SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2024] CSIH 27
XA53/23

Lord Justice Clerk
Lord Malcolm
Lord Tyre

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in the Appeal

by

DR MUHAMMAD RASHID MASOOD

Appellant

against

THE GENERAL MEDICAL COUNCIL

Respondent

Appellant: Party
Respondent: Byrne KC; Anderson Strathern LLP

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17 September 2024

Introduction

[1] This is an appeal under section 40 of the Medical Act 1983. The appellant is a registered doctor. He was the subject of fitness to practise proceedings raised by the General Medical Council arising from allegations made by his ex-wife, Ms A, that between November 2016 and November 2017, he emotionally, physically and sexually abused her. The proceedings contained allegations set out over 43 paragraphs and a greater number of

sub-paragraphs. In addition to the allegations of abuse, it was alleged that the appellant had attempted to interfere with the fitness to practise process and that he was convicted on a domestically aggravated offence under section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 which resulted in his being made subject to an order for absolute discharge. The complainer in respect of the latter offence was Ms A.

[2] On 20 October 2023 the Medical Practitioners Tribunal (MPT) issued its decision. It found the majority of allegations, including all the sexual allegations, not to be proved. Certain allegations of emotional and physical abuse were established, together with the additional allegations mentioned above. The Tribunal found that, with the exception of the limited emotional abuse, the appellant's conduct amounted to serious misconduct, that his fitness to practise was impaired as a result, and ordered that his name be erased from the medical register.

[3] The appellant appeals against that decision. He contends that certain aspects of the Tribunal's findings were perverse and that the sanction imposed was disproportionate.

Background

[4] The appellant qualified with MBBS in 1997 in Lahore, Pakistan. He has worked in the UK since August 2003. In November 2016, whilst visiting Pakistan, he married Ms A, who was at the time living in Pakistan and working as an engineer. Ms A joined the appellant in the UK on a spouse visa in March 2017. They resided together in Glasgow until November that year before returning to Pakistan via Turkey. Whilst in Pakistan the appellant instructed Ms A to go to stay with her parents while he dealt with private matters. Without Ms A's knowledge he returned to the UK and arranged to have divorce papers served upon her. Ms A's spouse visa was revoked.

[5] With the assistance of her brother Ms A returned to the UK in July 2018. She reported the appellant to the police in August 2018 and first raised concerns with the GMC in September 2018. She also obtained a non-molestation order from a Family Court in England and Wales in August 2018. In December 2019 the appellant was found to have committed an offence against Ms A, receiving an absolute discharge.

The findings

[6] Whilst the allegations contained 43 paragraphs, only those found proved are of importance in the present appeal. These are as follows:

Paragraph 5 Part (b)(iii)(1) stated that the appellant emotionally abused Ms A during a visit to Pakistan in or around January/February 2017 in that he told her that her job was worth nothing in his eyes.

Paragraph 8 Part (a) was that the appellant emotionally abused Ms A on 18 March 2017 by checking her mobile phone and social media. Part (c) was that he called Ms A and/or her family an offensive name, namely "bitch".

Paragraph 33 Part (a), to the extent proven stated that on or around 25 September 2017 the appellant physically abused Ms A, in that he pushed her against a wall, grabbed her arms, put his hand over her mouth, put his finger into her mouth and pulled onto the side of her cheek, pulled the chain she was wearing around her neck and head-butted her on one or more occasion.

Paragraph 39 Part (a), to the extent proven, was that on 4 November 2017 the appellant physically abused Ms A whilst in a hotel room in Turkey in that he punched her face.

Paragraph 42 On a date between around 18 March 2019 and 10 June 2020 the appellant instructed a lawyer in Pakistan to write to Dr F in terms designed to interfere with the GMC fitness to practise process by stopping Dr F from providing information in support of Ms A. Dr F had produced a report summarising her assessment of Ms A in Pakistan which contained a diagnosis of temporomandibular joint dislocation. The closing section of the letter from the appellant's lawyer was in the following terms:

> "in view of the foregoing facts and circumstances, you are hereby called upon to verify whether the document has been issued by you. You are further solicited to forthwith withdraw the document and the contents thereof by unambiguous written declaration and issue an unconditional apology to my client, in the event that the document is, indeed genuine. Failure to comply and make the foregoing clarifications(s) pertaining to the document my client shall be constrained to invoke his legal rights and initiate necessary actions against you in the Court(s) of law and requisite medical practitioner's regulatory forums including and not limited to PMDC and Sindh Health Care Commission."

Paragraph 43 On 16 December 2019 at Paisley Sheriff Court the appellant was found to have committed a domestically aggravated offence under section 38(1) of the 2010 Act, for which he received an absolute discharge. That offence arose from an incident of emotional abuse of Ms A on or around 8 October 2017.

