Neutral Citation Number: [2022] EWHC 2743 (Admin)

Case No: CO/611/2022

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

Tuesday 1st November 2022

Before:
MR JUSTICE FORDHAM

- -

Between:

Appellant

DR HAKEEM OLUKOREDE LATEEF

- and -

Respondent

GENERAL MEDICAL COUNCIL

- -
- -

Mansoor Fazli (instructed by Gulbenkian Andonian Solicitors) for the **Appellant**
Peter Mant (instructed by GMC Legal) for the **Respondent**

- -

Hearing date: 26.10.22

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. Pursuant to section 40 of the Medical 1983, Dr Lateef appeals against the decision of the Medical Practitioners Tribunal dated 18 January 2022, by which the Tribunal ordered his erasure from the register of medical practitioners. Pursuant to CPR 52.21(3), Dr Lateef contends that the Tribunal's decision was wrong and/or unjust by reason of serious procedural or other irregularity. There are nine grounds of appeal advanced on Dr Lateef's behalf by Mr Fazli (who did not appear at the hearing before the Tribunal). There is also a late attempt to rely on a tenth ground, and to adduce putative fresh evidence. I have considered everything to see whether there is anything in it. When I come to address the various topics in this judgment I am going to focus on what – as I saw it – was the real essence of the arguments, at their height, being advanced by Mr Fazli.

2. The background to the case is this. A previous decision by the Tribunal on 8 March 2018 had directed that Dr Lateef's registration be suspended for six months. That decision arose out of findings in conjunction with a road traffic collision, culminating in a conviction of Dr Lateef of dangerous driving, the Tribunal findings being that Dr Lateef had made false representations (a) to the General Medical Council and others to the effect that nobody had been injured in the accident and (b) to the Magistrates' Court that he had been unemployed at the time. It was in those circumstances that Dr Lateef was not working as a clinician in April 2018.

3. It was what happened in April 2018 which was at the heart of the Tribunal decision, against which Dr Lateef now appeals. The Tribunal found that, having paid a third party Mr Segun Popoola (described in the proceedings, and below, as "Mr A") to update his CV with a view to obtaining employment in the area of financial control (anti-money laundering), the updated CV which Mr A provided – to Dr Lateef's knowledge – contained a fabricated career history in financial control; and it was in those circumstances that Dr Lateef knowingly submitted the false updated CV to an employment agency (Emponics). The Tribunal found that in doing this, Dr Lateef acted dishonestly. That was the heart of the case. The documentary evidence undeniably demonstrated that at 13:11 on 19 April 2018 a job-seeking email was sent to Emponics from Dr Lateef's email address. At 20:13 on 19 April 2018, Emponics replied, pointing out that Dr Lateef had not included his CV. The response on the following day 20 April 2018 at 17:09 attached the bogus CV and a personal overview with content based on the bogus CV.

4. Dr Lateef's defence was that he had not submitted the false updated CV. He said he had not communicated with the employment agency. He had attended a one-day course on regulatory compliance, run by Mr A, on 14 April 2018. For that course, he had paid Mr A £400. He had then paid Mr A a further sum of £100. This was indeed in return for Mr A improving Dr Lateef's CV, with a view to trying to secure employment in financial control. Dr Lateef sent his medical CV to Mr A by email on 15 April 2018. On 19 April 2018 Dr Lateef paid the £100 to Mr A. What happened next was that a false CV had been provided to Dr Lateef by Mr A. He had received it and seen it. He had realised its contents were false. He never made use of it. Someone else must have submitted it to the employment agency, without his knowledge.

5. Dr Lateef became the subject of police interest and proceedings before the Tribunal. At his police interview on 8 May 2019 Dr Lateef said that he had received the CV by email from Mr A; that he had understood that Mr A had only been going to improve his medical CV by "rejigging" its content; that he had received the improved CV, had seen that its contents were false, and had been "shocked"; that he had asked Mr A "why" a false CV had been provided; that he had "binned" the false CV; that he never sent the false CV to Emponics; that he never wrote or sent the false personal overview; that he had never heard of Emponics. Asked if he could account for the emails from his account he said his email address must have been "hacked"; that another person had sent the false CV to Emponics from it; that he recalled needing to change his email passcode because of "hacking"; and that the hacking had manifested itself by the appearance of "spam" emails. Essentially the same position was taken by Dr Lateef in the 14 September 2020 formal (rule 7) response in the disciplinary proceedings which culminated in the hearing before the Tribunal.

6. By a witness statement in the Tribunal proceedings dated 10 September 2021 – which was then followed by a supplementary witness statement dated 20 December 2021 – a new explanation emerged. He had paid Mr A the £100 to update the CV; he had received and seen the false content and had protested with Mr A, around a week after receiving the CV; he had not sent the false CV to Emponics, nor provided the false personal overview information. Dr Lateef said he now knew what had happened. He had in April 2021 had a telephone conversation with his late wife's spiritual adviser: Mr Olayinka. He had learned from that conversation that his late wife, unknown to him, and at a time when she was suffering with the cancer from which she died in October 2018, had accessed his email address, had accessed the false CV, and had sent the communications with Emponics, including the false CV. In support of this explanation, Dr Lateef and his legal representatives adduced, in the Tribunal proceedings, a witness statement dated 5 August 2021 from Mr Olayinka. In it, Mr Olayinka described having made a telephone call in April 2021 to Dr Lateef. In the course of that conversation, he had been describing how deeply Dr Lateef had been loved by his late wife. He had given examples. One of those examples was that she had used a false CV to make a job application on Dr Lateef's behalf, without Dr Lateef's knowledge, which action she had revealed to Mr Olayinka in May or June 2018. After Mr Olayinka had said this, Dr Lateef then told Mr Olayinka about court proceedings in England in which Dr Lateef was being said to have made a false claim seeking employment.

