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Case No: CO/675/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/05/2023

Before :

THE HONOURABLE MR JUSTICE LINDEN

- -

Between :

Dr RINKU SENGUPTA **Appellant**

- and -

GENERAL MEDICAL COUNCIL **Respondent**

- -
- -

Dr Rinku Sengupta in person
Benjamin Tankel (instructed by **Thirty Nine Essex Chambers**) for the **Respondent**

Hearing date: 10th May 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 31st May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Linden:

Introduction

1. On 21 January 2022 the Medical Practitioners Tribunal ("MPT") made two decisions in relation to Dr Sengupta. First, it refused her third application, made pursuant to section 41(1) of the Medical Act 1983, to be restored to the medical register ("the restoration decision"). Second, the MPT went on to direct, pursuant to section 41(9) of the 1983 Act, that her ability to make further applications for restoration be suspended indefinitely ("the suspension decision").

2. These two decisions were set out in separate documents and sent to Dr Sengupta under cover of an email, dated 24 January 2022, which informed her that there was no right of appeal against the restoration decision and that any challenge to this decision could only be made by way of a claim for judicial review. The email went on to say that, however, there was a right of appeal against the suspension decision. The 28 day time limit for such an appeal under section 40(4) of the 1983 Act was set out, and the deadline was said to be 25 February 2022. A note explaining Dr Sengupta's right of appeal was attached. This gave further guidance on how to appeal, referring to CPR Part 52 and providing a link to the Civil Procedure Rules.

3. On 24 February 2022, Dr Sengupta filed an N161 Appellant's Notice. She was, in fact, 3 days late in doing so because the true deadline was 22 February 2022. But the GMC did not object to an extension of time for her to appeal given that Dr Sengupta was evidently relying on the incorrect date stated in the GMC's 24 January 2022 email. Having considered the principles set out in *Lars Stuewe v Health and Care Professions Council* [2022] EWCA Civ 1605, I was prepared to accept that there were exceptional circumstances which required me to relax the strictness of the 28 day time limit under section 40(4) of the 1983 Act and I therefore granted an extension of time to 24 February 2022.

4. A second preliminary point raised by Mr Tankel was as follows. In his skeleton argument he submitted that the only decision of the MPT which could be considered by me, given that Dr Sengupta had not brought a claim for judicial review, was the suspension decision. Section 40(1) of the 1983 Act identifies the decisions of an MPT which may be the subject of an appeal. These include, at (a), the original direction for erasure or a decision to impose some other disciplinary measure and, at (b), a decision to give a section 41(9) direction. Under section 40(1A)(a) and (b), there is also a right of appeal against a refusal to restore to the register where the erasure was administrative in nature (i.e. it was because the practitioner's address was out of date or because of failure to pay the prescribed fee) or the erasure was voluntary and, in any of these three cases, there is a refusal to restore to the register for a reason related to the practitioner's fitness to practise. But section 40 does not include a right of appeal against a refusal to restore to the register after erasure where the original erasure was on the grounds of unfitness to practise.

5. So, submitted Mr Tankel, the bulk of Dr Sengupta's arguments, as set out in her Notice of Appeal and amplified in her skeleton argument, were besides the point because they criticised the restoration decision rather than the suspension decision. I did not have jurisdiction to entertain a challenge to the restoration decision and I was therefore bound to accept it in its entirety, however obvious it might be that there

were flaws in it, and to adjudicate the appeal against the suspension decision on that basis. Moreover, for this reason he did not propose to address Dr Sengupta's criticisms of the restoration decision in his skeleton argument or orally.

6. At the beginning of the hearing, I raised this issue with the parties and asked Mr Tankel to take the court through the relevant provisions of the 1983 Act so that, if she wished to do so, Dr Sengupta would have an opportunity to contest his submission that there was no right of appeal against the restoration decision in this case. He did so and Dr Sengupta indicated that she would leave me to decide whether Mr Tankel's submission was correct. I agreed that it was.

7. It is also true that, apart from the fact that a Notice of Appeal rather than a judicial review claim form was submitted, in the Notice of Appeal Dr Sengupta characterises the process as an appeal and refers to her "grounds of appeal" which are then set out. However, in section 5 of her Notice of Appeal Dr Sengupta says, "I would like to appeal and or proceed towards a judicial review on the decision made by the MPTS panel on the 21st January this year". In her "Appeal Grounds Amended" document, dated 6 March 2022, she characterises the MPT's decision as one of "indefinite erasure" and, as Mr Tankel himself points out, she then puts forward a number of arguments that the restoration decision was flawed. Her skeleton argument takes the same approach and characterises the issue before me as being "whether the claimant should be granted restoration registration (sic) and the sanction of indefinite erasure reversed".

8. I asked Dr Sengupta to clarify whether she was challenging the restoration decision itself. As I understood her answer, her principal position was that she was appealing against the suspension decision on the basis that flaws in the restoration decision meant that the suspension decision was flawed because the latter was based on the former. But she also said, in answer to a question from me, that she would wish her appeal to be treated as an application for permission to claim judicial review of the restoration decision provided that this would not add to her exposure in costs.

9. I expressed doubts about Mr Tankel's position that I could not and should not consider or base my decision on any criticisms of the restoration decision. My provisional view was that, at the very least, Dr Sengupta was entitled to *argue* that the suspension decision was based on the restoration decision and that if the latter was flawed those flaw(s) undermined the former. But I also asked Mr Tankel why I should not treat the Notice of Appeal as including an application for permission to claim judicial review. He opposed this and his initial position was that his client would be unfairly prejudiced by this course because he had not come prepared to meet Dr Sengupta's arguments about the restoration decision. When I indicated scepticism about whether he would have any real difficulty in responding he agreed, on instructions, that I should hear all of the arguments and then come to an overall decision. This is what I did.

Background

Overview

10. Dr Sengupta obtained her primary medical qualification in India in 1988. She told me that she came to the United Kingdom in 1995 and had lived in this country since then,

save for an approximately 3 year period between 2011 and 2014 when she was in India.

11. In March 2010 the Fitness to Practise Panel ("FtPP") of the GMC directed the erasure of her name from the register. She made applications to the MPT for her name to be restored in 2015 and 2018, both of which were unsuccessful. Her application in 2021, which was rejected in January 2022, was therefore her third unsuccessful application.

The fitness to practise proceedings in 2010

12. The circumstances in which Dr Sengupta came to be before the FtPP in 2010 were, in summary, as follows.

13. In 2006, Dr Sengupta undertook a training programme in Obstetrics and Gynaecology in the West Midlands Deanery, in the course of which issues with her professional performance were identified. These were documented, and she was required to include that documentation as part of her personal development folder for future reference.

14. On 18 August 2007, Dr Sengupta applied to the West Midland Deanery for a speciality training post in Obstetrics and Gynaecology at the Birmingham Women's Health Care NHS Trust. At the second round of interviews, she presented a personal development folder which omitted documentation which referred to the performance issues which had been identified in relation to her. She admitted to the FtPP that there was an incomplete set of Objective Structured Assessments for Training, there were no 360 degree appraisals for the period 2002-2006 and no recent Record of In-training Assessment documents. There were also no educational appraisals for the period 2003-2006. The FtPP found these omissions to be dishonest and misleading.

15. In mid-2008, an assessment team of the GMC was directed to undertake a performance assessment of Dr Sengupta pursuant to rule 7(3) of and Schedule 1 to the General Medical Council (Fitness to Practise) Rules Order of Council 2004 (as amended) ("the Fitness to Practise Rules"). In the peer review phase of the assessment the findings were that her performance was "unacceptable" in the area of "treatment", and a "cause for concern" in the area of "limits". In the competence phase of the assessment the findings were that her performance in practical skills and her overall performance were "unacceptable".

16. The overall conclusion of the assessment team was that her professional performance was "deficient", albeit the standard of her performance was likely to be improved by remedial action, and that Dr Sengupta should not undertake surgical procedures unless closely supervised. Their concerns in relation to patient safety were such that, that day, they contacted the hospital at which Dr Sengupta was working to report their recommendations. Mrs Pauline Green, a Consultant in Obstetrics and Gynaecology and a member of the assessment team, gave evidence to the 2010 Panel that Dr Sengupta had a wide range of knowledge but the application of that knowledge was seriously deficient. She told the Panel that Dr Sengupta would have to restart her training in order to remedy her performance deficiencies.

17. Between March and August 2009, Dr Sengupta was recruited under the Wales Deanery and was appointed to a locum ST3 post in obstetrics and gynaecology at

Singleton Hospital in Swansea. The post was subject to formal monitoring and educational supervision. Her educational supervisor and other monitoring and assessment forms reported that she had applied for posts which were not suitable or appropriate for someone in her position, that she lacked insight into her difficulties, that she had poor communication with others, that she needed to improve her clinical judgment and that she had made inadequate progress in the six months to August 2009. There was some more positive evidence about her progress in September 2009 but the Chair of the Deanery Assessment Panel considered that the overall assessment should be that her progress was unsatisfactory.

18. Returning to conduct issues, the FtPP found that, between March and July 2009, Dr Sengupta assisted a Dr Madhuchanda Dey with preliminary work on a "case report" which was to be submitted to the Journal of Obstetrics and Gynaecologists. Although Dr Dey wrote the report herself, and although she was therefore the primary author (as Dr Sengupta admitted to the FtPP), on 28 July 2009 Dr Sengupta submitted an "abstract submission form" to the Royal College of Obstetricians in which she named herself as the primary author of the case report and Dr Dey as an associate author. The Panel found this to be misleading and dishonest.

