of the overarching

> ***objective: to maintain public confidence in the medical profession; and to uphold proper professional standards and conduct for members of the profession. The Tribunal therefore directs that Dr Ibrahim's name be erased from the Medical Register.***

The Appellant's Arguments on this Appeal

11. The grounds of appeal filed on behalf of the Appellant were supported by a skeleton argument written by Ms O'Rourke KC. In her oral submissions, Ms O'Rourke KC crystallised "six main arguments". Some of these developed existing points in the grounds of appeal and skeleton argument. But others were new points. I will gather the key arguments under some broad headings.

12. Overall. Having found impaired fitness to practise supporting the imposition of a sanction, the appropriate sanction in all the circumstances of the case should have been suspension with a review. The sanction of erasure was wholly disproportionate and wrong. Some of the Tribunal's Stage 2 impairment reasoning, which are carried through to its Stage 3 decision on sanction, was also wrong. A suspension accompanied by a review (Guidance §95), with the opportunity to review insight and remediation, would have been proportionate. This Court should replace the erasure sanction with a suspension.

13. Public confidence. The Tribunal rightly recognised that this case did not engage the first limb of the statutory overarching objective: protecting and promoting the health safety and well-being of the public (Determination §145). The Tribunal also rightly recognised that the third limb was engaged: promoting and maintaining proper professional standards of conduct for the members of the profession (§146). But the Tribunal was in error in placing any substantial weight on the second limb of the overarching objective: promoting and maintaining public confidence in the medical profession (§147). This was conduct in a domestic setting. It was conduct of a non-sexual nature. It was the subject of criminal proceedings and a criminal sentence which the Appellant has served. The public confidence limb can only be a "very small element" in such a case, or in any event in the present case. Public confidence is primarily and sufficiently addressed by the criminal law. That is how the public would see it.

14. Seriousness. Seriousness is at the heart of this case. The degree of seriousness which is necessary for the purposes of erasure as opposed to suspension is conduct so serious as to be "fundamentally incompatible with continued registration" (Guidance §92). The Tribunal concluded that the Appellant's behaviour was so serious as to meet this test (Determination §200). That conclusion was wrong. In a non-clinical setting this court is best placed to evaluate for itself whether that high threshold is crossed. This was "not the most serious" offending and the Tribunal's conclusion was wrong as to the degree of seriousness when comparison is made with other cases. The "context" and "setting" for the misconduct, and conviction, was "a marriage gone wrong". This was "a doomed co-habitation", arising from the "personalities" of the parties to a marriage. The approach to aggravating and mitigating factors was wrong, given the marital relationship of co-habitation, and given that the misconduct and aggressive behaviour were confined to the spousal setting, which had ended. There are two specific further criticisms concerning the way in which "aggravating and mitigating features" were evaluated (§§189-192). First, the Tribunal was wrong to characterise Ms A as having been a "vulnerable adult" by reference to her "immigration status" (§190), so as to

"elevate" immigration status into a vulnerability amounting to an aggravating factor. Second, the Tribunal was wrong to accord to the testimonials only the "limited weight" which it described (§192), when they were highly material to the consideration of whether an otherwise good and competent doctor needed to be erased (cf. Giele).

15. Remediation and insight. The Tribunal did not "take full cognisance" of the "wholly domestic setting", which was highly relevant to the nature and type of "remediation" which could be meaningful, appropriate and useful. This led the Tribunal into error in finding (Determination §141) a failure to undertake action towards remediation. The Appellant had undertaken what remediation was appropriate, available and on offer. The Tribunal at Stage 3 (sanction) repeated errors from Stage 2 (impairment): finding limited evidence of remediation; ignoring the single-relationship domestic-abuse setting; and ignoring the limited opportunities for "remediation". The Tribunal was wrong (§§141-143 and 191) to assess remediation and insight as limited, without recognising the six months which had passed since the Stage 2 determination on impairment and the ways in which matters had "moved on". The Tribunal was wrong to describe the Appellant's most recent reflection statement as "superficial" and "lacking specificity" (§143). The Tribunal was wrong to reject the sanction of suspension, in a case where the remediation and insight were under-developed (§198). What the Tribunal should have done was to impose a suspension with a review (Guidance §95), to allow time for remediation and insight to develop further.

