Neutral Citation Number: [2021] EWHC 376 (Admin)

Case No: CO/4340/2020

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

In the Matter of an Appeal under the Medical Act 1983

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 24 February 2021

Before:

HIS HONOUR JUDGE KEYSER QC
siting as a Judge of the High Court

- -

Between:

CLAY KUMAR TEEWARY	**Appellant**
- and -	
THE GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

The Appellant appeared **in person.**
Rory Dunlop QC (instructed by **The Solicitor to the General Medical Council**) for the **Respondent**

Hearing date: 19 February 2021
- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties by email and release to BAILII. The date and time for hand-down is deemed to be 10.30 a.m. on Wednesday 24 February 2021.

JUDGE KEYSER QC:

Introduction

1. The appellant, Dr Clay Kumar Teewary, (also known as Dr Kumar Pratyash), is a medical doctor. On 20 November 2020 a tribunal ("the Tribunal") of the Medical Practitioners Tribunal Service ("MPTS") suspended his registration for 12 months, under paragraph 5A(3D)(a) of Schedule 4 to the Medical Act 1983 ("the Act"). The reason for the decision to suspend his registration was that Dr Teewary had failed to comply with a direction of the General Medical Council ("GMC") that he undergo a health assessment and that in the circumstances it was reasonable to conclude that he might pose a risk to the safety of patients. The GMC had made that direction because it considered that Dr Teewary's conduct gave cause for concern about his mental health.

2. By a notice filed on 24 November 2020 Dr Teewary appeals against the Tribunal's decision on the grounds, which I shall describe a little more fully below, that the decision was substantively wrong and that it was reached after a hearing that was procedurally unfair.

3. For the reasons set out below, the appeal is dismissed.

4. This judgment will be structured as follows. First, I shall set out the statutory framework in which the hearing before the Tribunal took place and the most relevant parts of the guidance that informed its decision-making process. Second, I shall set out a narrative account of the facts, mentioning only those matters that seem to me to have a bearing on the issues or to be necessary for a proper understanding of the case. Third, I shall summarise the Tribunal's decision and set out key passages from it. Fourth, I shall identify the issues that arise on the appeal. Finally, I shall consider the issues and explain the reasons for my decision.

5. I am grateful to Dr Teewary for the courteous manner in which he presented his appeal and to Mr Rory Dunlop QC, who appeared for the GMC, for his succinct and focused submissions.

The legal framework and relevant guidance

6. Paragraph 5A of Schedule 4 to the Act provided at the material time as follows:

> "(1) The General Council may make rules—
>
> (a) authorising the giving of directions by any of—
>
> (i) the Investigation Committee,
>
> (ii) a Medical Practitioners Tribunal,
>
> (iii) such other persons as may be specified in the rules,
>
> requiring an assessment of a kind referred to in sub-paragraph (1A) to be carried out;

…

(1A) The assessments referred to in sub-paragraph (1) are—

(a) in the case of a registered person, an assessment of the standard of a person's professional performance;

…

(c) in either case, an assessment of the person's physical or mental health.

…

(2B) An assessment of a person's physical or mental health may include an assessment of the person's physical or mental health at any time prior to the assessment and may include an assessment of the person's physical or mental health at the time of the assessment.

(3) If the Registrar is of the opinion that a registered person who is required to submit to an assessment by virtue of this paragraph has failed to submit to that assessment or to comply with requirements imposed in respect of the assessment, the Registrar—

(a) may refer that matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, and

(b) if he does so, must without delay serve on the person concerned a notification of the making of such a referral.

(3B) Where a matter is referred to the MPTS under sub-paragraph (3) …, the MPTS must arrange for the matter to be considered by a Medical Practitioners Tribunal.

…

(3D) The Medical Practitioners Tribunal, on their consideration of a matter under sub-paragraph (3B) …, may, if they think fit—

(a) direct that the person's registration in the register is to be suspended (that is to say, is not to have effect) during such period not exceeding twelve months as may be specified in the direction; or

(b) direct that the person's registration is to be conditional on the person's compliance, during such period not exceeding three years as may be specified in the direction, with such requirements so specified as the Tribunal think fit to impose for the protection of members of the public or in the person's interests.

> (3E) Where, under sub-paragraph (3D), the Tribunal give a direction for suspension or a direction for conditional registration, the MPTS must without delay serve on the person concerned notification of the direction and of the person's right to appeal against it under sub-paragraph (5).
>
> …
>
> (3H) In deciding whether to give a direction under sub-paragraph (3D), a Medical Practitioners Tribunal must have regard to the over-arching objective.
>
> …
>
> (5) An appeal shall lie to the relevant court (within the meaning of section 40(5) of this Act) from any direction of a Medical Practitioners Tribunal given under sub-paragraph (3D) above, and on an appeal under this sub-paragraph the relevant court may—
>
> (a) quash the direction;
>
> (b) substitute for the direction any other direction which the Tribunal could have made; or
>
> (c) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of it in accordance with the court's directions,
>
> and the decision of the court on any appeal under this sub-paragraph shall be final."

For the purposes of paragraph 5A(5), in England and Wales "the relevant court" is the High Court. The time limit for an appeal is 28 days from service of the tribunal's decision.

7. The formal rules on procedure before a Medical Practitioners Tribunal at a non-compliance hearing pursuant to paragraph 5A(3B) are in r. 17ZA of the General Medical Council (Fitness to Practise) Rules 2014 ("the Fitness to Practise Rules"). It is unnecessary to set out the lengthy provisions of the rule. It provides, among other things, that, after the GMC's representative has presented the case, the doctor may, in response, adduce evidence and call witnesses in respect of the question of non-compliance, and that the tribunal may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction under paragraph 5A(3D) of Schedule 4 to the Act.

8. Guidance as to the conduct of a non-compliance hearing by a Medical Practitioners Tribunal is contained in "Non-compliance guidance for Medical Practitioners Tribunals" ("the Guidance"), which sets out the factors to be considered by a tribunal when making a finding in respect of the question of non-compliance and determining what order if any to make following a finding of non-compliance. Part A of the Guidance sets out the considerations that are relevant where, as in the present case,

there has been a referral for hearing by the GMC. The following paragraphs are particularly relevant:

> "A9 When considering the issue of non-compliance with a GMC direction or request to provide information the tribunal will need to consider whether or not:
>
> a) the doctor has failed to comply with the GMC's direction or request to provide information
>
> b) there was a good reason for the doctor's failure to comply.
>
> A10 The tribunal will not consider whether the doctor's fitness to practise is impaired when determining the issue of non-compliance.
>
> …
>
> A16 When considering the issue of the doctor's compliance with a GMC direction or request to provide information, the tribunal should ask the following questions:
>
> a) Has the doctor failed to comply with the GMC's direction or request to provide information?
>
> b) If so, is there a good reason for the doctor's failure to comply?
>
> …
>
> *Has the doctor failed to comply with the GMC's direction or request to provide information?*
>
> A18 A doctor may have failed to comply with a GMC direction or request to provide information where they have:
>
> a) explicitly refused to submit to a direction to undergo an assessment or provide the information requested from them
>
> b) agreed to submit to a direction to undergo an assessment but subsequently failed to comply with some or all of the requirements imposed in respect of that assessment
>
> c) agreed to provide the information requested but subsequently failed to provide it in part or in full
>
> d) failed to respond to a direction to undergo an assessment or request to provide information

e) been prevented from participating in an assessment by reason of their adverse physical or mental health (health-related non-compliance).

A19 An explicit refusal must be clearly documented and unambiguous.

…

If so, is there a good reason for the doctor's failure to comply?

A23 When considering the issue of whether there is a good reason for a doctor's failure to comply with a GMC direction or request to provide information, the tribunal will need to make a judgement based on the individual circumstances of the case.

A24 Examples of good reason for failing to comply with a GMC direction or request to provide information could include, but are not limited to, where:

a) there is objective evidence that demonstrates a doctor's adverse physical or mental health prevented them from complying with a GMC direction or request to provide information, and there is a realistic prospect of the doctor being able to comply in a reasonable timeframe in the future (see below)

b) a doctor can demonstrate they did not receive the GMC's direction or request to provide information and, since its existence came to the doctor's attention, they have not been provided with an opportunity, and / or sufficient time, to comply

c) a doctor can demonstrate they are not, or could not reasonably be expected to be, in possession of the information requested by the GMC

d) a doctor can demonstrate that, in all the circumstances, it was not reasonable for them to comply with the GMC's direction or request to provide information (see below)

e) a doctor can demonstrate that their failure to comply does not create a risk to public protection because the GMC can still investigate the concern (see below).

…

A29 Stated intentions by a doctor to; no longer practise in the UK, relinquish their licence to practise, or submit an application to have their name removed from the register, are also insufficient to amount to good reasons for failing to comply.

