



Neutral Citation Number: [2019] EWHC 3155 (Admin)

Case No: CO/3300/2019

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 11/12/2019

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

**DR OLAKUNLE AROWOJOLU**

**Appellant**

**- and -**

**GENERAL MEDICAL COUNCIL**

**Respondent**

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**Daniel Janner QC** (instructed by **Hempsons**) for the **Appellant**  
**Alexis Hearnden** (instructed by **GMC Legal**) for the **Respondent**

Hearing dates: 31 October 2019  
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**APPROVED JUDGMENT**

## **The Honourable Mr Justice Julian Knowles:**

### **Introduction**

1. This is an appeal pursuant to s 40 of the Medical Act 1983 (the MA 1983). The Appellant, Dr Olakunle Arowojolu, appeals against the direction of the Medical Practitioners' Tribunal (the Tribunal) of 25 July 2019 that his name be erased from the register of medical practitioners. He attacks the findings of fact made by the Tribunal. It found proved a number of allegations of sexual misconduct in July 2013 by him towards a receptionist, Ms A, at the health centre in Essex where they both worked. The Tribunal found that Dr Arowojolu's fitness to practise was impaired and, as a consequence, directed that his name be erased from the medical register. If I uphold the Tribunal's findings the Appellant does not appeal the sanction.
2. Ms A's identity is protected by s 1 of the Sexual Offences (Amendment) Act 1992, and no matter relating to her shall during her lifetime be included in any publication if it is likely to lead members of the public to identify her as the person against whom the conduct in question is alleged to have been committed.
3. The Respondent to the appeal is the GMC, which is the statutory regulator for the medical profession established by s 1 of the MA 1983. It brought the case against the Appellant in the Tribunal.
4. The Tribunal's determination of the facts was made on 10 April 2019 and the sanction was imposed on 25 July 2019.
5. The grounds of appeal advanced by Mr Janner QC on behalf of the Appellant are as follows. He submitted that the conclusion that the Appellant sexually assaulted Ms A was wrong and/or that it was unjust because of a serious procedural or other irregularity, such that I should allow the appeal pursuant to CPR r 52.21(3). In summary he argued that:
  - a. The Tribunal was misdirected in law by its legally qualified Chair about how to approach an allegedly false complaint of sexual offences made by Ms A against her grandfather when she was a teenager (Ground 1).
  - b. It failed to take into account, sufficiently or at all, the implausibility of Ms A's account (Ground 2).
  - c. It failed to sufficiently take into account the Appellant's positive good character (Ground 3).
  - d. It was wrong in its assessment of the CCTV evidence (Ground 4).
6. Mr Janner placed the first of these submissions at the forefront of his argument and accepted that the other points were essentially subsidiary ones.

### **The factual background**

7. The Appellant qualified as a doctor in 1982 in Nigeria. He worked as a consultant in Obstetrics and Gynaecology between 1993 and 1995. He moved to the UK in 1995. He worked as a GP Registrar and then as a *locum* GP. In 2005 he began working as an out of hours GP at the health centre. Ms A began working as a receptionist at the health centre about six weeks before the alleged incident with which this appeal is concerned.
8. On the night of 21-22 July 2013, Ms A was working the night shift. The Appellant finished his shift shortly after midnight. As he was leaving, he fell into conversation with Ms A in the reception area. She said she wanted to lose weight. She added that, having had two children, she was concerned about her stomach. The Appellant offered to examine her and to advise. He took her into a consulting room for that purpose. Two very different versions of what then took place were given in evidence by Ms A and the Appellant at the Tribunal hearing. They are as follows.

*Ms A's account*

9. According to Ms A, during the discussion in the reception area, the Appellant asked her to lift her top and show him her stomach, which she said was flabby. She lifted her top but did not show any skin. She claimed the Appellant then told her to follow him. They went into examination room number 6. She said that the Appellant looked into the office on the way, to make sure no one was around.
10. Once inside the examination room, Ms A said the Appellant pulled the curtain round, put some paper down on the examination table and asked her to lie on her back. He showed her how to do some sit-ups. She said the Appellant then seriously sexually assaulted her. She said that this happened in two phases.
11. During phase 1, she said that the Appellant repeatedly touched her clitoris and vagina. This lasted two to three minutes. She told him to stop seven or eight times, but he only stopped when she told him it was hurting. She then got up. But she then agreed to lie down again.
12. During phase 2, the same sort of assaults were repeated for a similar period of time. During this phase the Appellant also touched Ms A's left breast. She repeatedly asked the Appellant to stop, but he responded saying it was 'nice.' He only stopped when she again said it hurt.
13. They both then left the consultation room. Ms A said that she waited for the Appellant to leave and then complained to a nurse and her husband by telephone that she had been sexually assaulted. The call to her husband was at 1:01. Mr A did not answer but called her back a minute or so later. Ms A was upset when they spoke, at least implying that something adverse had happened ([32] of the fact-finding determination). Mr A's evidence to the police was that Ms A told him that the Appellant had touched her. The practice driver called at 1:05, and the transcript of the brief conversation records that Ms A was crying. The Appellant then called Ms A at 01:08, on his evidence, to reiterate his advice concerning sit-ups. At 1:28 the district nurse called Ms A. The transcript of the telephone conversation records that Ms A was crying and that she said that the Appellant had touched her inappropriately. With the support of the district nurse, Ms A reported the incident to the police later on the morning of 22 July 2013.

14. Although, on its face, Ms A's recent complaint to her husband supported the GMC's case, at [12] the Tribunal said that it had found his evidence 'less helpful' and that parts of it were 'surprising', for example, his evidence that he had gone to sleep even after his wife had told him that she had just been sexually assaulted.

#### *The Appellant's account*

15. The Appellant said that he had offered to carry out an informal examination after Ms A had lifted up her top and complained about her stomach after childbirth. He said that he thought it more appropriate to examine her in the privacy of a consultation room, and had offered to do so. Ms A accepted the offer and walked with the Appellant to the consultation room. He pinched her stomach skin for elasticity. He felt the firmness of her stomach and showed her how to do sit ups. He advised her to see her GP if the symptoms persisted.
16. The Appellant denied that any inappropriate behaviour whatsoever took place. He also denied that there were two phases, or that Ms A had asked him to stop at any point.
17. After the examination was over, they walked out of the examination room. He drove home, and on the way telephoned her to repeat his advice regarding seeing the GP.

