Neutral Citation Number: [2023] EWHC 2400 (KB)

AC-2023-BHM-000046

and AC-2023-BHM-000092

IN THE HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

DR SHAH SHAHIN ALI	**Appellant**
and	
GENERAL MEDICAL COUNCIL	**Respondent**

Approved Judgment

This judgment was handed down remotely by MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down was 10.00 am on 29 September 2023.

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

....

His Honour Judge Mithani KC

(29 September 2023)

<u>Hearing dates: 14 September and 29 September 2023</u>

BEFORE HIS HONOUR JUDGE MITHANI KC, SITTING AS A JUDGE OF THE HIGH COURT, at the Birmingham Civil and Family Justice Centre, Priory Courts, 33 Bull Street Birmingham, B4 6DS

The Appellant, Dr Shah Shahin Ali, appeared in person.

Mr Peter Mant (instructed by GMC Legal), appeared on behalf of the Respondent.

BACKGROUND

1 Dr Shah Shahin Ali ("the Appellant") appeals under section 40 of the Medical Act 1983 ("the MA 1983") against two decisions of the Medical Practitioners Tribunal ("the MPT") made on 22 December 2022 ("the First Review Decision") and 18 March 2023 ("the Second Review Decision") respectively. These decisions (collectively referred to as "the Review Decisions") were made by the MPT ("the Review Tribunal") on a review of an original decision ("the Original Decision") made by a differently constituted MPT ("the Original Tribunal") on 17 December 2021. The Original Decision, though made on 17 December, came into effect on 5 July 2022. It determined that the Appellant's fitness to practise was impaired by reason of his being convicted of an offence of dangerous driving on 12 December 2019, before the Crown Court in Birmingham. The offence in question was committed on 22 August 2018. The Respondent had pleaded "not guilty" to the offence. However, he was found guilty of it and was sentenced, on 23 April 2020, to a term of imprisonment of 9 months, suspended for 24 months, with a requirement to complete a programme of rehabilitation of 15 days and undertake 180 hours of unpaid work. He was also disqualified from driving for a period of 18 months. I will refer to the expression "MPTs" to describe more than one MPT.

2 The events leading to the Review Decisions being appealed require more detailed mention. I adopt the substance of the relevant events from the Respondent’s submissions.

3 The Appellant qualified in 2013 from the University of East Anglia. Following his training, he was registered as a fully-fledged Doctor and entitled to practise as such in that year.

4 The Appellant notified the Respondent – as he was required to do – that he was being prosecuted for the above offence and of his subsequent conviction of that offence. The Appellant has complied fully with the requirements of his suspended sentence. In addition, the Appellant has provided his full cooperation to the Respondent throughout the course of its investigation into his conduct arising from his commission of the offence.

5 Briefly stated, the circumstances of the offence were as follows: on 22 August 2018, the Appellant was behind the wheel of his vehicle in the car park of Highbury Park in Moseley, Birmingham. As he was about to leave the car park, the victim of the offence drove along the access road and was about to turn right into the car park. The Appellant’s vehicle approached the victim’s vehicle head-on. Both vehicles stopped “nose to nose”. The Appellant lost control of his temper when the victim’s vehicle did not move despite the Appellant gesturing that he should.

6 As the Appellant got out of his car, he shouted offensive language at the victim. The victim attempted to tell the Appellant that he was going to park in one of the two spaces available in the car park. However, the Appellant refused to listen and continued to shout, using offensive language. The Judge

described the language used by the Appellant, which was heard by a member of the public, as “absolutely disgusting”.

7 The victim then got back into his vehicle and then out again to pacify his dog who was yelping in the back. The Appellant became angry again, revved his engine, reversed slightly and then drove in the direction of the victim who was standing by his open, front car door. The Appellant drove his vehicle in a curve as if to drive around the victim’s car and then changed angle so he could side-swipe the victim. The Crown Court Judge found that the Appellant drove his vehicle deliberately at the victim and intended to hit him.

8 The Appellant’s car wing mirror struck the victim and he fell to the ground. The victim, who was 83 or 84 years old at the time of the incident, suffered minor injuries, which included a cut to his wrist, bruising to his right hand and swelling of his wrist. The Appellant then left the scene.

9 The Appellant pleaded “not guilty” before the Crown Court in Birmingham. However, he was found guilty of the offence. In his sentencing remarks, the Crown Court Judge described the incident as “a clear case of road rage”. He took the circumstances of the incident (including the injury to the victim) as aggravating the commission of the offence. Although there was no separate charge of violence or inflicting violence on the victim, it is plain that the Judge was perfectly entitled to find those matters proved and take them into account in sentencing the Appellant.

10 The Appellant maintained his innocence throughout the proceedings before the Original and Review Tribunals and in these appeals. While initially indicating that he intended to

appeal his conviction and (presumably also) sentence to the Court of Appeal, he has, thus far, brought no appeal against either, and is unlikely to be able to do so, given the time that has elapsed since he was convicted and sentenced.

11 I should add, by way of background only, that on 11 July 2019 (i.e., prior to the Appellant's conviction in the Crown Court but after the commission of the offence of dangerous driving), an MPT had directed that the Appellant's name should be suspended from the medical register for dishonesty and deficient professional performance ("DPP"). In January 2020, a review tribunal found that the Appellant's fitness to practise remained impaired on DPP grounds but was no longer impaired on the ground of dishonesty. It directed that conditions should be imposed on the Appellant's registration for a period of 24 months. This decision is entirely separate from the decisions and directions which form the subject of the proceedings before the Original and Review Tribunals and have no relevance to the issues that arise in these appeals.

12 On the date of the Original Decision, i.e., on 17 December 2021, the Original Tribunal found that the Appellant's fitness to practise was impaired by reason of his above conviction. Initially, the allegations against the Appellant in respect of the conviction were listed to be heard between 3 and 5 February 2021. However, the Appellant successfully applied to the Tribunal to adjourn the hearing to obtain pro-bono representation. The hearing resumed on 24 to 26 May 2021 for submissions for impairment and sanction.

13 Although the Original Tribunal found that the Appellant's fitness to practise was impaired by reason of the conviction, it was unable to complete its deliberations on the sanction that it

should impose against the Appellant and, therefore, adjourned the hearing. The Appellant was offered a return date for the adjourned hearing in September 2021 (at around the same time as a GMC Performance Assessment examination) but stated that he would prefer a listing in December 2021.

14 The Original Tribunal reconvened in camera on 13 December 2021 to determine the sanction that should be imposed on the Appellant. It decided to impose a six-month suspension order. The judgment of the Tribunal (i.e., the Original Judgment) was handed down on 17 December 2021. The Appellant appealed against that decision to this court but later withdrew the appeal. The order for suspension set out in the Original Judgment did not come into effect until 5 July 2022, when the appeal was withdrawn. In the meantime, on 24 January 2022, a hearing was convened to review the ongoing conditions of practice imposed in respect of the DPP. The review tribunal found that the Appellant's fitness to practise was no longer impaired by reason of the DPP and revoked the conditions of his suspension which were imposed for that conduct.

15 A "new and review" hearing was listed on 8 and 22 December 2022 to: (a) review the suspension order imposed by the Original Tribunal by the terms of the Original Decision; and (b) consider fresh misconduct allegations concerning the Appellant's alleged failure to disclose fitness to practise information to NHS England. However, on 9 December 2022, the Review Tribunal decided to adjourn both the hearing of the new misconduct allegations due to outstanding disclosure issues (which were not of the Appellant's making) and the review hearing. The decision to adjourn the review hearing was due to the fact that the Appellant wished to have the review hearing conducted in

person. This was not possible in the week commencing 12 December 2022 due to issues relating to the train strikes. The Review Tribunal, therefore, heard submissions on various preliminary issues on 13 December 2022, resumed hearing the case on 19 December 2022 and handed down its decision (i.e., the First Review Decision) on the substantive issue of "impairment" on 22 December 2022.

