Neutral Citation Number: [2020] EWHC 2480 (Admin)

Case No: CO/3642/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/09/2020

Before :

MR JUSTICE MORRIS

- -

Between:

DR KALOMOIRA KEFALA	**Appellant**
- and -	
GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

James Bourne-Arton (instructed by **Monarch Solicitors**) for the **Appellant**
Alexis Hearnden (instructed by **General Medical Council**) for the **Respondent**

Hearing dates: 9 June 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 18 September at 10:30 am.

Mr Justice Morris:

Introduction

1. This is an appeal from a decision ("the Decision") of the Medical Practitioners Tribunal ("the Tribunal") dated 9 August 2019. By the Decision, the Tribunal held that the fitness to practise of the Appellant, Dr Kalomoira Kefala ("the Appellant") was impaired by reason of misconduct and ordered that she be suspended from the medical register for three months. The relevant impairment arose from misconduct, comprising the dishonest failure to disclose a relevant conviction on two separate occasions. The appeal is brought under section 40 of the Medical Act 1983 and is in respect only of the Tribunal's finding of dishonesty. The Appellant does not appeal against the finding of impairment itself nor the sanction. She seeks an order that the Decision be quashed. The respondent to the appeal is the General Medical Council ("the GMC").

Some factual background

2. The Appellant is a Greek national and is a paediatrician specialising in neonatal pneumo-allergies. She qualified as a doctor from the University of Athens in 1997 and in 2013 received a Masters of Sciences from the University of Athens.

3. In 2005 she was involved in a road traffic accident in Greece when a motorcyclist drove into her while she was stationary in a car. There were civil court proceedings in which she was found not liable. In 2012 she discovered that in 2009 she had been found guilty, in her absence, by a court in Thessaloniki of an offence relating to the road traffic accident. She disclosed that decision in an application to register with the GMC. However subsequently when she undertook a post graduate course at the University of Southampton, she failed to disclose it in two forms – described in the Decision as "Form 1" and "Form 2"- that she was required to submit to the University. The GMC contended, and the Tribunal found, that those failures were dishonest and amounted to misconduct, and that by reason of that misconduct her fitness to practise was impaired.

The Legislative Framework and relevant legal principles

4. The statutory framework for the GMC and the Tribunal is to be found in the Medical Act 1983, as amended ("the Act"), and the General Medical Council (Fitness to Practise) Rules 2004, made under the Act. Other relevant material is to be found in certain case law and in the GMC's own statement of principles of good practice in its publication, Good Medical Practice.

The GMC and the Medical Practitioners Tribunal

5. Section 1(1A) of the Act provides that "the overarching objective of the General Council in exercising their functions is the protection of the public". Section 1(1B) expands on this, providing that: "the pursuit of the General Council of the overarching objective involves the pursuit of the following objectives (a) to protect promote and maintain the health safety and well-being of the public; (b) to promote and maintain public confidence in the medical profession, and (c) to promote and maintain proper professional standards and conduct for members of that profession".

Fitness to practise proceedings

6. The procedure for determination of "fitness to practise" is divided into two stages: an investigation stage and then reference to, and consideration and determination by, the Tribunal. Section 35C(2) of the Act provides that: "a person's fitness to practise shall be regarded as impaired for the purposes of this Act by reason only of – (a) misconduct… ". It is well established that under section 35C the determination of impairment of fitness to practise involves a two-stage process. First the issue of whether there has been misconduct (or other grounds) and, second, whether as a result of such misconduct (or other ground), fitness to practise is impaired.

Appeals

7. Section 40 of the Act makes provision for appeals from Tribunal decisions to, inter alia, this Court. By s.40(1)(a), appealable decisions include a tribunal decision under s.35D giving a direction for erasure, for suspension, or for conditional registration or varying the conditions imposed by a direction for conditional registration. Under s.40(7), this Court's powers on appeal include the power to dismiss the appeal, to allow the appeal and quash the direction appealed against, to substitute its own direction, or to remit the case to the MPTS for them to arrange for a tribunal to dispose of the case in accordance with the Court's directions.

8. On appeal, the question for the Court is whether the Tribunal was wrong, either as a matter of fact or law: see CPR 52.21(3). Further, an appeal under s.40 is a full appeal by way of re-hearing (and is thus, in principle, broader than the usual jurisdiction of "review" applicable to most appeals): see CPR 52.21(1)(a) and Practice Direction 52D, §19.

9. As regards the approach of the Court on such a re-hearing, in relation to findings of fact/misconduct in particular, I have considered a number of authorities (including those cited within authorities): *Gupta v General Medical Council* [2001] UKPC 61 [2002] 1 WLR 1691 at §10 (citing *Thomas v Thomas* [1947] AC 484 at 487-488); *Assicurazioni Generali SpA v Arab Insurance Group* [2003] 1 WLR 577 at §§13-22, 197; *Southall v General Medical Council* [2010] EWCA Civ 407 at §47 and §§50-62; *Yassin v General Medical Council* [2015] EWHC 2955 (Admin) at §32; *Siddiqui v General Medical Council* [2015] EWHC 1996 (Admin) at §30(ii); *Craig v Farriers Registration Council* [2017] EWHC 707 (Admin) at §§27 to 33; *General Medical Council v Jagjivan* [2017] 1 WLR 4438 at §40; *Bawa-Garba v General Medical Council* [2018[EWCA Civ 1879 at §§60-67; and *Gupta v General Medical Council* [2020] EWHC 38 (Admin) at §36. Whilst these cases do not speak with one voice, the following principles emerge.

10. First, where the appeal court is being asked to reverse findings of fact based on oral evidence, there is little if any difference between "rehearing" and "review": see *Craig* §28; *Assicurazioni Generali* at §§13, 15 and 23. Ultimately the question for this court is whether the decision below was "wrong" or "unjust because of a serious procedural or other irregularity in the proceedings [below]".

11. Secondly, on questions of fact, the degree to which the appeal court will show deference to the lower court will depend on the nature of the issues determined by the court below. Much will depend on the extent to which the judge below has an

advantage over the appellate court. Greater deference will be shown where the conclusions are based upon the view formed of oral evidence of witnesses: see *Assicurazioni Generali* at §15**.**

12. Thirdly, in this connection, distinctions are drawn between different types or descriptions of finding: findings of primary fact (based on direct perception); findings of inferential (or secondary) fact, being findings of fact based on inferences from primary fact; and findings of "evaluative judgment". The distinction between the second and third categories is most clearly explained in the judgment of Robert Walker LJ in *Bessant v South Cone*, cited at §20 in *Assicurazioni Generali*. Evaluative judgment involve findings which take into account a number of factors, and include, in particular, findings of fact based on the application of a legal standard: for example, findings of negligence, of obviousness in patent law, of the existence of a contract of service, and, as in the present case, a finding of dishonesty: see *Assicurazioni Generali* §§16 to 18.

13. As regards findings of primary fact, particularly founded upon the assessment of the credibility of witnesses, the appeal court will be, at least, very cautious about reversing such a finding: see *Gupta*. In the authorities, there are differences as to the relevant degree of reluctance or caution to be adopted: from "slow to interfere" in *Gupta* through "extremely cautious" in *Jagjivan*, to "virtually unassailable" in *Southall*. In the present case, nothing turns upon these differences. Nevertheless in my judgment, on the basis that *Gupta* and *Thomas v Thomas* remain good authority, even in cases of primary fact based on oral evidence, the appeal court may still interfere where the advantage of having seen and heard the witnesses may not be sufficient to explain or justify the conclusion of the court below: see analysis in *Craig* at §§30-32.

14. As regards findings of secondary or inferential fact, as stated expressly in CPR 52.21(4), and pointed out in *Jagjivan* §40 (iv), the appeal court may draw any inferences of fact which it considers justified on the evidence. (If and in so far as §32(vii) of *Yassin* is addressing such findings (as opposed to evaluative judgments), when it suggests a significant deference to the court below, I do not follow that approach).

15. As regards findings of evaluative judgment, the approach will vary depending on nature of the evaluation. In general the appeal court will not interfere unless satisfied that the conclusion below lay outside the bounds within which reasonable disagreement is possible. Where the application of a legal standard involves no question of principle, but is a matter of degree on the facts of the case, the appeal court will be reluctant to interfere with the judgment reached by the court below; and the more factors involved in the assessment, the greater the reluctance to interfere; see *Assicurazioni Generali* at §§17 to 22, citing *Todd v Adam*, *Bessant v South Cone* and *Biogen Inc v Medeva Plc* (which in turn disapproved of *Benmax v Austin Motor Co Ltd* [1955] AC 370 on this particular point). (In this connection, I consider that *Bawa-Garba* does directly assist in the present case; in that case, the court was considering an evaluative judgment on the appropriate sanction, where the professional expertise of the specialist adjudicative body is of particular relevance: see paragraph 17 below).