16. Risk and repetition. The Tribunal was wrong (Determination §143) about preventing reoccurrence. Again, it failed to recognise the "individualised" context (domestic violence between spouses not connected with professional practice) and its narrow confines (in a single spousal relationship). The Tribunal was wrong to find a "significant" risk of repetition (§§144 and 198), given the absence (see §145) of any evidence of any adverse impact on patients or ongoing risk to patient safety, given that the Appellant's behaviour was confined to his relationship with his ex-wife, and given the circumstances. A "significant" risk of repetition was not made out on the evidence. There had been a three-year passage of time since the most recent conduct relied on. There had been no repetition and the criminal sentence had been served. There had also been compliance with the one year restraint order imposed by the criminal court. The marital relationship was ended and had resolved. The Appellant was in new relationship which had begun in July 2020 with a partner with whom he had been cohabiting since October 2020. The Tribunal ignored ignoring important evidence: two statements of the Appellant's new partner dated 21 August 2021 and 12 February 2022 were unmentioned and unevaluated by the Tribunal.

17. Those, then, were the essential arguments, advanced in writing and orally on the appeal.

Three particular cases

18. I have recorded that, in relation to degree of seriousness, Miss O'Rourke KC submitted that the Tribunal's conclusion was wrong when comparison is made with "other cases". She submitted that three cases stood as helpful 'working illustrations', capable of assisting as to the line to be drawn between suspension and erasure. I will describe each of them.

19. First, there is Giele v GMC [2005] EWHC 2143 (Admin) [2006] 1 WLR 942. Dr Giele was described as a "uniquely talented" expert consultant in reconstructive surgery. He

had a sexual relationship with a patient. She was suffering at the time from a depressive illness. The relationship lasted for over a year. Defending the allegations against him, Dr Giele denied the sexual relationship and asserted that the patient had imagined it due to a psychosis or erotomania. The tribunal imposed the sanction of erasure. There was no suggestion that patients would be endangered if Dr Giele was permitted to continue to practise. The High Court (Collins J) said that if erasure were not necessarily required, the skills of the practitioner would be a relevant factor, but that if misconduct were so serious that nothing less than erasure would be considered appropriate, there could be no lesser sanction simply because the practitioner is particularly skilful. He said Dr Giele had chosen to contest the allegations and so to put Mrs A through the ordeal of giving evidence and being subjected to hostile cross-examination. That could not properly be used to justify the imposition of a more severe sanction than the misconduct deserved. But it did mean there was no mitigation, it did disclose a lack of remorse or regret, and it could indicate a lack of insight such that there could be said to be a danger of recurrence. The improper sexual relationship could have merited erasure, but the mitigation and testimonials could tip the balance against erasure. In conclusion, erasure was not required. Public confidence in the profession would not be harmed by 12 months suspension, which was the outcome substituted by the Court.

20. Secondly, there is Khan v General Pharmaceutical Council [2016] UKSC 64 [2017] 1 WLR 169 (discussed in Sastry at §29). Mr Khan was a registered pharmacist whose marriage had broken down. In May 2011 he pleaded guilty to assault in July 2010 and was fined. During the assault he had kicked his wife when she was lying in bed; grabbed her hair; punched her in the face; dragged her off the bed; and struck her again in the face. He then breached a bail condition by returning to the family home and attempting to contact her. In 2012 he pleaded guilty to threatening and abusive behaviour on two occasions in March 2012. On one, he had demanded entry, banging on the door, shouting and swearing. On the other, he had tricked his wife's sister into opening the door, had kicked a hole in the wall, sworn at the sister that he was going to kill her, his wife and the whole family, and removed the two children (aged 2 and 9). In June 2012 he was sentenced to a "community payback order", with supervision for 18 months, 180 hours of unpaid work, and a six month domestic violence programme called "Change". In proceedings before a disciplinary committee, Mr Khan admitted the misconduct set out; accepted that it had been wholly inappropriate; apologised for it; acknowledged its effect on public confidence. The committee accepted that he had diligently completed the 180 hours of unpaid work; successfully attended the "Change" programme; learned skills and genuinely learning the error of his past conduct; was assessed as low risk of re-offending. His misconduct had in no way affected his professional performance; his clinical skills were not in issue; and his patients were not at risk. The committee determined that suspension for 12 months would be insufficient to mark the gravity of his conduct; and that the maintenance of public confidence demanded nothing less than removal. The Supreme Court substituted an order of suspension. The reasons were these:

