

Dr Abayomi Sanusi
v
The General Medical Council

High Court of Justice Queen's Bench Division Administrative Court (Sitting at Leeds)

[2018] EWHC 1388 (Admin)

Before: Mr Justice Kerr

Friday, 20th April 2018

Representation

Mr Lee Gledhill (instructed by Direct Access) appeared on behalf of Dr Sanusi.

Ms Alexis Hearnden (instructed by GMC Legal) appeared on behalf of the Respondent.

Judgment

Mr Justice Kerr:

1. The appellant, Dr Sanusi, appeals against a decision of a tribunal of the Medical Practitioners Tribunal Service (the tribunal) made upon 18 October 2017, to order that his name be erased from the medical register. There is also an application before the court to produce certain new evidence that was not before the tribunal at the time of its deliberations.

2. Dr Sanusi did not attend the hearing before the tribunal, although he was aware of it and provided written submissions. This was another case in which a professional, facing serious disciplinary charges including a charge of dishonesty, courted peril by not attending in person. In *Burrows v General Pharmaceutical Council* [2016] EWHC 1050 (Admin) , I said (at [58]):

"In a case of obvious dishonesty, not attending the hearing amounts virtually to courting removal. We are getting a disturbingly high number of cases in which appeals are brought against removals from the statutory registers, imposed at hearings the appellant failed to attend. Given the high number of unrepresented parties in disciplinary proceedings of this kind, I think it would be a good idea for the disciplinary bodies to forewarn the defendant not just that a hearing may proceed in his or her absence, but also that the consequences of non-attendance are likely to be severely prejudicial."

3. I hope that practice will be followed in future; it has not featured in any letters to registrants convening disciplinary proceedings that I have seen.

4. The facts in the present case are as follows. Dr Sanusi qualified as a doctor in 2003 in Turkey. He came to this country at some point after that and began working here as a doctor. In 2010, he started work at Friarage Hospital, Northallerton.

5. In October 2012, concerns arose about his clinical care of a particular patient, called Patient A. The concerns related to Dr Sanusi's assessment and management of Patient A and his record keeping in the case. Most, though not all of those concerns were subsequently found proved as charges in later disciplinary proceedings.

6. In February 2014, further concerns arose in relation to another patient called Patient C. It was considered that Dr Sanusi had not assessed Patient C's condition when requested by two colleagues to do so and had not communicated appropriately with those colleagues. Again some, though not all of those matters formed the subject of charges that were later found proved.

7. Later that year in December 2014, yet further concerns arose in connection with Dr Sanusi's management of another patient, called Patient F. What became a further subsequent disciplinary allegation was a concern that he had failed adequately to assess and manage Patient F. That matter was also, in part, later found proved as a disciplinary allegation.

8. As a result of his handling of the cases of Patient C and Patient F, disciplinary proceedings against him by his then employer were brought. He received a final written warning in respect of his care of Patient C, at around the time when the issues in relation to Patient F arose. Later, further disciplinary hearings brought by the same employer led to the upholding of an allegation of failures in the performance of his duties. The final written warning was "activated" and he was dismissed with notice by letter of 3 July 2015.

9. Dr Sanusi's contract of employment was, according to the dismissal letter, to end on 20 December 2015. On 8 July 2015, his employer (or soon to be ex-employer) the Friarage South Tees NHS Trust, referred his conduct to the respondent (the GMC). On 14 July 2015, the GMC wrote to Dr Sanusi informing him that he was being investigated and enclosing documents arising from the referral.

10. Dr Sanusi, while under notice of dismissal left his employment early, before the expiry of his notice period. He applied for, and was granted, a post with Rotherham NHS Foundation Trust. He applied to that body some time in July 2015. He was interviewed on 30 July 2015 for the post. It was later alleged in further disciplinary charges that he had prepared his application form in a misleading and dishonest way and that he had compounded that dishonesty during this interview for the post.

11. The essence of the allegation was that he had failed to disclose the fact that he had been dismissed as a result of clinical care concerns from his last employment. He had, indeed, been dismissed, though on notice that had not yet expired. When Rotherham NHS Foundation Trust discovered this, it withdrew the post it had offered to him, before he took it up.