7. The case was duly scheduled to come on for hearing before the Tribunal. Dr Lateef and his legal representatives communicated with the Tribunal about the arrangements they were making so that Mr Olayinka would be able to give live evidence, by a video link, from Nigeria. At the hearing before the Tribunal, evidence was adduced on behalf of Dr Lateef. It included the written and oral evidence of Dr Lateef himself. It also included the written and oral evidence of Mr Olayinka, by video link from Nigeria. The advocate acting for the GMC (Mr Simkin) cross-examined both of these key witnesses. I have read the transcripts. In his own oral evidence and under cross-examination, Dr Lateef maintained the following: that he had sent his medical CV to Mr A, for the purposes of having its contents "rearranged", to help him seek employment in financial control; that he had received the bogus CV by email from Mr A; that (as the police had discovered) he had saved a copy of the bogus CV on his computer; that he had done this so that it could be evidence if it were needed. Dr Lateef said it was not he, but his late wife behind his back and without his knowledge, who had done the following: she

had identified Emponics as a potential source of employment in financial control; she had gone onto his email account (she knew his passcode) and found the false CV; she had sent the initial email to Emponics on 19 April 2018 at 13:11; she had seen the 20:13 email reply from Emponics; she had sent the false CV by email on 20 April at 17:09, in support of a job application to Emponics; she had also filled out the personal overview, using false information from the false CV. One point elicited from this oral evidence and cross-examination, was this. Dr Lateef told the Tribunal that 19 April 2018 was the day on which his late wife had returned home from a period in hospital, and that – given the state of her health – there had been no discussion between the two of them on that day on anything to do with work, the training course he had attended, or the new CV.

8. The video-link oral evidence and cross-examination of Mr Olayinka was problematic. Internet problems at the Nigeria end meant there was delay and time was taken to set up alternative arrangements. Dr Lateef's advocate (Ms Ingham) asked Mr Olayinka to confirm the truth of his witness statement, and it became clear that Mr Olayinka did not have that document to hand. The Tribunal was invited by Mr Simkin to adjourn for a period, to allow the statement to be emailed to Mr Olayinka and read through by him. The Tribunal took that course. As will be seen below, during the cross-examination, Mr Olayinka said that – prior to the April 2021 conversation – he had spoken to Dr Lateef on many occasions during 2018, 2019, 2020 and 2021. During the cross-examination, Mr Olayinka also described the April 2021 conversation to Dr Lateef. He said what happened in that call was this. Dr Lateef told Mr Olayinka about court proceedings in England in which Dr Lateef was being said to have made a false claim seeking employment. Mr Olayinka then told Dr Lateef about the revelation which Dr Lateef's late wife had made to Mr Olayinka in May or June 2018, about her using the false CV to apply for employment on her husband's back and without his knowledge. The exchanges between Mr Simkin and Mr Olayinka were not smooth and on various occasions Mr Olayinka was challenged by Mr Simkins for avoiding answering questions straightforwardly.

9. That was the context and setting in which the Tribunal found that it had been Dr Lateef, and not his late wife, who had sent the false CV and the false personal overview to Emponics on 20 April 2018. The Tribunal gave reasons why it rejected the evidence of Dr Lateef, and why it rejected the evidence of Mr Olayinka. The following section of this judgment summarises the Tribunal's Determination. It is based on Mr Mant's skeleton argument. Mr Fazli rightly accepted that it was a fair and accurate summary.

The Tribunal's Determination

10. In determining the facts, the Tribunal found it "far more likely" that Dr Lateef sent the updated CV to Emponics. The Tribunal rejected the suggestion that the email to Emponics had been sent by Dr Lateef's late wife, or that Dr Lateef's computer was hacked. Its main reasons for reaching these conclusions can be summarised as follows: (1) On Dr Lateef's own evidence, his wife returned from hospital on the day the updated CV was received, and he felt he could not inform her about it then. If Dr Lateef did confide in his wife, as he claimed to have done, it must have been on a date after the first email was sent. (2) In any event, it is inconceivable that the wife would have acted in the way suggested. It would have required her, on the same day, to (i) decide to deceive her husband, (ii) identify a recruitment agency to which the CV could be sent, (iii) gain access to his email account, (iv) recover the CV and enter into email

