



Neutral Citation Number: [2022] EWHC 424 (Admin)

Case No: CO/4304/2019

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

Manchester Civil Justice Centre

Date: 24/02/2022

**Before :**

**MR JUSTICE CHOUDHURY**

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**Between :**

**DR NOOR AHMED**  
**- and -**  
**GENERAL MEDICAL COUNCIL**

**Appellant**

**Respondent**

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**The Appellant appeared in person**

**Peter Mant** (instructed by **the General Medical Council**) for the **Respondent**

Hearing dates: Tuesday 15 and Wednesday 16 February 2021  
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**Approved Judgment**

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30 1<sup>st</sup> March 2022.

## **Mr Justice Choudhury :**

1. The Appellant, Dr Noor Ahmed, is, in clinical terms, an excellent doctor. He has a long and distinguished record in his specialty of Obstetrics and Gynaecology, is highly regarded by colleagues, particularly in laparoscopic and minimally invasive gynaecological surgery, has a respected body of research work, and is the author of a number of papers published in recognised journals.
2. It is, therefore, lamentable that a medic of such high ability should find himself having to appeal against the decision of the Medical Practitioners Tribunal (“the Tribunal”) issued on 4 October 2019 that his name be erased from the Medical Register. The Tribunal made adverse findings as to the Appellant’s conduct relating to the failure to disclose full details of previous Fitness to Practise (“FTP”) decisions, an ongoing FTP investigation and other matters to a prospective employer in an application form and during a job interview. The Tribunal found such conduct to be dishonest, that the dishonesty was particularly serious and that his FTP was impaired by reason of his conduct. The Tribunal also considered whether FTP was impaired by reason of the Appellant’s health but concluded that it was not.
3. The Appellant appeals against that conclusion and seeks to have his erasure set aside.

## **Background**

4. The events giving rise to the Tribunal’s decision now date back almost 11 years to applications made by the Appellant in 2011. However, the history of the matter goes back well before then as the following brief summary of the chronology makes clear.
5. The Appellant was born in 1953 and is now aged 69. He qualified as a doctor in 1977 at Ain Shams University, Egypt, and became a consultant in Obstetrics and Gynaecology. He moved to the UK from Ireland in 1987.
6. In April 2005, the Appellant was working for East Lancashire NHS Trust, when he accepted an offer of a post at another Trust without notifying either Trust. He worked for both Trusts using his study and annual leave from one Trust to work for the other. He also sought, through the British Medical Association, to obtain a £60,000 settlement with East Lancashire.
7. In January 2008, the GMC FTP Panel imposed a six-month suspension on the Appellant for misconduct, including dishonesty for: (i) holding two full-time NHS consultant posts with different Trusts at the same time; (ii) claiming study leave from both Trusts for the same period of leave; (iii) stating that he required additional leave for “personal reasons” when the leave was required to enable him to work both jobs; and (iv) pursuing a claim for severance pay with one of the Trusts without disclosing to that Trust or his own union representatives that he had secured a job with the other Trust. Following his suspension (which was extended by three months), the Appellant was subject to a 12-month order imposing conditions on practice.
8. On 4 November 2010, the Appellant submitted a job application to Southend University Hospital NHS Foundation Trust (“Southend”) in which he declared (by ticking a box) that he had not had conditions placed on his registration. This was not correct and a complaint was made by Southend to the GMC. Meanwhile, the

Appellant took up employment with Emerson Green Treatment Centre in Bristol (“the Treatment Centre”).

9. On 8 April 2011, the GMC issued a “Rule 7” letter formally setting out the allegations against the Appellant in respect of the Southend complaint. It was suggested in that letter that it might be appropriate to dispose of the case with a warning. The Appellant was invited to respond but appears not to have done so promptly.
10. On 16 May 2011, the Appellant resigned from the Treatment Centre although he continued to be paid until 28 June 2011.
11. On 24 May 2011, the Appellant wrote a letter to Dr Hughes of NHS Lothian (“Lothian”) with a view to securing a post there. He failed to mention the previous findings of dishonesty or his suspension.
12. In June 2011, the Appellant submitted a job application to Lothian. In it, he falsely stated that he was still in post at the Treatment Centre and completed the form in the present tense thereby giving the impression that he was still working there at the time. The Appellant also gave a partial account of his time out of practice in that he excluded any reference to the fact that he had been suspended in 2008.
13. On 15 July 2011, the Appellant responded to the GMC’s notice of the Southend allegations.
14. On 20 July 2011, the Appellant applied for a job at Brighton & Sussex University Hospitals NHS Trust (“Brighton & Sussex”). In his application he falsely answered “no” to the question: “*Are you currently the subject of a fitness to practise investigation or proceedings by a licensing or regulatory body in the UK or in any other country?*”
15. Shortly thereafter, Brighton & Sussex raised a concern with the GMC about the Appellant’s failure to disclose an ongoing investigation.
16. On 22 July 2011, the Appellant attended an interview with Lothian. Those interviewing him recalled that the Appellant stated or implied that he was still in post at the Treatment Centre and that he was no longer subject to any GMC investigations. He was offered the job by telephone later that date and commenced working there on 12 September 2011. The Appellant contended that he had in fact made full disclosure of all relevant matters in pre-interview discussions of which he had made contemporaneous notes.
17. On 13 February 2012, the GMC issued the Appellant with a warning in respect of both the Southend and Brighton & Sussex matters. These matters did not progress to a FTP hearing and there was no formal finding of dishonesty. There had been considerable delay in obtaining responses from the Appellant to these allegations.
18. By 24 February 2012, Lothian had cause to query the basis on which the Appellant had obtained the job. An investigatory meeting was scheduled but the Appellant went on sick leave and did not attend. He never returned to work for Lothian.