> ***37.Mr Khan was guilty of three incidents of domestic violence, of which the first and third were particularly serious. In the third he even involved the children of the family. His conduct betrayed a gross loss of control and his purpose was, directly and indirectly, to hurt his wife. Mitigation on his behalf in the Sheriff Court would have been hard to articulate. Inevitably the convictions attracted at first a significant fine and later a substantial community penalty. There, however, lay the punishment. The focus for the committee was different: its task, not easy, was to judge the effect of the conduct on public confidence in the profession and to identify a sanction proportionate to its judgement.***

> ***38. Mr Khan's conduct did not relate to his professional performance. No patient had been, or was likely to be, put at risk. The committee fairly recited several further features of the case which militated against the removal of his registration, such as his genuine acknowledgement of fault and the positive reports of his response to the requirements of the community payback order …***
>
> ***39. [T]he committee [was required] to have regard to the Indicative Sanctions Guidance when determining sanction. It duly referred to [the paragraph] of the guidance, entitled "Cases where removal from the Register may be appropriate", and it picked out two of the cases there described, albeit in arrestingly general terms, namely "Behaviour is fundamentally incompatible with registration" and "Public confidence in the profession demands no lesser sanction". But the committee might also usefully have referred to [the paragraph] of the guidance, entitled "Mitigating Features – General" and, had it done so, it would have picked out: (a) no prior disciplinary history; (b) genuine insight into misconduct; (c) open admissions at an early stage; (d) no actual or potential harm to patients or the public; (e) genuine expression of remorse to committee; and (f) steps taken to prevent recurrence."***
>
> ***40. The committee itself acknowledged that its direction for removal might appear harsh. It was indeed harsh. It was unnecessary. It was disproportionate. The sanction was proportionate to the disrepute into which Mr Khan's conduct had brought, or was likely to bring, the profession of pharmacy was suspension of his registration, which, at the time of the committee's determination, should no doubt have been for a period of a year.***

21. Thirdly, there is GMC v Bawa-Garba [2018] EWCA Civ 1879 [2019] 1 WLR 1929. Dr Bawa-Garba was a junior doctor specialising in paediatrics. She was convicted of gross negligence manslaughter, for a truly exceptional degree of negligence. She was sentenced to two years imprisonment suspended for two years, for what the sentencing judge described as failing to give a very sick 6 year old child the priority he deserved. The tribunal imposed a 12 month suspension, which the High Court overturned in favour of erasure, but which the Court of Appeal restored. Suspension with a review was a sanction properly and reasonably open to the tribunal. The Guidance was very useful non-statutory guidance, but its relevance and application depended on the precise circumstances of the case and none of its contents necessarily required erasure. It was permissible to take into account the full context of the child's death, the range of persons bearing responsibility and the systematic failings of the NHS trust. Dr Bawa-Barba's actions had not been deliberate or reckless. Any deficiencies in clinical skills had all been remedied, there was no continuing risk to patients, and there was demonstrable significant and substantial insight. It was appropriate to give respect to the expert tribunal reaching its evaluative judgment.

Discussion

22. In her oral submissions, Ms O'Rourke KC identified "seriousness" as the key question in this case. Mr Mant had made the same point in his skeleton argument. I agree.

23. This was a case in which the Appellant had assaulted his wife by beating on 17 April 2019. As the Magistrates court, and then the Tribunal, heard. The circumstances were these. The Appellant had asked Ms A to arrange a parking permit and got annoyed when he returned from work to find that this had not been done. Ms A went upstairs to get away from him. The Appellant followed her, poured a jug of hot water over her, before pulling her by the hair towards and down the stairs, kicking her legs and back. All this took place in the presence of their then four-year-old son. This was the subject of the prosecution, conviction and sentence in the magistrates' court in 2019.