19. The FtPP found that, having seen the abstract submission form, Dr Dey contacted Dr Sengupta by email at least twice to ask her to correct this, but she did not do so. Again, the Panel found this to be dishonest and misleading.

20. In September 2009, Dr Sengupta told her educational supervisor that what had happened in relation to the authorship of the report had been the result of a mistake or a misunderstanding. Again, the Panel found this to be dishonest and misleading. In October and November of that year she also contacted Dr Dey on two occasions to ask her to confirm Dr Sengupta's claim that what had happened was just a misunderstanding. The Panel found this to be inappropriate.

21. Also in September 2009, Dr Sengupta was interviewed by the Wales Deanery Assessment Panel. In the course of the interview, she was asked about the submission which she had made to the College. She gave the assessment panel the impression that the report was in the process of being submitted, which the FtPP found to be misleading and dishonest given that it had been submitted. And she was not forthcoming about the authorship issue, which the FtPP found to be inappropriate.

22. The FtPP which considered the charges against Dr Sengupta in 2010 found that her fitness to practise was impaired by reason of both her professional performance and her misconduct. It concluded that her failures were fundamentally incompatible with being a registered medical practitioner and therefore directed erasure of her name from the register.

23. As far as professional performance is concerned, the FtPP's overall conclusion was that Dr Sengupta's standard of professional performance was unacceptably low, that it amounted to deficient performance and that it was not satisfied that she did not pose a current risk to patients. It also said:

> "You have been in medical practice for 13 years and during that time have had considerable educational support. Your training number was withdrawn during your training at the West Midlands Deanery and your last assessment at the

Wales Deanery Assessment Panel, on 25 September 2009, concluded that you were not suitable to continue training.

Problems with insight have been a recurring theme in the evidence presented. It has been an ongoing issue in relation to your professional performance. In your Annual Assessment Review Form, dated 16 September 2009, your Educational Supervisor, Mr Flynn, stated that you needed to target the area of self reflection/insight as a priority regardless of future career intentions. He also stated that you would benefit from improving your teamwork skills. In your statement which you read to the Panel yesterday you failed to acknowledge appropriately, and take responsibility for, the deficiencies in your professional performance, stating that the comments on your TO2 forms were only a reflection of the immense stress and anxiety you were going through with GMC restrictions on your registration and your Fitness to Practise hearing pending.

Given the performance assessment team's finding that your professional performance was cause for concern in the area of limits, your lack of clinical insight causes the Panel to doubt your ability to work within safe clinical limits."

24. In relation to conduct, the Panel found:

"Your actions or omissions could have resulted in misleading the interview panel into believing you were better suited to the post than you actually were. You did not correct the authorship with the college despite several requests from Dr Dey. Furthermore, you subsequently attempted to mislead Mr Flynn and Mr Roseblade with regard to the deliberate nature of your actions. The Panel believes that your repeated dishonesty was driven by your desire to progress professionally. Your inappropriate, misleading and dishonest actions, both in terms of the incomplete portfolio you presented at interview and the issue of primary authorship, breached fundamental tenets of the medical profession, was liable to bring the profession into disrepute and had the potential to pose a risk to patient safety. In these circumstances, it is satisfied that your conduct is sufficiently serious as to amount to misconduct and, further, that your fitness to practise is impaired because of that misconduct."

25. The Panel added:

"In failing to demonstrate clinical insight and work within appropriate limits, you have put your own interests before the interests of patients, prioritising your own professional ambition over patient safety.

You have demonstrated a continued lack of insight into both the performance and misconduct elements of this case. The Panel believes that you have little or no real insight into your professional deficiencies, particularly in relation to your practical skills, and in matters of probity. In the Panel's view this reveals a serious attitudinal problem."

The 2015 application for restoration

26. Dr Sengupta's first application for restoration was heard by the MPT on 27-28 October 2015. The principal concerns of the MPT in refusing her application were as follows.

27. In relation to clinical deficiencies, the Tribunal noted that a key criticism made of Dr Sengupta in the 2008 Performance Assessment was that, whilst she had a wide range of knowledge, her ability to apply it was seriously deficient. Since then she had made efforts to keep her medical knowledge up-to-date but the Tribunal was concerned that her clinical skills, and her ability to apply those skills in a practical setting, were still lacking. The MPT noted that she had returned to India in December 2011 and had been there until October 2014. Although she was registered to practise there, she had chosen to undertake an observership rather than to work clinically.

28. The Tribunal considered that Dr Sengupta had made no attempt to improve the clinical deficiencies identified in the Performance Assessment and that she did not recognise the need to remediate her clinical skills. Indeed, the Tribunal found that she had made a deliberate choice not to seek a clinical position in order to improve her clinical skills. This led the MPT to conclude that she remained a risk to patient safety and to express concerns about the limited insight into the deficiencies in her practical skills which she had shown.

29. As far as the conduct issues were concerned at [40] the MPT found as follows:

> "Furthermore, in respect of your misconduct, the Panel is not satisfied that you have any developing insight into your past misconduct. You have provided little evidence of your understanding, reflection or insight into the serious adverse findings made by the previous Panel. Whilst you have accepted that you acted dishonestly in respect of the incomplete portfolio you submitted, during your evidence you continued to reiterate that there was a misunderstanding with Dr A regarding the Article. The Panel is also concerned that your evidence was inconsistent i.e. when cross-examined you gave differing accounts of the consultants you had worked with in India and the frequency of that work. Furthermore, you misled the Panel in respect of your status to undertake clinical work in Australia and the requirements to work in a clinical post in India. The Panel considers that you appeared to be trying to provide answers the Panel expected you to give."

The email exchange with Dr Gee

30. Between the application for restoration in 2015 and the application in 2018 there was an incident which is relevant for present purposes.

31. On 10 November 2017, Dr Sengupta sent an email to a Dr Gee, who was a retired Consultant Obstetrician and formerly Head of the Postgraduate School of Obstetrics and Gynaecology in the West Midlands. The subject heading of the email was "What happened to me since YOU deceided (sic) not to bother training me in The West Mids". The email said:

> "Hi Mr Gee

Let me fill you in as to what happened to me when YOU decided (collectively) to not TRAIN me in the West Midlands. The GMC (collectively) decided that the training standard in your deanery at that time was POOR..

I attach their determination..."

32. The document attached was the interim conditions of practice order which had been imposed on Dr Sengupta in 2009. In fact, it said nothing about the standard of training at the West Midlands Deanery.

33. Dr Gee forwarded this email to the GMC and, when Dr Sengupta found out about this, she wrote to him on 7 June 2018 as follows:

> "I apologise for m email to you in 2017 that you decided to forward to the General medical council. It would have been kinder if you had sirted (sic) this directly with me"

The 2018 application for restoration to the register

34. Dr Sengupta's second unsuccessful application for restoration to the register was heard by the MPT on 30-31 July 2018.

35. The MPT's findings record that she acknowledged in her oral evidence that she had not yet focused any of her efforts in CPD activities towards developing practical skills, even though she was aware that the Tribunal had to be satisfied that she was fit to be restored to unrestricted practice if her application was to succeed. The Tribunal was also concerned about the number of CPD activities which were shown on Dr Sengupta's log as being incomplete and, in many cases, "0% progress". It said that she continued to demonstrate that she was failing to take responsibility for her own predicament. The Tribunal was also not satisfied that Dr Sengupta had demonstrated a full understanding of her own role in addressing her previous deficiencies.

36. The MPT was critical of Dr Sengupta's email exchanges with Dr Gee. At [41] and [42] it said this:

> "41. The Tribunal did not accept that Dr Sengupta had sent the email expecting that Dr Gee would ignore it or that he would choose not to read it. It considered that her initial approach to him in these terms was, at best, ill-considered, particularly bearing in mind that he had already explained that he was no longer able to help her, and that her intemperate email of 10 November 2017 was unacceptable. Furthermore, her apology to him in June 2018 appeared to suggest that she blamed him for drawing this correspondence to the attention of the GMC. The Tribunal also took account of the timing of this incident, which took place after Dr Sengupta had already undertaken a good deal of learning and CPD activities focused on her shortcomings.
>
> 42. The Tribunal considered that Dr Sengupta's reaction to Dr Gee's correspondence was a concerning example of her emotional response to negative events, demonstrating that as late as November 2017, she was continuing to deflect responsibility for her actions onto others, and continued to blame the Deanery where she had worked for deficiencies, rather than recognising her own

responsibility for them. She also suggested in her evidence that she knew better than Dr Gee himself about what help he could give her. The Tribunal considered that Dr Sengupta was so keen to be restored to the Medical Register that this clouded her judgment. The Tribunal took the view that, notwithstanding her written reflection on the incident, Dr Sengupta's interaction with Dr Gee demonstrated a concerning lack of insight into her own shortcomings, which, if repeated in a clinical environment, could have serious implications for patients and colleagues."

37. I note, however, that the Tribunal did not find that Dr Sengupta acted dishonestly in this regard. It found that she had acted intemperately and emotionally. Nor did the GMC submit that this was an issue of honesty: the submission, which the MPT accepted, was that it showed a continued lack of insight despite having undertaken courses to address these shortcomings.

