



Neutral Citation Number: [2020] EWHC 1553 (Admin)

Case No: CO/4891/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/06/2020

Before :

MR JUSTICE MOSTYN

Between :

GENERAL MEDICAL COUNCIL

- and -

HAFEEZ-UR REHMAN AWAN

Appellant

Respondent

Ivan Hare QC (instructed by GMC Legal) for the Appellant
Ben Rich (instructed by MDU) for the Respondent

Hearing date: 10 June 2020

Approved Judgment

Mr Justice Mostyn:

1. On 15 November 2019 the Medical Practitioners' Tribunal ("the Tribunal") made an order suspending the respondent from practice for a period of nine months followed by a review at the end of that period. The GMC appeals against that order under section 40A of the Medical Act 1983. It contends that the sanction is insufficient to protect the public.
2. In order to succeed on the appeal, the appellant must show either that the decision of the Tribunal was wrong, or that it was unjust because of a serious procedural or other irregularity in the proceedings in the Tribunal. The latter limb is not relied on by the appellant; it argues through Mr Hare QC that the decision is wrong because the Tribunal erred by failing to take into account a relevant matter; by taking into account an irrelevant matter; and by failing to apply properly the GMC's Sanctions Guidance dated 6 February 2018. In such circumstances it is argued that the decision to suspend the respondent for nine months was wrong and I should replace it with a decision to erase the respondent's name from the register.
3. Before I turn to the facts, I should set out shortly the relevant legal principles applicable to an appeal such as this.
4. When exercising its functions through its disciplinary tribunal (and generally) the GMC is fixed with the over-arching objective of the protection of the public (see section 1(1A) Medical Act 1983). The pursuit of that over-arching objective involves the pursuit of the objectives of protecting, promoting and maintaining the health, safety and well-being of the public; promoting and maintaining public confidence in the medical profession; and promoting and maintaining proper professional standards and conduct for members of that profession (see section 1(1B)).
5. Therefore, when exercising its disciplinary functions, the overarching objective of the tribunal is the protection of the public. Thus, a sanctions decision is not penal. Rather, it is from first to last motivated only by the need to protect the public in the sense spelt out above. As stated above, the decision is not narrowly confined to protecting the health and safety of the public. It extends to maintaining public confidence in the reputation of the medical profession and the need to promote and maintain high professional standards and conduct of its members. Thus, in *General Medical Council v Meadow* [\[2006\] EWCA Civ 1390](#) [\[2007\] 1 QB 462](#) Sir Anthony Clarke MR stated at para.32:

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

The reason why the reputation of a profession is so important was explained in typically eloquent terms by Sir Thomas Bingham MR in *Bolton v The Law Society* [\[1993\] EWCA Civ 32](#) at paras 15 – 16:

"The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission... A profession's most valuable asset is its collective reputation and the confidence which that inspires. ... The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

6. A decision as to sanction is an evaluative judgment: see *Bawa-Garba v The General Medical Council & Ors* [2018] EWCA Civ 1879 at para 60. Where an evaluative judgment is formed after hearing oral evidence then it is particularly difficult to challenge on appeal: see *Beacon Insurance Company Ltd v Maharaj Bookstore Ltd* [2014] UKPC 21 per Lord Hodge at paras 16 to 17. At para 17 Lord Hodge stated:

"Where a judge draws inferences from his findings of primary fact which have been dependent on his assessment of the credibility or reliability of witnesses, who have given oral evidence, and of the weight to be attached to their evidence, an appellate court may have to be similarly cautious in its approach to his findings of such secondary facts and his evaluation of the evidence as a whole."

7. He cited the well-known dictum of Lord Hoffmann in *Biogen Inc v Medeva Plc* [1996] UKHL 18 at para 54 where he stated:

"The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, "*La vérité est dans une nuance*"), of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

8. The need for appellate caution is further enhanced where the decision has been made by a specialist tribunal: see *Bawa-Garba* at para 67 where the Lord Chief Justice stated:

"That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts."