12. Dr Sanusi was then appointed to a post as a registrar at Doncaster and Bassetlaw Hospitals NHS Foundation Trust. That appointment was from 1 October 2015. During the period of about a year he spent

there, he worked as a specialty doctor in breast surgery. Two of his supervisors were Mr Olubowale, a consultant breast surgeon, and Mr Kolar, a consultant breast and general surgeon.

13. In May 2016 Dr Sanusi applied for, and later secured, a general practitioner trainee position, while under investigation by the GMC. He left his post at Doncaster and Bassetlaw Hospitals NHS Foundation Trust on 3 October 2016. In letters dated 5 October and 5 November 2016, Mr Olubowale and Mr Kolar wrote clinical supervisor report letters about him, in positive terms.

14. On 11 October 2016, a “rule 7” letter was sent to Dr Sanusi by the GMC setting out the then allegations against him. He replied on 8 November 2016, providing detailed written responses to the allegations as they then stood, stating at some length why he did not agree with them.

15. As is usual in cases of this kind, the responses were then considered over a protracted period and the allegations amended or narrowed down to what became the eventual charges. In January 2017, the GMC decided to refer his conduct to the tribunal. On 17 January 2017, a “rule 8” letter was sent to him informing him of that decision and enclosing the then allegations, regrettably still in draft form.

16. From February 2017, Dr Sanusi took up his post as a trainee GP. However, at some point in 2017 - it is not clear when - he was suspended from practice as a result of the disciplinary process. Yet further draft charges were produced in June 2017 and the process then continued to edge towards a hearing of the disciplinary charges.

17. On 1 August 2017, Dr Alison Roberts, Dr Sanusi’s clinical supervising doctor for the past six months at the general practice where he had, until his suspension, being undergoing training, wrote a testimonial letter which mainly supported and was favourable to Dr Sanusi. It described Dr Sanusi as “very reliable and punctual member of the team who has always completed all tasks set for him”. Although the letter was not entirely favourable and did refer to some areas of clinical concern, it stated that “he has always keenly addressed” such concerns “with on-line and other sources of learning and updates”. The clear impression given is that the writer regarded him as a potentially competent GP in the future.

18. The disciplinary charges were finalised at the end of August 2017. In a letter of 31 August 2017, Dr Sanusi was given notice that the hearing would take place from 2 October 2017 with an estimated length of 20 days. He was also informed in that letter of his right to be represented, to produce witnesses and documents or to make representations in writing; and he was informed of available sanctions up to and including erasure from the register. He was informed that the hearing could proceed in his absence if he did not attend and he was referred to a link, to the relevant “Sanctions Guidance”.

19. On 1 September 2017, the GMC’s legal adviser wrote to enclosing draft witness statements, inviting him to submit any documents he wished to be included in the bundle and asking him for a list of such documents and a list of any witnesses he intended to call. The letter enclosed a draft index of the documents which the GMC proposed to include in the bundle. At the end of that index, there appeared reference to Dr Sanusi’s “rule 7 submissions” and “enclosures”. The enclosures turned out to be the two letters sent in October and November 2016 by his former clinical supervisors, Mr Olubowale and Mr Kolar.

20. Dr Sanusi did not respond directly to the specific request to provide a list of documents he wished to be put before the tribunal. He did, however, in telephone and email contact with a caseworker at the GMC and sent to her piecemeal a substantial number of documents over a considerable period. The tribunal did not see these documents. Many of them were shown to me during the hearing of this appeal.

21. They consisted of, among other things, appraisal documents going back to 2014, a tool for self-assessment and peer review dating from October 2015, an appraisal as at February 2016, certificates of courses completed over the years, expressions of appreciation from former patients, the results of clinical evaluation exercises undertaken by supervising doctors while working at Friarage Hospital, the results of a patient feedback exercise involving an interpersonal skills questionnaire and, most significantly, the letter from Dr Alison Roberts of 1 August 2017.

