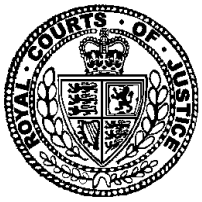

Neutral Citation Number: [2021] EWHC 877 (Admin)

Case No: CO/4875/2020

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

As at Manchester Civil Justice Centre
1 Bridge Street West
Manchester, M60 9DJ

Date: 20/04/2021

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

HAYDAR AL NAGEIM	**Appellant**
- and -	
GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

Scott Ivill (instructed by **BLM**) for the **Appellant**
Peter Mant (instructed by **GMC Legal**) for the **Respondent**

Hearing date: **17 March 2021**

- -

Approved Judgment

Mr Justice Julian Knowles:

Introduction

1. This is an appeal by Dr Haydar Al Nageim, the Appellant, under s 40 of the Medical Act 1983 against the decision of the Medical Practitioners Tribunal (MPT/the Tribunal) dated 4 December 2020 erasing his name from the register of medical practitioners that is kept by the Registrar of the General Medical Council (the GMC) under s 2 of the Medical Act 1983 (the MA 1983).

2. In a factual determination dated 16 March 2020 the Tribunal found misconduct proved against the Appellant relating to:

    a. his dishonest use of on-call rooms and surgical day centre facilities at the Countess of Chester Hospital (the Chester Hospital);

    b. his dishonest failure to notify the Royal Liverpool & Broadgreen University Hospital NHS Trust (the Royal Liverpool Hospital) of salary payments made to him over 27 months totalling £41 266.16 (net) which he knew had been made in error.

3. On 18 March 2020 the Tribunal found that the Appellant's fitness to practice was impaired by reason of his misconduct.

4. This appeal is against the sanction of erasure only. There is no appeal against the Tribunal's findings of fact or its determination of impairment.

5. I held a remote public hearing by Microsoft Teams on 17 March 2021. The Appellant was represented by Mr Ivill and the Respondent by Mr Mant. I am grateful to both of them for their written and oral submissions.

Factual background

6. At the relevant time, the Appellant was a junior doctor specialising in Trauma and Orthopaedics. Between 4 August 2010 and 2 August 2011, he was employed by the Chester Hospital.

7. Between August 2012 and February 2013, the Appellant worked as a *locum* in the Trauma and Orthopaedic Department at the Royal Liverpool Hospital.

8. Between February and August 2013, the Appellant was not working and lived with parents on the Wirral.

9. From 7 August 2013 until 5 August 2014, the Appellant was employed as a core surgical trainee in Trauma and Orthopaedics at Wrexham Maelor Hospital.

10. It was alleged that after the Appellant's employment with the Chester Hospital ended, on one or more occasions between July 2012 and February 2014, he provided false information and out-of-date identification in order to gain access to on-call rooms (used for overnight accommodation) and other Hospital facilities, such as the showers in the Jubilee Day Surgery Centre, and the Education Centre.

11. It was alleged that the Appellant knew that he was not entitled to access these facilities as he was no longer employed at the Hospital. It was also alleged that he knew that the information he provided to gain access (eg name and bleep number) was untrue, and that his actions had been dishonest.

12. It was further alleged that following the conclusion of his employment at the Royal Liverpool Hospital in February 2013, the Appellant wrongly continued to receive salary payments from that Hospital from 27 February 2013 until 29 April 2015. It was alleged that he knew he was still being paid when he was not entitled, and that he had failed to alert the Hospital about its error, and that his actions had been dishonest.

13. Matters first came to light on 23 February 2014 when the Appellant tried to gain access to an on-call room at the Chester Hospital but was refused entry by a suspicious security guard, and the police were called.

14. On 1 March 2017, the Appellant was interviewed under caution by fraud investigators from the Mersey Internal Audit Agency (MIAA) about his use of facilities at the Chester Hospital and the salary payments from the Royal Liverpool Hospital.

15. The allegations against the Appellant were set out in [10] of the Tribunal's factual determination:

> "That being registered under the Medical Act 1983 (as amended):
>
> Countess of Chester Hospital NHS Foundation Trust
>
> 1. After your employment with the Countess of Chester Hospital NHS Foundation Trust ('Chester Hospital') had ended on 2 August 2011:
>
> a. on the dates set out in Schedule 1, on one or more occasion you provided false information in the Accommodation Key Book in order to gain access to an on-call room at Chester Hospital ('On Call Room'), in that you gave:
>
> i. a false name;
>
> ii. a false bleep/contact number
>
> b. on the dates set out in Schedule 2, on one or more occasion you provided false information in Accommodation Allocation of Room forms in order to gain access to an On Call Room, in that you gave:
>
> i. false identification details;
>
> ii. a false bleep/contact number;
>
> c. on the dates set out in Schedule 3, on one or more occasion you

used an On Call Room

d. you used your Chester Hospital identification badge to access the:

i. Jubilee Day Surgery Centre, on the dates set out in Schedule 4;

ii. Education Centre, on the dates set out in Schedule 5;

e. on 23 February 2014 you attempted to gain access to an On Call Room.

2. You knew that the information you provided as set out at paragraphs 1ai, 1aii, 1bi, and 1bii was untrue.

3. Your actions as described at paragraphs 1a and 1b were dishonest by reason of paragraph 2.

4. You knew that after 2 August 2011 you were no longer an employee at Chester Hospital and were therefore not entitled to use the On Call Room(s), Jubilee Day Surgery Centre or the Education Centre.

5. Your actions as described at paragraphs 1c, 1d, and 1e were dishonest by reason of paragraph 4.

Royal Liverpool & Broadgreen University Hospital Trust

6. Between 27 February 2013 and 29 April 2015 you received the salary payments at set out in Schedule 6 from Royal Liverpool and Broadgreen University Hospital NHS Trust ('Royal Liverpool') when you were no longer an employee of Royal Liverpool ('the Payments').

7. You failed to alert Royal Liverpool to the fact that you had received the Payments after your employment had ended.

8. You knew that you were no longer an employee of Royal Liverpool and were therefore not entitled to receive the Payments.

9. Your actions as described at paragraph 7 were dishonest by reason of paragraph 8.

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

16. I need not set out the dates in the various Schedules; suffice it to say that they specified a large number of dates between July 2012 and January 2014.

17. The Appellant admitted some of the allegations against him, namely, [1c], [1d(i)], [1(d)(ii), [1e] and [6]. He denied the other allegations.

18. The Tribunal heard from a number of witnesses on behalf of the GMC and the Appellant, and received a quantity of documentary evidence. It found the following allegations not proved: [1(a)(i)], [1(a)(ii)], [1(b)(i)], [1(b)(ii)], [2], [3], [4] (in respect of the Education Centre); [5] (in relation to [1(d)(ii)]).

19. Of the allegations which the Appellant had denied, the Tribunal found the following proved: [4] (in relation to the on-call rooms and the Jubilee Day Surgery Centre); [5] (in respect of [1(c)], [1(d)(i)] and [1(e)]; [7]; [8]; and [9]). In holding that the Appellant had acted dishonestly (*per* [5] and [9]), the Tribunal applied the test for dishonesty in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2018] AC 391, [74]*:*

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

20. In relation to [4] and the on-call rooms the Tribunal found:

> "40. Dr Al Nageim's explanation about his entitlement to use On Call Rooms at Chester when no longer employed by the Trust was that he was an NHS worker and he did not know that the facilities were not generally available for use, including by those who were no longer employed by Chester Hospital. For the six dates where Dr Al Nageim admits he used the rooms, he was employed at Wrexham Hospital, but, with the exception of gaining rest on 17 February 2014, Dr Al Nageim accepted that his use of the rooms was not connected to his work. The Tribunal was not persuaded that Dr Al Nageim's belief about his entitlement to use the rooms was genuine. Dr Al Nageim is clearly an intelligent man and by 2013 had been a doctor and linked to the NHS for a number of years. The On Call Rooms were designated as such for a reason; as stated within the Accommodation Room form, they were for the use of those on call or on medical attachments. Dr Al Nageim was neither on call for Chester Hospital or on a medical attachment. He chose to show an out-of-date Chester Hospital photo ID, rather than his current Wrexham Hospital ID which is not consistent with his alleged genuine belief that any NHS worker can use the facilities.

> 41. Under cross-examination, the exploration by Mr Moran about Dr Al Nageim's alleged beliefs about the NHS were shown to be highly improbable and unreasonable; Dr Al Nageim said that he believed, at the time, the NHS effectively offered free accommodation to NHS workers throughout the UK who wanted to use such accommodation for any purpose they wish. The Tribunal found that the alleged belief of Dr Al Nageim to not be genuinely held and that it was not a credible position for him to adopt …"

21. In relation to [4] and the Appellant's use of the shower facilities in the Jubilee Day Surgery Centre, which were located in a clinical area, the Appellant's evidence was that he would use them after playing football (ie, occasions not connected with his NHS work). The Tribunal accepted at [42]-[46] that although the Appellant may have genuinely believed (as he claimed) that he was entitled to use the showers during the period he was employed at the Wrexham Hospital because he was an NHS worker, he had also used them on 38 occasions between February 2013 and August 2013 when he had been unemployed, and so could not have had any such genuine belief.