24. The Allegations and evidence before the Tribunal explored, and the Tribunal found, a far more extensive picture. The Tribunal found that this was a "violent, threatening and controlling relationship" (Determination §79); that the Appellant had engaged in a "course of abusive behaviour" towards Ms A, including "violence, verbal threats and coercive behaviour" (§132); that he had acted in a way which was "particularly cruel" (§132); and that the abusive behaviour "spanned several years" (§190). The Tribunal found that the Appellant had "hit" Ms A, "both on the face and on the body", "frequently", and "throughout" the 6 year period between 2013 and April 2019 (§36). This was multi-faceted abuse which had "significantly" harmed Ms A (§201). It was misconduct involving "violence", in a doctor's "personal life", over a "sustained period" (§163). It was a "long-standing pattern of abusive and violent behaviour" (§150).

25. The Tribunal found that this course of abusive behaviour was conducted in circumstances of a "significant power imbalance". Ms A was "reliant" on the Appellant for her immigration status, which made her "particularly vulnerable". The Appellant "exploited that vulnerability" (§132). He did so by making threats to Ms A's security in this country, and threats to her having her child taken away (§201). The reason why Ms A had not reported any previous incidents to the police was that the Appellant had "threatened" her with removing her from his visa if she did so, and with sending her back to Iraq by herself, and so she had stayed with him for that reason, although she was "terrified" of his "outbursts" (§§42-43). On one occasion, found by the Tribunal to be "compelling, credible and true", after the Appellant had beaten Ms A's face and her nose was bleeding, he handed her the phone and said to her: "you are a weak woman, call the police, you cannot do it" (§§38-39).

26. All of these findings and evaluative descriptions – on this central feature of the case – are, in my judgment, unimpeachable.

27. Strong emphasis has been placed by Ms O'Rourke KC, especially in the written submissions, on the "domestic setting". This takes the conduct squarely into the Appellant's "personal life" (Guidance §56). It was conduct within the context of a single relationship and with a single victim. There has been no harm to "patients" and the Appellant does not present a risk to "patient safety" (Determination §108). This brings into focus the question whether a sanction of erasure could ever be "necessary" for the protective purposes of the overarching objective, in a context of "domestic" violence and abuse. But I am in no doubt that it can be. Were it otherwise, the judgment of the Supreme Court in Khan would have been differently reasoned, and much shorter. An "impairment" has been found in this case, which Ms O'Rourke KC accepts is an impairment of this doctor's "fitness" to practise. It is not disputed that suspension from practice would be justified. This was a case in which there were actions which "would be considered deplorable by fellow practitioners and the public" and which amounted to "serious misconduct" (Determination §135). The Tribunal found that there was an impairment of fitness to practice in terms of the limbs of the overarching objective concerned with upholding trust and confidence in the medical profession and upholding proper standards of behaviour (§§146-148). I agree. True, sanctions are not concerned with "punishment" but rather with "protection" (Guidance §§14, 17). But the protective limbs of the "overarching objective" (Guidance §14) can be engaged by what a doctor does in their "personal life" (Guidance §56); and erasure may be appropriate even where the doctor "does not present a risk to patient safety" (Guidance §108). Khan was

a case where erasure was unjustified and disproportionate. It arose in a domestic setting. But the Supreme Court did not say that erasure was, in principle and for that reason, always inappropriate in such a setting.

28. The Tribunal assessed that this was conduct so serious that it crossed the undoubtedly very high threshold of being conduct fundamentally incompatible with continued registration, which characterisation supported the finding that suspension would not be appropriate, proportionate or meet the public interest concerns (§200). This seriousness underpinned the Tribunal's conclusion that erasure was the only necessary and proportionate sanction; it was necessary in terms of the overarching objective (§204) in the context of behaviour fundamentally incompatible with continued registration (§203) where the need to retain good competent doctors in the public interest was outweighed by the need to promote and maintain public confidence and uphold proper professional standards in the profession, balancing the interests of the Appellant as a good and valued clinician against the public interest (§202). There was serious harm done to Ms A, who had been exploited as a vulnerable person, through offences involving violence including assault but also the persistent pattern of violent behaviour over several years; all of which was put alongside insight which was incomplete and had been slow in developing (§201).