38. As far as Dr Sengupta's clinical competence was concerned, the MPT noted that 8 years had passed since the 2010 erasure decision but found that there had been no material improvement in the position in that period. At [45] and [46] it found:

> "45. While the Tribunal acknowledged that Dr Sengupta has made some efforts with her CPD activities, her log does not show a continued and demonstrable commitment to keeping her knowledge up to date. Moreover, it considers that she has not provided evidence to show that she has taken appropriate courses, demonstrating her ability to apply her clinical skills in practical situations.
>
> 46. Further, and particularly in the light of her recent interaction with Dr Gee, the Tribunal is not satisfied that Dr Sengupta has genuinely accepted responsibility for her own failings in this regard. The Tribunal was concerned that there may be a repetition by Dr Sengupta, if restored, of the issue identified by the 2010 Panel, namely that she may apply for numerous unsuitable posts, clouded by her need to obtain employment."

39. As far as the conduct issues were concerned, the MPT said this at [50] and [51]:

> "50. The Tribunal was concerned that Dr Sengupta's oral evidence was evasive and, at times, unreliable. It acknowledged that Dr Sengupta had apologised for her conduct and had undertaken some relevant CPD activities. However, it noted that she had linked a number of her apologies to requests for a supportive statement, which raised concerns that she was adopting a 'tick box' approach towards the gathering of evidence of remediation, rather than showing that she had genuinely appreciated the extent of her dishonesty. As a result, the Tribunal could not be satisfied that these email apologies were entirely genuine. Furthermore, the Tribunal was concerned that Dr Sengupta's conduct towards Dr Gee demonstrated a continuing failure to appreciate her own role in her present difficulties, both in relation to her clinical deficiencies and her misconduct. This was particularly concerning, as her original email to him on 10 November 2017 post-dated many of the CPD activities on which she sought to rely to support her contention that she would not repeat her misconduct. The Tribunal considered that her behaviour towards him undermined her contention that she had made profess in the development of insight.

> 51. In summary, the Tribunal considered that Dr Sengupta has made progress in remediating her dishonest behaviour with regard to the Case Report, reducing the possibility that she would behave in a similar way in the future. However, although the Tribunal acknowledged that Dr Sengupta's misconduct, as a whole, might be capable of remediation, it was not satisfied that she has, in fact, demonstrated that she has remediated it and gained genuine insight into it. Her attitude, especially towards her clinical deficiencies, remains a matter of concern and the Tribunal was not convinced that she would not repeat behaviour to conceal the extent of her clinical performance if a similar situation were to arise again. The Tribunal also noted that, in view of its conclusions in relation to Dr Sengupta's deficient professional performance, concerns remain regarding whether Dr Sengupta's clinical skills and knowledge are up to date."

40. The MPT considered whether it should exercise its powers to order a new performance assessment which would provide objective evidence of the standard of her clinical skills, but it concluded, in effect, that the deficiencies which it had identified were such that it would serve no useful purpose.

41. It went on to consider whether it should make an indefinite suspension order pursuant to section 41(9) of the 1993 Act given that this was Dr Sengupta's second unsuccessful application for restoration and concluded that it would not do so. Essentially its reasons were that she had made efforts to provide additional evidence which went beyond what was available to the MPT in 2015. Her applications for restoration were not made frivolously. She had not sought to go behind the findings made by the FTP Panel in 2010. Although the MPT had not been satisfied on the evidence, as at 2018 it accepted that the issues in relation to her clinical deficiencies and conduct remained, at least in principle, remediable.

Legal Framework

42. Section 41 of the Medical Act 1983 provides, so far as material, as follows:

> *"**Restoration of names to the register***
>
> *(1) Subject to subsections (2) and (6) below, where the name of a person has been erased from the register…a Medical Practitioners Tribunal may, if they think fit, direct that his name be restored to the register.*
>
> *(2) No application for the restoration of a name to the register under this section shall be made –*
>
> > *(a) before the expiration of five years from the date of erasure; or*
> >
> > *(b) in any period of twelve months in which an application for the restoration of his name has already been made by or on behalf of the person whose name has been erased.*
>
> …
>
> *(6) Before determining whether to give a direction under subsection (1) above, a Medical Practitioners Tribunal shall require an applicant for restoration to*

provide such evidence as they direct as to his fitness to practise; and they shall not give such a direction if that evidence does not satisfy them.

…

(9) Where, during the same period of erasure, a second or subsequent application for the restoration of a name to the register, made by or on behalf of the person whose name has been erased, is unsuccessful, a Medical Practitioners Tribunal may direct that his right to make any further such applications shall be suspended indefinitely.

(10) Where a Medical Practitioners Tribunal give a direction under subsection (9) above, the MPTS shall without delay serve on the person in respect of whom it has been made a notification of the direction and of his right to appeal against it in accordance with section 40 above.

(11) Any person in respect of whom a direction has been given under subsection (9) above may, after the expiration of three years from the date on which the MPTS for them to arrange for the direction to be reviewed by a Medical Practitioners Tribunal and, thereafter, may make further application for review; but no such application may be made before the expiration of three years from the date of the most recent review discussion.

(12) In exercising a function under this section, a Medical Practitioners Tribunal must have regard to the over-arching objective."

43. The overarching objective, is defined by section 1 of the 1983 Act as follows:

"(1A) The over-arching objective of the General [Medical] Council in exercising their functions is the protection of the public.

(1B) The pursuit by the General Council of their over-arching objective involves the pursuit of the following objectives –

(a) to protect, promote and maintain the health, safety and well-being of the public,

(b) to promote and maintain public confidence in the medical profession, and

(c) to promote and maintain proper professional standards and conduct for members of that profession."

44. I note that:

a) The burden is on the applicant for restoration to satisfy the MPT of their fitness to practise: section 41(6);

b) The MPT has a broad power in this regard which is to be exercised in accordance with the overarching objective: sections 41(1) and (12);

c) The power under section 41(9) is also a broad one once a second unsuccessful application has been made and it is also to be exercised with regard to the overarching objective;

d) The effect of an order under section 41(6) is that the practitioner is unable to make an application for restoration as of right for a period of 3 years but they may then apply for a review of the decision pursuant to section 41(11). The decision on an application for a review is not appealable, however. Any challenge to it therefore has to be brought by way of a claim for judicial review.

45. As far as procedure is concerned, Rule 24(2)(g) of the Fitness to Practise Rules provides that, before deciding whether to grant or refuse a restoration application, the Tribunal may adjourn and give such directions as it sees fit, including that the applicant should undergo an assessment of her performance.

46. Rule 24(2)(i) provides that:

> *"(i) before deciding whether or not to make a direction to suspend indefinitely the applicant's right to make further applications for restoration under section 41(9) of the Act, the Medical Practitioners Tribunal shall*
>
> *(i) consider any representations made and evidence received, and*
>
> *(ii) where the applicant is present, invite further representations <u>and evidence</u> from him specifically upon this issue."* (emphasis added)

47. In *Gosai v General Medical Council* [2003] UKPC at [23] the Privy Council said this about the power to make a section 41(9) order:

> *"…There is no basis for the assertion that suspension of the right to apply for restoration should be restricted to very clear cases, or should be regarded as exceptional. The PCC's discretion to impose a suspension order is, on the face of the legislation, unconfined and unfettered. The Committee was not obliged to start with a presumption that the power to make a suspension order was in any way an exceptional or unusual remedy. It was entitled to have regard, in exercising the discretion, to the public interest. It was also entitled to have regard to the interest of those who would be otherwise affected by repeated applications for restoration, such as (as in the present case) the family of the victim of a doctor's misconduct which has taken an active part in the proceedings, which may suffer anguish and be caused expense by repeated restoration applications by the doctor."*

48. The Medical Practitioners Tribunal Service ("MPTS") has also provided detailed guidance on the approach to be taken at restoration hearings entitled *"Guidance for medical practitioners tribunals on restoration following erasure"* ("the MPTS Guidance"). The MPTS Guidance covers an overview of the legislative framework and the applicable legal principles, the factors which the MPT should consider in exercising its powers, the approach to be taken where there are new allegations of impairment and the power of the Tribunal to adjourn a restoration hearing to allow for a performance assessment or further enquiries to be made.

49. As far as the right of appeal is concerned, section 40 of the 1983 Act provides, so far as material, as follows:

> *"(1) The following decisions are appealable decisions for the purposes of this section, that is to say—*
>
> *…*
>
> > *(b) a decision of Medical Practitioners Tribunal under section 41(9) below giving a direction that the right to make further applications under that section shall be suspended indefinitely;*
>
> *…*
>
> *(4) A person in respect of whom an appealable decision falling within subsection (1) has been taken may, before the end of the period of 28 days beginning with the date on which notification of the decision was served …. appeal against the decision to the relevant court.*
>
> *(5) In subsections (4)… "the relevant court"—*
>
> *…*
>
> > *(c) in the case of any other person, means the High Court of Justice in England and Wales.*
>
> *…*
>
> *(7) On an appeal under this section from a Medical Practitioners Tribunal, the court may—*
>
> > *(a) dismiss the appeal;*
> >
> > *(b) allow the appeal and quash the direction or variation appealed against;*
> >
> > *(c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Medical Practitioners Tribunal; or*
> >
> > *(d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court, and may make such order as to costs … as it thinks fit."*

50. CPR Rule 52.21 provides:

> *"(3) The appeal court will allow an appeal where the decision of the lower court was—*
>
> > *(a) wrong; or*

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

51. Paragraph 19.1 of Practice Direction 52D provides that an appeal under section 40 of the 1983 Act will be by way of a rehearing and will be supported by written evidence and, if the court so orders, oral evidence.