…

> *In all the circumstances, it was not reasonable for the doctor to comply with the GMC's direction or request to provide information*
>
> A37 A doctor may say that, given all the circumstances known at the time the GMC made its direction or request to provide information, it was not reasonable for them to comply.
>
> A38 Where this is raised, the tribunal should consider the full circumstances of the case to decide whether it was reasonable for the doctor to comply. However, the tribunal should not make a finding on whether the direction or request to provide information was lawful.
>
> …
>
> *The doctor's failure to comply has not created a risk to public protection because the GMC can still investigate the concern*
>
> A46 There is a clear risk to public protection where a concern about a doctor's fitness to practise has been raised but cannot be investigated other than by means of an assessment, or by requiring a doctor to provide information, and the doctor does not comply. The absence of such evidence may interfere with the GMC's ability to take forward a case on the grounds of impairment.
>
> A47 The outcome of the assessment, or the information requested from the doctor, should be material to the GMC's investigation. If, without it, the GMC is unable to proceed with the investigation in a proportionate way and take action in response to the concern, the failure to comply will create a risk to public protection.
>
> A48 If there are other proportionate means by which the allegations can otherwise be adequately investigated, or the information requested from the doctor can be acquired, this may indicate that the doctor's failure to comply has not created a risk to public protection because the GMC can still investigate."

9. If the tribunal finds that the doctor has failed to comply with the GMC's direction or request for information and that there is no good reason for the doctor's failure to comply, it should make a finding of non-compliance and proceed to consider whether to make a direction in accordance with Part C of the Guidance. Part C contains the following particularly relevant provisions:

> "C7 In considering whether to make a non-compliance order, the question for the tribunal is whether, on the basis of their finding in respect of non-compliance, action is needed to protect the public.
>
> C8 Protection of the public means acting in a way that meets the three elements of the statutory overarching objective:

i. protecting, promoting and maintaining the health, safety and wellbeing of the public

ii. promoting and maintaining public confidence in the profession

iii. promoting and maintaining proper professional standards and conduct for the members of the profession.

C9 Where a tribunal has made a finding of non-compliance, some action against the doctor's registration is likely to be necessary in order to protect the public. The tribunal should consider the relevance of, and impact on, each of the three elements of the statutory overarching objective and specify in their decision which elements are met by the order of conditional registration or suspension.

…

C23 When considering whether a period of suspension is a proportionate response to a doctor's non-compliance, the tribunal may want to take into account the previous opportunities the doctor has had to comply and the level of the doctor's engagement with the fitness to practise process.

C24 Suspension is likely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information, or has failed to respond to a direction or request to provide information, and there is no mitigating information to suggest that conditions are likely to be sufficient.

…

Immediate and interim orders

…

C35 Where a non-compliance order has been made the tribunal is required to consider whether an immediate order is necessary. Before making a decision the tribunal must consider any further evidence and submissions received from the parties.

…

C38 The tribunal may impose an immediate order where it is satisfied that it is:

a) necessary to protect members of the public

b) desirable in the public interest to maintain public confidence and uphold proper standards of conduct and behaviour

> c) in the interests of the doctor.
>
> C39 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety, or where immediate action is required to protect public confidence in the medical profession.
>
> C40 In considering whether to impose an immediate order, the tribunal should have regard to the seriousness of the matter that led to the direction of conditions or suspension being made and consider carefully whether it is appropriate for the doctor to continue in unrestricted practice pending the non-compliance order taking effect."

The facts

10. In 2017, while visiting Bolivia on a tour of the Amazon, Dr Teewary met a woman, Ms V, who was resident in Brussels. In September 2017 he began sending her emails. I shall not set them out in this judgment. They were at the very least imprudent; indeed, it is hard to resist the view that they were entirely inappropriate, as regards both their content and their number. Dr Teewary appears to have had some understanding of this but to have been unable to help himself. An email in October 2017 acknowledged that he was aware that he was "in a really dangerous harassment sort of territory here"; the following month, after Ms V, in a rare response, had asked him to stop contacting her and to leave him alone, said, "I am not a sex pest or creep, this is the first time such thing has happened"; another, shortly afterwards, said, "You realise I am deeply conflicted and basically harming myself." The emails continued throughout 2018. Dr Teewary also sent Ms V a number of gifts, which were unrequested and unacknowledged.

11. On 1 January 2019 Ms V made a complaint of harassment against Dr Teewary to the GMC. She said that, although her "interaction [with Dr Teewary] ha[d] never extended beyond acquaintance level", since the tour of the Amazon he had "not stopped for over a year with sending [her] emails with romantic and on occasions sexual content" and had sent her "over 1000 pounds on unsolicited gifts". She said that she was still receiving "tens of emails daily" and had received another unsolicited gift of £500, and that Dr Teewary had tried to use "his reputation as a doctor to win [her] over." Ms V expressed the belief that Dr Teewary's conduct towards her gave reason for concern as to his conduct or potential conduct towards patients and his ability to perform his professional duties properly. The letter of complaint said:

> "I wanted a professional body to assess this issue, and hopefully to urge or impose on [Dr Teewary] to get the necessary psychological or psychiatric guidance. I don't require apologies or anything and I especially do not want any direct contact with [Dr Teewary] (ever again). But what he is doing is not justifiable and there is a risk for the future."

12. The GMC opened an investigation into the complaint.

13. On 7 March 2019 Ms V sent an email to the GMC's Investigation Officer, saying that since the GMC had contacted Dr Teewary her "email trash can ha[d] exploded with one line emails", which she forwarded. She wrote: "He has irrational fantasies in his head and is convinced that I want him. With every slightest sign of life he receives from me (for example through the GMC) it makes him more motivated and determined in his conviction."

14. Dr Teewary complained that the Investigation Officer was harassing him and asked for him to be replaced. He complained that he was "[u]nder extreme duress, mental anguish, grave concern for myself among quite a few other concerns" and was "gravely concerned about [his] wellbeing" on account of the Investigation Officer's conduct. Initially the request was refused, but in the second week of March 2019 a new Investigation Officer was appointed. On 10 and 11 March 2019 Dr Teewary set out his case in a series of long and rambling emails to the GMC's Assistant Registrar, in which he also complained about the conduct of the first Investigation Officer. A short sample will give the gist of these emails and ought to be sufficient to make clear why they were concerning. In respect of the complaint by Ms V he wrote:

> "THE TALKATIVENESS AND CHATTINESS ON THE EMAILS COMES FROM THE FACT THAT ITS HIGHTLY ABNORMAL TO HAVE SOCIAL INTERACTION ON EMAIL, WITHOUT OTHER PERSON REPLYING-SO NO FEEDBACK, NO WAY OF KNOWING SHE LIKED IT OR NOT.
>
> ITS A GAME WHICH WE CHOSE TO PARTICIPATE WILLINGLY. THIS WAS OUR THING. THAT IS WHY I WANTED TO PUT CONTEXT TO IT ASAP.
>
> …
>
> Using emails to interact with me was her choice and I accepted it. Both of us knew its perils but I trusted her at that time.
>
> SHE NEVER REPLIES DIRECTLY TO MY EMAILS WHETHER SHE LIKES IT OR NOT.
>
> THIS HAS BEEN THE WAY SINCE NOV 2017. THIS IS OUR THING. ONLY INDIRECT FEEDBACK LIKE ACCEPTING MY GIFTS. SHE NEVER SAYS NO TO MY EMAILS. NO FEEDBACK AT ALL. THIS HOLDS TRUE FOR LIKALBE/UNLIKABLE EMAILS, LESS EMAILS / MORE EMAILS, ALL SCENARIOS. SHE NEVER SAYS NO. SHE JUST ACCEPTS EMAILS.
>
> ITS A GAME WE HAVE BEEN PLAYING. THIS WAS OUR THING."

Dr Teewary's complaint about the first Investigation Officer (Kris) was that he had failed to listen to Dr Teewary's explanations and had been unwilling to view the

emails in their proper context, namely a consensual game. This is an example of the complaint:

> "THAT IS WHY, RIGHT FROM THE GETGO I WANTED TO SPEAK TO KRIS ON PHONE -BUT HE KEPT CUTTING ME OFF SEVERAL TIMES, I WANTED TO WRITE THIS TO PUT CONTEXT TO IT- SO THAT NOBODY INNOCENT GET HARMED AND FOOLED BY SEEING WHAT IS WRITTEN AND TAKES THINGS AT FACE VALUE BUT HE SIMPLY WAS TOO ADAMANT AND SIMPLY WOULD NOT BUDGE AT ALL, HAD THIS MALINTENT TO TAKE ACTION AGAINST ME AT ALL COSTS AND THINGS I HAVE MENTIONED IN PREVIOUS EMAILS. THIS IS ALL THE WHILE HE TALKED ON PHONE ABOUT THE CONTENTS, HIS THOUGHTS ETC BUT REFUSED TO LIESTEN TO ME.
>
> RESULTING IN UNIMAGINALBE AMOUNT OF GRIEF TO ME. SO MUCH GRIEF, I HAVE NEVER EXPERIENCED IN LIFE. MY EVEREST TRIP HAS BEEN TROWN OFF. MY TRAINING HAS DERAILED. I AM SEEKING COUSELING AND PSYCHIATRIC TREATMENT DUE TO THE TRAUMA HE CAUSED TO ME AND SO MUCH MORE.
>
> …
>
> I BELIEVE I AM THE BRAVEST PERSON BUT FOR THE FIRST TIME I WAS SCARED IN MY LIFE. THAT IS BECAUSE I AM INNOCENT. BUT WHEN KRIS BECAME OBSTRUCTIVE, HAD MALINTENT ETC I WENT THROUGH A DURESS OF MY LIFE AND PAIN I WILL ALWAYS WISH NOBODY ELSE HAS TO GO THOUGH IN THEIR LIVES."