22. In relation to [5] the Tribunal found as follows.

23. Regarding the alleged dishonesty arising out of [1(c)] (use of on-call rooms), the Tribunal said it had found that the Appellant had not had a genuine belief that he was entitled to use these rooms, and his actions had been dishonest. It pointed out, for example, that he might have deprived a doctor who was genuinely on-call of the use of one of the rooms.

24. The Tribunal also found dishonesty arising out of [1(d)(i)] (use of the showers in the Jubilee Day Care Centre) because, it said, no-one is entitled to use clinical facilities for non-clinical purposes, and there were implications for infection control.

25. In relation to [1(e)], which was the occasion on 23 February 2014 when the Appellant had been refused access by a security guard (a Mr Bowker) and the police had been called, the Tribunal said that the Appellant accepted that he had tried to access an on-call room. It was nearly midnight when the Appellant arrived at the Hospital. He had been accompanied by a female, who had remained in her car. The reason the police were called was because by then the Hospital was aware of the issue and was on the look-out for the Appellant. He said that he was unable to remember the name or any other identifying features of this female, whom he had arranged to meet at a cinema, other than she was blonde and a nurse. He claimed this female simply accompanied him to the Chester Hospital so that, following his enquiries about a room, he could show her the way back to the motorway. The Tribunal was understandably sceptical about that story.

26. The Tribunal said at [55]-[56]:

> "55. … In respect of this matter, the only real dispute between parties is about the conversation which took place between Mr Bowker and Dr Al Nageim. It was Mr Bowker's evidence that when speaking Dr Al Nageim, he told Mr Bowker that he had just left Arrowe Park Hospital on the Wirral. This was the hospital closest to Dr Al Nageim's home, but a hospital where he has

> never been employed. The GMC's case is that Dr Al Nageim has not disclosed any identifiable details about the female to avoid further questioning about the purpose of his enquiry about room availability and that Dr Al Nageim panicked during his conversation with Mr Bowker and told him he had been at Arrowe Park Hospital, rather than at the cinema. Dr Al Nageim refutes Mr Bowker's version of events and sought to discredit his evidence because Mr Bowker incorrectly recalled that on 23 February 2014 Dr Al Nageim was driving a dark BMW when he was in fact driving a dark Mercedes.
>
> 56. The Tribunal having heard oral evidence from Dr Al Nageim and Mr Bowker preferred the account of Mr Bowker. Mr Bowker had no reason to be dishonest and had recorded, contemporaneously, his account of his conversation with Dr Al Nageim in a Datix form following the incident. In contrast, the Tribunal concluded that Dr Al Nageim's account of the events of that night could not be relied upon or given much weight. It considered his claim not to remember any details of the female he had spent the evening with to be improbable. It further considered his explanation that she had been unable to find her way to the motorway without assistance until her phone recharged sufficiently to use the navigation function, when she had previously found her way to the cinema to be improbable. The Tribunal was not persuaded that the inability to tell the difference between a BMW and a Mercedes was such that it could not place weight on Mr Bowker's account of the events of that night. Accordingly, the Tribunal was satisfied on the balance on probabilities that Dr Al Nageim had acted as the GMC alleged, in that he had not only attempted to gain access to an On Call Room on 23 February 2014 but that he had been less than honest in his account of that evening."

27. It concluded at [57]:

> "57. The Tribunal concluded that Dr Al Nageim did know more about the identity of the female than he admitted, and he knew that when he said to Mr Bowker that he had just left Arrowe Park Hospital, that was incorrect. The Tribunal was satisfied on the balance of probabilities that Dr Al Nageim's actions on 23 February 2014 would be considered dishonest according to the ordinary standards of reasonable and honest people because he had attempted to gain access to an On Call Room to which he was not entitled, and he had inaccurately told Mr Bowker that he had just left Arrowe Park Hospital."

28. In relation to [7], [8] and [9], and the undoubtedly more serious allegations about the Appellant's dishonest retention of salary payments from the Royal Liverpool Hospital to which he had not been entitled, the Tribunal found (at [58] et seq) that the Appellant had known that he was not entitled to the salary payments. It rejected his account that at a

meeting in December 2012 with a consultant, a person from Human Resources and (possibly) someone from finance, which had been called because of his poor performance and to tell him that his contract would not therefore be extended, he had been told that the Hospital would continue to pay him even after his employment ended.

29. The Appellant's case, in summary, was that he thought the payments were some sort of *ex gratia* 'kindness' by the Hospital. Later, in his evidence to the Tribunal, his account changed and he said he thought the payments had been a loan which he would have to repay at some stage.

30. He told the fraud investigators in the interview in March 2017:

> 'I thought that was a kindness that had been mentioned to me when I was leaving, so at a meeting that I had prior to leaving I was told I would continue to be paid and so I thought that was part of what had happened'

31. His account was that the Human Resources person had said:

> '… that because I had been struggling and they had noticed that I had been struggling that they were going to ease my work load but they would also continue to pay me and so and then until you know they would ease my work loads until February and then I could take some time out …
>
> And I understood that as being such and then when the payments continued I was very grateful and I just continued with just trying to sort out my life
>
> …
>
> She didn't make clarification of how long that payment was going to be for'

32. The Tribunal noted that during the March 2017 interview, the Appellant had repeatedly referred to the salary payments as a 'kindness' from the Royal Liverpool Hospital. He referred to the monies as a 'godsend' and said:

> 'At the time I received it, I was grateful for it and continued to receive it and I didn't question it because why would I question a gift horse …'

33. The Appellant said that he could not recall when he had first noticed that he was still receiving his salary after his employment at the Royal Liverpool Hospital had finished, but that when he did notice, he linked it to what he said he had been told at the meeting in December 2012, and that he believed it was some form of loan from the Hospital.

34. He said that the first time he knew he had been paid in error was during the interview

with fraud investigators in March 2017. He said that he thought that the loan had come to a 'natural end' in April 2015 and that he would be contacted by the Trust about repayment. He said that when he commenced working at the Wrexham Hospital and continued to receive his Royal Liverpool salary, this had been as a 'safety net' should his personal circumstances require him to leave work.

35. In his cross-examination before the Tribunal the Appellant conceded that he had made no enquires with the Royal Liverpool Hospital regarding the terms of the 'loan', for example, the sum to be repaid; the interest rate; or when repayment was to commence.

36. Thus, the Tribunal concluded:

> "68. The Tribunal was not persuaded that Dr Al Nageim genuinely believed the salary payments were a 'kindness' or a 'loan'. His evidence about the payments was inconsistent; his MIAA interview in March 2017, makes no reference to his understanding that the payments were a loan, and his witness statement from February 2020, makes no reference to the payments being made as a 'kindness'. Dr Al Nageim's description of the conversation with the lady from Royal Liverpool offering him 'help' could not reasonably be interpreted as a reference to a loan of over £67,000 of public money.
>
> 69. The Tribunal was not persuaded that Dr Al Nageim genuinely believed that he received the salary payments after sharing the personal circumstances and concerns he had shared with Royal Liverpool staff at the 14 December 2012 meeting. It noted that, in his witness statement, Dr Al Nageim concedes that at the meeting:
>
> > 'I remember that I became extremely upset during the meeting, largely because it was becoming obvious to me that [Royal Liverpool] were not happy with me, and that my post would therefore not be extended beyond February.'
>
> 70. The Tribunal noted that at the meeting, Royal Liverpool agreed to provide paid leave to Dr Al Nageim over the Christmas break, removed his on-call responsibilities which he said were challenging at the time, and arranged for him to finish his contract at Royal Liverpool in a supported, supervised clinical attachment role under Mr Santini. The Tribunal concluded that it was clear that this was the 'help' Dr Al Nageim was told he would receive. The Tribunal noted that there was no evidence, beyond Dr Al Nageim's, that the Royal Liverpool intended to provide any financial support to Dr Al Nageim either during his final contracted month or afterwards.
>
> 71. Taking all of the above into account, the Tribunal concluded that Dr Al Nageim did not genuinely believe he was entitled to

> the salary payments. Instead, it concluded that Dr Al Nageim knew that the payments he received over a period of 27 months from Royal Liverpool were made in error. The Tribunal concluded that, having viewed the salary payments as a 'safety net', Dr Al Nageim consciously decided not to alert Royal Liverpool. Its conclusion is supported by Dr Al Nageim's inconsistent evidence about the nature of the salary payments and the lack of any evidence to show Royal Liverpool intended to provide him with financial assistance.
>
> 72. While not material to its consideration of whether Dr Al Nageim's belief was genuinely held, the Tribunal did not accept that either of his accounts for the reasons he was in receipt of salary payments from Royal Liverpool was plausible or reasonable, particularly as he knew Royal Liverpool were not satisfied with his clinical performance during his post and were not extending his contract. Therefore, it would be entirely unreasonable to believe Royal Liverpool would continue to pay his salary until April 2015.
>
> 73. Having concluded that Dr Al Nageim knew that he was not entitled to the salary payments and that it was his genuinely held belief that they were being made in error, it follows that Dr Al Nageim did have a duty to alert Royal Liverpool to the payments. Therefore, having not alerted Royal Liverpool, Dr Al Nageim did fail in his actions. Accordingly, the Tribunal found paragraphs 7 and 8 of the Allegation proved."