52. In *Sastry and Okpara v General Medical Council* [2021] EWCA Civ 623 the Court of Appeal confirmed that appeals by practitioners under section 40 are by way of a rehearing. The Court also considered the authorities on the degree of deference which the High Court will accord to the specialist tribunal in considering appeals from decisions on sanction. In both cases the appeals were against decisions to direct the erasure of the practitioners' names from the register as opposed to the type of decision which is in issue in Dr Sengupta's appeal, but I accept that the same principles apply, at least in relation to the question of deference.

53. At [19] the Court of Appeal noted paragraphs [33] and [34] of the judgment of Lord Millet in *Ghosh v General Medical Council* [2001] 1 WLR 1915:

> *"33. Practitioners have a statutory right of appeal to the Board under section 40 of the Medical Act 1983, which does not limit or qualify the right of the appeal or the jurisdiction of the Board in any respect. The Board's jurisdiction is appellate, not supervisory. The appeal is by way of a rehearing in which the Board is fully entitled to substitute its own decision for that of the committee. The fact that the appeal is on paper and that witnesses are not recalled makes it incumbent upon the appellant to demonstrate that some error has occurred in the proceedings before the committee or in its decision, but this is true of most appellate processes.*
>
> *34. It is true that the Board's powers of intervention may be circumscribed by the circumstances in which they are invoked, particularly in the case of appeals against sentence. But their Lordships wish to emphasise that their powers are not as limited as may be suggested by some of the observations which have been made in the past. In Evans v General Medical Council (unreported) 19 November 1984 the Board said:*
>
>> *"The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee… The committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards."*
>
> *For these reasons the Board will accord an appropriate measure of respect to the judgment of the committee whether the practitioner's failings amount to serious*

> *professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the committee's judgment more than is warranted by the circumstances… "*

54. At [30] the Court of Appeal in *Sastry and Okpara* also noted [36] of Lord Wilson's judgment *in Khan v General Pharmaceutical Council* [2017] 1 WLR 169 where he said the following:

> *"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… Mr Khan is, however, entitled to point out that (a) the exercise of appellate powers to quash a committee's direction or to substitute a different direction is somewhat less inhibited than previously…(b) on an appeal against the sanction of removal, the question is whether it 'was appropriate and necessary in the public interest or was excessive and disproportionate'…and (c) a court can more readily depart from the committee's assessment of the effect on public confidence of misconduct which does not relate to professional performance than in a case in which the misconduct relates to it…"*

55. In *Sastry* the Court of Appeal summarised the case law and then set out its views at [96]-[114] including the following summary at [102]:

> *"102. Derived from Ghosh are the following points as to the nature and extent of the section 40 appeal and the 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."*

56. The principles which I would be required to apply in relation to a challenge to the restoration decision are, of course, not the same. In relation to that type of decision the normal public law principles of judicial review apply if the refusal to restore is to be quashed.

<u>The decisions under challenge</u>

Overview

57. Dr Sengupta's application for restoration was dealt with in 3 stages. The evidence was given/received on 15-16 July 2021 hearing, closing submissions were made on 16 December 2021 and the MPT deliberated but did not come to a conclusion on 17 December. The matter was then adjourned to 21 January 2022 when the MPT gave its decision on the application to restore, heard submissions on the question of a section 41(9) order and then made the order.

58. Dr Sengupta's Counsel changed between the hearing of the evidence in July and closing submission in December 2021. She told me that this was because Counsel were acting pro-bono. Her Counsel at the hearing in December 2021 had had copies of the transcript of the hearing earlier that year. At the hearing on 21 January 2022 Dr Sengupta represented herself.

The restoration decision

59. In its decision on the restoration application the MPT reviewed the background including the decisions of the FtPP and of the MPTs thus far. It then noted that Dr Sengupta had given oral evidence and had called a Mrs Radhae Raghaven who was a Consultant in Obstetrics and Gynaecology at the South Warwickshire NHS Foundation Trust. The MPT also recorded that it had considered various items of documentary evidence including a certificate of good standing from the West Bengal Medical Council dated 19 February 2021, two employers' references dated 25 November 2020 and 7 January 2021 and a number of testimonials submitted on Dr Sengupta's behalf.

60. The Tribunal recorded the competing submissions of Counsel for the parties and it set out the legal framework, including the relevant statutory provisions. It said that throughout its consideration of Dr Sengupta's application it had been guided by the MPTS Guidance and it reminded itself that the burden of proof was on her and that it could not go behind the findings made in previous hearings. The Tribunal also reminded itself of the test as set out in *GMC v Chandra* [2018] EWCA Civ 1898. This is as follows:

> *"having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective?".*

61. It then set out the terms of the overarching objective and it reminded itself of the factors which it should consider in applying this test.

62. The Tribunal went on to make its findings of fact. It made specific and positive findings about the CPD and reflective learning exercises which Dr Sengupta had undertaken since the previous application for restoration, including a two day basic practical skills courts in April 2019 which was aimed at trainees in obstetrics and gynaecology. It also listed the testimonials and related documents which had been provided by Dr Sengupta and noted that they were positive as far as they went.

63. The Tribunal also gave particular attention to the written and oral evidence of Mrs Raghaven, who had formed a favourable impression of Dr Sengupta during an

observership at Warwick in June to September 2020. It considered that arranging this observership was evidence of Dr Sengupta's commitment to improve her levels of proficiency and that this was to her credit. However, it noted that, although Mrs Raghaven was broadly supportive, this had been an observership and Mrs Raghaven's evidence confirmed that it was of limited assistance with practical skills. Dr Sengupta had not been allowed to be with any patient on her own or to examine or do any procedures on patients. Mrs Raghaven therefore had not seen her perform a clinical examination on a patient. She said that there would need to be an assessment of Dr Sengupta's practical skills in a real life scenario. And she said it was difficult for her to state with confidence that Dr Sengupta's clinical, practical knowledge and skills were up to date on the basis of what had been a two month observership which had taken place at least a year earlier and after 12 years out of clinical practice.

64. The Tribunal noted that Dr Sengupta was currently undertaking another observership and it accepted that Dr Sengupta had developed insight into the issues with her performance and had shown commitment to remediation but, at [62] and [63], it said this:

> "62. Turning to remediation, the Tribunal accepted that there have been no significant concerns regarding Dr Sengupta's academic knowledge and theory and that since 2018 she has developed an impressive portfolio of learning, a view largely supported by Mrs Raghavan.
>
> 63. However, in terms of the application of that knowledge and Dr Sengupta's physical and practical skills, the Tribunal was provided with very limited evidence to reassure it that Dr Sengupta would be competent at a practical level at applying her academic knowledge in a clinical setting. It considered that the practical activities she has undertaken, on models or simulators was to her credit, but insufficient to address the performance issues identified. This view is supported by the evidence of Mrs Raghavan and Dr Sengupta herself that she would require direct supervision on a return to practice."

65. At [65] it said this:

> "The Tribunal gave careful consideration to the submission of Mr Deacon that her position is no different to that of a trainee in obstetrics and gynaecology or someone returning from a long career break. However, the Tribunal did not accept this submission. The submission does not take account of the serious deficiencies identified in Dr Sengupta's performance, identified more than 20 years after she first qualified a doctor. Nor does it take into account that Dr Sengupta is seeking to return to practice after a 13 year break from practice, after her performance had already been found to be deficient. The Tribunal found that a trainee would have more recent clinical experience. The Tribunal was concerned that the available evidence did not provide assurance that Dr Sengupta's level of practical skill was beyond that of a final year medical student, over 30 years since she first qualified as a doctor."

66. Its conclusion at [67] was as follows:

> ".. the Tribunal must focus on its duty to the public and reminds itself that it cannot order restoration subject to conditions. In those circumstances, the

> Tribunal concluded that it could not be assured that Dr Sengupta is safe to practice and is no longer a risk to patients."

67. The MPT then turned to the question of misconduct. It examined Dr Sengupta's exchanges with Dr Gee and said this at [72]-[74]:

> "72. The Tribunal noted that Dr Sengupta wrote these emails after her attendance at an MSc Medical Ethics Course. Although no formal finding of dishonesty was made in 2018 regarding these emails, Dr Sengupta accepted in her oral evidence to this Tribunal, that she knew at the time that what she wrote was untrue. (emphasis added)
>
> 73. The Tribunal was also troubled by Dr Sengupta's oral evidence which did not reassure the Tribunal that she had put dishonesty behind her. When confronted by a direct question about when she first realised her conduct was dishonest, Dr Sengupta either could or would not give a consistent answer. At first she answered that she knew at the time that her actions were dishonest. *The she said, "I don't know what I thought at that point in time after all these years. All I can say is what I said to the panels and what the determination was then. It was 2007 and now we are in 2021. It is very hard to say what I thought then. All that I recollect is that I put the folder there. I took out the bad bits. I put in the good bits and I wanted a job for my promotion and for my career gains*."
>
> 74. In addition, the Tribunal was not reassured by Dr Sengupta's evidence that she understood the trigger mechanisms for her dishonesty. She said, *"After investigating my previous misconduct, I have identified my triggers. These include tiredness, feeling frustrated and so on. It is one of my triggers and if I am tired, I know how to ask for time out or rest times, or taking a break."* The Tribunal found this answer was not reassuring when Dr Sengupta is applying to return to an often tiring and frustrating career."