15. The GMC was concerned at the tone, manner, structure and volume of the emails being sent by Dr Teewary. It sought advice from a GMC medical case examiner, who advised that the emails indicated grandiose ideas, chaotic thoughts, problems with impulse control, paranoia concerning the first Investigation Officer, and delusional ideas regarding the supposed reciprocation of his feelings by Ms V.

16. Accordingly, the GMC decided that it was necessary to add a further allegation of "impaired health" to its investigation, in the interests of the safety of patients and to protect the public. On 21 March 2019 the Assistant Registrar wrote to Dr Teewary:

> "I have decided to direct a health assessment. I have made this decision based on the information enclosed an Annex A at the end of this letter, which suggests your health may be affecting your fitness to practise due to:
>
> • delusional disorder (F22),

> • mania (F30),
>
> • schizoaffective disorder (F25),
>
> • a personality disorder (F60) or Mental & Behavioural disorder due to use of cocaine (F14) and cannabis (F12)".

The letter explained that the health assessment would involve examination by two independent medical examiners, who would then report on Dr Teewary's fitness to practise. It asked Dr Teewary to complete and return a health assessment form. Under the heading, "What happens if I don't comply?", it said:

> "I am sure this won't happen in your case, but I want to let you know that an assistant registrar may refer you to a medical practitioner's tribunal non-compliance hearing if you:
>
> • do not agree to an assessment;
>
> • agree to an assessment but change your mind or don't turn up;
>
> • do not reply to this letter within 28 days (18 April 2019).
>
> If your case was referred to a non-compliance hearing, it would consider whether our direction is reasonable and whether you have failed to comply without good reason.
>
> If the tribunal finds that you have not complied, it may suspend your registration for up to 12 months, or may give you conditions for up to three years."

17. The direction to undergo a health assessment was made pursuant to rule 7(3) of, and Schedule 2 to, the Fitness to Practise Rules.

18. On 9 April 2019, pursuant to the direction, Dr Teewary provided to the GMC completed health assessment consent forms.

19. On 11 April 2019 an Interim Orders Tribunal placed an interim condition on Dr Teewary's registration, requiring among other things that he should not contact Ms V. There is no direct evidence that he has not complied with the condition, but the subsequent retraction of Ms V's complaint (see paragraph 42 below) gives cause for suspicion.

20. On 16 April 2019 Dr Teewary informed the GMC that he was currently in Nepal and would be returning by the first week of June 2019.

21. On 24 April 2019 the GMC wrote to inform Dr Teewary that it had arranged for the health assessments to be carried out by two assessors, Dr Welch and Dr Birtle, who would contact him to make arrangements for the assessments. The GMC also instructed Cansford Laboratories to arrange for collecting and analysis of a sample of Dr Teewary's hair for drug testing.

22. On 9 May 2019 a written offer of an appointment was made by Dr Birtle for 12 June 2019. On 13 May 2019 that offer was also sent to Dr Teewary by email.

23. On four occasions throughout May 2019 Cansford Laboratories sent emails to Dr Teewary to arrange a suitable date and location for provision of the hair sample. He did not reply to any of those emails.

24. On 15 May 2019 Dr Teewary updated his registered address details with the GMC, giving an address in Scotland. On the following day, however, he again contacted the GMC and changed his registered address to an address in India.

25. On 17 May 2019 the GMC advised Dr Teewary by email that he remained obliged to comply with the arrangements for the health assessments, despite his move to India, and reminded him of the possible consequences of non-compliance. A further email was sent to Dr Teewary by way of reminder on 22 May 2019. Dr Teewary did not respond to these emails.

26. On 4 June 2019 the GMC sent a further email, again reminding Dr Teewary of his obligation to comply with the direction for a health assessment. He replied that day by email to the Investigation Officer:

> "I went through the email.
>
> As you know already, I have been on an expedition, climbing in Nepal.
>
> From the emails, I can gather that you are already aware of my move to India.
>
> I understand that you would like to know when I will become available and I will let you know regarding that."

27. On 7 June 2019 the Investigation Officer replied that the investigation would remain open whether Dr Teewary was based in the UK or in India and that he was still required to make arrangements for health assessments, and he asked Dr Teewary to provide a response.

28. Dr Teewary sent two emails that same day. To the GMC he said:

> "[M]y move to India is permanent. I am not sure when I will come to the UK but I will inform as soon as I know … I understand that you wold like to know when I am going to be available and I will duly inform you of that as soon as I have any plans …""

The email to the health assessor and the Investigation Officer said that he would not be attending the appointment on 12 June 2019 and that he would keep the GMC informed of his availability.

29. On 12 July 2019 the GMC advised Dr Teewary that, in view of his failure to engage fully with efforts to make the necessary arrangements for his health assessments, consideration would be given to proceedings for non-compliance. Dr Teewary

questioned the basis of such proceedings. In an email on 22 July 2019 he asked to be told the reasons why it was considered he was not fully compliant, and commented, "I have gone above and beyond to comply with the GMC procedures with absolute keenness." He repeated his request for reasons in emails on 22 and 30 July 2019. In the latter he stated:

> "I am more than willing to undergo any GMC compliance requirements, and I will promptly inform when I become available in the UK. I have been advised to point out that my drug test report, the psychiatry test report and GP health record are already available …"

This is a reference to the fact that, although Dr Teewary had not found it convenient to attend an examination by one of the GMC's examiners or to arrange for Cansford Laboratories to take a sample of his hair for drug testing, he had arranged his own drug test (he has arranged others since) and his own psychiatric report.

30. On 14 August 2019 an Assistant Registrar of the GMC wrote to Dr Teewary:

> "On 21 March 2019 the Assistant Registrar directed that you undertake a health assessment in light of the information collected during our investigation.
>
> While you did initially agree to undergo a health assessment, you then did not comply with the reasonable requirements of the assessment team.
>
> This has impeded our investigation and our ability to fulfil our purpose to protect the public.
>
> I have decided that the matter should be referred to a Medical Practitioners Tribunal for a non-compliance hearing in accordance with Schedule 4 of the Medical Act 1983. I have included the decision reasoning at Annex A."

Annex A recorded that the completed health assessment consent forms had been received from Dr Teewary on 9 April 2019, and it set out a chronology of events thereafter. The reasons for the decision to refer the matter to the MPTS were, in summary: that the direction of a health assessment was reasonable, as the evidence available to the medical case examiner and the Assistant Registrar suggested that Dr Teewary might be suffering from a mental health condition; that Dr Teewary had failed to comply with the direction for a health assessment, despite having consented to such an assessment and having received notice of the appointment; and that his failure to comply with the direction had impeded the GMC's investigation.

31. The hearing before the Tribunal was listed for two days, 9 and 10 January 2020. (In the event, despite the simplicity of the issue, and as a result of Dr Teewary's conduct in the proceedings, the hearing extended over seven days.) On 16 December 2019 the GMC wrote to the MPTS, informing it that Dr Teewary was currently living and working in the UK and that a decision had been made to instruct examiners with a view to giving Dr Teewary a further opportunity to comply with the direction for

health assessments. The email noted that any health assessment was likely to be carried out after the date fixed for the hearing, and it asked for a four-week postponement of the hearing. A few minutes later, Dr Teewary asked the MPTS and the GMC to "keep the dates between 20th March and 30th March", as he would be "mostly out of the country from mid January onwards" and those were "the only dates possible for [him] due to [his] commitments abroad." A couple of hours later still, Dr Teewary sent another email, asking that the hearing before the MPTS be listed no earlier than the latter part of June 2020, as he was hoping to be included on an expedition to Mount Everest and would in that event not be available for a health assessment before the second week of June. Faced with the prospect of such a long delay if the hearing were postponed, the GMC withdrew its application for a postponement.

32. On 9 January 2020 Dr Teewary did not attend and was not represented before the tribunal. He had sent a number of communications requesting an adjournment of the hearing, and he also submitted a Part 7 claim form that had been issued by the Queen's Bench Division in London on 3 January 2020, in which he alleged that the GMC had acted unlawfully and subjected him to harassment and racial discrimination and sought "the Court's intervention to protect me from further harassment and harm by the General Medical Council."

