Neutral Citation Number: [2018] EWHC 3331 (Admin)

Case No: CO/1678/2018

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/12/2018

Before :

MR JUSTICE SPENCER

- -

Between :

Aqdas Nabili	**Appellant**
- and –	
General Medical Council	**Respondent**

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- -

The Appellant appeared in person
Rory Dunlop (instructed by the General Medical Council) for the Respondent

Hearing date: 16th October 2018

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Judgment Approved

Mr Justice Spencer:

Introduction and overview

1. Dr Aqdas Nabili appeals under section 40 of the Medical Act 1983 against the decision of the Medical Practitioners Tribunal ("the Tribunal") dated 8th February 2018 to erase her name from the medical register. Dr Nabili had worked as a consultant paediatrician. There were concerns over her performance for several years. In January 2017 the Tribunal had found that her fitness to practise was impaired by reason of her deficient professional performance. The sanction imposed was suspension of her registration for a period of 12 months, which took effect on 20th February 2017. The Tribunal directed that her case should be reviewed shortly before the end of the period of suspension. The review hearing was set for 29th January 2018. Dr Nabili was informed of this many months in advance.

2. In the intervening period it came to light that there was a new and serious allegation of professional misconduct against Dr Nabili arising from her storage of patients' medical records at her home address in parts of the building accessible by private tenants living there. This formed a separate allegation of failing to keep medical records securely and breaching patient confidentiality such that her fitness to practise was impaired by reason of misconduct. Dr Nabili was formally notified of that allegation on 13th December 2017. She was informed that the allegation was to be heard by the Tribunal conducting the review, commencing 29th January 2018. Nine days were set aside for the hearing.

3. In the week before the hearing was due to commence Dr Nabili twice sought an adjournment because she had been unable to secure legal representation. The applications were refused by the Tribunal case manager on the grounds there was no legitimate explanation for instructing counsel so late and that an adjournment would be contrary to the public interest in the fair, economic and efficient disposal of the proceedings. Witnesses would also be inconvenienced. The hearing commenced on Monday 29th January, in Manchester. Dr Nabili did not attend. She remained in London. She renewed her application for an adjournment, initially on the grounds that she was without legal representation and, when that did not find favour, on the grounds that she was unfit to attend.

4. On Wednesday 31st January, the third day of the hearing, Dr Nabili admitted herself to hospital in London but no supporting medical evidence was forthcoming to establish that she was unfit to attend the hearing. The Tribunal carefully considered each of her repeated applications for an adjournment and refused each one. The Tribunal decided that it was appropriate to proceed in her absence. They heard oral evidence from three witnesses in relation to the allegation of misconduct arising from breach of patient confidentiality. They found the allegation proved and gave their decision on Friday 2nd February.

5. The hearing resumed on Monday 5th February and moved on to consider the question of impairment of fitness to practise. Dr Nabili now attended the hearing but again she applied for an adjournment so that she could be represented. The application was refused. Dr Nabili addressed the Tribunal on the issue of impairment and was allowed further time to present more documents next morning. On 6th February she renewed her application for an adjournment which was refused. Submissions on impairment were concluded.

6. On 7th February the Tribunal handed down its determination, finding that Dr Nabili's fitness to practise was impaired by reason of misconduct and by reason of defective professional performance. The Tribunal proceeded to consider the appropriate sanction. Dr Nabili again applied for an adjournment, this time to enable her to provide written submissions. The application was refused. Dr Nabili addressed the Tribunal at length. The Tribunal adjourned to the following day, 9th February, indicating that they would then simply hand down their decision. Dr Nabili did not attend the following day. The Tribunal handed down its determination that the appropriate sanction was erasure from the medical register.

7. On 2nd March 2018 Dr Nabili filed her appellant's notice and grounds of appeal.

The appeal

8. Dr Nabili prepared the grounds of appeal herself. They are lengthy, repetitive and at times difficult to follow, but the main points may be summarised as follows:

    a) the Tribunal should have granted her applications to adjourn the hearing, because she had been unable to obtain legal representation;

    b) the Tribunal should have adjourned the proceedings because she was medically unfit to attend the hearing;

    c) the Tribunal should not have carried on with the proceedings in her absence;

    d) the Tribunal determined the misconduct allegation only on the evidence presented by the GMC; there were many flaws in the evidence of the witnesses whose evidence she fundamentally disputed.

9. Although Dr Nabili filed her appeal in time, she did not file a proper appeal bundle or a skeleton argument. The date for the hearing of the appeal, 16th October 2018, was notified to the parties on 24th May 2018. Dr Nabili attempted belatedly to obtain representation but without success. On 16th October she was not present when the case was called on. It was unclear whether she would attend. The GMC had been informed in an email the previous day from solicitors she had instructed that they were no longer acting for her. Dr Nabili did attend a few minutes later. She did not seek an adjournment of the appeal. She represented herself and presented several new documents.

10. The GMC was represented at the appeal by counsel, Mr Dunlop. It emerged that he had not been provided with final version of Dr Nabili's grounds of appeal, and was lacking paragraph 19 onwards, in which Dr Nabili complains about the Tribunal's decision on the misconduct allegation. Mr Dunlop was able to deal with these grounds in his oral submissions and to provide other documentation to address part of Dr Nabili's complaints.

11. Dr Nabili addressed me courteously and with passion. I helped her to concentrate on the matters in issue. The hearing lasted a full day and I reserved my decision.

12. Section 40 of the Medical Act 1983 provides for a right of appeal against the Tribunal's decision to impose a sanction under section 35D of the Act. Section 40 (7) provides as follows:

> " On an appeal under this section from a Medical Practitioners Tribunal, the court may-
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> a) dismiss the appeal;
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> b) allow the appeal and quash the direction or variation appealed against;
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> c) substitute for the direction or variation appealed against any other direction or variation which could have been given or made by a Medical Practitioners Tribunal;

> d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court,
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> and may make such order as to costs… as it thinks fit."

13. The Act does not prescribe a test under section 40 for allowing an appeal. It follows that the general provisions of CPR 52.21(3) apply:

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

14. Applied to these proceedings the question in this appeal is whether the decision of the Tribunal to impose the sanction of erasure from the register was either (a) wrong or (b) unjust because of a serious procedural or other irregularity in the proceedings in the Tribunal.

15. In order to evaluate Dr Nabili's complaints it is necessary to examine carefully the various decisions made by the Tribunal at each stage to see whether there was a serious procedural or other irregularity. There is no short cut in that exercise. I have studied the entire transcript of the proceedings, and the relevant documentation presented to the Tribunal at each stage.

16. However, because the main thrust of Dr Nabili's appeal is that the Tribunal was wrong to refuse an adjournment and wrong to proceed in her absence, it is appropriate first, before embarking on that analysis, to set out the relevant legal principles applicable to those issues.

The applicable legal principles

17. The general power to postpone or adjourn a hearing is provided in rule 29 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended). The rules do not themselves give any guidance as to the circumstances in which an adjournment may or may not be appropriate, nor could they. The power to proceed in absence derives from rule 31 which provides:

> "Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules. "

18. The proper approach to adjournments and proceeding in absence in GMC disciplinary hearings such as this was considered by the Court of Appeal in *General Medical Council v Adeogba* [2016] EWCA Civ 162; [2016] 1 WLR 3867. The Court acknowledged the usefulness of the principles developed by the criminal law in relation to trial in the absence of a defendant. Sir Brian Leveson P continued:

> "[17… Having said that, however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision under rule 31 to continue a disciplinary hearing. This latter decision must also be guided by the context provided by the main statutory objective of the GMC, namely the protection, promotion and maintenance of the health and safety of the public as set out in section 1(1A) of the 1983 Act. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance. …
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> [19] … 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.
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> [20] …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. "

19. Later in his judgment, Sir Brian Leveson said, at [61]:

> "…No regulatory system can operate on the basis that failure to attend should lead to an adjournment on the basis that the practitioner might not know of the date of the hearing (rather than having disengaged from the process or even adopted an "ostrich like attitude"): any culture of adjournment is to be deprecated. "

20. The Court also considered the circumstances in which fresh evidence might be admitted on appeal in order to explain the practitioner's absence from the hearing. Sir Brian Leveson said at [35]:

> "Pulling these strands together, in my view, it is clear that evidence as to the reasons why, in any case, a medical practitioner does not appear or engage in a disciplinary hearing is likely to constitute fresh evidence and will require consideration, at least de bene esse. Thus, if a practitioner was taken ill or involved in an accident or had suffered some unforeseen and unforeseeable disaster, that fact would be very relevant to the exercise of discretion whether or not to adjourn and would not have been available at the hearing because, by definition, the practitioner would not have been able to be

> present to advance it. If there is a good reason for non-attendance, it would not necessarily extend to fresh evidence going to the merits of the disciplinary complaint which would have been available to be deployed at the time of the hearing. "

21. As I shall explain in due course, part of the difficulty Dr Nabili faces in this appeal, in challenging the Tribunal's decision not to adjourn but to proceed in her absence, arises from the fact that despite clear requests from the Tribunal she failed to provide any independent verifiable medical evidence that she was unfit to attend.

22. On this issue of fitness to attend, some assistance may be gained from the general approach of the courts to such applications for an adjournment. For example, in *Levy v Ellis-Carr* [2012] EWHC 63 (Ch) Norris J said, at [36]:

> " …In my judgment it falls far short of the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial. Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties…"

23. Later in this judgment, when I have reviewed and explained the factual history, I shall consider the overall impact of the Tribunal's refusal to adjourn the hearing and its decision to proceed in Dr Nabili's absence. It is important however, to bear in mind throughout that the Tribunal's decisions must be viewed in the light of the information available to the Tribunal at the time each decision was made.

Relevant background

24. Dr Nabili's late application to adjourn the hearing in January 2018 has to be seen in the context of the history of the GMC proceedings as a whole. The hearing which resulted in the order of suspension in January 2017 had originally been listed in April 2016, but Dr Nabili successfully applied for the hearing to be adjourned on the grounds that she needed more time to instruct a legal representative. That hearing was listed to commence on Monday 9th January 2017. She did not instruct lawyers until Wednesday 4th January 2017. Her application for an adjournment was refused. She did not attend on the first day of the hearing, but there was a further application for an adjournment on the grounds that she needed more time to instruct lawyers. The Tribunal refused that application. On 10th January 2017 Dr Nabili still did not attend but there was an e-mail from solicitors on her behalf requesting an adjournment on the grounds of ill-health. It was said she had been taken ill over the weekend although they had no further detail. There was a letter from Dr Nabili's GP, in very general terms, referring to her stress

generally but the letter did not address the issue of whether she was fit to attend and participate in the proceedings. Further details were provided at the request of the Tribunal in relation to Dr Nabili's current health issues. It became apparent that the solicitors were no longer instructed.

25. In refusing an adjournment and deciding to continue with the hearing in Dr Nabili's absence, the 2017 Tribunal bore in mind that she did not raise the issue of ill-health until the Tribunal had announced its decision not to adjourn so that she could be legally represented. There was no satisfactory evidence to show that Dr Nabili was too unwell to attend the hearing and participate in it. Nor was there any realistic likelihood that a further adjournment would achieve anything. None of the adjournments or delays in the past had brought the case to a just resolution. The public interest demanded that the case be resolved in a reasonable time. This had been ongoing since 2012. Public confidence in the profession would be undermined if the case were allowed to be delayed further without a more compelling reason.

26. I have rehearsed this background of the hearing in January 2017 at some length because it bears a striking similarity to the situation which developed a year later in January 2018 immediately before and at the start of the hearing which is the subject of this appeal. It is important to note that Dr Nabili was informed on 10th March 2017 that the review hearing was set for 29th January 2018. She therefore had ten months' notice of that important date, ample time to arrange representation. It is right to point out, however, that Dr Nabili was not notified of the hearing date for the new misconduct allegation until 13th December 2017. She therefore had six weeks' notice of that part of the hearing.

27. It is unclear precisely when Dr Nabili instructed counsel to represent her. She explained to me at the hearing of the appeal that she had started looking for representation as soon as she was suspended in January 2017. She eventually found a barrister to represent her on the website "myBarrister". She first met him in conference on Saturday 20th January, a week before the hearing was due to begin. He told her he could not represent her at the hearing after all, owing to another professional commitment which clashed with the hearing dates.

28. The first application to adjourn the hearing was made in an e-mail from counsel on her behalf, Mr O'Donoghue, on the afternoon of Monday 22nd January. He explained that he had agreed to represent the Dr Nabili "subject to the following": he understood the hearing was scheduled for 29th January; from the information already furnished to him it was clear there was an extensive volume of material to be read and evaluated; because of the "extreme short notice" he was unfortunately unable to attend the hearing on 29th January and the following days because of a prior professional commitment. On behalf of Dr Nabili, he therefore requested an adjournment of the hearing to a suitable date.