19. On 22 March 2012, Lothian referred the Appellant's conduct to the GMC. It was eventually determined that the allegations in respect of the Lothian application would be considered by the Tribunal.
20. The Tribunal hearing was originally listed to be heard in April and May 2015. However, on the first day of the hearing, the Appellant applied for and was granted an adjournment on health grounds. The Appellant was directed by the GMC to attend a health assessment, but there were long delays whilst attempts were made to arrange an appointment with the Appellant. It is not in dispute that the Appellant was suffering from a number of physical and mental health conditions in this period. In February 2018, the Assistant Registrar of the GMC referred the matter to the Tribunal for a non-compliance hearing. That appears to have persuaded the Appellant in March 2018 to agree to an assessment.
21. In June 2018, at a telephone case management meeting, the parties agreed an 11-day listing for the Tribunal hearing in October and November 2018.
22. The hearing eventually commenced on 29 October 2018, with Ms Kim Kneale as the Legally Qualified Chair ("LQC"). The Appellant was represented by Leading Counsel, Ms O'Rourke QC, and the GMC by Mr Kitching of Counsel. The Tribunal heard evidence, including cross-examination of the Appellant and other witnesses, and submissions over 6 days. On Day 7 of the hearing, the Tribunal went into camera to consider its decision in respect of the fact-finding stage.
23. On 9 November 2018, whilst the Tribunal was still in camera, the Appellant's Solicitors informed the Tribunal that the Appellant had dis-instructed Ms O'Rourke QC and sought an adjournment on health grounds. On the same dated, the Appellant reported chest pains and attended A&E.
24. On 12 November 2018, the Appellant's Solicitors came off the record. The Appellant sought an adjournment of the hand-down of the Tribunal's determination of the facts. This was refused and the hand-down went ahead on 30 November 2018. The second stage of the hearing, dealing with impairment of FTP and sanction, was listed to be heard between 4 and 8 March 2019.
25. The resumed hearing was adjourned due to the Appellant's health and was re-listed to be heard on 30 September to 4 October 2019.
26. By the time of the re-listed hearing, the Appellant had instructed new Solicitors and subsequently instructed new Counsel, Mr Morris.
27. The Tribunal handed down its decision on impairment of FTP on 3 October 2019. Its decision on sanction, namely that the Appellant's name be erased from the Register, was handed down the following day.

### **The Tribunal's decisions**

28. The Tribunal reached the following determination on the facts:

"The Tribunal has determined the facts as follows:

1. In a letter to Dr A dated 24 May 2011 you described the circumstances of

your 2008 GMC hearing in a way which you knew to be false as the description did not accurately set out the reasons for your referral to the GMC. **Admitted and Found Proved**

2. In an undated employment application form submitted to NHS Lothian ('the Board') in or around June 2011 you:

a. stated that you were 'still in post' at the NHS Treatment Centre, Bristol ('the Treatment Centre') when you knew that that was not the case;

**Admitted and Found Proved**

b. completed the remainder of the application form using the current tense which suggested that you were still in post at the Treatment Centre when you knew that that was not the case; **Admitted and**

**Found Proved**

c. provided details of why you had been away from clinical practice.

**Admitted and Found Proved**

3. You knew the information provided in paragraph 2c did not accurately summarise the position as it failed to mention that one of the reasons you had had a period out of practice was because you had been suspended by the GMC for six months in 2008. **Admitted and Found Proved**

4. During an interview with the Board on 22 July 2011 ('the interview') you stated and/or implied that you were still in post at the Treatment Centre when you knew that this was not the case. **Determined and Found Proved**

5. During the interview you stated and/or implied that you were no longer subject to any GMC investigation when you knew that this was not the case.

**Determined and Found Proved**

6. Your actions in paragraphs 1 to 5 above were:

a. dishonest;

**Determined and Found Proved in relation to 1, 2a, 2b, 3, 4 and 5**

**Found Not Proved in relation to 2c**

b. misleading.

**Admitted and Found Proved in relation to 1, 2 and 3**

**Determined and Found Proved in relation to 4 and 5**

7. On 19 March 2018, you were medically examined by Dr B who, on 3 September 2018, diagnosed you as suffering from a medical condition, the nature of which is set out in Schedule 1. **Admitted and Found Proved**

8. On 22 March 2018, you were medically examined by Dr C who, on 3 September 2018, diagnosed you as suffering from a medical condition, the nature of which is set out in Schedule 2. **Admitted and Found Proved**

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

a. misconduct in respect of paragraphs 1 to 6;

## **To be Determined**

b. adverse physical or mental health in respect of paragraphs 7 to 8.

## **To be Determined”**

29. As to whether or not the Appellant’s FTP was impaired, the Tribunal first considered whether there was impairment by reasons of any adverse physical and/or mental health conditions. As to that issue, the Tribunal concluded that, in light of recent evidence indicating an improvement in health, the Appellant’s FTP “*is not currently impaired by reason of his adverse health*”.

30. The Tribunal went on to consider whether FTP was impaired by reason of the conduct found to be proved:

“48. The Tribunal found that Dr Ahmed in his dishonest acts as found proved and in his evidence to the Tribunal, failed to adhere to the above paragraphs of GMP [Good Medical Practice]. The Tribunal was of the view that Dr Ahmed’s actions fell below the standards expected of a medical practitioner and breached fundamental tenets of GMP.

49. The Tribunal is of the view that although the facts related to a single set of circumstances relating to his job application, there were multiple elements to the dishonesty found. The Tribunal also noted that the warning issued to Dr Ahmed in 2012, also related to a lack of openness in job applications.

50. The Tribunal considered that Dr Ahmed’s actions were deliberate. He wrote a letter that was false, left out relevant information on a job application form, and at interview he did not answer questions honestly. His dishonesty was compounded by the documents that he produced during the course of this hearing which have been found to have been deliberately altered, namely the job advert and his notes of the interview. In addition, the Tribunal found Dr Ahmed’s oral evidence to be ‘wholly unreliable and potentially dishonest’.

51. The Tribunal finds Dr Ahmed’s dishonesty is particularly serious given the background of his previous findings of dishonesty and the warning imposed for failing to be open in job application forms.

52. The Tribunal determined that Dr Ahmed’s conduct was of a morally culpable nature which brings the profession into disrepute. The Tribunal considered that this is misconduct which is serious.

## **Impairment**

53. The Tribunal went onto consider as a result of his deliberate dishonesty whether Dr Ahmed’ fitness to practise is currently impaired by reason of misconduct.

54. The Tribunal has been mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended). Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance set down by Dame

Janet Smith in the Fifth Shipman Report and to the relevant considerations as set out earlier in the determination.

55. When viewed overall it is clear that Dr Ahmed's misconduct is such that he can fairly be judged as having brought the profession into disrepute; as having breached fundamental tenets of the medical profession; and as having demonstrated by a course of conduct that his integrity cannot be relied upon in the future. In making its findings the Tribunal has had regard to all three limbs of the overarching objective.

56. Although Dr Ahmed admitted that some of his actions were misleading he did not admit that any were dishonest. No evidence has been presented to suggest that Dr Ahmed has taken any steps to attempt to remedy his misconduct. Therefore, the Tribunal finds that Dr Ahmed has no insight or understanding of his misconduct.