#### **The GMC's allegations against the Appellant**

18. The allegations made by the GMC against the Appellant are set out in [4] of the Tribunal's fact-finding determination. They were, in summary, that he had: (a) asked Ms A to show him her stomach in the centre's reception area; (b) performed an intimate examination of Ms A; (c) failed to offer her a chaperone; (d) lifted up Ms A's clothing; (e) placed his hand on various parts of her body; (f) in particular, applied pressure to her pubic bone and touched her clitoris and labia under her knickers; (g) and stroked one of her breasts. He was also alleged to have made a number of comments to her during the examination including telling her to lie back down and that touching her was 'nice'. Allegation [4(7)] was an overarching allegation that the conduct in question had been sexually motivated.
19. The Appellant admitted some of the allegations (eg, failing to offer a chaperone) but denied the most serious allegations and denied that his conduct had been sexually motivated.

#### **The criminal proceedings and the disclosure of an alleged previous sexual assault of Ms A by her grandfather**

20. The Appellant was arrested on the morning of 22 July 2013. In interview he provided a prepared statement which set out his account of the examination of Ms A, denying any sexual misconduct. He said that he was 'deeply shocked' by Ms A's allegations. He was charged with sexual assault on 16 January 2014.
21. The Appellant stood trial at Chelmsford Crown Court in October 2014 before Her Honour Judge Lynch QC and a jury. There was a single count on the indictment alleging the sexual assault of Ms A contrary to s 3 of the Sexual Offences Act 2003.

On 16 October 2014 he was convicted and sentenced to two years' imprisonment. He appealed against his conviction, and on 1 April 2015 his conviction was quashed by the Court of Appeal: [2015] EWCA Crim 842. The reasons why his conviction was quashed are not directly relevant to this appeal. They related to some evidence given by a police officer about a complaint made against the Appellant in 2010 by a patient, and to the way in which the judge had dealt with the Appellant's partial 'no comment' interview in her summing-up. In light of these matters the Court of Appeal held that the conviction was unsafe and ordered a re-trial.

22. When the case was listed for re-trial on 22 February 2016, the prosecution disclosed some unused material which had not been disclosed previously. This caused the trial to be adjourned.
23. The disclosure related to Ms A's claim when she was a teenager that she had been sexually abused by her grandfather over a two-year period. The matter was investigated by the police but no charges were brought. The evidence can be summarised as follows.
24. In a letter to her father dated 21 December 2003, when she was 14, and then to the police in an ABE interview shortly afterwards, Ms A alleged that during the preceding two years her grandfather had subjected her to numerous indecent assaults including rubbing her leg and vaginal area over her clothing; touching her breasts beneath her clothing; and trying to kiss her. She claimed the abuse happened every time she visited her grandparents in Hastings, and in their car. The abuse continued when her grandparents moved to Basildon. She also said that her grandfather had tried to rape her. She alleged that the last incident had been five weeks earlier when she had had a nosebleed and her grandfather went upstairs and sexually assaulted her.
25. Her grandfather denied the allegations and was never charged. In statements provided to the police, her family not only disbelieved her but provided evidence which undermined her claims. Her mother said that her daughter never showed any resentment to her grandfather or tried to stay away from him. Family members were present and nothing unusual happened when she had a nosebleed. Her mother's boyfriend said that Ms A had been lying to her mother and that the nosebleed incident details she gave were wholly wrong.
26. At the first re-trial the jury could not agree. The Appellant was then re-tried, and was acquitted by the jury. The proceedings before the Tribunal followed his acquittal.

### **The Tribunal hearing**

27. Mr Janner said that this was a case which hinged on Ms A's word against that of the Appellant. His case was that Ms A was a liar and a fantasist. He said she had a track record of making false allegations against older men in positions of authority. This was reinforced by Ms A's claim in evidence during the 2017 trial that the attempted rape incident happened in Hastings when her grandfather 'was wearing a leopard skin thong' and her grandmother was in the house at the time.

*Ms A's evidence before the Tribunal*

28. The Tribunal hearing began on 1 April 2019. During her evidence Ms A repeated her claim that she had been sexually assaulted by the Appellant during two distinct phases. She was cross-examined on her account by Mr Janner.
29. On the fourth day of evidence (after the Appellant's evidence) Ms A was recalled by the GMC so that questions could be put to her as to her motivations for potentially fabricating the allegations. Ms A gave evidence that she was not going to sue for damages in the civil courts. As to a Criminal Injury Compensation Authority claim, she denied knowing that the scheme even existed until after the trial or until after the charge, noting that there was no financial incentive for her to give evidence before the Tribunal.
30. In his written submissions on this appeal, Mr Janner made the following forensic points about Ms A's evidence:
  - a. Although she claimed the Appellant checked that no one was around when walking with her to the consultation room, it was suggested to her that the CCTV footage showed he did not look into the office at all and that she was lying.
  - b. During phase 1 of the alleged assault she did not attempt to get up or push the Appellant away or resist or scream.
  - c. After phase 1 was over she got up but did not leave by the unlocked door or complain, despite her account that she had told the Appellant to stop because it was hurting but, in fact, agreed to lie down again.
  - d. Her lying back down was inconsistent with the sexual assault she claimed had just taken place.
  - e. Again, during phase 2, she did not attempt to get up or push the Appellant away or resist or scream.
  - f. She maintained that her allegations about her grandfather were true when, said Mr Janner, patently they were not.

*The Appellant's evidence before the GMC*

31. The Appellant accepted with the benefit of hindsight that it had been naïve of him to have examined Ms A without anyone else being present, but that the examination had been impromptu, she appeared upset, and it had not taken long (nine minutes) and it was unexceptional. Mr Janner pointed out to me that the Tribunal had agreed with this description (at [73] of its decision).
32. The Appellant adduced a quantity of evidence of his positive good character. Those who worked with him spoke of his professionalism and care. None had any concerns about his behaviour. On the contrary, they all testified as to his popularity and skill.