16. Fourthly, as regards the giving of reasons, the purpose of a duty to give reasons is to enable the losing party to know why he has lost and to allow him to consider whether

to appeal. It will be satisfied if, having regard to the issues and the nature and content of the evidence, the reasons for the decision are plain, either because they are set out in terms or because they can be readily inferred from the overall form and content of the decision. It is not necessary for them to be expressly stated, when they are otherwise plain or obvious: see *Southall* at §54, citing *Phipps v GMC* [2006] EWCA Civ 397 at §106. In straightforward cases, it will be sufficient to set out the facts to be proved and then finding them proved or not. In exceptional cases, where the underlying issues are more complex, while a lengthy judgment is not required, the reasons will need to contain a few sentences dealing with the salient issues and indicating the particular arguments accepted: scrutiny of the transcripts may not be sufficient to fill any gap: see *Southall* at §§55-57 and 62. A decision on an issue of deliberate falsity and/or dishonesty based on inference may be a relatively simple one, which does not require detailed reasons: see Southall at §50 (citing *Selvanathan*). An appeal court will not allow an appeal on grounds of inadequacy of reasons, unless, even with the benefit of knowledge of the evidence and submissions made below, it is not possible for the appeal court to understand why the judge below had reached the decision it did reach.

17. Finally, in the present appeal neither the question of sanction, nor findings of impairment, are in issue. Accordingly the principle that the appellate court will accord special respect to the judgment of the professional decision-making body in respect of such matters is not of direct relevance: see *Ghosh v General Medical Council* [2001] 1 WLR 1915 and *Raschid and Fatnani v General Medical Council* [2007] 1 WLR 1460; Thus §40(vi) of *Jagjivan* (relied upon by Mr Bourne-Arton) has no direct application to the issues which fall to be decided on this appeal.

Dishonesty

18. As regards dishonesty, in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2017] UKSC 67 the Supreme Court set out the following test (at §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."*

There are thus two stages: first finding the actual state of the individual's knowledge or belief as to the facts; and secondly, whether the conduct is honest or dishonest, by reference to the objective standards of ordinary decent people.

The background facts in more detail

19. On 16 March 2009 at the Thessaloniki Court of First Instance ("the Greek Court") the Appellant was tried in absentia and convicted of the misdemeanour of bodily injury by negligence in a road traffic accident (arising from the road traffic accident in 2005). The Court imposed a five month custodial sentence, which was suspended for a period of three years. For present purposes, I refer to the decision of the Greek Court as "the Thessaloniki Decision". The Thessaloniki Decision is recorded in an eight-page document entitled "Minutes and Judgment" ("the Minutes").

20. In 2012, the Appellant first became aware of the Thessaloniki Decision when, for professional purposes, she was required to provide a copy of her criminal record. By that time, there was no remaining avenue of appeal against the Thessaloniki Decision.

21. On 28 January 2013, the Attorney General of the Greek Court issued a certificate stating that the Appellant was not presently subject to any criminal proceedings "for absconsion of prosecution".

Registration with the GMC ("Form 0"): June 2015

22. On 7 June 2015 the Appellant applied to register with the GMC and advised the GMC of the Thessaloniki Decision. On the application form, - Form 0[1] - she answered "Yes" to the following question:

> *"Have you ever been convicted of an offence in a court of law, or been cautioned, in the UK or another country? You must include:*
>
> *- Any caution or convictions in the UK or another country that have been spent under the Rehabilitation of Offenders Act 1974*
>
> *- Any road traffic convictions*
>
> *- Any offences for which you have been convicted in a military court or tribunal.*
>
> *Except those which are classed as 'protected' cautions or convictions (see guidance note for more details".*"

In the further information box at the end of the application, the Appellant gave more detail about how she came to be tried in her absence and explaining that she had been "acquitted" in the civil court, and that the Thessaloniki Decision was suspended.

23. On 11 August 2015 the Greek Department of Criminal Records, in a "Criminal Record", certified the Appellant's "criminal status", by reference to the Thessaloniki Decision, in the following terms:

> *"Decision: Three Membered Magistrate's Court of Thessaloniki 5918 – 16/3/2009 (Judgment by default).*
>
> *Punishable Acts: Bodily injury by negligence of the liable*

[1] So described, in order to maintain chronological consistency with the numbering used in the Decision.

> *Main Penalty: 5 months <u>imprisonment</u>. 3 years of suspension of penalty"*
>
> (*<u>emphasis</u> added)*

Enrolment on the course at Southampton University (Form 1): October 2016

24. On 12 October 2016 the Appellant applied to attend a course at Southampton University. She completed, online, the application form - described in the Decision as "Form 1" - to enrol on a post graduate course – the MSc Allergy Programme. To the question on Form 1, "Do you have any criminal convictions which you are required to declare", the Appellant answered "No". At the end of the form she declared that the information provided was accurate and that no material information had been omitted.

25. As regards the words "which you are required to declare", before completing the form the Appellant sought assistance, from an online help function, communicating with a live person online. There is a dispute of fact as to the material she was provided with through that online help function. The GMC contended that the Appellant was provided with certain information, which I refer to as "the Guidance" (and referred to in the Decision as "the guidance"). The Appellant says that she was provided with a link which she went to a webpage, but which contained material different from the Guidance.

The Guidance

26. The relevant wording of the Guidance is as follows:

> "*Do you have any relevant criminal convictions?*
>
> *The University has special procedures for handling applications from people with criminal convictions. It is important that you declare any relevant convictions. The information that you provide will not affect the academic assessment of your application. However, it will enable us to ensure that the interests and safety of all members of the University community are safeguarded.* ***Relevant criminal convictions include offences against an individual whether of a violent or sexual nature and convictions for offences involving unlawfully supplying controlled drugs or substances where the conviction concerns commercial drug dealing or trafficking. Spent convictions*** *(as defined by the Rehabilitation of Offenders Act 1974)* ***are not considered to be relevant and you should not reveal them****. If you are convicted of a relevant criminal offence after you have applied for a postgraduate programme of study, you must tell us. We will then ask you for further details.*
>
> ***<u>Programmes in</u> teaching, <u>health</u>, social work or those involving work with children or vulnerable adults: you must tick the box if any of the following statements apply to you:***
>
> ***a. I have a criminal conviction***

b. I have ***a spent criminal conviction***

c. I have a caution (including a verbal caution)

d. I have a bind over order

e. I am serving a prison sentence for a criminal conviction.

You may need an 'enhanced disclosure document' from the Criminal Records Bureau or Scottish Criminal Record Office Disclosure Service. The University will send you the appropriate documents to complete. If statement 'e' applies to you then you must also give the prison address as your correspondence address and a senior prison officer must support your application (e.g. as a referee).

All other programmes:

For all other programmes, you must tick the box if either of the following statements apply to you:

a. I have a relevant criminal conviction that is not spent

b. I am serving a prison sentence for a relevant criminal conviction

If statement 'b' applies, you must also give the prison address as your correspondence address and a senior prison officer must support your application (e.g. as a referee)." (***emphasis*** *added)*

27. Thus, in summary, under the Guidance, a distinction is drawn between "*Programmes in teaching, health, social work or those involving work with children or vulnerable adults*" and "*all other programmes*". In the former case, any criminal conviction, including any spent conviction, was to be disclosed; in the latter case, only "a relevant criminal conviction that was not spent" was required to be disclosed. Evidence concerning the provenance of the Guidance is referred to in paragraph 79 below.

The first DBS form ("Form 2"): November 2016

28. On 11 November 2016, the Appellant attended her first lecture on the course. At the end of that lecture, she completed, as required, a hard copy form entitled "PG Allergy Programmes 2016/2017 Student Self Disclosure of Criminal Record" – described in the Decision as "Form 2". Form 2 had the word "Medicine" as a header. Its opening printed words provided as follows:

"*The purpose of this document is to confirm that you have not received any criminal convictions, cautions or bind-overs by the Disclosure and Barring Service (DBS). Conviction includes being put on probation or being given an absolute or conditional discharge, or being bound-over or being given a formal caution. This includes convictions which would*

normally be regarded as "spent" under the Rehabilitation of Offenders Act 1974"

This text is significant for reasons set out in paragraph 87 below. The Appellant then added her name and completed the form as follows:

> *"I understand that to complete the MSc Allergy Programme I must discuss any criminal record with my Senior Tutor. [Answer] Yes.*
>
> *"Have you been:*
>
> *• Convicted [Answer] No*
>
> *• Cautioned [Answer] No*
>
> *• Bound-over [Answer] No*
>
> *Are you currently charged with any criminal offence? [Answer] No."*.

She then signed the declaration that the statements made in the Form were true to the best of her knowledge and belief. The Appellant did not therefore disclose the Thessaloniki Decision.

29. Before completing this form, the Appellant discussed it with Dr Veronica Hollis, senior teaching fellow at Southampton University. There is a conflict of evidence as to the content of that discussion. The Appellant maintains that she explained the situation to Dr Hollis, who told her she did not need to disclose the Thessaloniki Decision. Dr Hollis was certain that at no point did the Appellant disclose that the Thessaloniki Decision was a criminal conviction; rather she formed the impression that the Appellant had been involved in a minor road traffic accident. Her evidence is contained in an email and in oral evidence. The evidence is considered further in paragraphs 106 and 107 below.