9. Such caution must be exercised whether the conduct in question relates to a clinical error or misjudgement on the part of the respondent or whether it relates to personal conduct by the respondent unrelated to his/her work as a doctor. In [Khan v General Pharmaceutical Council \(Scotland\) \[2016\] UKSC 64](#) Lord Wilson stated at para 36:

“An appellate court must approach a challenge to the sanction imposed by a professional disciplinary committee with diffidence. In a case such as the present, the committee's concern is for the damage already done or likely to be done to the reputation of the profession and it is best qualified to judge the measures required to address it ...”

In making that observation Lord Wilson drew no distinction between cases of clinical error and those of non-clinical personal misconduct. The misconduct in that case, domestic violence, was unrelated to Mr Khan's competence as a pharmacist.

10. Plainly, the degree of caution or diffidence depends on the subject matter of the charges, but it cannot be disputed, as a general principle, that caution, to a greater or lesser degree, must be exercised whatever the subject matter.
11. When exercising its sanctions powers the tribunal will, naturally, have regard to the Sanctions Guidance. However, the Guidance is only guidance. It provides signposts to a possible destination rather than a fixed track leading to an inevitable terminus. This much is clear from *Bawa-Garba* at para 83 where the Lord Chief Justice stated:

“The Sanctions Guidance contains very useful guidance to help provide consistency in approach and outcome in MPTs and should always be consulted by them but, at the end of the day, it is no more than that, non-statutory guidance, the relevance and application of which will always depend on the precise circumstances of the particular case.”

12. When I turn to examine the reasoning of the Tribunal, I remind myself that I should not expect the same standards of literary expression as those found in perfectly polished judgments from the Supreme Court. *Phipps v General Medical Council* [2006] EWCA Civ 397 establishes the proposition that the Tribunal is under no obligation to record in its reasons every point in favour of the doctor in the evidence it has heard and read. To my mind the best exposition of this principle was given by Sir James Munby P in *Re F (Children)* [2016] EWCA Civ 546 where he stated:

"22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking

metaphor of Mostyn J in *SP v EB and KP* [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."

23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in *Piglowska v Piglowski* [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):

"The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case ... These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself."

It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in "narrow textual analysis".

13. It is these standards that I shall apply when I consider the criticisms of the reasoning of the Tribunal.
14. I now turn to the facts.
15. On 5 January 2016, nearly four years before the Tribunal proceedings, the respondent was working as a GP in Leeds and Wakefield. On that day he logged into a chat room hosted by Lycos. His username was "medic333" which obviously signified that he was a member of the medical profession. He explained in his evidence that he logged in in order to "de-stress" following an argument with his brother about the aftermath of an extremely unpleasant incident that occurred 14 months earlier in Pakistan when he was violently robbed, assaulted and seriously injured by a gang of armed men. He explained that his visit to the chat room was not an isolated incident; he did so regularly.
16. Once in the chat room he started exchanging messages with a person with the username "Sophiasheff". This person was in fact a police officer conducting an

undercover sting operation. The conversation was quite lengthy; the transcript covers six pages of exchanges. In the course of the exchange:

- i) Sophiasheff told the respondent at the outset that she was 13, and should be at school but was not;
 - ii) the respondent told Sophiasheff that he was a doctor;
 - iii) the respondent told Sophiasheff that he was in bed;
 - iv) the respondent sent Sophiasheff an emoji of a couple hugging and wrote “mwah huggs for you ... I want huggs too ... mmmwah”;
 - v) the respondent asked Sophiasheff if she had a telephone as he wanted to call her and listen to her voice;
 - vi) the respondent asked Sophiasheff if her mum was there now;
 - vii) the respondent asked Sophiasheff if she was on kik or WhatsApp;
 - viii) the respondent asked Sophiasheff what her Facebook identity was and tried to find it on Facebook;
 - ix) the respondent gave Sophiasheff a fake Facebook ID for himself;
 - x) the respondent asked Sophiasheff what her Yahoo Messenger ID was;
 - xi) the respondent asked Sophiasheff to give him her telephone number; and
 - xii) the respondent gave Sophiasheff his telephone number and she stated that she would text him later.
17. On 15 January 2016 South Yorkshire police disclosed the above information to the GMC.
18. On 21 January 2016 a South Yorkshire police officer posing as Sophiasheff initiated a WhatsApp exchange with the respondent. The exchange was quite lengthy; it covers nine pages of transcript. It is in four parts:
- i) Part 1: from 14:00 to 15:32 when Sophiasheff told the respondent she was at school;
 - ii) Part 2: from 17:08 to 17:29 when Sophiasheff told the respondent she was at home;
 - iii) Part 3: at 17:30 when there was a short WhatsApp audio call made by the respondent to Sophiasheff; and
 - iv) Part 4: from 17:30 – 17:53.
19. In the course of the exchange:

- i) the respondent said he was at work finishing at 6 and asked “what are you up to? Xxxxx”;
 - ii) Sophiasheff told the respondent that she was at school but really bored;
 - iii) the respondent asked Sophiasheff what time she finished school;
 - iv) the respondent asked Sophiasheff how old she was and was told she was 13;
 - v) the respondent stated that he remembered her but thought that she was 15 soon to be 16;
 - vi) the respondent stated that they could only be friends and would not be able to meet until she was 16 as it “will be illegal”;
 - vii) the respondent repeated that they could only chat and could not meet;
 - viii) after the audio call, the respondent stated “U sound nice but not 13. U sound a lot older tbh”;
 - ix) the respondent asked Sophiasheff what her real age was and was told “13 and 4 months”.
20. In October 2017 the respondent emigrated to Canada where he works as a GP.
21. The respondent was charged by the GMC as follows:
- “1. On 5 January 2016 and 21 January 2016, you engaged in conversations via an online chatroom, text message and WhatsApp (the ‘Conversations’) with an individual (‘Person A’) who you:
 - a. believed was a 13-year-old girl;
 - b. purported to accept was a 13-year-old girl.
 2. During the course of the Conversations you:
 - a. told Person A that you were a doctor;
 - b. used the username [medic333] which identified you as a member of the medical profession;
 - c. made numerous inappropriate remarks to Person A as set out in Schedule 2 (as amended).
 3. Your conduct at paragraphs 1 and 2c was sexually motivated.
 4. You failed to report Person A as a potentially vulnerable child to the:
 - a. relevant child protection agency;

b. police.

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.”

22. The respondent admitted 1(b) and 2(a) and (b). The remaining charges were tried before the Tribunal. Over five days the Tribunal dealt with the matter in the conventional manner. First it determined the facts; second it determined whether the facts amounted to misconduct; third, having decided the first two questions affirmatively, it determined whether the misconduct resulted in an impairment of the respondent’s fitness to practice; and finally, having decided that question affirmatively, it moved to the question of sanction.
23. The respondent gave evidence on day one. He was the only live witness. I have read the transcript of his evidence and I have to say that his defence was absurd. His evidence was that he realised immediately that “Sophiasheff” was an impostor. He believed that she was an older female who was “messing” with him and that he realised after the audio call that she was probably a police agent. He said that he wrote the things he wrote to her (including giving out his telephone number) in order to expose her and to reveal her true age. The things that he wrote were meaningless and were just normal Internet chitchat carrying no significance. He repeated this theme time and again throughout his evidence.
24. Unsurprisingly, this defence was robustly rejected. Unsurprisingly, the respondent was not believed. Paragraphs 1(a), 2(c), 3 and 4(a) of the allegation were found proved against him. Paragraph 4(b) of the allegation was found not proved. It is important to note that the respondent was found to have acted with sexual motivation under paragraph 3 of the allegation.
25. In its decision on impairment the Tribunal said this:

“20. The Tribunal took the view that sexually motivated conduct is not easily remediable. However, it recognised the steps that Dr Awan has taken towards remediation. It noted from Dr Awan’s GMC witness statement that he has completed a number of CPD courses to improve his knowledge and understanding of social media. The Tribunal considered that Dr Awan has made some efforts to reflect on his behaviour and has started to put measures in place to ensure that this conduct is not repeated. He told the Tribunal that he no longer uses chat rooms and has found other methods to ‘de-stress’. The Tribunal had regard to the positive testimonials provided in support of Dr Awan. It is clear that he is a well-regarded doctor and that there are no clinical concerns. The Tribunal noted that there is no evidence that Dr Awan has repeated his misconduct. For all these reasons, it therefore determined that the risk of repetition in this case is low.

21. The Tribunal went on to consider Dr Awan’s insight into his behaviour. Whilst the Tribunal acknowledged that Dr Awan has reflected on his behaviour, it considered Dr Awan’s insight

to be limited. The Tribunal took the view that Dr Awan is yet to recognise that his actions towards Person A were inappropriate. The Tribunal noted that Dr Awan has not expressed any remorse or addressed the impact that his actions could have had on the public trust in, and the reputation of, the medical profession. The Tribunal determined that Dr Awan needs to develop greater insight in order to fully remediate its findings.”

26. Mr Hare QC argues that the sequence of reasoning in these passages shows that the Tribunal reached a conclusion about the risk of repetition before it turned to consider the question of insight by the respondent. I cannot accept this. This is exactly the kind of narrow textual analysis which an appellate court should avoid when considering the reasoning of any tribunal, especially one not composed of professional judges. Obviously, the passages are to be construed to mean that the conclusion expressed in para 20 took into account the findings about insight in para 21. In a perfect world the first sentence of para 21 should probably have read: “In reaching that conclusion the Tribunal took into account Dr Awan’s insight into his behaviour.”
27. Unsurprisingly, the Tribunal determined that the respondent’s fitness to practice was impaired by reason of his misconduct. In fairness, this finding was accepted as inevitable by Mr Rich representing the respondent.
28. The Tribunal then turned to sanction. It gave its decision on the fifth day of the hearing. It is contained in 28 paragraphs of text spread over six pages. In para 9 it stated:

“In reaching its decision, the Tribunal has taken account of the [Sanctions Guidance]. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and maintain public confidence, although it may have a punitive effect.”

29. It then set out the mitigating and aggravating factors as follows:

“11. The Tribunal considered the following to be mitigating factors in this case:

- No evidence that Dr Awan has committed a sexual offence;
- Dr Awan has made positive steps towards remediation and put measures in place, such as discontinuing his use of social media platforms to ensure this misconduct is not repeated;
- There were opportunities for Dr Awan to engage in a more sexually explicit dialogue with Person A however he did not do so;
- The sexual misconduct was at the lower end of the spectrum;
- No one came to any harm;

- Doctor of good standing with an unblemished record;
- The impact of the assault on Dr Awan in 2014.

12. The Tribunal considered the following to be aggravating factors in this case:

- Dr Awan has demonstrated limited insight into the effect his conduct, including revealing his identity as a doctor, had on the public trust and confidence in the medical profession;
- There has been no expression of remorse;
- The findings of inappropriate behaviour and sexual misconduct towards Person A who Dr Awan believed to be a 13-year-old girl;
- The Tribunal considered Dr Awan’s actions to be a serious departure from the principles set out in [Good Medical Practice].”

30. In time-honoured fashion the Tribunal then worked its way up through the available sanctions starting with the most lenient. Unsurprisingly, it rejected no action and the imposition of conditions. When it came to suspension it stated at para 19:

“The Tribunal accepted that suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor.”