68. Its conclusion at [78] and [79] was as follows:

> "78. The Tribunal found that Dr Sengupta now accepts that her episodes of dishonesty are her responsibility alone and she cannot blame others. The Tribunal found that this represented a step forward in insight and deserved to be acknowledged. Nevertheless, it was insufficient to persuade it that Dr Sengupta is unlikely to be dishonest in future. Given that the dishonesty was persistent and repeated, even after Dr Sengupta attended a professional ethics course, the current evidence fails to sufficiently demonstrate that she has fully understood her dishonesty, and put that dishonesty behind her. (emphasis added)
>
> 79. In light of these concerns and apparent contradictions, the Tribunal found that a significant risk of repetition remains. It considered it highly unlikely that Dr Sengupta would repeat the exact behaviour and be dishonest about the same issues, but there remains a significant risk of further dishonesty if other stressful situations arise." (emphasis added)

69. The MPT applied the overarching objective and concluded that the application for restoration should be refused. It went on to consider whether it should direct a new performance assessment and concluded that "such an assessment would serve no

useful purpose because it would not address the ongoing concerns about Dr Sengupta's honesty" [82].

The suspension decision

70. In a short, separate, decision the MPT then made the suspension order in respect of which Dr Sengupta represented herself and made submissions at a hearing on 21 January 2021. It set out section 41(9) of the 1983 Act and paragraphs E1, E2 and E3 of the MPTS Guidance; and it reminded itself of the overarching objective and its duty to apply it. It correctly rejected Dr Sengupta's argument that the 2018 Tribunal had found that there was no risk of repetition. In fact it had found that there was such a risk as I have indicated in my summary.

71. In explaining its decision to make a section 41(9) order, the Tribunal said this at [8]:

> "In reaching its decision, the Tribunal has taken account of all the evidence before it, both oral and documentary. The Tribunal has already given a detailed determination on the application for restoration in this case and it has taken those matters into account at this stage of the proceedings." (emphasis added)

72. At [10] it said:

> "This determination should be read in conjunction with the detailed findings set out in [the restoration decision]".

73. At [13]-[15] the MPT said this:

> "13. With regard to Dr Sengupta's misconduct the Tribunal reminded itself that it had already found that she had not developed full insight despite the passage of time.
>
> 14. With regard to Dr Sengupta's clinical performance, the Tribunal had regard to its findings that, despite the passage of time, she had not remediated these and that the prospect of her being able to do so was now greatly reduced.
>
> 15. The Tribunal concluded that in all the circumstances, it was not in the public interest to allow Dr Sengupta to make another application with so little prospect of success." (emphasis added)

The challenge to the MPT's decision(s)

Overview

74. Dr Sengupta's Notice of Appeal identifies five main grounds of appeal which were then amplified in her skeleton argument and orally. She also provided a helpful chronology, a document containing her reflections on the history which ran to 133 pages, a bundle and an additional bundle of material, and a bundle of authorities.

75. Dr Sengupta's grounds of challenge were arranged under five headings:

i) First, she says that there were various errors of law made by the MPT ("Ground 1");

ii) Second, there was a misapplication of the legal tests as to dishonesty ("Ground 2");

iii) Third, she argues that the MPT made several factual errors ("Ground 3");

iv) Fourth, she argues that there has been a miscarriage of justice ("Ground 4"); and

v) Fifth, the decision of the MPT was disproportionate ("Ground 5").

76. Under Ground 1, Dr Sengupta made various points.

i) In her skeleton argument she said that the MPT analysed her level of insight incorrectly owing to a lack of consideration of the cultural context, and language barriers. The Tribunal was not culturally diverse and this could potentially limit its understanding of cultural differences. She referred to various materials which make the point that cultural differences may account for behaviours which may therefore be misunderstood by a court or tribunal. She did not give particulars of the relevant cultural differences in her case, but in her oral submissions she indicated that cultural differences may have accounted for her willingness to apologise and/or to admit that she was wrong and/or for the way in which she communicated, but she was not specific as to which culture she was referring to other than the fact that she was of Indian origins.

ii) She argued that the MPT gave insufficient evidence based reasons for its decision ("the Reasons") which, she said, could potentially raise issues of procedural fairness. Her position in writing, repeated orally, was that she was not saying that she necessarily disagreed with the reasons given by the MPT; but she did not consider that the Tribunal dealt in sufficient detail with the evidence which she had given, particularly given the seriousness of the issue which was under consideration.

iii) She said that the MPT was wrong not to include in its determination the legal advice which it had received from its legally qualified Chair which, she said, is a matter of procedural fairness and open justice.

iv) She argued that it was unfair to consider the conduct issues in relation to her cumulatively and to describe them as involving persistent dishonesty.

v) And she said that the improvement in her character in 2021 was not appropriately considered and the character references which were provided for her were not given appropriate weight.

77. Under Ground 2, Dr Sengupta argued that the MPT misapplied the test for dishonesty. In her skeleton argument, she appeared to be arguing that the original finding of dishonesty by the FtPP in 2010 was flawed as both limbs of the test in *R v Ghosh* [1982] QB 1053 were not applied. It was therefore unfair of the MPT to rely on the findings of the 2010 Panel in 2021. It was also unfair to describe her dishonesty as persistent.

78. In her oral arguments, however, Dr Sengupta said that the MPT should simply have accepted the FtPP's findings in its decision in 2010 and should not, therefore, have questioned her about issues of honesty as it did at the July 2021 hearing, a point which I discuss further below. Given that those questions were about whether Dr Sengupta appreciated that what she was saying in her email to Dr Gee in November 2017 was untrue, her argument was that it also appeared that the MPT was applying the *Ghosh* test for dishonesty which had since been superseded in *Ivey v Genting Casinos UK Ltd* [2017] UKSC 67.

79. Under Ground 3, Dr Sengupta pointed out what she said were 11 factual errors made by the 2021 MPT. She argued that whilst they were "seemingly insignificant, cumulative factual errors can have significant consequences on the outcome of a case". She took me through the alleged errors, many of which were actually accurate summaries or statements of what had been found by the FtPP or the earlier MPTs and/or conclusions with which she disagreed, or words or phrases which she said required explanation. Her submission was that cumulatively these errors were fundamental and were therefore sufficient to vitiate the decision.

80. Under Ground 4, Dr Sengupta argued three points:

i) First, that the MPT did not adhere to paragraphs C2 and C5 of the MPTS Guidance which deal with notice of new allegations. She also referred to the Fitness to Practise Rules, in particular 2, 4, 15 and 24, and she emphasised the need to give notice of new allegations, particularly allegations of dishonesty or lying, and the requirements of Article 6 ECHR. She also referred to, amongst other authorities, *Serafin v Malkiewicz* [2020] UKSC 23, [2020] 1 WLR 2455 at [49]. Her particular complaint in this regard was in relation to the email exchanges with Dr Gee in 2017/2018 to which I have referred. In writing she said that the rules and the Guidance were ignored in 2018 and the 2021. Orally, she accepted that she had notice of the GMC's intention to rely on the exchanges with Dr Gee a month before the hearing in 2018 although she said that she was not told for what purpose. In relation to 2021, she said that she did not have notice of the fact that it would be said that she acted dishonestly in these exchanges.

ii) Second, Dr Sengupta also argued that section 41(9) of the 1983 Act requires consideration of an indefinite suspension order after a second unsuccessful application for restoration but does not specify any actions after the third refusal. In this regard she also referred to paragraph E5 of the MPTS Guidance which states that if the doctor has made a second unsuccessful application the MPT should consider whether to suspend their right to apply for restoration. She confirmed to me that her case was that there could only be consideration of a section 41(9) order immediately after the second application to restore. If an order was not made on that occasion the matter could not be considered again, no matter how many further applications were refused.

iii) Third, she argued that the legally qualified Chair of the MPT overstepped his statutory role and was confrontational and dismissive, effectively cross examining her about her honesty. This was intimidating and it meant that she did not give of her best in evidence. She pointed to extracts from the transcript which, she said, show excessively robust questioning of her. Her argument

was that she did not receive a fair hearing and that the Chair of the MPT appeared to be biased.