### **The Tribunal's determination of facts dated 10 April 2019**

33. The Tribunal held that the Ms A had been subject to a sexually motivated examination by the Appellant: see [63] to [102] of its determination, and [2(a)], [2(b)], [3(a)] to [3(i)], [5] - [7] of the allegations set out in [4] of the determination.
34. The Tribunal found that Ms A was a 'plausible witness' and based its decision on the following factors (references to the paragraph numbers of the determination).
  - a. They found no evidence that she was a fantasist ([70]).
  - b. The CCTV footage showed them coming out of the examination room separately ([72]).
  - c. The telephone calls she made afterwards were inconsistent with fabrication ([74]).
  - d. It rejected the Appellant's stated reason for telephoning her from the car after his examination ([75]).
35. The Tribunal did not find the following allegations proved (the references are to the sub-paragraphs of [4] of the determination, where the allegations are set out):
  - a. [1(a)], namely the allegation that the Appellant asked Ms A to show her stomach. It held that there was no premeditation involved.
  - b. [1(b)], the allegation that the Appellant performed an intimate examination.

### **Chronology**

36. The relevant dates are as follows:

1982	The Appellant qualified as a doctor in Nigeria
1995	The Appellant moved to the UK
2003	The Appellant became a GP Registrar
21.12.03	ABE interview of Ms A, in respect of allegations that her grandfather had subjected her to indecent assaults
2012	Became a GP Partner
2005-2013	Worked as an out of hours GP at the health centre
22.07.13	Alleged incident on the night shift involving Ms A
22.07.13	The Appellant was arrested
16.01.14	Appellant charged by police
16.10.14	Appellant convicted at Chelmsford Crown Court of indecently assaulting Ms A
01.04.15	Court of Appeal overturned the conviction on the grounds that it was unsafe
22.02.16	First day of intended re-trial; adjourned
07.07.17	Appellant acquitted at a re-trial
01.04.19-	MPT hearing

10.04.19	
10.04.19	Determination on the facts
24.07.19	Determination on misconduct and impairment
25.07.19	Determination on sanction
21.08.19	Appellant's notice.

### **Legal framework governing hearings before the MPT**

37. In 2015 changes were made to the way in which medical disciplinary matters were dealt with. Paragraph 19F of the MA 1983 was added by the General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 (SI 2015/794). It established the Medical Practitioners Tribunal Service (the MPTS) as a statutory committee of the GMC. The purpose of this change was to strengthen the separation between the GMC's investigation and adjudication arms. It was intended to enhance and protect the independence of decision making at the adjudication stage of fitness to practise procedures involving doctors by establishing the MPTS in statute. It was also intended to modernise, simplify and clarify a number of aspects of the legislative framework surrounding fitness to practise.
38. Part 4 of the General Medical Council (Fitness to Practise) Rules 2004 (SI 2004/2608), as amended, sets out the procedure before the MPT.
39. The Schedule to the General Medical Council (Constitution of Panels, Tribunals and Investigation Committee) Rules Order of Council 2015 (SI 2015/1965) sets out the Rules for the constitution of the following Panels, Tribunals and the Committee of the GMC: (a) Registration Panel and Registration Appeals Panel; (b) Interim Orders Tribunal and Medical Practitioners Tribunal, and (c) the Investigation Committee.
40. Under rule 6(4), the MPTS must appoint to and maintain from the lists referred to in rule 4(1)(a), a list of persons eligible to serve as Chair of a Tribunal.
41. The MPTS must set and publish criteria which a person must satisfy (whether in relation to qualifications, experience, competencies or other matters) in order to be eligible for selection to serve as Chair of the Tribunal (rule 6(7)).
42. The responsibilities of the legally qualified Chair are set out in the General Medical Council (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015 (SI 2015/1958). The Schedule to the Order contains the rules which distinguish between a legal assessor and a legally qualified person, ie, a legally qualified Chair. Rule 6 governs the giving of advice by legally qualified persons:

“Where, at hearing of a Tribunal, a legal assessor has not been appointed under paragraph 7(1B) of Schedule 4 to the Act, and the Chair as a legally qualified person advises the Tribunal on any question of law as to evidence or procedure, the Chair shall—

- (a) so advise in the presence of every party, or person representing a party, in attendance at the hearing; or



(b) if the advice is tendered after the Tribunal has begun to deliberate on any decision during the course of the proceedings, include the advice so given in the Tribunal decision, unless the Chair considers it necessary to advise in the presence of every party, or person representing a party, in attendance at the hearing”.

### **Legal framework governing appeals under s 40 of the Medical Act 1983**

43. The relevant principles were not materially in dispute between the parties.
44. Section 40 of the MA 1983 provides a right of appeal to the High Court against a sanction imposed by the Tribunal:

"(1) The following decisions are appealable decisions for the purposes of this section, that is to say –

(a) a decision of a Medical Practitioners Tribunal under section 35D above giving a direction for erasure, for suspension or for conditional registration or varying the conditions imposed by a direction for conditional registration;

...

(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 Tribunals 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 (or, in Scotland, expenses) as it thinks fit."

39. The over-arching objective of the GMC in exercising its functions is the protection of the public (s 1(1A)). The pursuit by the GMC of its over-arching objective consists of the following aims:

- 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.
40. By virtue of CPR PD52D, [19.1], an appeal under s 40 is by way of re-hearing. However, such an appeal 'is a re-hearing without hearing again the evidence': see *Fish v General Medical Council* [2012] EWHC (Admin) 1269, [28]. Applying CPR r 52.21, the Court must allow the appeal if the decision of the Tribunal was wrong or unjust because of serious procedural or other irregularity.
41. In *Yassin v the General Medical Council* [2015] EWHC 2955 (Admin), [32], Cranston J considered the scope of an appeal under s 40 in the following terms:

"Appeals under section 40 of the Medical Act 1983 are by way of re-hearing (CPR PD52D) so that the court can only allow an appeal where the Panel's decision was wrong or unjust because of a serious procedural or other irregularity in its proceedings: CPR 52.11. The authorities establish the following propositions:

(i) The Panel's decision is correct unless and until the contrary is shown: *Siddiqui v. General Medical Council* [2015] EWHC 1966 (Admin), per Hickinbottom J, citing Laws LJ in *Subesh v. Secretary of State for the Home Department* [2004] EWCA Civ 56 at [44];

(ii) The court must have in mind and must give such weight as appropriate in that the Panel is a specialist Tribunal whose understanding of what the medical profession expects of its members in matters of medical practice deserves respect: *Gosalakkal v. General Medical Council* [2015] EWHC 2445 (Admin);