correspondence with Emponics from that account, and (v) complete the overview document. All this would have needed to be done without Dr Lateef's knowledge and in the hope and expectation that, if offered an interview or a job, she could persuade him to enter into fraudulently obtained employment. There was no evidence to suggest that the wife was by nature a dishonest or deceitful person. (3) If the wife was responsible for submitting the update CV and overview document, it would not explain how a slightly different version of the overview document was on Mr A's computer storage area. (4) Mr Olayinka's oral evidence was "vague, lacking in detail, and in a number of respects inconsistent with his statement". The Tribunal referred, in particular, to (i) Mr Olayinka's evidence that he could not remember the wife telling him that she had done a dishonest thing, and (ii) his explanation as to why he only informed Dr Lateef about these matters in April 2021. (5) The Tribunal "struggled to understand" from Dr Lateef and Mr O's evidence how it was that the revelation about Dr Lateef's wife had only come to light three years after the event, when Dr Lateef and Mr O had been in regular communication. (6) Dr Lateef's account regarding his dealings with Mr A in April 2018, and subsequently, lacked credibility. Dr Lateef said that he believed Mr A had acted fraudulently, but he did not challenge Mr A or report any concerns because he was worried that Mr A might be a violent man. The Tribunal noted that there was no evidence that Mr A had threatened Dr Lateef or done anything to make Dr Lateef think he would be violent, and Dr Lateef remained in touch with Mr A for many months after receiving the updated CV. (7) The updated CV was submitted from Dr Lateef's email address. Correspondence from Emponics would have been sent to Dr Lateef's email account and it is unlikely that he would not have seen incoming emails. (8) The email which Dr Lateef admitted sending on 15 April 2018 included a request for help with referees. The Tribunal did not understand how Mr A would have been able to assist with referees when he and those he worked with knew nothing about Dr Lateef beyond what was contained in the original CV. Having found that Dr Lateef knowingly submitted a CV to Emponics that included false information, the Tribunal said it was "self-evident" that the Registrant's conduct was dishonest by the standards of ordinary decent people.

11. In determining misconduct, the Tribunal had regard to Dr Lateef's difficult personal circumstances. However, it also noted that (i) Dr Lateef had made false representations for personal gain, and to this extent his actions amounted to fraud; (ii) from the date the request for an edited CV was submitted, he embarked on a dishonest course of conduct; and (iii) he was fully aware of the consequences of committing dishonesty having recently been suspended for other acts of dishonesty. Overall, the Tribunal concluded that Dr Lateef's conduct fell so far short of expected standards as to amount to serious misconduct. As to impairment, the Tribunal considered whether Dr Lateef had demonstrated any insight, taking into account his maintenance of a "false position" as well as other documents and evidence, including his witness statement, reflections and appraisal. It concluded that the reflections did not demonstrate any real insight into the gravity of the facts found proved or the gravity of the 2018 findings. In the absence of insight or meaningful remediation the Tribunal stated that there must inevitably be a risk of repetition. Further, and in any event, the Tribunal held that Dr Lateef's conduct brought the medical profession into disrepute and that the dishonesty breached a fundamental tenet of the profession. The Tribunal accepted that Dr Lateef's conduct had not put patient safety at risk, but found that it had undermined public confidence and failed to uphold standards. On this basis, the Tribunal concluded that Dr Lateef's fitness to practise was impaired. At the sanction stage the Tribunal determined that

suspension or any lesser sanction would not be sufficient to maintain public confidence or uphold proper standards. The Tribunal noted that four factors identified in the Sanctions Guidance as indicating that erasure may be appropriate were present in this case. These were: (1) a particularly serious departure from the principles set out in Good Medical Practice where the behaviour is fundamentally incompatible with being a doctor; (2) a deliberate or reckless disregard for the principles set out in Good Medical Practice and/or patient safety; (3) dishonesty, especially where persistent and/or covered up; (4) persistent lack of insight into the seriousness of their actions or the consequences. The Tribunal then went on to address the question of whether the conduct was fundamentally incompatible with continued registration. The Tribunal concluded that, in isolation, the most recent misconduct might not be so. However, Dr Lateef was serving a period of suspension for dishonesty at the time of the most recent misconduct, and his persistent dishonesty was fundamentally incompatible with being a doctor. The Tribunal also noted – as a "further" point – that Dr Lateef had shown a persistent lack of insight into the seriousness of his actions and their potential consequences.

New Matters

12. A new ground (ground ten) emerged two days before the appeal hearing. What happened was this. A draft index of authorities was provided on Friday. Then on Monday morning a further index of authorities was produced. Mr Mant for the GMC pointed out that many new authorities had been added, without agreement or explanation. I said I wanted from Dr Lateef a document identifying all new authorities, the reason they were being cited and the point which they were being said to support. The Further Submissions document (24 October 2022) referred to "two preliminary issues" which Dr Lateef was going to invite the Court to consider. Putative fresh evidence also emerged alongside the Further Submissions document. This is the first of the preliminary issues identified. What was produced was a further written statement from Mr Olayinka. It is dated 20 October 2022. I decided at the hearing to listen to what both sides had to say about the new matters, so that I would be able to determine all issues relating to those matters in my judgment. Nobody disagreed with this course. It enabled the hearing to run smoothly and the Court to look at the points in the round.

The issues relating to Mr Olayinka's evidence

13. Grounds one and two, new ground ten, and the 'putative fresh evidence' all relate directly to the evidence of Mr Olayinka. I will address them in this part of the judgment. Ground one is that there was procedural unfairness, through the Tribunal's failure to secure an interpreter for Mr Olayinka or to decide to adjourn the hearing given the difficulties which arose – as to language and video link – in eliciting evidence from Mr Olayinka. Mr Fazli points out that the Tribunal said this in its determination.

> ***The Tribunal considered the written and oral evidence of Mr Olayinka. It acknowledged that he was giving evidence over a video link within Nigeria, that the sound quality was not ideal, and it was apparent to the Tribunal that English was not his first language. However, having given due allowances for these facts, it found that his evidence was vague, lacking in any meaningful detail and was in a number of respects inconsistent with his written statement.***

Mr Fazli emphasises that Mr Olayinka was a key witness, and the Tribunal did not believe his evidence. He says it was not enough to acknowledge the "shortcomings" of the video link and the fact that English was not Mr Olayinka's first language. He says

that it was "wrong" and/or "unjust" for the Tribunal not to adjourn, to allow an interpreter, and to secure an improved video link. He emphasises that credibility was in issue. He says that "due allowances" were referenced but not identified. He submits that there is (see Gholizadeh v Sarfraz [2021] EWHC 2814 (Ch) at §24) a recognised "general principle" that "it is important that witnesses should be able to give evidence through an interpreter if English is not their first language". He maintains that adjournment would not have necessitated a differently constituted tribunal starting again, notwithstanding the observations in A (Ethiopia) [2003] UKIAT 00103 at §10(1).