33. The Tribunal reconvened on 10 January 2020, when initially Dr Teewary was not present but was represented by counsel instructed on a direct access basis. The Tribunal gave a ruling, dismissing the application for an adjournment. After a couple of brief adjournments during the day at his counsel's request, Dr Teewary through counsel renewed his application for an adjournment of the proceedings. When that application was refused, counsel applied for a stay of proceedings. That too was refused. The substantive hearing commenced. After a further brief adjournment, Dr Teewary withdrew his instructions from counsel. He then repeated his request for an adjournment, which was again refused. After two further applications for an adjournment had been refused, Dr Teewary informed the tribunal that he was willing to attend two appointments that he had been given for health assessments. On that basis, the tribunal adjourned the hearing until a date after the second assessment. The adjourned hearing was listed for 25 August 2020.

34. Despite this, no health assessments took place.

35. The first assessment was to have been carried out by Dr Agrawal, a consultant psychiatrist. On 5 January 2020 Dr Teewary informed Dr Agrawal that he would not be available for the appointment offered for later that month. On 19 January 2020 Dr Agrawal offered another appointment, on 11 March 2020. On 24 January 2020 Dr Teewary sent an email to Dr Agrawal as follows:

> "Kindly cancel my health assessment.
>
> We had requested for certain disclosures from the GMC, the documents which could be crucial for the decision maker/health assessor to get the full context and full picture in order to make the accurate judgement.
>
> But our disclosure request has been denied.

> So now we are moving to the High Court and we are seeking appropriate remedy for that."

The second assessment, similarly, did not proceed.

36. On 24 August 2020 Dr Teewary filed a judicial review claim form in the Administrative Court, naming the GMC as the defendant, together with an application seeking an order to stay the proceedings before the Tribunal until after determination of the claim against the GMC. On the same day, Johnson J refused the request for urgent consideration of the application, on the grounds that the question of a stay was more appropriately dealt with at the outset by the Tribunal and that Dr Teewary had "not identified any basis for this court to intervene."

37. On 25 August 2020 the hearing before the Tribunal resumed; it was held by Skype, as were subsequent hearings. On that date, the Tribunal refused applications by Dr Teewary (i) to adjourn the proceedings, (ii) to adduce further documentary evidence, and (iii) for a direction that the hearing be held in public.

38. On 26 August 2020 Dr Teewary applied to the Administrative Court, within the judicial review proceedings against the GMC, for a stay of the proceedings before the Tribunal. The application was refused by Eady J, whose reasons for refusal were as follows:

> "The substance of the claimant's application relates to the decision of the MPTS, on 25 August 2020, to refuse his application for a stay of proceedings. that decision was reached after hearing submissions from the claimant and from the representative of the GMC at an oral hearing and after consideration of the evidence relied on by the claimant. I understand that the claimant is facing non-compliance proceedings for failing to undergo health assessments with two health assessors as part of the GMC investigatory process. The particular issue raised by the claimant in support of his application for a stay of the proceedings related to the information and material that would be provided to the two health assessors. He contended that the process was unfair as the GMC would not provide the assessors with all relevant material (in particular, with medical reports that he had obtained). As the decision of the MPTS makes clear, however, it would be open to the claimant to provide such further material to the assessors as he considered relevant: that was expressly the position of the GMC (as stated by its representative at the hearing on 25 August 2020) and the MPTS permissibly concluded that there was no abuse of process or other basis for granting the application for the stay.
>
> The material provided by the claimant does not demonstrate any serious issue to be tried nor would the balance of convenience favour staying the MPTS proceedings."

39. The hearing before the Tribunal continued on 26 August 2020. I shall say more about the proceedings on that day later in this judgment. The Tribunal refused Dr Teewary's application for a stay of the proceedings and, when later he was not present at the hearing by Skype or by telephone, it ruled that the hearing should proceed in his absence.

40. The hearing before the Tribunal continued on 27 August 2020, but as the Tribunal was not then in a position to hand down its determination on non-compliance the hearing was adjourned to a date to be fixed (later fixed as 19 November 2020) so that the Tribunal could give its determination on non-compliance and, if necessary, consider sanction.

41. Before the hearing was resumed, Dr Teewary's application to the Administrative Court for permission to apply for judicial review was considered by HHJ Lambert, sitting as a Judge of the High Court, who refused the application and certified that it was totally without merit. Judge Lambert observed that Dr Teewary had shown no awareness of the role of the Administrative Court or of the available grounds of judicial review and that he had failed to identify proper particulars of his complaint. He remarked: "Your grounds are little more than a non-particularised bleat."

42. On 17 November 2020 the GMC received by email from Dr Teewary's representative a witness statement dated 9 November 2020 from Ms V, in which she said that she was withdrawing her complaint against Dr Teewary and would not support any proceedings or investigation against him by the GMC. The statement described the complaint as the result of "misunderstandings … due to cultural differences as well as due to the flawed nature of electronic communication when used exclusively in social settings." In response to a query by the GMC by email on 18 November, Ms V confirmed that she had "signed and agreed to" the document.

43. The hearing before the Tribunal resumed on 19 November 2020. Dr Teewary was not present and was not represented. The tribunal decided to proceed in his absence and gave a reasoned decision on the allegation of non-compliance with the direction to undergo a health assessment. The decision set out the background of the matter and described in some detail the course of the proceedings. It identified the most important evidence to which it had had regard, and it summarised the submissions of counsel for the GMC and of Dr Teewary. Then it gave its decision and reasons.

The Tribunal's Decision

The decision on non-compliance

44. The Tribunal observed, with reference to the Guidance, that it was not concerned with any question concerning the lawfulness of the direction to undergo a health assessment. However, it addressed the matter, as follows:

> "36. The Tribunal took account of the complaint made to the GMC by [Ms V], relating to numerous emails from Dr Teewary to her including romantic and sexual content, unsolicited gifts and [Ms V's] fear for her safety at the hands of Dr Teewary. Following the GMC's contact with Dr Teewary in relation to that complaint, he began to send numerous emails per day to

> the GMC. It bore in mind that the Assistant Registrar had concluded on the basis both of the original complaint and the content of Dr Teewary's emails to the GMC, that Dr Teewary's fitness to practise may be impaired by reason of his physical or mental health.
>
> 37. In April 2019 Dr Teewary consented to undergo examination by two independent health examiners appointed by the GMC.
>
> 38. The Tribunal has taken into account everything that has happened since the original direction and found that Dr Teewary has appeared to resist and frustrate attempts to undertake a health assessment and undermined the process instigated by the GMC. The Tribunal determined that this is an alarming and continuing pattern of behaviour which lends credibility to the GMC's direction that it is necessary and proportionate for Dr Teewary to undertake a health assessment.
>
> 39. The Tribunal also took into account Dr Teewary's assertion that there are no patient safety concerns in this case. The Tribunal is of the view Dr Teewary's position is misconceived. The GMC has raised a concern and made a direction for Dr Teewary to undertake a properly organised health assessment. Dr Teewary has not attended this and now contends that it is not necessary and that the GMC is not treating him fairly. By not engaging with his regulator, Dr Teewary is presenting a potential risk to patient safety and is not acting in the public interest. The Tribunal was of the firm view that the credibility, or otherwise, of [Ms V] was for another tribunal to determine, and not a matter for this non-compliance tribunal.
>
> 40. In all the circumstances of the case, the Tribunal is satisfied that the GMC's direction was reasonable. It has not been successfully challenged by Dr Teewary and in any event this Tribunal is not required to consider the lawfulness of the said direction."

45. The Tribunal then found that Dr Teewary had failed to comply with the direction.

> "41. The evidence before the Tribunal demonstrates that Dr Teewary has not complied with the GMC's direction to undergo two health assessments. The GMC had provided Dr Teewary with several opportunities to comply with its direction. Most recently the GMC had applied for a postponement of these proceedings in order to allow Dr Teewary to attend health assessments later in January 2020. However, when Dr Teewary indicated that he would not be able to attend any assessments until April 2020 and later until June 2020, that application for postponement was withdrawn.

> 42. The Tribunal noted that Dr Teewary contacted the GMC in June 2019 stating that he was unable to attend health assessments as he was not in the UK. He stated that he would contact the GMC upon his return; Dr Teewary did not contact the GMC. The Tribunal has concluded that Dr Teewary has made no effort to comply with the GMC's direction. In the circumstances it has determined that Dr Teewary has not complied with the GMC's direction.
>
> 43. Dr Teewary conceded at the hearing in January 2020 that he had not attended a health assessment directed by the GMC. He stated that this was a matter of "fact". Nothing has changed since that time."

46. The Tribunal then considered whether the failure to comply was unavoidable or otherwise excusable:

> "44. The Tribunal noted that the initial reason provided by Dr Teewary for his failure to comply with the GMC's direction that he undergo health assessments was that he was outside of the UK, attempting to climb Mount Everest. The Tribunal bore in mind that Dr Teewary's primary duties are to the public and to his regulator. This was not sufficient reason for not complying with the GMC's direction, did not constitute a reasonable excuse nor was his failure to comply unavoidable.
>
> 45. The Tribunal has already refused Dr Teewary's application for a stay of proceedings on the basis of an abuse of process by the GMC.
>
> 46. The Tribunal had regard to the earlier submissions of Dr Teewary. It found that his statements were at times disjointed and that he was evasive in his answers. It was apparent that Dr Teewary did not accept that he may have demonstrated inappropriate behaviour towards [Ms V]. This is reinforced by his contention that it would be unfair for him to have to undertake a health assessment by the GMC. Dr Teewary stated that the decision by the GMC to refer him for a health assessment was totally without merit and that the direction was not reasonable and was based on false assumptions. The Tribunal determined that Dr Teewary had produced no objective evidence or reasoning that it could rely on to agree with this assertion. The Tribunal found that Dr Teewary appeared to be deliberately frustrating the GMC and MPTS proceedings with his erratic and unreasonable behaviour.
>
> 47. The Tribunal has determined that on balance, there is no good reason for Dr Teewary's failure to comply with the direction."