The Second DBS Form ("Form 3"): January 2017

30. On 6 January 2017, the Appellant completed, as required, a second "Student Self Disclosure of Criminal Record" form (which I refer to as "Form 3"); this time it was in electronic form. The heading and the printed terms were as in Form 2. On this occasion, the Appellant answered "No" to the same questions as in Form 2. However she added, in a box at the foot of the form, details of the Thessaloniki Decision. She described the Thessaloniki Decision in precisely the same terms as contained in the August 2015 Criminal Record (as set out in paragraph 23 above). She added the following explanation:

> *"This decision has been suspended due to the previous and afterwards honourable life. This has been a judgement by default as the clerk has put up poster in an unknown address. The civil court had acquitted me as I was stopped and it was the guy with the moto who had fell up on me. He actually wanted to gain money from the case and continued with*

> *another court. This court has had a judgement by default as I was not informed for this court. As I was not present, the other party changed his declaration and he actually bear false witness. Actually, I was informed for this decision on 2012, after this decision has been barred."*

31. According to the Appellant and Greek law evidence, on 16 March 2017, five years after the Thessaloniki Decision, it would have been removed from her criminal record, on the basis that the suspended sentence had not been activated in that period.

The Third DBS Form ("Form 4"): October 2017

32. On 3 October 2017, the Appellant completed, as required, a third "Student Self Disclosure of Criminal Record" form ("Form 4"); again electronically. This form was headed "Faculty of Medicine Postgraduate Taught Programmes 2017/2018". The printed terms were as in Form 2. On this occasion, the Appellant answered "Yes" to the question "Have you been convicted?" and immediately following she set out the details of the Thessaloniki Decision, again in the precise same terms as set out in paragraph 23 above.

33. In 16 November 2017 Dr Hollis provided an email setting out her recollection of her discussion with the Appellant, on 11 November 2016, about completing Form 2. This is referred to as her "initial account": see paragraph 106 below.

University disciplinary proceedings October 2017 to May 2018

34. On 4 October 2017 Dr Hollis was contacted by the student administration team. Review of Form 4 prompted Dr Judith Holloway, Programme Lead of MSc in Allergies to email, on 16 October 2017, Dr Clare Polack, Senior Clinical Lead, to discuss her concerns about the Appellant's apparent failure to disclose the Thessaloniki Decision at earlier opportunities. Dr Polack decided that, as this was not a student seeking a medical degree, the matter should be dealt with by the non-medical student disciplinary body. Student disciplinary proceedings were commenced. On 24 October 2017, the Appellant was notified of an investigation by the University. On 2 February 2018, the Student disciplinary body found that the Appellant had not provided clear evidence as to why she had not fully disclosed the Thessaloniki Decision and issued a formal written warning. Subsequently on 11 May 2018, the Appellant successfully appealed that decision and the previous sanction was retracted and removed.

The Tribunal Proceedings

35. In the meantime, on 20 March 2018, the matter had been reported by Dr Polack to the GMC. As a result, the GMC brought proceedings before the Tribunal against the Appellant, alleging dishonest failure to disclose the Thessaloniki Decision on two occasions.

The course of the hearing

36. The Tribunal hearing took place between 1 and 9 August 2019. The Appellant attended, and was represented by Mr Bourne-Arton at the facts stage, but did not attend nor was represented at the subsequent stages of misconduct, impairment or sanction. The GMC case before the MPT was that the Appellant (a) was aware of the conviction (as demonstrated by her disclosure to the GMC in 2015) and (b) had knowingly failed to disclose it on Forms 1 and 2. The GMC relied upon the Guidance.

The allegations

37. The allegations against the Appellant are set out at paragraph 5[2] of the "Determination on Facts" section ("the Determination") of the Tribunal's "Record of Determinations" (i.e. the Decision), in eight numbered paragraphs as follows[3]:

> *"1. On 16 March 2009 in the Thessaloniki Court of First Instance, you were convicted of bodily injury caused by negligence on the part of the liable party.*
>
> *2. You were sentenced to five months imprisonment, suspended for three years.*
>
> *3. On 12 October 2016 you completed an application form ('Form 1') for a post graduate course at the University of Southampton ('the University').*
>
> *4. On 11 November 2016 you completed a student self disclosure of criminal record ('Form 2') for the University.*
>
> *5. In response to the question, 'do you have any criminal convictions which you are required to declare', on Form 1 you stated 'no'.*
>
> *6. In response to the question, 'have you been convicted', on Form 2 you stated 'no'.*
>
> *7. The answers you gave to paragraph 5 and 6 above were:*
>
> *a. untrue;*
>
> *b. known you to be untrue.*
>
> *8. Your actions in respect of paragraphs 5 and 6 were dishonest by reason of paragraph 7b.*
>
> *And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct."*

[2] In the following, all references to paragraph numbers are to paragraphs of the "Determination on Facts" section.

[3] The quoted passage omits reference to whether the allegation was disputed.

38. The Determination recorded that allegations 3 to 6 were admitted and found to be proved. The remaining allegations (1, 2, 7 and 8 and the impairment) were disputed and fell to be determined by the Tribunal.

The evidence

39. The Tribunal heard oral evidence from Dr Polack, Dr Hollis and the Appellant. It also received substantial documentary evidence, including email correspondence between the GMC and the University concerning the Guidance (see paragraph 79 below).

40. Dr Polack gave evidence by a witness statement and was then cross-examined. She principally adduced the University documentation. In particular she gave evidence about the Guidance and about whether the MSc Allergy Programme was a "programme in health". Dr Hollis gave oral evidence, in which she verified a witness statement and the initial account. She was cross-examined. She gave evidence about the content of the discussion on 11 November 2016 about Form 2.

41. The Appellant provided an undated written witness statement and gave oral evidence over two full days. She gave substantial oral evidence in chief and in cross-examination. In particular she gave evidence about each of the Forms, about whether she considered the Thessaloniki Decision to be a conviction or a criminal conviction; about the online help she received in relation to Form 1, and about her discussion with Dr Hollis relating to Form 2, and about why she had completed Forms 3 and 4 in the way she had.

42. The Appellant also relied upon evidence as to Greek law and procedure. She relied upon the written evidence of Iosif Karadedos, Greek lawyer and upon the opinion of Antigoni Moysidou, an Appeal Court Solicitor, and member of the Thessaloniki Bar Association.

The Decision

The Tribunal's findings and conclusion

43. After setting out the allegations, the Determination continued at paragraphs 7 to 16 as follows:

> "***The Facts to be Determined***
>
> *7. In light of Dr Kefala's response to the Allegation made against her, t<u>he Tribunal is required to determine whether Dr Kefala was convicted of injury caused by negligence on the part of the liable party</u> and whether she was sentenced to five months imprisonment which was suspended for three years. The Tribunal must determine whether Dr Kefala did not notify The University of the conviction on her application form and student declaration form and if this was dishonest.*
>
> ***Witness Evidence***

8. Dr Clare Polack gave oral evidence at the hearing. The Tribunal found Dr Polack to have been generally a good and credible witness and her oral evidence was balanced and consistent with her written statement. She was honest in her responses to questions and did her best to assist the Tribunal. She as honest when she was unable to answer questions.

9. Dr Veronica Hollis, Senior Teaching Fellow at the University, gave evidence at the hearing via video link. The Tribunal found Dr Hollis to be reliable in her oral evidence and was consistent with her written statement. The Tribunal recognised that there were some connection issues which caused there to be a delay in her responses when questioned. However, the Tribunal found Dr Hollis to have been a credible witness.

10. Dr Kefala provided her own witness statement and also gave oral evidence at the hearing.

11. Dr Kefala stated to the Tribunal that she first became aware of the Decision of the Thessaloniki Court of First Instance in 2012 when she requested a copy of her criminal record. Dr Kefala told the Tribunal that she did not consider the Thessaloniki Court of First Instance's finding to be a 'conviction' but rather a 'Decision' as this is what is written in the court documents. Furthermore, Dr Kefala stated that she did not think that this 'Decision' amounted to a criminal conviction.

12. Dr Kefala told the Tribunal that she has never lived or worked in the UK but applied to the GMC for registration on 07 June 2015 and declared her conviction to the GMC in this application form.

13. When giving oral evidence to the Tribunal, Dr Kefala said that she did not disclose her conviction from the Thessaloniki Court of First Instance to the University as she saw that the University application used different wording to the GMC application form when enquiring about convictions and she did not think that she was required to declare this 'Decision'.

14. Dr Kefala told the Tribunal that she was referred by the University to a website link which gave guidance as to what to declare. Dr Kefala said that the guidance given in the link was 'general' and stated that a conviction was something that could impair her practice. Dr Kefala did not think that the 'Decision' had done anything to impair her practice and accordingly answered 'no' to the questions regarding criminal convictions on the University application form.

> *15. Dr Kefala told the Tribunal that, on her first day of attending the course, during a break she spoke with Dr Hollis about the self-disclosure of criminal record form which had been handed out to all students. Dr Kefala told the Tribunal that Dr Hollis said to her 'I do not think you should disclose this.' Dr Kefala did not disclose her conviction on the self-disclosure form and did not think that she said was untrue.*
>
> *16. Dr Kefala confirmed that she had declared her conviction on a self-disclosure of criminal record form dated 06 January 2017 and again on 03 October 2017. She told the Tribunal that she had done this to 'take their attention' and she assumed that someone in an administrative role at the University would contact her to obtain further information about her disclosure."* (*emphasis added*)

44. At paragraphs 18 and 19, the Tribunal made the following significant assessment of the Appellant's evidence:

> "*18. During her oral evidence the Tribunal found Dr Kefala provided a lot of information and her evidence was difficult to follow. The Tribunal noted that English is not Dr Kefala's first language and at times she found it difficult to convey information in a direct and cogent manner.*
>
> *19. On occasion, some of Dr Kefala's answers deflected away from the purpose of the questions and drew attention to other matters not directly relevant to the allegations but she did not seek to deliberately mislead the Tribunal. The Tribunal felt that Dr Kefala's answers to questions regarding her conviction were clouded by the fact that she felt the Decision made by the Court of Thessaloniki was unjust."*

45. The Determination then went on to summarise the documentary evidence and to set out the Tribunal's approach to the Thessaloniki Decision on the facts, including the burden and civil standard of proof, noting that in relation to dishonesty it had to have regard to the cogency of the evidence. At paragraph 22 the Tribunal set out the two stage test for dishonesty in *Ivey* as set out in paragraph 18 above.