14. Mr Fazli took me through multiple references in the transcript. In my judgment, his strongest points were those aspects which I have underlined for emphasis, in this section of the cross-examination and re-examination. I set out the whole passage, so that the underlined text can be seen in the overall context in which it appears, and because I will need to return to a point which is made in the putative fresh evidence. Here is the section from Mr Olayinka's oral evidence:

> ***Q … [Dr Lateef's wife] died in 2018.***
> ***A Yes.***
> ***Q In October of 2018. Did you speak to Dr Lateef after his wife had died?***
> ***A Yes, of course; yes.***
> ***Q Did you speak to him in 2018?***
> ***A No.***
> ***Q No. Did you speak to him in 2019?***
> ***A Let me just say this: when he was ---***
> ***Q No, I want you to answer the question I have asked you. Did you speak to Dr Lateef in 2019?***
> ***A Yes. That is what I want to tell you.***
> ***Q It is very difficult. If you don't listen to me and answer my questions because it is very difficult over the link, so you should only answer my questions. I will give you a chance but you should answer the questions I have asked you.***
> ***A You did not let me say, but carry on.***
> ***Q So you didn't speak to him in 2018, but you did speak to him in 2019; is that correct?***
> ***A No, it isn't correct.***
> ***Q Tell us what is correct.***
> ***A I speak to him in 2018 for losing his wife; yes, I did that.***
> ***Q 2019, did you speak to him in 2019?***
> ***A Yes, I speak to him.***
> ***Q Why? A In 2019? I am asking him about all he is doing by then. How is he going on. I didn't know him well (inaudible). That is what I am asking him. I speak with him because he knew I am praying for his wife.***
> ***Q Okay. How many times do you think you spoke to him in 2019?***
> ***A I have no idea about that.***
> ***Q Just give us an estimate, not a precise number. More than 1000, less than ten? Help us.***
> ***A I don't remember. Maybe if I could look, five or four times.***
> ***Q So four or five times in 2019. What about 2020; how many times did you speak to Dr Lateef in 2020?***
> ***A I don't know in '20 but I do know that time we spoke in '19 when the virus is arising, I speak to him because I was asking him about the protection for the Covid-19 and all like that.***
> ***Q So you spoke to him about the virus in 2020.***
> ***A Yes.***
> ***Q How many times do you think you spoke to him in 2020?***
> ***A Many, but I can't remember.***
> ***Q More than 100, less than ten; how many roughly? Once a month, once a week?***
> ***A I cannot ---***
> ***Q You can; you can try and help us, how many times do you think you spoke to Dr Lateef during 2020?***

A You know this thing you are asking me I don't keep a record for all this kind of thing; but all that I know I spoke with him many times in that 2020.
Q Many times. That is the best you can do. So 2021, up to April 2021 had you spoken to Dr Lateef before April in 2021? Do you understand my question?
A In 2021 I think.
Q Listen to my question: did you speak to him in 2021 before April?
A Before what? Again, please.
Q Before the telephone call in April 2021 were there any other telephone calls before then in 2021?
A Yes. Yes, I speak with him.
Q How many?
A It is many.
Q How many? Give us a number, roughly how many?
A I cannot remember but I know we speak in that 2021.
Q Did you speak to him every day, every week, every month? Help us, how many times did you speak to him?
A It was like three times in the month; sometimes once in the month; sometimes two times in the month. Sometimes we didn't talk for like two months.
Q So about ten times in 2021?
A Yes.
Q Let us look at this. You spoke to him after his wife died in 2018.
A Yes.
Q You spoke to him about four or five times in 2019, so that is at least five times. You spoke to him many times in 2020 – shall we say 20 times?
A I know it is about 15.
Q So you have spoken to him ten times in 2021 so you have had at least 30 telephone calls with him between his wife dying and April 2021. Is that fair and correct?
A Yes, it is. I cannot give specific times I called him.
Q You can't specific detail, can you, because you aren't telling the truth.
A No, I have everything in my head; I have my own jobs to do and I have my work to do.
Q What made you tell him about his wife confessing to applying for this job?
A Eh?
Q Given that you had already spoken to him 30 times or thereabouts before. What made you mention it this time?
A I cannot understand you; explain me again.
Q What made you mention his wife applying for this job in 2021? What made you say it in that phone call? It is a really easy question: why did you say it in that phone call?
A Eh? I cannot remember.
Q I know you can hear me. I know you can hear me.
A I can hear you but I ---
Q People are always able to hear me. Why did you tell him about his wife applying for a job in that phone call in April 2021?
A Okay. He called me and told me that he's got no work going on; that they charged him to court for one CV they used in an application to find a job, this and that, and he told me so, and when he told me so I now remember back that his late wife told me one time before that that she want to apply for a job for him. That is why I now tell him back that this is one (inaudible) that she was applying for the job.
Q So the reason then – is this right – that you mentioned it is because Dr Lateef raised it with you?
A Yes, yes.
Q So you were aware, weren't you, that he was facing charges that related to the application which he said was made by his wife; and have you made up this story to help him, is that what you have done?
A Yes.
Q I don't think you really understood my question. Are you lying to this tribunal to try and get Dr Lateef out of trouble; is that what you are doing?
A No, no, no, no, no.
Q No, no, no, no.
A Yes.
Q Is my question funny?