16 The Tribunal did not have time to hear submissions on sanction, so the matter was adjourned and came back before the Review Tribunal on 17 and 18 March 2023. The Tribunal extended the existing suspension under the terms of the First Review Decision for six months to cover the period up to the resumed review hearing under s. 35D(5)(a) of the MA 1983 (though mistakenly referred in the papers to s. 35D(12)(c) of that Act) which provides it with the power to do so. In the meantime, the Appellant appealed the decision of the First Review Decision to this court and was granted an extension of time by this court to do so.

17 The sanction hearing came before the Review Tribunal on 17 and 18 March 2023. The Appellant did not attend that hearing. However, the Tribunal decided to proceed in his absence. On 18 March 2023, the Review Tribunal handed down its determination on sanction (i.e., the Second Review Decision), imposing a further period of suspension for six months.

18 On 21 April 2023, the Appellant filed an appeal against the Second Review Decision. On 23 May 2023, His Honour Judge Tindal, sitting as a Judge of the High Court, consolidated the two appeals; identified five grounds of appeal for determination by

the court and struck out any wider grounds of appeal relied upon by the Appellant.

19 The only basis for the Review Tribunal imposing the suspension was that, as a result of the criminal conviction, the Appellant had brought the medical profession into disrepute. Neither the allegation of dishonesty nor that of the DPP, which had previously been made out against the Appellant, and had resulted in his past suspension, were taken into account in the decision made by the Review Tribunal. I was informed at the hearing on 14 September 2023 that it was possible that the Appellant could face new allegations unrelated to the offence, but that is wholly extraneous to my determination of these appeals, and I have completely disregarded that possibility.

20 The next date for the review of the decision of the Review Tribunal is in October of this year. The position that the Respondent will adopt at that hearing is not known. It is likely to maintain that the Appellant's fitness to practise continues to be impaired by reason of the conviction. It may seek the erasure of the Appellant from the medical register on the basis that there has to come a point in time where the Appellant is either able to satisfy the Tribunal that his suspension should be removed or, if he is unable to, he should no longer be allowed to practise as a doctor.

THE DECISIONS OF THE REVIEW TRIBUNALS

21 Following the conviction, the Appellant's conduct arising from the conviction was referred to the Respondent. The Respondent brought disciplinary proceedings against the Appellant as a result of the conviction. The proceedings came before the Original

Tribunal which heard them over the days that I have referred to above.

22 As noted above, the Original Tribunal determined that, by reason of the Appellant’s criminal conviction, he had brought the medical profession into disrepute. His conviction, and the facts underlying it, as described by the Crown Court Judge, demonstrated that the offence and the circumstances of its commission were serious.

23 In deciding upon the sanction to impose against the Appellant, the Tribunal took into account various matters in favour of the Appellant. They included the following:

(a) The Appellant’s express acknowledgment of how his conviction affected the wider public interest.

(b) The Appellant's behaviour was out of character.

(c) The apology that the Appellant offered for his actions.

(d) The Appellant had complied with all the requirements of his sentence and had engaged with those responsible for monitoring and supervising those requirements fully and efficiently.

(e) The Appellant had paid the court costs and compensation which the Crown Court Judge imposed on him fully and sooner than the Judge required him to do.

(f) The Appellant was a person of previous good character in the sense that there were no criminal convictions, cautions or reprimands recorded against him.

(g) In addition to completing the requirement to undertake 180 hours of unpaid work (which he did despite the impact of the pandemic), the Appellant had also engaged in voluntary community work.

24 Nonetheless, the Original Tribunal ruled that a finding of impairment was necessary to promote and maintain public confidence in the medical profession, and to promote and maintain standards of good conduct for members of the profession. It concluded that the Appellant should be subject to a period of suspension of 6 months.

25 The Original Tribunal found that the Appellant had some insight into the seriousness of his actions, but that it was "limited". It also found that although the risk of the repetition of the Appellant's past offending was "low", it had not seen sufficient evidence to conclude that the likelihood of repetition was "very low". The Original Tribunal said that it was not wholly reassured that the Appellant had developed and put in place strategies that would prevent the recurrence of his past behaviour should he find himself in a similar situation again. It also noted that the Appellant had not addressed the personal impact of his actions on the victim of, or witnesses to, the offence.

26 The Original Tribunal directed that a review hearing should be convened before the end of the period of suspension. It stated that it might assist the Review Tribunal if the Appellant provided evidence:

(a) that he had continued to keep his medical knowledge and skills up to date; and

(b) of the strategies that he had developed to minimise the risk of recurrence.

27 As noted above, the Appellant appealed the Original Decision, i.e., the decision of the Original Tribunal dated 17 December 2021, but then decided not to proceed with his appeal and withdrew it.

28 The evidence of the Appellant before the Review Tribunal included proof that he had kept his medical knowledge and skills up to date by acquiring the necessary CPD points. However, on the issue of the strategies that he claimed he had developed to minimise the risk of recurrence, the Review Tribunal took the view that he had not shown sufficient insight into the impact of his offending.

29 The Appellant's own position on insight was summarised in his undated witness statement "entitled Stage 1 and 2 Witness Statement of [the Appellant]" in the following terms:

> "14.2. In relation to evidence of strategies developed to minimise the risk of recurrence. The previous MPT neglected or rejected, my submissions and statements including those related to Probation services with strategies to minimise the risk of recurrence.
>
> 14.2.A. In defiance of the 2021 MPT, I resubmit the previous shadow appraisals, demonstrating full participation with actions around remediation and development of a variety of strategies (SA5). I do repeat, it is not for the GMC or the MPTS to undermine HM Courts or Probation service.
>
> 14.2.B. The current shadow appraisal builds further on past strategies (SA10).
>
> 14.2.C. I will submit further a letter from Probation services of [sic] satisfactorily completion. I had regular supportive contact and supervision during the suspended sentence this is a stark contrast to MPTS/GMC suspension/punitive measures. (SA11).

14.2.D. The fact the suspended sentence was not enacted and ran out in April 2022.

14.2.E. I have paid the fine and due to previous fear of the GMC I had completed 200 hours of community service when only 180 hours [sic] was required (SA12)

14.2.F. I have completed Level 1 of the Foundations of rehabilitation course (SA5). This was 6 half-days, due to circumstances and acceptance of innocence/insight (unlike the GMC and MPTS) further up to 15 Rehabilitation Actions requirement days were not utilised by HMCT Probation service.

14.2.G. When the incident occurred, I did contact my insurance company and medicolegal defence following due process. It was made known to my employers in anticipation of GMC harassment, which occurred. Thus I am still employed.

14.2.H. I kept relevant people aware including the GMC updated, but not strangers with no connection to me i.e. not Dr Sarah Marwick of the MPTS and toxic deanery. Given experiences of the GMC double-standards, I also kept evidence of GMC responses as defence with expectation of negligent GMC complaints to themselves like 2017.

14.2.I. From exploration I am aware one of the original factors for the standoff and significant caution that led to the Dangerous Driving incident, was fear of the GMC. I am no longer afraid of the GMC and have developed strategies to act against the GMC as part of my national-elected doctors' representative role, on the basis the GMC is unfit for purpose. This removes the circumstances of that freak incident.