37. In relation to [9] the Tribunal found:

> "74. The Tribunal has already determined that Dr Al Nageim failed to alert Royal Liverpool to the salary payments after his employment had ended. It has discounted his stated belief that the payments were a 'kindness' or a 'loan' and concluded that this was not genuinely held and that it was unreasonable. The Tribunal has ascertained that, subjectively, Dr Al Nageim knew that he was not entitled to the salary payments and that they were being made to him in error.
>
> 75. The Tribunal therefore went on to consider whether, by the standards of ordinary decent people, Dr Al Nageim's actions in knowing he was not entitled to the payments he received from Royal Liverpool, and not alerting them to the error was dishonest.
>
> 76. The Tribunal considered that even if either of Dr Al Nageim's explanations regarding his receipt of the salary payments had been accepted, ordinary, reasonable and honest people would have considered his actions dishonest.
>
> 77. The Tribunal considered that any reasonable and honest

> person believing the salary payments were a loan would expect a written agreement and formal terms to have been agreed in advance. If such terms were not disclosed, any reasonable person would enquire about them, which Dr Al Nageim conceded he did not do. Instead he unquestioningly accepted the payments and acted to address the error only following his interview with MIAA, despite him being in receipt of other NHS salaries from August 2013 onwards. The Tribunal considered that being in receipt of two salaries for 20 of the 27 months he received the payments and not alerting Royal Liverpool would rightly, be considered dishonest by ordinary, reasonable and honest people.
>
> 78. The other explanation offered by Dr Al Nageim was that the salary payments were issued as a 'kindness' to assist him during a period of relative financial hardship during the time he was not employed following his contract at Royal Liverpool ending. However, having started another post six months later, ordinary decent people would expect that, having secured a new salaried position, Dr Al Nageim would have, at that point, confirmed with Royal Liverpool that he was no longer in need of the financial assistance. Having not alerted Royal Liverpool and allowed the payments to continue following a return to salaried employment, considering them a 'safety net' , would again be considered to be dishonest by ordinary reasonable and honest people.
>
> 79. However, the Tribunal had concluded that Dr Al Nageim knew that he was not entitled to the payments and was receiving them in error. It concluded that Dr Al Nageim failed to alert Royal Liverpool to their error during his receipt of the salary payments, or for almost two years after they had stopped. The Tribunal concluded that to have received such a large sum over a long period and not to have alerted Royal Liverpool to it, would be considered dishonest by ordinary, reasonable and honest people. Therefore, it found paragraph 9 of the Allegation proved."

The Tribunal's sanction determination

38. At the sanction determination in December 2020 the Tribunal had written and oral evidence from Mr John Aspden, executive coach and leadership development facilitator; the Appellant's oral testimony; a personal statement of reflections from the Appellant; testimonials in support of the Appellant from various former colleagues, his two mentors, family and friends; and a CPD bundle including CPD course reflections.

39. The GMC submitted that erasure was the only appropriate sanction in this case, given the gravity and scale of the Appellant's misconduct and dishonesty. The GMC reminded the Tribunal that it had found that the Appellant's dishonesty had not been a one-off incident, but that there had been a pattern of dishonesty. It pointed out that the Tribunal had concluded that the Appellant's dishonesty had arisen from his sense of entitlement. This was a reference to [20] of the Tribunal's findings on impairment, where it said:

> "However, the Tribunal also had regard to Dr Al Nageim's evidence, noting that he persistently maintained in his MIM interview, his witness statement and his oral evidence before the Tribunal that all of his actions were taken at both Royal Liverpool and Chester Hospital with the belief that he was acting legitimately and honestly based on what he was entitled to as an NHS worker. The Tribunal was concerned that Dr Al Nageim has consistently maintained this sense of entitlement in explaining his actions at Chester Hospital and his receipt of salary payments from Royal Liverpool."

40. At [7] the Tribunal said:

> "7. Mr Moran [counsel for the GMC] conceded that, given the time that has elapsed since the impairment stage of these proceedings, Dr Al Nageim has had a lot of time to reflect. He submitted that it would be churlish not to recognise the impressive body of evidence provided by Dr Al Nageim that speaks to his character, clinical skills and knowledge and the steps he has taken. Mr Moran submitted that this evidence was worthy of serious consideration. However, he submitted that the Tribunal could not ignore its own key findings that Dr Al Nageim had continued to deny his dishonesty during the hearing. Further, he submitted that Dr Al Nageim had been found by the Tribunal to have been less than honest in his evidence to it, which compounded his original dishonesty."

41. The GMC went on to submit that the Appellant's final position appeared to be that he did not believe he had been dishonest, either at the time of events or in hindsight. It accordingly submitted that as the Appellant did not believe he had been dishonest, it could not be said that he had sufficient insight.

42. The GMC submitted that the realistic choice facing the Tribunal was between suspension or erasure, and that given all the circumstances, the only proper sanction was erasure.

43. On behalf of the Appellant, Mr Ivill submitted that erasure would not be a proportionate sanction in this case, nor would it be in the public interest. He said that the Appellant had demonstrated insight into his misconduct, that he now understood the seriousness of the proved misconduct, and that he recognised why it was unacceptable. Mr Ivill submitted that the Appellant understood the wider impact of his actions and why they should never be repeated.

44. He submitted there had been extensive remediation in this case and reminded the Tribunal that the Appellant had accessed coaching and mentoring, undertaken relevant courses and stated more than once that if he were in the same position again, he would act differently. He referred the Tribunal to the examples of this in the Appellant's reflections, including a situation where he received a further payment after the end of a hospital contract and had immediately queried it with the relevant finance department.

45. He went on to submit that the events in question could be regarded as historic and that

they had occurred when the Appellant was very junior and had been dealing with challenging family circumstances and working full time. He said that the risk of repetition was low and there were a number of positive testimonials in support of the Appellant. He submitted that the Appellant's commitment to the profession was not in doubt and that he was a well-regarded doctor with enormous potential. He said that suspension would be a proportionate sanction.

46. In its determination the Tribunal began (at [17]) by reminding itself that:

> "… the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Al Nageim's interests with the public interest."

47. At [21] the Tribunal said it was satisfied that the Appellant understood the gravity of his misconduct and the impact such actions have on patients, the public and the profession, and that he had sufficient insight into this. It went on to say that the Appellant was 'now' genuinely remorseful.

48. At [24]-[26] it said:

> "24. In considering insight, the Tribunal was invited to conclude by Mr Moran, on behalf of the GMC that Dr Al Nageim had failed to tell the truth to the Tribunal on five occasions. Mr Moran had referred the Tribunal to five paragraphs of its own determination on the Facts. He reminded the Tribunal that, in relation to Chester Hospital, it had found that it was 'was not persuaded that Dr Al Nageim's belief about his entitlement to use the rooms was genuine'. In relation to the On Call Rooms, Dr Al Nageim said that 'he believed, at the time, the NHS effectively offered free accommodation to NHS workers throughout the UK who wanted to use such accommodation for any purpose they wish. The Tribunal found that the alleged belief of Dr Al Nageim to not be genuinely held and that it was not a credible position for him to adopt' and that, in relation to the Jubilee Day Centre, 'the Tribunal was not persuaded that Dr Al Nageim genuinely believed he could use the shower facilities, in a clinical area of a hospital he was not employed by, for non-clinical purposes'. Further, the Tribunal had concluded that Dr Al Nageim's evidence about 23 February 2014 had been 'less than honest'. Regarding the salary payments from Royal Liverpool, 'the Tribunal concluded that Dr Al Nageim did not genuinely believe he was entitled to the salary payments'.
>
> 25. The Tribunal considered its determinations and the evidence it had heard on these points again and was satisfied that Dr Al Nageim had not given the Tribunal a true account on five occasions in the course of his evidence at the first stage of these

> proceedings.
>
> 26. Taking all of the above into account, the Tribunal concluded that Dr Al Nageim's insight into his misconduct was now developing. It concluded that Dr Al Nageim had sufficient insight into the gravity and seriousness of his actions, their impact on public confidence and the profession and that he had reflected on, and put strategies into place to ensure he did not repeat his behaviour. However, the Tribunal was not satisfied that Dr Al Nageim had developed any insight into his actions in not telling the truth, particularly to this Tribunal; nor had he reflected on his assertion that another witness in this case, Mr Bowker, had been incorrect about what had occurred on 23 February 2014 and had sought to discredit his account."

49. The Tribunal then considered mitigating and aggravating factors.

50. At [28] it identified the following mitigating factors: the Appellant had developed a sufficient understanding of the gravity and impact of his actions; he had developing insight, which was sufficient insight in parts; he had apologised and expressed genuine remorse following this Tribunal's findings; he had taken steps to formulate strategies to avoid any repetition of his unacceptable behaviours and demonstrated that they are working, for example in seeking immediate reassurance from the finance department at a hospital when he received a payment following the end of his contract; he had provided excellent references which spoke to his skills as a clinician, state that he is a well-regarded doctor who has much to contribute as stated by both his mentors; and he had no previous adverse findings against him.