[7] Having made these findings, the Tribunal then considered the question of impairment. It concluded that the relatively low level emotional abuse did not amount to serious misconduct, but that the remaining allegations did so. Whilst the conduct was capable of remediation, there was no evidence of this, and there was minimal insight, such that it could not be said that there was little risk of repetition. The Tribunal thus found that fitness to practise was impaired. As to sanction, the Tribunal reflected on all the circumstances, including mitigation, and considered whether suspension would meet the case, before concluding that a sanction of erasure was necessary.

The Tribunal's assessment of the evidence in respect of the established allegations

General

[8] The Tribunal noted that Ms A had throughout given a generally consistent account but was unwilling to make concessions when faced with documents which challenged her account. It noted a tendency to exaggerate. The appellant was prepared to make concessions regarding documentation but reluctant to expand on issues raised, relying on bare denials. It was suggested that during cross examination he introduced a new reason for the bruising in Turkey (a clash of heads) which had not been put to Ms A. The Tribunal proceeded to consider each allegation separately, setting out directions to itself as to how to proceed.

Paragraph 5

[9] The appellant did not deny that he spoke about Ms A's job in negative terms. Social media messages were produced in which the appellant spoke dismissively about Ms A's job calling it *inter alia* "shit". The appellant had accepted that conversations surrounding Ms A's job took place at the relevant date. The Tribunal concluded that to undermine Ms A's confidence or self-worth by disparaging her job in this way amounted to emotional abuse.

Paragraph 8

[10] *(a)* The evidence was that the parties shared their device passwords from January 2017. Ms A continued to have access to the appellant's passwords following her arrival in the UK and this was only removed once the relationship deteriorated. The Tribunal deduced that the appellant would have had access to Ms A's passwords. The evidence was that both had significant insecurities, manifesting in signs of jealousy and there was a developing lack of trust between them. Controlling reactions by the appellant to

Ms A's use of Facebook in February 2017 were noted. The Tribunal was of the view that it was more likely than not that he would have accessed Ms A's passwords from time to time, and with the purpose of monitoring or controlling her activity. This had the same effect as the conduct in paragraph 5. Ms A gave evidence that she found it emotionally distressing.

[11] *(c)* Ms A had said from an early stage that the appellant insulted her and her family. This was referred to both in support of her application for the non-molestation order and within her initial complaint to the GMC. There was no evidence to support Ms A's allegations about most of the derogatory terms she said the appellant used, but there were WhatsApp messages in which the appellant called her a "bitch". The Tribunal found the allegation proved to this extent, and that this amounted to emotional abuse undermining or eroding Ms A's confidence and self-worth.

Paragraph 33

[12] Ms A produced a photograph which she took of herself, which showed around four small red injuries to her bottom lip and redness in the middle and on one side of her lip. A number of other photographs were produced, date stamped 26 September 2017 at 12:39pm, showing evidence of marks and bruises on her body. The appellant relied on a video dated 26 September 2017 in which Ms A could be seen smiling and talking to the appellant who was behind the camera. The Tribunal found that the injury to Ms A's lip was seen in the picture and the video, documenting facial trauma. In the absence of an accident, which was not suggested, the photographs showed injuries of a physical assault. The appellant's evidence that he had not noticed the injuries to Ms A was not credible. They shared the same bed and continued to have sex. The Tribunal found the physical abuse proved insofar as consistent with the injuries shown in the photographic evidence. However, the Tribunal was not satisfied as to the other allegations of physical abuse, which had included

attempting to suffocate her with a scarf, in respect of which Ms A was not an entirely reliable witness. Ms A had a tendency on occasions to exaggerate or embellish her accounts of her injuries. She had suggested the injuries were so severe that she was unable to get out of bed for two days. This was not borne out by the video evidence.

Paragraph 39

[13] The appellant gave evidence that their time in Turkey was not pleasant. Ms A had been making continuing allegations about his ex-wife (he described her as obsessed) and insisted he should not see his children. By the end of the trip it was clear the marriage would not work. In her police statement Ms A described verbal abuse in the lobby of a hotel in Istanbul and thereafter physical abuse in the hotel room. The contents of her police statement were consistent with her statement to the Tribunal, save that the latter contained additional allegations of biting her cheek and all over her body. Ms A relied on photographic evidence and a letter from Dr F dated 10 November 2017. Dr F examined Ms A in Pakistan and diagnosed her with a dislocated jaw. The appellant relied on unchallenged evidence from a maxillofacial surgeon that there was no dislocation.