14.2.J. Safeguarding is [sic] everyone responsibility this includes analysing, challenging and re-training from reflections on practice (Safeguarding Level 4), was done to ensure safe practice. There was no court finding but I still need to consider professionally (SA5 & SA10) especially as prosecution misused age to for theoretical vulnerability of the other driver that attempted a head-on car crash, then further harm to me.

14.2.K. I have also replaced the dual front and back dashcam on my mini automobile Additionally a larger durable memory card and a back-up plan for data.

14.2.L. I keep personal GPS tracking data which has and will undermine past and future GMC accusations e.g. 10 January 2016, I was in Morocco on Annual Leave.

14.2.M. Given my Race and history, further GMC actions will reoccur unless I address issues and prevent the GMC from having the ability to consider matters well outside their statutory remit, this is work in progress (SA5 and SA10).

14.2.N. Strategies to manage stress are useful, and need to be enacted. I am an honouree boy scout so I try to prepare; thus I have engaged already in a series of sessions with a psychologist and plan a third and fourth series. The effect of this, theoretically also mitigates risk of reoffending (SA5 and SA10).

14.2.O. It is important to be open to the potential for health issues especially as the years of GMC abuse/suspension increase. My explorations of GMC induced suicide clearly shows the need. A complex multi-stage coping mechanism can help but this is only effective if it is regularly reviewed, for me this has to be with someone I know and another unknown person (SA5 and SA10).

14.2.P. I anticipated the GMC would split the consideration of a criminal conviction and pointing out the obvious bad GMC practices strengthens my defence. I planned to highlight the GMC and MPTS misuse of CP31.22 however it appears recently the GMC have had no choice, but to drop their own complaint they were inappropriately self-considering without due process and double-standards (SA13).

14.2.Q. Given overall situation and subtleties indirectly related, I am actively working on strategies to work on situational awareness in non-healthcare environment or political environments when my knowledge, skills, team and available competence is not sufficient. This includes working with other organisations to improve a bad GMC. If successful it would minimise future MPTS attendance".

30 Paragraph 14.3 of that witness statement, in which the Appellant provides "other information" of assistance to the Tribunal, is in the same vein. It largely contains criticisms of the Respondent and a denial of the facts and matters that were taken into account by the Crown Court Judge in determining what sentence should be imposed against the Appellant.

31 Having read the transcripts and other relevant documents in the appeal, I agree with the Respondent that the following summary contained in the "Determination Impairment" dated 22 December 2022 correctly represents the position advanced orally by the Appellant to the Tribunal:

(a) the victim's complaint against the Appellant was malicious and motivated by a claim for compensation to get rich;

(b) the victim was a "crazy drunk" who chased after the Appellant in his car;

(c) some of the witnesses were not independent but were friends of the victim;

(d) one of the witnesses gave evidence at the criminal trial behind a screen because she was frightened of one of the police officers;

(e) the Crown Court Judge had misrepresented the facts in his sentencing remarks;

(f) the Judge was racist;

(h) in pursuing various allegations against him, the Respondent had failed to follow due process, was motivated by racism and lacked insight;

(i) the Original Tribunal's decision to adjourn after going part heard was motivated by malice;

(j) the chair of the Original Tribunal did not understand the nature of a dangerous driving conviction; and

(k) a number of witnesses against the Appellant were drug dealers.

32 At the subsequent sanction hearing, the Appellant filed further submissions in which he continued to make wide-ranging criticisms of the Respondent and its processes, including alleging that the proceedings taken against him had been motivated by deceit and bad faith.

33 The following paragraphs of the sanction decision set out the decision of the Review Tribunal on sanction:

> 17. The Tribunal noted that [the Appellant] submitted that he has sought some psychological therapy. However, the Tribunal has not seen any independent evidence corroborating that this has taken place, what issues had been addressed and what has been achieved by it, and so place limited weight on this evidence.
>
> 25. The Tribunal considered the submissions made by the [Respondent] and [the Appellant], and the totality of the evidence and findings made by the Tribunal. The Tribunal was of the view that [the Appellant] continues to place blame for his circumstances on others including the victim and witnesses to his criminal behaviour, the [Respondent], the MPTS, and the Tribunal members. This suggested a serious attitudinal issue which needed to be resolved in order for [the Appellant] to demonstrate insight and remediate his behaviour. The Tribunal noted that the Appellant] has however complied with the terms of his sentence, and has not reoffended since the incident in 2018".

34 The Review Tribunal considered all the sanctions which were available to it to deal with the Appellant. It concluded that a period of suspension would be an appropriate and proportionate sanction "balancing [the Appellant's] interests against those of the public. The Tribunal took into account the impact that this sanction may have upon [the Appellant]. However, in all the circumstances the Tribunal concluded that his interests [were] outweighed by the need to maintain public confidence in the profession and declare and uphold proper standards of conduct and behaviour. Overall, the Tribunal decided that this case was not one where the conviction [was] 'fundamentally incompatible with continued registration' and therefore it considered that erasure would not be appropriate or proportionate at this stage".

35 The Tribunal determined, therefore, that an order of suspension was required in that case. It then went on to determine the length of the suspension and decided to impose a period of suspension for six months to allow the Appellant sufficient time to reflect, develop and document his insight, particularly into the impact of his actions on the victim of the offence and on the medical profession. In reaching that decision, the Tribunal considered that a 12-month period of suspension was appropriate but reduced it to a period of six months to take into account the extension of the suspension since the last hearing in December 2022 and the fact that the order imposed by it would only take effect when the current extension expired. The Tribunal considered that this length of suspension struck a fair balance between the wider public interest and the Appellant's own interest in being able to practise as a doctor, having regard to the principles of totality and proportionality. In addition, the Tribunal directed that there should be a review of the Appellant's case before the end of the period of suspension. It made it clear to the Appellant that at that review hearing (which is now due to take place in October 2023), the onus would be on the Appellant to demonstrate how he had developed insight, and that it would assist the Tribunal if the Appellant provided evidence to the Tribunal that he had developed insight and that he had kept his knowledge and skills as a doctor up to date.

THE APPELLANT'S CONSOLIDATED GROUNDS OF APPEAL

36 In his consolidated grounds of appeal, the Appellant summarises why this Court should interfere with the decision of the Review Tribunal:

“Ground 1; Persistent procedural irregularity of GMC MPT3 ‘New and Review Panel’ with frequent refusal to provide decisions made or explain decisions made, in particular with variances from Fitness to [sic] Practice Rules, is wrong.

1.1. Review Stage 1; The GMC re-opened the conviction then double-substituted the conviction undermining HMCTS and misusing the Medical Act 1983 (as amended). The procedural irregularities resulted in a second unjust reconsideration of the conviction therefore is wrong.

1.2. Review Stage 2; The GMC refused to accept substantial pre-submitted defence evidence or the GMC’s own existing objective evidence of fitness to practice. The Appellant’s fitness to practice being impaired finding and refusal to explain decisions on 22nd December 2022, was unfair and wrong.

1.3. Review Stage 3; That the GMC’s tribunal directions on 9th December (before the review hearing) to impose a further pre-determined sanction of suspension for six months with yet another review hearing, was wrong. The pre-determined sanction resulted in various irregularities and postponement, this was later confirmed 18th March 2023, which is against natural justice.

2. Ground 2; Limited-Insight and Limited-Remit of the GMC in Non-Medical Matters. The GMC habitual misuse of the insight, with refusal to accept or acknowledge its limited insight and limited remit in non-medical matters in these cases, constitutes an error”.