22. Those materials did not go before the tribunal and were therefore not available to the tribunal when it later evaluated the available sanctions and considered the question of mitigating circumstances.

23. Dr Sanusi can be taken to have appreciated the nature and extent of the forthcoming hearing, but it is clear that he did not fully appreciate the peril of erasure that he was in. He did not seek legal advice and later cited financial constraints as the reason for that. He wrote a statement running to some 28 pages, dated 15 September 2017, addressed to the members of the tribunal. He stated, at the start of that document, that while he would have liked to have read the statement to the panel himself, he was unable to attend because he had limited time off as leave of absence during his general practice training program. He did not understand that attending the tribunal hearing should take priority over his training.

24. In the document, he complained that the narrative of events alleged against him was selective and partially “devoid of context and background” and that he had suffered much already as a result. He commented on the second page of the statement as follows:

“This statement does provide context, but that context becomes even more meaningful when this statement is read together with the evidence and responses previously supplied to the GMC (included those excluded by the GMC).”

25. As I have said, Dr Sanusi had not responded directly to the request for a list of documents he wanted included but had sent documents piecemeal to the GMC’s caseworker, which were not placed before the tribunal.

26. In his written statement, he went on to produce a detailed narrative of events from his perspective. It consisted of denials and included accusations of harassment and abuse by a consultant. It included sub-headings such as “Persistent Harassment”, “Persecution and Denial of Opportunity” and “Escalation of Persecution”.

27. He also included a detailed narrative in response to the specific charges. He did not accept shortcomings in his patient care nor that he had misled Rotherham NHS Foundation Trust. He did include, towards the end of his statement, a heading, "Reflection", which conceded that he is "fallible" and that "[w]hen things have gone wrong, I have used the opportunity to learn and change my practice". Such was the gist of his written defence to the charges.

28. The hearing then took place without him present, starting on 2 October 2017. It lasted through to 18 October 2017. The panel heard from a number of witnesses, both orally and in writing. The bundle of documents was, it appears, as set out the attachment to the GMC's letter of 1 September 2017, to which I have referred. In relation to possible mitigation matters, it included only the two testimonials that I have referred to.

29. As is apparent from the tribunal's determination, it found the thrust of the charges proved although not every aspect of every charge. In relation to the application to Rotherham NHS Foundation Trust, it found that Dr Sanusi had been dishonest in his interview but not in his written job application. The panel found misconduct. It went on to find that the misconduct was serious and that Dr Sanusi's fitness to practice was impaired. There is no challenge in this appeal to either of those findings.

30. In relation to impairment, the tribunal stated (paragraphs 27-34 in the impairment part of the decision) that Dr Sanusi had placed patients at risk of harm, had treated Patients C and F in such a manner as to lead to his dismissal and had claimed that he had resigned due to personality clashes; that he lacked insight and an ability to accept responsibility and had sought to justify his behaviour and blame others for what happened. The tribunal found there was a risk of future repetition of such conduct and that he had also acted dishonestly and presented an ongoing risk to patients and the public.

31. The tribunal went on to consider the question of sanction. In the usual way, it considered the available sanctions in ascending order of gravity. After rejecting lesser penalties, it considered the issue of suspension, under that heading, at paragraph 17 of the sanctions decision, as follows (my underlining):

"The Tribunal bore in mind the mitigating factors in Dr Sanusi's case. The incidents all took place whilst Dr Sanusi was working in the same role at one place of employment and there is no evidence of issues with Dr Sanusi's character or performance either prior to October 2012 or since July 2015. There is also no evidence that Dr Sanusi's misconduct caused actual harm to patients, although it did pose a potential risk of serious harm. The Tribunal also had regard to two testimonials from Consultant Surgeons at Doncaster and Bassetlaw Hospitals NHS Foundation Trust, which speak of his abilities in positive terms during his employment there from 1 October 2015 to 4 October 2016. However, the Tribunal noted that, in relation to the testimonials, the authors appeared to be unaware of the nature of the allegations against Dr Sanusi or of the fact of these proceedings. This fact impacted upon the way which the Tribunal felt able to attach to them. The Tribunal understood that Dr Sanusi had been undergoing GP training since February 2017, however, no evidence has been submitted in relation to this."