(iii) The Panel has the benefit of hearing and seeing the witnesses on both sides, which the Court of Appeal does not;

(iv) The questions of primary and secondary facts and the overall value judgment made by the Panel, especially the last, are akin to jury questions to which there may reasonably be different answers: *Meadows v. General Medical Council* [197], per Auld LJ;

(v) The test for deciding whether a finding of fact is against the evidence is whether that finding exceeds the generous ambit within which reasonable disagreement about the conclusions to be drawn from the evidence is possible: *Assicurazioni Generali SpA v. Arab Insurance Group* [2003] 1 WLR 577, [197], per Ward LJ;

(vi) Findings of primary fact, particularly founded upon an assessment of the credibility of witnesses, will be virtually unassailable: *Southall v. General Medical Council* [2010] EWCA Civ 407 , [47] per Leveson LJ with whom Waller and Dyson LJJ agreed;

(vii) If the court is asked to draw an inference, or question any secondary finding of fact, it will give significant deference to the decision of the Panel, and will only find it to be wrong if there are objective grounds for that conclusion: *Siddiqui*, paragraph [30](iii).

(viii) Reasons in straightforward cases will generally be sufficient in setting out the facts to be proved and finding them proved or not; with exceptional cases, while a lengthy judgment is not required, the reasons will need to contain a few sentences dealing with the salient issues: *Southall v. General Medical Council* [2010] EWCA Civ 407, [55]-[56].

(ix) A principal purpose of the Panel's jurisdiction in relation to sanctions is the preservation and maintenance of public confidence in the medical profession so particular force is given to the need to accord special respect to its judgment: *Fatnani and Raschid v. General Medical Council* [2007] EWCA Civ 46, [19], per Laws LJ.

(x) An expert Tribunal is afforded a wide margin of discretion and the court will only interfere where the decision of the Tribunal is wrong: see *R(Fatnani) v General Medical Council* [2007] EWCA Civ 46.”

## **Submissions**

### *The Appellant's submissions*

42. Mr Janner's principal submission was that the Tribunal was misdirected by its legally qualified Chair as to how to approach the evidence concerning Ms A's complaint against her grandfather (the grandfather evidence). Consequently, he said that the Tribunal failed properly to consider or address this evidence, which was a central part of the Appellant's case. Hence, he argued that the Tribunal's findings of fact cannot stand because it did not properly or fairly address the crucial issue of Ms A's credibility, upon which the whole of the case turned.
43. Quite properly, the question of what legal advice the Tribunal should receive was the subject of discussion between the parties, and then between the parties and the Chair. The parties were agreed what direction should be given, as follows (4 April 2019, D4/52):

“Ms Fordham (counsel for the GMC): My learned friend and I have had the opportunity to discuss the use to which the tribunal can put the suggested false allegations that Ms A made against her grandfather.

The Chair: Yes.

Ms Fordham: Of course, the GMC’s position is that it is not a false allegation, simply it was not challenged. The defence position is that it was a false allegation. The question is: to what use can the tribunal put that part of the evidence ? Unfortunately, we don’t have the directions from the judge in the criminal court, from his summing-up. However, it is agreed between my learned friend and I that in order for that part of the evidence to have any relevance to the tribunal’s consideration, the tribunal would first have to find on at least the balance of probabilities that that was a false allegation, an untrue allegation. If the tribunal do not find that it was false or untrue, that it then has no relevance.”

44. The Chair then replied. He made clear he took a different view. His advice was as follows (set out at D4/52-3 and also set out at [21] of the Tribunal’s decision; it appears the Chair had set out his guidance in writing):

“Right. Let me tell you the guidance that I propose to give on that, which I think differs from that, I have to say, and then we can perhaps discuss it.

As part of my advice, I would say the third matter, or the matter on which I need to proffer guidance, is the approach which should be taken to the evidence before the tribunal about historic sexual abuse allegations made by witness A, which came to light during the criminal proceedings already referred to. Those allegations have not been determined by a court, but the tribunal has been provided with evidence about the investigation of them, which led to no further action being taken.

Witness A maintained the truth of the allegations in her evidence, whereas the defence assert they demonstrate a propensity on the part of Witness A to make false allegations.

Rule 34 of the Fitness to Practice Rules provides that:

‘34(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.’

I go on to say, quite correctly, no objection has been taken to the admission of this evidence and it is right for the tribunal to consider it as part of the entirety of the evidence it has heard. However, the tribunal should bear in mind that it does not need to determine the truth or otherwise of the historic allegations. It should simply consider the evidence it has before it about these, alongside all of the other evidence, in determining the issues of fact that it does need to decide.

That concludes the part of the advice that I propose to give about that. That reflects the position set in the criminal case admittedly of *R v Mitchell (Respondent) (Northern Ireland)* [2016] UKSC 55, and is lifted and adapted from paragraph 53”

45. I will return to *R v Mitchell* later.

46. The Tribunal’s approach to the grandfather evidence is set out at [35] and [36] of its decision:

“35. The Tribunal received evidence that Ms A had made allegations of sexual abuse against a close family member which was said to have begun when she was aged 11/12 and which were still on-going when at age 14 she reported the abuse to her dad by way of letter which the tribunal has seen, and the matter was then reported to the police. Ms A was interviewed by the police and no further action was taken against the family member who had denied the allegations. Ms A denied making up the abuse allegations or that she was a fantasist as suggested by Mr Janner. Ms A also categorically denied fabricating the allegations against the appellant.

36. The Tribunal accepts that the allegations were made and that after initial investigation no further official action was taken. However, it did not consider that those bare facts assisted in determining the truth of the current allegations.”

47. In its determination at [70] the Tribunal said this:

“The Tribunal could find no basis for concluding that Ms A was lying about events. As previously outlined the evidence of the historic allegations do not assist in establishing a tendency on her part to make allegations. The Tribunal has found no evidence to support the contention that Ms A is a fantasist. Furthermore, the Tribunal has accepted the evidence of Ms A that she was

unaware about the possibility for a financial aware from the Criminal Injuries Compensation Board when she first made the allegations.”