The Tribunal took note of the favourable medical reports that Dr Teewary had obtained unilaterally since the proceedings started, but it observed that they could be given limited weight because the assessors were not accredited by the GMC and, anyway, had not had access to all material information. It also made the pertinent observation that Dr Teewary had taken it upon himself to obtain the reports at the same time as he was not cooperating with the GMC's direction. It concluded:

> "51. The Tribunal determined that Dr Teewary's ongoing resistance to undertaking a health assessment and limited cooperation with this process is demonstrative of a pattern of behaviour.
>
> 52. The Tribunal determined that it does not accept the assertions submitted by Dr Teewary for not complying with the reasonable direction of the GMC. It determined that there is no good reason for not having complied.
>
> 53. In all the circumstances the Tribunal has determined that non-compliance has been found."

The decisions on sanction

47. Having handed down the decision on non-compliance, the Tribunal proceeded with the hearing in order to consider the question of sanction. At this point, Dr Teewary resumed participation in the hearing. When his submissions were invited, Dr Teewary said that the Tribunal should proceed no further. He reminded the Tribunal that Ms V had signed a statement withdrawing her complaint, and he made an application for an adjournment in order that he might seek a "retrial". The Tribunal refused the application for an adjournment. It also refused to allow Dr Teewary to submit Ms V's statement of 9 November 2020, on the grounds, first, that the underlying complaint by Ms V was irrelevant to the issue before it and, second, that Dr Teewary could tell the Tribunal what the document said. Counsel for the GMC submitted that the appropriate sanction was suspension. Dr Teewary submitted that there should be no sanction.

48. The Tribunal delivered its decision on sanction on 20 November 2020. Having referred to the overarching objective and to the options that were available to it, the Tribunal rejected the option of taking no further action: there were no exceptional circumstances; there was a consistent and persistent failure to comply with the direction over a period of 18 months; allowing Dr Teewary to return to unrestricted practice "would not uphold the overarching objective to protect the public" and "would not maintain public confidence in the profession". The Tribunal also decided that it would not be appropriate to make Dr Teewary's registration conditional on compliance with a health assessment:

> "20. The Tribunal had regard to the evidence of Dr Teewary's continued non-cooperation with the GMC and absence of

> insight into his health concerns as identified by the GMC. The Tribunal took into account Dr Teewary's submission that he believed that the whole process is completely misconceived and that the GMC's direction to undertake a HA [health assessment] is an injustice to him. This is demonstrative that Dr Teewary does not have insight into the need for a HA and/or to cooperate with a direction from his regulator. The Tribunal notes that Dr Teewary has consistently evaded taking a GMC directed HA, made excuses not to attend and has denied that a HA is necessary at all.
>
> 21. The Tribunal carefully considered, despite the above, whether it was appropriate or proportionate to impose conditions on Dr Teewary's registration, including a condition to undertake a HA. However, it is not satisfied, on the balance of probability and on the evidence it has received, that Dr Teewary will undertake a GMC directed HA. On this basis, the Tribunal noted that there is little evidence before it to suggest that Dr Teewary would comply with any conditions it imposed. The Tribunal was not satisfied that a period of conditional registration was the appropriate or proportionate sanction in this case.
>
> 22. The Tribunal took into account that there is no evidence before it to suggest that Dr Teewary had failed to comply with the current order of conditions on his registration initially imposed on his registration by an IOT in April 2019. However, it considered that the IOT was not in full possession of the information that was available to this Tribunal.
>
> 23. The Tribunal determined that conditions would not be workable, appropriate or meet the overarching objective in this case."

49. The reason given for suspending Dr Teewary's registration were as follows:

> "25. The Tribunal took into account all parts of the [Non-Compliance] Guidance, however it considered the following paragraphs were all integral to its decision making progress and all engaged in this case. Paragraphs C22, C23, C24 and C25 provide:
>
> > 'C22. In the context of non-compliance, an order of suspension sends a message about the important role the GMC and MPTS play in making sure that a doctor's practice meets the expected standards and that the public is adequately protected where fitness to practise concerns have been raised.
> >
> > C23. When considering whether a period of suspension is a proportionate response to a doctor's non-compliance,

> the tribunal may want to take into account the previous opportunities the doctor has had to comply and the level of the doctor's engagement with the fitness to practise process.
>
> C24. Suspension is likely to be appropriate where a doctor has explicitly refused to comply with a direction or request to provide information, or has failed to respond to a direction or request to provide information, and there is no mitigating information to suggest that conditions are likely to be sufficient.
>
> C25. Suspension has a deterrent effect and can be used to send a signal to the doctor, the profession and public about what behaviour is expected from a registered doctor. Suspension from the register also has a punitive effect, in that it prevents the doctor from practising and therefore from earning a living as a doctor during the period of suspension, although this is not its purpose.'

26. The Tribunal had regard to the history of this case. It noted Dr Teewary's recent non-cooperation with the GMC and his non-compliance with its direction that he undergo a HA has been ongoing since 2019. Further, the Tribunal noted that despite Dr Teewary being subject to conditions for more than 18 months, this has not prompted him to engage with his professional regulator and seek to demonstrate his compliance by undergoing the HA as directed. It also noted Dr Teewary's principle (sic) submission that a HA was not required (due to 'misconceived proceedings') and that the IOT order should be revoked. This, in the Tribunal's view demonstrated a complete lack of insight with regulatory cooperation. The Tribunal concluded that, considering the initial serious concerns about his health, his unwillingness to cooperate with his regulator and his continuing non-compliance, it was appropriate to conclude that Dr Teewary may pose a risk to patient safety.

27. The Tribunal was of the view that given Dr Teewary's persistent failure to cooperate with his professional regulator, the public interest would not be satisfied if a period of suspension was not imposed.

28. Taking all of this into account, the Tribunal concluded that it is appropriate, proportionate, in the public interest and in Dr Teewary's own interest to impose a period of suspension on Dr Teewary's registration for 12 months which would uphold the overarching objective. The 12 month duration of the suspension is intended to afford Dr Teewary sufficient time to organise a HA with the GMC, undertake the assessment and for a report to be produced, taking into account the current global pandemic."

50. The Tribunal then considered whether the suspension should be immediate and decided that it ought. Having referred to passages from Part C of the Guidance (including some paragraphs that I have not set out), it gave its reasons as follows:

> "8. The Tribunal determined that given the serious nature of its non-compliance and sanction determinations, an immediate order of suspension is necessary, appropriate and proportionate. This is in order to protect members of the public, maintain public confidence in the medical profession, uphold proper professional standards and is in the doctor's own interest.
>
> 9. The Tribunal determined that Dr Teewary persists in his submissions that he will not undertake the HA until he is satisfied that all documents that he considers relevant are placed before the Health Assessors. This submission is of particular concern to the Tribunal. The Tribunal is of the view that, if an immediate order is not imposed, Dr Teewary will be able to continue in current practice as a doctor, while there are ongoing, unresolved health concerns and non-compliance with the regulator's direction. The Tribunal reminded itself of its finding at the non-compliance and sanction stage, that Dr Teewary has consistently and persistently failed to comply with the direction from his regulator to undertake a HA.
>
> 10. With regard to the reference to the purported retraction statement, the Tribunal remains of the firm view that it relates to distinct issues separate from these non-compliance proceedings.
>
> 11. The Tribunal determined that to protect the confidence in the profession, to maintain standards in the profession, in the public interest and in Dr Teewary's own interests, it is necessary, appropriate and proportionate to impose an immediate order of suspension.
>
> 12. This means that Dr Teewary's registration will be suspended immediately."

The Appeal

51. On 24 November 2020 Dr Teewary filed a notice of appeal and applied for a stay of the suspension of his registration pending the outcome of the appeal.

52. On 25 November 2020, UTJ Grubb, sitting as a Judge of the High Court, refused Dr Teewary's application for a stay of the suspension. Dr Teewary renewed that application to an oral hearing on 18 January 2021, when it was refused by HHJ Cotter QC sitting as a Judge of the High Court.