[14] The Tribunal reasoned that there was no dispute that the parties were rowing on arrival to the hotel. The photographic evidence showed visible injury to Ms A's body on the relevant date, but did not support the ferocity of the attack she described. The Tribunal placed little weight on Dr F's letter, which was written in an unusual manner. The Tribunal rejected a belated explanation offered by the appellant during his evidence that the injury was caused by an accidental clash of heads as he lent in to kiss Ms A during intercourse. This was not consistent with the injury evidenced in the photographs. Further, because it was not raised earlier, Ms A did not have the opportunity to challenge it. Ms A's evidence that the injury was caused by a punch to the face, insofar as it was supported by the extrinsic

photographic evidence, was preferred. However the Tribunal again noted that there was insufficient evidence to support the physical abuse by the other means specified in the allegation. Some of it, such as that the appellant head-butted Ms A, was not introduced by her until some time after her initial statement to the police. Whilst delays in disclosure might be explained by trauma, the Tribunal referred back to its earlier finding that Ms A was prone to embellishing her account.

Paragraph 42

[15] The appellant gave evidence that he was concerned that Dr F was not qualified to prepare a medical report and was doing so for reasons which were inappropriate and unethical. He feared not being able to practise medicine in Pakistan again. He instructed the lawyers in Pakistan to write the letter to Dr F. He had no influence over or input into its terms, but had seen a draft and instructed that it be sent. In addition to the closing section of the letter quoted above, it asserted that the report "concocted …. heinous allegations against" him, "defamatory and libellous information" and had caused "severe irreparable miseries and physical mental and societal losses to him". It suggested that the fitness to practise proceedings were concocted and initiated by Ms A on the strength of Dr F's letter. The appellant said in evidence that at the time of doing so he was not thinking of the GMC's investigation, but about protecting his interests in Pakistan. Ms A notified the GMC that Dr F had received the intimidating letter. Dr F responded to the GMC that it was never her intention that the letter be part of a fitness to practise investigation and advised that she had no interest in the matters in dispute and wished to take no part.

[16] The Tribunal found that the letter was written in clear and unambiguous terms and with a clear purpose. The appellant accepted its tone was threatening and intimidating. The

letter only arose as part of the GMC investigation given its proximity to the investigation. It was not credible that the appellant had not thought about the investigation at the time.

Paragraph 43

[17] The extract conviction was produced. There was no detail as to the nature or extent of the abuse involved, but counsel for the appellant advised that it involved "words not actions". The appellant accepted that he had been found guilty, but at the same time said he intended to explore his options for challenging the court's decision.

Impairment

[18] Counsel for the appellant made no submission on the question of impairment. The Tribunal observed that the first issue was whether the proven allegations amounted to serious misconduct. The emotional abuse was relatively low level and did not. However the physical abuse took place in the context of domestic violence. This was an aggravating factor - society had become increasingly intolerant towards violence perpetrated in the domestic setting. The appellant's conduct did not ensure public trust in the profession and had the clear potential to bring the profession into disrepute. Fellow practitioners would regard it as deplorable and not befitting of a medical practitioner. The appellant's attempts to interfere with the fitness to practise process also amounted to serious misconduct. It demonstrated disregard for the role and responsibility of the GMC as the regulator and breached the appellant's professional requirement to cooperate with complaints procedures. Taken together the conduct fell so far short of the standards of conduct reasonably expected of a doctor as to amount to serious misconduct.

[19] Turning to the question of remediation, the Tribunal applied a "three-fold test": (i) was the conduct remediable; (ii) had it been remedied; and (iii) was it highly unlikely to reoccur (*Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula*

Grant [2011] EWHC 927 (Admin)). The Tribunal accepted that in the present case the conduct was capable of remediation. However the appellant had not produced evidence of remediation. The Tribunal referred to: the positive testimonials provided by colleagues and neighbours; the appellant's appraisals which contained limited reference to the nature of the allegations, showing a degree of openness; the appellant's oral and written evidence in which he made concessions regarding the intimidating letter; and that he had otherwise shown an appropriate level of recognition for the role of the regulator by complying with conditions placed upon his registration and engaging with the proceedings.

[20] There was however minimal evidence of insight. There was no insight as to how his behaviour had brought him before the regulator, nor was there evidence of steps he might have taken to understand how his behaviour could impact upon others including the public and the profession. The appellant sought to excuse the interference allegation and he did not accept that the conviction on the section 38(1) offence was correct. The level of insight shown was not sufficiently developed to indicate there was little risk of repetition of the behaviour, notwithstanding the fact that there had been no repetition in the intervening six years. A finding that the appellant's fitness to practise was impaired was required to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct of that profession. A member of the public would consider that a finding of impairment should be made.

Sanction

[21] Counsel for the GMC submitted that the appropriate sanction was one of erasure. Counsel for the appellant submitted that suspension would be an appropriate sanction. There was no evidence to demonstrate that remediation would prove unsuccessful. The conduct although serious and wholly unacceptable, was at the lower end of the scale. The

behaviour had not been repeated. The testimonials provided evidence of character. He was effectively the sole practitioner at his surgery between Wednesday and Friday, thus erasure would have a knock on effect for the wider community. The appellant's wider family would also face significant hardship as a result of erasure.