51. At [29] it identified the following aggravating factors: his dishonesty formed a pattern, was persistent and only stopped when he was discovered; he committed dishonesty against his former employer, the NHS, by accepting salary payments to which he was not entitled for 27 months, and conceded that he would have allowed this to continue had the error not been discovered; he stated in evidence that the time period covering the misconduct was a time of great personal strain; however, there was no independent or objective evidence before the Tribunal demonstrating this; his misconduct spanned a number of years, including when he chose to take a lengthy holiday while in receipt of money to which he knew he was not entitled and earlier he had been in receipt of an additional NHS salary; and he had not told the Tribunal the truth in his evidence in March 2020 and had not demonstrated any insight into this.

52. At [30] it said:

> "30. The Tribunal considered which of these factors had the most weight. It considered that it was particularly concerning that Dr Al Nageim admitted that if Royal Liverpool had not completed the audit that raised the issue of the salary payments, he would not have alerted them himself, despite 27 months passing and NHS monies being received by him. Further, the Tribunal had concluded that Dr Al Nageim had not told the truth in his evidence in March 2020. The Tribunal acknowledged there were

> persuasive mitigating factors in this case, in that Dr Al Nageim was now developing insight, some of which was already good, and understood the gravity and impact of what he had done. The Tribunal accepted that there was strong evidence of Dr Al Nageim's skill as a clinician and that there is a public interest in keeping otherwise competent doctors on the medical register."

53. The Tribunal then went through the available sanctions in ascending order of seriousness. At [34] it said (as both parties had submitted) that the only realistic choice in this case was between suspension and erasure. It said that the question it needed to ask was whether the Appellant's dishonest conduct was fundamentally incompatible with continued registration. This was a reference to [92] of the Sanctions Guidance produced by the GMC:

> "92. … Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession)."

54. The Tribunal then said it regarded [97] (in relation to suspension) and [109] (in relation to erasure) of the Sanctions Guidance to be relevant. Paragraph [109(a) and (h)] state that the following factors may indicate that erasure is appropriate: a particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor ([109](a)]); dishonesty, especially where persistent and/or covered up [109(h)]). The Tribunal went on to quote the following paragraphs of the Sanctions Guidance:

> "124. Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.
>
> 125. Examples of dishonesty in professional practice could include:
>
> - a defrauding an employer …
>
> …
>
> 128. Dishonesty, if persistent and/or covered up, is likely to result

in erasure ..."

55. The Tribunal concluded:

> "38. The Tribunal considered what the appropriate and proportionate sanction would be in this case. The Tribunal was of the view that if the Allegation found proved had related to Dr Al Nageim's actions at Chester Hospital only, in his use of facilities to which he was not entitled, erasing him from the medical register would have been disproportionate, particularly in light of the steps he has taken towards insight and remediation in the last nine months. However, the Tribunal remained concerned that Dr Al Nageim had continued not to tell the truth in his evidence about Chester Hospital, what he believed his entitlement to be and the actions of others who he asserted had been incorrect.
>
> 39. The Tribunal had heard submissions from both parties that Dr Al Nageim's dishonesty regarding to the salary overpayment amounted to acts of omission rather than commission. The Tribunal was not satisfied that this was an entirely accurate representation of Dr Al Nageim's actions. At Chester Hospital, Dr Al Nageim sought access to facilities that the Tribunal found he knew he was not entitled to use. In regard to the salary payments from Royal Liverpool, the Tribunal accepted that Dr Al Nageim's evidence that he was not aware of payments for the first few months. However, when he did become aware of those payments and subsequently became employed again by another NHS Trust, the payments continued and only stopped when Royal Liverpool discovered the error. He chose to allow the payments to continue. Further, Dr Al Nageim conceded in evidence that had this not occurred, he would not have sought to raise the issue with Royal Liverpool himself. Dr Al Nageim received £41,266.16 (net) of NHS money over a 27 month period, during which time he travelled abroad and commenced a new salaried position at a different NHS Trust.
>
> 40. The Tribunal concluded that Dr Al Nageim's actions represented a particularly serious departure from GMP, in that honesty is a fundamental tenet of the profession, and he had been persistently dishonest over a period of years, including not telling the truth during this hearing. While his insight was now developing, Dr Al Nageim showed no insight during the earlier stage of these proceedings and has yet to demonstrate any insight into all aspects of his dishonesty.
>
> 41. The Tribunal determined that it was the scale of Dr Al Nageim's dishonesty regarding the salary payments from Royal Liverpool that was key to its consideration as to whether Dr Al Nageim's actions were fundamentally incompatible with continued registration. The Tribunal considered the extent of Dr

> Al Nageim's dishonesty in relation to the salary payments from Royal Liverpool, coupled with the additional dishonesty relating to misuse of Chester Hospital facilities and his lack of honesty in his evidence to the Tribunal. Given the persistent nature of his dishonesty, the Tribunal concluded that Dr Al Nageim's actions were fundamentally incompatible with continued registration.
>
> 42. The Tribunal concluded that, having knowingly received money to which he was not entitled and acted dishonestly with two separate NHS Trusts, erasure from the medical register was the only appropriate and proportionate sanction in this case. It determined that any lesser sanction would not promote and maintain public confidence in the medical profession, or uphold proper professional standards and conduct for members of the profession. The remediation, insight and clinical competence of Dr Al Nageim did not outweigh this conclusion.
>
> 43. The Tribunal therefore determined that Dr Al Nageim's name be erased from the Medical Register."

Submissions on the appeal

The Appellant's submissions

56. The Appellant's perfected grounds of appeal are as follows.

57. The direction of erasure was unjust given the following circumstances of serious irregularity:

    a. The Tribunal omitted to take account of a relevant mitigating factor;

    b. The Tribunal erroneously categorised a factor as aggravating;

    c. The Tribunal erroneously categorised the Appellant's conduct as being other than an act of omission.

58. In addition to these matters, the direction of erasure was wrong given that:

    a. The Tribunal gave insufficient weight to its acceptance that it was not the Appellant's intention to be dishonest;

    b. Undue weight was given to the fact that the Appellant's evidence was disbelieved;

    c. The sanction of erasure was disproportionate in the circumstances of the case.

59. Developing these grounds on behalf of the Appellant, Mr Ivill submitted that the Tribunal fell into error by failing to take into account the lapse of time since the Appellant's most recent misconduct (by December 2020, five and half years since his last payment in April 2015). He said, per [25(e)] of the Sanctions Guidance, this was a powerful mitigating factor.

60. Next, he said the Tribunal had been wrong to say there had been no independent or objective evidence of the Appellant's personal hardship in caring for his sick mother at the relevant time. There had been such evidence [pp142-3; pp149-150], which had been referred to, but in any event even if there had been no such evidence, this was not an aggravating factor.

61. Mr Ivill also said that what the Appellant had done in relation to his salary was an act of omission rather than commission, and that this had been the joint position of the parties. He said the Tribunal had been wrong not to accept this point. What the Appellant had done was fail to alert the Royal Liverpool Hospital that he was still being paid. He had not done anything to procure the payments. He said the Tribunal had therefore mischaracterised the Appellant's misconduct in a way that made it more serious than it was.

62. Next, Mr Ivill submitted that the Tribunal's acceptance in [19] of its sanction determination that it had not been the Appellant's intention to be dishonest should have been a factor which impacted his level of culpability. He said that, given this finding, erasure was a disproportionate sanction.

63. It was further submitted that the Tribunal had wrongly treated what it found to have been the Appellant's lack of honesty in giving evidence, and the fact it had not believed him (see at [41]) as an aggravating factor, despite [52(d)] of the Sanctions Guidance, which provides that 'a doctor is likely to lack insight' if they:

> *"*(d) fail to tell the truth[14] during the hearing (see paragraph 72 of *Good medical practice*)."

64. Footnote 14 states: 'This includes being dishonest or misleading." Paragraph 72 of *Good medical practice* provides:

> "72. You must be honest and trustworthy when giving evidence to courts or tribunals.[28] You must make sure that any evidence you give or documents you write or sign are not false or misleading.
>
> a. You must take reasonable steps to check the information is correct.
>
> b. You must not deliberately leave out relevant information."

65. Footnote 28 provides: 'Acting as a witness in legal proceedings (2013) GMC, London.'

66. In support of this submission, Mr Ivill relied on *General Medical Council v Awan* [2020] EWHC 1553 (Admin), [38], where Mostyn J said:

> "It seems to me that an accused person has the right to advance any defence he or she wishes and is entitled to a fair trial of that defence without facing the jeopardy, if the defence is disbelieved, of further charges or an enhanced sanction."

67. Mr Ivill argued that the Tribunal had referred to there being a lack of honesty in the Appellant's evidence as part of its decision that his actions were fundamentally incompatible with continued registration (p56, [41]). This suggests that the effect of it not believing his account was a factor that resulted in their decision to impose the enhanced sanction of erasure.

68. Finally, in an overarching submission, Mr Ivill said that erasure was, in all the circumstances, a disproportionate sanction given that: the Appellant had no previous adverse findings and excellent references; the Tribunal accepted ([28]) that he had developed a sufficient understanding of and insight into the gravity and impact of his actions; he had apologised and was remorseful; and there were now effective and demonstrable workable steps taken to formulate strategies to avoid any repetition.