37 I have found the grounds of appeal very difficult to understand. Some of them are simply meaningless. The Appellant has also sought to reinstate his original grounds of appeal struck out by Judge Tindal, though, again, I have found it difficult to understand what those grounds are, and the reasons for seeking a reinstatement of, and the Appellant’s substantive case on, them.

38 I hope I can summarise in a few short points what I consider to be the Appellant’s main reasons for challenging the Review Decisions:

(a) By having multiple reviews, the Review Decisions amounted to his being punished more than once for the same conduct, i.e., they constituted “double jeopardy”.

(b) The Original and/or the Review Decisions amounted to an “unjust second reconsideration” of the conviction.

(c) The Review Tribunal failed to consider the circumstances of the conviction properly.

(d) The Review Tribunal failed to provide decisions on various matters or to explain some of the decisions that it had made.

(e) The Review Tribunal refused to allow the Appellant a proper opportunity to open his case;

(f) The First Review Decision, which found that the Appellant’s fitness to practise continued to be impaired, was wrong.

(g) The decision to extend the original suspension made by the Review Tribunal on 22 December 2022 (i.e., by the First Review Decision) for six months was wrong.

(h) The decision to proceed with the hearing on 17 and 18 March 2023 in his absence was wrong.

(i) The decision to extend the suspension made on 18 March 2023 (i.e., by the Second Review Decision) for a further six months was wrong.

(j) The Respondent was motivated by spite and ill will to bring the disciplinary proceedings against the Appellant, particularly as he has been instrumental, as a whistleblower, in exposing racism and serious failures in the processes and practices of the Respondent.

39 It is noticeable that there is very little in his grounds about how he has acquired sufficient insight into the impact of his offending.

40 There were several other points that the Appellant made or emphasised in his oral submissions before me. He appeared to suggest that the undated letter setting out the underlying allegations against him sent by the Respondent (page 283 of the Appeal Bundle) was deficient. He contended that it did little more than set out the terms of his conviction and the sentence imposed upon him, rather than set out all the facts and matters upon which the Respondent relied in seeking to discipline him. I am not sure whether he was arguing that this meant that the Respondent could not rely on the findings made by the Judge about the circumstances of the commission of the offence. I accept his criticism of the way in which that letter was formulated. Whether or not the service of such a notice is a requirement to initiate disciplinary proceedings, if a notice is served upon a person by a regulatory body informing him that disciplinary proceedings may be taken against him, the notice should (whether its service is mandatory or simply directory) contain all the material facts upon which the regulatory body will rely before a tribunal so he knows, from the outset, the case that he will need to meet. However, in the present case, the Appellant cannot be said in any way to have been prejudiced by this because he was subsequently, and reasonably swiftly, provided with (and, in any event, knew of) all the material information that the Respondent intended to rely upon in support of its case against the Appellant before the Original and Review Tribunals. Nor do I quite understand the significance of the redacted and unredacted versions of the public record of the Original Tribunal's decision to suspend him from practice for 6 months, which he drew to my attention at the outset of the hearing. Neither matter

affects the validity of the proceedings before the Original and Review Tribunals. Nor can they be said to warrant interference with the decisions made by those Tribunals.

THE LAW

41 A review of a suspension by an MPT is governed by s 35D(5) of the Medial Act 1983 ("MA 1983") and r. 22 of the General Medical Council Fitness to Practise Rules 2004 ("the GMCFPR 2004"), which were made by virtue of the General Medical Council (Fitness to Practise) Rules Order of Council 2004/2608.

42 Section 35D(5) of the MA 1093 provides:

> "On a review … a Medical Practitioners Tribunal may, if they think fit—
>
> (a) direct that the current period of suspension shall be extended for such further period from the time when it would otherwise expire as may be specified in the direction;
>
> (b) [subject to certain exceptions not applicable in the present case], direct that the person's name shall be erased from the register;
>
> (c) direct that the person's registration shall, as from the expiry of the current period of suspension or from such date before that expiry as may be specified in the direction, be conditional on his compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as [the Tribunal] think fit to impose for the protection of members of the public or in his interests; or
>
> (d) revoke the direction for the remainder of the current period of suspension,
>
> but [subject to exceptions not applicable in the present case], the Tribunal shall not extend any period of suspension under this section for more than twelve months at a time".

43 Rule 22(1)(f) of the GMCFPR 2004 requires the MPT to first "consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired". However, r. 22(5) goes on to state:

> "Where, prior to the Medical Practitioners Tribunal making a finding under rule 22(1)(f), a review hearing is adjourned under rule 29(2), the Medical Practitioners Tribunal—
>
> (a) must consider whether to make a direction under section 35D(5)(a), (8)(a), or (12)(c) of the Act and announce its decision in that regard; and
>
> (b) may consider whether to make an order under section 41A of the Act and announce its decision in that regard".

44 Rule 22(5), therefore, gives a review tribunal power to extend the period of suspension where it decides to adjourn a case before a decision on current impairment is made. On behalf of the Respondent, Mr Mant points out that although there is no express provision requiring a review tribunal to consider extending the period of suspension where a review hearing adjourns a hearing after a decision on current impairment has been made, as happened in the present case, and before any further evidence or submissions on sanction have been heard, r. 22(5)(b) does not make it obligatory for a review tribunal to hear further evidence or submissions on sanction before extending the period of suspension. In any event, s. 35D(a) of the MA 1983 does not restrict the circumstances in which a suspension order may be extended. I agree with him. It would be odd if a review tribunal could extend the period of suspension where it had not made a decision on impairment but had no power to do so if it had. It must follow from this that, so far as the Appellant challenges the jurisdiction of a review tribunal to extend the suspension following an adjournment after a finding of impairment is made, it is plain that the review tribunal does have that jurisdiction, provided the facts warrant the exercise of that jurisdiction.

45 Guidance on the way in which the decision of a review tribunal should be exercised under the provisions of s. 35D and r. 22 is provided in several cases.

46 In *Abrahaem v GMC* [2008] EWHC 183 (Admin), at [23], Blake J said that s. 35D:

> "is to be read together with the 2004 Rules … and Rule 22(a) to (i) makes clear that there is an ordered sequence of decision making, and the Panel must first address whether the fitness to practice is impaired before considering conditions. In my judgment, the statutory context for the Rule relating to reviews must mean that the review has to consider whether *all* the concerns raised in the original finding of impairment through misconduct have been sufficiently addressed to the Panel's satisfaction. In practical terms there is a persuasive burden on the practitioner at a review to demonstrate that he or she has fully acknowledged why past professional performance was deficient and through insight, application, education, supervision or other achievement sufficiently addressed the past impairments".