[22] The Tribunal identified the mitigating factors: a good work record; positive testimonials, appraisals and patient feedback demonstrating competence as a doctor; the significant lapse in time since the events; and the lack of evidence of repetition. The aggravating factors included: lack of insight into the impact of his actions; the lack of apology or remorse for interfering with the GMC investigation; and that the abusive conduct was perpetrated in the domestic setting.

[23] The Tribunal thereafter considered the available sanctions beginning with the least severe. There were no exceptional circumstances which would justify taking no action; and the imposition of conditions on the appellant's registration would be disproportionate to the gravity of the conduct.

[24] Suspension could have a deterrent effect. Whilst recognising that the appellant was entitled to maintain his denial, the Tribunal noted that he had continually failed to acknowledge or take any responsibility for the part he played in coming before the regulator. The interference and conviction allegations were indisputable facts. The appellant had been aware of his wrongdoing in this regard since 2020 and 2019 respectively, yet failed to address either of these matters. He did not instruct a letter of retraction or apologise for the consequences of his actions in seeking to interfere with the investigation. Although the appellant had expressed shame in relation to the language he used towards Ms A, he also suggested that the professionally translated words had a different meaning in his language. There was an extremely poor level of insight. Accordingly, the Tribunal could

not be satisfied that there was a low risk of repetition. Lack of repetition to date might be explained by the fact that no situation had arisen in which the appellant felt the need to protect his interests. Despite the time he had to address his conduct he had not done so. It was of minimal relevance to the fitness proceedings that the violence was at the lower end of the scale standing the psychological impact spoken to by Ms A in her evidence.

The appellant's conduct was incompatible with continued registration. Although it might have been remediable, it had not been remedied. He had shown a deliberate and reckless disregard for the principles set out in GMP (Good Medical Practice, (2013)); his conduct involved an abuse of position/trust; and the offences involved violence.

[25] It was clear that the appellant was a good doctor held in high esteem by patients and colleagues and that erasure would have a severe impact on his family. However the Tribunal noted that it was neither his clinical practice nor relationship with his colleagues that brought him before the regulator. His actions seriously undermined the reputation of the profession. It followed that only erasure was appropriate.

Submissions for the appellant

[26] There are five grounds of appeal.

Grounds 1 and 2

[27] These contend that the Tribunal's findings in relation to paragraphs 33 and 39 were perverse. The findings relative to paragraph 33 did not reflect the available evidence.

Ms A's evidence in relation to this matter was inconsistent in various ways internally and with other evidence. The Tribunal's approach to the evidence was also inconsistent. The Tribunal rejected significant parts of Ms A's evidence, but had not explained why it felt able to accept other parts despite finding her, at least in part, not to be a credible witness. Clearer

reasons were required (*R (on the application of Mohammad)* v *General Medical Council* [2021] EWHC 2889 (Admin)). (*Lawrence* v *GMC* [2012] EWHC 464 (Admin); *Selvanathan* v *GMC* [2001] Lloyd's Rep. Med 1; and *Gupta* v *GMC* [2002] 1 WLR 1691).

[28] In relation to paragraph 39, the bruising shown on the video evidence was not commensurate with the ferocity of the attack Ms A had described. It was consistent with an accidental clash of heads, which suggestion was put to Ms A despite the Tribunal finding to the contrary. Ms A's evidence was largely inconsistent with a punch as the cause of her injuries.

Ground 4

[29] It is convenient next to mention this ground which asserts that it was perverse for the Tribunal to prefer Ms A's evidence over the appellant's evidence, having regard to the various adverse credibility findings against her. Over 92% of her allegations against the appellant had been rejected due to contradictions, inconsistencies and discrepancies in her account. It was incumbent on the Tribunal to explain why, notwithstanding these findings, it felt able to accept her evidence and find certain paragraphs proved (*R (on the application of Mohammad) v General Medical Council (supra)).* It had not done so.

Ground 3

[30] This contends that certain mitigating factors were not advanced on the appellant's behalf in relation to paragraphs 42 and 43, despite being provided to counsel. Instructing the sending of the notice to Dr F had been the sort of reasonable mistake anyone under the stress experienced by the appellant might make. This was a mitigatory factor not taken into account by the Tribunal. The appellant was not afforded the opportunity at the end of his evidence to express his unconditional regret and shame for using inappropriate language towards his ex-wife and to apologise for contacting the witness. The appellant had

otherwise fully cooperated and supported the GMC's investigation. There was substantial mitigation which should have been taken into account.