32. The last underlined sentence clearly resulted from the tribunal's ignorance of Dr Alison Roberts' letter, which not only confirmed that the GP training was taking place, but also that it was going quite well. The GMC

was in possession of that letter (and the other documents sent to the caseworker) but the tribunal was not.

33. The tribunal went on to consider suspension and concluded that there was: “no evidence of any meaningful insight, acknowledgement of fault, or steps taken towards remediation and, to date, the Tribunal has not received any evidence upon which it could properly conclude that there is any real prospect of remediation in the future” (paragraph 21). Accordingly, the tribunal rejected suspension and proceeded to decide that the only remaining penalty open to it was appropriate, namely erasure.

34. Such then are the facts in this appeal. The correct approach in an appeal such as this, is well known and it is unnecessary to cite authority for the governing propositions. They are first, that dishonesty is always very serious and may well lead to erasure from the register, because it threatens public confidence in the profession. Secondly, lack of insight makes erasure more likely. Third, an appeal is only allowed where the decision below is wrong or unjust because of the serious procedural or other irregularity. Fourth, appropriate deference is due to the tribunal in view of its expertise, especially in cases regarding clinical judgment and professional practice. Fifth, the court can correct material errors but its judgment on the application of the principles to the facts is secondary in relation to sanction. The court should not conduct a re-sentencing exercise, substituting its view for that of the tribunal.

35. The main submissions of Mr Gledhill, for Dr Sanusi were, as follows. He accepted that the tribunal was justified in proceeding with the hearing on 2 October 2017 in Dr Sanusi’s absence. However, he submitted that the tribunal should have paused briefly before embarking on the sanctions stage of the process and should have contacted Dr Sanusi to enquire whether he wished to attend before taking the draconian step of deciding to erase his name from the medical register.

36. Mr Gledhill referred me to well known principles governing whether an adjournment should be granted, in *R v Jones (Anthony)* [2003] 1 AC 1 and *Tate v The Royal College of Veterinary Surgeons* [2003] UKPC 34 . In the regulatory context, he referred me to two cases in which it had been held that disciplinary bodies ought to have adjourned before proceeding to consider sanction. They were *Lawrance v General Medical Council* [2015] EWHC 586 (Admin) , per Collins J at [39], and *Sukul v Bar Standards Board* [2014] EWHC, 3532 (Admin) , per Laws LJ at [34].

37. He submitted that the present case was another such case. He also sought the court’s permission to adduce further materials relevant to mitigation which, he contended, Dr Sanusi would have placed before the tribunal had it contacted him to invite his attendance before proceeding to consider sanction. These documents were not confined to those Dr Sanusi had sent to the GMC’s caseworker.

38. He also submitted that the GMC already had in its possession the documents I have mentioned, which were relevant and not placed before the tribunal. They were, he argued, easily accessible and could easily have been put before the tribunal. Furthermore, Dr Sanusi had specifically requested that they be considered, as part of his statement of 15 September 2017, in which he had said the context became more meaningful when his statement was “read together with the evidence and responses previously supplied to the GMC (including those excluded by the GMC)”.

39. For the GMC, Ms Hearndon submitted that the authorities relied upon by Dr Sanusi were not persuasive and had been overtaken by the reasoning in the lead judgment of Sir Brian Leveson, President of the Queen’s Bench Division, in *General Medical Council v Adeogba* [2016] 1 WLR 3867 . She accepted that the cases relied

on by Dr Sanusi, *Sukul* and *Lawrance* , provided some support for his position but argued that the authorities were in a state of “disarray” and that other first instance decisions, in particular *Faniyi v Solicitors Regulation Authority* [2012] EWHC 2965 (Admin) (Divisional Court) , and *Held v General Dental Council* [2015] EWHC 669 (Admin) (His Honour Judge Stephen Davies) were to be preferred as they were in tune with the reasoning of Sir Brian Leveson in *Adeogba* .