48. Mr Janner submitted that the advice tendered to the Tribunal was legally erroneous and that it led the Tribunal into error. He said that the grandfather evidence had been admitted on the basis that it was relevant to the issue of whether Ms A had a propensity to lie in relation to sexual allegations and in particular against people in positions of authority. He said that the Tribunal should have been directed that it needed to decide whether, on the balance of probabilities, the allegations Ms A had made against her grandfather were false. If the Tribunal concluded that the allegations were false, then it should have been directed to consider whether that proved she had a propensity to make false allegations. If it concluded she did have such a propensity, then it should have been directed to take this into account when judging the truth or otherwise of her allegations against the Appellant, and that it added weight to the defence contention that she was a fantasist. Mr Janner said that just noting the existence of the evidence missed the point of its potential significance.
49. Mr Janner referred me to the direction which the judge gave to the jury on this topic at the re-trial where the Appellant was acquitted. This was obtained by the Appellant’s legal team after the Tribunal hearing. The direction given by His Honour Judge Lodge at Basildon Crown Court was as follows:

“We know that the complainant [Ms A] has made an allegation some years before against her maternal grandfather. We know from the agreed facts what she said, what others said and that no prosecution arose out of those allegations. The defence say that’s important because it demonstrates she is prone to making false complaints and that impacts on her reliability.

The first issue you must consider is whether the evidence shows that there is a real possibility that this was a deliberate false attempt made by the complainant against her grandfather. If you are sure it was not a deliberate false complaint, the evidence doesn’t help you at all. If you conclude there is a real possibility that it was a deliberate false complaint made against the grandfather, you can consider (*sic*) – you should consider whether that shows that the complainant has a tendency – or propensity – to make such false allegations. If you conclude that she might have such a tendency – or propensity – that is something which you would be entitled to consider when assessing her reliability and credibility. However, it is only part of the evidence. The fact that someone may have made a false complaint in the past does not, and cannot, mean that every complaint they may – might make in the future must be false.”

50. Mr Janner said that a similar direction should have been given to the Tribunal and, because it was not, its findings of fact cannot stand. In summary, Mr Janner said that the mere assertion by the Tribunal that they found the undisputed ‘bare facts’ – namely, that Ms A had made an allegation which did not lead to any official action -

was entirely the wrong approach to this evidence. He said that effectively the Tribunal had brushed aside this important evidence, without dealing with it properly or at all, thereby rendering its findings of fact unsafe, given its probative value, as reflected in the jury's decision to acquit the Appellant on the retrial.

51. Next, Mr Janner submitted that the Tribunal had wrongly concluded without any proper analysis that there were two phases of the assault, described by Ms A as two examinations. In [91] it held: 'As stated in finding paragraphs 3 and 4 proved, the tribunal preferred the evidence of Ms A and believed her account that the appellant did conduct a second examination in the manner described.' He said that, referring back to [3] and [4] of its decision, the Tribunal did not analyse the inherent unlikelihood that there were two phases in the assaults. Specifically, in [70], the Tribunal held that it '... could find no basis for concluding that Ms A was lying about events' and concluded [75] that Ms A's account is the more accurate.' Mr Janner submitted that the failure to properly assess the inherent weakness of Ms A's evidence regarding the two phases provided another ground of appeal in that it was inconceivable that if Ms A was telling the truth about being repeatedly sexually assaulted in phase 1, that she would have simply lied back down again and allow herself to be assaulted again.
52. Mr Janner also made submissions about CCTV footage from cameras in the health centre. He said that in [72] the Tribunal dealt with the CCTV recording, stating that the footage of Ms A and the Appellant leaving the consultation room did not show them coming out together and chatting, which was the defence contention. Mr Janner said that, in fact, the CCTV footage *did* show them coming out at the same time, walking side by side, and talking.

#### *The Respondent's submissions*

53. In response, Ms Hearnden submitted as follows. She pointed out that the Tribunal had been correctly directed that the burden of proof rested on the GMC to the civil standard throughout. She accepted Ms A's allegations were not corroborated, in the sense that there were no other witnesses who could give direct evidence about what happened in the consultation room. The Tribunal had been correctly directed that the Appellant was of good character and that this was relevant to the issues of credibility and propensity. She also said that both counsel had been given the opportunity to comment on the Chair's advice; neither made any further submissions or complaint.
54. She said that the Tribunal had gone through each individual factual allegation in some detail and rehearsed the relevant evidence. Each contested allegation had been found proved, including sexual motivation.
55. Ms Hearnden emphasised that the Tribunal's legally qualified Chair had clearly advised it about its approach to the grandfather evidence. On neither occasion was objection taken by counsel on behalf of the Appellant. She said the advice was correct; the Tribunal had not been required to decide whether, on the balance of probabilities the allegations she made against her grandfather was false. It was not wrong to decline to make a finding about historic abuse allegations. She said that, here, the fact of the allegation was simply part of the factual background. For the Tribunal to have tried to make findings about the historic allegations would have required it conduct a 'mini-trial within a trial', but without the benefit of all of the evidence, eg, from Ms A's

grandfather, other members of the family or other contemporaneous evidence. Moreover, the allegations made by Ms A against her grandfather, 10 years before, were made in a family context, rather than professional context. Whilst the police/CPS did not proceed with the allegations, there had no positive finding that the allegations were false or made up. If the allegations had been made up, there may have been very different reasons for it. There was no evidence of any further allegations in the intervening periods. In the circumstances, Ms Hearnden said it was perfectly proper for the Tribunal to (a) decline to make a finding about the historic allegations and (b) reject the Appellant's suggestion that Ms A had a propensity to lie about sexual assaults or was a fantasist. Further, even if the Tribunal could/should have reached a decision on the balance of probabilities about historic abuse, Ms Hearnden said that it did not follow that the Tribunal would have inevitably concluded that Ms A had a propensity to lie.

56. In any event, Ms Hearnden said that in [70] of its determination the Tribunal had, as a matter of fact, rejected the suggestion that Ms A had lied about her grandfather.
57. In relation to Mr Janner's second submission and the alleged implausibility of Ms A's account, Ms Hearnden's short submission was that the Tribunal heard the evidence and was entitled to come to the conclusion that it did. It was told not to make stereotypical assumptions about the behaviour and demeanour of sexual assault victims.
58. In relation to the CCTV evidence, she said that this was a matter of fact for the Tribunal and its decision was not wrong.
59. Lastly, in relation to good character, Ms Hearnden said that the Appellant had received the benefit of a good character direction on both propensity and credibility and that it is clear from the Tribunal's decision that it had had proper regard to the Appellant's history and reputation.