81. Under Ground 5, Dr Sengupta argued that:

i) There had been a failure to comply with the Fitness to Practise Rules and, in particular, Rule 24(2) in that she had not been given an opportunity to put forward evidence in relation to the question whether a section 41(9) direction should be made. The Tribunal had also not acted in accordance with Part F1 of the MPTS Guidance which provides that "Doctors can apply for restoration either with or without a licence to practise…". She showed me a passage from the transcript of her evidence to the MPT where she said that if the Panel considered that she was unsuitable for restoration with a licence she would appreciate it if they considered restoring her without a licence as this would enable her to earn a living in medicine related roles such as teaching but without practising.

ii) The punishment was disproportionate to the severity of her conduct and the GMC's guidelines on sanctions and restoration should have been analysed and applied.

iii) The 2018 Tribunal found her performance issues to be remediable and the decision of the 2021 Tribunal was inconsistent with this finding. The MPT failed to explore alternative options, to recognise the improvements which she had made and to consider the proposed grades to return to practise. Several doctors have been rehabilitated after long periods of erasure, and she gave examples from the cases.

iv) Performance improvements and stress management strategies were not adequately considered. The MPT expressed concern that tiredness and frustration were a trigger to Dr Sengupta's dishonesty but stress management and regular breaks were required by law and recommended in guidance to NHS managers which suggests strategies for dealing with these issues.

v) There was a failure to consider mitigating factors including her expressions of remorse, the improvements in her insight and her ongoing remediation. The passage of time, she says, was wrongly regarded as an aggravating factor. The MPT also failed to consider the contemporary concept of public confidence.

The GMC's position

82. As noted above, Mr Tankel's position was that it was impermissible for Dr Sengupta to challenge the suspension decision on the basis that the restoration decision was flawed, as she had not brought a claim for judicial review. Her Notice of Appeal should not be treated as such a claim, nor as an application for permission to bring such a claim either. However, he helpfully addressed Dr Sengupta's arguments. As will be seen below, I accepted most of his arguments and I therefore need not set them out separately.

Discussion and conclusions

Mr Tankel's procedural argument

83. As I have highlighted above, the MPT stated that it had taken its findings on the restoration decision into account in considering the question of suspension and, indeed, enjoined the reader to read the suspension decision in conjunction with the detailed findings made in the restoration decision. Given this approach it was able to set out the reasoning which led to the suspension decision in three short sentences/paragraphs. In these circumstances, it seemed to me to be wholly unrealistic to suggest that Dr Sengupta could not base her appeal against the suspension decision on criticisms of the findings and reasoning which led to the restoration decision, and that I was bound simply to take the latter as read. In effect, the suspension decision incorporated the reasons which the Tribunal had given for the restoration decision. It was set out in a separate document but could just was easily have been set out as a few additional paragraphs to the restoration decision.

84. I accept that Dr Sengupta could only ask the court to set aside or quash the restoration decision by way of a claim for judicial review and that, in considering whether it should do so, the court would apply public law principles. But allowing Dr Sengupta to criticise aspects of the restoration decision as part of her appeal against the suspension decision did not undermine this point given that, even if those arguments succeeded, absent a claim for judicial review the restoration decision would stand.

85. There remains the question whether any of Dr Sengupta's criticisms of the MPT were valid and, if so, whether those criticisms meant that the suspension decision was wrong and/or unjust because of serious procedural or other irregularity. It would not automatically follow from the fact that I upheld any of her criticisms of the restoration decision that the suspension decision should be set aside. Whether this was the consequence would depend on the nature of the criticism which I upheld and its impact on the suspension decision itself.

Ground 1

86. Taking each of Dr Sengupta's arguments under Ground 1 in turn:

i) The principal answer on the question of cultural differences is that, as Dr Sengupta confirmed when I asked her, cultural differences were never relied on by her as playing a part in what happened in this case, whether before the FtPP or any of the subsequent MTPs, including at the hearings in 2021/2022. This type of argument required specific evidence about the cultural differences which were said to be relevant, which evidence would then need to be considered in the context of the evidence as a whole with a view to deciding whether it explained or mitigated the evidence against her or, at least potentially, indicated that some of her behaviours were irremediable as Mr Tankel suggested. In addition to this, in her skeleton argument Dr Sengupta did not identify any particular way in which cultural differences or differences of language might have affected the MPT's assessment. Her oral English was impeccable and her evidence about cultural differences was vague and capable of suggesting that she was lacking in insight for cultural reasons because she found it difficult to accept that she had done anything wrong and/or to apologise. I did not find this at all convincing. In my view, there was no valid criticism of the MPT in this regard.

ii) Second, nor was there anything in the criticism of the legally qualified Chair for failing to set out legal advice which he had given the lay members of the MPT. In the Reasons he set out principles which were applied to the evidence by the MPT and in my view he was under no obligation to do more than this. In any event, this is not a point which affected the outcome of either of the decisions.

iii) Third, as is apparent from my summary of the reasons given by MPT, they were more than adequate and they were evidence based. The Tribunal set out the relevant matters fully and the basis for its decision is clear. Contrary to Dr Sengupta's argument, the MPT was not obliged to consider each item of evidence in turn and explain what it found and why: see *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 at [19].

iv) Fourth, the MPT was also fully entitled and, indeed, required to look at the whole picture in terms of the deficiencies in Dr Sengupta's performance and skills and her conduct, the steps which she had taken to address them and how effective those steps had been. These considerations were highly relevant to the overarching question whether she was fit to practise. Insofar as this amounted to looking at her conduct cumulatively, the MPT was clearly right to do so. It was also entitled to describe her dishonesty as persistent, particularly in relation to the authorship of the case report which Dr Dey had written and the submission to the College, but also in the sense that there was evidence of various instances of serious dishonesty between 2007 and 2009.

v) Fifth, as I have pointed out in my summary of the reasons given by the MPT it clearly took into account the evidence which was supportive of Dr Sengupta's case and to a considerable extent that evidence was accepted. The problem was that fundamentally that evidence did not address the critical issues in relation to Dr Sengupta's performance and her integrity.

87. I therefore reject Dr Sengupta's arguments under Ground 1.

<u>Ground 2</u>

88. Nor was there anything in Ground 2. It is true that, as is well known, in *Ivey v Genting Casinos UK Ltd* [2017] UKSC 67 the Supreme Court modified the test for dishonesty in *R v Ghosh* [1982] QB 1053. In *Ghosh* the test had been said to be whether the relevant conduct was dishonest by the ordinary standards of reasonable people and, if so, whether the defendant appreciated that this was the case. In *Ivey* the Supreme Court said that the test was to ask what the defendant's actual state of knowledge or belief as to the facts was at the material time and then to ask whether, based on that, his conduct was dishonest by the standards of ordinary decent people. Whichever of these tests is applied, the conduct of Dr Sengupta which the FtPP and the 2015 and 2018 MPTs found to be dishonest plainly was dishonest. Moreover, Dr Sengupta herself ultimately argued at the hearing before me that the 2021 MPT should simply have accepted the findings of the FtPP and the earlier MPTs. I will return to the MTP's questioning of Dr Sengupta in July 2021 but that did not indicate that the 2021 MTP was reopening earlier findings of dishonesty or applying an outdated test for dishonesty. Even if it was, this was of no materiality to the outcome in relation to either of its decisions.

Ground 3

89. As for Ground 3, the majority of the factual errors alleged by Dr Sengupta were accurate recitations of what the FtPP and the earlier MPTs had found. They were also trivial and/or immaterial to the 2021 MPT's decisions even if they were inaccurate. There were other alleged errors which were obviously unfounded, such as the use of the phrases "hand-holding" and "watering down" when the former was quoting a phrase used by Mr Raghavan and the latter was quoting what had been submitted by Counsel for the GMC rather than these being the MPT's own phrases. And there were alleged errors in relation to the MPT's findings on the issue of dishonesty. These included Dr Sengupta's complaint about the MPT's references to persistent dishonesty, which I have dealt with above. But they also included a complaint about the finding at [72] (which I have quoted at [67], above) that Dr Sengupta had admitted in her oral evidence to the Tribunal that she knew at the time of her emails to Dr Gee that what she wrote was untrue. Mr Tankel accepted that she had not made this admission. I return to this point below.

Ground 4

90. I agree with Mr Tankel that Dr Sengupta's second point under Ground 4 is misconceived. The fact that an order under section 41(9) of the 1983 Act may be made after two unsuccessful attempts does not mean that no such order may be made after a third unsuccessful attempt. In this case consideration was given to such an order after the second application for restoration, as I have noted, but that did not mean that the matter could not be considered again.

91. I will deal with Dr Sengupta's first and third points under Ground 4 together. They have a good deal more substance.

92. In relation to the first of Dr Sengupta's arguments, Rule 23(2) of the Fitness to Practise Rules requires that the practitioner is given notice of certain matters no less than 28 days before the hearing of the application for restoration to the register, and the Registrar is required to provide the applicant with *"a copy of any statement, report or other document the General Council has obtained which has not previously been sent to the applicant or his representative and which is relevant to the question whether the applicant's name should be restored to the register"*. Rule 23(2) provides that in this event: *"the applicant shall be given a reasonable opportunity of responding before the Medical Practitioners Tribunal makes a decision"*.

93. Paragraph C5 of the MPTS Guidance provides:

> "As part of their submissions, the GMC will present any evidence about new allegations that have not previously been determined by a tribunal. The doctor will have been given notice of any new allegations in advance of the hearing and provided with copies of any information or evidence that underpins them. It is for the GMC to prove new allegations on the balance of probabilities."

94. Paragraph C2 provides:

> "The approach which should be taken by tribunals is to consider all the factors detailed in part B in relation to the original matters which led to erasure. In

> addition, where there are previously untested allegations which call into question the doctor's fitness to practise, tribunals must weigh the evidence carefully to reach a judgment:
>
> > a. firstly on whether the new allegations are proved on the balance of probabilities
> >
> > b. secondly on whether the doctor's fitness to practise is impaired by reason of those new allegations.
>
> The tribunal should invite the parties to make submissions and present evidence on both questions."