> ***A That is funny. (Witness laughed)***
> ***Q Is it?***
> ***A Because you don't know me. (Inaudible) that I have got. (Inaudible) I am in the mosque and apart from the mosque (inaudible) court, and I know anything I say today, hereafter everybody (inaudible). I am not defending him for the (inaudible).***
> ***Q So the first time you were ever asked or ever knew about this was three years after the conversation with Dr Lateef's deceased wife; is that right? A What did you say?***
> ***Q You never recalled it, you were never asked about it until three years after the conversation. A Conversation? Now I cannot understand you.***
> ***Q If you listen carefully. Listen. The conversation you said was with Dr Lateef's wife in 2018. A Yes.***
> ***Q But you weren't asked about that conversation until April 2021 – years later. It was a trivial conversation, wasn't it, with Dr Lateef's wife, if it took place. How are you able to remember the detail of a brief conversation three years after it took place?***
> ***A You know in my home (inaudible). I do write something down officially (inaudible). So on signing this, what you are asking me, I am telling you the truth of the matter. The conversation with his dead wife, all what I know is I remember and I know that the wife told me "I am going to apply for a job" for her husband and all that is all what I know and I remember it very well. (Inaudible). She knows; she told me so. That is what I know.***
> ***MR SIMKIN: Sir, with particularity, given the link, I don't think there is any real virtue from further cross-examination; so I don't seek to ask this witness any further questions. Thank you.***
> ***THE CHAIR: Yes, thank you Mr Simkin. Ms Ingham, do you have any questions in re-examination?***
> ***MS INGHAM: Just one question.***
> ***Re-examined by MS INGHAM***
> ***MS INGHAM: Mr Olayinka, can you hear me?***
> ***A Yes, I hear you.***
> ***Q Did [Dr Lateef's late wife] tell you to keep the information to yourself or did she say anything else?***
> ***A I do not understand.***
> ***Q Did she ask you to keep what she told you about applying for the job a secret or did she not say that?***
> ***A No, she did not tell me that; she did not tell me any secret. She just asked me for prayer and she told me she is going to apply for a job for her husband.***

15. In my judgment, there was nothing here – or in the transcript as a whole – which makes the Tribunal's determination wrong or unjust on the basis of a serious procedural or other irregularity, based on the Tribunal's failure to insist on an interpreter or adjourn to allow that or an improved link. There was a video link, and there were difficulties. The Tribunal appreciated that English was not Mr Olayinka's first language. It made "allowances", which meant that it took account of these features regarding the link and language in assessing the evidence. There was no procedural unfairness. Mr Olayinka was the witness called for Dr Lateef. Mr Olayinka had given a witness statement in English, not with a certified translation. Dr Lateef's legal representatives had made and confirmed the arrangements, including the link. There were various steps taken, in securing a suitable signal and means to be able to receive the oral evidence by video link of Mr Olayinka. But those attempts were successful, as the transcript reflects. There was no suggestion, at any stage, of any difficulty in language. There had been no suggestion of making arrangements for an interpreter. The cross-examination by video link was difficult in light of the use of the video link but also in light of the way in which Mr Olayinka presented and responded to the questions that he was asked. Ultimately, the cross examination by the GMC was concluded. The transcript indicates that it would have gone on longer, but for the shortcomings of the video link and Mr Olayinka's presentation, responses and responsiveness. But there was no unfairness to Dr Lateef in any of that. Dr Lateef had no entitlement to any particular length of cross-

examination of his witness. Re-examination was available. The Tribunal was careful and conspicuously fair. The Tribunal had earlier in the day adjourned, to allow time for Mr Olayinka to receive his written statement and read it through. That was important, in fairness, because it was being put forward as his evidence and he was going to be cross-examined. Very sensibly, time was taken by the Tribunal to ensure that the statement was re-emailed to Mr Olayinka (in English) and that he had, took, and confirmed that he had taken, the opportunity to read it fully before the cross examination got underway. At no stage did the legal representatives acting for Dr Lateef say or indicate that Mr Olayinka was having a language difficulty, still less ask for an interpreter; nor ask for an adjournment.

16. I turn to the putative fresh evidence. The Further Submissions said this:

> ***The Appellant respectfully wishes to submit a certified translation of a sworn witness statement that was drafted in Yoruba by Mr Suliman Olayinka, who was the A's main witness at the hearing before the Tribunal. This statement relates to the difficulties he states he experienced at the hearing on account of his English language difficulties and the poor connection. This issue of interpretation relates to the first ground of appeal, which is pleaded in detail. This statement supports the first ground of appeal and it is to assist the Court in evidencing the complaint raised therein and which is also supported by the transcript. It is respectfully submitted that there would be no prejudice to the Respondent if this statement was admitted and it only relates to the witness's account of his struggles with the language during the course of the hearing. His concerns were clearer after he was provided with the Tribunal's decision and the transcript.***

In my judgment, this evidence has come far too late: 8 months after the notice of appeal, after the skeleton arguments, with the hearing imminent, and without being foreshadowed. There is no good reason. It is not good enough to say that the idea did not occur to anyone. However, nothing turns on any of that. The fresh evidence is quite incapable, in my judgment, of influencing or altering the analysis reached by reference to the other materials. I would agree with Mr Fazli that evidence about what happens at a hearing cannot fall foul of any 'fresh evidence' requirement about diligent availability at that very hearing. I also agree with him that it would be open to the Court to admit only that part of it which describes what happened at the hearing. But I cannot agree that it is in the interests of justice to adduce this putative fresh evidence, or any part of it. Nor can I agree that this evidence would meet the other familiar 'fresh evidence' tests (GMC v Adeogba [2016] EWCA Civ 162 at §§26, 31) which are, in essence: ability to influence the outcome; and apparent credibility. I agree with Mr Mant that, ultimately, the putative fresh evidence is a clear attempt to improve the evidence given, as live evidence and with cross-examination, to the Tribunal by Mr Olayinka: see Threlfall v General Optical Council [2004] EWHC 2683 (Admin) at §24.