29. That application fell to be considered by a Tribunal Case Manager, in accordance with rule 29. The Case Manager gave his decision on Thursday 25th January, having sought further information and representations from the parties. The Case Manager had regard to the Medical Practitioners Tribunal Service ("MPTS") guidance for Case Managers considering rule 29 postponement applications. The application was refused. The reasons given in the written determination stated that the public had an interest in the doctor's suspension being reviewed before its expiry. It was due to expire on 19th February 2018. There was no explanation why the doctor had only instructed counsel

on 19th February 2018, and counsel who was not able to attend on the listed dates. The GMC had arranged for the attendance of its three witnesses. One of them had been caused stress by the proceedings and in particular the prospect of postponement. Dr Nabili had no witnesses. The reasons continued:

> "11. The fair economic and efficient disposal of regulatory proceedings is 'of very real importance', and the obligation on professionals to co-operate with their regulators has also been recognised, see *GMC v Adeogba* [2016] EWCA Civ 162.
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> 12. In the circumstances as set out for me, there is no adequate explanation for the lateness of arrangements for representation, which arrangements have solely led to the request for postponement. The impending date of the hearing has been known to the doctor for many months.
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> 13. At this late date, the public interest in the disposal of proceedings, considered in the light of the doctor's obligations, must take precedence over the doctor's request to obtain representation from counsel who is unavailable.
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> 14. Accordingly, I am not persuaded that a postponement is proportionate in the circumstances."

30. That decision was communicated to Mr O'Donoghue at 10.15 am on Thursday 25th January 2018. At 17.27 the same day Dr Nabili sent the Tribunal a lengthy e-mail containing a further application for an adjournment. She suggested that the problem over her representation had been caused by the unnecessary hearing length in consolidating the misconduct allegation with the review hearing. She suggested that the misconduct allegation could easily have been heard alone. She said it was "just a simple human error" that her barrister did not realise he had another hearing listed. She also referred to imminent criminal proceedings relevant to the misconduct allegation, and to difficulties she had encountered in providing information about her CPD record for the purpose of the review.

31. On the morning of Friday 26th January at 10.23am the GMC responded to the second application, pointing out that Dr Nabili had known for some time that the intention was to join both matters in one hearing and had raised no objection. She had advised the GMC and the Tribunal in July 2017 that she was intending to seek legal representation. Dr Nabili in turn responded to these further representations at considerable length by an e-mail on Friday 26th January at 11.54. She repeated that she found herself in a very difficult position on discovering her barrister had at the last minute realised he had made "a natural human error" over his diary. She referred again to imminent criminal proceedings which had a bearing on the misconduct allegation. She said it was very important that the Tribunal should hear "the entire matter in question" which would not happen if there was "no appropriate defence" to bring out the facts of the criminal case.

32. The Tribunal Case Manager gave a further written decision refusing the application for an adjournment. He pointed out that the issue raised over the availability of relevant evidence would have been subject to case management, and important issues over such evidence would have been considered at that time. It was very late now to raise the

question of joinder. Rule 21A required that the new matter be heard first in time, and that the issue of current impairment be considered after the Tribunal had made factual findings, along with the review. The current suspension expired on 19th February 2018 and the new matter ought to be heard before the review. The reasons repeated that Dr Nabili had been aware of the listing date for a long time and had apparently not approached counsel until 19th January 2018. Reference was made again to *Adeogba* and the public interest in the fair, economic and efficient disposal of regulatory proceedings. The public interest had to take precedence. A postponement was not proportionate in the circumstances.

33. That decision was communicated to Dr Nabili by e-mail at 13.33 on Friday 26th January. She was informed that the hearing would proceed as planned on Monday 29th January.

34. Pausing there, it should be noted that Dr Nabili had at this stage raised no issue of ill-health. She had the weekend to prepare for the hearing. She was an experienced and articulate senior medical practitioner, a consultant paediatrician. She should have been capable of presenting her own case now that she found herself without representation.

Monday 29th January, Day 1

35. On Monday 29th January Dr Nabili did not attend the hearing in Manchester. She remained in London. She told me in the course of her submissions that she had missed the train to Manchester which she had intended to catch. She became very stressed over the weekend and began to feel unwell. I shall return to this aspect.

36. At 10.11am, well after the hearing was due to start, Dr Nabili e-mailed the Tribunal with a further application for an adjournment of the hearing. She said she had tried to attend but could not manage "for today", and would like to be present by telephone at the hearing of her application for an adjournment. There was a lengthy attachment to her e-mail setting out the grounds of her application. In relation to legal representation she said she had thought she could manage the hearing herself but realised she could not. She had approached numerous legal firms who had been unable to represent her because of the cost of the hearing or their non-availability. She said that she had been informed on 11th January through "myBarrister" that someone had been found to represent her and that when she had met Mr O'Donoghue on 20th January he suddenly realised on looking at his diary that he was scheduled for another hearing that day. She said she had found another barrister in Manchester who would happily represent her if the hearing were adjourned. She concluded by reassuring the Tribunal that as she now had two barristers waiting to be booked, this would be the last application. She had been left no choice but to apply for "a very short adjournment until March 2018".

37. That document made no reference to any ill-health issues. However, at around 10.20am Dr Nabili telephoned the Tribunal office to check that the e-mail had been received and to say that she had further supporting documents she wanted to send. She said she had not slept all night. She would need to go through the documents carefully before sending them. Dr Nabili was asked whether she intended to travel that day to Manchester to make the application. She was unable to say for sure. She was very upset. She did not think she could. She became very distressed.

38. At 12.17 she sent a further lengthy e-mail apologising for "lack of control of my tears". She suggested for the first time that she had two witnesses who were out of the country

and had "not come back to her". She said she had decided to present her case for an adjournment "face to face", but through computer problems and through having to collect her hearing bundles from Mr O'Donoghue she had missed the train she was planning to catch. She said she felt dizzy and could not stand. She had not slept for two nights. She had huge abdominal pain, headache nausea and dizziness. She would finish typing the document she wanted to send, which she described as her "chronology", and after that she would sleep. She apologised and said she hoped to be forgiven for not being able to come today, and for her barrister's diary. She said she looked forward to participating in the hearing of her application by telephone.

39. The Tribunal was faced with a dilemma, as counsel who was presenting the case on behalf of the GMC, Ms Chalkley, explained. The first matter for the Tribunal to consider was to have been the misconduct allegation. However, in order to put Dr Nabili's application for an adjournment in its proper context it would be necessary to refer to the whole history of the proceedings in 2017 and earlier, which would otherwise not have become known to the Tribunal until the later stage of the hearing in conducting the review. Counsel suggested that it would be preferable that another Tribunal, sitting within the same building in Manchester, should hear the adjournment application.

40. The Tribunal agreed with counsel's suggestion. It was not in the public interest potentially to imperil the hearing by receiving information it should not be considering at this early stage. MPTS would be requested to provide a different Tribunal to hear the discrete matter of the adjournment application and, if appropriate, any application to proceed in Dr Nabili's absence. Importantly, the Tribunal directed that any documentation Dr Nabili wished to rely upon for her adjournment application must be submitted by e-mail by 9.30am the following day, Tuesday 30th January.

Tuesday 30th January, Day 2

41. As it turned out, it was not possible to arrange for another Tribunal to hear the application for an adjournment, so the matter had to be determined by the original Tribunal. Dr Nabili failed to provide any further documentation by 9.30am as required. At 09.40 she e-mailed what she described as an unfinished and uncorrected draft of her chronology for the urgent attention of the Tribunal hearing her application for an adjournment. She said in her e-mail:

> "I have my GP and friend to support me and I am about to see a doctor. I slept after GP prescribed pain killers and I used with sleep tablet. I will be son (sic) better I promise… "

42. The chronology was an extremely lengthy document, effectively setting out her career history. It did not address the issue of the lateness of her attempts to obtain legal representation, nor did it say any more about any health issues.

43. At 10.17am the same day Dr Nabili sent a further e-mail, apologising, which concluded:

> "This will be the last e-mail today as my GP want me to get to surgery or A & E and I promise her to go instead to bed and wait for her. I will be OK soon. I am sorry that cannot walk properly to attend today. Please convey my thanks for the kind sympathy and understanding to MPTS (sic). "

44. The Tribunal agreed to receive the further documentation submitted by Dr Nabili, although it was late. Counsel submitted that there was no proper evidence as to why Dr Nabili could not attend that day in person or on the telephone, which was an option she had suggested yesterday. Counsel then took the Tribunal through the history of the January 2017 proceedings and the two applications refused by the Case Manager the previous week. Counsel reminded the Tribunal that Dr Nabili's suspension expired in mid-February and that the matter had to be dealt with before then, as Dr Nabili was well aware.

45. The Tribunal received advice from the Legal Assessor that it was their duty to balance against the interests of Dr Nabili the public interest in an expeditious process and conclusion to the proceedings. The Tribunal took time to consider all the material and adjourned until the following day.

Wednesday 31st January, Day 3

46. On the morning of Wednesday 31st January, the Tribunal announced their decision that Dr Nabili's application for an adjournment was refused. They had considered whether it was appropriate for the same Tribunal to continue with the hearing and were satisfied that it could. The reasons for the decision were handed down in writing. After reciting the background, the competing submissions, and the legal advice received, the decision was expressed in these terms:

> " 21. The Tribunal took account of Dr Nabili's adjournment application of 29 January 2018 and her accompanying e-mails dated 30 January 2018. It also had regard to the submissions by Ms Chalkley and of the two previous postponement applications which were refused by the MPTS Case Manager on 25 and 26 January 2018.
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> 22. As with the previous postponement applications, the Tribunal considered that this application again related mainly to Dr Nabili's inability to obtain legal representation for this hearing. The Tribunal noted that there was mention of a further new barrister, apart from Mr O'Donoghue, but that Dr Nabili did not provide any evidence of communication from him or any further details of who this barrister was.
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> 23. Given the previous adjournment and postponement requests, the Tribunal was of the view that they illustrate Dr Nabili's awareness of the process of MPTS proceedings and of the need to allow sufficient time to instruct legal representatives. It also noted that Dr Nabili had been aware of the current proceedings since April 2017 in relation a proposed November 2017 hearing date that was subsequently rescheduled for January 2018.
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> 24. The Tribunal was of the view that Dr Nabili's supporting evidence, including the chronology document, detailed a number of stressful events in Dr Nabili's relatively recent past but that there was no new supporting information. The matters of accessing representation and the stresses experienced by Dr

> Nabili had been before the MPTS Case Manager in January 2018.
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> 25. Within her written correspondence, Dr Nabili makes reference to "*stress*", "*dizzy"*, "*painkillers"* and *"cannot walk properly to attend today".* The Tribunal was mindful it has not been provided with any independent evidence or supporting documentation to suggest that this hearing should be adjourned on health grounds. It noted that support can be provided to doctors at a hearing, including explanations of the procedure at each stage and allowing frequent breaks.
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> 26. The Tribunal took account of the inconvenience and potential stress to the witnesses in this case should there be adjournment of the proceedings. It was the of the view that the appropriate use of resources and the public interest would also not be served by failing to proceed prior to the expiry of the order imposed by the 2017 Tribunal.
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> 27. The Tribunal concluded that it could not have any confidence that an adjournment would result in Dr Nabili being represented and/or attending and taking a part in a hearing. It was satisfied that public confidence in the profession would be undermined if this case were allowed to be delayed further without a far more compelling reason than has been put before this Tribunal.
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> 28. The Tribunal took into account the balance between the overarching objective and the need to ensure fairness to Dr Nabli. Considering all the circumstances, the Tribunal determined not to accede to Dr Nabili's application for adjournment of this hearing."

47. In relation to the question of whether the Tribunal's ability fairly to consider the misconduct matter was impaired by knowledge of the history of proceedings the Tribunal added:

> "33. The Tribunal was content that, as a professional tribunal, it was able to disregard the details of the review matter put before it as part of the adjournment application when considering the facts of the new matter. It determined that it was able to proceed with this hearing and make determinations on the matter without unfairness to Dr Nabili."

48. Counsel for the GMC, Ms Chalkley, next applied to proceed in Dr Nabli's absence in relation to the misconduct allegation and in relation to the review. There could be no dispute that Dr Nabili had been properly served with notice of the hearing, but it was necessary for counsel to take the Tribunal through the documents. The Tribunal was also referred to the GMC Guidance to the 2004 Rules, and specifically paragraph 102 which sets out a number of factors to be taken into account (where applicable) in deciding whether to proceed in the practitioner's absence. Those factors included:

whether an adjournment would resolve the matter; the likely length of such an adjournment; whether the practitioner, though absent, wished to be represented or had waived his right to representation; the extent of the disadvantage to the practitioner in not being able to present his account of events; the risk of the hearing reaching an improper conclusion about the absence of the practitioner; the general public interest that a hearing should be held within a reasonable time; the effect of the delay on the memories of witnesses.

49. Counsel submitted that it would be wrong and contrary to common sense, having refused the adjournment, to conclude that the Tribunal could not proceed in Dr Nabili's absence. If an application to adjourn were to succeed in a case like this, there was an obvious risk that such a decision could encourage the belief that a practitioner could simply not attend, safe in the knowledge that an application to proceed in absence would fail.