95. In relation to the complaint that Dr Sengupta was not given notice of the intention to rely on the Dr Gee emails in 2018, this claim was not supported by the 2018 MPT's Reasons. The submissions of Counsel made on her behalf were summarised by the MPT and they do not indicate any objection to the point being taken on the grounds of lack of notice. On the contrary, Dr Sengupta had prepared a written reflection on the incident in advance of the hearing. She also gave evidence about the exchange and the reasons for it, albeit the MPT did not accept this evidence. She had apologised to those involved and the Tribunal for what she described as "a moment of madness" and she said that she had taken steps to learn from this incident. As I have noted, in her oral submissions at the hearing before me, Dr Sengupta accepted that she had been given 28 days' notice of the GMC's intention to rely on the exchanges with Dr Gee. Her only point was that they had not alleged that she had acted dishonestly in this regard and the 2018 MPT had not found that she did.

96. As far as the 2021 restoration hearing is concerned, Dr Sengupta said, and Mr Tankel accepted, that it was no part of the GMC's case at any stage that she had acted dishonestly in her emails to Dr Gee. It relied on the findings of the 2018 MPT which, as noted above, were that this was emotional and intemperate behaviour which was of concern because of what it said about Dr Sengupta's level of insight. What happened was that when the Tribunal asked her questions at the hearing in July 2021, the Chair of the Tribunal questioned her about whether she knew that the statement in the November 2017 email that "The GMC (collectively) decided that the training standard in your deanery at that time was POOR.." was untrue at the time that she wrote it. Indeed, at one point in his questioning he suggested to her that it was a lie. She had not accepted that she knew that what she was writing was untrue, nor that it was a lie.

97. At the end of Counsels' closing submissions on 16 December 2021 the Chair then made various remarks about the overall approach which the MPT would take to its decision-making including:

> "There's been a number of references to an email in 2017, which has been variously described as "intemperate". I have to say that the preliminary view that we've took of the email, and I raised it at the time, is what we have to assess is whether it's dishonest or not. The real concern is whether it shows that even as recently as four years ago, and several years after erasure, under pressure, Dr Sengupta couldn't be relied upon to tell the truth, couldn't be trusted. That's what we have to evaluate. We have to look at that in the light of all the things that Mr

Deacon said to us about the evidence that there has been a significant change, in particular since 2018, looking at the position as a whole, and we have to evaluate that, and we must."

98. The Chair then asked Counsel whether they had anything that they wanted to add and neither added anything of relevance to this point. Dr Sengupta's Counsel made a submission that she should be treated as being in a similar position to a trainee who was about to embark on working with patients, or a person who had has a prolonged period away from practice.

99. I invited Dr Sengupta to take me to all of the passages from the transcript on which she relied to support her argument that the Chair's approach, and the tone of his questions to her, showed apparent bias or such a degree of unfairness as to vitiate the hearing. She relied on a series of questions which he put to her about the issue of dishonesty as found by the 2010 FtPP, and in relation to her emails to Dr Gee. Having considered these questions carefully, I did not accept that there was anything concerning about their tone nor, subject to one point, about the fact that the Chair asked them. Whilst it is never a comfortable experience to have one's honesty questioned, and the Chair did probe Dr Sengupta's answers, the tone was courteous, and the questions were relevant to the questions of remediation and insight. Dr Sengupta's answers were also in some respects unclear and/or surprising, and they therefore called for follow-up questions. I did not accept that "a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.": *Porter v McGill* [2002] AC 357 at [103]. Nor did I accept, subject to what follows, that there was any unfairness in the questions. Indeed, I could well see that the Chair felt that he ought to ask the questions which he asked given what was in the mind of the Tribunal.

100. However, ultimately I did accept that Dr Sengupta's complaint about the finding of dishonesty against her in relation to the Dr Gee emails had substance for the following reasons.

i) First, the 2021 MPT directed itself that it *"should not seek to go behind the findings on facts, impairment and sanction made by the previous hearings"* [42]. Mr Tankel's position was also that they and I could not do so, as I have noted. The basis on which the 2021 MPT could make a finding of dishonesty which was not made by the 2018 MPT which fully considered the matter was therefore unclear, and Mr Tankel did not identify any such basis at the hearing before me.

ii) Second, as I have noted, the GMC did not allege dishonesty against Dr Sengupta in this regard. It had not given her notice of any such allegation and, as I understood the transcript and Mr Tankel's concession, that remained the case even after the Chair had raised the issue. On the contrary, the GMC relied on the findings of the 2018 MPT.

iii) Third, if the Tribunal was to take the point it should have indicated in advance of its closing remarks to the parties that it was considering doing so and invited submissions as to whether such a finding was open to it given the findings of the 2018 MPT. It should also have given the parties an opportunity to put forward any evidence and/or argument which they wished to advance on

the issue of honesty. It was unsatisfactory to introduce the issue in questions to Dr Sengupta, and then after Counsel had made their submissions, given the seriousness of the allegation.

101. Subject to Mr Tankel satisfying me that it was open to the 2021 MPT to reach its own finding that Dr Sengupta had acted dishonestly in what she wrote to Dr Gee, I might not have been persuaded that these unsatisfactory features of the hearing were sufficient to allow the appeal. In particular, Dr Sengupta's Counsel did not respond to the Chair's closing remarks by objecting to the suggestion that her honesty could be put in issue in this regard. Indeed, on one reading of paragraph 26(a) of his written closing submissions he conceded that her evidence was that she knew at the time of the November 2017 email to Dr Gee that what she was writing was dishonest. However:

i) It is not clear that this is what he was conceding. If it was, the concession was incorrect. In her evidence, Dr Sengupta did not accept that she had acted dishonestly in this regard. She denied it.

ii) Second, it is a matter of concern that, having raised the issue, the MPT apparently misunderstood Dr Sengupta's answers. In particular, as noted above, it recorded at [72] that: *"Dr Sengupta accepted in her oral evidence to this Tribunal, that she knew at the time that what she wrote was untrue."*. This was not the case, as Mr Tankel conceded. She accepted that the email was "inaccurate and accusatory", but she said that she wrote it in an emotional state and did not know that it was not true.

iii) Third, even this might not have been sufficient for the appeal to be allowed given that the MPT apparently considered that Dr Sengupta had acted dishonestly, whether or not she had in effect admitted it. But the finding of dishonesty was itself problematic. Dr Sengupta's statement "The GMC (collectively) decided that the training standard in your deanery at that time was POOR.." was untrue but she went on to "attach their determination" from which it was apparent that no such decision had been reached or, at least, which did not bear her out. It is highly arguable that this was not a communication in which she was attempting to deceive Dr Gee or which gave rise to any risk that he would be deceived.

iv) Fourth, it is therefore unsurprising that it was characterised as intemperate by the GMC and the 2018 MPT, rather than dishonest. Indeed, the MPT's statement that *"no formal finding of dishonesty was made in 2018"* is also troubling because it implies that informally this was the view of that 2018 MPT. If so, I do not accept that it was.

v) Fifth, I note that the 2021 MPT's Reasons do not suggest that the finding of dishonesty in relation to the emails to Dr Gee was a minor or immaterial point. This finding was not the only matter on which it relied in relation to conduct and honesty but, as noted above, at [78] it referred to Dr Sengupta's dishonesty as *"persistent and repeated, even after Dr Sengupta attended a professional ethics course"*. Mr Tankel agreed that this referred back to its finding at [72], also quoted above. The MPT therefore considered that this was powerful

evidence that, despite the steps which she had taken, she had not addressed her dishonesty and there was a significant risk of further dishonesty.

vi) Sixth, realistically, this must have had a bearing on the MPT's view as to the prospect of a future successful application for restoration. If the Tribunal's view was that she had continued to lie in a professional context after taking steps to address her past dishonest behaviour it was unlikely that further steps would be effective. That, in turn, was a powerful reason for making the suspension order.

Ground 5

102. Subject to one point, there was nothing in Ground 5:

i) Contrary to Dr Sengupta's arguments, it is plain that the Tribunal took into account all of the matters on which she relied, including the positive steps which she had taken to address her shortcomings for which it commended her. It also took into account the supportive evidence from Mrs Raghaven, the positive testimonials and her "mitigation".

ii) There was also no inconsistency between the MPT concluding in 2018 that her shortcomings were still remediable and it concluding, three years later, that in the light of the lack of progress her prospects of a successful application for restoration were such that the suspension order was appropriate. The 2021 MPT looked at the history thus far and concluded that although the shortcomings were remediable the prospects of them being successfully addressed were remote.

iii) With respect to Dr Sengupta, the argument that the MPT should have concluded that she should be given breaks and rest periods so as to ensure that she was not dishonest in the future was wholly unrealistic. Quite apart from the fact that there was no power to order restoration with conditions, the expectation would be that a practitioner would be honest at all times including when they were overworked, tired or frustrated.

iv) Overall, I did not accept that the suspension was disproportionate on the findings which the MPT made. The problem is that aspects of those findings were flawed.