57. The Tribunal therefore determined that Dr Ahmed's fitness to practise is currently impaired by reason of his misconduct but not by reason of his adverse health."

31. Finally, in respect of sanction, the Tribunal took account of the mitigating and aggravating factors (which included the fact that the Appellant had previously been found guilty of dishonesty in 2008) and decided that it would not be sufficient, or appropriate to conclude the case by taking no action, by suspending him or by imposing conditions on practice. As to the option of erasure, the Tribunal concluded as follows:

"37. The Tribunal had regard to paragraphs 108 and 109 of the SG [Sanctions Guidance], which state:

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

109. Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a. A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety

...

h Dishonesty, especially where persistent and/or covered up

j Persistent lack of insight into the seriousness of their actions or the consequences.'

38. The Tribunal has found all of the above factors applied in Dr Ahmed's case.

39. The Tribunal has determined that, for all the reasons set out in this determination, Dr Ahmed's misconduct is fundamentally incompatible with continued registration on the Medical Register. It has concluded that erasing his name from the

Medical Register is the only proportionate sanction to impose and is necessary in order to maintain public confidence in the medical profession and declare and uphold the proper standards of conduct and behaviour.

40. Accordingly the Tribunal determined that Dr Ahmed's name should be erased from the Medical Register"

32. The Appellant now appeals against that decision.

### **Procedural History of the Appeal**

33. The appeal was initially listed to be heard in February 2020. However, the Appellant sought and was granted an adjournment by Julian Knowles J for a period of three months. A further application to adjourn was made on 30 April 2020 shortly before the re-listed hearing. That adjournment was granted, once again by Julian Knowles J, this time largely because of the pandemic, which was then at its height.

34. On 19 February 2021, the Appellant sought a further adjournment on medical grounds. A directions hearing was ordered and the Appellant was directed to file updated medical evidence by 16 April 2021. The directions hearing was at that stage listed to be heard on 13 May 2021.

35. On the eve of the directions hearing, the Appellant sought another adjournment. The adjournment was granted with directions for a further remote directions hearing on 18 June 2021. The parties were given directions about bundles and skeleton arguments.

36. Notice of the substantive hearing was issued on 8 June 2021 for the hearing to commence on 22 July 2021 for one day. However, on 11 June 2021, the Appellant made his fourth application to adjourn on medical grounds.

37. At a case management hearing on 18 June 2021, the Appellant sought a further six-month adjournment with updating medical evidence to be filed at the end of that period. Julian Knowles J rejected that application and set the matter down for hearing after the summer vacation. He stated that a balance had to be struck between the Appellant's health concerns and the need for finality; four months would allow the Appellant time to pursue recovery and prepare his appeal. The judge stated that there was force in the GMC's submission that, if the application was granted, the stress that was impacting on the Appellant's mental health would "*simply recur*" when the case came up for hearing again. He expressed concern that the case would be "*trapped in a never-ending loop*".

38. On 23 July 2021, the Appellant was given notice that the hearing would commence on 21 October 2021 for 1.5 days. Once again, directions were given for the service of bundles and skeleton arguments, with the Appellant required to serve a skeleton argument not less than 3 weeks before the hearing. The Appellant did not serve any skeleton argument.

39. On 20 October 2021, the Appellant filed another application for an adjournment on health grounds. That application extended to 9 pages and contained almost 50 pages of attachments. Freedman J, who was due to hear the appeal, granted the adjournment on 21 October 2021. Freedman J gave directions for the service of further medical



evidence, a CMC in the week commencing 22 November 2021, and for the provisional re-listing of the appeal hearing in a window between 16 and 21 December 2021 with a time estimate of 1.5 days. Freedman J's ruling, of which a transcript has been made available, deals in considerable detail with the medical evidence relied upon by the Appellant.

40. On 22 November 2021, the Appellant sought an adjournment of the CMC and the appeal without giving any indication as to when he might be fit to conduct either hearing. That application was refused by Cotter J who considered that granting further time was unlikely to serve any purpose in resolving the range of problems on which the Appellant relies.
41. In the event, the Court was unable to list the matter in December and instead notice of hearing was issued on 30 November 2021 for the hearing to take place on 15 February 2022 for 1.5 days.
42. At 9.52am on the morning of the hearing, the Appellant made an application to adjourn the hearing on health grounds. He relied, in particular, on the fact that he had undergone a medical procedure the previous day, and on a medical report dated 1 December 2021, indicating that the Appellant was not fit to instruct legal representatives. The Appellant did indicate, however, that he would be willing to attend the hearing remotely although his contribution may be limited due to his current condition. For reasons set out more fully in a separate judgment, that application was refused and the Appellant was informed that he would be able to attend the hearing remotely from 2.15 pm.
43. The hearing eventually commenced at 2.30pm at which point the Appellant, appearing by telephone only, renewed his application to adjourn, citing health reasons as before and his desire to instruct legal representatives once fit. That application was also refused for reasons given orally, and the hearing proceeded. Although the hearing was undoubtedly difficult for the Appellant, it continued without further interruption. Throughout the hearing, the Appellant presented his case lucidly and demonstrated a strong grasp of the factual background.

## **Grounds of Appeal**

44. The Appellant filed full grounds of appeal on 31 January 2020. The grounds of appeal extend to over 13 pages. A summary of those grounds is set out in the skeleton argument of Mr Mant, of Counsel, who appears for the Respondent (but who did not appear below). I consider, and the Appellant did not dispute, that Mr Mant's summary is fair and accurate, and I set it out here.
  - a. Ground 1- unfair introduction of material: The Appellant complains that:
    - i. He was taken by surprise by the introduction of new materials during the course of the hearing that had not previously been disclosed;
    - ii. He was advised by his own legal team that it would not be possible for him to introduce new material following his rule 7 response and exchange of statements;
    - iii. He had previously been denied disclosure of documents that the GMC then relied on at the hearing;