## **Discussion**

### *Ground 1*

60. The MA 1983 charges the GMC with various functions relating to medical practitioners, including keeping a register of all those who practise medicine in the UK (s 2 and Part IV) and investigating allegations that a registered doctor's fitness to practise is impaired (Part V).
61. As I have explained, from 11 June 2011, the GMC established the Medical Practitioners Tribunal Service (the MPTS) as an adjudication arm. The MPTS arranges and manages panels of the Medical Practitioners Tribunal and Interim Orders Tribunals more or less independently of the GMC, although it does not have a separate legal personality and the GMC funds, and is ultimately responsible for, the service: see generally, *R(Kuzmin) v General Medical Council* [2019] EWHC 2129, [5]-[6].
62. The statutory provisions governing medical disciplinary hearings and the changes which were made to the regime in 2015 following a consultation were considered by Hickinbottom J (as he then was) in *R(British Medical Association) v General Medical Council* [2016] EWHC 1015 (Admin), [5] – [30]. Among the changes made were in



nomenclature: the former Fitness to Practice Panel was renamed the Medical Practitioners Tribunal, and the General Medical Council (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015 (SI 2015/1958) introduced legally qualified Tribunal Chairs alongside the existing provisions for legal assessors. By rule 6, the Chair provides legal advice to the Tribunal:

“Where, at hearing of a Tribunal, a legal assessor has not been appointed under paragraph 7(1B) of Schedule 4 to the Act, and the Chair as a legally qualified person advises the Tribunal on any question of law as to evidence or procedure, the Chair shall

(a) so advise in the presence of every party, or person representing a party, in attendance at the hearing; or

(b) if the advice is tendered after the Tribunal has begun to deliberate on any decision during the course of the proceedings, include the advice so given in the Tribunal decision, unless the Chair considers it necessary to advise in the presence of every party, or person representing a party, in attendance at the hearing”.

63. One of the differences between a legal assessor and a legally qualified Chair is that the former’s role is solely to tender legal advice and s/he does not take part in the Tribunal’s deliberations: *Libman v The Queen* [1971] AC 217, 221. A legally qualified Chair, on the other hand, is a member of the Tribunal.
64. Obviously, common law fairness applies to disciplinary hearings. Article 6(1) of the European Convention on Human Rights also applies to them because they involve the determination of a practitioner’s civil rights and obligations: *Le Compte, Van Leuven and De Meyere v Belgium* (1981) 4 EHRR 1, 48. The requirements imposed by both sources of law are effectively co-extensive. In *R(Kuzmin) v General Medical Council* [2019] EWHC 2129 (Admin), Hickinbottom LJ said:

“[34] Disciplinary tribunals are part of the regulatory scheme which governs the relationship between professional associations and individuals who practise that profession and, as a condition of doing so, sign up to that scheme. In form they may have “charges” in the form of alleged breaches of the regulatory scheme under which the individual operates, which are “prosecuted” by the relevant regulatory authority; and, of course, disciplinary tribunals have the power to impose sanctions for breaches which may have very severe consequences for the individual involved. However, as the courts have repeatedly emphasised, disciplinary proceedings are civil and *not* criminal proceedings (see, e.g., *Wickramsinghe v United Kingdom* (ECHR Commission Case No 31503/96) [1998] EHRLR 338; *R v The Securities and Futures Authority ex parte Fleurose* [2001] EWHC 292 (Admin) and [2001] EWCA Civ 2015; *R (Coke-Wallis) v Institute of Chartered Accountants of England and Wales* [2011] UKSC 1; [2011] 2 WLR 103 at [23] per

Lord Clarke of Stone-cum-Ebony JSC giving the majority judgment of the court; and *R (Panjawani) v Royal Pharmaceutical Society of Great Britain* [2002] EWHC 1127 (Admin) at [54] per Sedley LJ).

....

[38] However, in my view, these authorities do not assist Ms O'Rourke's [counsel for the registrant] cause. Each makes clear, beyond any doubt, that, whilst disciplinary proceedings involve the determination of a practitioner's civil rights and obligations where the practitioner's right to practise is affected, they are not criminal proceedings (see the resumé in *The Regulation of Healthcare Professionals: Law, Principle and Process*: D Gomez: 2nd Edition (2012), at paragraph 19-016, to which we were helpfully referred). It is true that, because they concern important rights and may result in severe consequences for an individual, disciplinary proceedings often demand strong procedural safeguards including some safeguards regarded as essential in criminal proceedings. But that does not mean that disciplinary proceedings are criminal, or even a criminal/civil hybrid as Ms O'Rourke submitted. They are civil proceedings in respect of which procedural fairness sometimes requires particular steps to be taken, including some of those specifically identified in article 6(2) and (3) as vital in criminal proceedings such as the requirement to be properly informed of the nature of the disciplinary charges against him. As the ECtHR put it in *Albert and Le Compte* (also at [30]), in the context of disciplinary proceedings:

'... the principles enshrined in articles 6(2) and (3) are, for the present purposes, already contained in the notion of a fair trial as embodied in article 6(1)'

Those safeguards are demanded by the common law, as well as article 6(1) of the ECHR (see, eg *R (Panjawani) v Royal Pharmaceutical Society of Great Britain* [2002] EWHC 1127 (Admin) at [54] per Sedley LJ; and *R (Banerjee) v General Medical Council* [2015] EWHC 2263 (Admin) at 131 per Walker J). In practice, the scope of common law and article 6 in this area is more or less co-extensive".

65. Appeals may be brought against Tribunal decisions on the basis that the legal advice it received was erroneous: see eg *Yasin v General Medical Council* [2018] EWHC 677, [18] ('Equally it is clear that the court can and will interfere to correct material errors of law and fact ...). In *Libman*, supra, p221, Lord Hailsham said:

"When criticism is made of the legal adviser's account of his advice the question is whether it can fairly be thought to have been of sufficient significance to the result, to invalidate the decision."

66. In the *British Medical Association* case, supra, Hickinbottom J said this at [55] about the role of the legally qualified Chair:

“As such, he is bound to-and can be relied upon to-exercise his judgment to ensure that the hearing, as a whole, is fair and in accordance with article 6. If he fails to ensure that fairness, then the resulting decision may be open to challenge, for example by way of appeal or judicial review.”