47 More specific guidance on the approach of a tribunal in a case where a practitioner denies the underlying allegations of misconduct, as is the case here, was provided in *Yusuff v GMC* [2018] EWHC 13 (Admin), in which Yip J said:

> "18. It would be wrong to equate maintenance of innocence with a lack of insight. However, continued denial of the misconduct found proved will be relevant to the Tribunal's considerations on review. As paragraph 52 of the Sanctions Guidance makes clear, refusal to accept the misconduct and failure to tell the truth during the hearing will be very relevant to the initial sanction. At the review stage, things will have moved on. The registrant may be able to demonstrate insight without accepting that the findings at the original hearing were true. The Sanctions Guidance makes it clear that at a review hearing the Tribunal is to consider whether the doctor has fully appreciated the gravity of the offence and must be satisfied that patients will not be put at risk if he resumes practice. A want of candour and continued dishonesty may be taken into account by the Tribunal in reaching its conclusions on impairment. See *Karwal v GMC* [2011] EWHC 826 (Admin) at paragraph 11 and *Irvine v GMC* [2017] EWHC 2038 (Admin) at paragraph 83.
>
> 19. In *Amao v Nursing and Midwifery Council* [2014] EWHC 147, the unrepresented registrant appeared before a disciplinary panel and was found to have committed misconduct involving aggression towards colleagues. At the impairment stage, she was then cross-examined as to whether she agreed with the panel's findings on

> each of the factual allegations. The legal adviser made it clear that it would not be proper to seek to get Ms Amao to admit things which she had previously denied but that she could be asked whether she accepted the panel's findings. The questioning then continued in a manner described by Walker J as focusing relentlessly on past conduct and causing confusion for a litigant in person. The judge said that Ms Amao was perfectly entitled to say that she did not accept the findings of the panel. Walker J thought it was 'inappropriate, almost Kafkaesque, to cross-examine Ms Amao in a way which implied she would be acting improperly if she did not 'accept the findings of your regulator. The reality was that she did not have an appreciation of the real nature of the case that she had to meet in relation to impairment, namely that it was not just past conduct that was relevant but also her insight into what could be done in the future to prevent repetition".

48 Having reviewed all the relevant authorities, Yip J stated that the following general principles could be derived from them:

(a) the findings of fact made by an original tribunal were not to be reopened;

(b) the practitioner was entitled not to accept the findings of the tribunal;

(c) in the alternative, the practitioner was entitled to say that he accepted the findings in the sense that he did not seek to go behind them while still maintaining a denial of the conduct underpinning the findings;

(d) when considering whether a practitioner's fitness to practise remained impaired, it was relevant for the tribunal to know whether or not the practitioner now admitted the misconduct;

(e) admitting the misconduct was not a condition precedent to establishing that the practitioner understood the gravity of the offending and was unlikely to repeat it;

(f) if it was made apparent that the practitioner did not accept the truth of the findings, questioning should not focus on the denials and the previous findings;

(g) A want of candour and/or continued dishonesty at the review hearing may be a relevant consideration in considering impairment.

49 In *Sawati v GMC* [2022] EWHC 283 (Admin), Collins Rice J stated, in the case of a "rejected defence" in the context of dishonesty, that it could count against a practitioner if he "lacked insight" in relation his conduct. At [76], she stated:

> "As a general principle, insight – an acknowledgment and appreciation of a failing, its magnitude, and its consequences for others – is essential for that failing to be properly understood, addressed and eliminated for the future. Future risk – to patients or to public confidence in general – is a proper preoccupation of Tribunals. If a doctor's performance or conduct is faulty, but they do not have insight into that, that can give good grounds for concern that they are unlikely to be able to address and remediate it, and hence that they pose a continuing risk".

She went on to say, at [103], that reconciling the principle of insight (or lack of it) with a practitioner who was not prepared to accept or deal with a finding of fact made against him was "not complicated" but could "be difficult in an individual case … and was undoubtedly fact-sensitive".

50 She then went on to make the following general observation, at [109]-[110]:

> "In short, before a Tribunal can be sure of making *fair* use of a rejected defence to aggravate sanctions imposed on a doctor, it needs to remind itself of Lord Hoffmann's starting place [in *Misra v GMC* [2003] UKPC 7] that doctors are properly and fairly *entitled* to defend themselves, and may then find it helpful to think about four things: (i) how far state of mind or dishonesty was a primary rather than second-order allegation to begin with (noting the dangers of charging traps) – or not an allegation at all, (ii) what if anything the doctor was positively denying other than their own dishonesty or state of knowledge; (iii) how far 'lack of insight' is evidenced by anything other than the rejected defence and (iv) the nature

> and quality of the defence, identifying clearly any respect in which it was itself a deception, a lie or a counter-allegation of others' dishonesty… These are all evaluative matters. Tribunals need to make up their own minds about them, and their relevance and weight, on the facts they have found. But they do need to direct their minds to the tension of principles which is engaged, and check they are being fair to both the doctor and the public. They need to think about what they are doing before they use a doctor's defence against them, to bring the analysis back down to its simplest essence".

51 The observations of Collins Rice J in *Sawati* were made in the context of a rejected defence in a dishonesty case, which is not the case here. The Appellant criticises the Respondent's reliance on this case. However, it seems to me to be clear that while that case dealt with dishonesty, the observations made by the judge are of general application.

52 An appeal from a decision of an MPT to this court is governed by the provisions of s. 40 of the MA 1983. Section 40(5) of that Act states that such an appeal lies to the High Court.

53 By s. 40(7), it is provided that the High Court may determine the appeal by:

(a) dismissing the appeal;

(b) allowing the appeal and quashing the direction or variation appealed against;

(c) substituting for the direction or variation appealed against, any other direction or variation which could have been given or made by an MPT.

(d) remit the case to an MPT to dispose of the case in accordance with any directions of the court.

54 The provisions of CPR 52 and the practice directions supplementing it (so far as they are relevant to the appeal) apply in such a case.

55 Although CPR 52.21 states that the appeal will be limited to a review of the decision of the lower court and that the appeal court will not receive oral evidence in relation to the appeal, para. 19(2) of PD 52D modifies this provision by providing that the appeal "must be supported by written evidence and, if the court so orders, oral evidence and will be by way of re-hearing".

56 CPR 52.21(4) states that the appeal court must allow the appeal where the decision of the lower court was: (a) wrong; or (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court. As regards ground (b), the procedural or other irregularity must be "serious" and it must have caused the decision in the lower court to have been "unjust". However, this ground does not depend on the decision in the lower court having been 'wrong'. In other words, the second ground may apply even if the lower court would have reached the same decision, i.e., the same decision even if the procedural or other irregularity had not occurred.

57 In *Tanfern Ltd v Cameron-MacDonald (Practice Note)* [2000] 2 All ER 801, Brooke LJ summarised the approach that an appeal court should take under CPR 52.11, the forebear of CPR 52.21(1):

> "32. … the appellate court should only interfere when it considers that the judge of first instance has not merely preferred an imperfect solution which is different from an alternative solution which the Court of Appeal might or would have adopted, but has exceeded the generous ambit within which a reasonable disagreement is possible.

> 33. So far as the second ground for interference is concerned, it must be noted that the appeal court only has power to interfere if the procedural or other irregularity which it has detected in the proceedings in the lower court was a serious one, and that this irregularity caused the decision of the lower court to be an unjust decision".

58 An appeal under s. 40 of the MA 1983 is by way of "rehearing" but in essence a rehearing without the court usually hearing any oral evidence: see PD 52D, para. 19(2). The approach of Brooke LJ, set out in [32], must be modified accordingly. In *Sastry v GMC* [2022] EWCA Civ 623, at [102], Nicola Davies LJ stated that, in the context of an appeal under s. 40, the approach of the court should be as follows:

(i) s. 40 provides a medical practitioner with an unqualified statutory right of appeal;

(ii) the jurisdiction of the court is appellate, not supervisory;

(iii) the appeal is by way of a rehearing in which the court is fully entitled to substitute its own decision for that of the tribunal;

(iv) the appellate court will not defer to the judgment of the tribunal any more than is warranted by the circumstances. The appropriate degree of deference will depend on the circumstances of the case: *ibid*, at [103].

(v) the appellate court must decide whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate; and

(vi) in the latter event, the appellate court should substitute some other penalty or remit the case to the tribunal for reconsideration.