- iv. The GMC's failure to disclose relevant information denied him the opportunity to prove that he was not aware of the warning given in 2012;
  - v. He was unfairly questioned about matters giving rise to the warning (the Southend Hospital and Brighton & Sussex Hospitals job applications) when these were not included in the rule 7 letter and did not form part of the charge against him;
  - vi. Questioning by Counsel for the GMC, Mr Kitching, was oppressive ("hammering" and "battering" him with questions, "disrespectfully" accusing him of not telling the truth, and questioning whether he understood English);
- b. Ground 2- Unfairly introduced bad character: The Appellant asserts that it was unfair that the GMC was permitted to advance an argument that he was of "bad character" based on matters that were not included in the rule 7 letter and did not form part of the charges against him.
- c. Ground 3- Unfair and prejudicial mistreatment by GMC counsel: Under this ground, the Appellant:
- i. Repeats the assertion that Mr Kitching's questioning was oppressive;
  - ii. Raises a concern that Mr Kitching spoke to one of the witnesses before they gave evidence;
  - iii. Claims that Mr Kitching misrepresented the evidence by: (a) asserting that the Appellant was aware of the warning he received in 2012; (b) questioning the authenticity of the document that the Appellant claimed was a contemporaneous minute of pre-interview discussions; and (c) falsely characterising the misconduct that led to the suspension in 2008 as involving "financial irregularity" or "extorting" money.
- d. Ground 4- Poor Legal Representation: The Appellant further complains that his own barrister, Ms O'Rourke QC, never challenged Mr Kitching and did not support the Appellant when he protested about the questioning. He states that Ms O'Rourke QC insisted that he admit allegations, which he declined because most of them were untrue and defensible.
- e. Ground 5- Unfairly arranging the attend the GMC hearing while still recovering from illness: The Appellant complains that he was "rushed" to proceed with the GMC hearing when he was still recovering from a prolonged period of physical and mental health issues.
- f. Ground 6- Rushing to attend the hearing by GMC and my representative: He further complains that he was pressured by the GMC and his own representative to agree a hearing date. He was told that, if he wanted a certain barrister and solicitor to represent him, he had to accept their convenient dates.

45. I shall consider each of these grounds in turn below.

## **The Legal Framework**

46. Section 40 of the *Medical Act 1983* provides a right of appeal to the High Court against sanctions imposed by the Tribunal. Applying CPR 52.21, the test on appeal is whether the decision of the Tribunal was “wrong” or “unjust” because of serious procedural or other irregularity.
47. Paragraph 19.1 of Practice Direction 52D specifies that the appeal should take the form of a “re-hearing”. In *Sastry and Okapara* [2021] EWCA Civ 623, the Court of Appeal considered the distinction between a review and a re-hearing, holding that the approach identified by the Privy Council in *Ghosh v General Medical Council* [2001] 1 WLR 1915, and approved by the Supreme Court in *Khan v General Medical Council* [2017] 1 WLR 169, was appropriate for a section 40 appeal. At [102]-[103] Nicola Davies LJ held as follows:

"102 Derived from Ghosh are the following points as to the nature and extent of the section 40 appeal and that approach of the appellate court:

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

103 The courts have accepted that some degree of deference will be accorded to the judgment of the Tribunal but, as was observed by Lord Millett at [34] in Ghosh, "the Board will not defer to the Committee's judgment more than is warranted by the circumstances". In Preiss, at [27], Lord Cooke stated that the appropriate degree of deference will depend on the circumstances of the case. Laws LJ in Raschid and Fatnani, in accepting that the learning of the Privy Council constituted the essential approach to be applied by the High Court on a section 40 appeal, stated that on such an appeal material errors of fact and law will be corrected and the court will exercise judgment but it is secondary judgment as to the application of the principles to the facts of the case ([20])...."

48. It is clear from these authorities that an appeal should only be allowed on grounds of procedural irregularity if the matter complained about is “serious” and rendered the ultimate decision “unjust”.
49. The Appellant’s grounds of appeal focus on matters of alleged procedural irregularity and do not raise any substantive challenge to the findings of fact. In his oral

submissions, however, the Appellant did stray beyond the grounds of appeal to some extent and queried the basis of some of the findings made against him, particularly in relation to credibility. Some latitude was afforded to the Appellant in this respect given his unrepresented status, and Mr Mant did not object to that course.

Grounds 1 and 2 - unfair introduction of evidence including evidence of “bad character”

50. Grounds 1 and 2 are taken together, as they deal with the same issue, namely the unfairness to the Appellant of the introduction in the course of the hearing of evidence relating to previous GMC investigations in respect of previous job applications for Southend and Brighton & Sussex. The Appellant claims that he was taken by surprise by the introduction of such material. He complains, in particular, that he was subject to questioning about matters (e.g. the Southend and Brighton & Sussex matters) that did not form the subject matter of the Rule 7 letter and/or the charges.

51. It is correct that evidence that was described as “bad character” evidence was permitted to be adduced at the hearing. The Appellant was represented by Solicitors and Leading Counsel, Ms O’Rourke, for the entirety of the fact finding stage of the hearing, and no objection was taken by them to the introduction of such material, as the following extract from the transcript of Day 1 of the hearing makes clear:

*THE CHAIR: Having looked at the case management history, as it were, there was an issue of preliminary argument in terms of bad character, an application which indicates “Is not opposed”. Is that the correct position? We have seen a skeleton argument, obviously, from the GMC.*

*MISS O’ROURKE: Madam, yes. Mr Kitching and I have just been discussing it. I don’t have any legal basis to oppose it. Apart from anything else, you will have seen from the documents you have read that, as the case concerns what happened in 2008, inevitably you are going to know what happened in 2008 and the 2008 determination is contained in the bundle. Therefore, it would be – I don’t know what is the right word – fallacious of me to say that I should resist it.*

*All I say – Mr Kitching and I are agreed that this is an acceptable position for me to take – is that it doesn’t necessarily mean you need to use it. In other words, you get to know that he has previous adverse findings of dishonesty and he therefore has a bad character. I will not be able to assert good character when I make my stage 1 closing submissions but it doesn’t mean you have to make the determinations you do on the outstanding charges by relying on the bad character. I will be inviting you to make those determinations not based on anything that has happened in the past but based on the evidence that you will have heard from him.*

*THE CHAIR: Thank you for that indication...*

52. In the event, the Tribunal determined only to use this evidence in a limited way as the following passage from its determination under the heading, “The Tribunal’s Approach to Dishonesty”, makes clear:

110. At the commencement of this hearing, the GMC had sought permission to adduce evidence of Dr Ahmed’s GMC history to support the charges that the Dr currently faces which is evidence of a type that can be characterised as evidence of bad character. Dr Ahmed’s legal team did not oppose the adducing of evidence of bad character, although they did not accept that it should be used in the manner suggested by the GMC. In its initial assessment of dishonesty, the Tribunal used this history to

provide context to the current allegation. However, it did not consider it necessary to use it to show propensity or to rebut the defence/explanations put forward on behalf of Dr Ahmed.