40. She submitted that there was no basis for criticising the tribunal’s failure to adjourn at the stage of considering sanctions; it was not for the GMC to make the doctor’s case for him, he had chosen freely to absent himself and, as pointed out in a number of cases, a doctor does so at his or her peril. As for any additional evidence, Ms Hearndon submitted that this appellate court should not admit it, as it did not come near to satisfying the well known *Ladd v. Marshall* requirements. Finally, in relation to the materials in the possession of the GMC but not produced at the tribunal at the sanctions stage, Ms Hearndon submitted that it was not part of the GMC’s duty to make the tribunal aware of them.

41. I come to my reasoning and conclusions. In my judgment, there is no basis here for criticising the decision of the tribunal not to adjourn and contact Dr Sanusi before proceeding to consider sanctions. It is true that there is some support for that course in appropriate cases, but the cases relied on by Dr Sanusi predate the decision of the Court of Appeal in *Adeogba* ; they appear not to have been cited to the court in that case and the reasoning in them is not fully consistent with the thrust of the reasoning in *Adeogba* .

42. In my judgment, the decisions in *Sukul* and *Lawrance* should be regarded as having been decided on their own facts and under disciplinary regimes in which the rules were not necessarily to the same effect as those of the GMC; or the basis of reasoning that has to an extent been overtaken by *Adeogba* . That does not mean, of course, that they are wrongly decided on their facts.

43. Indeed, in *Adeogba* the court emphasised that fairness to the doctor is a “prime consideration”. What fairness demands is a question of fact in each case. But in the context of the disciplinary jurisdiction exercised by MPTS tribunals in the case of doctors, it will rarely be unfair for a tribunal to proceed straight to the question of sanction, rather than pausing to invite attendance from a defendant who has, up to that point, hitherto voluntarily absented himself.

44. I turn next to consider the question of further evidence. The evidence that Dr Sanusi wishes to rely upon in this appeal falls into three categories: (i) documents he sent to the GMC’s caseworker before the hearing, which the tribunal did not see; (ii) documents in existence at the time of the tribunal hearing, which he did not send to the tribunal; and (iii) documents created after the tribunal hearing took place.

45. I find no possible basis for allowing him to rely on appeal to this court on documents falling into the second and third of those categories. To allow that would, as Ms Hearndon correctly submits, confer an unfair advantage on a doctor who wishes to have a second attempt on appeal at achieving a different result from the unfavourable result reached below, in his absence. It was Dr Sanusi’s responsibility to deploy what documents he wished to rely on at the hearing before the tribunal.

46. The only real point in this appeal is whether the process before the tribunal was unfair because the tribunal made its decision without seeing documents in the GMC’s possession that were relevant to mitigation, before proceeding to consider sanction; and if so whether that made any difference to the outcome. Ms Hearndon submitted that the GMC was under no duty to place those documents before the tribunal. She argued that,

while the GMC acts as “prosecutor” in disciplinary proceedings before the MPTS tribunals, its position is not the same as a conventional prosecutor; it is a party at arms’ length from the tribunal and is not required to conduct the doctor’s case for him.

47. Matters of mitigation are of less moment in this jurisdiction than in others, because of the need to protect public confidence in the profession. Furthermore, the doctor is required under the relevant rules to engage with the disciplinary process and react to the case brought to the tribunal. Ms Hearnden argued that the tribunal’s ignorance of Dr Sanusi’s documents resulted from his own decision not to attend. Mr Gledhill said that was not correct because Dr Sanusi had actually asked in his statement of 15 September 2017 that the document in question, which he had provided to the GMC, should be available to the panel in order to provide the necessary “context” for his position.

48. There are many situations in which an absent party’s point of view has to be considered by a court, tribunal or other body making a decision affecting the absent party’s rights. The situations in which that can arise vary greatly. At one end of the spectrum is the case of a freezing injunction. It is applied for, almost by definition, in the absence of the other party, who must normally be kept unaware that it is being made. In such cases, the duty of candour and of full and frank disclosure is at its highest.