29. I respect those conclusions, arrived by a specialist tribunal, after a lengthy and rigorous process, over an extended period involving multiple days of hearings and with oral and written evidence and representations. But more than that, I agree with the cogent reasons given by the Tribunal, and with the conclusion which was fully, objectively justified. I would reach the same view on a correctness standard. In my judgment, the Tribunal was fully justified in the present case – in light of its findings of fact – in concluding that there was in this case "conduct … fundamentally incompatible with continued registration" (Determination §200). Under the Guidance, that characterisation meant that "erasure [was] more likely to be the appropriate sanction" (Guidance §92). The Tribunal concluded that suspension was insufficient, and erasure was necessary. That conclusion was not wrong. Nor was the reasoning which underpinned it.

30. As to the public confidence limb of the overarching objective, I cannot accept the contention, advanced for the first time orally, that this important limb is capable of only being a "very small element" in the context – or in the present case – of a domestic (non-sexual) conduct case where the criminal law is applicable and has been applied. That is essentially for the reasons given by Mr Mant, who creditably took this new point in his stride. A criminal conviction is a recognised basis for a finding of misconduct under the disciplinary process. That itself indicates that "public confidence" and the "public interest" are not left to, or exhausted by, a criminal process. The criminal process will provide appropriate punishment, but the disciplinary processes of the GMC and the relevant sanctions are in place to serve the different objective of protection of the public by reference to all three limbs of the overarching objective (Guidance §14). The Guidance explicitly, and convincingly, recognises the appropriateness of taking "serious" action where conduct arises in a doctor's "personal life", including misconduct involving "violence", and inappropriate behaviour towards "vulnerable adults" (Guidance §56). Where there has been a criminal conviction, the Tribunal process operates to consider whether "fitness to practise" is "impaired" and to consider what sanction is appropriate whether (Guidance §116) to protect the public

(first limb), to maintain the reputation of the profession (second limb), and/or to maintain high standards (third limb). Khan was itself a domestic violence case which involved two sets of criminal proceedings. Far from suggesting that public confidence would lack prominence in such cases, the judgment of the Supreme Court specifically recorded: the recognised effect of the misconduct on public confidence (Khan §19); the conclusions of the disciplinary committee about the sanction needed to avoid undermining public confidence in the profession (Khan §20); and the Court's own recognition "in a case such as the present" of the committee's concern "for the damage already done or likely to be done to the reputation of the profession" and the "assessment of the effect on public confidence of misconduct which does not relate to professional performance" (Khan §36). Moreover, in the present case, the sole conduct which was directly the subject of the criminal process in the present case was the assault by beating on 17 April 2019. The Tribunal was directly concerned with the bigger picture of conduct over a six-year period. In my judgment the Tribunal was correct to identify the public confidence limb of the overarching objective as being directly engaged and applicable, identifying erasure as a sanction necessary and appropriate viewed from the perspective of public confidence in the profession.

31. The characterisation of seriousness was the context in which the question of "aggravating" and "mitigating" factors then arose (Guidance §§24-60). At this stage in the analysis (a point discussed in Giele), the Appellant's response becomes relevant. In Khan the Supreme Court emphasised the "genuine acknowledgement of fault" and the "open admissions at an early stage". There were also the "positive reports of … response"; the "genuine insight into misconduct"; the "genuine expression of remorse"; and the "steps taken to prevent recurrence". The present case is strikingly different. Here, the Appellant had denied the assault by beating in April 2019, in his police interview and at trial. He was then convicted and sentenced and in November 2019 subject to the community order with the BBR and the RAR. He attended 12 RAR sessions and Module 1 of the BBR (seven sessions). At that point, and now facing the 'bigger picture' allegations in the Tribunal proceedings, of the "violence, threatening and controlling behaviour" through the 6 year period, he denied the vast bulk of the new Allegations, and all the new Allegations of violence. That denial meant Ms A was, once again, placed in the position of having to give oral evidence and be cross-examined. The Appellant's own evidence to the Tribunal – on violence, threatening and controlling behaviour – was rejected, the Tribunal finding that he had "downplayed" and "minimised" the violent nature of his behaviour towards Ms A, and that he had raised matters which were not true, to portray himself in a good light (Determination §32).