The Respondent's submissions

69. On behalf of the Respondent, Mr Mant began by emphasising the caselaw to the effect that dishonesty by a professional lies at the top end of the spectrum of gravity of misconduct (see, eg, *General Medical Council v Theodoropolous* [2017] EWHC 1984 (Admin), [35]), and that where dishonest conduct is combined with a lack of insight, is persistent, or is covered up, nothing short of erasure is likely to be appropriate (see, eg, *Naheed v General Medical Council* [2011] EWHC 702 (Admin), [22]). He said that even one-off episodes of dishonesty may justify erasure: *Nicholas-Pillai v General Medical Council* [2009] EWHC 1048 (Admin), [27]. He referred me to the well-known passage in the judgment of Sir Thomas Bingham MR (as he then was) in *Bolton v Law Society* [1994] 1 WLR 512, 519, to the effect that because orders made by professional disciplinary tribunals are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. He also referred to [124] of the Sanctions Guidance, which states that dishonesty related to matters outside the doctor's clinical responsibilities (including fraudulent claims for monies) is particularly serious because it undermines the trust which the public places in the medical profession, and that evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.

70. Mr Mant said that applying these principles, the sanction of erasure was plainly open to the Tribunal, and its decision could not be characterised as wrong. That was because the dishonesty was serious and persistent; the Appellant continued to lie about his state of knowledge; and he showed no insight into those lies. The Tribunal properly applied the Sanctions Guidance and took into account all relevant considerations. There are no grounds for interfering with its specialist judgment about what sanction was required in these circumstances to maintain public confidence and standards and conduct for the profession.

71. In relation to lapse of time, Mr Mant said that the Tribunal had been well-aware of this factor because in its decision it had referred to the 'historic' nature of the allegations. He said that how it was weighed was a matter for the Tribunal, and that it was not capable of affecting the inherent seriousness of the Appellant's dishonesty. He also pointed out that the Appellant was responsible for at least some of the delay because although he received

the last salary payment in April 2015 it was not until he was confronted in the interview under caution in March 2017 that he agreed to repay the money.

72. On the second matter relied on by the Appellant, namely the Tribunal's categorisation as aggravating the absence of independent evidence about his personal difficulties, Mr Mant accepted that this was not, 'strictly speaking', an aggravating factor, but that this was a harmless error in that there was only limited evidence from friends and family (and not, for example, from occupational health), and it could not justify the Appellant's persistent dishonesty over a period of years.

73. On the omission/commission point, Mr Mant said this was just a question of semantics and that reading the Tribunal's decision as a whole, there was no misdirection of fact. It had been correct to say that to describe what the Appellant had done as being 'omission' was not 'entirely accurate'. The Appellant had chosen not to tell the Royal Liverpool Hospital about his erroneous salary payments. Further, on any view his conduct in Chester had involved positive acts. In any event, how the Appellant's conduct was to be characterised did not alter the substance of the Appellant's wrongdoing.

74. In relation to the fourth matter relied on by the Appellant, namely the Tribunal's assessment that he genuinely believed he had not been dishonest, Mr Mant said that the Tribunal had given careful consideration to the Appellant's state of mind in its assessment of insight and remorse, and the weight to be attached to these matters in deciding sanction was primarily a matter for the Tribunal.

75. Next, on the question of the Appellant's evidence before the Tribunal, Mr Mant submitted that lies by a practitioner, particularly in a dishonesty case, are plainly relevant to the sanction appropriate to mark the seriousness of the misconduct in the public interest. He said that the Registrant's dishonest evidence compounded the original dishonesty and constituted a distinct breach of [72] of *Good medical practice* (see above). Mr Mant relied on *Nicholas-Pillai*, supra, [15]-[21], where Mitting J suggested that lying on oath could be taken into account in the determination of sanction, and that Hooper LJ in refusing permission to appeal had said the same: [2009] EWCA 1516, [8] ('The fact that he continues before the panel to give dishonest evidence about what had happened must compound the original dishonesty and be a factor which a panel is entitled to take into account.')

76. Finally, Mr Mant submitted that the suggestion that erasure was a disproportionate sanction was not sustainable. He said the Appellant's dishonesty had been grave and persistent and he had lied to the Tribunal. Any lesser sanction would not have been sufficient to maintain public confidence and uphold standards and conduct for the medical profession.

Legal principles

77. Section 40 of the MA 1983 provides a right of appeal to the High Court against a sanction imposed by the Tribunal. By virtue of CPR PD52D, [19.1], appeals under s 40 are by way of re-hearing. However, such an appeal 'is a re-hearing without hearing again the evidence': see *Fish v General Medical Council* [2012] EWHC 1269 (Admin), [28]. The test I have to apply is contained in CPR r 52.21(3):

> "(3) The appeal court will allow an appeal where the decision of the lower court was -
>
> (a) wrong; or
>
> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

78. The correct approach to an appeal against sanction was set out by Mostyn J in *Awan*, supra, [4]-[13], and is not contentious. The following summary is adapted from that judgment.

79. When exercising its functions through its disciplinary Tribunal (and generally) the GMC is fixed with the over-arching objective of the protection of the public (see s 1(1A), MA 1983). The pursuit of that objective involves the pursuit of the objectives of protecting, promoting and maintaining the health, safety and well-being of the public; promoting and maintaining public confidence in the medical profession; and promoting and maintaining proper professional standards and conduct for members of that profession (see s 1(1B)).

80. Therefore, when exercising its disciplinary functions, the overarching objective of the Tribunal is the protection of the public. Thus, a sanctions decision is not penal. Rather, it is motivated only by the need to protect the public. But the decision is not narrowly confined to protecting the health and safety of the public. It extends to maintaining public confidence in the reputation of the medical profession and the need to promote and maintain high professional standards and conduct of its members. Thus, in *General Medical Council v Meadow* [2007] 1 QB 462, [32], Sir Anthony Clarke MR said:

> "The purpose of FTP [fitness to practice] proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP [Fitness to Practice Panel] thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past."

81. A decision on sanction is an evaluative judgment: *Bawa-Garba v General Medical Council* [2019] 1 WLR 1929, [60]. Where such a judgment is formed after hearing oral evidence then it is particularly difficult to challenge on appeal: *Beacon Insurance Company Ltd v Maharaj Bookstore Ltd* [2014] 4 All ER 418, [16]-[17]. At [17] Lord Hodge said:

> "Where a judge draws inferences from his findings of primary fact which have been dependent on his assessment of the credibility or reliability of witnesses, who have given oral evidence, and of the weight to be attached to their evidence, an appellate court may have to be similarly cautious in its approach to his findings of such secondary facts and his evaluation of the evidence as a whole."

82. He cited *Biogen Inc v. Medeva Plc* [1996] UKHL 18, [54]:

> "The need for appellate caution in reversing the trial judge's evaluation of the facts is based upon much more solid grounds than professional courtesy. It is because specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon him by the primary evidence. His expressed findings are always surrounded by a penumbra of imprecision as to emphasis, relative weight, minor qualification and nuance (as Renan said, *'La vérité est dans une nuance'),* of which time and language do not permit exact expression, but which may play an important part in the judge's overall evaluation."

83. The need for appellate caution is further enhanced where the decision has been made by a specialist tribunal. In *Bawa-Garba*, supra, [67], the Lord Chief Justice said:

> "That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts."

84. Such caution must be exercised whether the conduct in question relates to a clinical error or misjudgement on the part of the respondent or whether it relates to personal conduct by the respondent unrelated to his/her work as a doctor. In *Khan v General Pharmaceutical Council (Scotland)* [2016] UKSC 64, [36], Lord Wilson said:

> "An appellate court must approach a challenge to the sanction imposed by a professional disciplinary committee with diffidence. In a case such as the present, the committee's concern is for the damage already done or likely to be done to the reputation of the profession and it is best qualified to judge the measures required to address it …"

85. In making that observation Lord Wilson drew no distinction between cases of clinical error and those of non-clinical personal misconduct. The misconduct in that case, domestic violence, was unrelated to Mr Khan's competence as a pharmacist.

86. As Mostyn J observed in *Awan*, supra, [10], plainly the degree of caution or diffidence depends on the subject matter of the charges, but it cannot be disputed, as a general principle, that caution, to a greater or lesser degree, must be exercised whatever the subject matter.

87. The next point made by Mostyn J was that the Sanctions Guidance is only that – guidance - and that it 'provides signposts to a possible destination rather than a fixed track leading to an inevitable terminus.'. He referred to *Bawa-Garba*, supra, [83]:

> "The Sanctions Guidance contains very useful guidance to help provide consistency in approach and outcome in MPTs and should always be consulted by them but, at the end of the day, it

> is no more than that, non-statutory guidance, the relevance and application of which will always depend on the precise circumstances of the particular case .."