Ground 5

[31] This relates to the sanction imposed. Erasure was wholly disproportionate. The appellant had not been suspended during the investigation. Most of the allegations against him were found not proved. The testimonials spoke to his good character, a factor to be taken into account in assessing credibility and propensity (*Donkin* v *Law Society* [2007] EWHC 414 (Admin); *Bryant* v *Law Society* [2009] 1 WLR 163), but this was not taken into account in determining whether the allegations were proved. It was dismissed at the hearing on sanction. The context of the complaint that there was no clinical concern for or risk to patients was important. The length of time the investigation lasted, the quality of the evidence, the appellant's unblemished record, the lack of risk to patients or anyone else and the appellant's right to earn a livelihood were not taken into account. The imposition of conditions on the appellant's registration or suspension would not have been regarded by a reasonable and informed member of the public with knowledge of the facts as too lenient, nor would this level of sanction diminish public confidence in the profession.

[32] *Ex hypothesi* the two allegations involving physical domestic violence were not proved, the remaining issues did not justify erasure. The emotional abuse did not amount to serious misconduct. Under the GMC's guidance a conviction resulting in a conditional or absolute discharge may not be considered as a conviction for the purpose of fitness to practise proceedings. The Tribunal would have come to a different conclusion had the mitigating factors relating to the interference allegation been highlighted. Evidence of remediation had now been produced. The appellant has lodged various certificates of courses which he had undertaken in relation to *inter alia* domestic abuse awareness and

anger and conflict management. He has also prepared a reflective statement and produced an email in which he apologises to Dr F. Erasure would deprive the NHS and the community of an experienced clinician and would in effect amount to collective punishment of the appellant's children due to the appellant's role as the breadwinner of the family.

Submissions for the GMC

[33] The Tribunal's decision as a specialist Tribunal was entitled to respect. It was for the Tribunal to assess the seriousness of the misconduct. The court could only interfere where there was a "serious flaw in the process or the reasoning" or where the decision could be said to be plainly wrong or "manifestly inappropriate" (*Professional Standards Authority for Health and Social Care* v *Nursing & Midwifery Council* 2017 SC 542; *Mallon* v *General Medical Council* 2007 SC 426). It had not been shown that the decision was plainly wrong. The decision was careful, reasoned and detailed, running to 167 pages. It followed a lengthy hearing at which the MPT had the very substantial advantage of hearing the evidence.

[34] The reasoning in relation to paragraphs 33 and 39 was clear and logical. The weight to be attributed to particular factors was a matter for the Tribunal, which was entitled to place weight on the factors it did. The allegations insofar as proved were supported by extrinsic objective evidence. The position adopted by the appellant in his third ground of appeal was inconsistent with his position during the fitness to practise proceedings, and in his other grounds, that the allegations against him were false and Ms A was not a credible witness. It was not for this court to determine whether or not Ms A was credible. That was a matter for the Tribunal. The appellant's submission that she was not was simply an assertion and not a basis upon which to challenge the Tribunal's decision.

[35] The decision on sanction is a multi-factorial one, akin to a jury question, on which reasonable people may differ. It is pre-eminently a matter for the Tribunal's expertise and judgement. As such, there was similarly limited scope for the appeal court to intervene; it could only do so where the decision contains an error in principle or is plainly wrong (*General Medical Council* v *Bawa-Garba* [2019] 1 WLR 1929, paragraphs 60-68). The appellant had not demonstrated that this was the case. The Tribunal was entitled to take into account the domestic context of the assault and the increasing intolerance within society towards this type of violence; and to give considerable weight to the appellant's attempt to interfere with a witness. The Tribunal carefully balanced the factors in the appellant's favour. There was little insight and the Tribunal could not find that there was little risk of repetition. The Tribunal was entitled to give weight to the need to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct of that profession.

[36] The court should not consider the new evidence upon which the appellant had sought to rely, which failed most if not all of the limbs of the test for admission (*Chowdhury* v *General Medical Council*, 2023 S.L.T. 4, 04paragraphs 27-28). It could have been obtained earlier and there was no reasonable explanation why it had not been. It sat uneasily with the appellant's continued denial of the allegations throughout the proceedings. The importance in finality of lengthy proceedings meant that it would not be in the interests of justice to have regard to the new material. In any event it was unpersuasive and immaterial.

Analysis and decision

General

[37] This is an appeal from a specialist, regulatory Tribunal. As such the role of the court

is a limited one, as identified in *Professional Standards Authority for Health and Social Care* v *Nursing & Midwifery Council* 2017 SC 542 (Lord Malcolm, delivering the opinion of the court) at paragraph 25:

> "In respect of a decision of the present kind, the determination of a specialist Tribunal is entitled to respect. The court can interfere if it is clear that there is a serious flaw in the process or the reasoning, for example where a material factor has not been considered. Failing such a flaw, a decision should stand unless the court can say that it is plainly wrong, or, as it is sometimes put, "manifestly inappropriate". This is because the Tribunal is experienced in the particular area, and has had the benefit of seeing and hearing the witnesses. It is in a better position than the court to determine whether, for example, a nurse's fitness to practise is impaired by reason of past misconduct, including whether the public interest requires such a finding. The same would apply in the context of a review of a penalty."