32. The Tribunal found, as a point in the Appellant's favour, that there was not a "persistent lack of insight" (Guidance §109(j)), but rather that his "insight" was "incomplete and had been slow in developing" (Determination §201). As "mitigating factors" (§191), the Appellant had shown some insight and evidenced some, albeit limited, remediation; he had apologised through the Tribunal for his behaviour towards Ms A and to the wider profession; and he had expressed regret and remorse. The limited remediation involved compliance with the requirements of his community sentence, but the BBR programme had stopped short due to Covid after the completion of one of the four modules (§139). As the Tribunal noted, it had been said in a letter from probation (8 April 2020) that the Appellant had "started" to "explore different skills and strategies" which "could assist" him to avoid abusive and aggressive behaviours in future and that

he was "encouraged" to "continue to develop these" (§140). But the Tribunal found a significant lack of evidence demonstrating any actions towards remediation, beyond what had been required by the community order. The Tribunal also considered the recent letter from a counsellor dated 12 February 2022, provided for the Stage 3 hearing on 14 February 2022. It recorded that in very recent telephone sessions (19 January 2022, 2 February 2022 and 9 February 2022) "we are looking both at better management in terms of prevention through mitigation and also relief through the development of coping strategies". The Tribunal convincingly described "this aspect of … remediation" as being "in its early stages" and said there were "limited evidenced examples" of those coping strategies which the counsellor described the Appellant as "determined to find" (§142). The Tribunal (§143) had and considered the recent "reflective statement" from the Appellant (February 2022), with its acceptance and acknowledgment and its expressions of apology, remorse and some understanding. The Tribunal's view was that there was only limited evidence of efforts towards remediation, that the words were not matched by evidence of positive action to prevent re-occurrence of abusive behaviour, and that overall the reflections were superficial, lacked specificity and the insight was incomplete (§143). The Tribunal recognised that there was "some insight" but that it was incomplete and had been slow in developing (Determination §201). This was one of the features to be considered under the (Guidance §97) in deciding whether the lesser sanction of suspension was appropriate and sufficient. The Tribunal was not, in principle, under any obligation to impose suspension so as to give time for remediation and insight further to develop: see Ranga v GMC [2022] EWHC 2595 (Admin) at §51. The Tribunal had very well in mind the 5-6 month period that had elapsed since the determination on impairment (Determination §143). It had the evidence and representations about the extent to which matters had 'moved on' during that period. It found that statement was general and aspirational in its nature. The tribunal grappled (§§141-143) with the nature of the evidence demonstrating actions towards remediation. That reasoning is persuasive and I see nothing wrong with any of it.

33. All of that is important for "risk", because it was in the light of those conclusions that the Tribunal found there to be a "significant" risk of repetition (Determination §144). Ms O'Rourke KC's submission really comes to this: that it was wrong to characterise the risk as "significant"; and so that it was wrong to decline to characterise the risk as being "not significant". I cannot accept that argument. Nor can I accept that the Tribunal ignored important evidence. The Tribunal was very well aware that the behaviour towards Ms A had taken place between 2013 and 16 April 2019. The Tribunal was aware that the appellant had complied with the requirements of his sentence (§139). It recorded the representations on behalf the Appellant regarding "risk of repetition", which urged the Tribunal to consider the particular circumstances and the time that had elapsed since the events in question, the absence of repetition and the Appellant's conduct since April 2019 (§176). The Tribunal was well aware that the criminal sentence had been served, that the marital relationship had ended, and that the Appellant was now in a relationship with his new partner, a point which it specifically recorded, quoting from her first statement (§117). The problem was that, in the absence of satisfactory evidence of concrete steps relating to remediation and insight, the Tribunal nevertheless identified a real – a "significant" – risk of repetition. I can see nothing wrong or unjustified in that conclusion. There is a clear link, drawn by the Tribunal, between the nature of insight and remediation on the one hand and the risk of repetition on the other. In the context of what was found to be a "violent, threatening