49. The duty of candour in such a case was described thus by Hughes LJ in *In re Stanford International Bank Ltd* [2011] Ch 33 at [191]:

“It is not limited to an obligation not to misrepresent. It consists in a duty to consider what any other interested person would, if present, wish to adduce by way of fact, or to say in answer to the application, and to place that material before the judge...In effect a prosecutor seeking an ex parte order must put on his defence hat and ask himself what, if he were representing the defendant or a third party with a relevant interest, he would be saying to the judge, and, having answered that question, that is what he must tell the judge.”

50. Those words were described as “authoritative” by Gross LJ, giving the judgment of the court in *R (Unaenergy Group Holding Pte Ltd) v Director of the Serious Fraud office* [2017] 1WLR 3302 at [32].

51. In other cases, a defendant may be aware of proceedings but absent either by choice or, for example, through illness. Such a party may or may not be legally represented and the absence may be voluntary or involuntary. In the present case, the absence was voluntary and the party, Dr Sanusi, was unrepresented. He was, as the rules require, correctly engaging with the process, though he was unaware of how serious his position was and how unwise it was not to attend in person.

52. I reject the submission of Ms Hearnden that the GMC is under no duty at all to inform the tribunal about documents in its possession sent to it by the (voluntarily) absent doctor before the hearing. I do not accept her suggestion that such a duty would be inconsistent with the statutory scheme or unduly onerous to the GMC, or indeed other regulators. There are a number of reasons why I take that view.

53. The first is that, as already mentioned, there is generally a duty of candour which applies when an application is made ex parte or when a public body is placing evidence before a court in a public law proceeding; and there is some analogy with those situations here. Secondly, the GMC is normally, and was in this case, represented by counsel. It is a normal part of counsel's functions when appearing against an absent party, even if the party is voluntarily absent, and particularly an unrepresented absent party, to consider and communicate to the tribunal points that could and might well have been made by that party.

54. The duty in such a case is lower than the strict duty that applies in a freezing injunction or other case where the absent party is deliberately kept unaware of the proceedings. But that does not mean there is no duty at all. At its simplest, it includes taking reasonable steps to avoid any inadvertent misleading of the tribunal. Inadvertent misleading can occur by omission as well as by positive act; for example, not informing the tribunal of relevant matters or not correcting a misapprehension on the part of the tribunal.

55. I would add that in a case such as this, the tribunal is chaired by a legally qualified person. He or she would, in addition, do well to check with the party that is present that the tribunal is, so far as that party is aware, in possession of all relevant facts whether favourable or unfavourable to the party providing the information.

56. It seems to me that the ordinary duties of counsel and other legal representatives in legal proceedings where one party is absent and the other present, applies in regulatory proceedings such as these, as in other proceedings. The content of the duty will vary from case to case and is fact sensitive. It is conditioned by factors such as the applicable procedural rules, the obligation to engage with the process, whether the absent party is aware of the proceedings, is engaging with them and is legally represented and any other relevant circumstances.

57. Applying those principles to the present case, I note that the tribunal approached the issue of sanction in ignorance of relevant mitigation material, which the doctor had, in my judgment, clearly indicated he wished to be considered. I do not wish to be taken as levelling harsh criticism at counsel or the chair of the panel in the present case. However, for the future, where a tribunal is seised of a potential erasure case and has a legally qualified chair, I would expect the chair to be keen to assure that the panel has all the materials it needs available to it when considering sanction, particularly when the doctor is not present and the proceedings may well lead to termination of the doctor's career.

58. The GMC and its legal advisers, for their part, should always take whatever steps are reasonable to put relevant documents in its possession before the tribunal; and counsel should check that documents in the GMC's possession that are readily available and relevant to mitigation are provided to the tribunal; especially if it is known that an absent doctor has so requested, and more particularly still if the absent doctor is unrepresented.

59. I am not suggesting that the GMC is required to conduct extensive trawls through archives; only reasonable searches are required. But it is a simple matter to produce to the tribunal relevant documents from the GMC's file that have been sent by the doctor to the GMC caseworker.