53. Thus, whilst the application forms for previous posts did not form the basis of the allegations being considered, they provided relevant context and background to the allegations that were before the Tribunal. It is difficult to see, in those circumstances, which include the lack of objection from his own representatives, how the Appellant could have been taken by surprise by the GMC's reliance on this material relating to his FTP history. In any event, the previous application forms were familiar to the Appellant, material parts having been referred to in the warning and other documents included in the agreed bundle, and no objection was taken to their introduction on the basis that there had not been enough time to consider them.
54. It is also relevant to note that the introduction of further evidence was not all one-sided, as the Appellant submitted: indeed the Appellant was permitted to adduce a substantial quantity of material, some relating to those same applications, even in the face of his own Counsel acknowledging that some of it may lack relevance, as the following extract from Day 5 of the transcript demonstrates:

*MISS O'ROURKE: Madam, can I just explain the position so that Dr Ahmed can hear it and I do not think I am waiving any legal professional privilege in doing it. The position is this: Dr Ahmed did indeed have the huge bundle from his Rule 7 response. What about that material? What documents to put in? I said I could not see the relevance of them to the two outstanding charges because, as you know, the facts are admitted in respect of charges 1, 2 and 3, dishonesty is not admitted but the basic facts are. The only charges in dispute are 4 and 5 which relate solely to the interview, in other words, what was said in interview by him. There are no outstanding charges relating to application forms. It is right and proper that Mr Kitching cross-examines about the Southend form because it goes to three things: bad character, credibility and the fact that that is the matter not disclosed in the interview or allegedly not disclosed.*

*Dr Ahmed was very keen to put in hundreds and hundreds of pages and I said we must focus on relevant material. I have at some stage, whether it is three years ago or more recently, I suspect seen all of it and probably seen what has been handed in now. It is a question ultimately of relevance but on the other hand Mr Kitching very fairly does not want to be seen to be closing Dr Ahmed out. Dr Ahmed clearly thinks they are relevant, I may take a different view because I know the rules and the law and whatever, but on the other hand I am very concerned that because of the seriousness of the issues in this case that Dr Ahmed does not feel he has been closed out or that I have given wrong advice as to what documents may or may not be relevant, so if he thinks that the application forms advance his case then I am happy to say well, so be it. My own decision and advice for the sake of management of the hearing within the relevant time was I could not see what they went to on the outstanding charges 4 and 5 but the decision of course as to the admission of any evidence is for you.*

*THE CHAIR: Yes. It is always difficult talking about evidence we have not seen before as to whether it is relevant or not.(To the witness) If there are documents that you feel strongly about overnight that you need to put in for your case, having heard what Miss O'Rourke has just said, clarifying the position for us then you can bring those documents tomorrow for the matter to be considered. When we make our decision on the facts those aspects that you have already admitted have been found proved on the basis that you have admitted them so we will only be making decisions on the outstanding charges which was why Miss O'Rourke was addressing us in the way that she just did. Okay?*

*DR AHMED: I agree with all what Miss O'Rourke said. As a layman I would like to put in as much evidence as possible but as an expert Miss O'Rourke has represented me several times in the past. However, I promised Mr Kitching to produce evidence of previous applications and I would like to honour this, which I have it with me and I promise I will bring it tomorrow."*

55. Thus, contrary to the Appellant's protestations of double-standards in relation to documentation, the Tribunal permitted both sides to adduce substantial further material. This extract from the transcript also contradicts the Appellant's contention that he was advised by his own legal team that it would not be possible for him to introduce new material following his rule 7 response and exchange of statements. As is apparent from the extract, Ms O'Rourke had in fact advised the Appellant not to seek to adduce certain new material because it was not relevant. In the event, the new material was introduced.
56. Another complaint made by the Appellant under these grounds is that he had previously been denied disclosure of documents relied upon by the GMC at the hearing. That complaint appears to be without substance. The bundles were agreed by respective Counsel and the agreed bundles were served on the Appellant's solicitors in advance of the hearing. There is nothing to indicate that the Appellant and/or his representatives had made any pre-hearing application for disclosure that was refused by the GMC. The Appellant did make a request for disclosure at the conclusion of the fact-finding stage. On 20 September 2019, the Appellant requested a copy of GMC communications spanning the period from mid-December 2010 to June 2012 which led to the 2012 warning. Given that this request was being made *after* the Tribunal had handed down its determination on the facts on 30 November 2018, the GMC, understandably, sought to clarify the relevance of the request, its position being that the requested material was not relevant to the remaining stages of the proceedings (impairment and sanction). The GMC did state that it would re-consider its position if information was provided about the relevance of the request to the stage of the proceedings. No further response was received from the Appellant, and no issue was raised in respect of the requested material when the Tribunal reconvened on 30 September 2019.
57. The Appellant complains that the GMC's failure to disclose relevant material denied him the opportunity to prove that he was not aware of the warning (in respect of the Southend and Brighton & Sussex matters) at the time it was issued. However, this would appear to be an assertion without substance. It was not at all clear what, if any, disclosure would have enabled the Appellant to "prove" that he was not aware of the

warning. In reaching the conclusion that the Appellant's evidence was "wholly unreliable and potentially dishonest", the Tribunal made these findings in relation to the Appellant's knowledge of the warning:

"47. In relation to d) [the issue of when the Appellant found out about the warning] – Dr Ahmed told the Tribunal that he did not realise that he had received a warning until he received the paperwork relating to this hearing. The Tribunal note the letter at B130, dated 18 August 2011 which states that concerns had formally been raised from Brighton and C12 (Rule 7 letter) dated 30 November 2011 which refers specifically to Brighton and Sussex and asks for his comments before a final decision is made before the consideration of a warning and B137 dated 13 February 2012 which confirms that Dr Ahmed had been issued with a warning. Dr Ahmed stated that when he moved to Edinburgh all his correspondence was being sent to Bristol until his housemate came back from Europe so he did not collect his mail until May or June 2012. However C12 shows that at least by November 2011 all correspondence from the GMC was being sent to Dr Ahmed's ... Preston address and this was his registered address as at 2 September 2009. The Tribunal note Dr Ahmed's categorical denial of receiving the documentation until he was shown the un-redacted copy of C12, after which he reluctantly accepted that he must have received it."

58. The Appellant's remaining complaints under these Grounds relate to alleged conduct on the part of the GMC's Counsel, Mr Kitching, during cross-examination of the Appellant, and are dealt with under Ground 3 below.