50. The Tribunal retired to consider the application. They decided that there had been proper service and that they should proceed to hear the matters in Dr Nabili's absence. A written ruling was handed down in which the Tribunal's decision was expressed in these terms:

> "13. The Tribunal was mindful of the public interest in ensuring matters were dealt with expeditiously. It gave its attention to the matters that the guidance recommends that it considers in making its decision. It noted that Dr Nabili had been aware of this hearing for some time, albeit that specific service of the dates of this hearing has been more recent. The Tribunal acknowledged that the GMC had warned Dr Nabili that, should her application be refused, the hearing would proceed without further delay.
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> 14. The Tribunal also referred to its earlier determination on Dr Nabili's adjournment application. The Tribunal remained of the view that it could not have any confidence that an adjournment would result in Dr Nabili being represented and/or attending and taking part in a hearing. It was also satisfied that public confidence in the profession would be undermined if this case were allowed to be delayed further without a far more compelling reason that has been put before this Tribunal.
>
> 15. The Tribunal reminded itself of the balance between the overarching objective and the need to ensure fairness to Dr Nabili. The Tribunal noted that Dr Nabili has chosen to absent herself from these proceedings. It has determined that it is appropriate, in all these circumstances, that the hearing proceeds as planned."

51. The Tribunal then considered the timetable for the next stage of the hearing, the misconduct allegation. There were three witnesses, all of whom had been warned to attend. Counsel for the GMC indicated that she would not call the witnesses unless the Tribunal wished to hear from them. She was content that their evidence be read. The Tribunal indicated that they wished to read the relevant material again before deciding whether the witnesses should be called. The Tribunal then adjourned until the afternoon.

52. Before the hearing resumed, Dr Nabili made further contact with the Tribunal by e-mail and by telephone. At 13:47 she telephoned and asked to speak to somebody managing her hearing. She said she was in hospital. It would not be possible to call her back but she wanted to speak to somebody. She provided her mobile number and was advised that somebody would call her back. The note of that call became exhibit D3.

53. At 14:50 Dr Nabili e-mailed the Tribunal. She complained that she had waited all day yesterday (30th January) for MPTS to call to connect her to the hearing room so that she could participate in the hearing of her application for an adjournment. She said she was ill, but that should not prevent her exercising her right to be heard and to participate by telephone. She said she was in hospital, but "continuously waiting for MPTS to call" so she could participate. That e-mail became exhibit D4.

54. At 15:08 Dr Nabili telephoned again. She was quite distressed that nobody had called her; she had a right to participate in her own hearing. She said she had made it clear from the beginning that she wanted to participate by telephone. She was in hospital and unable to attend in person. The note of that conversation became exhibit D5.

55. When the hearing resumed in the afternoon, the Tribunal took the view that these communications amounted to an application by Dr Nabili to participate by remote means. The Tribunal heard submissions from counsel who pointed out (as was the case) that contrary to her latest assertion Dr Nabili had given no indication the previous day that she was willing and able to participate by telephone, if permitted. Counsel pointed out that there was no evidence to confirm that Dr Nabili was in fact in hospital. She submitted that Dr Nabili appeared to be playing the system and should be required to provide "proper examinable medical evidence" that she was unfit to attend.

56. The Legal Assessor advised the Tribunal that there was MPTS guidance to the effect that granting an application of this kind would be appropriate only in truly exceptional circumstances. Normally the application would be made at the commencement of the hearing; normally it would have to be supported by a skeleton argument, with documented reasons for the exceptional circumstances alleged to arise, and with evidence in support. The Tribunal would need to consider whether acceding to the request might be disruptive to the proceedings.

57. The Tribunal retired to consider the application, saying they would give their decision that afternoon but hand down reasons next morning. They indicated that in any event they would like to hear live evidence from the witnesses. Counsel explained that all three witnesses lived in London. One witness had already been considerably inconvenienced having travelled to Manchester in vain on the first day of the hearing, expecting to give evidence.

58. At the end of the afternoon the Tribunal announced their decision that Dr Nabili's application to participate by remote means was refused. Reasons for the decision would be handed down the following morning at 11am. The Tribunal would expect to proceed then with counsel's opening and the calling of the witnesses. Counsel explained that in the meantime enquires had been made as to witness availability. Two of the witnesses would be able to attend in person. The third would not be able to travel to Manchester the following day because of work commitments but could be available to give evidence over a telephone link. The Tribunal agreed to this course. Dr Nabili was informed of the Tribunal's decision.

Thursday 1st of February, Day 4

59. Next morning the Tribunal handed down their reasons for the decision to refuse Dr Nabili's application to participate by telephone. There had been no further communication from Dr Nabili overnight. The Tribunal's decision was in these terms:

> "15. The Tribunal acknowledged Ms Chalkley's submissions where she drew attention to the lack of medical evidence to support Dr Nabili's application.
>
> 16. With regard to Dr Nabili's application to present her case by telephone, the Tribunal noted the starting presumption, in the telephone evidence guidance, that all parties and witnesses will appear at MPT hearings in person. The Tribunal considered whether there were exceptional circumstances, with supporting explanation and evidence, as to why Dr Nabili should be permitted to participate by telephone.
>
> 17. The Tribunal had regard to Dr Nabili's latest account of her whereabouts and current health. It took account of her previous comments about "*stress*", "*dizzy*" and taking to her bed. Dr Nabili has now stated that she is in hospital. The Tribunal has no further details than this and no documentation which would allow it to verify this statement.
>
> 18. In addition, the Tribunal noted that Dr Nabili had previously been made aware of the requirements of an MPTS Tribunal to see contemporaneous, independent and verifiable medical evidence in relation to any claim of ill health. It took into account that, in its determination, the 2017 Tribunal had documented, in relation to a claim made by Dr Nabili that she was too ill to attend, that it required to see such evidence. The evidence was not produced before that Tribunal.
>
> 19. The Tribunal also had regard to the practicality of a practitioner participating in a hearing by telephone which could be difficult, especially given cross examination of witnesses by telephone. It also considered that the previously scheduled witnesses had been postponed due to a prior application for adjournment. The availability of the witnesses was now uncertain and the participation of Dr Nabili in the proceedings by telephone would introduce logistical problems which might prevent the Tribunal hearing from any witnesses by remote means.
>
> 20. In light of the above, the Tribunal determined to refuse Dr Nabili's application to present her case by telephone link.
>
> 21. In making this determination, the Tribunal also determined that any further participation by Dr Nabili would require that she attends the hearing in person or appoints a relevant representative on her behalf. She must provide independent verifiable medical evidence in support of the exceptional circumstances that she asserts prevent her from attending."

It is important to emphasise, as the Tribunal noted, that at this stage Dr Nabili had provided no medical evidence whatsoever to support her claim that she was unfit to attend.

60. The hearing proceeded. Counsel for the GMC opened the case. The misconduct allegation was pleaded as follows:

> **Paragraph 1**
>
> On one or more dates between 18 January 2014 and 11 April 2016 you stored medical records containing identifiable medical information relating to patients ('Medical Records') in unsecured areas at a residential address (the 'Property').
>
> **Paragraph 2**
>
> By reason of the actions described in paragraph 1 above you:
>
> a) failed to keep the Medical Records securely;
>
> b) breached patient confidentiality in that the Medical Records could be accessed by private tenants living at the Property.

61. The GMC case was that Dr Nabili stored confidential records in an unlocked wet room within the property, to which her tenants had access. One at least, Mr I, stored some of his possessions there as well. He lived at the property between January 2014 and April 2016. He found the medical records when he was packing his belongings to move out of the property. He was so concerned that he reported what he had found to the GMC. He first e-mailed the GMC on 24th April 2016, then again on the 19th May 2016. Mr I photographed the records on his mobile phone although only one photograph survived. It showed what was clearly a letter in relation to a patient signed "Dr Nabili, paediatrician".

62. Importantly, counsel told the Tribunal in opening that the relationship between Mr I and Dr Nabili was not good. Indeed, she explained, it was clear that the relationship between all three witnesses and Dr Nabili was not good.

63. The second witness Mr S, was a tenant from September 2015 to December 2015. He too saw medical records when he was living at the property.

64. The third witness was another tenant Mr J. He lived there from 1st October 2014 to 24th November 2014. He too had a difficult relationship with Dr Nabili, and ended up taking her to the Small Claims Court. He also saw medical records lying around.

65. The Tribunal was provided with witness statements from each of these three witnesses, together with the two surviving photographs taken by Mr I on his mobile phone. The second photograph did not show any medical records but showed that there was no lock on the wet room door.

66. Mr I was the first witness to be called. It is important to note that, far from taking his evidence at face value from his witness statement, the Tribunal questioned Mr I at considerable length to test the accuracy and reliability of his evidence. In due course, as explained in their reasons for finding the allegation proved, the Tribunal said they found Mr I to be a credible and honest witness who provided clear and detailed

descriptions in relation to where he saw the medical records at the property. His evidence was supported by the evidence of Mr S, the second witness to be called.

67. It was Mr S who gave evidence over the telephone because of his work commitments. Again, the Tribunal questioned him at considerable length to test the reliability and accuracy of his evidence. In their reasons the Tribunal noted a number of inconsistencies between Mr S's oral evidence and his witness statement. His oral evidence was that he had not actually seen any medical records himself, which was contrary to what he had said in his witness statement, although other aspects of his oral evidence were consistent with his witness statement. Mr S gave evidence that he had been told by Dr Nabili that he had damaged some medical records following work he had carried out for her. Dr Nabili had asked him to cut a hole in the ceiling in order to identify where a leak was coming from. Dr Nabili later called him to say that some insulation had fallen from the ceiling onto the medical records and he had to pay for the damage caused. The Tribunal was satisfied that as Mr S was engaged in construction work it seemed credible that Dr Nabili would have asked him to carry out work for her and subsequently claim compensation for any resulting damage. On the balance of probabilities, the Tribunal accepted Mr S's evidence on this point.

68. The third witness to give evidence was Mr J. He too was questioned closely and at considerable length by the Tribunal to test his evidence. In their reasons the Tribunal said that they found Mr J to be a clear, concise and credible witness. There was no reason to doubt his evidence as to where he had seen the medical records. In response to the Tribunal's questions he was clear and consistent. He had seen medical records in a number of communal places, including a kitchen and hallway areas. He described seeing letters with medical letterheads and patient names. The Tribunal was satisfied that he was credible when he stated that there were unsecure medical records in communal areas at various times during his tenancy.

69. After the witnesses had given evidence, counsel for the GMC addressed the Tribunal, inviting them to accept the evidence of all three witnesses as truthful and accurate, thereby proving the allegation. Appropriate advice was given by the Legal Assessor. He reminded the Tribunal that the burden of proof rested on the GMC. Dr Nabili was not obliged to prove her innocence. The standard of proof was the civil standard, namely that they had to be satisfied on the balance of probabilities that the misconduct alleged had occurred.

70. The Tribunal adjourned to consider their decision. They indicated that they hoped to announce the decision that afternoon. In the event the decision was not given until the following morning Friday 2nd February.

71. Dr Nabili had made no contact with the Tribunal that day whilst the witnesses were being examined. It was not until the afternoon that she next contacted the Tribunal. At 15:08 she sent an email headed "very urgent". She said she was in hospital and continued to be unable to travel to Manchester to attend the hearing. She set out the history of refusal of her applications for an adjournment, and her application to participate by telephone. She said it was very important for her to participate in the two hearings and crucially important that the GMC allegation and her case were fairly conducted and appropriately defended. She said that under current circumstances it was impossible to expect a fair hearing:

> "To prevent further miscarriage of justice I urge MPS to stop and vacate the entire hearing of both cases immediately. I am waiting for hospital and GP letter to follow this electronic application today. I apologise that I have to email this urgent application before the certificates are ready to prevent any further of this hearing without any defence, any legal representation and in my absent and during the time my acute ill symptoms demanded a hospital admission, medical investigations and treatment (sic)….."

72. The Tribunal staff acknowledged receipt of this e-mail at 16.29. The hearing had by then adjourned for the day. Dr Nabili was informed that her e-mail would be given to the Tribunal the following morning. She was reminded that in their earlier determination the Tribunal had said:

> "21. In making this determination, the Tribunal also determined that any further participation by Dr Nabili would require that she attends the hearing in person or appoints a relevant representative on her behalf. She must provide independent verifiable medical evidence in support of the exceptional circumstances that she asserts prevents her from attending."

It was noted the Dr Nabili was waiting for a GP/hospital letter. She was invited to forward any further application or medical evidence.

73. At 16.52 the same afternoon, 1st February, Dr Nabili e-mailed the Tribunal again, this time attaching a photograph of a certificate of her hospital admission "after my acute health worsen". The document was headed University College London Hospital NHS and provided "confirmation of attendance" at the emergency department. It gave her name, her hospital number and the date of her attendance, 31st January 2018. The time of her attendance was 13.43. The document was signed by an A & E administrator. The document gave no medical details of her admission or her treatment.

Friday 2nd February, Day 5

74. Next morning, Friday 2nd February, the Tribunal announced its determination on the facts. It found the facts alleged in paragraph 1 and 2 of the allegation proved. It handed down written reasons. The reasons indicated that the Tribunal was satisfied that the photograph provided by Mr I was of correspondence that clearly related to a patient and the letter bore Dr Nabili's name. Mr I had photographed the letter while it was on top of one of a number of boxes within an unlocked wet room/bathroom. Mr I stated that this room would have been accessible to other tenants in the house. The Tribunal accepted his evidence and determined that the photograph was clear evidence that medical information relating to a patient was left unsecured. The Tribunal accepted Mr S's evidence that Dr Nabili had sought compensation from him for damage done to medical records in the wet room/bathroom. Mr S stated that the room had been unlocked, and this was consistent with the evidence of Mr I.