[38] In assessing whether there is any compelling reason to disagree with the findings and determination of a specialist Tribunal, the court must look at the whole circumstances of the case, bearing in mind that the primary purposes of the Tribunal lie in the protection of the public, the maintenance of proper professional standards of conduct, and the preservation and maintenance of public confidence in the profession. Where the determination follows the leading of evidence, the court must also recognise that it does not have the same advantages as the Tribunal which saw and heard the witnesses. This is a relevant consideration in the present case where so much hinges on the Tribunal's assessment of evidence led before it. The appellant himself referred to *Khan* v *General Medical Council* [2021] EWHC 374 (Admin) where this important principle was noted by Knowles J, paragraph 57, citing *Fish* v *General Medical Council* [2012] EWHC 1269 (Admin) at para 32:

> "It is plain that where the conclusion of the FTP is largely based on the assessment of witnesses who have been "seen and heard", this court will be very slow to interfere with that conclusion. Nonetheless, the court has a duty to consider all the material put before it on an appeal in order to discharge its own responsibility, appropriate deference being shown to conclusions of fact reached on the basis of the advantage of having seen and heard the witnesses. Where this court does not feel disadvantaged

> by not having heard the witnesses, and the issues can be addressed with little emphasis on the direct assessment of the evidence by the Panel, it is in a position to take a different view in an appropriate case."

[39] It is important to recognise that at the outset of its assessment the Tribunal took care to set out the approach which it understood it should follow. In doing so the Tribunal correctly identified:

(a) the correct standard and burden of proof;

(b) how it should deal with inconsistencies in the evidence, by application of its own judgement on issues of credibility and reliability; and

(c) that it required to exercise caution in its assessment of the issues arising.

[40] In this latter respect the Tribunal acknowledged that it required to exercise care in the assessment of sensitive issues such as arose in the case, especially in the absence of documentary or supporting evidence; that it required to look at all the circumstances; that it should not proceed merely, or even mainly, on demeanour of witnesses, which can be misleading; that it could not speculate; and that it had to consider each allegation separately.

[41] In short, the Tribunal proceeded exactly as it should, and reminded itself fully of the principles upon which it should proceed. The Tribunal proceeded to address each individual allegation; examined the evidence relevant thereto; considered whether there was supportive or objective evidence available; and reached a conclusion in respect of each. We can detect no flaw in the Tribunal's approach.

[42] Contrary to the assertion of the appellant, the Tribunal did not merely accept the evidence of Ms A in preference to that of the appellant. In some instances, indeed, it preferred the evidence of the appellant. What the Tribunal did was examine the evidence regarding each allegation separately, taking a discerning approach. In circumstances where

it accepted evidence of Ms A it did so because it was supported by other, objective, evidence and having regard to its likelihood when considered in light of the whole evidence. As the Tribunal had identified under reference to *Suddock* v *MWC* [2015] EWHC 3612 (Admin), rather than the demeanour of a witness, a far more reliable indicator of truth lies in the extent to which an account fits with contemporaneous material. In his oral submissions the appellant drew attention to numerous contradictions which he submitted arose between Ms A's evidence and statements she had made; within her evidence generally; and between her evidence and the photographic or video evidence, submitting also that the Tribunal did not consider or address these. There is no doubt that there were numerous inconsistencies and embellishments in Ms A's evidence but it is equally clear that the Tribunal recognised these and took them into account in reaching its conclusions. For example, in paragraph 371, specifically referred to by the appellant, the Tribunal stated:

> "The Tribunal found that whilst the video clip did show evidence of marks on Ms A's face and mouth it did not demonstrate injuries that would have been commensurate with the ferocity of the attack which she described. The Tribunal found Ms A, on occasions, had a tendency to exaggerate or embellish her accounts of her injuries, as previously found. Whilst once again Ms A had challenged the authenticity of the video clip, there was no evidence that it had been falsely created or edited."

[43] The Tribunal noted various other inconsistencies: see for example paragraphs 372; 405; and 415. At paragraph 417 there is an example of Ms A's evidence simply being rejected as untruthful.