The Decision on the dishonesty

46. Under the heading "The Tribunal's Analysis of the Evidence and Findings", at paragraphs 23 to 40, the Tribunal made its findings in respect of each of the disputed allegations (1, 2, 7 and 8). The Tribunal stated:

> "*23. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.*"

47. As regards allegation 1, the Tribunal found as follows:

> "*24. The Tribunal was mindful of the Minutes and Judgment of the three-member Misdemeanours Court of Thessaloniki, dated 16 March 2019 which sets out that:*
>
> *"It finds her guilty of the following: On 18.04.2005, in Thessaloniki, due to negligence, i.e. lack of attention she was required to and could have shown, she did not foresee the punishable result of her action and caused bodily injury to another individual".*
>
> *25. The Tribunal further noted that on her self-disclosure form to the University dated 3 October 2017 Dr Kefala selected 'Yes' in answer to the question 'Have you been convicted' She further provided details of the Decision by the Court of Thessaloniki namely that she was convicted of "Bodily Injury by negligence of the liable".*
>
> *26. The Tribunal also took account of Dr Kefala's GMC application form submitted on 07 June 2015, where she declared that she had a conviction. In her oral evidence Dr Kefala further admitted that she had been convicted of bodily injury caused by negligence. The Tribunal therefore considered that this allegation is a matter of fact and given the above evidence this allegation is found proved.*" *(emphasis added)*

At paragraphs 27 to 29, the Tribunal went on to find allegation 2 (relating to sentence) proved.

48. The Tribunal then addressed allegations 7a and 7b, considering in turn, Form 1 and Form 2 respectively. As regards Form 1 (i.e. allegation 5), the Tribunal found as follows:

> *"Paragraph 7a in relation to paragraph 5*[4]
>
> *30. The Tribunal took account of the University application form contained in the bundle and the guidance which was sent as an electronic link to Dr Kefala. It considered that if she had studied it properly, as she stated in her oral evidence, then she would have ticked the 'Yes' in the box asking if she had any criminal convictions. The Tribunal were of the view that it was clear that any criminal convictions were taking seriously by the University and the guidance makes it clear that she must tick the box if she has a criminal conviction or a spent criminal conviction.*
>
> *31. The Tribunal has already determined that Dr Kefala had a criminal conviction as per paragraph one of the allegation which was found proved and therefore by answering 'no' this*

[4] i.e. whether the statement in Form 1 was untrue.

was untrue. It therefore determined allegation 7a in relation to paragraph 5 is found proved.

Paragraph 7b in relation to paragraph 5[5]

32. The Tribunal had regard to the guidance which was provided to Dr Kefala by the University which outlined various examples of convictions that would need to be declared. The Tribunal were mindful that as a competent individual, Dr Kefala must have read and understood this guidance and what she was expected to declare on the University application form. The Tribunal had regard to paragraph 71 (a) and (b) of Good Medical Practice (GMP) which states:

'You must be honest and trustworthy when writing reports, and when completing or signing forms, reports or other documents. You must make sure that any 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.'

33. The Tribunal took the view that during her oral evidence Dr Kefala appeared not to accept her conviction. It determined that she was aware that she had a criminal record as she stated in her oral evidence that she received a copy of this in 2012. The Tribunal therefore concluded that when she stated that she did not have any criminal convictions this was known by her to be untrue. Therefore it determined allegation in 7b in relation to paragraph 5 is found proved."

(emphasis added)

49. As regards Form 2 (i.e. allegation 6), the Tribunal found as follows:

"*Paragraph 7a in relation to paragraph 6*[6]

34. The Tribunal took into account that Dr Kefala had ticked 'no' on the University's Student self-disclosure form when asked if she had been convicted. The Tribunal has already found in relation to paragraph 1 of the allegation that there was a conviction. Dr Kefala's response was thefore untrue. The Tribunal determined that paragraph 7a of the allegation, in relation to paragraph 6 is found proved.

Paragraph 7b in relation to paragraph 6[7]

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[5] i.e. whether the Appellant knew that the statement in Form 1 was untrue.

[6] i.e. whether the statement in Form 2 was untrue

[7] i.e. whether the Appellant knew that the statement in Form 2 was untrue

> *35. In considering this allegation the Tribunal were mindful of the evidence it received from Dr Hollis. In her evidence Dr Hollis stated that she explained what the form was about and "at no time did she [Dr Kefala] disclose a criminal conviction".*
>
> *36. The Tribunal took the view that Dr Hollis did not have the full facts in relation to Dr Kefala's conviction and the circumstances surrounding it. It considered that it is unlikely that Dr Hollis would have told Dr Kefala not to disclose her conviction.*
>
> *37. The Tribunal determines that it was Dr Kefala's responsibility to ensure that she completed any forms correctly and honestly and by stating 'no' in her Student self-disclosure of a criminal record she knew this to be untrue. The Tribunal had regard to paragraph 71 (a) and (b) of the GMP. It therefore determined allegation 7b in relation to paragraph 6, is found proved."* (*emphasis added*)

50. Finally, the Tribunal considered the question of dishonesty (allegation 8, in respect of both Form 1 and Form 2) and found as follows:

> "*Paragraph 8 in relation to paragraph 5 and 6*
>
> *38. The Tribunal had regard to all of the evidence set out above and it found that Dr Kefala was aware of her conviction and knew the information she provided in both documents was untrue.*
>
> *39. The Tribunal then went on to consider whether Dr Kefala's conduct was dishonest by applying the objective standards of ordinary decent people. Having done so, it concluded that ordinary decent people would find Dr Kefala's actions dishonest in that she knowingly gave false information in stating 'no' on the course application form and self-disclosure form.*
>
> *40. Therefore, the Tribunal found that Dr Kefala by declaring that she did not have a criminal conviction, was dishonest by reason of the matters set out in paragraphs 5 and 6 of the allegation. The Tribunal determined paragraph 8 of the Allegation is found proved."*

51. At paragraph 41 the Tribunal summarised its "Overall Determination on the Facts", finding all eight allegations proved. The Decision then addressed, in turn, the "Determination on Impairment", the "Determination on Sanction", and the "Determination on Immediate Order". These determinations are not relevant to this appeal.

The Appeal

52. By Appellant's Notice dated 17 September 2019, the Appellant appeals against the Decision, contending that the Determination was wrong.

The Grounds of Appeal

53. The Appellant puts forward six grounds of appeal as follows:

(a) The Panel were factually wrong to find that the Appellant had provided details of the Decision "namely that she was convicted".

(b) In determining allegation 1, the Tribunal relied on the forms completed by the Appellant, but failed to consider the Appellant's explanation for both answers. The explanation being that the Appellant did not accept she had a conviction.

(c) The Tribunal failed to properly consider the question asked in the application to Southampton University when finding her answer was not true.

(d) In determining allegation 7 (b), the Tribunal, in determining that the Appellant knew her answer to be untrue, failed to properly consider the evidence by the Appellant. This is true in relation to both the application to Southampton University and the DBS form completed on 3 October 2017.

(e) The Tribunal failed to properly apply the *Ivey* test for dishonesty by failing to determine the Appellant's actual knowledge of belief of facts and whether it was genuinely held.

(f) In determining that the Appellant was dishonest in allegation 8 the Tribunal were wrong and failed to give proper consideration to surrounding evidence.

54. For the appeal, the Appellant sought to rely upon fresh evidence. She provided her own new witness statement dated 18 October 2019. She also sought to rely upon a statement of Mr Anagnostopoulos, giving further evidence of Greek law. As to her witness statement, the GMC contended that it was not admissible under familiar *Ladd v Marshall* principles. I read the statement de bene esse. In any event it largely repeats, and does not materially add to the account, she gave in oral evidence at the hearing. I have considered the statement of Mr Anagnostopoulos. Again it does not materially add to the evidence already submitted.

Discussion and Analysis

55. Before turning to consider the grounds of appeal, I make the following general observations. I have considered in some detail the evidence before the Tribunal and in particular the transcripts of the hearing, including the oral evidence of Dr Polack, Dr Hollis and the Appellant. This gives me an understanding of the evidence heard by the Tribunal and to some extent a flavour of the tone and manner of the evidence. However I recognise that the Tribunal had the advantage of seeing and hearing the evidence being given, and was thus able to assess demeanour – which goes to, but is not decisive, of the credibility and reliability of the witnesses. I have also read the closing speeches and so can ascertain what was directly in issue before the Tribunal.