75. The Tribunal also accepted the evidence of Mr J that he had seen documents with medical letterheads which related to clinical correspondence and contained names and addresses. The Tribunal was impressed by Mr J's clear and cogent account of records

in a kitchen which, while designated to Dr Nabili, was unlocked and accessed by Mr J and other tenants. He also identified a table at the top of the stairs in a communal area on which Dr Nabili would frequently leave records. Mr J stated that this area was open and would be used by all the tenants, apart from the tenant in the basement. The Tribunal found Mr J to be an honest witness and accepted his evidence that medical information relating to patients was left unsecured in the property. Accordingly, the Tribunal found paragraph 1 of the allegation proved. The Tribunal also found paragraph 2 (a) proved. It was apparent from the evidence of all three witnesses that, either through their direct knowledge or interaction with Dr Nabili, there were medical records which were not held in a secure place.

76. The Tribunal also found paragraph 2 (b) proved. Two of the witnesses had seen patient identifiable information and one of the witnesses, Mr I, had such access that he was able to photograph an item containing such information. It was clear from the evidence of the witnesses that other tenants could have had access to records in the wet room/bathroom, the kitchen and at the top of the stairs. The Tribunal accepted the evidence of Mr I that he had been granted permission to use this room as storage for some of his personal possessions. Both Mr I and Mr S had stated that the wet room/bathroom had been unlocked. Mr J stated that he did not enter the wet room/bathroom as he had been told there was broken glass on the floor. However, the Tribunal concluded that there were insufficient restrictions to prevent tenants from being able to access this room and the medical notes stored inside. Although Mr J had stated that the kitchen had been designated to Dr Nabili, this restriction did not amount to preventing access to it by tenants.

77. Having handed down these reasons, the Tribunal invited submissions from counsel for the GMC in relation to the latest communication from Dr Nabili, received the previous afternoon. Counsel pointed out that there was still no independent verifiable medical evidence. The document Dr Nabili had supplied merely showed that on 31st January at 13.43 she attended A & E. Even if the document was genuine, the threshold required for an adjournment or for participation by telephone was simply not met.

78. The Tribunal took the view that it should give the widest interpretation to Dr Nabili's latest application and would regard it as a request that the members of the Tribunal recuse themselves. They would also treat it as a further application for an adjournment. The Tribunal took time to consider the matter. Later that morning the Tribunal announced its decision to refuse Dr Nabili's application to adjourn and to refuse the application that the Tribunal should recuse itself. Reasons were handed down in writing. The Tribunal's decision included the following:

> "9. The Tribunal had regard to the certificate produced by Dr Nabili and considered the quality of this evidence. The Tribunal noted that Dr Nabili says that she has acute symptoms requiring medical treatment but gives no further details. The Tribunal was of the view that the certificate did not tell the Tribunal much, i.e. the nature of the health problem, whether or not she was admitted to hospital, the duration of any such admission, any treatment required, etc. The Tribunal noted that the certificate only addressed attendance at the Emergency Department. With regard to paragraph 21 of its previous determination… the Tribunal did not consider that the new information provided by Dr Nabili

> meets the threshold of independent verifiable medical evidence to support exceptional circumstances.
>
> 10. The Tribunal also noted that Dr Nabili did not specify the length of the adjournment she seeks. It has no confidence that, if this hearing was adjourned, it would be able to continue at a future date with Dr Nabili attending and/or represented.
>
> 11. The Tribunal balanced fairness to Dr Nabili, the overarching objective and the principle that matters should be dealt with expeditiously. The Tribunal determined to refuse Dr Nabilis request for adjournment of this hearing.
>
> 12. The Tribunal considered the specific wording of Dr Nabili's e-mail. In fairness to Dr Nabili, the Tribunal gave the widest possible interpretation to her request that the Tribunal 'vacate' the hearing of both matters immediately. In light of this, the Tribunal considered this as a request that the Tribunal recuse itself. The Tribunal referred to its previous comments that there was nothing, at the stage of considering a previous application, which led it to believe it had prejudiced itself.
>
> 13. Since that stage, the Tribunal decided that service was effective and determined to proceed in Dr Nabili's absence. At this point, the Tribunal considered if there were any grounds to lead it to believe there was any prejudice which would stop the Tribunal from making a fair and appropriate consideration of this case, including both the new and review matters. The Tribunal determined that there was no such prejudice and rejected the apparent application for recusal."

79. The Tribunal directed that Dr Nabili be informed by e-mail that the Tribunal would be hearing submissions on the next stage of the proceedings starting at 9.30 on Monday morning, 5th February. The Tribunal then adjourned until Monday morning to read the material. There was no further communication from Dr Nabili that day.

Monday 5th February, Day 6

80. On Monday 5th February Dr Nabili attended the resumed hearing. The next stage was for counsel for the GMC to address the Tribunal on the issue of impairment and to present the documentary evidence. It was then for Dr Nabili to respond. Dr Nabili explained that she was still "not that well but I was well enough to attend and just greet you personally". She again applied for an adjournment of the proceedings so that she could be legally represented. She asserted that her barrister had confirmed to the Tribunal that he was happy now to come and address them. It is important to note that there was no evidence that either of the barristers she had previously mentioned was available immediately or within the next day or so. Counsel for the GMC opposed the application. She submitted that the public interest demanded that "we get on with this now"; there was a long history of attempts to delay and disrupt the hearing. Dr Nabili repeated the assertion she had made the previous week in her e-mails, that her barrister

had simply made a mistake over the dates. How could she do justice to any legal argument? She was just a doctor.

81. The Tribunal withdrew to consider the application. They handed down their decision in writing later that morning:

> "4. The Tribunal noted that Dr Nabili had stated that she regarded herself to be sufficiently well to attend and participate today. It considered Dr Nabili's application for adjournment so that she could have legal representation. It noted that she referred to a barrister who she said had indicated that he would be available should there be an adjournment. The Tribunal did not receive any documents indicating the barrister's availability.
>
> 5. The Tribunal had regard to the interests of justice and fairness to Dr Nabili. It balanced these factors against the overarching objective and the public interest in proceedings such as this being conducted in a timely and fair fashion.
>
> 6. The Tribunal concluded that it did not have any confidence that an adjournment would result in Dr Nabili being represented. It was satisfied that public confidence in the profession would be undermined if this case were allowed to be delayed further without a far more compelling reason than has been put before this Tribunal."

82. The Tribunal next proceeded to consider the issue of impairment. Counsel for the GMC submitted that the facts found proved in relation to the misconduct allegation, and the lack of any change since her suspension, demonstrated that Dr Nabili's fitness to practise was impaired by reason of both her misconduct and her clinical deficiency. Counsel took the Tribunal through the documents in the review bundle, including the findings of the Tribunal in January 2017. These included the following:

> "The Tribunal concluded that the deficiencies in Dr Nabili's practice were serious and had a direct impact on patient safety. The Tribunal accepted the evidence that Dr Nabili was not able to formulate diagnoses or treatment plans and did not communicate effectively with patients, their parents or with colleagues. It received evidence that her knowledge base is alarmingly low… The Tribunal concluded that there was no evidence before it to suggest that Dr Nabili had completed any remediation or retraining to address the deficiencies identified in the clinical performance. Nor was there any evidence before the Tribunal that Dr Nabili has developed any insight into the extent of her failings. The Tribunal concluded that Dr Nabili's medical knowledge and skills are likely to have deteriorated since the assessments were completed … The Tribunal were satisfied that Dr Nabili currently poses a risk to patients. It identified mitigating features in her case, including that her professional performance appears to have occurred against a background of acute difficulties in her personal life, and that some of her

> practice was regarded as acceptable by the assessors, often in areas relating to 'soft skills'. "

83. Counsel then addressed the Tribunal on the issue of what, if anything, had changed since that assessment by the Tribunal in January 2017 when Dr Nabili was suspended. In summary, there was very little that had changed. In January 2017 the Tribunal had said that it would be of assistance if Dr Nabili provided a reflective statement demonstrating insight into the deficiencies identified in her practice. At the beginning of January 2018 Dr Nabili had written to the GMC asking for clarification of what was expected in her reflective statement, adding:

> " As several times I informed GMC and IOP I do not recognise the legitimacy of the performance assessment and the way it was performed and used against me. Therefore I could not comment on the alleged deficiencies that unfinished and biased performance assessment said find against me (sic)… "

84. Counsel's submissions concluded at 12.45pm. The Tribunal suggested that Dr Nabili should respond after the luncheon adjournment. She explained that she had tried to write a lot of things but she was not a lawyer. It then became apparent there were further documents Dr Nabili wanted to introduce even though she had failed to provide them within any of the time limits. Over the luncheon adjournment the legal assessor spoke to Dr Nabili (in the presence of counsel for the GMC) to explain the stage that the proceedings had reached and that it was now her opportunity to present her response on the issue of impairment of fitness to practise. It was explained that it was not appropriate to introduce evidence relating to the determination of the misconduct allegation which was now closed. She should concentrate particularly on what may have changed since January 2017.

85. In her submissions when the hearing resumed that afternoon, Dr Nabili returned to the question of her inability to attend the hearing the previous week. She said she needed time to present additional documents to the Tribunal. The fact that neither the GP nor anybody else had sent the documents on time did not mean that she had not been ill. She said it was not her fault that the doctors had not been asked to provide evidence of her ill-health; the document she had sent was the only thing she had been given. Presumably this was a reference to the single document she had e-mailed, confirming her attendance at A & E the previous Wednesday.

86. Dr Nabili then addressed the Tribunal at considerable length on the issue of impairment. When she strayed off that topic and reopened the determination of the misconduct allegation she was firmly reminded by the Chair that this was her opportunity to address the question of impairment and she should not waste it .

87. Towards the end of her lengthy address Dr Nabili referred to other documents she might want to present. She was told that she would need to submit them by 9am next morning as an absolute deadline; she had previously had plenty of opportunity to provide them. Dr Nabili responded that she had been engaged in three cases in the Court of Appeal, and cases in the magistrates' court and the county court.

88. At the end of Dr Nabili's submissions, counsel for the GMC asked to be allowed to postpone her reply until the following morning in case there were any other documents

Dr Nabili produced which she would need to address. Dr Nabili assured the Tribunal that she would be present at the hearing next day. She explained that her documents would be her CPD record and possibly a document to show how her house had been vandalised. She was reminded that the Tribunal would only be prepared to consider documents relating to impairment.

89. The legal assessor then gave the Tribunal his advice on the proper approach to the issue of impairment. Dr Nabili asked for a copy of the document from which he had been reading. There was no copy available, nor would it have been appropriate to provide her with it, but the Tribunal asked the Legal Assessor to speak to Dr Nabili in the presence of counsel for the GMC, and explain his advice again, if necessary. Dr Nabili was reminded again of the deadline of 9am next morning for any further documents.

Tuesday 6th February, Day 7

90. Next morning, Tuesday 6th February, Dr Nabili e-mailed a number of documents to the Tribunal, some before and some after the 9am deadline. The first (which became exhibit D7) was an e-mail in which she explained, in a somewhat disjointed way, the history of her admission to hospital the previous week. She said she had asked the GP who advised her on 29th January to "write her diagnosis", but the GP was only part time and not available until next week. The GP would do her best to write a letter as soon as she could. Dr Nabili said that she herself could self-certify as a patient for 7 days, but because of the Tribunal's request she had asked UCL Hospital to provide the "letter" (i.e. the single A&E document) which she had e-mailed. She said she had been admitted on 30th January for acute headache, lower abdomen, nausea and "blurness of vision". Pausing there, this does not accord with the record of her first being seen in A &E at lunchtime on Wednesday 31st January, not Tuesday 30th. She said that on 31st January she had been seen by doctors of another specialty after her first scan result in A & E. She was advised that a letter would be written to her GP with all the blood and imaging scans and the consultant's diagnosis.

91. Also with this first e-mail, Dr Nabili provided an abstract of the Divisional Court's decision in *Brabazon-Drenning v UK CCNWH* (2001) HRLR 6. That was a case in which it was held that the tribunal hearing should have been adjourned because the practitioner had been unable to attend. It was said that save in very exceptional circumstances where the public interest pointed very strongly to the contrary, it was wrong for the committee which had the livelihood and reputation of an individual in the palm of its hand to go on with the hearing when it had unchallenged medical evidence before it that an individual was simply not fit to withstand the rigours of the disciplinary process. The practitioner had the right to be present when the case was put against her and to be in a position where she could either cross-examine herself or have a representative with whom she could communicate cross-examination on her behalf; there had been a breach of natural justice and of article 6 ECHR. I shall return to the significance of this authority.