and controlling" relationship (§79), and a "course of abusive behaviour" including "violence, verbal threats and coercive behaviour" (§132), the function of strong evidence of insight and concrete remedial steps would have been highly reassuring including from the perspective of risk of repetition. By the same token, the function of weak evidence of insight and concrete remedial steps failed to provide that reassurance. There was a real and substantial risk which the Tribunal unassailably characterised as significant. I respect that evaluative appraisal. I adopt it, because I agree with it.

34. I cannot accept the new and unheralded oral argument that the Tribunal wrongly elevated the immigration status of Ms A into a vulnerability for the purposes of constituting an aggravating factor. There was nothing in the Tribunal's reasoning which was unjustified or an overstatement. The Tribunal explained that it accepted Ms A's evidence (§43) that she had not reported previous incidents to the police as the Appellant always threatened her with removing her from his visa if she did. The Tribunal was fully justified, for the reasons it gave, to identify (§132) this as abusive behaviour in the context of a significant power imbalance; that Ms A was reliant on the appellant for her immigration status; that she was therefore particularly vulnerable; and that the Appellant had exploited that vulnerability.

35. So far as "other cases" are concerned, I would agree that the case of Khan – in its domestic criminal context – provides a valuable 'working illustration'. It is a Supreme Court decision in which the question of "suspension" as against "erasure" was directly in issue. It was a case where the Supreme Court concluded that suspension (for the maximum period) was the justified and proportionate course, rather than erasure. But Mr Mant is right to point to clear differences. In Khan the series of incidents included one incident of physical violence, and the Supreme Court strongly emphasised the open admissions at an early stage, genuine insight, genuine expression of remorse and steps taken to prevent recurrence (Khan §§38 to 39).

36. So far as the testimonials are concerned, the position is this. It is clear that the Tribunal appreciated and took fully into account – in the Appellant's favour – his position as a good clinician and valued colleague (Determination §202). The reference to valued colleague links directly to the testimonials which had been provided, on which reliance was and is placed. The Tribunal expressly accepted the public interest in retaining good and competent doctors (§202). It had earlier described the testimonials attesting to those facts: that the Appellant is a skilled clinician and well-regarded colleague (§192). In explaining why those testimonials were of "limited" weight, the Tribunal spelt out that this was the "consequence" of the fact that there had never been any "clinical" concerns or any suggestion that "patient safety" or patient "well-being" was at risk (§192). In other words, the points which the testimonials supported were being accepted: there was no doubt about the Appellant being a skilled clinician and a well-regarded colleague. They were already fully weighed in the balance. The Tribunal had that very well in mind. It recognised it and took it into account. That was why the first limb of the overarching objective was not engaged (§145). But, for the convincing reasons which the Tribunal gave, none of that undermined the conclusion that there was a necessity for erasure in this case.

Conclusion

37. I have addressed issues on this appeal by way of a rehearing. I have exercised an objective judgment on all the materials. I have undertaken an exercise in evaluating, for

myself, issues of public protection and issues relating to the reputation of the medical profession. But in doing all of this, I have found the Tribunal's detailed and careful analysis and reasoning of great assistance. I adopt it because it is cogent and convincing and I agree with it. I find the sanction which was imposed in this case fully objectively justified, for the reasons given by the Tribunal. In my judgment, the sanction was not "wrong"; erasure was not "excessive" or "disproportionate"; suspension would not have met the public interest concerns properly identified, and erasure was objectively appropriate and necessary in the public interest. Erasure was necessary to promote and maintain proper conduct standards, and to promote and maintain public confidence in the medical profession, and to achieve both of those aspects of the statutory overarching objective. Having reached those views, on the particular facts and features of this individual case, I dismiss the appeal.