59 Whether a practitioner has shown insight into his misconduct, and how much insight he has shown, are classically matters of fact and judgment for the professional disciplinary committee in the light of the evidence before it: see *Professional Standards Authority v HCPC* [2017] EWCA Civ 319, at [38]. As is the case in any appeal, the lower court or tribunal will have had the advantage of seeing and hearing the witnesses. While the appeal court can and should undertake the task of weighing conflicting evidence and drawing its own inferences and conclusions, it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. As Lord Hope of Craighead observed in *Marinovich v GMC* [2002] UKPC 36, at [28], an MPT:

> "is the body which is best equipped to determine questions as to the sanction that should be imposed in the public interest for serious professional misconduct. This is because the assessment of the seriousness of the misconduct is essentially a matter for the [MPT] in the light of its experience. It is the body which is best qualified to judge what measures are required to maintain the standards and reputation of the profession".

ANALYSIS AND DISCUSSION

60 A significant amount of the emphasis of the Appellant, both in his appeal papers, and in his oral submissions before me, was about how the proceedings against him brought by the Respondent were motivated by spite and ill will. He describes the Respondent as "institutionally racist" and states that he and other doctors from ethnic minority backgrounds are regularly targeted or unfairly picked on by the Respondent for disciplinary action for their conduct when their counterparts, who are not from the same background, are not subject

to any action for the same or similar conduct. The Appellant says that while this was a matter of concern to him in the past, and that "one of the original factors for the standoff and significant caution that led to the Dangerous Driving incident was [his] fear of the GMC", he is "no longer afraid of the GMC and [has] developed strategies to act against the GMC as part of [his] national-elected doctors' representative role, on the basis the GMC is unfit for purpose. This removes the circumstances of that freak incident". His position is stated in various places in the documents which he has filed in these proceedings. Paragraph 8 of his undated witness (p. 294 of the Appeal Bundle) is illustrative of what he says:

> "… after 5 years, I am increasingly aware of bad GMC and MPTS practices for which I have become more vocal as is my right as a citizen of the United Kingdom. In particular I am upset at the GMC's persistent misrepresentation of my past, racism in practice, the GMC/MPTS persistent lack of fairness with me and others. This has led the medical profession to 'fear' the GMC and elect me as a national representative on the mandate, the GMC continues to be 'unfit for purpose' since 2018, [SSA9]. Additionally, my utter annoyance with the suicide-inducing GMC by-line by prosecution-only investigators that they are 'working flexibly with doctors' which may be the case depending on race but it is deceitful".

61 I am aware that the position advanced by the Appellant is that there is a not insignificant body of public opinion (entirely disputed by the Respondent) to the effect that the Respondent is institutionally racist and not fit for purpose. However, the investigation of generic allegations of this nature is beyond the remit of this court. So far as these appeals are concerned, I am satisfied, on the basis of the papers I have seen and the submissions I have heard, that the Appellant cannot be said to be the victim of any racism, or that the approach of the Respondent is motivated by spite or ill will.

62 Nor am I able to accept that a non-medical charge of misconduct is inappropriate for action by the Respondent. The question in each case will be the seriousness of the conduct in question. In the case of conduct which amounts to a criminal offence – and in relation to which

a medical practitioner has been convicted by a criminal court – the pursuit of disciplinary proceedings will depend upon the circumstances of each case. In the context of driving offences, there will, at one end of the spectrum, be minor road traffic offences (such as an isolated speeding offence) which will almost certainly not result in disciplinary proceedings being brought, to, on the other end, very serious offences such as causing multiple deaths from dangerous driving, which will almost certainly do. In relation to the latter type of offence, the Respondent would, in my view, have to bring disciplinary proceedings. If it did not, it might be said to be acting in serious dereliction of its duty to protect the public and to uphold the high standards of the medical profession which the public expects. So far as the Appellant suggests that this might amount to "double jeopardy", he is plainly wrong. The court before which a medical or other professional is convicted usually has no power to impose any sanction in relation to his fitness to practise. That is why a regulatory body has to consider bringing disciplinary proceedings against the professional and have a disciplinary tribunal decide whether and if so, what, sanction should be imposed against him. The position is different where the convicting court has that power and refuses to exercise it, such as, for example, s. 2 of the Company Directors Disqualification Act 1986, under which a criminal court has the power (described in various authorities as a "regulatory" power) to disqualify a person from acting in the management of a company where he is convicted of certain types of offences. If it declines to exercise that power, it would not usually be open to a civil court to do so subsequently on the basis of "double jeopardy", even though the civil court has concurrent power under that provision to take that course: see *Secretary of State for Business, Innovation and Skills v Weston* [2014] EWHC 2933 (Ch).

63 The Appellant does make some valid points about the approach taken by the Respondent in these appeals. For example, I am not sure that I

understand the difference between a “low” risk of the repetition of the Appellant’s past offending (which would warrant the Review Tribunal having to be satisfied that he had shown sufficient insight) and a “very low” risk of the repetition of such offending (which the Respondent appears to suggest could mean that he had shown sufficient insight). Mr Mant expressed the difference in terms of degree, stating that perhaps the former meant a 30% risk of repetition and the latter 10%. However, I do not see that from his analysis of those two expressions. I am not sure that one should result in the continuation of the suspension (and possibly subsequent erasure) and the other not. It seems to me that “insight” (or lack of it applies) whatever the risk of repetition. Its purpose is to allow that risk (however low) to be recognised and to be avoided

64 I can also understand why the Appellant contends that evaluating whether the risk of reoffending has been reduced from “low” to very low or something less than “low” is not a matter for the Respondent. He states that the initial assessment of risk was carried out by the Probation Service and the Probation Service has to be best placed to decide the present level of that risk. I have not seen the Probation report so cannot comment on what appears to be common ground between the parties that the risk of reoffending was merely described in it as “low”. It would have been helpful to see the report to ascertain whether it contained any strategies suggested by the Probation office about how the Appellant’s insight into his offending could be improved.

65 I am clear that despite the, sometimes, inelegant words used by the Review Tribunal about the risk of “reoffending”, what it was alluding to was whether the Appellant had “insight” into his alleged behaviour and whether he had developed strategies to avoid the type of confrontation he had with the victim. The circumstances of such a confrontation might or might not amount to the commission of a criminal offence.

However, the public would be rightfully concerned to know that a doctor, who is supposed to show compassion, empathy, sympathy and understanding to, and act with professionalism towards, a patient had behaved in a manner in which the Appellant was alleged to have behaved against the victim. That is a legitimate concern which it is the duty of both the Respondent and an MPT to uphold. It may not impact directly on how a doctor discharges his professional obligations but could well be highly relevant if a similar situation arose in a professional setting. In any event, it is plainly very important for the public to know that doctors are held to the highest possible standards.

66 In my judgment, therefore, the Original and Review Tribunals were perfectly entitled to hold the Appellant to account for his criminal behaviour and to monitor his progress on insight to ensure that he had put strategies in place to avoid that type of behaviour in the future.

67 In deciding whether the decisions of the Review Tribunal were wrong, it is necessary to start from the premise that it is the absolute right of the Appellant to disagree with his conviction and the facts and circumstances surrounding it. As the authorities say, that denial creates a tension with whether the Appellant has insight into his actions. However, it is a tension which an MPT is well able to resolve, based on the circumstances of each individual case.