88. When examining the reasoning of a Tribunal a degree of flexibility is required. *Phipps v General Medical Council* [2006] EWCA Civ 397 establishes the proposition that the Tribunal is under no obligation to record in its reasons every point in favour of the doctor in the evidence it has heard and read. In *Re F (Children)* [2016] EWCA Civ 546, [22], Munby P said:

> "22. Like any judgment, the judgment of the Deputy Judge has to be read as a whole and having regard to its context and structure. The task facing a judge is not to pass an examination, or to prepare a detailed legal or factual analysis of all the evidence and submissions he has heard. Essentially, the judicial task is twofold: to enable the parties to understand why they have won or lost; and to provide sufficient detail and analysis to enable an appellate court to decide whether or not the judgment is sustainable. The judge need not slavishly restate either the facts, the arguments or the law. To adopt the striking metaphor of Mostyn J in *SP v EB and KP* [2014] EWHC 3964 (Fam), [2016] 1 FLR 228, para 29, there is no need for the judge to "incant mechanically" passages from the authorities, the evidence or the submissions, as if he were "a pilot going through the pre-flight checklist."
>
> 23. The task of this court is to decide the appeal applying the principles set out in the classic speech of Lord Hoffmann in *Piglowska v Piglowski* [1999] 1 WLR 1360. I confine myself to one short passage (at 1372):
>
> > 'The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed. This is particularly true of an unreserved judgment such as the judge gave in this case … These reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account. This is particularly true when the matters in question are so well known as those specified in section 25(2) [of the Matrimonial Causes Act 1973]. An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself.'
>
> It is not the function of an appellate court to strive by tortuous mental gymnastics to find error in the decision under review when in truth there has been none. The concern of the court ought to be

> substance not semantics. To adopt Lord Hoffmann's phrase, the court must be wary of becoming embroiled in 'narrow textual analysis'."

Discussion

Delay

89. I am not persuaded that the Tribunal failed to have adequate regard to the time which had elapsed between the period of the Appellant's wrongdoing and the date of the sanction determination. At [13] of its determination it specifically referred to the submission in mitigation made by Mr Ivill that the events in question were 'historic'. True it is that it did not list this specifically as a mitigating factor in [28] but, as the authorities I have cited show, it was not required slavishly to list every factor. I also doubt, in truth, how much of a mitigating factor this was on the facts of the case. That is because the Appellant should have, but did not, report that he had wrongly been paid his salary and so benefitted from what he had wrongly received from the time he began to be paid (February 2013) until March 2017, when he was interviewed under caution. No doubt during this time he was hoping that his dishonesty would never come to light.

90. Overall, the Appellant's wrongdoing over a sustained period at two hospitals required a wide-ranging investigation by the GMC. It even went to the length (unusually, in my experience) of obtaining expert evidence in connection with the Chester investigation. The investigation obviously took some time. There was no suggestion by Mr Ivill that there had been any culpable delay on the part of the GMC in its investigation of the Appellant's misconduct or the bringing of the disciplinary proceedings.

91. I therefore reject this ground of appeal.

Absence of evidence as an aggravating factor

92. Mr Mant conceded that the Tribunal had been wrong to have classified what it said was an absence of independent or objective evidence regarding the Appellant's personal circumstances as an aggravating factor, and that what it should have done was to regard this as a neutral factor.

93. I agree that the Tribunal's took the wrong approach to this evidence. The testimonials put forward on behalf of the Appellant speaking to his clinical competence and his good character, and stressors in his life between about 2011 and 2015 arising from illness in his family, were not challenged by the GMC, and so they should have been accepted by the Tribunal at face value as mitigating evidence.

94. However, I do not think that the Tribunal's error means that its decision on sanction was wrong or was rendered unjust by a *serious* irregularity. That is because, firstly, as *Bolton*, supra, makes clear (as do many other cases), personal mitigation can only have limited weight in professional disciplinary proceedings. Second, the Appellant's misconduct was not a single error of judgment committed at a time when he was under particular stress; it was sustained and repeated dishonest misconduct over a period of years. Third, as the Respondent submitted, there was no medical evidence from his employers at the time or

from occupational health services about any stress-related illness which hampered his professional performance.

95. For these reasons I am entirely satisfied, all other things being equal, that the Tribunal's decision would inevitably have been the same even if it had not made this small error (cf. *R (Smith) v North Eastern Derbyshire Primary Care Trust* [2006] 1 WLR 3315, [10]). I therefore reject this ground of appeal.

Omission/commission

96. There is nothing in this point. The submission made on the Appellant's behalf was that his retention of salary had been an act (or acts) of omission rather than commission, and this should have been given more weight. In its reasons, the Tribunal said at [39]:

> "39. The Tribunal had heard submissions from both parties that Dr Al Nageim's dishonesty regarding to the salary overpayment amounted to acts of omission rather than commission. The Tribunal was not satisfied that this was an entirely accurate representation of Dr Al Nageim's actions. At Chester Hospital, Dr Al Nageim sought access to facilities that the Tribunal found he knew he was not entitled to use. In regard to the salary payments from Royal Liverpool, the Tribunal accepted that Dr Al Nageim's evidence that he was not aware of payments for the first few months. However, when he did become aware of those payments and subsequently became employed again by another NHS Trust, the payments continued and only stopped when Royal Liverpool discovered the error. He chose to allow the payments to continue. Further, Dr Al Nageim conceded in evidence that had this not occurred, he would not have sought to raise the issue with Royal Liverpool himself. Dr Al Nageim received £41,266.16 (net) of NHS money over a 27 month period, during which time he travelled abroad and commenced a new salaried position at a different NHS Trust."

97. I cannot fault this reasoning. The misconduct at the Chester Hospital was undoubtedly positive misconduct as opposed to mere omission by the Appellant. Just looking at the salary retention, it was not wholly accurate to describe this as an omission by the Appellant. In its factual determination the Tribunal found that the Appellant had known he was being paid when he was not entitled and that he had not informed the Hospital although he was under a duty to do so. In other words, he made a positive choice not to do something he was under a duty to do. In these circumstances, the distinction between omission and commission is essentially meaningless. Even if what the Appellant did was an omission, then this was not any meaningful mitigation.

98. I therefore reject this ground of appeal.

The Tribunal's acceptance that it was not the Appellant's intention to be dishonest

99. At [19] of its sanction determination the Tribunal said that it accepted, by reference to the Appellant's 'reflections' document and his oral evidence, that he genuinely believes that

he was not dishonest; that it was not his intention to be dishonest; and that he maintains that he was not dishonest.

100. I would observe that the Appellant's own view of whether he was dishonest was actually irrelevant. The effect of the decision in *Ivey*, supra, was to remove from the test for dishonesty the defendant's subjective view about whether he had been dishonest. As Mostyn J remarked in *Bux v General Medical Council* [2021] EWHC 762 (Admin), [89], such a finding is a throwback to the old law which is no longer necessary.

101. In any event, I do not accept the submission that the Tribunal failed to give this factor sufficient weight. In its decision it carefully considered this factor alongside all of the other matters going to the question of the Appellant's insight and it reached a conclusion – that he had some, but not yet full, insight into his wrongdoing – which was open to it on the evidence.

102. I therefore reject this ground of appeal.

Untrue evidence given to the Tribunal

103. In the section of its decision headed 'Insight', the Tribunal said:

> "24. In considering insight, the Tribunal was invited to conclude by Mr Moran, on behalf of the GMC that Dr Al Nageim had failed to tell the truth to the Tribunal on five occasions. Mr Moran had referred the Tribunal to five paragraphs of its own determination on the Facts. He reminded the Tribunal that, in relation to Chester Hospital, it had found that it was 'was not persuaded that Dr Al Nageim's belief about his entitlement to use the rooms was genuine'. In relation to the On Call Rooms, Dr Al Nageim said that 'he believed, at the time, the NHS effectively offered free accommodation to NHS workers throughout the UK who wanted to use such accommodation for any purpose they wish. The Tribunal found that the alleged belief of Dr Al Nageim to not be genuinely held and that it was not a credible position for him to adopt' and that, in relation to the Jubilee Day Centre, 'the Tribunal was not persuaded that Dr Al Nageim genuinely believed he could use the shower facilities, in a clinical area of a hospital he was not employed by, for non-clinical purposes'. Further, the Tribunal had concluded that Dr Al Nageim's evidence about 23 February 2014 had been 'less than honest'. Regarding the salary payments from Royal Liverpool, 'the Tribunal concluded that Dr Al Nageim did not genuinely believe he was entitled to the salary payments'.
>
> 25. The Tribunal considered its determinations and the evidence it had heard on these points again and was satisfied that Dr Al Nageim had not given the Tribunal a true account on five occasions in the course of his evidence at the first stage of these proceedings.

> 26. Taking all of the above into account, the Tribunal concluded that Dr Al Nageim's insight into his misconduct was now developing. It concluded that Dr Al Nageim had sufficient insight into the gravity and seriousness of his actions, their impact on public confidence and the profession and that he had reflected on, and put strategies into place to ensure he did not repeat his behaviour. However, the Tribunal was not satisfied that Dr Al Nageim had developed any insight into his actions in not telling the truth, particularly to this Tribunal; nor had he reflected on his assertion that another witness in this case, Mr Bowker, had been incorrect about what had occurred on 23 February 2014 and had sought to discredit his account."

104. At [29] when it came to consider aggravating factors, the Tribunal listed as a factor:

> "Dr Al Nageim did not tell the Tribunal the truth in his evidence in March 2020 and did not demonstrate any insight into this."

105. At [41] it said:

> "41. The Tribunal determined that it was the scale of Dr Al Nageim's dishonesty regarding the salary payments from Royal Liverpool that was key to its consideration as to whether Dr Al Nageim's actions were fundamentally incompatible with continued registration. The Tribunal considered the extent of Dr Al Nageim's dishonesty in relation to the salary payments from Royal Liverpool, coupled with the additional dishonesty relating to misuse of Chester Hospital facilities and his lack of honesty in his evidence to the Tribunal. Given the persistent nature of his dishonesty, the Tribunal concluded that Dr Al Nageim's actions were fundamentally incompatible with continued registration."