67. In *Gopakumar v General Medical Council* [2008] EWCA Civ 309, [33], Tuckey LJ said:

“So unfettered by any criminal analogy, was there anything wrong with the legal assessor’s direction in this case. Was it unfair ? Does it cast doubt on the Panel’s decision ?”

68. Mr Janner’s submission was that because the judge at Basildon Crown Court had directed the jury at the Appellant’s criminal trial in the way that I have indicated, therefore, *ipso facto*, the Chair ought to have directed the Tribunal in the same way. I do not accept that simple proposition. Ms Hearnden was right to submit that although in some contexts directions given to the Tribunal should mirror those which a judge would give to a jury in a criminal trial (eg, in relation to good character: see *Donkin v The Law Society* [2007] EWHC 414, [25] where Maurice Kay LJ said that a Tribunal’s failure in its reasons to attach weight to good character in relation to dishonesty was a ‘significant legal error’), there are *dicta* (eg in *Gopakumar*, supra) warning against drawing too close an analogy with criminal proceedings. I therefore reject Mr Janner’s simple answer to his first ground of appeal. A more nuanced analysis is called for.

69. The question, it seems to me, is whether the Chair’s advice on the grandfather evidence and the Tribunal’s approach to it, judged in their proper context, resulted in unfairness in a way which invalidates its findings of fact that the Appellant sexually touched Ms A without her consent. The fact that the criminal trial judge gave a particular direction on the evidence is not necessarily, of itself, determinative.

70. I take as my starting point the grandfather evidence, and the reasons why it was adduced before the Tribunal. Mr Janner cross-examined Ms A extensively about it. He addressed the Tribunal on it in his closing submissions on 5 April 2019. He began by telling the Tribunal that the grandfather evidence had been significant in the Appellant’s acquittal. He said that the allegations which Ms A made against her grandfather and against the Appellant were similar, because both were against older men in positions of authority. He pointed to the similarity of the nature of the touching that she alleged against both men. He took the Tribunal through parts of his cross-examination of Ms A at the trial, including the part where she alleged that her grandfather had worn a leopard skin thong. He concluded:

“It is my submission, given that evidence, that you are dealing with a track record for making a fantasy allegation of a sexual nature against an older man in a position of authority.”

71. It is therefore clear that the reason Mr Janner adduced the grandfather evidence was so that he could advance the argument that Ms A was a fantasist. Another way of putting the point is that Mr Janner was alleging that Ms A had a propensity for making false allegations against older men in a position of authority.
72. In criminal trials evidence of false complaints may be admissible under s 100 of the Criminal Justice Act 2003, which governs the admission of bad character evidence of a non-defendant. This provides that the bad character of a non-defendant is admissible (*inter alia*) if and only if it has substantial probative value in relation to a matter which is a matter in issue in the proceedings, and is of substantial importance in the context of the case as a whole. Earlier false complaints by a complainant may be evidence of bad character for these purposes, the matter in issue in such cases being the complainant's credibility: *R v S* [2009] EWCA Crim 2457, [40] - [55].
73. The Crown Court Compendium suggests the following directions to the jury in relation to s 100 at [12-28]. It says the judge should: (a) identify the evidence of bad character; (b) identify the issue/s to which the evidence is potentially relevant; (c) direct the jury that it is for them to decide the extent to which, if any, the evidence of bad character of the non-defendant assists them in resolving the potential issue/s; (d) depending on the nature and extent of the convictions or other evidence of bad character, there may need to be a direction as to the effect on the credibility of the person if he/she was a witness.
74. Although the proceedings against the Appellant were civil and not criminal proceedings, these provisions illustrate the broad conceptual framework under which the grandfather evidence was admitted. It was admitted because it was relevant to the question of whether Ms A had a propensity to be untruthful, as Mr Janner submitted. The crucial question for me is whether the Chair's direction properly and fairly directed the Tribunal about how to approach this vital issue.
75. I do not consider that the direction which the Chair gave the Tribunal gave proper assistance to it on this issue, or that it was well-founded as a matter of law. I am therefore satisfied that the Appellant's first ground of appeal is sound and that the Tribunal was misdirected about how it should approach the grandfather evidence. I am also satisfied that the Tribunal's reasons show a similar error of law, such that its findings of fact cannot stand.
76. In my judgment it was not sufficient for the Chair merely to direct the Tribunal that it was 'right' for the Tribunal to consider the grandfather evidence as part of 'the entirety' of the evidence it had heard. That was, in the circumstances, an essentially meaningless direction, as was the Chair's direction that the Tribunal 'should simply consider the evidence it has before it about these, alongside all of the other evidence, in determining the issues of fact that it does need to decide'. These directions did not assist the Tribunal on the issue to which the evidence was relevant, namely, Ms A's credibility. Contrary to the directions which the Chair gave, the Tribunal *did* need to try and determine the truth or otherwise of the historic allegations, because then – and only then – would it have been in a position properly and fairly to have considered the central contention on behalf of the Appellant that Ms A had a propensity for making false allegations against men in positions of authority.