68 The authorities also make it clear that it is not appropriate for an MPT or this court to go behind the Appellant's conviction. Although the Appellant disputes the offence and its circumstances, the Crown Court Judge was perfectly entitled to come to the finding – having presided over the proceedings – that the Appellant was guilty of road rage and his actions that day had resulted in the victim falling to the ground and suffering injuries, albeit minor. Although the Appellant asserted that the injuries were unlikely to have been caused by the offence (claiming

they were more likely to have been caused by a vicious dog), the finding the Crown Court Judge came to was that it was that the Appellant drove his vehicle deliberately at the victim and intended to hit him. The Judge must have come to the finding on how the injuries were caused, based on medical evidence that was before him and the jury. In any event, as noted above, it would not have been appropriate for the Original and Review Tribunals to go behind that finding. To assert, therefore, as the Appellant does, that if the Tribunal had considered the injuries properly, it might have come to a different conclusion is simply untenable on the facts.

69 The offence of dangerous driving is inherently serious. Dangerous driving can expose members of the public to the risk of serious injury and often a fatality. The Judge plainly had this in mind when sentencing the Appellant and one can see that it might have happened in the circumstances that applied in this case. The victim was in his 80s at the time of the incident and fell to the ground because of the Appellant's actions. It was fortunate that he only suffered minor injuries. His injuries could have been very much more serious.

70 I fully accept that the Appellant is entitled to deny the offence and the circumstances of its commission. However, I am unable to accept his account of the offence or its circumstances. He claims that, at best, the conviction was a "12 mph dangerous driving conviction" and makes a series of allegations against the victim, how the criminal proceedings were conducted by the court, and what he believes was the biased way in which the proceedings were conducted by a "racist" judge. Quite apart from the fact that there is no scintilla of evidence of any of this on the papers I have seen or the oral submissions I have heard, the conviction cannot be revisited by me. This means that as the Original and Review Tribunals did, I must accept the remarks of the Judge as valid and binding. Nor am I able to question the findings of the Original

Tribunal that the Appellant had failed to display proper insight into his offending.

71 Insight is difficult to evaluate in a case where – as is the position here – the Appellant does not accept his bad behaviour. The Appellant has had numerous opportunities to demonstrate that even though he disputes that his conduct was wrong, he has put in place the necessary strategies to recognise it if it arose, how to prevent it and how to respond in a way that is both reasonable and proportionate. Instead, what he has done in these proceedings, and in the proceedings before the Review Tribunal, is to resurrect matters which have been decided, make wholesale complaints of institutional racism against the Respondent (which this court is not able to investigate), make allegations of racism and bad faith against the Respondent and the Original and Review Tribunals against him (of which there is no evidence in these proceedings), challenge the practices and processes of the Respondent and the MPTs (which are prescribed in legislation), and of the fitness of purpose of both the Respondent and the MPTs (of which there is, again, no evidence in these proceedings). Many of the matters which he seeks to rely upon in support of his appeals (so far as they have already been finally determined previously, such as his conviction in the Crown Court and the decision of the Original Tribunal) are an abuse of process.

THE GROUNDS OF CHALLENGE

72 I cannot see how the First Review Decision can be said to be wrong. It found that the Appellant's fitness to practise continued to be impaired because the Appellant had not addressed all the concerns raised in the findings of the Original Tribunal. His written and oral evidence primarily dealt with how badly he had been treated by the courts, the Respondent, the Crown Court judge, the MPTs (and their staff) and others, leading to his conviction and his subsequent suspension from

practice. The Appellant could have demonstrated insight, without admitting guilt, by acknowledging how serious the findings made against him were and how, even though the allegations were denied, he had put in place the necessary strategies to recognise the conduct complained of against him, how to prevent it and how to respond to it if it arose in the future in a way that was both reasonable and proportionate. It was perfectly within the jurisdiction of the Review Tribunal to make the directions it did. There was nothing in the way it exercised its jurisdiction that can be said to be wrong.

73 Much the same may be said about the sanction of suspension imposed by the Second Review Decision. Very little had changed concerning the Appellant's insight. He made the same or similar allegations and failed to address the concerns that the Review Tribunal had about his insight. In the circumstances, the sanction imposed by the Second Review Decision was both necessary and proportionate to maintain public confidence and uphold the high standards that the law and the public expects from doctors.

74 Nor can I see any error in principle in the extension of the original suspension by the Review Tribunal by the First Review Decision, on 22 December 2022, for an interim period. The Review Tribunal had found that the Appellant's fitness to practise continued to be impaired, and there was insufficient time to hear evidence and submissions on sanction. It was right to extend the suspension by six months. By the Second Review Decision, which was made on 18 March 2023, the Tribunal gave full credit for that period of 6 months, so the suggestion by the Appellant that it was unfair that he was suspended in the interim is wrong. As the Respondent says, it would be bizarre if, during the interim period, the public was left with no protection from the past conduct of the Appellant by being allowed to practise when his fitness to do so was impaired.

75 Turning to the grounds of appeal.

GROUND 1

76 Under this ground, the Appellant challenges the decision of the Review Tribunal on the basis that it was guilty of “persistent procedural irregularity”.

77 The ground is divided into three sub-grounds, i.e., sub-grounds 1.1, 1.2 and 1.3.

78 So far as I am able to understand sub-ground 1.1, the Appellant complains that the Original and/or Review Tribunals reopened the conviction of the Appellant. That is simply incorrect. They did not. They relied on the conviction and the findings made by the Crown Court Judge in coming to their decision that the Appellant’s fitness to practise was impaired and that he should be subject to an appropriate sanction. Nor did they seek to undermine HMCTs or misuse the MA 1983, both of which statements are entirely meaningless. Even if the assertion of the Appellant that the Original and/or the Review Tribunal did not allow the Appellant an opening is correct, this is no basis for interfering with any of the decisions of those Tribunals. Within the confines of the GMCFPR 2004, an MPT is perfectly entitled to regulate its own procedures at a hearing, and this includes not allowing a party an opening or changing the order of speeches before it, provided it has allowed that party a full and fair opportunity to advance his case before it. There is clear evidence that it did so in the present case.

79 I am unclear about what the Appellant means when he says that the Respondent advanced arguments “against maintaining innocence” which would ordinarily be made at “stage 3”, not at “[sic] stage 1&2”.

So far as he contends that matters of insight and denial should not have been considered in December 2022, when the Tribunal was deciding impairment, and should only have been considered in March 2023, when the Tribunal was deciding sanction, that is simply wrong. It is a complete fallacy to think that matters of insight and denial only become relevant at the sanction stage. If they are disregarded at the "impairment" stage, how, it has to be questioned, can an MPT decide on current impairment.

80 The statement that the Appellant makes about "inadvertent disclosures from the'new' case" which undermined the conviction" is meaningless. There is no evidence from any case concerning the Appellant which undermined the conviction. Nor would a party usually be allowed to adduce evidence to undermine a conviction. As noted above, the authorities clearly state that a conviction by a court of competent jurisdiction must be allowed to be carried through to any disciplinary action which is based on the conviction. That is all the Original and Review Tribunals did in the present case.

81 There is no substance in the assertion that the Review Tribunal was wrong to proceed in the Appellant's absence on 18 March 2023. The Tribunal was not required to give the Appellant the period of notice of 28 days specified in r. 20(1) of the GMCFPR 2004. That provision does not apply to the resumption of a hearing that has gone part heard and, in any event, the short notice period did not cause any injustice to the Appellant. He was aware of the date of the adjourned hearing and chose not to attend. The Tribunal took the approach usually taken in a case where a respondent fails to attend a disciplinary hearing that if it is satisfied that the respondent has had notice of the hearing, the discretion whether or not to proceed must then be exercised having regard to all circumstances known to the Tribunal. Fairness to the practitioner is a prime consideration, but the public interest must also

be considered. In this context, the relevant public interest is that of the effective prosecution of disciplinary proceedings in the medical profession. Where there is good reason not to proceed, the case should be adjourned; where there is not, it is only right that the hearing should proceed: see *General Medical Council v Adeogba* [2016] 1 WLR 3867, at [17]-[23], per Coulson LJ. However, so far as the Tribunal reached the conclusion that the matter should be adjourned, that decision was taken in the exercise of a discretion. This court can only interfere with it if the decision is outside the area of judgment reasonably available to it. There is no evidence of this in the present case.