92. The next document was an e-mail sent by Dr Nabili to her GP at 8.10am that morning in which she set out her own account of the diagnosis and treatment she received from the GP, and the advice she had been given to go to hospital. Some of the details are significant. She thanked the GP for her diagnosis of 29th January, "her treatments", and her advice to call an ambulance. She said she called the GP as she did not want to be admitted to hospital that day because she was "waiting for a very important call" and

would make sure she went to A & E if her health did not improve. She had been admitted on 30th January (i.e. the Tuesday) with symptoms of "severe sharp headache, nausea and acute abdomen" and was seen by six doctors who did "very comprehensive tests". She said that during her hospital admission she asked six times to be discharged so she could attend "a very important meeting", but she had been told she could not be discharged and that her "acute health issue" should be treated and resolved first. She thanked the GP for her "excellent approach" to her health. She said it seemed that the "meeting" which needed the GP's letter was now over (presumably a reference to the misconduct stage of the hearing) but she would be grateful to receive a letter with a copy of the results of investigations, and the hospital letters.

93. The next document, which became exhibit D9, was an e-mail attaching as much as Dr Nabili could provide of her CPD record, and other reference documentation.

94. She sent a further email at 9.36am, which became exhibit D10, attaching a 15 page typed note of evidence from the Employment Tribunal hearing of her claim for unfair dismissal against the healthcare trust where she had last worked.

95. The Tribunal considered carefully which of these documents they should receive in evidence, in the light of submissions from counsel for the GMC. Dr Nabili then addressed the Tribunal further at considerable length. The Legal Assessor explained that he had spoken with Dr Nabili at the close of the previous day's hearing, in the presence of counsel for the GMC, to explain the need to submit only relevant documents to support her case on how the position may have changed since January 2017. Dr Nabili said again that she wanted an adjournment so she could have a barrister. She became distressed. She said there were two barristers ready to represent her, who had made it very clear to MPTS that "no matter what happens, any date would be met by one of us and we will be there". When asked again whether there were any new documents she wished to present, Dr Nabili replied "I am the best document, Sir, for you. I cannot defend myself."

96. The Tribunal withdrew to consider this further adjournment application. When the Tribunal reconvened Dr Nabili said that her barrister urgently needed to speak with the panel and wished to e-mail the panel before a decision was made about the adjournment. The Tribunal stated that they had determined the application on the material placed before them and were not minded to grant the adjournment. There was no new evidence. They would hand down reasons later. Dr Nabili persisted with suggestions that her barrister was willing to speak to the Tribunal by telephone. He was presently in London.

97. The Tribunal adjourned to consider the question of impairment, in conjunction with the question of the admissibility of the documents which Dr Nabili had submitted. They indicated that the hearing would resume at 1.30pm the following day.

Wednesday 7th February, Day 8

98. Next day, Wednesday 7th February, the Tribunal announced its decision not to grant Dr Nabili an adjournment. Written reasons were handed down:

> " 9. The Tribunal balanced the public interest with fairness to Dr Nabili. It considered that the public interest was increasingly being tested.

> 10. The Tribunal decided to admit an e-mail with attachments from Dr Nabili to the MPTS dated 6th February 2018 at 8.24am (D7) in the context of the adjournment application. Within the document the Tribunal found no independent verifiable medical evidence that there were health grounds on which to grant an adjournment.
>
> 11. The Tribunal also took account of the overarching objective and of the fact that the Tribunal should conclude matters fairly but in a timely manner. As stated in previous determinations on this point, the Tribunal remained of the view it had no confidence that, if this hearing was adjourned, it would be able to continue at a future date with Dr Nabili being legally represented. It considered that there was no new documentary evidence to persuade the Tribunal to move from this position.
>
> 12. The Tribunal acknowledged that doctors appearing before tribunals are in a stressful situation. It noted that Dr Nabili was receiving appropriate advice on the process and procedures of the hearing from the Legal Assessor and that she had accessed the MPTS Doctor Contact support service.
>
> 13. In all the circumstances, the Tribunal determined to refuse Dr Nabilis request for an adjournment of this hearing."

99. In relation to the other documents that Dr Nabili had submitted, the Tribunal handed down a separate written decision. In respect of documents D7 and D8 there was nothing in them relevant to the question of impairment. The Tribunal admitted document D9 and provisionally, D10 entitled "mitigating factors".

100. The Tribunal then handed down its determination on the issue of impairment. The Tribunal found that Dr Nabili's fitness to practise was currently impaired by reason of misconduct and deficient professional performance. In relation to impairment arising from the misconduct allegation, the Tribunal said in their written reasons:

> "38. The Tribunal considered Dr Nabili's conduct in that sensitive patient medical records were kept in unsecured areas of the Property. It acknowledged Ms Chalkley's submission that these records would have related to children as Dr Nabili was a paediatrician. The Tribunal had regard to the evidence from two of the tenants at the Property who stated that they had seen confidential medical documents at the Property. Mr I, one of these tenants, provided a photograph of a document which clearly related to a patient. The Tribunal noted that this photograph, while redacted, in its original form would have contained details of the patient's identity. The Tribunal also noted that the two witnesses had described viewing records on different occasions over an extended period of time. In its consideration of the evidence of two witnesses, the Tribunal had determined that records were accessible in three unsecured locations. The Tribunal had determined that these records were

> accessible in different locations in the Property and over a significant period of time.
>
> 39. The Tribunal was of the view that members of the public would be appalled that clinical records, whether relating to them individually or to others, would be accessible and accessed by persons who had no proper involvement in the care of the patients. The Tribunal considered this to be a breach of a basic tenet of the medical profession. It was of the view that respect for and maintenance of patient confidentiality was fundamental to the doctor/patient relationship. It considered that departure from this principle would amount to a failure to meet the basic duties of a doctor to treat patients as individuals and respect their dignity and rights to confidentiality. The Tribunal was of the view that doctors would find these breaches of professional duty to be deplorable.
>
> 40. The Tribunal concluded that Dr Nabili's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct and it considered that this misconduct was serious. "

101. The Tribunal went on to consider whether Dr Nabili's fitness to practise was currently impaired by reason of her misconduct. She had suggested that her conduct was an isolated occurrence and not indicative of an attitude problem, or of her as a person. The Tribunal found that the conduct was repeated and sustained, and that Dr Nabili had attempted to minimise the nature of the conduct. She had not demonstrated insight into the gravity of her conduct and its potential impact on the confidence of the public and patients. The Tribunal concluded that her fitness to practise was impaired by reason of her misconduct.

102. The Tribunal then turned to the question of impairment by reason of deficient professional performance. In their written reasons they said they had viewed all the material and considered what progress Dr Nabili had made since her suspension in January 2017. In summary, the Tribunal concluded that Dr Nabili had not complied with the recommendations of the 2017 Tribunal in providing documentation which might assist in considering her current fitness to practise. In the course of her oral submissions she had demonstrated an ongoing deficiency in her insight into the nature and gravity of the impairment of her fitness to practise. The Tribunal shared the view of the previous Tribunal as to the seriousness of the deficiencies which had then been identified. Dr Nabili's medical knowledge and skills were likely to have deteriorated further since the 2017 hearing. In the absence of any compelling evidence of insight into these deficiencies or remediation, the Tribunal concluded that Dr Nabili's fitness to practise remained impaired by reason of her deficient professional performance.

103. The next stage of the proceedings was the consideration and determination of the appropriate sanction. First, however, there was a further development concerning possible legal representation. At 11.50am a barrister from the Doctors Defence Service, Mr Gledhill, spoke to a member of staff in the Tribunal office to say that he had been contacted the previous week by Dr Nabili and had suggested that she should send some medical evidence to the Tribunal if she was unwell. He said that Dr Nabili had called

him again but he was not sure why. Mr Gledhill was informed that the Tribunal was presently in retirement considering the issue of impairment. Mr Gledhill said he could not be "parachuted in". He was not available that week.

104. At 13.08 the Tribunal received an e-mail from Mr Gledhill, saying that he had received a call from Dr Nabili that week. He explained that he was in London, but if an adjournment was granted he would be content to represent her at a convenient date. He asked that this be conveyed to the Tribunal.

105. At 2pm there was a further telephone conversation with Mr Gledhill. He said Dr Nabili was still in touch with him and was asking him to write a letter. She seemed highly stressed. He said he was not instructed, as there was no fixed date to attend in the future and he was not available that week. He was not in a position to attend and address the Tribunal, but was willing speak by "spider phone" if needed. Dr Nabili had asked him to write a letter, but he was unsure what this would say.

106. When the Tribunal handed down its decision on impairment the Chair put on record that these communications had been received from the barrister. The Legal Assessor also put on record that when the Tribunal had adjourned the previous day he had spoken with Dr Nabili at her request, in the presence of counsel for the GMC. Dr Nabili had treated it as an opportunity to question counsel and challenge some of the assertions that had been made. The Legal Assessor had explained that this was not appropriate and that he was happy to explain to Dr Nabili what the procedure would be when the Tribunal reconvened at 1.30pm. He had explained that in the event of a finding of impairment, the Tribunal would move straight to the sanctions stage. He had previously advised Dr Nabili of the sanctions available. The Tribunal would hear oral submissions on sanctions, and if any documents were to submitted they should be ready and available for 1.30pm.

107. The Tribunal then adjourned until 2.30pm in order to give Dr Nabili the opportunity to read the written determination they had handed down in relation to impairment. It was explained that the Tribunal would first hear from counsel for the GMC on the issue of sanction, then they would hear what Dr Nabili wished to say.

108. Additional preparation time was afforded to Dr Nabili before the afternoon session resumed. Counsel for the GMC then addressed the Tribunal on sanction. In the course of her submissions she pointed out that Dr Nabili had failed to provide any substantive response or explanation in respect of the misconduct allegation prior to the hearing. Counsel reviewed the evidence as a whole. She submitted that the 2017 Tribunal had considered whether erasure was appropriate and had decided it was disproportionate at that stage because there was some evidence that Dr Nabili was capable of being retrained and returning to work. That was why a period of suspension had been imposed. It was now clear, she submitted, that Dr Nabili no longer fitted the criteria for suspension. Dr Nabili showed a worrying lack of insight and an unwillingness to engage in remediation. She submitted that the sanction of erasure was now necessary and proportionate.

109. When Dr Nabili was invited to address the Tribunal on the question of sanction, she was reminded that they could not go behind or unpick any of their previous determinations. Sanction was the only issue. Dr Nabili submitted two letters which she had e-mailed to consultants on 25th January 2018 asking for an opportunity to observe

their work. This was a very belated attempt to seek the sort of retraining and remediation considered necessary by the Tribunal in January 2017 when Dr Nabili was suspended.

110. Dr Nabili also now submitted, for the first time, some documentary evidence of her admission to hospital the previous week and her treatment. This became exhibit D12. The material consisted of documents from University College Hospital NHS Foundation Trust, printed on 6th February 2018. The first confirmed that Dr Nabili had visited A & E on 31st January complaining of "lower abdominal and RIF (right iliac fossa) pain for the past four days, nausea, headache, occasional blurness of vision. No vomiting, no fever, loss of appetite". On examination the following day, Thursday 1st February, the record showed "now symptoms settled". Dr Nabili underwent ultrasound examination of the abdomen.

111. Dr Nabili told me in her submissions at the hearing of the appeal that she had not been kept in hospital overnight on Wednesday 31st January. However, she returned to hospital the following afternoon, Thursday 1st February, having discussed the scan results on the telephone with the relevant specialist and having been advised to attend the outpatient clinic. The hospital discharge summary confirmed that she had arrived at hospital on 1st February at 15.28 and departed at 17.23. It should be noted that she had e-mailed the Tribunal at 15.08 that afternoon to say "I am in hospital and continue to be unable to travel to Manchester to attend the MTS hearing".

112. Dr Nabili was then invited by the Tribunal to present her case on the issue of sanction. She said she needed more time to prepare. She was not asking for an adjournment but wanted to provide a written submission which she would send "soon". The Tribunal Chair explained that she could either present a written submission that day or apply for an adjournment. The Legal Assessor advised the Tribunal that there would have to be compelling new grounds for an adjournment in view of the history of adjournment applications to date. Counsel for the GMC queried whether Dr Nabili was in fact asking for an adjournment at all, rather than extra time to present a written submission. She pointed out, however, that Dr Nabili had been advised throughout that week, when she was present at the hearing, that she would need to prepare her submissions. There had been long periods over the previous two days when the Tribunal was in retirement; there had been ample time for her to prepare her submissions. As counsel put it "I think you just have to grasp the nettle. Where does it stop? We need to have some finality".

113. The Legal Assessor confirmed, in his advice to the Tribunal, that he had made it clear to Dr Nabila each day that week that she would be invited to make submissions on sanction, and that those submissions would be heard orally; if there were documents she was seeking to present, she must have them ready. He had explained to Dr Nabili on the evening of Monday 5th February the range of sanctions available and had advised her to make best use of the two lengthy adjournments when the Tribunal was in retirement. The Tribunal Chair said he must now ask Dr Nabili to continue with her submissions on sanction.

114. Dr Nabili then addressed the Tribunal at considerable length, ranging over much of her career and the injustice of the previous GMC proceedings resulting in her suspension. She spoke of the personal difficulties she had suffered and her unfair treatment by the health trust for whom she had last worked, where she had been vindicated in the Employment Appeal Tribunal. She addressed the Tribunal on the various sanctions open to them. Erasure would not help anybody. Suspension had not helped. It had a

destructive effect. The coming year would be much better. She proposed that conditions should be imposed so that she could avail herself of the opportunity of supervision by the professionals who had offered to help her. She was willing to return at whatever level she could. She should be allowed to "see where she could be helpful to patients".