106. Mr Ivill argued this approach conflicted with what Mostyn J said in *Awan*, supra, [38]-[40]:

> "38. It seems to me that an accused person has the right to advance any defence he or she wishes and is entitled to a fair trial of that defence without facing the jeopardy, if the defence is disbelieved, of further charges or an enhanced sanction.
>
> 39. It is for this reason that explicit admissions of culpability tend not to be given in the impairment and sanctions phase. Rather, language alters to the passive voice and statements in the genre of 'I am sorry if what I have said has caused you to take offence' are made. Thus, in the case of *General Medical Council v X* [2019] EWHC 493, which has some striking similarities to this one, the 'admission' following the factual finding was (at para 32):

> 'Dr X had instructed [counsel] to admit on Dr X's behalf that what the tribunal had found proved was serious and deplorable.'
>
> 40. That is some distance away from admitting explicitly the truth of what the tribunal had found proved. In my judgment, in the absence of any significant hiatus between the factual finding and the impairment/sanctions phase in which full reflection can be undergone, that is as much as can reasonably be expected of an accused professional who has defended the case on the ground that he did not do what was alleged."

107. The question of whether being found by a Tribunal to have given untrue evidence at the fact-finding stage can properly be used at the impairment or sanction stages was considered again by Mostyn J in *Towuaghantse v General Medical Council* [2021] EWHC 681 (Admin), [58]-[77]. In that case the Tribunal ordered the doctor's name be erased from the medical register after a misconduct hearing for failings in relation to the clinical care of a new-born baby on whom he had operated and who tragically died. Following an inquest, the Coroner recorded a narrative verdict that identified three specific failures by the doctor which directly contributed to the baby's death.

108. At [59]-[60] Mostyn J said:

> "59. I have set out above at para 14 an extract from para 31 of the impairment decision. I draw attention to the sentence: '*In particular, Mr Towuaghantse failed to accept any of the Coroner's findings*' (my emphasis).
>
> 60. In similar vein in para 32 of the sanctions decision the MPT said this:
>
> > 'The Tribunal noted Mr Towuaghantse's change of stance as the hearing progressed. There was more evidence of insight provided at the sanction stage than at the preceding ones in that Mr Towuaghantse had placed more emphasis on his own failings than before. However it could not ignore the fact that, particularly at the first stage of the hearing when the Tribunal was considering the facts, Mr Towuaghantse had tried to attribute to others at least some of the responsibility for what had happened to Patient A. *In the judgment of the Tribunal, that was a particularly regrettable feature of the case.*' (my emphasis)"

109. Mostyn J said at [61]-[62]:

> "61. It is clear to me that a significant component in the decision-making process, both as to determination of impairment of fitness to practise, and in the imposition of the sanction of erasure, was the conclusion that the appellant was to be seriously faulted for

> (a) having contested the allegations against him at the inquest, and not having accepted the Coroner's findings, and (b) having contested the allegations against him at the MPT. The pleas of not guilty (in effect) in both courts were clearly regarded by the MPT as evidence of an incapacity to remediate and therefore of a risk to the public, as well as an aggravating feature contributing to the award of the ultimate penalty.
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> 62. At para 56 of the sanctions decision the MPT said 'in the absence of evidence of remediation there remains a risk of repetition.' The 'absence of evidence' referred to must have included the forensic stance of the appellant in defending the allegations against him both at the inquest and before the MPT."

63. At [63] he re-iterated what he had said in *Awan*, supra:

> "In my judgment it is not procedurally fair for a registrant to face the risk of enhanced sanctions by virtue of having robustly defended allegations made against him before the MPT, or before another court."

110. He then cited what Lord Scott said in *Misra v General Medical Council* [2003] UKPC 7, [17], where charges had been brought which included an allegation that the doctor had lied in his response to the initial complaint made to the GMC. Mostyn J said Lord Scott had 'deprecated' this practice. Lord Scott said:

> "17. Their Lordships find the inclusion in the charge of allegations that Dr Misra gave information he knew to be untrue rather puzzling. The substantive allegations against Dr Misra were that he had been informed of each of the four telephone calls and requests for home visits. Dr Misra had admitted being informed of only two of them. So there was a substantive issue as to whether he had been informed of the other two. If he were to maintain his denial at the hearing and be believed that would be an end of the issue. If his denial were to be disbelieved then the Committee would have to consider his conduct regarding Mrs Berryman on the footing that he had received four requests to visit her but had failed to do so and on the footing also that he had lied on oath about two of the telephone calls. What the GMC's point was in adding to the charge first an allegation that he had earlier told the same lie to Mr Berryman and secondly that the lie had been repeated in his solicitor's letter to the GMC is not clear. Their Lordships enquired of Mr Greene, counsel for the GMC, whether it was a general GMC practice where charges of professional misconduct were being made to add to the factual allegations on which the charges were based an allegation of dishonesty in the event that the respondent doctor had had the temerity to deny any of the factual allegations. Counsel told their Lordships that it was not the general practice and that he was not aware of a previous case where that had been done. No explanation of why it was

> thought right to add the allegations of dishonesty in the present case was offered. In their Lordships' opinion the addition of the allegations of dishonesty in the present case was unnecessary and oppressive. The allegations added nothing to what would have been shown to be the degree of culpability of Dr Misra if the substantive allegations that he had declined to admit were found proved against him."

111. At [64] Mostyn J commented:

> "64. A strict textual interpretation of this passage would confine the oppressive conduct to the formulation of charges based on the registrant's forensic reaction to the initial complaint in the pre-trial period. But the underpinning reasoning surely applies equally to the situation, as here, where a registrant has doughtily defended allegations against him in the fact-finding phase. It surely leads to say that it is equally oppressive for that defence by the registrant to be used against him in the impairment and sanctions phases."

112. At [65], Mostyn J referred to *Amao v Nursing and Midwifery Council* [2014] EWHC 147, where Ms Amao was found in the fact-finding phase to have acted aggressively towards colleagues. In the impairment phase, she was then cross-examined as to whether she agreed with the panel's findings on each of the factual allegations. The legal adviser made it clear that it would not be proper to seek to get Ms Amao to admit things which she had previously denied but that she could be asked whether she accepted the panel's findings. Her refusal to do so contributed to a finding of a high risk of repetition which led to a finding of impairment to practise which in turn led to her being struck off the register. At [161], [163], Walker J held:

> "161. Ms Amao was perfectly entitled to say that she did not accept the findings of the panel: she had a right of appeal which she was entitled to exercise. In all the circumstances it was thoroughly inappropriate, almost Kafkaesque, to cross-examine Ms Amao in a way which implied that she would be acting improperly if she did not 'accept the findings of your regulator'.
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> …
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> 163. … the panel's finding that there was a high risk of repetition was vitiated by an unfair procedure".

113. In his decision at [66]-[68] Mostyn J referred to *Awan*, supra, and what he had said in [38] of that decision (see above). At [69] he said that, in contrast, in *Yusuff v General Medical Council* [2018] EWHC 13 (Admin), Yip J heard a challenge to a decision on a review which was held some time after the initial sanction was imposed. At [18] she observed that, 'as para 52 of the Sanctions Guidance makes clear, refusal to accept the misconduct and failure to tell the truth during the hearing will be very relevant to the initial sanction.' Mostyn J said that she had further observed that a want of candour and continued dishonesty may be taken into account by the Tribunal in reaching its

conclusions on impairment. Paragraph 52 of the Sanctions Guidance states that 'a doctor is likely to lack insight if they… failed to tell the truth during the hearing (this includes being dishonest or misleading).'

114. At [71] Mostyn J commented as follows:

> "71. It is hard to square these statements with Lord Scott's comments in *Misra*. In the criminal sphere there is no principle of a plea in aggravation by the prosecutor whereby he seeks an enhanced sentence because the defendant's defence was rejected as untrue. A plea of not guilty attracts no aggravation; a plea of guilty, however, attracts mitigation. In my opinion that axiom should equally apply in disciplinary proceedings. I can see, were a defence to be rejected as blatantly dishonest, then that would say something about impairment and fitness to practise in the future. But there would surely need to be a clear finding of blatant dishonesty for that to be allowed. Absent such a finding it would, in my judgment, be a clear encroachment of the right to a fair trial for the forensic stance of a registrant in the first phase to be used against him in the later phases."