82 This sub-ground is, therefore, misconceived and dismissed.

83 As regards sub-ground 1.2, I am unable to see how it can conceivably be said from the documentation included in the bundle that the Respondent "refused to accept substantial pre-submitted defence evidence or the [Respondent's] own existing objective evidence of fitness to [sic] practice". The Respondent submitted all relevant material to the Original and Review Tribunals and the decisions of those Tribunals were arrived at after a full consideration of that material. In any event, the Appellant had the opportunity to do so as well, so he could have submitted material to the Tribunals that he claimed the Respondent had refused to accept.

84 There is nothing in the point made by the Appellant that, "having been found fit to [sic] practice by the previous Tribunal, that is what the starting point should have been". Whatever may or should have been the starting position for the Original or Review Tribunal, it was perfectly entitled to conclude that the Appellant should be suspended from practice. The suggestion that the Original and/or Review Tribunals failed to give any or any proper reasons for their decisions is

simply incorrect. It is noticeable that the Appellant does not provide any basis for this suggestion. The Tribunals gave proper reasons for all their decisions. It is not necessary for a court or tribunal to determine every point which has been raised in the course of proceedings between the parties or every issue which has arisen between them. It is only necessary for the court or tribunal to determine those matters which enable it to decide whether the allegations made by one party against the other are established and, if so, whether they warrant the making of an order or decision that the court or tribunal has decided to make. In a case like this – where the emphasis has almost entirely been on extraneous matters, principally on how badly the Respondent has acted towards the Appellant and how the Crown Court and the various MPTs have shown open bias against him – it would have required a counsel of perfection for the Original and/or the Review Tribunal to deal with every conceivable point made by the Appellant, many repeated on several occasions and some which were either meaningless or simply incomprehensible.

85 The contention by the Appellant that the Review Tribunal "refused to accept verbal and written reflection on the incident and conviction" is meaningless. At best, it seeks to repeat the same ground stated above, i.e., that the conviction and the circumstances of it were wrong. The Tribunal plainly considered everything the Appellant had to say about the incident and conviction, but concluded, in my judgment rightly, that it was bound by the findings that the Crown Court Judge made about them and that whatever the Appellant had to say about this, his fitness to practise was impaired and he should be suspended from practice. The Appellant's contention is, therefore, misconceived and wrong.

86 The allegation by the Appellant that the Tribunal "dismissed substantial" hours of CPD is spurious. The Tribunal accepted the

evidence of CPD provided by the Appellant. It did not find that the Appellant's fitness to practise was impaired by reason of any failure to keep his knowledge and skills up to date.

87 Nor is the statement by the Appellant that "misused [the] 'test of dishonesty' in *Sawati*" correct. The case before the MPTs was not whether the Appellant was dishonest but whether, as a result of the conviction and the circumstances of it, the Appellant's fitness to practise was impaired and whether he should be suspended from practice. As regards the issue of "insight", the case was plainly relevant, and I cannot see from the papers either that the Respondent sought to misinterpret or the MPTs misconceived it.

88 Sub-ground 1.2 must, therefore, also be dismissed.

89 Nor is there any substance in Ground 1.3 in which the Appellant says that "the tribunal directions on 9th December (before the review hearing) to impose a further pre-determined sanction of suspension for six months with yet another review hearing, was wrong". For the reasons I have already set out above, that assertion is simply incorrect. I have already dealt with the specific matters under this ground upon which the Appellant relies, such as his assertion that his suspension was because of his "past whistleblowing against GMC-associates"; the alleged pre-determined sanction that was imposed on him in December 2022; the failure to take into account his mitigation; and the "bad" practices of the Respondent. These allegations amount to little more than a repetition of his wider criticisms of the Respondent and the MPTs, which is outside the remit of this court. In the present case, there is no merit in any of the allegations, either on the papers or the Appellant's oral submissions.

GROUND 2

90 None of the matters upon which the Appellant relies in Ground 2 warrant my interfering with the decisions of the review Tribunal. Allegations made by the Appellant that the Respondent "habitually misuses insight" is a bare and meaningless assertion that can have no relevance in this case. Allegations such as the Review Tribunal wrongly finding that the Appellant had "an entrenched lack of insight" are findings that the Original and/or Review Tribunals were perfectly entitled to come to. They did so after taking into account the Appellant's conviction (and the circumstances of it) and the other material placed before them by both parties, including his mitigation. The suggestion by the Appellant that they only looked at the "negatives" is wrong. They plainly looked at all the material before them and (where appropriate) heard the oral submissions of the Appellant before they came to their decisions. Nor (if this is the thrust of his argument) is there any evidence that the Tribunals misconceived the burden and standard of proof in relation to the Review Hearings.

91 Many of the wider criticisms made by the Appellant were struck out by Judge Tindal. There is no basis for these to be reinstated. They were – as he found and as I confirm – outside the remit of this court. Therefore, they remain struck out.

92 The rest of the allegations made by the Appellant are little more than a repetition of the general and wider criticisms about the conduct of the Respondent and of the MPTs. Though formulated in a different way, those matters amount to little more than saying that the Original and/or Review Tribunals should not have found his fitness to practise to be impaired.

93 The Original and/or Review Tribunals were perfectly entitled to find that the Appellant's fitness to practise was impaired and that he should

be suspended. As the Respondent pointedly observes, the MPTs found that the Appellant could have shown insight through reflection on the Original Tribunal's findings and acknowledgement of the seriousness and consequences of the conviction (whilst maintaining his innocence). He could have complied with the Original Tribunal's recommendation by identifying general steps to minimise the risks of confrontation and to de-escalate when they arise (without admitting that he was guilty of the specific offence for which he was convicted). Instead, he launched into a personal attack upon the victim, the Crown Court Judge, the Respondent and the MPT, and rather than address the finding of lack of insight, sought to blame the disciplinary process for his troubles.

94 There is, in my judgment, no basis to impugn any of the findings or decisions of the Review Tribunal. There are no errors of procedure (within the meaning of CPR 52,21) which would make it appropriate for this court to set aside the decisions of the Review Tribunal. Nor, on the facts, can any of the decisions of the Review Tribunal be said to be wrong.

95 The appeals must, therefore, be dismissed.

96 I mention one additional matter: rather than raise issues of the type he raised before the Original and Review Tribunals and this court, summarised above, the Appellant might use the time between now and the next review date to demonstrate real insight into his offending and persuade the Review Tribunal that, even though he denies the offence: (a) he accepts that the circumstances relating to his misconduct that were found proved in the Crown Court were serious; (b) he accepts that he and the Review Tribunal are bound by those findings despite the fact that he denies them; (c) he agrees that the Original and Review Tribunals were right in treating them seriously; (d) through insight, application, education, supervision or by other means, he has sufficiently addressed the concerns of the Respondent and the Review

Tribunal; (e) he has put in place the necessary strategies to avoid conduct of that type if it arises in the future and to respond in a way that is reasonable and proportionate; and (f) he can demonstrate what those strategies are. If he can do this, it should be possible for the suspension to be lifted, though, of course, this will ultimately be a matter for the Review Tribunal to determine on the material before it and on the oral submissions of the parties.