115. The Legal Assessor gave appropriate advice on the sanctions available. He reminded the Tribunal of the GMC Sanctions Guidance. The Tribunal Chair explained that they would now retire to consider the matter and anticipated giving their decision the following afternoon, Thursday 9th February at 3.30pm. Dr Nabili enquired whether it would be necessary for her to return next morning as she needed to go back to London that night. The Chair said that they did not anticipate calling on the parties prior to 3.30pm. Dr Nabili asked whether the Tribunal would simply be giving its determination next day, or whether there was anything she would need to do. The Chair confirmed that it was simply a question of handing down their determination.

Thursday 8th February, Day 9

116. Dr Nabili did not attend the hearing on the final day, Thursday 8th February. At 16.02 she e-mailed the Tribunal to apologise for her absence. She said she had had to return to London urgently. She asked to be present by telephone.

117. The Tribunal reconvened later that afternoon to hand down their determination. The Tribunal found no compelling reason to grant Dr Nabili's application to participate by telephone. They handed down reasons for their refusal, the previous day, to grant Dr Nabili an adjournment to prepare and present a written submission on sanction. Balancing the public interest with fairness to Dr Nabili the Tribunal had decided that its public duty required it to hear her oral submissions on the issue of sanction.

118. The Tribunal then announced their decision that Dr Nabili's registration should be erased. Should she appeal, her current suspension would continue until the conclusion of the appeal. The Tribunal handed down reasons for their decision to impose the sanction of erasure. The Tribunal accepted, in mitigation, that Dr Nabili had offered to retrain and recommence at a more junior level. They had regard to the personal difficulties Dr Nabili had described, which she believed had contributed to her poor performance. Balanced against this, however, were a number of aggravating factors:

a) Because she had been working as a consultant paediatrician, her patients were particularly vulnerable. Their confidentiality and their medical records had required proper protection.

b) Dr Nabili's persistent refusal to accept responsibility for her misconduct, and to appreciate its seriousness, were fundamental to her lack of insight.

c) The misconduct had occurred over a significant period of time. There was no evidence that steps had been taken to remedy the situation or prevent its recurrence during that period.

d) Dr Nabili had not demonstrated any reflection on the misconduct, or any remediation of her lack of insight and appreciation of the importance of maintaining patient confidentiality.

e) There was a fundamental failure to acknowledge the findings of the 2017 Tribunal; Dr Nabili continued to question the validity of the performance assessments which the 2017 Tribunal had considered.

f) Dr Nabili had failed to provide any evidence that she had used the opportunity provided by the 2017 Tribunal to address the concerns identified, including a lack of CPD, a failure to reflect on the findings of the 2017 Tribunal or to remediate the deficencies in her practice, despite the opportunity to do so.

119. The Tribunal noted the comments of the 2017 Tribunal as to the serious nature of the identified performance concerns, namely that " Dr Nabili's failings were wide-ranging, encompassing fundamental areas of clinical competency, with evidence that her medical knowledge base is alarmingly low".

120. The Tribunal then considered, in ascending order, the sanctions available: no action; conditions; suspension; erasure.

121. As to suspension, the Tribunal found that both the misconduct which had been proved and the deficiencies in Dr Nabili's professional performance amounted to risks to patient safety. She had not demonstrated insight, remorse or remediation over those issues. She had not engaged in the recommendations of the 2017 Tribunal for a period of ten months. She lacked insight into the findings of the 2017 Tribunal and the gravity of the misconduct. A further period of suspension would not address the issue of public confidence in the profession nor would it afford appropriate protection to patients and the public.

122. As to erasure, the Tribunal gave consideration to paragraph 109 of the Sanctions Guidance where a number of factors are listed which may indicate that erasure may be appropriate. Paragraph 109 (a) applied: "A particularly serious departure from the principles set out in Good Medical Practice where the behaviour is fundamentally incompatible with being a doctor". Here Dr Nabili's misconduct and her deficient medical performance amounted to departures from the fundamental duties of a doctor, including the obligation to keep professional knowledge and skills up to date and to respect the patient's right to confidentiality.

123. Paragraph 109 (b) was also relevant: "a deliberate or reckless disregard for the principles set out in Good Medical Practice and/or patient safety". There was a deliberate failure by Dr Nabili to remediate the deficiencies in professional performance in view of her refusal to accept the findings of the 2017 Tribunal and her failure to acknowledge or recognise the seriousness of the misconduct.

124. Paragraph 109 (j) applied: "persistent lack of insight into the seriousness of her actions or the consequences". This was particularly pertinent to the misconduct which had been proved and the persistent deficiencies in her professional performance.

125. The Tribunal also had regard to paragraph 107 of the Sanctions Guidance: "The tribunal may erase a doctor from the medical register in any case where this is the only means of protecting the public".

126. The Tribunal's conclusion was in these terms:

> " 52…The Tribunal determined that the gravity of Dr Nabili's misconduct, and the seriousness of the persistent impairment arising from her deficient professional performance, were such that erasure from the Medical Register was the appropriate and proportionate sanction to protect patients and to maintain public confidence in the profession.
>
> 53. The Tribunal recognised its duty in the context of the overarching objective, namely to patient safety, the public interest, and to uphold proper professional standards and conduct for members of the profession. The Tribunal determined that the only sanction that could address these matters was that of erasure. The Tribunal has therefore determined that Dr Nabili's name be erased from the Medical Register."

New matters advanced by Dr Nabili at the appeal

127. Dr Nabili advanced several new matters in her appellant's notice, and in her oral submissions at the appeal. In relation to lack of legal representation before the Tribunal, Dr Nabili told me in her oral submissions that as soon as she was suspended she sought legal representation. Eventually she found a barrister through "myBarrister" who would accept instructions. She did not appeal against the decision of the 2017 Tribunal as she did not know she could appeal herself without legal representation. She told me she had asked that the 2018 proceedings be dealt with at two separate hearings. The misconduct allegation only required a day's hearing time. The proposed ten day hearing was too long and made it very difficult for barristers to commit themselves. She said that her suggestion of splitting the hearing had been refused by the GMC. When the barrister she instructed found he had made a mistake over the dates, he had said he would find her another barrister.

128. It was pointed out to Dr Nabili that in the e-mail to her from the GMC's legal advisor dated 26th January 2018, in response to her initial application for an adjournment, it was stated in terms that Dr Nabili had known throughout that there was to be one hearing only, and she had previously raised no objection to the matters being joined.

129. In relation to her ill-health and whether this prevented her from attending the hearing, Dr Nabili explained to me that she was under stress. That weekend she could not sleep. She was worrying about what she could do. She started writing things. She told herself she was going to attend the hearing. She planned to catch the train on the Sunday night but she missed it. On the Monday (29th January) the GP told her to stay in bed and she would come to see her at home. A neighbour came in and was very caring. She still intended to travel to Manchester that night, but the stress was getting to her. On the Tuesday, 30th January, she stayed in bed. The GP had told her she was to stay in bed otherwise she would call an ambulance. She went to hospital on the Wednesday, 31st January. She could not see a consultant straightaway. She had to wait her turn like everyone else. She was given medication. She was there all day. She had various tests and investigations. On the Thursday, 1st February, she went back to hospital. She had asked her GP to send her a letter confirming her ill-health. The GP said she should not

travel, but despite this she went to Manchester for the hearing the following Monday, 5th February.

130. Dr Nabili submitted that it was unreasonable for the Tribunal to have required her to provide medical evidence confirming her hospitalisation and unfitness to attend the hearing. The GMC should itself have called on the hospital to provide that information. The Tribunal should have known that a consultant would not be able to prepare a report on the spot.

131. As to the substance of the misconduct allegation, Dr Nabili submitted that she had always intended to challenge the allegations. She had always been punctilious in not keeping records at home. She would avoid even carrying patients' records from one clinic to another, and this had caused a problem with the previous health authority where she worked. There was a long history of ill-feeling between her and the tenants, in particular Mr I. She had been assaulted by him. There were serious allegations of damage to her property which had been reported to the police. No reliance could be placed on the credibility of any of the three witnesses. She acknowledged, however, that there had been some boxes sent to her home by the Medical Protection Society following earlier proceedings involving the GMC. She had been deprived of the opportunity of challenging the evidence of the witnesses, and denied the opportunity of presenting evidence from the police and from insurers. For example, the insurers had taken photographs of the premises at various stages which would have shown locks in place.

132. In her oral argument Dr Nabili developed the points at paragraph 19 of her grounds of appeal. For example, she emphasised that a report was awaited from the police, which the GMC had asked for, but the report was not made available to the Tribunal. She was convinced that this report would have stopped the misconduct allegation in its tracks: " …the case would be closed in a minute if the GMC spoke to the police".

133. Because Dr Nabili's written submissions in relation to the misconduct allegation (at paragraphs 19.1 to 19.31 of her expanded grounds of appeal) had not been served on the GMC, I invited Mr Dunlop to address these issues. In particular it was important to establish whether there was any substance to Dr Nabili's complaint that a police report had been commissioned but not placed before the Tribunal. Mr Dunlop was able to confirm the overall position, on instructions, but required further time to provide the relevant e-mails. I directed that any such material should be forwarded to me after the hearing, within strict time limits. That was done, and Dr Nabili was copied into the relevant communication.

134. The position which emerged is illuminating, and does not bear out Dr Nabili's assertions. The e-mails show that on 24th October 2017 Dr Nabili forwarded to the GMC a list of incidents, with police reference numbers, forming the basis of her request for third party disclosure from the police. She said that as soon as she received the remaining police disclosure she would send the MPTS the bundle she had prepared. On 25th October 2017the GMC legal advisor informed Dr Nabili that, on the basis of the information she had provided, the GMC proposed to contact the police to request disclosure of documents in respect of Mr I and Mr J from January 2014 to August 2016. There did not appear to be any reference to Mr S in Dr Nabili's request. On 26th October 2017 Dr Nabili thanked the GMC for this response, saying that she would await further disclosure from the police and disclose it to the GMC on receipt.

135. On 19th December 2017 the police forwarded to the GMC a summary of the police reports in question, listing a number of incidents where the police were called out. The picture which emerges from that three page summary is that there were regular complaints and incidents. Several of these were complaints by Mr I against Mrs Nabili.

136. For example, Mr I complained in February 2014 that she had turned off the hot water to his room. In 2015 he complained that letters addressed to him had been tampered with or had gone missing. There had been an incident in 2015 when he and Dr Nabili had an argument in the kitchen; she had allegedly pushed him in the chest while holding a knife in her other hand; she had then slammed the door on his feet. Dr Nabili had been interviewed by the police and denied the allegations. In one of the reports it was noted that both parties made allegations against each other over minor and petty matters. There was an incident in October 2015 when Dr Nabili alleged she was kicked by Mr I, and alleged that he was using her electricity without paying for it. The police investigated, but no action was taken. In December 2015 she had complained that Mr I had followed her down the road and assaulted her, bending her fingers back and kicking her. That was investigated. The allegation was not substantiated, although an independent witness saw her being held up against a wall by Mr I. It was noted in the report that Dr Nabili and Mr I were engaged in a civil dispute. On that basis the police declined to investigate further his allegation that Dr Nabili had stolen some of his property.

137. In July 2016 Dr Nabili alleged that Mr I went into her room and took some documents; he had also vandalised her property. This apparently related to the matters giving rise to the complaint he made to the GMC that he had found sensitive documents in the downstairs washroom. The police report concluded there was no tangible evidence of theft by Mr I of any documents from her room. Dr Nabili could not be positive that documents were stolen. The crime report was therefore closed as there was insufficient evidence to proceed.

138. The final report was August 2016, a complaint by Mr I over the recovery of possessions. It was noted that there appeared to be a civil dispute and Mr I was advised to seek a civil remedy accordingly.

139. On 20th December 2017 Dr Nabili was sent the police report. On 10th January 2018 she was informed by the GMC that counsel took the view that as the report did not relate directly to the misconduct allegation it was not relevant and should not be included in the hearing bundle. The GMC acknowledged, however, that Dr Nabili might deem the information relevant; it was a matter for her to decide whether she would like the Tribunal to see it as part of her own evidence. The GMC were in the process of taking a further statement from Mr I in relation to the police investigation, so Dr Nabili might wish to await sight of that statement before responding. The deadline for lodging the agreed hearing bundle was Friday 12th January. Dr Nabili was informed that if the GMC had not heard from her by 3.30pm on Thursday 11th January, the bundle would be uploaded in the form of the index which was attached to the e-mail, and the Tribunal would be informed that Dr Nabili had not confirmed her agreement to its contents. Dr Nabili did not reply to that e-mail.

140. Finally, on 17th January 2018 the GMC served on Dr Nabili the anticipated further witness statement of Mr I, dated 16th January. It contained his response to the information in the police disclosure. It was made clear that the GMC would rely on the

additional statement only to rebut allegations as to Mr I's credibility should Dr Nabili rely on the police information as part of her defence of the misconduct allegation. Dr Nabili never replied to that e-mail either.