53. The grounds of appeal, which were served on the GMC only on 1 February 2021, list 29 grounds, most of which are themselves subdivided. They are long, diffuse and difficult to use as the basis of analysis. Dr Teewary's complaints emerged rather more manageably from his skeleton argument and from the oral submissions that he made to me. The main points appear to be the following:

- The direction to undergo a health assessment was inappropriate, at least by the time the Tribunal made its decision. Dr Teewary did not (at least, before me) go so far as to seek to challenge the legality of the direction, but he did contend that it did not provide a rational basis for a decision of non-compliance or for the imposition of a sanction. This was because: (a) the communications to Ms V did not provide a proper basis for concern as to his health, if they were interpreted in their proper context; (b) any concerns as to his health were properly allayed by the favourable medical reports and clear drug tests that he had since obtained and by his work record since the direction was made; (c) the original complaint had been withdrawn.

- The Tribunal ought not to have found that Dr Teewary had refused to comply with the direction. (I still am unsure whether the submission was intended to go this far, though at times it was expressed in terms that suggested it was. It needs, anyway, to be taken together with the next point.)

- The Tribunal ought to have found that there was a good reason for any non-compliance with the direction, because the GMC had consistently refused to send relevant papers to the medical examiners, thereby rendering the process unfair, and Dr Teewary was at all times willing to comply with a fair process. Dr Teewary said that this point raised a matter of general concern in respect of the GMC's conduct regarding directions to undergo health assessments.

- The proceedings before the Tribunal were unfair, because Dr Teewary was effectively excluded from the critical stage of the proceedings at which he would have made submissions on the question of non-compliance. Therefore his right to a fair hearing was violated.

54. The appeal is governed by CPR Part 52. In accordance with r. 52.21(3), the appeal will be allowed if the decision of the Tribunal was either (a) wrong or (b) unjust because of a serious procedural or other irregularity in the proceedings in the Tribunal.

55. In *Ali v The General Medical Council* [2017] EWHC 741 (Admin), Fraser J considered the correct approach to an appeal under r. 52.21(3)(a) and summarised the principles:

> "46. Firstly, it is not appropriate to add any qualification to the test in CPR Part 52, for example, by requiring that the decision should be 'clearly wrong'. The authority for that principle is *Fatnani and Raschid v GMC* [2007] EWCA Civ 46.
>
> 47. Secondly, the court should recognise that the purpose of regulatory sanction is not to punish, but is to protect the public and the reputation of the profession. As a result, evidence of purely personal mitigation is likely to be of less significance than in a case concerning retributive punishment. The authority for that principle is also *Fatnani*.
>
> 48. Thirdly, the court should give respect and due weight to the expertise of the MPT to make the required judgment about what is necessary to maintain public confidence and proper standards in the

> profession. This is derived from both *Fatnani* as well as *Ghosh v General Medical Council* [2001] 1 WLR 1915, and *Cheatle v General Medical Council* [2009] EWHC 645 (Admin).
>
> 49. Fourthly, the court will correct material errors of fact and of law. The authority for that principle is *Fatnani*. However, in relation to errors of primary fact, the court would be reluctant to interfere, especially where a finding is based upon an assessment of credibility of witnesses. The authority for that principle is *Southall v GMC* [2010] EWCA Civ 407. The court may also draw inferences of fact which it considers justified.
>
> 50. Finally, in considering the exercise of the MPT's discretion, the court will exercise a judgment – which is distinctly and firmly, a secondary judgment, again based on *Fatnani* - taking into account that the MPT's overall value judgment is akin to a jury question as to which there may reasonably be different answers. In other words, the court does not simply substitute its view of the merits for that of the MPT."

56. As regards procedural irregularity, it is well established that a hearing may be rendered unfair if a party is denied the opportunity to present his case to the court or tribunal. This aspect of the matter is considered in more detail below.

Discussion

57. The starting point for the Tribunal was that there was a valid direction that Dr Teewary undergo a health assessment. Any challenge to the direction would properly have been made by a claim for judicial review. No such claim was made in 2019, and the claim made in 2020, if it can be taken to have included a challenge to the direction, had failed at the permission stage. The Tribunal correctly appreciated that it did not have jurisdiction to question the lawfulness of the direction; cf. paragraph A38 of the Guidance.

58. The Tribunal was also not concerned with the merits of Ms V's complaint. It correctly observed that, if that matter fell to be determined, it would be determined by another tribunal. The Tribunal was dealing solely with the question of non-compliance with the direction that Dr Teewary undergo a health assessment. Dr Teewary's submissions on this appeal indicate that he does not fully understand this point, because in his grounds of appeal, in his skeleton argument and associated documents and in his oral submissions to me he has insisted on the importance of the alleged failure of the GMC and the Tribunal properly to scrutinise the conduct of Ms V and the contextual meaning of his emails, with a view to understanding that Ms V lacked credibility and that the emails were innocent. This, however, is indicative of Dr Teewary's apparent inability, actual or feigned, to understand that compliance with a lawful direction of the GMC is an independent and important obligation.

59. I do not mean to suggest that it necessarily follows that the questions of the level of need for a health assessment and of the merits of Ms V's complaint were entirely irrelevant for the Tribunal. In theory, both questions could have been relevant to the consideration of what if any sanction ought to be imposed for non-compliance: for

example, it could in theory have been the case that the evidence available to the Tribunal showed that the original grounds for believing that Dr Teewary might have mental health problems had all been shown to be baseless; a finding to that effect might possibly have been material to the Tribunal's decision as to how to deal with a nevertheless unjustified failure to undergo a health assessment. However, two points need to be emphasised. First, such questions could not have been relevant to findings as to non-compliance or as to justification for non-compliance. Second, and emphatically, on the facts of this case such considerations to do not arise.

60. Perhaps the most disturbing aspect of this case is what appears to be Dr Teewary's lack of insight into his own conduct. He accepts that he sent the hundreds of emails to Ms V and that she made virtually no response at all and gave no encouragement to him. He appears to think that the lack of response leaves it entirely unclear whether the emails were welcome or unwelcome, so that he might reasonably carry on regardless. When he sent Ms V unsolicited gifts, which were unacknowledged, he regarded her failure to return them as confirmation that his communications were welcome. When she complained to the GMC both about the emails and about the gifts, he not only adduced her failure to return the gifts as indicative of the fraudulent nature of her complaint but sent her a renewed barrage of unsolicited emails.

61. As regards the question of non-compliance, Ms V's retraction of her complaint has little if any relevance. Dr Teewary remained under obligation to undergo the assessment. Ms V has confirmed to the GMC that she agreed to and signed the statement retracting her complaint, but she has not said that she originated the statement or what caused her to sign it, and the fact that it was provided to the GMC by Dr Teewary's representatives raises some obvious questions. More importantly, Dr Teewary accepts that he sent the emails in question to Ms V. His reason for doing so, as explained to me at the appeal hearing, was that when they said goodbye in Bolivia in 2017, Ms V told him to email her. The retraction of the complaint provides no good reason for not requiring Dr Teewary to undergo a health assessment, which was in any event required largely as a result of the tone, content and number of emails that he sent directly to the GMC.

62. Here I need to address a point that Dr Teewary made repeatedly at the appeal hearing. While stopping short (for the most part) of suggesting that the direction for a health assessment was abrogated, he implied that it was now of little importance, because the direction had been made on a false basis. He insisted that the reference in the direction to "Mental & Behavioural disorder due to use of cocaine (F14) and cannabis (F12)" resulted from a misunderstanding of an email he had sent to Ms V on 17 January 2019, which had no content apart from the subject line: "I tried a special substance – white color – I had mentioned in Pampas – guess!" He said that this jocular, riddle-like remark had been misunderstood by the GMC as a reference to drugs, and that the several clear drug tests that he has since provided showed that there was no reason to suspect him of abusing drugs. Dr Teewary's submission on this point was wholly lacking in merit. If he believes that the suspicion that he has mental health problems is a consequence of a suspicion that he abuses drugs, he is quite wrong. The truth is the other way around. The direction to undergo a health assessment, and the Annex A that is summarised in the direction, make it perfectly clear that the concerns over Dr Teewary's mental health result from the emails he sent: their excessive number, their concerning content, and their bizarre manner of

composition. Drug abuse is raised as a possible explanation of mental health problems, not as an assumed fact that might indicate the possible existence of such problems. There is no reason to think that the direction was made on the basis of a misapprehension. Indeed, a layman might have found it surprising if a medical examiner, on reading Dr Teewary's emails, had not concluded that they gave cause for concern as to the state of his mental health.

63. The Tribunal was concerned, first, to decide whether Dr Teewary had failed to comply with the direction. It held that he had so failed. There is no basis for questioning that finding, which was (with respect) obviously correct. At one point in his oral submissions Dr Teewary appeared to deny that he had failed to comply with the direction, but I understood his real submission to be that he had at all times been willing to undergo a health assessment that was arranged in a fair and lawful manner and had only refused to participate in an unfair assessment. I turn to consider that argument.