60. Where the duty I have just been discussing is not fully performed, the fairness of the proceedings may or

may not be compromised. Whether or not an unfilled gap in the tribunal's knowledge makes the process unfair depends on all the circumstances. Broadly speaking, that will depend on whether the materials that are not drawn to the tribunal's attention would be likely to have made any difference.

61. In the present case, it seems to me clear that Dr Sanusi did not intend his mitigation documents to be confined to the two testimonials from October and November 2016. He continued to send documents to the GMC after producing his response to the rule 7 letter; and some of the later documents, in particular, the letter from Dr Roberts written in August 2017 (which he sent to the GMC caseworker on 10 August 2017), had not yet existed at the time he responded to the rule 7 letter.

62. I conclude, without wishing to criticise individuals in this case, that the system did not operate as it should have done. Dr Sanusi's mitigation documents sent to the caseworker should have been placed before the tribunal. Indeed, Ms Hearndon properly conceded as much in written submissions helpfully provided after the oral hearing of this appeal, in which she accepted that the absence of the letter from Dr Roberts written in August 2017 "has the potential to amount to a procedural irregularity"; a concession made on a narrow basis and strictly limited to the facts of this case.

63. The result was that the panel was ignorant of material relevant to mitigation. The next question is, whether that matters in the context of this case. That depends on whether the outcome would or might have been different had the tribunal been aware of the missing material. Mr Gledhill submitted that it did matter: the omitted material, which Dr Sanusi wished to be considered, contained much that was positive and insofar as it also contained certain negative comments, those showed insight on his part and willingness to learn from mistakes, which would have moved the tribunal to impose a lesser sanction than erasure.

64. Ms Hearndon disagreed. She submitted that the tribunal's findings on impairment were damning and included that Dr Sanusi had deliberately lied in order to obtain employment which, he must have known, he was otherwise unlikely to secure. He had placed patients at risk of harm. He had sought to justify his behaviour and blame others for his actions. He interpreted events as others being "out to get" him. He presented an "ongoing risk to patients and the public", such that, "public confidence in the profession would be seriously undermined if a finding of impairment were not made".

65. Ms Hearndon submitted that the materials that were not available to the tribunal would have been highly unlikely to have affected the outcome; they bore only on peripheral matters, such as continuing attendance at training courses. The appraisal document from February 2016, insofar as it was positive, did not meet concern about unwillingness to accept personal responsibility for what happened and for lying.

66. I have to consider whether the missing materials might just have tipped the balance and led the tribunal to conclude that this was a case where suspension would have been sufficient. In the end, after careful reflection, I conclude that it would be unrealistic to suppose that consideration of those missing materials would or might have made a difference. In my judgment, they were not reasonably capable of affecting the outcome that occurred, essentially for the reasons advanced by Ms Hearndon.

67. The charges were very serious, they were found proved, and Dr Sanusi's statement of 15 September 2017 demonstrated a remarkable lack of acceptance of responsibility. I agree with Ms Hearndon that the materials he wished to be considered were, for the most part, tangential. They dated, in many cases, from early in the history

of events and in most, if not all cases, were unrelated to the subject matter of the charges.

68. The only possible exception was the letter in August 2017 from Dr Roberts, Dr Sanusi's clinical supervisor during the short period of his GP training, before he was suspended. The tribunal's ignorance of that letter led it to state that there was no evidence about any GP training undertaken by Dr Sanusi. That was factually incorrect; there was such evidence but the tribunal did not see it. I have had to consider carefully whether knowledge of that evidence about GP training would or might have made a difference.

69. I have concluded that it would not have done. The tribunal's decision on sanction would still have had to reflect the gravamen of the main findings. The absence of insight and appreciation of the seriousness of his misconduct, the difficulty in showing the required "remediation" in a case of dishonesty and the overriding need to preserve public confidence in the profession, lead me to conclude that no harm was done by what went wrong in the present case and that the decision to erase Dr Sanusi's name from the medical register must therefore stand. The appeal is therefore dismissed.

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