[44] It is clear that the Tribunal had some concerns about the reliability of Ms A's evidence, given her tendency to exaggerate and her unwillingness to make obvious and necessary concessions. It did not conclude however that she was thereby an incredible witness. Without considering itself as requiring to find corroboration of her account, it is apparent that the Tribunal accepted her evidence only where there was some additional

evidence, for example photographic or video evidence, or social media messages, which allowed it to accept her evidence as both credible and reliable; and where the account given was not inconsistent with its assessment of the evidence as a whole. In the course of its assessment of evidence and statement of findings the Tribunal reminded itself both of the standard and burden of proof. For example at paragraph 439 it stated:

> "The Tribunal reminded itself that it was not required to make a finding that something 'could' have happened. The standard required is that it was more likely than not that it 'did' happen."

[45] Similar statements, reflecting also the burden on the GMC may be found at paragraphs 209; 224; 235. See also paragraphs 252; 285; 293; 343; 352; 370; 373; 390; and 396. It is clear that the Tribunal retained these principles at the forefront of its consideration of the allegations.

Grounds 1, 2 and 4

[46] This issue is well illustrated by the Tribunal's approach to paragraphs 33 and 39 which it found proved only insofar as the injuries were vouched by extrinsic evidence and insofar as the abuse alleged was commensurate with those injuries. It may be that the Tribunal erred in saying that the parties shared a bed, but in our view this does not undermine the Tribunal's findings, particularly since the injuries in question were essentially facial ones, for which there was no other apparent explanation. A minor error was made by the Tribunal in stating that the appellant's late explanation of an accidental clash of heads to account for the injuries was not put to Ms A: it was put in cross-examination. However, the alleged failure to put the point was only one aspect of the Tribunal's reasoning, which noted further that this explanation was not consistent with the photographic evidence. In any event, the Tribunal would have been entitled to consider that

little weight should be accorded to an explanation offered at such a late stage in the proceedings.

[47] The Tribunal was entitled to accept the evidence of Ms A on certain issues, especially where supported *aliunde*, and to reject it in other respects. There is nothing unusual, inconsistent or notable in such an approach, which is illustrative of a careful and considered approach.

Ground 3

[48] The appellant made no submissions on the issue of impairment. The issue of whether the behaviour amounted to misconduct, whether it was serious, and whether fitness to practise was thereby impaired is quintessentially one for the specialist Tribunal to assess using its own expertise. The Tribunal noted that the appellant "did accept that the language he used to Ms A was unacceptable and he expressed shame in respect of the same". However, as per the sanction decision, any contrition appears to have been equivocal, the appellant having attempted to suggest that the professionally translated words had a different meaning in his language. The appellant had ample opportunity to express remorse for having sent the intimidating letter. He accepted that the terms of the letter were threatening and intimidating. He had accepted from the outset in his statement that he instructed the letter be sent and then instructed the Pakistani lawyers to cease further action once he was given advice on how the letter could be perceived. It is almost inconceivable that had the appellant expressed such remorse, this would not have been raised by counsel at the hearing on sanction where matters such as insight and remediation were central. Moreover, the Tribunal's finding that the appellant could have but did not retract the letter or apologise to Dr F would have remained.

[49] The Tribunal approached the matter correctly by stages: was there misconduct; was it serious; could it lead to a finding of impairment; was the Tribunal satisfied that there was impairment as at the date of assessment. We can find no error in the Tribunal's approach. We are satisfied that it was entitled to conclude that there was serious misconduct and to make a finding of impairment.

Ground 5 – sanction

[50] In order to succeed under this ground the appellant must show that the sanction imposed, erasure, fell outside the range of reasonable sanctions which the Tribunal could properly and reasonably decide to impose (*General Medical Council* v *Bawa-Garba* [2019] 1 WLR 1929, paragraph 67). The court affords the Tribunal a significant margin of appreciation in this regard (*Professional Standards Authority for Health and Social Care* v *Nursing and Midwifery Council* (*supra,*)), although it can more readily interfere where the misconduct, as here, does not relate to professional performance (*Habib Khan v General Pharmaceutical Council* [2016] UKSC 64).

[51] The terms of the Tribunal's decision on sanction demonstrate that it took the proper approach, including reference to the overarching statutory objectives, namely

> "to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession."

[52] The Tribunal noted that the appellant's interests were to be balanced against the public interest. The mitigating and aggravating factors were identified including those which the appellant asserted that the Tribunal either failed to take into account or dismissed. The mitigating factors included: the appellant's previous good record; appraisals and patient feedback results which indicated that he was a competent and conscientious doctor;

testimonials speaking to the high regard in which he was held by colleagues; and that there was no evidence of repetition of the conduct since. Collectively, these factors can be regarded as comprising the appellant's otherwise good character. In its decision the Tribunal gave reasons for determining that erasure was appropriate notwithstanding the evidence of previous good character:

> "[It] is not Dr Masood's clinical practice or his relationship with work colleagues that has brought him before his Regulator. It is his conduct that has not been in accordance with paragraphs 65 or 73 of GMP and the gravity of the same. Even if there is no risk to patient safety, the public must be able to have confidence in the mechanisms in place to ensure that a doctor is fit to practise, which in turn will uphold the reputation of the profession."