56. As regards the assessment of the witnesses, the Tribunal was entitled to reach the views that they did on credibility and reliability. As to the Appellant in particular, albeit without the benefit of having seen and heard the evidence being given, the Tribunal's findings at paragraphs 18 and 19 were, in my judgment, justified, and perhaps, gave her the benefit of any doubt. From consideration of the content of the transcripts alone, the content of the Appellant's oral evidence was at times opaque, inconsistent and even evasive. In my judgment, the Tribunal's finding at paragraph 19 that her answers were "clouded" is a finding by the Tribunal that some of the Appellant's answers in evidence to the Tribunal were not true and were not accepted by the Tribunal. (I address below the Tribunal's further finding that the Appellant did not seek deliberately to mislead the Tribunal).

Grounds (a) and (b): Allegation 1: was the Appellant "convicted"?

57. Grounds (a) and (b) are both directed at allegation 1, and the Decision at paragraphs 24 to 26 set out in paragraph 47 above, and whether the Appellant was "convicted" i.e. whether the Thessaloniki Decision was a "conviction".

The Appellant's case

58. By Ground (a) the Appellant contends that, in reaching its conclusion, on allegation 1, that the Appellant was "convicted" by the Thessaloniki Court, the Tribunal was wrong to find, (at paragraph 25) that the Appellant "provided details of the decision… , namely that she was convicted". The Appellant had not described the Thessaloniki Decision as a conviction. Subsequent findings (in particular findings at paragraph 38) were based on this erroneous finding.

59. By Ground (b) the Appellant further contends that, in relying, at paragraph 25, on the Appellant's "Yes" answers in Form 0 and in Form 4, the Tribunal ignored the issue she raised that she did not regard the Thessaloniki Decision as a conviction and failed to refer to the legal opinion of Mr Karadedos. The reasons given by the Tribunal show that it failed properly to understand her case or chose to ignore her explanation of her understanding of the Thessaloniki Decision. The Appellant had ticked "Yes" to Form 4 because in Form 3 she had included information about the Thessaloniki Decision and had a concern because no questions had been asked. She did not believe she had been convicted of a criminal offence and still does not believe it. As regards Form 0, she had ticked "Yes" because that form drew specific attention to a road traffic offence. In summary, in reaching its conclusion on allegation 1, the Tribunal was wrong to take account of what the Appellant had said about the Thessaloniki Decision, without looking at the surrounding context of those documents relied upon.

The GMC case

60. The GMC contends that the argument that the Thessaloniki Decision was not "criminal" nor "a conviction" is unsustainable. It was a decision of a criminal court, resulting in a custodial sentence, albeit suspended. The GMC relies upon the evidence of the decision itself, the Appellant's criminal record, the evidence of the Greek lawyers and the Appellant's own admissions. The fact that the sentence was suspended, did not change the criminal complexion of the underlying penalty.

61. The Tribunal was entitled to find that the Appellant was convicted of bodily injury caused by negligence (allegation 1). The Tribunal's conclusion that the Appellant knew she had a conviction was based on careful consideration of all the evidence, including the Appellant's live evidence. The Tribunal was entitled not to accept the Appellant's account that she did not believe she had a conviction.

Discussion and conclusions

62. The issue on allegation 1 is whether the Thessaloniki Decision was, in fact, a conviction (and not what the Appellant considered it to be). That issue is addressed at paragraphs 24 to 26. The existence and content of the Thessaloniki Decision is a question of primary fact, but does not depend on oral evidence. Whether it constitutes a "conviction" or a "criminal conviction" is, in so far as it is a question of Greek law, a question of fact provable by expert evidence, and, ultimately, in so far as it concerns the meaning of the term in the various Forms, a question of construction of those forms – which is in turn a question of law. In argument, Mr Bourne-Arton accepted as an appropriate definition, that the meaning of the term "conviction" (or criminal conviction) in Forms 1 and 2 (and the other forms), is a finding of guilt by a court of criminal jurisdiction of an offence defined by a penal law.

63. Moreover, as conceded in the Appellant's skeleton, regardless of her own understanding of the Thessaloniki Decision, "it could be regarded as a conviction for other reasons".

64. In my judgment, it is clear that from the content of the Thessaloniki Decision that it was, in fact, a "conviction" and indeed a criminal conviction – both as a matter of Greek law, and as a matter of English language meaning.

65. The Appellant's case here is that the Tribunal should not have relied upon "admissions" by the Appellant that the Thessaloniki Decision was a "conviction". However, first, the Tribunal did not wholly rely upon those admissions. At paragraph 24, and as its first reason, the Tribunal relies directly upon the terms of the Thessaloniki Decision itself (i.e. the Minutes). Both the passage there cited and the Minutes in general clearly indicate that the decision amounts to a criminal conviction. The Minutes refer to the Misdemeanours Court, to the Code of Criminal Procedure and to the Deputy Public Prosecutor. They record that the court had "tried" the Appellant and "finds her guilty". After recording the finding of guilt, the Minutes go on to consider, separately, the question of sentence and states "the act of which the defendant has been found guilty is punishable under [various Articles] of the Penal Code". In this section on sentence, the Minutes refer repeatedly to "the crime" committed and the Appellant as the "guilty party". It is clear from the terms of the Minutes, that the Thessaloniki Decision is a criminal conviction as a matter of Greek law and procedure.

66. Further the evidence from the Greek lawyers supports this conclusion. In his statement, Mr Karadedos referred to the "criminal court" and to her "criminal record" and accepted that the Thessaloniki Decision was a conviction, albeit a suspended one. Ms Moysidou stated that the Appellant was convicted in absentia by a Three-Member Misdemeanours Court of Thessaloniki, sentenced to a custodial sentence of 5 months suspended for three years and described the Thessaloniki Decision as a "conviction" and referred to the Appellant's "criminal record". I note too that, in his statement

dated 12 September 2019, Mr Anagnostopolous, whilst stating that there is no criminal decision in force and that the Appellant did not knowingly make untruthful statement because the sentence had been suspended, nevertheless accepted that the Thessaloniki Decision was a "final criminal conviction".

67. Thus, regardless of questions of sentence, suspension and lapsing, it is clear that the proceedings at the Thessaloniki Court were "criminal" or "penal" in nature, and that the Appellant was found guilty of an act prohibited by the criminal law and subject to a penal sanction i.e. the Thessaloniki Decision was a criminal conviction.

68. Secondly, the Tribunal was entitled to take account, too, of the Appellant's own admissions that the Thessaloniki Decision was a "conviction".

69. Those admissions are to be found in her responses in Form 4 and in Form 0. As to Form 4, (paragraph 25) – the subject of Ground (a) – not only did she answer "Yes" to the question posed in the Form, but she went on to provide further details (of the "conviction" which she had effectively accepted), identifying the "punishable act". The Tribunal's analysis at paragraph 25 is correct. As to Form 0 (first sentence paragraph 26), the Tribunal was justified in relying upon the admission there that the Thessaloniki Decision was a "conviction".

70. The Tribunal went on to rely upon the Appellant's admission in oral evidence that she had been convicted.

The Appellant's evidence

71. The Appellant gave extensive evidence about the conviction and maintained that "I didn't think that I am a criminal". However under cross examination, the Appellant was asked about her declaration on Form 0. She was asked "You accepted the conviction?" to which she answered "I do not accept". Counsel followed up "I know you don't now, but you did then?" The Appellant answered: "Yes, I put "yes"". Later, in cross-examination, she agreed that she had been found guilty in her absence, that the court convicted her in her absence, going on to say that the suspended sentence meant that the decision was "erased". The Minutes were put to her. She could not bring herself to say expressly that she had been convicted. Eventually, the Chair asked her to answer directly the question whether she had been convicted. She answered that she was prepared to accept it was a conviction, but it had been suspended. She accepted that she had been convicted and that she had provided her copy of her criminal record.

72. Thus on the basis of that evidence, I consider that the Tribunal's finding was correct. Whilst the Appellant's answers in cross-examination were at times obfuscatory and evasive (as pointed out by the Tribunal at paragraph 19), she reluctantly accepted that the Thessaloniki Decision was a conviction and that her criminal record contained convictions. The fact that the sentence had been suspended does not detract from that admission.

73. For these reasons I conclude that the Tribunal's findings on allegation 1 were not wrong and that Grounds (a) and (b) are unfounded.

Ground (c): Allegation 7a (relating to Form 1): not "required to declare"

The Appellant's case

74. The Appellant contends that, in reaching its conclusions at paragraphs 30 and 31 (i.e. that the answer "No" in Form 1 was untrue) the Tribunal failed to consider that the question on Form 1 was whether there were any criminal convictions that she was "required to declare" and gave no explanation for the basis on which the Appellant was required to disclose the Thessaloniki Decision. First, the evidence was that the Appellant did not see the Guidance when she completed Form 1. The Appellant's evidence was that the link she was sent was not to the Guidance; it was to something different. Dr Polack's evidence was that the Guidance in fact applied to the DBS form (Form 2). Secondly, and in any event, on the basis of Dr Polack's evidence, the MSc Allergy Programme was not a "programme in health" and so, under the Guidance, the Appellant was not required to disclose "all" convictions. The allergy module involved no practical work involving members of the public, (and so the rationale for full disclosure of a wide array of convictions, cautions, etc did not apply to it). Rather, because, under the Guidance, it was an "other programme", she was only required to disclose "relevant criminal convictions", which did not include the Thessaloniki Decision, because it was not a conviction for a violent or sexual offence against an individual.