17. In the putative fresh evidence, Mr Olayinka (in the English translation) says this:

> ***I had some difficulty during [witness] cross examination because I have a poor understanding of the English language. In addition, I was unaware I could request the assistance of a translator. If I had been made aware, then I would have asked for one. The problems that arose are due to the fact that I could not really understand or hear what the GMC lawyers and the judge asked me during the trial. This caused me to sometimes respond incorrectly to their questions.***

The force of the putative fresh evidence is illuminated immediately by examining what in practical terms is said to follow. The passage which I have just cited is followed by this (emphasis added):

> ***For example: when I was asked how many times I talked with Dr Hakeem Lateef after the death of his wife in 2018, I misunderstood the question because I had difficulty comprehending the lawyer's accent. As a result, my response was not concise. One thing is for sure, both [Dr Lateef and I] of us did not talk much after the demise of Dr. Hakeem Lateef's wife. I don't know how many times we talked, but it was only a few times. This is why we never discussed his wife's [documentation] job for Emponics.***

This is utterly unconvincing. There was not a "question". There was a persistent and repeated line of questioning about how many times Mr Olayinka and Dr Lateef had talked. I have set it out earlier in this judgment. The relevance and significance of this point arose out of the fact that Mr Olayinka's written witness statement – whose truth he confirmed having re-read it – said this:

> ***I am aware that [Dr Lateef's late wife] sadly passed away on 25 October 2018. A few months ago, around April 2021, I was speaking with Dr Lateef on the telephone when this issue came up.***

It continued:

> ***I have known Dr Lateef since my client, [his late wife] married him in 2014, but we never had much contact except to exchange pleasantries on several occasions. I made this telephone call to greet him after two years had passed since he lost his wife.***

The idea that the whole series of many questions about how many times Mr Olayinka spoke to Dr Lateef between October 2018 and April 2021, and the answers which were given, constituted a "question", which Mr Olayinka had "difficulty in comprehending", because of "the lawyer's accent", is one wholly incapable of being given any substantial weight. I formally refuse permission to adduce the putative fresh evidence. It is incapable of assisting in supporting any sustainable ground of appeal.

18. Ground two is that there was an erroneous assessment or legally inadequate reasoning in relation to Mr Olayinka's evidence. Mr Fazli says that the Tribunal held against Mr Olayinka that he did not remember Dr Lateef's wife telling him that she had done a "dishonest thing", and that he "could not recall any substantial detail". Mr Fazli says where "dishonest" was a label, Mr Olayinka did communicate the substance and detail, and this point was not put in cross-examination. The answer is that the Tribunal properly considered these aspects of Mr Olayinka's oral evidence, which arose directly out of what was put in cross-examination, was fully justified in the observation about the lack of detail, and put this alongside the other features of its detailed reasons. Those other features included identifying Mr Olayinka's oral evidence about sharing the revelation only after Dr Lateef said he was being "accused of using a fake CV" as being "inconsistent" with Mr Olayinka's witness statement (which put those the other way around), which was plainly justified and correct.

19. The problems with Mr Olayinka's evidence can be seen by taking another illustration. This involved the different versions of events as to the sequence in which things were said during the conversation in April 2021. The point was whether Mr Olayinka was being said to have made his revelation after first being told by Dr Lateef that the authorities in England were accusing Dr Lateef of a false employment application. It is unsurprising that the Tribunal found a problem with the evidence. The witness statement of Mr Olayinka that was before the Tribunal said this:

> ***I was under the impression that [Dr Lateef's wife] eventually told her husband about her using the inaccurate CV to apply for jobs on his behalf before she died, but I was surprised when [Dr Lateef] claimed he was not aware of it. In fact, when the issue arose, [Dr Lateef] shouted initially but then became very silent for some time… At this point, [Dr Lateef] informed me of the current court case in regards to the job application, and he asked me to make a statement to his defence representatives…***

In the cross-examination of Mr Olayinka on this aspect the sequence was the other way round. Mr Olayinka's revelation was prompted by being told by Dr Lateef that the authorities in England were accusing Dr Lateef of a false employment application:

> ***Q. Why did you tell him about his wife applying for a job in that phone call in April 2021?***
> ***A Okay. He called me and told me that he's got no work going on; that they charged him to court for one CV they used in an application to find a job, this and that, and he told me so, and when he told me so I now remember back that his late wife told me one time before that that she want to apply for a job for him. That is why I now tell him back that this is one (inaudible) that she was applying for the job.***
> ***Q So the reason then – is this right – that you mentioned it is because Dr Lateef raised it with you?***
> ***A Yes, yes***

Dr Lateef maintained that the revelation from Mr Olayinka came unprompted. He went further and said he did not. The cross-examination of Dr Lateef on this aspect was:

> ***Q Can I just ask you to break that down? Were you saying to him that your wife had done things that you were unaware of or was he saying to you ---***
> ***A No.***
> ***Q Okay.***
> ***A I was discussing completely unrelated issue about general issues about my wife and her life, how she lived her life and things like that. He started mentioning things about how much she loved me, so that was where the conversation drifted towards what she did without my knowledge just for my sake.***
> ***Q He then told you that your wife had told him that she had filled in a bogus application form and CV and sent it to a prospective employer without telling you.***
> ***A Yes. He told me that that is what my wife did because she believed that she wanted to help me.***
> ***Q She never told you this because she died, didn't she, before you were interviewed by the police or before any of this came to light ---***
> ***A She never told me.***
> ***Q (Inaudible) some massive impression on your life that was weighing heavily on the life between you, but years after – because you didn't tell him, did you? You didn't tell Mr Olayinka that you were being investigated by the police or that you were being investigated by the police at any stage. You didn't tell him that ---***
> ***A I never did.***
> ***Q You never told Mr Olayinka that you had been investigated by the GMC.***
> ***A No.***

20. I turn to new ground ten. I refuse permission to amend the grounds of appeal to rely on this new ground of appeal. It too has been raised far too late in the day. No good reason is put forward for the delay. What is said is that it did not occur to anybody. The new ground ten is articulated in the Further Submissions. They say:

> ***The … issue that it is not clear from the transcript and from the Tribunal's judgment … whether or not permission was obtained from the Nigerian authorities through the Foreign Office to enable Mr Olayinka to give evidence from abroad via video. The case of Nare (evidence by electronic means) Zimbabwe [2011] 00443 (IAC) provided guidance as to the procedure to be followed when a party seeks to call evidence by an electronic link from outside the jurisdiction: please see §21, and in particular §21d. The case of Agbabiaka (evidence***

> ***from abroad; Nare guidance)** [2021] UKUT 00286 (IAC) is relevant on the same issue and the relevant part relied upon is the headnote. If permission was not obtained, that would render the evidence of Mr Olayinka as potentially inadmissible and given the Tribunal's reliance on his evidence in its findings of facts that is likely to amount to a material error.*

I agree with Mr Mant that it is prejudicial to raise such a point at such a late stage. The argument presupposes a direct correlation between immigration and disciplinary tribunals. The Upper Tribunal is a Superior Court of Record. I agree with Mr Mant that the GMC would need to analyse, and take a considered position, as to whether there is a sound 'read-across' from the Nare cases to the Tribunal. But leaving all that to one side, ground ten has no viability. Mr Olayinka was Dr Lateef's witness. It was Dr Lateef's representatives who were making the arrangements for the evidence from abroad. If and insofar as there was a Foreign, Commonwealth and Development Office procedure which ought to have been gone through, it was for Dr Lateef's representatives, as "the party making the request", to "go through" that procedure: Agbabiaka at §41. Nor can it help the Appellant, even if Mr Olayinka's evidence is analysed – for the purposes of appeal – as having been potentially "inadmissible". If inadmissible, it would either have been temporary (while the Nare issue was resolved) or Dr Lateef would have lost a key witness who he was putting forward, whose evidence could not be tested. Subject to grounds one and two (which I have rejected), it cannot be "wrong" or "unjust" or a "serious procedural or other irregularity" for the Tribunal not to have excluded – of its own motion (since nobody raised the point) – oral evidence from Dr Lateef's key witness. Nor can that become "wrong" or "unjust" because Mr Olayinka was cross-examined effectively, revealing serious problems in the story being put forward; nor for some reason regarding "respect for diplomatic relations" invoked by Mr Fazli.

The remaining grounds

21. I turn to the grounds of appeal which relate to matters of substance in the Tribunal's determinations on the issues. There is nothing in any of them. The Tribunal, unassailably, made primary findings of fact, having considered all the evidence, and made unimpeachable findings of evaluative judgment. In the light of the relevant principles (as to which see especially Byrne v GMC [2021] EWHC 2237 (Admin) at §§12-16), there is no basis for interfering on appeal with the Tribunal's findings of fact and findings by way of evaluative judgment. The findings of misconduct and impairment were unassailable; and so was the finding of dishonesty (as to which see especially Nkomo v GMC [2019] EWHC 2625 (Admin) at §45). The sanction (as to which see especially Sastry v GMC [2021] EWCA Civ 623 at §§105, 108) was appropriate and necessary in the public interest; it was not excessive and disproportionate. Once the Tribunal had, unimpeachably, found that it had been Dr Lateef who had sent a false CV and a false personal overview which he had paid to be produced, which he knew was false, to seek employment in financial control during his period of suspension from the GMC register, the writing was on the wall. As an evaluative judgment in the circumstances (as to which see especially Sawati v GMC [2022] EWHC 283 (Admin) at §§109-110) the Tribunal was fully justified in approaching impairment and sanction on the basis that – in defending himself and then expressing 'insight', Dr Lateef was denying having sent the email with the false CV, with a concocted and false story, blaming and impugning the honesty of his late wife.