*Ground 3- Unfair and prejudicial mistreatment by GMC counsel*

59. A considerable part of the Appellant's oral submissions sought to highlight what he considered to be unfair and prejudicial questioning by Mr Kitching. The Appellant complains both about the subject matter and the manner of the questioning. As to subject matter, the complaint is that Counsel's questioning about matters giving rise to the warning was "unfair", particularly as the warning did not form part of the charges against him. In my judgment, there was nothing unfair in being questioned about the warning and his knowledge of it; indeed, the Appellant's Counsel herself acknowledged the relevance of being questioned about such matters:

*It is right and proper that Mr Kitching cross-examines about the Southend form because it goes to three things: bad character, credibility and the fact that that is the matter not disclosed in the interview or allegedly not disclosed.*

60. Cross-examination about the warning and the application forms giving rise to it was relevant to credibility and to provide context for the issue that was before the Tribunal, namely the Lothian application, given the similar nature of the alleged conduct, i.e. the misleading nature of the information provided to prospective employers. The GMC had invited the Tribunal to find that the Appellant's conduct in respect of the Southend and Brighton & Sussex applications, even though not found to be dishonest, showed a propensity to act dishonestly in the context of job applications. However, the Tribunal clearly declined that invitation and determined that its findings in relation to the earlier applications were not necessary to show propensity. The Appellant cannot, therefore, show that the cross-examination in respect of the warning had unfairly resulted in a finding of dishonesty in respect of the matters set out in the charges against him.

61. As to the manner of questioning, the Appellant suggests that Mr Kitching's cross-examination was "oppressive" ("hammering" and "battering" him with questions), disrespectful in that Counsel accused him of not telling the truth, and insulting in that Counsel questioned whether he understood English.
62. I have considered the transcript of the cross-examination. Whilst acknowledging that a transcript cannot fully capture the manner in which questions are put, it is abundantly clear that Mr Kitching conducted the cross-examination in a thoroughly professional and courteous manner. One can see, for example, that the Appellant was asked whether he was "alright" when he became distressed (Day 3/19); Counsel informed the Appellant that he could ask for a question to be repeated or explained if it was not clear (Day 3/8); and that Counsel interrupted politely to keep the focus on the question asked (Day 3/10). The Appellant undoubtedly found cross-examination difficult and stressful, but there is nothing here to indicate that Counsel exceeded the bounds of proper, robust questioning.
63. As for the suggestion that Counsel was disrespectful towards the Appellant, once again, the transcript does not bear this out, as the following extract reveals:

*Q This was a question put on your behalf to Dr Dewart*

*"Q How could Dr Ahmed have known you had been to the World Congresses on Endometriosis unless you had met him before the interview and told him?"*

*Dr Dewart didn't have an answer to that.*

*A I am sorry I don't follow you.*

*Q I think you do doctor.*

*A No. By the way when you say that it is not fair to me.*

*Q Right let me remind you...*

*A Please be fair to me.*

*MR KITCHING: Fine, my apologies.*

*THE CHAIR: Dr Ahmed it is Mr Kitching's job to put the GMC case, that is his job.*

*THE WITNESS: Yes Madam but when he is indirectly saying to me that I am lying I find it unacceptable.*

*THE CHAIR: Well then you just need to answer his question and explain why it can't be right. But he is doing his job which is to put the GMC's case.*

*THE WITNESS: Yes but...*

*THE CHAIR: Just focus on the question, listen carefully and do your best to answer the question.*

*THE WITNESS: I expect a gentleman's manners in putting questions to me.*



*When I said to him please repeat the question, genuinely I did not catch the question.”*

64. The Appellant took umbrage at the implication that he was being untruthful. However, as the Tribunal pointed out, that was the GMC’s case, and it would have been remiss of Counsel not to put that case to the Appellant.
65. The Appellant was affronted that Counsel should suggest he did not understand English. However, the transcript of the relevant exchange does not support the contention that Counsel was being insulting or disrespectful:

*Q “We have now concluded our preliminary investigation into the concerns raised by Southend NHS Trust.”*

*What is confusing about that doctor?*

*A In hindsight I was wrong.*

*Q You are just not telling the truth that...*

*A No sir.*

*Q You knew it was an investigation, how can you not have known that?*

*A Okay. There is investigation and investigation. My understanding of investigation is a full hearing.*

*Q I know English isn’t your first language doctor but please...*

*A No, it is not the language, sir, it is not the language. But I wish Mairead Harrington recorded my conversation with her. But I read her note, she doesn’t say what we discussed.*

66. The Appellant was being questioned about his understanding of the term “investigation” as it appeared in a letter from the GMC, and gave a response which appeared, in context, to invite incredulity. It was in that context that Counsel, perhaps in exasperation, commented that English was not the Appellant’s first language. In fact, as the Appellant has made clear before me, English *is* his first language and his command of English is outstanding. In the absence of express information to the contrary, it would be inappropriate of Counsel to make the assumption that he did about English not being the Appellant’s first language. However, regrettable though that assumption might be (if unjustifiably made), I cannot discern any unfairness at all in the manner of Counsel’s questioning. It was legitimate to suggest to the Appellant that he was not being truthful when saying that he was not aware that he was subject to an investigation. There was no gratuitous belittling of the Appellant’s language skills.
67. The Appellant also raises a concern that Mr Kitching spoke to one of the GMC’s witnesses about the case before they gave evidence. He contrasts this with the strict instruction from Ms O’Rourke QC that he could not speak to her about the case at all whilst giving evidence. He submits that this was a clear example of “double standards”.

68. The Appellant was unable to state clearly what it was he thought he had heard or seen Mr Kitching say to the witness. He infers from the evidence given by the witness that they had been told what his evidence had been. However, this appears to be conjecture. There is no credible evidence that Counsel behaved inappropriately or sought to “coach” the witness. It is reasonable and appropriate to speak to a witness before they give evidence to explain procedure and to put them at ease. It is more likely that that was the purpose of the conversation, if there was one, it being highly unlikely that experienced Counsel would engage in the kind of conduct alleged.
69. The Appellant considered it inappropriate for Counsel to question the authenticity of documents that he relied upon. However, Counsel was entitled to explore whether, contrary to the Appellant’s position, documents had been altered. The Tribunal concluded that documents had been altered. That conclusion led to the conclusion that the Appellant’s evidence was unreliable and potentially dishonest.
70. The final complaint made about Counsel’s conduct is that he sought to mischaracterise the misconduct that led to the suspension in 2008 as involving “financial irregularity” or an attempt to “extort” money from the Trust.
71. A search of the transcript suggests that those terms were not used by Counsel. Counsel did state in his closing submissions that the Appellant sought to “*extract two years’ salary whilst he was in another post*”. This was a reasonable characterisation of the facts found proved.
72. For these reasons, it has not been established that Counsel’s conduct gave rise to any unfairness or rendered the outcome of the hearing below unjust in any way.