141. In response to Dr Nabili's oral submissions, Mr Dunlop developed the points in his skeleton argument. He submitted that the Tribunal's decisions not to adjourn were neither "wrong" nor "unjust". There was a strong public interest in the expeditious resolution of regulatory proceedings. Dr Nabili had never provided an adequate reason to justify still less require an adjournment. She had given no good explanation as to why she had instructed counsel so late. As a senior medical practitioner, a consultant paediatrician, there was no reason why she could not have represented herself. As to the suggestion of ill-health, she had failed to provide independent medical evidence that she was unfit to participate adequately in the hearing, despite repeated opportunities to do so and despite reminders that such evidence was required.

142. As to the misconduct allegations, Mr Dunlop submitted that Dr Nabili had never provided any written response to the allegations in advance of the hearing. When she was informed that the hearing would proceed in her absence, she could at least have provided a document setting out the questions she wanted the Tribunal to put to the witnesses. She had failed to engage with the GMC over the deployment of the police report. The Tribunal had probed the evidence of the three witnesses very fully. The Tribunal had made findings of credibility which, on the authorities, must be regarded as virtually unassailable. There was no basis to interfere with those findings.

143. At the hearing of the appeal Dr Nabili presented some further documents. There was a 12 page resumé of her troubled career since 2007, beset by GMC investigations and proceedings. The document was entitled "If any of the professionals involved in my case could do better". Only the latter part of the document addressed the issues giving rise to the grounds of appeal, and Dr Nabili developed those points in her oral submissions.

144. Dr Nabili also submitted medical reports dated 24th November 2016 and 9th April 2018 confirming her attendance at hospital in London for stress related chest pain. She told me she had still been unable to obtain a report from the GP who had advised her at the time of the hearing in January 2018. Dr Nabili put in various documents relating to ongoing possession proceedings in the county court. There was also a lengthy document prepared by or on behalf of Dr Nabili's sister setting out the history of various domestic crises in recent years.

Discussion and analysis

145. The sole question in this appeal is whether the decision of the Tribunal to impose the sanction of erasure from the Medical Register was either (a) wrong or (b) unjust because of a serious procedural or other irregularity in the proceedings before the Tribunal. Dr Nabili's complaints relate principally to the Tribunal's refusal to adjourn and the Tribunal's decision to proceed in her absence. It is, therefore, convenient first to consider whether there was any serious procedural or other irregularity in the proceedings which renders the sanction of erasure unjust.

Refusal to adjourn for legal representation

146. The starting point is that Dr Nabili had ample time to arrange representation. She was notified on 10th March 2017 that the review hearing was set for 29th January 2018, ten months later. She was made aware of the misconduct allegations well before she received formal notification on 13th December 2017 that they were to be dealt with at the same hearing. She had successfully opposed the suggestion that the hearing be brought forward to November 2017.

147. The applications to adjourn in the week before the hearing was due to begin in January 2018 were not supported by any convincing evidence that her lack of representation had arisen without fault on her part. The initial application for an adjournment in Mr Donoghue's e-mail dated 22nd January made it clear that he had been instructed at "extreme short notice". The decision made by the Tribunal Case Manager cannot be faulted. There was no adequate explanation for the lateness of arrangements for representation. The impending date of the hearing had been known to Dr Nabili for many months. Applying the principles explained in *GMC v Adeogba,* the Case Manager was fully entitled to conclude that the public interest, considered in the light of Dr Nabili's obligations, had to take precedence over her request to gain representation from counsel who was unavailable. A postponement was not proportionate. It was an important factor that Dr Nabili's suspension was due to an expire on 19th February 2018 and that witnesses would be inconvenienced by an adjournment.

148. Dr Nabili's renewed application to the Case Manager for an adjournment was based on the same grounds. She sought to blame the GMC for consolidating the misconduct allegation with the review hearing thereby lengthening the hearing to an extent that made it difficult for her to find a barrister available to represent her. That was disingenuous because Dr Nabili had known for some time that the intention was to join both matters in one hearing and she had raised no objection. She had advised the GMC and the Tribunal as far back as July 2017 that she was intending to seek representation. Dr Nabili also raised an issue over the availability of relevant evidence, in particular evidence from the police arising from third party disclosure. It is clear now that in fact it was Dr Nabili who had been remiss in failing to respond to the GMC's e-mails in the preceding fortnight in relation to the use Dr Nabili wanted to make of that evidence. The Case Manager was again fully entitled to refuse the application to postpone the hearing.

149. It was particularly important to bear in mind that rule 21A required that the new matter was heard first in time, before the review, and the review had to take place before the expiry of Dr Nabili's current suspension, 19th February 2018. Applying *Adeogba,* the public interest in the fair, economic and efficient disposal of regulatory proceedings had to take precedence. A postponement was not proportionate in the circumstances.

150. Dr Nabili did not attend on the first day of the hearing, Monday 29th January. She renewed her application for an adjournment by e-mail, initially making no reference to any ill-health issues. There was in reality no new information to support her application for an adjournment to obtain representation. Although she claimed that it was all a simple mistake over dates on the part of her barrister, there was no documentary or other evidence to support that assertion. When Dr Nabili began to complain of ill-health later that day, counsel for the GMC recognised that the situation which was developing was identical to that which had occurred in the previous hearing in January 2017. Realising that this would be an important part of the GMC's objection to an adjournment, she sensibly suggested that the adjournment application should if possible

be heard by another Tribunal so as not to risk prejudicing the current Tribunal with knowledge of this aspect of the 2017 proceedings before reaching the stage of the review hearing. That solution turned out not to be available. The Tribunal rightly took the view that, as a professional tribunal, it was able to disregard the details of the review matter when considering the facts of the new matter without unfairness to Dr Nabili.

151. The substantive adjournment application was argued on Tuesday 30th January. Dr Nabili was at home in London that day. She e-mailed at 10.17am to say that she was not attending that day and this would be her last e-mail, as her GP wanted her to get to her surgery or to A & E, and she had promised instead to go to bed. It follows that although Dr Nabili had expressed a wish the previous day to participate by telephone in the hearing of her application for an adjournment, that request was not pursued on Tuesday 30th January.

152. The Tribunal handed down a fully reasoned decision on Wednesday 31st January, refusing the adjournment. There was still no good explanation for Dr Nabili's failure to obtain legal representation for the hearing. She had made mention of another barrister who might be available if the hearing were adjourned but she had provided no evidence of this. The Tribunal took account of the inconvenience and potential stress to the witnesses in the event of an adjournment. The appropriate use of resources and the public interest would not be served by failing to proceed before the expiry of Dr Nabili's suspension.

153. Importantly, the Tribunal concluded that it could have no confidence that an adjournment would result in Dr Nabili being represented and/or attending and participating in the hearing. This was a conclusion they were fully entitled to reach having regard to the whole history of the proceedings, including the very similar circumstances which had developed at the January 2017 hearing. Public confidence in the profession would be undermined if the case were allowed to be delayed further without a far more compelling reason. The Tribunal properly balanced the public interest and the need to ensure fairness to Dr Nabili.

154. There was no further application for an adjournment by Dr Nabili that week based on the discrete ground of lack of legal representation. On Monday 5th February she attended the hearing. The Tribunal had now reached the stage of considering impairment. Dr Nabili suggested that a barrister would be available to represent her if an adjournment were granted. She provided no documentary proof of this. The Tribunal again concluded that it could have no confidence that an adjournment would result in her being represented. Public confidence in the profession would be undermined if the case were allowed to be delayed further without a far more compelling reason. There can be no possible complaint about that decision. In any event the stage had now been reached where Dr Nabili was present and capable of presenting her case herself, with the assistance of the Legal Assessor in relation to any procedural or technical matters.

155. The final discrete application for an adjournment to obtain legal representation was on Tuesday 6th February, before Dr Nabili completed her oral submissions on impairment. She claimed to have two barristers ready to represent her if an adjournment were granted. The Tribunal noted there was no new documentary evidence to substantiate this. The Tribunal still had no confidence that if the hearing were adjourned to a future date Dr Nabili would be legally represented, given the history. She was receiving appropriate advice on process and procedure from the Legal Assessor and had accessed

the MPTS Doctor Contact support service. Once again, this decision cannot be criticised.

156. There was a curious but revealing sequel the following day, Wednesday 7th February, when another barrister, Mr Gledhill, telephoned and e-mailed the Tribunal indicting his willingness to represent Dr Nabili if an adjournment were granted. He was not instructed. He said he could not be "parachuted in". He was not available that week. Dr Nabili had asked him to write a letter but he was not sure what this would say. This episode exemplifies the disorganised way in which Dr Nabili was approaching the proceedings.

157. In summary, therefore, I am satisfied that in refusing Dr Nabili's repeated applications for an adjournment to obtain legal representation, the Tribunal struck a proper balance between fairness to Dr Nabili on the one hand and the public interest in the fair, economical , expeditious and efficient disposal of such proceedings on the other, in accordance with the principles explained in *Adeogba*. There was no procedural irregularity. Each separate decision was carefully considered and clearly reasoned. The Tribunal's discretion was in each case properly exercised.

Refusal to adjourn on the grounds of ill-health

158. At first sight it may seem harsh that the Tribunal proceeded to hear the case when Dr Nabili was in hospital in London on Wednesday 31st January and Thursday 1st February, and therefore unable to participate in the hearing in Manchester on those days. However, that would be far too superficial an analysis, given the way in which the issue of ill-health developed, and the very limited information Dr Nabili was providing at the time the Tribunal had to make the decisions on adjournment and proceeding in absence. The reality is that until the late afternoon of Thursday 1st February Dr Nabili had provided no independent medical evidence whatsoever that she was, or had been, unfit to attend through ill-health. It was only after the Tribunal had adjourned for the day that Dr Nabili e-mailed, at 16.52, the photocopy of the certificate of her hospital admission. But that document merely confirmed that she had attended hospital the previous day at 13.43. It gave no medical details of her admission or her treatment.

159. It was not until the following Wednesday, 7th February, during her oral submissions to the Tribunal on the final issue of sanction, that Dr Nabili for the first time submitted any documentary proof of her treatment at hospital on Wednesday 31st January, and her return to hospital on Thursday 1st February for the results of tests the previous day. The Tribunal could only act upon the evidence with which it was supplied. Given the similar history of the January 2017 proceedings, the Tribunal was entitled to be sceptical. As soon as Dr Nabili began to refer to her ill-health the Tribunal had made it crystal clear, repeatedly, that she must provide independent verifiable medical evidence in support of the exceptional circumstances she asserted prevented her from attending.

160. By the time Dr Nabili eventually provided factual evidence of her admission to hospital and the tests that had been carried out, the Tribunal had already made its decision on the misconduct allegations and on the issue of impairment. Those matters were closed. It would have been wholly irregular to re-open them.

161. Dr Nabili complains that it was not for want of trying that she was unable sooner to obtain the medical evidence that she was unfit to attend the hearing. She even suggests

that the GMC should have obtained the evidence for her, although that does not seem to have been suggested at the time. It should be noted that it was only on the morning of Tuesday 6th February that Dr Nabili e-mailed the GP setting out her account of the treatment and diagnosis she had received from the GP the previous week. There was no response from the GP confirming Dr Nabili's account. At the hearing of the appeal there was still no confirmation from the GP of Dr Nabili's self-serving account, although Dr Nabili told me she had repeatedly pressed for a response.

162. Mindful of the observations of the Court of Appeal in *Adeogba* that the court would need to consider, at least de bene esse, any fresh evidence as to the reasons why a medical practitioner did not appear at a disciplinary hearing, I have reviewed all the material now available. It does not lead me to conclude that any of the Tribunal decisions to refuse an adjournment were wrong, even in hindsight.

163. First, Dr Nabili could and should have provided proper independent medical evidence at the time. She is an experienced senior doctor, a consultant paediatrician. Even respecting her presumed wish not to disclose the fact that she was required to attend a GMC disciplinary tribunal, I cannot accept that she could not have obtained proper written evidence of her ill-health and placed it before the Tribunal immediately. For that reason alone, any reliance upon fresh evidence must fail.

164. Second, the sequence of events during the first week of the hearing does not permit any confident conclusion that Dr Nabili failed to attend the hearing because she was medically unfit to do so, rather than by choice in the hope of securing the adjournment which had previously been refused. Even on her own account she intended to travel to Manchester for the first day of the hearing, Monday 29th January, but missed the train. She says that she had become stressed and anxious over the weekend, finding herself without representation. She says that she received advice from a GP, but there is no documentary proof of that. In the e-mail she sent the GP on 6th February, setting out the history, she stated that she was admitted on 30th January (the Tuesday) which is wrong. In fact she remained at home in London on that Tuesday. It was not until lunchtime on Wednesday 31st January that she attended A & E at 13.43, as the hospital document later confirmed. At 13.47 she telephoned the Tribunal to say she was in hospital. She was not kept in hospital overnight. She returned to hospital at 15.28 the following afternoon, 1st February. It was noted on examination that day that her symptoms had now settled. On the face of it there was no reason why she could not have attended the Tribunal on Friday 2nd February. Without being unduly cynical, the fact is that Dr Nabili admitted herself to hospital through A & E on 31st January. She described symptoms which were investigated by various tests, but on my interpretation of the medical records of those tests there was nothing justifying urgent investigation or treatment. There is certainly no medical evidence to support such a proposition.