31. It then referred to paras 91, 92 and 97 of the Sanctions Guidance which deals specifically with suspension. It noted that the respondent had taken positive steps towards remediation and to ensure that his conduct was not repeated. It considered nonetheless that the respondent needed to reflect further on the impact his actions had on public trust and public confidence in the profession. It then in para 22 referred to para 149 and 150 of the Sanctions Guidance which deal specifically with sexual misconduct. In para 23, the very next passage, it stated:

“The Tribunal took into account the seriousness of the misconduct. Whilst the Tribunal accepted that there was no victim in this case, it has found that Dr Awan made inappropriate and sexually motivated remarks towards Person A, who he believed to be a 13-year-old girl. The Tribunal was satisfied that action must be taken to maintain public confidence in the profession as well as to maintain proper professional standards. The Tribunal considered paragraph 149 of the [Sanctions Guidance] which sets out a wide range of conduct from sexual assault, sexual abuse of children to sexual misconduct. The Tribunal considered that the sexual misconduct in this case was at the lower end of the spectrum. The Tribunal also noted that many of the paragraphs in the

[Sanctions Guidance] concerning sexual misconduct are in fact related to misconduct involving patients and were not relevant to this case.”

32. Mr Hare QC argues that in this paragraph the only reference is to para 149 of the Sanctions Guidance and that in reaching its conclusion the tribunal must have forgotten about para 150 notwithstanding that it referred to it in the immediately preceding paragraph. Again, this is an example of the vice of narrow textual analysis. I cannot accept that when phrasing para 23 of its decision the Tribunal did not fully have in mind the principles set out in para 150 of the Sanctions Guidance. That paragraph reads:

“150. Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.”

33. The Tribunal then reached its conclusion in paras 24 and 25 in the following terms:

“24. The Tribunal had considered whether to erase Dr Awan’s name from the Medical Register. In light of the positive testimonials, along with no evidence of repetition, the Tribunal carefully balanced the interests of Dr Awan with the interests of the Public. The Tribunal is of the opinion that Dr Awan’s misconduct was serious but falls short of being fundamentally incompatible with continued registration. The Tribunal took the view that erasing Dr Awan’s name from the medical register would be disproportionate, given the circumstances of this case and that a period of suspension would suffice in order to send a signal to the doctor, the profession and the public about what is regarded as behaviour unbecoming of a registered doctor. It also considered the public interest would be best served by not depriving the public of an otherwise competent doctor.

25. In all the circumstances, therefore, the Tribunal concluded that suspension would be the most appropriate and proportionate sanction in this case.”

34. It decided to impose a suspension of nine months to be followed by a review at the end of the period of suspension.
35. The first ground of appeal is that the Tribunal failed to have regard to the manner in which the respondent gave his evidence to the tribunal. As I have explained above, the Tribunal robustly rejected the respondent’s defence, which was, frankly, ludicrous. In his skeleton argument Mr Hare QC argues:

“The implausible, incredible and inconsistent explanations provided on oath to the Tribunal were plainly relevant to Dr Awan’s insight into his misconduct and the risk of repetition

and yet the Tribunal failed to refer to this matter in its determination on impairment and then to reflect this aggravating factor in its determination on sanction.”

36. I reject this ground of appeal. It is inconceivable that the Tribunal did not have in mind the respondent’s dogged, yet ridiculous, defence when making its findings about insight which I have set out above. Indeed, it is obvious that this must have been the principal factor that influenced its conclusion.
37. I think that it is too much to expect of an accused member of a profession who has doughtily defended an allegation on the ground that he did not do it suddenly to undergo a Damascene conversion in the impairment phase following a factual finding that he did do it. Indeed, it seems to me that to expect this of a registrant would be seriously to compromise his right of appeal against the factual finding, and add very little, if anything, to the principal allegations of culpability to be determined. In [Misra v. General Medical Council \(GMC\) \[2003\] UKPC 7](#) Lord Hoffmann deprecated additional charges being brought based on a disbelieved defence. He stated at para 17:

“Their Lordships enquired of Mr Greene, counsel for the GMC, whether it was a general GMC practice where charges of professional misconduct were being made to add to the factual allegations on which the charges were based an allegation of dishonesty in the event that the respondent doctor had had the temerity to deny any of the factual allegations. Counsel told their Lordships that it was not the general practice and that he was not aware of a previous case where that had been done. No explanation of why it was thought right to add the allegations of dishonesty in the present case was offered. In their Lordships' opinion the addition of the allegations of dishonesty in the present case was unnecessary and oppressive. The allegations added nothing to what would have been shown to be the degree of culpability of Dr Misra if the substantive allegations that he had declined to admit were found proved against him.”