Ground 4- Poor Legal Representation:

73. The Appellant’s complaints about Counsel extend to his own barrister, Ms O’Rourke QC, notwithstanding the fact that she had “represented [the Appellant] several times in the past” (Day 5/57). He complains that Ms O’Rourke QC failed to challenge Mr Kitching and/or support the Appellant when he protested about the questioning. He further states that Ms O’Rourke QC insisted that he admit allegations, which he declined because most of them were untrue and defensible. It was also submitted that Ms O’Rourke QC allowed Mr Kitching “an open hand in running the case”, fearing that he would “slash her to pieces” if she ran the case as the Appellant wished.
74. The approach to be taken when it is alleged that a representative’s conduct or incompetence rendered a hearing unfair was set out by Moses J (as he then was) in *R (Aston) v Nursing and Midwifery Council* [2004] EWHC 2368 (Admin):

**“Approach**

6.. Before me it was not contended that the mere fact of the incompetence of the advocate would be sufficient to entitle this court to allow the appeal and order the rehearing which was requested by this appellant.

7.. Both the appellant and the respondent agree that in the instant case the approach of this court should be that which is applied by the Court of Appeal Criminal Division when complaints are made as to the incompetence of the representation.

8.. The approach of that court is exemplified in two decisions. *R v Bolivar* [2003] EWCA Crim 1167 and *R v Day* [2003] EWCA Crim 1060 . In *R v Bolivar* the Vice

President at paragraph 52 stated the test as Wednesbury unreasonableness and such as to affect the fairness of the trial.

9.. In *R v Day* , the test was posed in the following way:

“(Incompetent representation) cannot in itself form a ground of appeal or a reason why a conviction should be found to be unsafe. We accept that, following the decision of this court in *Thakrar* [2001] EWCA Crim 1906 , the test is indeed the single test of safety, and that the court no longer has to concern itself with intermediate questions such as whether the advocacy had been flagrantly incompetent.

But in order to establish lack of safety in an incompetence case, the appellant has to go beyond the incompetence and show that the incompetence led to identifiable errors or irregularities in the trial, which themselves rendered process unfair or unsafe.”

10.. In the context of part 52, rule 11 , the test is not safety. The appellant need not show that the decision was wrong, but he must show that the decision was unjust. The decision will only be unjust if the incompetence led to irregularities which rendered the process of the trial unfair or the conclusion unsafe.

11.. However, in the case before me both sides agree that the court should not allow the appeal unless the incompetence was of such a degree as to be described as Wednesbury unreasonable. That concept is not easily applied to the question of the incompetence of an advocate, but I take the Vice President's reference to Wednesbury unreasonable to mean that the conduct of the advocate must be such that he or she took such decisions and acted a way in which no reasonable advocate might reasonably have been expected to act.

12.. But that by itself, as I have said, is not enough. It must further be shown that that wholly inadequate conduct did affect the fairness of the process. Only then could the conclusion of the committee be shown to be unjust.”

75. There is clearly a high threshold to be crossed before it can be said that an advocate’s conduct was such that it affected the fairness of the process and rendered the outcome unjust. Section 40 appellants need to be aware that the circumstances in which it is shown that professional representatives acted in a manner giving rise to some serious irregularity in the proceedings so as to render the outcome unjust are likely to be very rare, and the fact that the appeal court conducts a rehearing is not licence to include a ground of appeal founded on hindsight-based disagreement with the way in which representation was conducted before the Tribunal.
76. The conduct complained of here is, in my judgment, not even susceptible to mild rebuke, let alone displaying the level of incompetence or unprofessionalism required before this court could conclude that the Tribunal’s decision had been rendered unjust.
77. The Appellant was represented by experienced leading counsel, Ms O’Rourke QC. Where Ms O’Rourke QC did not support the Appellant’s protests about the admission of evidence, this was likely to be because she considered the material to be relevant. Similarly, there was no legitimate basis for interrupting Mr Kitching’s cross-examination or to seek to curtail it more than she did. As the Tribunal correctly pointed, Mr Kitching was doing no more than putting the GMC’s case. The Appellant no doubt found the cross-examination discomfiting and at times distressing, but Mr Kitching’s conduct was as professional as was Ms O’Rourke’s reticence to intervene

during cross-examination. This was not a case of giving Mr Kitching a “free hand” as the Appellant puts it, but a reflection of the fact that there was no proper basis for raising any objection to the way in which the GMC was conducting its case.

78. As to the suggestion that Leading Counsel insisted that the Appellant admit allegations, it is unclear to which allegations this claim relates. There does not appear to be any evidence to support the suggestion that Ms O’Rourke QC behaved inappropriately, even though the Appellant claims that this is “all documented”. In any event, on his own account, the Appellant declined to follow the advice, whatever that might have been, and so nothing turns on this.
79. During oral submissions, the Appellant sought to expand the nature of his complaint by implying that it was improper for Mr Kitching and Ms O’Rourke QC to appear in the same case when they are tenants in the same set of Chambers and to have coffee together.
80. There is no substance to these complaints. As any informed and reasonable user of Barristers’ services will know, individual members of the same set of chambers are in business on their own account and are sufficiently independent to act against each other; indeed that is commonplace in some practice and geographical areas. Opposing Counsel will frequently have professional discussions about an ongoing matter and may do so without clients present. It is understandable that, from the lay person’s perspective, the sight of their barrister meeting opposing counsel over coffee may give rise to the perception of unprofessionalism or a cosy lack of independence. However, that would be a misperception.
81. In summary, there is nothing here that is even close to approaching the high threshold described in *Aston*. The Appellant may well have been dissatisfied with his legal representation; that is his prerogative. However, mere dissatisfaction with one’s lawyers does not mean that the hearing was unfair or that the outcome is unjust.

Ground 5- Unfairly arranging attendance at the GMC hearing while still recovering from illness:

82. The Appellant complains that he was “rushed” to proceed with the hearing before the Tribunal when he was still recovering from a prolonged period of physical and mental health issues. He submits that although he was, by the time of the hearing in late 2019, certified as being fit to return to clinical practice, that did not mean that he was fit to deal with “extremely distressing GMC hearings”.
83. It is important to note that the hearing before the Tribunal was delayed by several years because of the Appellant’s health conditions. It was eventually able to be listed after the Appellant’s own legal representatives confirmed, at a pre-hearing case meeting on 13 September 2018, that the Appellant was “much better and, although he has a heart condition, there is no medical evidence to suggest he is not fit to attend”. In the light of that confirmation, the Appellant’s contention that he was “rushed” into a hearing whilst still too unwell to proceed appears spurious and unfounded. Furthermore, if it were the case that he was not fit to proceed with the hearing upon its commencement on 29 October 2018, he could have made an application to adjourn. However, no such application was made by the Appellant or his representatives. I conclude from this series of events that the Appellant was fit to attend the hearing

upon its commencement on 29 October 2018, and that his protestations now that he was not are wholly without substance.