115. He expressed his conclusions as follows in [72]-[77]:

> "72. In my judgment a distinction should be drawn between a defence of an allegation of primary concrete fact and a defence of a proposed evaluation (or exercise of discretion) deriving from primary concrete facts. The former is a binary yes/no question. The latter requires a nuanced analysis by the decision-maker with a strong subjective component. If a registrant defends an allegation of primary concrete fact by giving dishonest evidence and by deliberately seeking to mislead the MPT then that forensic conduct would certainly say something about impairment and fitness to practise in the future. But if, at the other end of the scale, the registrant does no more than put the GMC to proof then I cannot see how that stance could be held against him in the impairment and sanctions phases. Equally, if the registrant admits the primary facts but defends a proposed evaluation of those facts in the impairment phase then it would be Kafkaesque (to use Walker J's language) if his defence were used to prove that very proposed evaluation. It would amount to saying that your fitness to practise is currently impaired because you have disputed that your fitness to practise is currently impaired.
>
> 73. The rejection of the appellant's defence on the facts by the MPT in this case did not entail a finding that he was guilty of blatant dishonesty or the deliberate misleading of the tribunal. It is true that in a number of respects the appellant's case on the facts was rejected on the balance of probability but it is clear that the rejection did not involve fixing him with blatant dishonesty. Take for example allegation 4(a). That said that at the conclusion of

Patient A's first operation, the appellant failed to pay attention to the concerns being raised by the anaesthetic staff whilst the baby remained on the operating table. In support of the allegation the GMC adduced evidence from the anaesthetists Dr Waring and Dr Clement. The appellant did not suggest that they were lying; rather, he sought to put a different complexion on their evidence by saying that he himself had noticed the signs but that he expected things to improve within a few hours. The rejection of that account did not involve making a judgment whether the appellant was lying or telling the truth. It merely preferred, on balance of probability, the evidence of the anaesthetists to that of the appellant.

74. It is perfectly normal in a forensic process, where there are two versions of events, for one version to be preferred by the fact-finder (on the balance of probability) but without a consequential condemnation of the exponent of the other version as a liar. This unsententious approach reflects a judicial self-awareness of our fallibility as fact-finders, as Baroness Hale of Richmond recognised in *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35, [2009] AC 11 at [56] where she said:

> '… the 'risk' is not an actual risk to the child but a risk that the judge has got it wrong. We are all fallible human beings, very capable of getting things wrong.'

And to similar effect in *Re L and B (Children)* [2013] UKSC 8, [2013] 1 WLR 634 at [43] where she said:

> '… the disconcerting truth is that, as judges, we can never actually *know* what happened: we were not there when whatever happened did happen. We can only do our best on the balance of probabilities …' (original emphasis)

75. In my judgment, in the absence of findings of blatant dishonesty, the MPT should not have used against the appellant in the impairment and sanctions phases his decision to contest the allegations made against him in the Coroner's court. Nor should the MPT have used against the appellant in those phases his failure to accept those findings in circumstances where they were soon replicated by charges brought against him by the GMC before the MPT. It is in this sense that the conclusions of the Coroner were unfairly deployed against him.

76. Nor should the MPT have used against the appellant in the impairment and sanctions phases his decision fully to contest the charge before the tribunal. His deployment of a robust defence, which was his right, should not have been construed as a refusal to remediate, let alone an incapacity to remediate.

> 77. Therefore, I have reached the conclusion that the decision-making processes that led to the finding of impairment, as well as the decision on sanction, were unjust because of a serious procedural irregularity. I reiterate my opinion in *GMC v Awan* at [40] that the absence of any significant gap between the findings of fact and the commencement of the impairment and sanctions phases means that it is unrealistic to expect a registrant who has unsuccessfully defended the fact-finding phase then almost immediately in the impairment phase to demonstrate full remediation by fully accepting in a genuinely sincere manner everything found against him. In my opinion the capacity of the registrant to remediate sincerely should be judged by reference to evidence unconnected to his forensic stance in the fact-finding phase (unless the fact-finding decision included findings of blatant dishonesty by the registrant)."

116. Judgment in *Towuaghantse* was handed down on 24 March 2021, after the hearing in the appeal before me. Mr Ivill and Mr Mant drew it to my attention and made short submissions on it.

117. Mr Ivill submitted it reinforced the approach in *Awan*, supra, namely that it is not fair for a doctor to face the risk of enhanced sanction if the defence is disbelieved. He again emphasised the Tribunal's finding that the Appellant had not intended to be dishonest.

118. Mr Mant submitted that the approach of Mitting J in *Nicholas-Pillai,* supra, was to be preferred, but that in any event this was a case where the Appellant had been blatantly dishonest and hence this was a factor which could properly be taken into account on the question of fitness to practice.

119. I turn to my conclusions on this ground of appeal in light of Mostyn J's reasoning and observations.

120. Although the Tribunal did not use the phrase 'blatantly dishonest' to describe the Appellant's evidence before it, in my judgment it could aptly be so described. To take the two ends of the spectrum of defences referred to by Mostyn J, this was a case where the Appellant was advancing a positive defence about what he said he believed had been his entitlement to use Chester Hospital facilities (even though he no longer worked there and his use was not connected with his work as a doctor), and what he said had been his belief about why he was being paid his salary by the Royal Liverpool Hospital (even after his contract had come to an end and, later, he started to receive his Wrexham salary in addition). In other words, to borrow the language of [72] of Mostyn J's judgment, the Appellant's defence involved the 'allegation of primary concrete facts' rather than being 'a defence of a proposed evaluation (or exercise of discretion) deriving from primary concrete facts'.

121. The Tribunal found as a fact that that the Appellant did not have either of the states of belief that he claimed in his evidence he had had. These were findings that he knowingly advanced a false case before the Tribunal. Thus, at [41] it said:

> "41. … Dr Al Nageim said that he believed, at the time, the NHS effectively offered free accommodation to NHS workers throughout the UK who wanted to use such accommodation for any purpose they wish. It accepted that Dr Al Nageim may have been unaware that a cost was charged internally for the use of such rooms in 2014. Nevertheless, the Tribunal found that Dr Al Nageim knew he was not entitled to use the On Call Rooms at Chester Hospital in the manner that he did."

122. Regarding his salary, it found at [68]-[69], [73]:

> "68. The Tribunal was not persuaded that Dr Al Nageim genuinely believed the salary payments were a 'kindness' or a 'loan'. His evidence about the payments was inconsistent; his MIAA interview in March 2017, makes no reference to his understanding that the payments were a loan, and his witness statement from February 2020, makes no reference to the payments being made as a 'kindness' . Dr Al Nageim's description of the conversation with the lady from Royal Liverpool offering him 'help' could not reasonably be interpreted as a reference to a loan of over £67,000 of public money.
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> 69. The Tribunal was not persuaded that Dr Al Nageim genuinely believed that he received the salary payments after sharing the personal circumstances and concerns he had shared with Royal Liverpool staff at the 14 December 2012 meeting …
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> …
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> 73. Having concluded that Dr Al Nageim knew that he was not entitled to the salary payments and that it was his genuinely held belief that they were being made in error, it follows that Dr Al Nageim did have a duty to alert Royal Liverpool to the payments. Therefore, having not alerted Royal Liverpool, Dr Al Nageim did fail in his actions. Accordingly, the Tribunal found paragraphs 7 and 8 of the Allegation proved."

123. I regard the Appellant's case before the Tribunal about the salary payments as having involved especially egregious untruthfulness and dishonesty. By 2013 he had been a doctor for a number of years and he knew full well how and when NHS doctors are entitled to be paid. He could not have genuinely believed for one second that he was still entitled to be paid by the Royal Liverpool Hospital even after his contract there had come to an end. His claim that he genuinely thought the payments were some sort of *ex gratia* 'kindness', or a loan by the Hospital, and that after he started working in Wrexham in August 2013 it was perfectly in order for him to receive two NHS salaries, was completely absurd.

124. It follows that I do not consider the Tribunal was at fault in having regard to this dishonesty when it came to assess the Appellant's level of insight. Its approach was in line with what Mostyn J said in *Towuaghantse*, supra, [72], that dishonesty in knowingly

advancing a case of false primary fact certainly 'say[s] something about impairment and fitness to practise in the future'. And there is the point that in this case nine months passed between the facts/impairment stage and the sanction stage, in which time the Appellant had still not developed full insight into his dishonesty.

125. Taking a step back and looking at the Tribunal's reasons as a whole, this was not a case where the Appellant was being punished for daring to contest the GMC's case against him. The Tribunal found that in March 2020 he had advanced a case as to his states of mind at the time of the alleged misconduct which he knew not to be true. By December 2020 the Tribunal was not satisfied that he had full insight into that dishonesty. This was a relevant factor for it to take into account in deciding whether his dishonest misconduct was fundamentally incompatible with his continued registration.

Sanction of erasure disproportionate

126. I have anxiously considered whether, overall, the sanction of erasure was disproportionate. I accept all of the points made by Mr Ivill on behalf of the Appellant. But the inescapable fact is that the Appellant was found to have behaved in a sustained and dishonest manner over a period of years and to have pocketed over £41 000 of NHS money which he knew he was not entitled to. He frankly admitted that if the payments had continued after April 2015, he would have continued to keep them and would not have reported the matter. To get an idea of the scale of the Appellant's dishonesty, it is worth noting that the Sentencing Council's Definitive Guideline for offences of fraud shows that the obtaining of £40 000 by fraud over a period of time would likely attract a sentence of imprisonment.

127. The sanction of erasure imposed in this case was consistent with the GMC's Sanctions Guidance and, in particular, [124], [125(a)] and [128], which I quoted earlier.

128. The nature, scale and extent of the Appellant's dishonesty in this case meant that, despite his good qualities and clinical competence, an order for erasure was virtually inevitable: cf *Bux*, supra, [93].

129. I am therefore unable to characterise the Tribunal's decision as wrong or disproportionate, and I therefore dismiss this appeal.