77. That was not an impossible task. It would have been open to the Tribunal to consider the grandfather evidence and Ms A's evidence and for it to have decided whether it could be sure she was telling the truth. True it is that the Tribunal had not heard, for example, from Ms A's grandfather. But evidential incompleteness is a common feature of bad character evidence in criminal trials. Often, such evidence involves allegations which are not as fully developed in evidence as they would have been had they been themselves the subject of a trial. But that is no impediment to a fact-finder attempting to resolve a contested issue. Had the Tribunal been so directed, for example, it might have concluded that Ms A's evidence about the leopard-skin thong was so outlandish as not to be credible even in the absence of any evidence from the grandfather. It would have been correct for the Chair to have directed the Tribunal that in the event that they were unable to resolve the issue of whether Ms A was telling the truth then the issue went no further; but what he should not have done was to absolve them from even trying.
78. I return to the case of *R v Mitchell*, supra. The Chair regarded his advice as consistent with it and, in particular, with [53] of Lord Kerr's judgment. The defendant, Ms Mitchell, admitted that she had killed her ex-partner by stabbing him with a knife but claimed that she had acted in self-defence. At her trial for murder the prosecution, pursuant to articles 6(1)(d) and 8 of the Criminal Justice (Evidence) (Northern Ireland) Order 2004, adduced disputed evidence of other incidents in which the defendant was said to have attacked or threatened to attack a person with a knife but which had not been the subject of any criminal convictions. The prosecution relied on that evidence to show that the defendant had a propensity to use knives in circumstances where she had been neither provoked nor was acting in self-defence. The defendant was convicted of murder but the Court of Appeal allowed her appeal on the ground that the judge ought to have directed the jury that, before they could take the disputed bad character evidence into account, they had to be sure of its truth. The Crown appealed, challenging the Court of Appeal's ruling that the non-conviction bad character evidence had to be proved beyond a reasonable doubt if it were to be considered by the jury on the issue of propensity.
79. The Supreme Court dismissed the appeal. It held that the proper issue for the jury was whether they were sure that the propensity had been proved beyond a reasonable doubt. It said that when a sole incident was relied on as showing propensity the facts of that incident had to be proved to the criminal standard but that, where there were several incidents relied on for that purpose, the jury did not have to be convinced of the truth and accuracy of all aspects of each of the alleged incidents, and the facts of each individual incident did not have to be considered in isolation from the others. The Court said that, in such circumstances, the evidence about propensity should be considered cumulatively rather than each incident being regarded separately. It added that propensity was at most an incidental issue in a trial which could not alone establish guilt, and it should be made clear to the jury that the most important evidence was that which bore directly on the guilt or innocence of the defendant. It concluded that the trial judge had failed to give adequate directions as to how the question of propensity should be approached by the jury, and so the defendant's conviction was unsafe and had been properly quashed.
80. At [53] Lord Kerr said this:

“*R v O’Dowd* [2009] 2 Cr App R 16 nevertheless illustrates an important consideration which must be borne in mind by trial judges when determining applications to adduce evidence of propensity under articles 6(1)(d) and 8(1)(a). The jury is not asked to return a verdict on any previous allegations relied upon, and indeed should be reminded that the defendant is not on trial for them. It should be told to focus on the indicted offence(s). Reliance on cumulative past incidents in support of a case of propensity may indeed illuminate the truth of the currently indicted allegations, but excessive recourse to such history may skew the trial in a way which distracts attention from the central issue. Article 6(3) requires the judge to consider actively whether the effect of admitting the bad character evidence will have such an adverse effect on the fairness of the trial that it ought to be excluded. That species of adverse effect can arise through the sheer weight of disputed evidence on other uncharged allegations. And that can happen even though the jury will in due course be directed to consider propensity cumulatively, if the volume of evidence received is sufficiently strong to support a conviction. It is a truism that satellite litigation is often inimical to efficient trial.”

81. Lord Kerr had discussed *R v O’Dowd* in his judgment at [47]-[52]. That was a case where the trial of a single defendant on charges relating to one victim had lasted six and a half months. He had been convicted of falsely imprisoning, raping, sexually assaulting and poisoning a woman. The Court of Appeal stated that a major reason for the length of the trial was the introduction of bad character evidence. This concerned three allegations of rape, two of which related to events that had occurred 22 and 17 years before the indicted charges. The first of the allegations resulted in an acquittal, the second in a conviction and the third was stayed on the ground of abuse of process. The Court of Appeal allowed the appeal because, in effect, the trial was lengthened by a considerable period because of the perceived need to conduct what were in effect three mini-trials. The Court of Appeal considered that the fairness of the proceedings had been irredeemably compromised and the convictions were quashed.
82. In my judgment *R v Mitchell* does not support the Chair’s advice to the Tribunal which was, as I have said, to the effect it need not decide whether the grandfather evidence showed Ms A to have a propensity to be untruthful. Paragraph 53 was merely a warning against the dangers of *excessive* reliance on bad character evidence to support indicted allegations. It is not authority for the proposition that a fact-finder need not determine whether such allegations support a finding of propensity.
83. Ms Hearnden submitted that even if the Tribunal had been given a direction that it was required to make a finding upon the historic allegation, it would have made no difference to the outcome. In other words, she submitted that the Chair’s misdirection was a harmless error. She realistically accepted, however, that the threshold for a ‘no difference’ outcome is a high one which is not readily satisfied: *R (Smith) v North Eastern Derbyshire Primary Care Trust* [2006] 1 WLR 3315, 3321.

84. I disagree. This was a case of one person's word against another. The Appellant had been acquitted by a jury (albeit, I recognise, on a different standard of proof). Ms A's credibility lay at the heart of the Appellant's case and was emphasised by Mr Janner. I am unable to say that the Chair's misdirection on this core issue made no difference.
85. So far as Ms Hearnden's reliance on [70] of the Tribunal's fact-finding determination is concerned, I understand the submission that this paragraph can be read as the Tribunal having in fact not found that the grandfather evidence was untrue, despite the advice it had received. However, for the reasons I have explained, the Tribunal was materially misdirected on this important issue. I am therefore unable to be certain that the Tribunal properly considered the grandfather evidence in the way that it ought to have done, namely by considering whether it established a propensity on the part of Ms A to make false allegations.
86. For these reasons, Ground 1 succeeds. I therefore need not consider the other grounds advanced by Mr Janner.

### **Disposal**

87. After I had circulated this judgment in draft the parties made submissions on whether I could make an order allowing the appeal, whilst preserving the Tribunal's findings in relation to the allegations that it had found not proven. Mr Janner submitted that I could quash the Tribunal's findings of fact, save for these allegations. Ms Hearnden submitted otherwise.
88. I do not consider that I have the power to make the order contended for by Mr Janner. My powers are the statutory powers contained in s 40(7) of the MA 1983. The appeal is one against a direction for erasure pursuant to s 35D (see s 40(1)). It is not an appeal against findings of fact, as such. Section 40(7) provides that I can either dismiss the appeal; allow the appeal and quash the direction or variation appealed against; substitute for the direction or variation appealed against any other direction or variation which could have been given or made by the Tribunal; or remit the case to the MPTS for them to arrange for a Tribunal to dispose of the case in accordance with the directions of the court.
89. In light of these provisions, the order I make is simply that the appeal is allowed and that the Tribunal's direction that the Appellant's name be erased from the medical register be quashed. What happens thereafter is a matter for the GMC and the Tribunal, should fresh proceedings be initiated.