165. Among the documents provided to the Tribunal at a later stage, on 6th February, was an abstract of the Divisional Court's decision in *Brabazon-Drenning* . That was a very different case. It was held that the tribunal hearing should have been adjourned because the practitioner had been unable to attend. But in that case there was unchallenged medical evidence that the practitioner was simply unfit to withstand the rigours of the disciplinary process.

166. I have considered all the evidence and further material very carefully. To the extent that any application for an adjournment was based on Dr Nabili's alleged medical unfitness

to attend, I am entirely satisfied that on each occasion the Tribunal was fully entitled to reject such application as unsubstantiated. The Tribunal was entitled to have regard to the similar history in January 2017. Dr Nabili was given every opportunity to provide verifiable independent medical evidence. She singularly failed to do so. I am satisfied that there was no procedural irregularity in the circumstances.

Proceeding in Dr Nabili's absence

167. The decision to proceed in Dr Nabili's absence was separate and distinct from the decision to refuse her an adjournment. That distinction was recognised by the Tribunal. The GMC's application to proceed in Dr Nabili's absence was fully argued and carefully considered. The principles in *Adeogba* were properly applied. The Tribunal had regard to the GMC guidance at paragraphs 101 and 102, setting out the factors to be taken into account (where applicable) in deciding whether to proceed in the practitioner's absence. The Tribunal did not treat it as a fait accompli that because they had refused an adjournment it was automatically appropriate to proceed in Dr Nabili's absence.

168. However, in the circumstances of this case, many of the same considerations applied to those separate issues. In particular the Tribunal was entitled to take the view that it could have no confidence that an adjournment would result in Dr Nabili being represented and/or attending and taking part in a future hearing. The Tribunal was satisfied that Dr Nabili had chosen to absent herself.

169. It is important to note the Tribunal took great pains to test the evidence in support of the misconduct allegation. That demonstrates the proper discharge of the Tribunal's duty in circumstances where Dr Nabili was not present to question the witnesses herself. It was a proper safeguard in order to mitigate any prejudice from Dr Nabili's absence.

170. I am satisfied that there was no procedural irregularity in proceeding with the hearing in Dr Nabili's absence. That course was fully justified in the circumstances, balancing Dr Nabili's interests on the one hand and the public interest in ensuring that matters were dealt with expeditiously on the other.

Refusing participation by telephone

171. Dr Nabili e-mailed the Tribunal at 14.50 on Wednesday 31st January, from hospital, saying that she should not be prevented from exercising her right to be heard and to participate by telephone. The Tribunal sensibly treated this as an application to participate in the hearing by remote means. The application was argued that afternoon. The Tribunal announced its decision, refusing the application, and gave reasons the following morning, 1st February. This was immediately before the Tribunal embarked on the hearing of the misconduct allegation. The Tribunal received advice from the Legal Assessor on the guidance from the GMC on participation by remote access. It is an exceptional course. Normally an application would be made at the start of the hearing, supported by skeleton arguments and any necessary medical or other evidence.

172. Here there was a complete absence of medical evidence to justify participation by remote means. The Tribunal had very recently refused Dr Nabili's application for an adjournment and had decided to proceed in her absence on the basis that she had demonstrated no good reason not to attend. In these circumstances the evidential basis

for granting her application to participate by remote means was simply not made out. Dr Nabili had been told that the Tribunal would require contemporaneous independent and verifiable medical evidence in the case of ill-health. No such evidence was provided.

173. The Tribunal also had regard to the practicality Dr Nabili participating in the hearing by telephone, especially cross-examining witnesses by telephone. The witnesses had already been inconvenienced. One had travelled from London to Manchester at the beginning of the week to give evidence, all to no avail. Another witness was permitted to give evidence by telephone because he had business commitments which necessitated his presence in London. The Tribunal was entitled to take the view, as things stood, that if Dr Nabili were permitted to participate by telephone, including cross-examining that witness, there could well be logistical problems which might prevent the Tribunal from hearing evidence from that witness at all.

174. I am satisfied that the Tribunal was entitled to take the view there were no exceptional circumstances justifying Dr Nabili's participation by telephone. I emphasise that this decision of the Tribunal, like each of the others, has to be viewed and assessed in the light of the evidence available at the time the decision was made, and in the circumstances as they then existed. In hindsight it can be seen that Dr Nabili was in London and at home the following morning, Thursday 1st February, when the Tribunal embarked on the misconduct allegations. She did not go to hospital until 3pm that afternoon. She did not inform the Tribunal of this development. She made no contact with the Tribunal that day. She left it until she was in hospital before e-mailing, at 15.08, to emphasise the importance of participating in the hearing, urging the Tribunal to stop and vacate the whole case.

175. From that chronology it is a reasonable inference that Dr Nabili deliberately chose to leave it until she was at hospital again, in the hope of strengthening her application for an adjournment or abandonment of the hearing.

176. I am satisfied that in the particular circumstances the Tribunal was fully justified in refusing the application to participate by telephone. There was no procedural irregularity.

Inability to challenge the misconduct allegations

177. Because Dr Nabili was not present at the hearing when the misconduct allegations were heard, she was unable to cross-examine the three witnesses called by the GMC, or to give evidence herself to refute the allegations. Those were the consequences of her failure to attend. For the reasons I have already explained, there was no procedural irregularity in refusing her applications for an adjournment, or in proceeding in her absence, or in refusing to allow her to participate by remote link.

178. As already observed, the Tribunal mitigated this potential prejudice by examining the evidence of the three witnesses in very considerable detail. Each of the witnesses was extensively questioned by the Tribunal in order to clarify precisely what medical records were seen, where they were seen, and in what circumstances. It is true that Dr Nabili lost the opportunity of challenging the evidence of the witnesses by cross-examination. However, I accept the submission on behalf of GMC by Mr Dunlop that Dr Nabili could easily have provided the Tribunal with a list of questions she wished

them to ask the witnesses. She told me in the course of her oral submission that it never occurred to her to do this because she never thought the Tribunal would proceed in her absence without permitting her to participate by telephone. I am unimpressed by that submission. The reality is that Dr Nabili had simply not addressed her mind properly to these allegations, as she should have done in good time before the hearing. She had provided no written response to the allegations, which was the obvious course she should have taken to place her case on record. Had she done so, the Tribunal would no doubt have used that as a basis to question the witnesses and test their evidence still further.

179. Nor can Dr Nabili justifiably complain that the Tribunal was not made aware of the content of the police report which had been commissioned by the GMC at her request. She had no reason to assume that the Tribunal would have it in the hearing bundle when she had failed to respond to the GMC's correspondence explaining precisely what steps they had taken, and what steps she needed to take, if the material was to be presented to the Tribunal.

180. The thrust of Dr Nabili's cross-examination would, no doubt, have been to challenge the evidence of the witnesses as to the physical location of the medical records they said they had seen, and to emphasise the lack of impartiality of the witnesses, given the acrimonious history of their various disputes with her, in some of which the police had become involved, and in particular her bad relationship with Mr I.

181. As to the first of these issues, as already explained, the Tribunal went to immense pains to establish precisely where the records had been seen by the witnesses. It is difficult to see how Dr Nabili could have challenged that factual evidence, other than by impugning the credibility of the witnesses. As to the second issue, bad blood between her and the witnesses, the Tribunal was by no means kept in the dark. In opening the GMC's case in relation to the misconduct allegations, counsel very properly told the Tribunal that the relationship between Mr I and Dr Nabili was not good, and that it was clear that the relationship between all three witnesses and Dr Nabili was not good. Counsel told the Tribunal that Mr J had a difficult relationship with Dr Nabili and that there had been proceedings in the small claims court between them. Thus the Tribunal had the broad picture. Judging by the content of the police report which I have summarised, Dr Nabili would probably have been ill-advised to rely upon its content. Far from supporting her case, it would inevitably have led the Tribunal to the view that, at the very least, it was a case of six of one and half a dozen of the other. Moreover, had Dr Nabili cross-examined any of the witnesses on this police material, the likely response from the witnesses would have been unfavourable to her case. She would have been opening a Pandora's box.

182. The real question is whether, despite the disadvantage of no cross-examination and no evidence from Dr Nabili, the Tribunal's conclusion in finding the misconduct allegations proved can in any way be criticised as wrong or unjust. In my view it cannot. The Tribunal did not accept everything the witness said. They set out clearly in the reasons for their decision the extent to which they found each witness credible, reliable and accurate. No coherent submission has been put forward by Dr Nabili to challenge the findings made by the Tribunal.

183. One point which emerged from her oral submissions, but was unknown to the Tribunal, was that Dr Nabili had undoubtedly received at the property several boxes of medical

papers arising from earlier GMC proceedings. Any suggestion that Mr I (who took the photograph of a medical letter signed by Dr Nabili) had somehow doctored or produced a false photograph of a document which had never been in the property seems to me to be fatally undermined by that fact alone. If there had been no medical records stored at the property which were accessible to the tenants, how could Mr I have photographed such a document?

184. I bear in mind that the Court of Appeal in *Adeogba* said, at [35]:

> "If there is a good reason for non-attendance, however, it would not necessarily extend to fresh evidence going to the merits of the disciplinary complaint which would have been available to be deployed at the time of the hearing."

In this appeal that is precisely what Dr Nabili is seeking to do. She had provided no evidence to the Tribunal in advance of the hearing, when she had every opportunity to do so. She had provided no list of questions for the Tribunal to ask when her application to participate by telephone was refused. She had not taken the opportunity which was open to her to place the evidence of the police report before the Tribunal. In these circumstances she cannot now be heard to complain that the Tribunal reached a wrong or unfair conclusion in finding the misconduct allegations proved. The Tribunal considered the evidence very carefully. Their findings are unimpeachable. There was no irregularity in relation to the hearing of the misconduct allegations.

185. For all these reasons I am satisfied that there was no procedural or other irregularity, still less serious irregularity, in the conduct of the proceedings before the Tribunal.

Was the sanction of erasure wrong?

186. The final question is whether, in the light of all the evidence, the decision of the Tribunal to impose the sanction of erasure from the medical register was wrong.

187. I do not propose to rehearse again the Tribunal's reasons for imposing the sanction of erasure. Suffice it to say that there was no realistic alternative to erasure, having regard to the history of these proceedings and the findings in relation to misconduct and impairment. When the previous Tribunal imposed the sanction of suspension for 12 months in January 2017 it was in the expectation that Dr Nabili would take steps to address the concerns which had been identified, including a lack of CPD and a failure to accept the findings of the 2017 Tribunal and to remediate the identified deficiencies in her practice. Regrettably Dr Nabili had failed to take such steps and had left it very late indeed to address these concerns at all. Equally fundamentally, she had demonstrated no insight into her shortcomings.

188. The Tribunal was fully entitled to conclude that Dr Nabili's misconduct, coupled with her deficient professional performance, represented a particularly serious departure from the principles of Good Medical Practice and represented behaviour fundamentally incompatible with being a doctor. The Tribunal was also fully entitled to conclude that Dr Nabili had failed to remediate the deficiency in her professional performance, had refused to accept the findings of the 2017 Tribunal, and had failed to acknowledge and recognise the seriousness of the misconduct proved against her. She had shown total disregard for the basic duties of a doctor. The gravity of her misconduct and the

seriousness of the persistent impairment arising from her deficient professional performance made erasure the appropriate and proportionate sanction in order to protect patients and maintain public confidence in the profession.

Conclusion

189. I am satisfied that the Tribunal's decision to impose the sanction of erasure cannot conceivably be said to be wrong. Indeed, in my view, it was sadly inevitable.

190. I have no doubt that in the past Dr Nabili has been a good and caring doctor, and someone to whom many patients have had cause to be grateful. Sadly, however, she has over recent years let her high standards slip. The protection, promotion and maintenance of the health and safety of the public must come first, as section 1(1A) of the Medical Act 1983 makes clear. The Tribunal was right to conclude that only the sanction of erasure could achieve the statutory objective in this case.

191. Accordingly, Dr Nabili's appeal is dismissed.

Costs

192. I indicated, when this judgment was circulated in draft on 23rd November 2018 for the correction of typographical errors, that I would consider any application for costs, and any other ancillary matters, on the basis of written submissions. Dr Nabili requested an extension of time for this purpose, which I granted. Although it was made clear to her that this was not an opportunity to make further submissions on the merits of the case, Dr Nabili e-mailed a lengthy document on 30th November 2018 doing just that. I have considered her document, but it does not affect any of my conclusions. She also asks for permission to appeal. However, because an appeal to the Court of Appeal would be a "second appeal", within the scope of CPR 52.7.2, any application for permission will have to be made direct to the Court of Appeal itself. I have no jurisdiction to consider or grant such permission.

193. The GMC have submitted a statement of costs for summary assessment in the total sum of £5,155.20. Dr Nabili has indicated in her e-mail of 30th November that she opposes this application, "considering my financial inability and the seriousness of the case I appealed." Clearly the GMC are entitled to their costs, the appeal having failed. Dr Nabili's alleged impecuniosity is no reason for refraining from making an order for costs against her, although it will be for the GMC to decide whether to enforce it. In my view the sum claimed is reasonable and proportionate.

194. Accordingly I order that Dr Nabili must pay the Respondent's costs of the appeal and I assess those costs summarily at £5,155.20.