64. Dr Teewary's main argument on the appeal was that he was justified in refusing to attend the medical examinations for the purposes of the health assessment, because the GMC was conducting the assessment in an unfair manner. The complaint is that the practice of the GMC is to send a file of papers to the examiner through a special portal but that it refused to send additional material that Dr Teewary wanted the examiner to see. Dr Teewary says that the examiners refuse to receive advance paperwork directly from him, and therefore they will not see all relevant documents before the examination takes place. He acknowledges that he will be able to provide any information and documentation that he thinks material at the examination itself, but he says that this is too late for the purposes of a fair and comprehensive assessment. The specific documentation that he wants the examiners to see is (i) evidence of Ms V's acceptance of his gifts (in the sense of receipt; the gifts were not acknowledged), (ii) Ms V's statement retracting her complaint, and (iii) documentation from the Royal Gwent Hospital, Newport, showing that Dr Teewary was working there satisfactorily in the period after the complaint was made.

65. This very argument was made by Dr Teewary to the Tribunal on day 4 of the non-compliance hearing, 26 August 2020. When he was invited to present his evidence and submissions on the question of justification for non-attendance at the examinations, Dr Teewary made a renewed application for a stay of the proceedings on the ground of abuse of process. In its determination dismissing the application, the Tribunal recorded Dr Teewary's submissions; it is easier to take them from the summary contained in the determination than from the transcript of the hearing:

> "3. Dr Teewary submitted that the matters in question are not in relation to clinical care or patient safety, but rather relate to a personal issue. He submitted that patients have never been put at risk and that he has provided evidence that he is a good, competent clinician, supported by testimonials, patient/colleague feedback and two independent health reports.
>
> 4. Dr Teewary submitted the GMC have consistently refused to provide all the evidence to the health assessors which he considers vitally important to support with understanding the context surrounding the events and evidence as alleged and of

> the reasoning to undertake a health assessment. He submitted that it would be impossible for him to fairly discharge his duty to undertake a health assessment for this reason. He submitted that the GMC is trying to subvert the fairness of the process, manipulate the information provided to the health assessors and prevent him from providing a complete set of information for fair assessment of his health. Dr Teewary further submitted that the GMC have repeatedly 'dodged' his request for disclosure of a complete set of information which would be provided to the health assessors to assist them when undertaking the assessment. Dr Teewary submitted that, for these reasons, the process has not been fair and that the GMC has abused its position of power.
>
> 5. Dr Teewary submitted that his contention of abuse of process is not directed at the GMC organisation as a whole, or the MPTS or the Tribunal, rather it is directed at specific individuals within the GMC.
>
> 6. Dr Teewary also submitted in support of his application for a stay, that the GMC are aware of the lack of credibility (his contention) regarding the original complaint (to which he contends he has no case to answer) and are therefore manipulating the process to allow for an allegation of non-compliance."

The Tribunal gave its reasons for refusing the application:

> "17. The Tribunal notes, that Dr Teewary has provided two independent medical reports which he relies on as evidence of the non-compliance proceedings being unnecessary. The Tribunal particularly notes that the authors of those two reports were themselves in possession of limited information or material and were not aware of the details of the allegations in this case. The Tribunal is of the view that Dr Teewary is able, if he so wishes, to provide any material or information to the GMC appointed health assessors. The Tribunal's view is that the provision of the information or material by Dr Teewary avoids any prejudice whether serious or otherwise. The Tribunal accepts the submission made by Mr Breen that the application by Dr Teewary for a stay is therefore fundamentally flawed.
>
> 18. The Tribunal noted Mr Breen's submission [for the GMC] that Dr Teewary is able to provide any information he deems necessary to the health assessors to support their assessment. It determined that this fact undermines Dr Teewary's argument that he is being prevented from providing a complete set of information to the health assessors. Therefore, the application is misjudged.

> 19. The Tribunal is of the view that this application is the continuation of a pattern of behaviour from Dr Teewary to delay the timely execution of these proceedings and that it demonstrates his continuing lack of understanding of GMC procedures and the findings and determinations of this Tribunal or the High Court."

66. The Tribunal's reasoning on this matter in respect of the application for a stay is equally applicable to the contention that Dr Teewary's non-compliance with the GMC's direction was justified by some unfairness of the assessment procedure. I respectfully agree entirely with the reasoning of the Tribunal, and I bear in mind that the Tribunal contained two medically qualified members, whose judgement as to how a medical examination might fairly be conducted is deserving of respect by this Court.

67. The final point of substance advanced by Dr Teewary on this appeal was a complaint that he had been denied a fair hearing by the Tribunal, because he had been prevented from presenting evidence and submissions to the Tribunal on the issue of non-compliance. There is nothing in this point.

68. As I have said, day 4 of the non-compliance hearing was on 26 August 2020. Dr Teewary was present but was not represented. The Chair addressed Dr Teewary; he noted that the Tribunal had already dealt with the fact that Dr Teewary had not attended the assessments and that Dr Teewary had been asked to be prepared with his submissions on non-compliance:

> "There may be in your submission a good reason for failing to attend and that is what we need to hear, please. Okay? So it is now over to you. We have already heard Mr Breen back in January. We don't need to hear from him again at this stage. But I need you to now, please, tell us … give us your submissions and provide any evidence that you wish to assist us."

69. At that point, Dr Teewary made the renewed application for the proceedings to be stayed as an abuse of process. After the Tribunal had produced a determination dismissing the application (see above), the Chair asked Dr Teewary to present his case on non-compliance. There was the following exchange:

> "DR TEEWARY: Okay. I was saying, sir, that I need to read this determination, and I do not consent for the tribunal to move ahead any further. I believe there is a massive injustice been, you know, done to me in the past and there is a massive risk of injustice right now as well. So I need to read that determination. I am not asking for 30 minutes or 40 minutes. It might just be five or seven minutes and then I will be done, because I just received it like two minutes back, or five minutes back, actually. You know, I just need to, you know, get a message of what this can be, or the grounds of the reasons, so that I can actually advise …

THE CHAIR: Doctor, can I again make this clear? The panel wish to be very patient, courteous, polite to you, etc, and we have been, and will continue to be, but we cannot delay this matter any further, okay? Now I know you may say, 'Well, five, seven minutes isn't long.' That is fine; I understand that, but you will have plenty of time to read that determination when the panel are considering the issue of non-compliance. When we go into private session then, that is when you can read it. At the moment, I am not going to allow this hearing to be delayed any further, okay? We are going to get cracking with it now. Please understand that position, okay? I appreciate entirely it does not sit well with you. If you don't consent to it, I am not asking for your consent, Doctor, okay? We don't need your consent, okay? I am asking you to now just give us, please, your submissions. If you don't want to, then that is fine. We will proceed without them, which is not what I want to do, or the panel want to do. We want to hear from you, because that is important, but we need to hear from you now.

DR TEEWARY: But, sir, just (inaudible – distortion), I mean my main problem is okay, actually, but I think we can still – what I'm saying is that the issue of, you know, me knowing the determination is because I will just put it very succinctly is that I have got an obligation, and the public body like the GMC has got an obligation as well, and they must go about doing that in a fair way. For me, (inaudible – distortion), allegation that there has been an abuse of process, because that comes first. First, they have to make sure that what they expect from me is (inaudible – distortion). They have got a duty of acting fairly, to act fairly first, and then, of course, they can make allegations that yes, I have failed to not do my side of duty. So I need to see that determination. I have been advised to see that determination. I am not asking you (inaudible – distortion), because (inaudible – distortion).

THE CHAIR: Listen, I have made the position clear. I don't know how clearer I can make it, okay? I can only say this to you: we are very patient as a panel, have been, will continue to be, but please don't abuse that patience. We really need to just get cracking with it, okay? So please, I am going to ask you again: please let us have your submissions now. You will have time to read that determination. We are not going to deal with, or revisit that determination, or allow this to be delayed further. What you do in the High Court is a matter for you. Please now, let us carry on with this non-compliance, and I invite you to, please, cooperate and assist the panel to help you, okay? So please, let us have your submissions now.

> DR TEEWARY: I mean, if I am compelled and I have no option, then I will proceed with your order and my objections, but I would just want to submit once that yes, you know, I agree that you have been, and the tribunal …(Pause)"

70. At that point, Dr Teewary, but no one else, appeared to experience problems with the Skype connection, which had not been evident beforehand. This led to discussion about continuing with him on the telephone. The Tribunal Assistant offered to send to Dr Teewary a telephone number and a conference ID. Dr Teewary agreed to that course. The hearing was suspended while the arrangements were made. When it resumed, however, Dr Teewary was not present by telephone or otherwise. After deliberating, the Tribunal decided to proceed in his absence. It later set out its reasons in a written determination. Because the procedural fairness of the proceedings is a matter of great importance, I shall set out the body of that determination in full:

> "1. On 25 [scil. 26] August 2020, day 4 of proceedings, at approximately 10.45am Dr Teewary informed the Tribunal via email that he was unable to access the internet in order to make his oral submissions in relation to non-compliance. Dr Teewary was able to engage with proceedings on the previous day and prior to this technical issue. The Tribunal adjourned until 15.06pm, in order to allow Dr Teewary to engage and submit written submissions as an alternative, when it heard submissions from the GMC in relation to proceeding in Dr Teewary's absence.
>
> 2. Dr Teewary submitted, via email, that because he was unable to access the internet the proceedings should not go ahead without him being present. Dr Teewary did not make an application to adjourn proceedings, but rather that the Tribunal should wait for him to resolve his issue with his internet. He did not offer any information on when the issue could or would be resolved.
>
> 3. On behalf of the GMC, Mr Breen opposed the application to adjourn and submitted that proceedings should continue in Dr Teewary's absence. He submitted that Dr Teewary's absence was an on-going pattern of behaviour whereby Dr Teewary was seeking to frustrate proceedings and not make his submissions in relation non-compliance. Mr Breen submitted that Dr Teewary had already, multiple times, sought to adjourn to a later date and these had been refused. He submitted that there was no credible evidence that Dr Teewary was unable to access the internet to engage with proceedings and he had in fact utilised the internet to email the Tribunal.
>
> 4. The Tribunal went on to consider whether to exercise its discretion under Rule 31 of the Rules to proceed with the hearing in Dr Teewary's absence. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should

be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

5. The Tribunal referred to the case of *GMC v Adeogba* [2016] EWCA Civ 162, which applies the principles set out in *Jones* to regulatory proceedings. It states in paragraphs 19 and 20 of the judgement:

> 'First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.'