103. The one point, however, is that as Mr Tankel very fairly accepted, the MPT told Dr Sengupta that she could not adduce any further evidence in relation to the question of whether a section 41(9) order should be made. Dr Sengupta attended on 21 January 2022. The restoration decision was handed down. She was asked whether she would be ready to respond to Counsel for the GMC's application for such an order. She pointed out that she is not a lawyer and had suffered a recent bereavement and was not in a good mental state. There was discussion of whether she wished the application to be adjourned and she asked whether, if it was, the Tribunal would receive further evidence at the resumed hearing. She was told that it would not: *"We have already handed down a written determination and that is the end of it"*. On this basis she then agreed to go ahead. However, what the MPT told her was contrary to rule 24(i)(ii) of the Fitness to Practise Rules which, as noted above, requires the MPT

to *"invite further representations* <u>*and evidence*</u> *from [her] specifically on this issue"* (emphasis added). The MPT did the opposite in relation to evidence.

<u>Relief in the appeal</u>

104. Mr Tankel submitted that despite the flaws in the MPT's approach which I have identified, I should dismiss the appeal. As far as the flaws in relation to the findings about the emails to Dr Gee are concerned, he argued that I could take a robust view and uphold the MPT's suspension decision having discounted this particular finding of dishonesty. He pointed out that the suspension decision was based on issues both of misconduct <u>and</u> competence and he argued that I could conclude that the flaws in the MPT's approach did not, or do not, materially affect the outcome of the application for a section 41(9) order.

105. In relation to the MPT's indication to Dr Sengupta that she could not adduce any further evidence for the purposes of the section 41(9) application, Mr Tankel argued that Dr Sengupta had not shown me what evidence she would have adduced had she been told that she could do so. As the appeal was by way of a rehearing, she should have done so. Again, I should take a robust view and dismiss the appeal on the basis that the MPT's error made no difference to the outcome.

106. I was unable to accept these submissions.

i) The MPT's restoration and suspension decisions are not written in such a way as to enable me to conclude that inevitably it would have come to the same conclusion on the suspension order had it simply adopted the findings of the 2018 MPT on the subject of the exchange with Dr Gee. In relation to the overall assessment of Dr Sengupta's honesty and the risk of further dishonesty, it clearly considered that this was an important point: hence, it raised the point for itself despite the GMC not doing so, and the point then featured prominently in the findings on the conduct aspect of the case. At [82] it also said that its reason for refusing to refer Dr Sengupta for a further performance assessment was the issue of her honesty, and it specifically referred to conduct in its suspension decision. Its view was that even after attending an ethics course Dr Sengupta had acted dishonestly and, as I have noted, if correct, this was a good reason to take the view that the position would be no better in the future.

ii) Nor do I accept that Dr Sengupta would have had no further evidence to adduce on the question of the proposed section 41(9) order had the Tribunal invited her to do so. Importantly, the evidence was taken by the MPT in July 2021. Six months had therefore elapsed since any evidence of Dr Sengupta's progress had been received. At the time of the July 2021 hearing she was undertaking an observership. Dr Sengupta also told me that she would have wished to adduce further evidence of steps which she had taken to address the issues and would be willing to take in future, all with a view to arguing that she should not be prevented from making further applications for restoration and/or that any applications after 3 years should not be limited to an application for a review which, in turn, was not susceptible to appeal. Having seen her determination to be restored to the register and her approach in this appeal, I accept that she would have sought to put forward further evidence,

not least given that she specifically asked the MPT whether she would have an opportunity to do so if the hearing was adjourned and then agreed to go ahead when she was told that this would not be permitted.

iii) I have not seen all of the evidence which was before the MPT or heard the witnesses, and I have not seen the evidence which Dr Sengupta might have adduced in relation to the proposed suspension order had she been given the opportunity. I do not accept that the just response to this state of affairs would be for me to say that therefore Dr Sengupta has failed to establish that the MPT's decision was wrong. Rather, the position is that I am not in a position to substitute my own view as to what the outcome of the section 41(9) application would have been or should now be, as opposed to remitting the question for further consideration.

107. I therefore allow the appeal on the basis that the suspension decision was "*unjust because of a serious procedural or other irregularity in the proceedings*" and remit the GMC's section 41(9) application for reconsideration. The parties are invited to make submissions in writing as to whether this should be to the same or a differently constituted MPT. In order to assist them in considering their positions on this question I make clear that, as will need to be reflected in the draft order:

i) At the remitted hearing, whether to the same or a differently constituted Tribunal, the findings in the restoration decision would stand save for the findings of dishonesty in relation to the emails to Dr Gee and the conclusions about her honesty which are based on those findings.

ii) My provisional view is that I should direct that at the remitted hearing the MPT should proceed on the basis of the findings of the 2018 MPT in relation to these emails i.e. it should not consider whether Dr Sengupta acted dishonestly in this regard or base its decision on any such finding. However, I accept that Mr Tankel did not have a sufficient opportunity to address the question whether the 2021 MPT could in principle add to the findings of the 2018 MPT in this way and therefore have not reached a final view on the question.

Permission to claim judicial review?

108. As I have noted, Dr Sengupta brought an appeal and her principal position was that she was challenging the MPT's approach in relation to the restoration decision in order to undermine the suspension decision. As I understood it, she only wished to claim judicial review if this would not increase her exposure in costs. This was an equivocal position and, of course, a claim for judicial review would have the potential to do so given that the issues in relation to such a claim would not be identical to the issues in relation to an appeal against the suspension decision. Different principles would apply.

109. From an abundance of caution, however, I have taken the view that the appropriate course is to treat the notice of appeal as an appeal against the suspension decision and an application for permission to claim judicial review of the restoration decision, and to consider both on their merits albeit recognising that different levels of scrutiny of each decision will be required. The notice of appeal was filed promptly for the

purposes of the test under CPR rule 54.5(1). It indicated a wish to "proceed towards a judicial review" and I did not see any prejudice to the GMC in taking this course provided my decision was limited to the question of permission. Mr Tankel had notice of the respects in which Dr Sengupta criticises the decisions of the MPT and was well able to deal with them, at least for the purposes of that question.

110. Having done so, I do not consider that permission to claim judicial review should be granted. With the exceptions which I have identified in considering Dr Sengupta's appeal, in my view there is no arguable basis on which the MPT's decision on the application to restore was outwith its powers, unlawful or unfair. It conducted a fair hearing in the course of which it heard the evidence, received arguments from Counsel for each side, made detailed findings of fact and then reached permissible conclusions based on those findings of fact. It applied the law correctly and reached conclusions which were plainly open to it.

111. The breach of rule 24 of the Fitness to Practise Rules, to which I have referred, affected the decision on the section 41(9) application but it did not affect the restoration decision.

112. The flaws in relation to Dr Sengupta's emails to Dr Gee gave me more pause for thought. As I have said, these criticisms of the MPT's decision are well founded. I have also noted that the risk of further dishonesty was a key aspect of the MPT's reasoning in refusing the application to restore and, indeed, deciding not to direct a new performance assessment. Dr Sengupta had also raised the possibility of restoration to the register without a licence and this was not specifically addressed by the MPT.

113. In the event of a claim for judicial review the principal issue would therefore be relief given that some aspects of the decision were flawed. Realistically, Dr Sengupta's best case would be that the refusal to restore her to the register should be quashed. There is no prospect whatsoever that the court would order that she should be restored without a further hearing before the MPT, with or without a licence. In my view, applying section 31(2A) Senior Courts Act 1981, even a quashing order would be refused on the basis that it is highly likely that the MPT would have refused to restore Dr Sengupta to the register even without the finding of dishonesty in relation to the emails to Dr Gee: see e.g. *R (on the application of HPSPC Ltd) v Secretarty of State for Education* [2022] EWHC 3159 (Admin) at [163].

114. I appreciate that, at first blush, it might be thought that this conclusion sits uneasily with my conclusion on the appeal. But that is not so. The question for the MPT on the application to restore was whether Dr Sengupta was "now fit to practise?". The question on the application for a suspension order was different: should she be prevented from making future applications to be restored to the register and/or be limited to applying for a review after a period of 3 years. The two questions engaged different, albeit connected, considerations. The first concerned the current state of play; the second considered the likely future position.

115. The MPT's findings that Dr Sengupta remained unfit to practise by reason of the issues with her competence are undisturbed by my decision on the appeal and they are more than sufficient to support the MPT's conclusion that Dr Sengupta should not be restored to the register. The findings that she had not addressed the issue of her

integrity are undermined by my decision on the appeal, but it remains the case that the MPT was concerned about this issue on the basis of the conduct which led to the original erasure and her conduct since then. This included her performance as a witness in all three applications to restore and her conduct in relation to the Dr Gee emails. Even if that conduct was not dishonest, it was concerning, as the 2018 MPT found, and it was relevant to her fitness to practise. Dr Sengupta did not argue before me that she should have been referred for a performance assessment but, even if she had, I am confident that this would also have been refused by the MPT in the light of its findings.

116. I am therefore confident that the MPT would have permissibly reached the same conclusion on the restoration decision in any event. Moreover, as a matter of discretion the better course would also be to leave Dr Sengupta simply to apply for restoration again, assuming no suspension order was made, given that there would need to be a further application to restore in any event.

117. Insofar as it was applied for, I therefore refuse permission to claim judicial review of the MPT's decision to refuse to restore Dr Sengupta's name to the register.