The GMC case

75. The GMC contends that the Tribunal did not fail properly to consider the question asked on Form 1 when finding her answer to be untrue. First, the Tribunal correctly found (as it was entitled to do on the evidence) that the Appellant was provided with the Guidance – it was the only document relevant to the Form 1 application and the documentary evidence makes it clear that it is this document which is reached by pressing the help button on the online application form. Secondly, as accepted by Mr Bourne-Arton at the hearing, the Appellant was studying, on the MSc Allergy Programme, under the Faculty of Medicine; this should have prompted the Appellant to recognise that it was "a programme in health". On this basis, the Tribunal was entitled to conclude that the Appellant should have disclosed the Thessaloniki Decision, as being "a conviction", in Form 1. Thirdly, in any event, even if it was not a "programme in health" the Thessaloniki Decision was a conviction for "an offence against an individual" - the Appellant accepted in cross-examination that the offence involved "some injuries to a person" - and was thus a "relevant criminal conviction".

Discussion and conclusions

76. This ground relates only to Form 1 and goes to the question of whether, even assuming that the Thessaloniki Decision was a criminal conviction, it was one which the Appellant was "required to declare". If it was not required to be declared, then the statement "No" could not be untrue. This issue of "required to be declared" is an important issue and was addressed at the hearing.

The Tribunal's findings

77. The Tribunal's findings in relation to Form 1 (which cover not only "untruth", but also some aspects of "knowledge") can be summarised as follows.

(1) The Guidance applied to Form 1 and the Appellant received the Guidance (and by implication, no other material) by way of electronic link (paragraphs 30, first sentence and 32, first sentence).

(2) The Guidance made clear that she had to disclose *a* criminal conviction or *a spent* criminal conviction (and not just a "relevant criminal conviction") (paragraph 30, final sentence). Whether or not the MSc Allergy Programme was a "programme in health" was in issue before the Tribunal. Whilst there is no express finding on this issue (nor on the meaning of "relevant criminal conviction"), it is implicit in this finding that the MSc Allergy Programme was a "programme in health".

(3) The Guidance "outlined various examples of convictions that would need to be declared" (paragraph 32, first sentence). It was by reference to this that the Tribunal went on to find that the Appellant "must have … understood … <u>what</u> she was expected to declare… " (paragraph 32, second sentence). However the only such examples outlined in the Guidance are examples of the narrower class of "relevant criminal convictions". This finding therefore might suggest that the Appellant only had to declare "relevant criminal convictions", and thus, implicitly, findings (a) that the MSc Allergy Programme was *not* a "programme in health", but (b) that the Thessaloniki Decision was a conviction for an "offence against an individual …of a violent … nature". In this way, there is a tension between this finding and the implicit finding in (2) above.

(I address the issue of the adequacy of the Tribunal's reasons for these findings, (and for its findings on knowledge) in paragraphs 102 and 103 below).

Analysis

78. This ground raises four issues:

(1) Did the Guidance apply to Form 1?

(2) Did the Appellant see the Guidance at the time?

(3) If the Guidance did apply to Form 1, was the MSc Allergy Programme a "programme in health" within the meaning of the Guidance?

(4) If it was not a "programme in health", was the Thessaloniki Decision a"relevant criminal conviction" within the meaning of the Guidance?

The first two issues are questions of primary fact; the latter two involve questions both of construction of the Guidance and of evaluative judgment.

(1) Did the Guidance apply to Form 1?
(2) Did the Appellant see the Guidance?

79. In response to a specific request for disclosure by the Appellant's legal team, on 14 February 2019 the GMC made inquiries of Dr Polack as to the guidance provided to students in relation to Form 1 and to the self disclosure DBS forms (Forms 2 to 4). Dr Polack passed on the inquiry to University administrative staff. The response to that inquiry, passed back to the GMC on 1 March 2019, was that, as regards the DBS

forms, there was no further guidance; but as regards Form 1, there were online help buttons. The text of what was provided by the help button was passed on (cut and pasted into an email). That text is "the Guidance" as set out in paragraph 26 above. This was all set out in a series of emails within the University and between the University and the GMC and placed before the Tribunal as documentary evidence.

80. In oral evidence, Dr Polack was asked about the provenance of the Guidance In cross examination, she seemed to suggest that the "cut and paste" text of the Guidance had been "cut and pasted" from the "online DBS form". But then when asked for clarification by the Tribunal, she could not say "hand on heart" which document the Guidance related to.

81. The Appellant's evidence as to whether she saw the Guidance was not entirely clear and at times suggested that she might have seen the Guidance. However ultimately her evidence was she was not provided with, nor ever saw, the Guidance.

82. In her undated written statement, she referred to the guidance she had received in relation to Form. She explained that on receiving the link, she found the leaflets about the convictions required to be declared. She said that the leaflet she saw distinguished between different types of course; that when no clinical work is involved, some convictions are considered to be irrelevant and what were relevant concerned sexual violence, drug use and trafficking. The description in this statement matches closely the contents of the Guidance. What is not entirely clear is whether, in this statement, she accepted that what she saw at the time when referred to the link was the Guidance.

83. In her oral evidence, the Appellant said that the online assistant help directed her to a link that indicated that she had to disclose any "criminal" conviction. As a result of that link, she decided that the Thessaloniki Decision was not a criminal conviction and further that it was not a conviction "which she was required to declare". However the material she was referred to by the link was not the same as the material provided by Dr Polack in evidence i.e. the Guidance. The material she saw suggested that she need only declare a conviction which impaired fitness to practise. (In her new witness statement, she said that the person on the online chat had told her that she did not need to click "Yes").

84. In my judgment, the Tribunal correctly found that the Guidance applied to Form 1 and was further entitled, on the evidence, to find that what the Appellant saw, at the time of completing Form 1, was the Guidance. The documentary evidence in the emails, provided by the University in response to the Appellant's own inquiry, strongly supports this conclusion. On the other hand, the Appellant's evidence was confused and in any event there is no corroborative evidence to support her alternative claim that the link on the help function was to a webpage with different guidance on it. No such different material has been produced. Moreover, the Appellant's own evidence suggests that she was aware of a distinction between "health programmes" and "non-health programmes" which mirrors the distinction drawn in the Guidance. Dr Polack's uncertainty as to whether the Guidance applied to Form 1 or the DBS Form is understandable. She was not directly responsible for the administration of the online applications, but merely acted as a conduit for the inquiries made of the University. The result of those inquiries was clear.

(3) Was the MSc Allergy Programme a "programme in health"?

85. This was an important issue in evidence and argument before the Tribunal. As pointed out above, it was not directly addressed in the Decision – although paragraph 30 appears to contain, implicitly, an affirmative answer to the question.

86. Dr Polack explained, in re-examination, that the MSc Allergy Programme is Faculty of Medicine course. She was asked whether it was a "course in health". She did not answer directly Yes. She replied that it was a post graduate taught masters, attended mainly, but not wholly, by health professionals or doctors, nurses, but also by any kind of scientist. Asked whether they would be "working in the field of health", she replied "not necessarily". Some would be working in the field of health, others might not be. This evidence was relied upon by Mr Bourne-Arton in closing submissions to the Tribunal, to support the contention that the MSc was not a "programme in health" and that, in any event, it was not clear that it was. Thus, Dr Polack's evidence, and in particular the fact that when asked directly she did not confirm positively that the MSc was a programme in health, provides some support for the conclusion that it was not a "programme in health".

87. Nevertheless, this is a question of construction and evaluative judgment, and Dr Polack's view is not conclusive. I am satisfied that the MSc Allergy Programme was a "programme in health" and thus that, under the Guidance, "all convictions" were required to be disclosed in Form 1. First, the MSc was a course undertaken under the auspices of the Faculty of Medicine – a point which the Chair was keen to have confirmed in the course of closing argument. Secondly, it was attended, mostly, even if not exclusively, by allied health professionals, doctors, nurses. Thirdly, and significantly, the terminology and contents of the subsequent DBS forms which those attending were required to complete is consistent only with this conclusion (see paragraph 28 above). Each of those forms was designed specifically for the MSC Allergy Programme, and its express terms required disclosure of all matters covered by the Guidance in relation to "programmes in health" – including any convictions, including bind overs and spent convictions. What was required to be disclosed in the DBS Forms matched what was required to be disclosed by the Guidance in relation to a "programme in health". Whilst the Appellant had not seen the DBS forms at the time of completing Form 1, that is not relevant to this issue, but only, perhaps to the issue of her knowledge.

88. I conclude that, on this basis, the Thessaloniki Decision was a conviction which the Appellant was required to declare and thus that the answer "No" to Form 1 was untrue.

89. Even if there were any doubt about this, assuming, as I do, that in paragraph 30, the Tribunal made an implicit finding that the MSc was a programme in health and thus that she was required to disclose the Thessaloniki Decision, because it was "any" conviction, this was an evaluative judgment which the Tribunal was entitled to reach and not one outside the bounds within which reasonable disagreement is possible.

(4) If the MSc was not a programme in health, was the Thessaloniki Decision a "relevant criminal conviction"?

90. In the light of my conclusion in paragraph 88 above, this issue does not arise directly. However I address it here, because it is relevant in the context of the Appellant's knowledge of the need to declare.