38. It seems to me that an accused professional has the right to advance any defence he or she wishes and is entitled to a fair trial of that defence without facing the jeopardy, if the defence is disbelieved, of further charges or enhanced sanctions.
39. It is for this reason that explicit admissions of culpability tend not to be given in the impairment and sanctions phase. Rather, language alters to the passive voice and statements in the genre of “I am sorry if what I have said has caused you to take offence” are made. Thus, in the case of *General Medical Council v X* [2019] EWHC 493, which has some striking similarities to this one, the “admission” following the factual finding was (at para 32):

“Dr X had instructed [counsel] to admit on Dr X's behalf that what the tribunal had found proved was serious and deplorable.”

40. That is some distance away from admitting explicitly the truth of what the tribunal had found proved. In my judgment, in the absence of any significant hiatus between the factual finding and the impairment/sanctions phase in which full reflection can be undergone, that is as much as can reasonably be expected of an accused professional who has defended the case on the ground that he did not do what was alleged.
41. For these reasons I reject the first ground of appeal.
42. The second ground of appeal is that the Tribunal had regard to an irrelevant factor namely the public interest in not depriving the public of the services of an otherwise competent doctor (see the final sentence of para 24 of the sanctions decision set out above). The argument is that the public interest in question relates only to the UK public and because the respondent has since emigrated to Canada it is not in play in this case. I cannot accept this argument. It is, I suppose, implicit in the terms of section 1(1A) and 1(1B) of the Medical Act 1983 that the public there referred to is the UK public. One would like to think, however, that the objective of protection would extend to the global community. However, there was no reason to suppose that the decision to emigrate made by the respondent was irrevocable. Moreover, and more importantly, I do not regard this single sentence as being a key element of the decision-making process. It is almost as if it was added on as an afterthought. In my judgment if this sentence did contain an error it was not a material one.
43. The third ground of appeal is that the Tribunal made two significant failings in its application of the Sanctions Guidance. I have dealt with the first alleged failing at para 32 above. In my judgment it is meritless. The second alleged failing is that the tribunal failed explicitly to reference the relevant parts of para 109 of the Sanctions Guidance which deal with possible erasure. The sub-paragraphs in question are as follows:
- “(a) A particularly serious departure from the principles set out in Good Medical Practice where the behaviour is fundamentally incompatible with being a doctor.
- ...
- (d) Abuse of position/trust (see Good Medical Practice, paragraph 65: ‘You must make sure that your conduct justifies your patients’ trust in you and the public’s trust in the profession’).
- ...
- (j) Persistent lack of insight into the seriousness of their actions or the consequences.”
44. While it is true that these particular sub-paragraphs were not expressly referenced by the Tribunal in its reasoning, it is clear to me that in its disposal the Tribunal fully had these factors at the forefront of its mind. To paraphrase Sir James Munby P, it is not the duty of the tribunal slavishly to restate the terms of the Guidance. This is especially so when, for the reasons I have stated, it is no more than non-binding advice.

45. I therefore reject this ground of appeal also.
 46. Standing back I ask myself whether the disposal can be characterised as wrong. The conduct of the respondent was serious and deplorable. However, the sanction imposed by this specialist Tribunal was very carefully considered and was judged to be sufficient to meet the objective of protecting the public and promoting and preserving the reputation of the medical profession. I cannot say that it was wrong.
 47. It was a comparable disposal to that ordered in the case of *General Medical Council v X* where the facts were strikingly similar. Therefore, there is a consistency of approach in a case of this kind.
 48. For these reasons the appeal is dismissed.
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