And;

> 'Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.'

6. The Tribunal was concerned that Dr Teewary had sought several adjournments and this latest development represented a long-standing pattern of behaviour from Dr Teewary. The Tribunal acknowledges that technical issues can occur, however, Dr Teewary had been available on the previous day and in the morning and despite being given the majority of the day to resolve his internet issues, had not taken the opportunity to make any meaningful submissions, despite being able to send email communication. The Tribunal noted that Dr Teewary had been informed in January 2020 that he needed to have submissions ready for when the Tribunal reconvened and had not done this.

7. The Tribunal was concerned that it was now on the fourth day of proceedings and that it had already lost almost three days dealing with repeated attempts from Dr Teewary to dismiss the case against him completely or to adjourn to later dates. The Tribunal determined that it has a duty to conduct these proceedings in a fair, expeditious fashion and that it was in the public interest to do so. It also determined that it was in Dr Teewary's own interest to have a resolution to these proceedings.

> 8. Accordingly, the Tribunal has determined to proceed in Dr Teewary's absence."

71. Dr Teewary did not challenge that determination.

72. The Tribunal then proceeded to hear submissions from Mr Breen, counsel for the GMC. It also asked him to present the points that Dr Teewary might have wished to make. It is worth noting that the fact of non-compliance with the direction had already been dealt with, as mentioned by the Chair, and that the remaining issue concerned justification for that non-compliance. It is also worth noting that the justification for non-compliance advanced by Dr Teewary on this appeal, namely that the health assessment was conducted unfairly by reason of the GMC's failure to provide the examiners with the documentation that Dr Teewary wanted them to see, had already been considered and dismissed by the Tribunal.

73. On 26 August 2020 the Tribunal adjourned to the following day, 27 August 2020, in order to consider its decision.

74. On 27 August 2020 Dr Teewary was neither present nor represented, but he lodged applications for a stay of proceedings and for the hearing to be held in public. Both applications were refused. However, the Tribunal now found that it had insufficient time to give its determination on non-compliance and so adjourned proceedings. The adjourned hearing was listed for 19 November 2020.

75. On this appeal, the complaint that Dr Teewary made was that he had been excluded from the beginning of the hearing on 19 November 2020. He referred to a number of emails, which he said showed that he had been waiting in the lobby for admittance into the hearing and that he had filed further documents for consideration by the Tribunal.

76. The hearing on 19 November 2020 was for the purpose of handing down the Tribunal's determination on non-compliance. Before handing down its determination, the Tribunal considered what to do about the fact that Dr Teewary was not present. Again, the Tribunal's decision on this point is important:

> "1. On 19 November 2020, the Tribunal informed parties that it would be announcing its decision in relation to the matter of non-compliance, and parties were asked to be available from 09.00 am. Once the determination was complete, the Tribunal informed parties that the decision would be announced at approximately 10.30 am. Dr Teewary informed the Tribunal, through the MPTS, that he would not be logging into the conference unless the Tribunal accepted and received a number of documents from him.
>
> 2. The Tribunal treated the information provided, to the MPTS staff, by Dr Teewary as his submissions. On the telephone to MPTS staff and via email on the morning of the hearing and the day before, Dr Teewary provided documentation to go before the Tribunal. He stated that these documents supported his contention that the proceedings should go no further and end

immediately. He further stated that this documentation did not require the prior approval of the GMC for the purpose of placing it before the Tribunal. It was indicated that the documentation purported to show the withdrawal of the original complaint by the complainant and went to the heart of the requirement for compliance with the GMC's direction to undergo a HA.

3. On behalf of the GMC, Mr Breen opposed the demand from Dr Teewary and submitted that it was right and proper to proceed, in the interest of justice and in the public interest. He submitted that Dr Teewary had provided no good reason for his non-attendance and that this was further demonstrative of the continuing and persistent pattern of behaviour and conduct that Dr Teewary had engaged in to disrupt these proceedings.

4. The Tribunal went on to consider whether to exercise its discretion under Rule 31 of the Rules to proceed with the hearing in Dr Teewary's absence. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

5. The Tribunal referred to the case of *GMC v Adeogba* [2016] EWCA Civ 162, which applies the principles set out in Jones to regulatory proceedings. It states in paragraphs 19 and 20 of the judgement:

> 'First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed.'

And;

> 'Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.'

6. The Tribunal was concerned that Dr Teewary had sought several adjournments and this latest development represented a

> long-standing pattern of behaviour from Dr Teewary. It was of the view that Dr Teewary was, in effect, refusing to participate in these proceedings and therefore voluntarily absented himself.
>
> 7. The Tribunal was concerned that it was now the sixth day of these proceedings and despite Dr Teewary communicating with the MPTS Team prior to the announcement of the Tribunal's decision on non-compliance, he subsequently refused to participate.
>
> 8. The Tribunal was firmly of the view that Dr Teewary was seeking to reopen and make further submissions on the issue of non-compliance after the Tribunal had determined, albeit not announced the same. The Tribunal considered that the documentation that Dr Teewary wished to submit was not relevant to these proceedings.
>
> 9. The Tribunal determined that it has a duty to conduct these proceedings in a fair, expeditious fashion and that it was in the public interest to do so. It also determined that it was in Dr Teewary's own interest to have a resolution to these proceedings.
>
> 10. Accordingly, the Tribunal has determined to proceed in Dr Teewary's absence."

77. The Tribunal then gave its determination on non-compliance. It found that Dr Teewary had not complied with the GMC's direction and that he had no good reason for failing to comply. At that point the Tribunal reconvened to considered sanction. Dr Teewary made himself available for that part of the hearing, but he objected to any further proceedings taking place.

78. In my judgment, the proceedings before the Tribunal were not in any way unfair. Dr Teewary did not make submissions when he had an opportunity to make them on 26 August 2020. The Tribunal was entitled to take the view that he was trying to frustrate the conduct of the proceedings and that it should proceed in his absence: in colloquial terms, it had his number. It gave him every opportunity to put forward any representations he wished to make. Indeed, the only representation of substance that he has ever advanced—concerning the limited information provided by the GMC to the medical examiners—was presented by Dr Teewary and considered and rejected by the Tribunal; see above. Dr Teewary did not attend on 27 August 2020. The hearing on 19 November 2020 was for the giving of the decision, and there was no good reason why the Tribunal ought not to have given its decision on non-compliance on that occasion. When the decision had been given, Dr Teewary yet again attempted to delay the proceedings, but the Tribunal very properly did not permit him to do so. The issue in the case had been entirely straightforward. It justified one or at the most two days of the Tribunal's time. Dr Teewary had succeeded in derailing the proceedings to the extent that they had taken up seven days of the Tribunal's time. He had been indulged quite enough.

79. On this appeal, Dr Teewary did not direct any submissions to the questions whether suspension was an appropriate sanction or whether any suspension ought to have been immediate. Therefore it suffices to say that I see no basis for supposing that the Tribunal's decision on those matters was wrong.

80. For these reasons, Dr Teewary's totally unmeritorious appeal will be dismissed.

81. I shall adjourn consideration of questions of costs to a further hearing, if they cannot be agreed.

IN THE HIGH COURT OF JUSTICE **CO/4340/2020**

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

In the Matter of an Appeal under the Medical Act 1983

His Honour Judge Keyser QC sitting as a Judge of the High Court

24 February 2021

BETWEEN

CLAY KUMAR TEEWARY

Appellant

and

THE GENERAL MEDICAL COUNCIL

Respondent

UPON the Appellant's appeal against a decision of the Medical Practitioners Tribunal dated 20 November 2020

AND UPON HEARING the Appellant in person and Mr Rory Dunlop QC for the Respondent on 19 February 2021

IT IS ORDERED THAT:

1. The appeal be and is hereby dismissed.

2. The question of the costs of the appeal, including the costs previously reserved, be considered at a telephone hearing (30 minutes), not before 12 March 2021, unless the parties reach agreement as to the appropriate order for costs.

Dated: 24 February 2021

By the Court