91. The question is whether the conviction for an offence of "bodily injury caused by negligence" amounted to an "offence against an individual whether of a violent or sexual nature" and thus amounted to a "relevant criminal conviction". The issue was raised in argument before the Tribunal, but apart from the reference to "the various examples" in paragraph 32, was not addressed in the Decision.

92. Contrary to Mr Bourne-Arton's first argument on this point, I consider that that the offence was an offence "against an individual" and further accept that it was an offence which caused injury. However in my judgment an offence of a violent (or sexual) nature is one which involves the intentional infliction of harm (be it physical or sexual or both). By contrast, the offence here is an offence which lacks intention; it is an offence of causing harm by negligence; akin to careless driving. For example, the English law offence of causing death by careless driving would not, in my judgment, be considered to be a violent offence[8]. In my judgment, the offence of bodily injury caused by negligence was not an offence of "a violent nature" and thus not a "relevant criminal conviction" with the meaning of that terms in the Guidance. Thus, if the MSc Allergy Programme had not been a "programme in health", the Thessaloniki Decision would not have been a conviction which the Appellant was required to declare in Form 1.

Overall conclusions on Ground (c)

93. For these reasons, the Tribunal's finding that the statement "No" on Form 1 was untrue was not wrong and accordingly, Ground (c) is unfounded.

Ground (d): Allegation 7b (Forms 1 and 2): knowledge of untruth

The Appellant's case

94. The Appellant contends that the Tribunal failed properly to consider the Appellant's evidence when concluding that the Appellant knew that her answers both on Form 1 and Form 2 were untrue. In relation to Form 1, the Tribunal should have considered the fact that the online assistant had advised her to answer "No". The guidance she was provided with related to impairment of fitness to practise, which the conviction did not. Even if, contrary to Ground (c), the Thessaloniki Decision was a conviction which was required to be declared, the Tribunal did not consider whether she knew her answer to be untrue (i.e. whether she knew it was a conviction which "was required to be declared"). In reaching its conclusion at paragraph 33, the Tribunal failed to consider these matters. In that paragraph there is no reference to the critical issue of "required to declare". In any event, the Tribunal failed to give proper or sufficient reasons for these findings.

[8] It is not a "specified violent offence" listed in Schedule 15 Criminal Justice Act 2003.

95. As regards Form 2 and knowledge, the Tribunal did not explain the basis upon which it reached its conclusion, in paragraph 37, that she knew the statement 'No' to be untrue. The fact that the Appellant sought guidance from Dr Hollis demonstrates that she wanted to know how she should answer the question. She did not believe it to be a criminal conviction and, given the nature of the question, on that basis, she did not know that the statement "No" was untrue. The fact that on Form 3, she answered "No" again but went on to mention the Thessaloniki Decision, shows that the Appellant did not believe it to be a "criminal" conviction.

The GMC case

96. The GMC submits that the Tribunal gave due and proper consideration to the Appellant's evidence when determining that her answers were untrue. The Tribunal was properly entitled and able after hearing two days of oral evidence from the Appellant to judge the state of her knowledge when completing the forms and her decisions not to disclose the conviction. She knew she had a conviction, as evidenced by her answers to Form 4 and Form 0. The Tribunal found she had known about it since 2012. The fact that she asked Dr Hollis does not alter the fact about what she knew.

Discussion and conclusions

97. The issues here raise questions of primary fact or inferential fact. Unless expressly admitted, knowledge or belief is not something that is readily the subject of direct perception; but it is an inference of fact that can be derived from other facts supported by direct evidence. Inferential fact is something upon which an appeal court *may* make its own findings.

Knowledge in relation to Form 1

98. This issue is less straightforward. As indicated above, the Tribunal correctly found that the Appellant was provided with the Guidance; further, under the Guidance, I consider that the Appellant was required to declare the Thessaloniki Decision. However that does not, of itself, establish that the Appellant knew that she was required to declare it.

99. There is some substance in Mr Bourne-Arton's submission that the position under Guidance was not entirely clear (i.e. "not black and white") - neither that the MSc was a programme in health nor as to whether the Appellant's offence was a "relevant criminal conviction". Thus, he submits, the Tribunal could not be satisfied that the Appellant did understand that, under the Guidance, this was a conviction she was required to declare. Moreover by that stage, the Appellant had not seen the DBS Form (Form 2), the terms of which now make it clear that under the Guidance all convictions had equally to be declared in Form 1.

100. However, this was not the Appellant's own case. Her case, and her evidence, was not that she had read the Guidance and concluded that she did not need to declare the Thessaloniki Decision or even that it was not clear, under the Guidance, that she needed to do so. Rather the Appellant's evidence was that she saw a different document and she was not required to declare because the Thessaloniki Decision did not impair her fitness to practise; and further that she was positively advised by

someone to answer "No". But that account of primary fact was - correctly - rejected by the Tribunal. There was no evidence that the Appellant found the Guidance confusing.

101. The Tribunal found as a fact, not only that she was provided with the Guidance, but also that she "must have" read and understood it and what she was expected to declare. Having found that the Appellant was provided with the Guidance, and having rejected the Appellant's account, the Tribunal was entitled to make an inferential finding that she must have read and understood its content. Whilst there is some force in the specific criticism that in paragraph 33 there is no reference to the issue of "required to declare", paragraph 32 makes express reference to the Guidance and makes a clear inferential finding that the Appellant did actually read and understand the Guidance and what she was expected to declare under it. In my judgment, the Tribunal were entitled to make the inferential findings that the Appellant knew that she was required to declare it.

Adequacy of Reasons

102. I have given careful consideration to the adequacy of the reasons given by the Tribunal, in paragraphs 30 to 33, for its conclusions in relation to Form 1 – both as to "untruth" and as to "knowledge", in the light of the principles set out in paragraph 16 above. The issue of "required to declare" was an important and centrally disputed issue, and an issue comprising a number of sub-issues going beyond a simple dispute of primary fact turning upon a conflict of oral evidence. It was the subject of oral and documentary evidence, of closing submission and specific questions from the Tribunal itself. Whilst there was a finding that the Guidance applied and that the Appellant had seen the Guidance, there was no express finding on the issue of why the Guidance required the conviction to be declared; there was the implicit finding in paragraph 30 and the possible inconsistency created by the reference to "examples" in paragraph 32 (as explained above). In my judgment, it would have been helpful if the Tribunal had expanded upon its reasons for finding why, under the terms of the Guidance, the conviction was required to be declared i.e. why the MSc was a "programme in health" or why the conviction was a "relevant criminal conviction". Further on the issue of knowledge, it might have been helpful if the Tribunal expanded upon the basis under the Guidance that the Appellant must have understood what she was expected to declare. The Tribunal's reasons in these paragraphs are somewhat truncated and require some unpicking.

103. However, the fact that further reasons could have been helpfully given does not mean necessarily that the reasons given were inadequate such as to constitute a breach of the duty. Ultimately, the question is whether it was clear to the Appellant (and whether it is clear to this Court) why she had lost. In my judgment, the Tribunal did make it sufficiently clear for the Appellant to know why her account was not believed and why she had lost, taking account of her own understanding of the evidence and the argument. Had I concluded that the reasons given for these findings were not adequate, it is very likely that I would have concluded that the Tribunal's findings of fact on these issues were wrong. However I am able to conclude on the basis of the reasons given, against the background of the relevant evidence and argument, that those findings were not wrong.

Knowledge in relation to Form 2

104. This raises two issues: first, was the Appellant told not to disclose by Dr Hollis? Secondly did the Appellant know that the Thessaloniki Decision was a criminal conviction?

105. As to the former, there was a dispute of primary fact as to what was, and was not, said in the discussion with Dr Hollis on 11 November 2016, arising from a conflict in the evidence of Dr Hollis and the Appellant.

106. Dr Hollis' evidence, in her initial account, was that the Appellant explained to her an incident which appeared to Dr Hollis to be "a minor traffic offence or minor accident which might warrant an insurance claim". She had found it difficult to understand the exact nature of what had happened. Dr Hollis had told the Appellant that she should not worry about disclosing it unless it was a criminal charge. "At no time did she actually disclose a criminal conviction".

107. In her oral evidence, Dr Hollis could not recall what she was told by the Appellant, but that she was not told it was a criminal offence. She was unable to explain the basis upon which she was described the situation as a minor traffic offence. In summary, she had had some difficulty in understanding what the Appellant told her. It was not clear to her that what the Appellant was describing to her was a criminal conviction. She did not have a clear understanding of whether, even if what she was being told was a minor traffic offence, that amounted to a criminal conviction. She was adamant that she did not positively advise the Appellant to tick the "No" box on Form 2. She did not tell the Appellant that what she was describing to her did not sound like a criminal conviction. The Appellant did not tell her she had been convicted of bodily injury caused by negligent driving or sentenced. In questions from the Tribunal, she was asked about her understanding of road traffic offences. She said certainly it was not clear to her that there was any criminal conviction or whether the police were involved.

108. The Appellant's evidence was that she told Dr Hollis of the Thessaloniki Decision and the circumstances surrounding it. She told Dr Hollis that she had been taken to "the penal court", that she had been found guilty by the Greek Court, and specifically that that had been recorded in her criminal record. Dr Hollis told her that it did not seem to be something she needed to disclose. She asked Dr Hollis whether she should put "Yes" or "No". Dr Hollis replied "I don't think that you should disclose this". As a result of that discussion, she answered "No".