22. I will deal briefly with the key points, as I saw them. Ground three alleges an erroneous conclusion on the question of who sent the CV. This is the heart of the case. Mr Fazli criticises the Tribunal for holding against Dr Lateef points of detail, without recognising the four years lapse of time between April 2018 and January 2022. But the Tribunal was well aware of the lapse of time, and the interview and statements made in the period in between. The Tribunal gave cogent reasons for its factual conclusions on this central issue. The fact that Dr Lateef's evidence asserted that he had discussed with his wife (who "knew everything happening to me") going on the course and receipt of the bogus CV, as Mr Fazli emphasises, does not begin to undermine the Tribunal's finding – for the several cogent reasons given – that the emails to Emponics had been sent by Dr Lateef and not Dr Lateef's late wife. Ground four advances the impossible contention that, once the Tribunal had found that the emails to Emponics had been sent by Dr Lateef and not Dr Lateef's late wife it could not properly then make and sustain a finding of dishonesty. Mr Fazli points to Dr Lateef's explanation of being fearful of Mr A, as militating against dishonesty, but that misses the point. The dishonesty relates directly to the use of a false CV. Grounds five and six focus on evidence which was put forward on behalf of Dr Lateef only after determination on the facts, including dishonesty, had been made by the Tribunal. Mr Fazli relies on the fact that good character may be relevant to dishonesty (as to which see Sawati at §§53-56). From that platform he mounts the impossible arguments that the finding of dishonesty in this case was "wrong" or "unjust" (a) by reason of the Tribunal's then blameless ignorance of evidence not yet adduced by Dr Lateef or (b) because the Tribunal ought of its own motion to have reopened its finding on dishonesty once that evidence was adduced at a later stage (impairment). Ground six also includes the contention that the finding at the final (sanctions) stage failed to give sufficient weight to good character and testimonial evidence, but the Tribunal convincingly explained why it was unable to attach great weight to that evidence in this case.

23. Ground seven impugns the Tribunal's finding on misconduct. Mr Fazli says it was wrong or unjust for the Tribunal to find that Dr Lateef's conduct "involved making a number of false representations" given that there was only one document (the CV). The answer is that the bogus CV – and personal overview – contained multiple untruths. Mr Fazli says the Tribunal failed to recognise that Dr Lateef had a "secondary" role, compared to the "primary" role played by Mr A in producing multiple bogus CVs. The answer is that the Tribunal focused on the "dishonest course of conduct" on which Dr Lateef "embarked", armed with his bogus CV from Mr A. The Tribunal's characterisation of that conduct was wholly justified. Ground eight contends that the Tribunal erroneously relied on Dr Lateef's denial when approaching the questions of impairment and then sanction. The answer is that, as an evaluative judgment in the circumstances (as to which see especially Sawati v GMC [2022] EWHC 283 (Admin) at §§109-110), the Tribunal was fully justified in approaching impairment and sanction on the basis that – in defending himself and then expressing 'insight' (limited to issues such as data protection and third party access to his computer), Dr Lateef was denying having sent the email with the false CV, with a concocted and false story, blaming and impugning the honesty of his late wife. Mr Fazli says that the Tribunal should have found that this was an isolated incident, that the dishonesty was not persistent, that any 'cover up' was established only on the balance of probabilities, that it was disproportionate to find impairment, and disproportionate to reject the alternative of a conditions of practice order. The answer is that the Tribunal identified a cogent reasoned basis for all of its conclusions; and that the Sanctions Guidance ("dishonesty,

if persistent and/or covered up is likely to result in an erasure") was amply applicable given the dishonesty and 'cover up' (blaming the late wife) unassailably found by the Tribunal, and against the background of the previous March 2018 suspension for the dishonest representations to the GMC and the Magistrates. Ground nine is that the Tribunal failed to appreciate or consider the absence of any evidence from Mr A. Mr Fazli says that Mr A was said to have carried out widespread false CV fraud, for some 150 people. He says that Mr A should have been a 'prosecution witness' – like the mother who was not called to give evidence in Hefferon v Professional Conduct Committee for Nursing and Midwifery (1988) 10 BMLR 1 – and the failure to call Mr A as a witness was procedurally unfair. The answer is that the GMC's case against Dr Lateef focused on his alleged dishonest use of the bogus CV in communications with Emponics. The case did not turn on what Mr A was saying had transpired between him and Dr Lateef. There was a submission that the evidence necessarily supported the conclusion that Dr Lateef had "embarked on a fraudulent scheme … prior to his request for an edited CV". But even that was not based on any claim said to have been made by Mr A. Moreover, the Tribunal expressly declined to make that finding. The Tribunal said Dr Lateef's account regarding his dealings with Mr A in and after April 2018 lacked credibility, and gave reasons why. But that was dealing with what Dr Lateef was putting forward in his defence; it did not in any event turn on what Mr A was being said to have claimed had transpired between him and Dr Lateef; and it was just one of many reasons for the overall evaluative judgment.

Conclusion

24. In none of the grounds of appeal, whether viewed individually or cumulatively, is there any basis for this Court – as an appellate court – concluding that the Tribunal's decision was in any respect wrong, or unjust for serious procedural or other irregularity. This was, and is, a very clear case. The Tribunal's reasoned conclusions in light of the evidence are fully and objectively justified; and there was no procedural unfairness. In those circumstances, and for those reasons, the appeal is dismissed.

Consequentials

25. The appeal is dismissed and the Appellant shall pay the Respondent's costs. Having circulated the judgment as a confidential draft, I am able to deal here with the disputed consequential matters. I summarily assess the costs at £9,500. I am satisfied that the costs and costs order are reasonable and proportionate, especially given the proliferation of grounds and authorities deployed on behalf of the Appellant. I have made a broad brush reduction from the full costs of £10,988.40, reflecting the fact that I am not ordering costs on an indemnity basis. I refuse permission for an appeal which, in my judgment, would have no realistic prospect of success, quite apart from Mr Mant pointing out that this would be a second appeal for which only the Court of Appeal can grant permission (CPR 52.7(1)).

1.11.22