[53] The appellant's good character was not "dismissed" at the sanction stage. Rather, the import of the Tribunal's decision is that it was not of sufficient weight, in light of the other factors, to render suspension appropriate in the circumstances of the case. The fact that there had been no repetition to date did not preclude the Tribunal from finding that it could not conclude that there would be no repetition in the future. The Tribunal reasoned that there may have been no repetition of the conduct involved in the interference allegation standing there being no need for the appellant to protect his interests.

[54] Other factors mentioned by the appellant in his submissions were also taken into account by the Tribunal. The Tribunal noted the submission of counsel for the appellant as to the effect of erasure on the wider community. The impact on the appellant's family was expressly considered when the Tribunal gave its reasons for the decision.

[55] By the time of the decision on sanction the appellant had had ample opportunity to develop insight and remediate his conduct, having regard to the timetable of events. Despite this, at the hearing the appellant continued (as he still does) to deny the allegations of physical abuse, attempted (as he still does) to challenge his conviction and repeatedly

claimed that sending the letter had nothing to do with the fitness to practise investigation. Each of these were factors to which the Tribunal properly attributed weight in concluding that the appellant lacked insight. The Tribunal was entitled, as it did, to rely on the length of time he had yet failed to do so. In common with the submissions made on behalf of the appellant, the Tribunal properly considered both suspension and erasure. It noted the domestic aggravation to the physical assaults. The Tribunal did not place any emphasis on the conviction which resulted in an absolute discharge, seeming to treat it as part of the emotional abuse which did not amount to serious misconduct. Their decision was not contrary to GMC sanctions guidance. As to the letter to Dr F, as counsel for the GMC submitted, the Tribunal was entitled to conclude that it was an attempt to subvert (in fact a successful one) the legitimate work of the FTP Tribunal. In this regard, a critical passage in the reasoning of the Tribunal appears at paragraph 45 on page 159:

> "It further noted the allegation of interfering with the GMC investigation. The Tribunal found that the role of the GMC in carrying out its regulatory function is an integral part of maintaining public confidence in the profession and protecting the reputation of the profession. The public need to have confidence that when a doctor is subject to complaints, the GMC will be allowed to investigate such complaints without the doctor being able to ensure that evidence is withheld or witnesses deterred from giving evidence. This gives the public the confidence that a thorough process will be followed and a doctor's fitness to practise will be carefully examined. The Tribunal was in no doubt from the wording of the letter that was sent to Dr F by Dr Masood's lawyer, that it was done with the express intention of making her withdraw her evidence. The Tribunal find that this [is]conduct that is incompatible with continued registration."

[56] This is a finding which it was open to the Tribunal to make.

The appellant now seeks to rely on fresh evidence comprising various certificates indicating domestic abuse, management and conflict awareness and an emailed apology to Dr F. There is no reasonable explanation why this material was not available in the original proceedings (*Chowdhury* v *GMC* 2023 SLT 404, paragraph [45] endorsing the approach in *B* v

HM Advocate 2014 SCCR 376). The courses could have been taken, and the apology issued, earlier, whether by email or via the lawyers previously instructed. It is not reasonable for the appellant, as a professional man, to assert that he was not aware of the importance of insight and remediation.

[57] Moreover, the appellant continues to assert that Ms A is lying. The certificates have to be viewed together with the appellant's reflective statement, which makes plain that it is the emotional abuse allegations, which did not feature in the sanction decision, which he is seeking to address. In any event, it is difficult to square this with the appellant's continued denial of the fairness of his conviction for emotional abuse.

[58] The Tribunal was entitled to reach the conclusions it did regarding insight and remediation. It approached the issue of sanction in an appropriately graduated way, considering whether lesser sanctions would meet the case, and giving a reasoned explanation for rejecting each option short of erasure. Having regard to the severity of the allegations it was open to the Tribunal to proceed as it did.

[59] In essence the appellant's submissions invited this court to re-open the findings made by the Tribunal in respect of those instances where it accepted the evidence of Ms A; and to re-assess the conclusions on misconduct, impairment and sanction. As we have already noted, in appeals of this kind the court may only interfere with the decision of the specialist Tribunal if it is seriously flawed or manifestly wrong. The court may correct egregious errors of fact, or errors of law; it may interfere if important evidence has been left out of account; or misinterpreted in a significant way; or where the reasoning cannot be defended according to the principles applicable. What it cannot do is simply remake the decision according to its own views of the case. The appellant has established no basis upon

which we could justifiably interfere with the decision of the Tribunal and the appeal must therefore be refused.