109. Thus, essentially the dispute of fact was whether (a) the Appellant told Dr Hollis that the Thessaloniki Decision was a criminal conviction and (b) whether Dr Hollis advised the Appellant to tick "No" in answer to the question of Form 2.

110. The Tribunal made findings of fact (at paragraph 36) that Dr Hollis did not have the full facts in relation to the conviction and that it was unlikely that Dr Hollis would have told the Appellant not to disclose her conviction. In doing so it preferred the evidence of Dr Hollis – a reliable witness – over the Appellant's evidence – whose account was "clouded". In my judgment, on this issue of primary fact, dependent upon the oral evidence heard by the Tribunal, the Tribunal was entitled to prefer Dr Hollis' evidence and this is not one of those exceptional cases, where I should put to

one side an appeal court's usual reluctance to reach a different conclusion. Having considered the conflicting accounts, as summarised above, there is no basis for this court to conclude that the advantage of hearing and seeing the witnesses is *not* sufficient to explain or justify the conclusion of the Tribunal.

111. As regards the second issue, if the Appellant knew that the Thessaloniki Decision was a criminal conviction, then she knew she had to declare it . In this case, there was no limitation of "required to declare". At paragraph 33 the Tribunal had found that the Appellant knew that that the Thessaloniki Decision was a criminal conviction. The Tribunal did not accept her evidence that she believed it was not a criminal conviction. That provided the foundation for the finding, at paragraph 37, that she knew the answer to Form 2 to be untrue i.e. she knew she had been criminally convicted.

112. In my judgment, the Tribunal's findings of fact were correct and justified on the evidence. As pointed out in paragraph 71 above, the Appellant accepted in her evidence that the Thessaloniki Decision was a conviction. Secondly, it was clear from the Minutes that the conviction was a "criminal" conviction. Thirdly the Appellant knew, and accepted in evidence, that the conviction gave rise to her having a criminal record. Fourthly, her own evidence was that she had told Dr Hollis that she had been found guilty, by a penal court, and had referred expressly to the fact that this was recorded in her criminal record. Finally, the fact that she again ticked "No" in Form 3 whilst noting the Thessaloniki Decision does not assist the Appellant, given that, in Form 4, she ticked "Yes", admitting it *was* a criminal conviction.

Conclusion on Ground (d)

113. For these reasons the Tribunal's findings that the Appellant knew that the statements "No" in Forms 1 and 2 were untrue were not wrong. Accordingly Ground (d), in so far as it relates to both Form 1 and Form 2 is unfounded.

Grounds (e) and (f): Allegation 8: dishonesty

The Appellant's case

114. The Appellant contends, first, that the Tribunal (at paragraph 38) was wrong to rely on its earlier incorrect finding (at paragraph 25) that the Appellant was aware of her conviction (i.e she was aware of the fact that it was a "conviction"). Further, in considering the first aspect of the *Ivey* test, the Tribunal (at paragraph 38) failed to take account of: the fact that the Appellant sought and followed advice in completing both forms; the wording of Form 1 "required to declare"; and her personal circumstances that her first language is not English and that she has no understanding of English law and limited understanding of Greek law. In considering the second aspect of the *Ivey* test, the Tribunal (at paragraph 39) failed to take account of surrounding evidence: the Thessaloniki Decision would not have had any impact on her application to the university or remaining on the course; she had already declared the decision to the GMC and she declared it on Form 3; in relation to Form 2, she had tried to explain the existence of the Thessaloniki Decision to Dr Hollis; the only reason that the University was aware of the Thessaloniki Decision was because she had declared it; she had nothing to gain from hiding the decision. Further, the Tribunal failed to take into account her otherwise good character. Finally the

Tribunal failed to give adequate reasons for its conclusions on dishonesty. The finding at paragraph 19 was not sufficient to explain the basis for its conclusion that she had been dishonest.

The GMC case

115. The GMC contends that, first the Tribunal properly directed itself as to the *Ivey* test. In relation to the first limb, the Tribunal properly relied upon the Appellant's positive answers in Form 4 and Form 0. She had known about the criminal conviction since 2012. Secondly, the Tribunal correctly considered the actual state of her knowledge and belief. As regards good character, this was not relied upon by the Appellant before the Tribunal and testimonials were not adduced until the impairment stage, despite the point having been raised by the Chair at the facts stage as potentially relevant to the issue of dishonesty. In any event the failure to give a good character direction is not a procedural irregularity – and plainly the Tribunal had it in mind. For the finding of dishonesty, it is sufficient that the Appellant made knowingly untrue statements. Once allegation 7b is found to be established, then allegation 8 is established.

Discussion and conclusions

116. The decision as to whether the Appellant's conduct was dishonest is a classic evaluative judgment of fact, involving the application of a legal standard to the facts of the case. In reaching such a judgment, the Tribunal might take account of a number of factors. The Tribunal identified correctly the relevant two-stage legal test. It then went on to consider the two stages of factual assessment. First, (at paragraph 38) it considered the Appellant's actual state of knowledge or belief as to the facts. It concluded, based on its previous findings of knowledge at paragraphs 33 and 37 (and 25 and 26), that the Appellant knew she had been convicted and knew she had to declare the conviction and thus knew that her statement that she did not have a criminal conviction was untrue. Then (at paragraph 39), the Tribunal applied the second stage, concluding that the Appellant was dishonest because she had knowingly given false information and such conduct is dishonest by the objective standards of ordinary decent people.

117. First, in my judgment a finding of dishonesty by reference to the standards of ordinary decent people is ultimately a matter of judgment and not readily capable of further articulation. (For this reason, in a criminal trial a jury is given a direction of a very general nature). In this case, having made its finding in relation to knowledge, the ensuing issues underlying the question of dishonesty were not complex. It follows that in relation to a finding of dishonesty, the duty to give reasons required little more than the setting out of the facts to be proved and a finding that they are proved or not; it was not an issue upon which the Tribunal was required to give more extended reasons: see paragraph 16 above.

118. Secondly, in my judgment, having made the findings it made in relation to the making of a knowingly false statements, being false statements about convictions, a conclusion that such conduct was dishonest, by reference to the second stage of the *Ivey* test, was not one which lay outside the bounds within which reasonable disagreement is possible. The Tribunal were justified in finding that the conclusion on dishonesty follows from the finding of knowingly making false statements.

119. Thirdly, the finding at paragraph 19 that the Appellant did not seek deliberately to mislead the Tribunal is a finding that the Appellant was not dishonest when giving evidence *to the Tribunal*; it does not amount to a finding that she did not seek to mislead the University when completing Forms 1 and 2. She may not have been a dishonest witness, but she could still have been dishonest in the Forms.

120. Fourthly, as regards the specific points made by the Appellant (paragraph 114 above) these were made by Mr Bourne-Arton in closing submissions to the Tribunal. There is no reason to consider that the Tribunal did not take them into account in reaching its conclusion on the issue of dishonesty and, in my judgment, there was no requirement upon the Tribunal to address each of them in their reasons. The Tribunal was not required to identify a benefit or motive for the making of the false statements. In any event, the Appellant's conduct and explanations, over time, were not consistent, and it was not possible readily to divine her personal motivation in filling out the forms in the way that she did.

121. Finally, as regards the issue of the Appellant's good character, this was not relied upon by the Appellant before the Tribunal, despite the Tribunal having expressly given the Appellant the opportunity to do so prior to closing her cases. The fact that the Chair raised it of his own motion, suggests that that the Tribunal had the Appellant's good character in mind in any event.

122. For these reasons the Tribunal's finding that the Appellant's conduct in stating that she did not have convictions in Forms 1 and 2 was dishonest was not wrong. Accordingly Grounds (e) and (f) are unfounded.

Conclusion

123. For these reasons I conclude that the Decision was not wrong on the facts. This appeal is therefore dismissed.

124. I make two final observations. First, the Appellant has brought this appeal for the sole purpose of setting aside a finding of dishonesty by a professional body. Her desire to clear her name in this way is understandable. Nevertheless I am not satisfied that the Tribunal's decision on this issue was wrong.

125. Secondly, I recognise that the bringing of disciplinary proceedings is a matter for the GMC, which has a greater experience and understanding of the requirements of professional standards than this court. Be that as it may, in the particular circumstances of this case, I have had some difficulty understanding, in the context of the statutory objectives of the GMC set out in paragraph 5 above, the GMC's thinking behind the purpose in bringing these particular proceedings against the Appellant. As far as the GMC itself was directly concerned, the Appellant had, at the outset when registering, properly notified the GMC itself of her conviction when registering. The Appellant was not dishonest in her dealings with the GMC. Moreover she had no intention to practise. As regards the university, she had subsequently and voluntarily disclosed the conviction (in Form 3, and certainly, in Form 4), and ultimately the disciplinary body responsible for that conduct vis-à-vis the university found that that conduct was not subject to disciplinary action and did not warrant censure. As far as the university was concerned, the Appellant had not breached relevant standards.

126. Nevertheless, these observations do not undermine the soundness of the conclusions of the Tribunal nor excuse the Appellant's conduct.

127. Finally I am most grateful to counsel and solicitors for the helpful way in which this appeal has been dealt with, not least in the circumstances of the present Covid-19 situation.