84. It is relevant to note that when applying to have the hearing before this Court adjourned, the Appellant invoked the gradual approach of the Tribunal, which had allowed him to regain a degree of health before proceeding with the hearing, as one that should be emulated by this Court. The implication of that submission was that the Tribunal had waited until he was fit to attend before proceeding. That submission is wholly at odds with the claim that he was not fit to attend and that he was “pushed” to attend. The Appellant’s position is inconsistent, and, I regret to say, leaves one with the impression that, at least in this respect, the Appellant is willing to say whatever it takes, irrespective of the reality, in order to achieve the desired result.
85. The Appellant submits that he was so unwell as a result of attending the hearing that he had to be told to go home, and that the hearing then unfairly continued in his absence. It is correct that the Appellant was not feeling well on the afternoon of Day 4 of the hearing. The Chair decided to rise until the following morning, but the Appellant confirmed when he returned the next day that he was feeling “much better” and was happy to continue. Furthermore, the Tribunal agreed to build in frequent breaks to ensure that the Appellant could remain hydrated and so that he could “look after [him]self”. The hearing continued to hear evidence and submissions over a further three days until it went into camera at then conclusion of Day 7 to consider its findings. By an email dated 9 November 2018, which was Day 8 of the hearing (but which was non-sitting as the Tribunal was still in camera), the Appellant informed the Tribunal that he was unwell, unable to attend and no longer with representation. He also thanked the Tribunal “for taking extra care of me during the very stressful time of the hearing”. The Tribunal reconvened on Day 9 (12 November 2018). The Appellant was not present for the reasons he had given. However, nothing of substance occurred as the Tribunal merely stated that it was not in a position to hand down its determination on facts that day and that it would do so on 30 November 2018. The claim of unfairness in any of this is wholly unfounded.
86. At the reconvened hearing on 30 November 2018, the Appellant was still not present. The Tribunal handed down its determination on the facts. The only other matter of substance considered was whether the Tribunal ought to impose an interim order of suspension pending the next stage (impairment and sanction) of the hearing. The Tribunal was satisfied that the Appellant had been afforded an opportunity to appear and be heard on this issue, and that he could have made submissions but chose not to do so. Once again, it is difficult to detect any unfairness to the Appellant in the matter proceeding as it did.

*Ground 6- Rushing to attend the hearing by GMC and my representative:*

87. The Appellant’s final complaint is that he was pressured by the GMC and by his own representatives to accept certain dates for the hearing. However, there is no support for this complaint in the procedural history. At a relisting telephone conference held on 27 June 2018, the Tribunal, in listing the matter, expressly took account of the Appellant’s desire (at that stage) to retain the same barrister (Ms O’Rourke QC) that he had used throughout the proceedings up to that point. There was no pressure from the GMC to accept a specific date. As to his complaint that he was pressured to accept a date that was convenient to Ms O’Rourke QC, that appears to me to be a matter

entirely for the Appellant. If he was not happy with the dates that busy Counsel could accommodate, then he could have gone elsewhere. The fact is that, as mentioned above, his own representatives confirmed in September 2018 that there was nothing to indicate that the Appellant was not fit to attend the hearing in October 2018. There is nothing remotely unreasonable or inappropriate in any of this.

## **Conclusion**

88. For the reasons set out above, none of the Grounds of Appeal succeeds.
89. Although there is no ground of appeal expressly challenging the sanction of erasure, it is clear that that is the underlying purpose of the appeal. The Appellant was at pains to point out that he sought at all times to act honourably and openly in making his application to Lothian, having learned a painful lesson from the findings made against him in 2008, that any shortcoming in his application was inadvertent and not due to dishonesty, and that he would have had little to gain by seeking to conceal past sanctions or current investigations as such matters can be readily checked on the GMC website. However, all of this ignores the very clear findings made by the Tribunal as to nature and character of the Appellant's conduct. There is nothing in those findings that can be said to be wrong or unjust given the evidence before the Tribunal, including the evidence given by the Appellant himself. That included evidence that documents were altered. Whilst the Appellant disputed aspects of the evidence considered by the Tribunal, there was nothing to support the contention that the Tribunal reached the wrong conclusions.
90. One aspect of the evidence queried by the Appellant was that suggesting that he had tampered with the clock on his laptop so as to create the (false) impression that a document was created or modified on an earlier date than it actually was. The Appellant was adamant that changing the clock on the laptop in this way is "not possible". What the Appellant does not address, however, is that the Appellant was forced to concede during cross examination that certain sections of the interview and pre-interview notes (which on his case had not been modified after June 2011) contained information that could only have been added some time afterwards. His explanations as to how this occurred were not credible. The Tribunal concluded that "it is inconceivable that those notes were prepared on the date that Dr Ahmed said he did". Nothing has been said in this appeal to undermine that conclusion.
91. The Tribunal considered that erasure was the only proportionate sanction in the circumstances, was necessary in order to maintain public confidence in the medical profession and to declare and uphold proper standards of conduct and behaviour. Although the Appellant has not expressly contended that that conclusion was wrong, I bear in mind the Appellant's unrepresented status and the fact that he has been required to proceed with his appeal when his preference was to have it adjourned yet again. I therefore consider for myself whether the sanction was wrong and whether it was excessive and/or disproportionate. Having considered all the material before this court, I unhesitatingly come to the conclusion that the sanction of erasure was appropriate and necessary in the public interest. The allegations found proved against the Appellant were very serious. Although not related to clinical matters, they went to other fundamental aspects of character and probity which the public is entitled to expect of medical practitioners. The alteration of documents, the lack of insight even after an earlier finding of dishonesty in 2008, and the repeated pattern of conduct all

lead to the inevitable conclusion that, as the Tribunal found, erasure was the only proportionate sanction.

92. Standing back and viewing matters in the round, there is nothing in this appeal that persuades me that the decision overall was “unjust”. The outcome of erasure is a very sad one for such a capable and distinguished doctor, but it was, in my judgment, entirely correct.
93. This appeal is therefore dismissed.