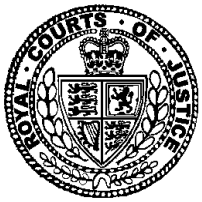

Neutral Citation Number: [2023] EWHC 797 (Admin)

Case No: CO/2640/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/04/2023

Before

MR JUSTICE SWIFT

- -

Between

MOHAMMAD ADIL **Applicant**

- and –

GENERAL MEDICAL COUNCIL **Respondent**

- -
- -

FRANCIS HOAR (instructed by **PJH Law**) for the **Applicant**
MARTIN FORDE KC (instructed by **GMC Legal**) for the **Respondent**

Hearing date: 15 February 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.00am on 5 April 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SWIFT

A. Introduction

1. Mohammad Adil appeals against decisions of the Medical Practitioners' Tribunal ("the Tribunal") made in June 2022. At the time of the events relevant to the Tribunal's decision Mr Adil worked as a locum consultant colorectal surgeon, first at the Chesterfield Hospital and then at the North Manchester Hospital NHS Trust.

2. The Tribunal is a committee of the General Medical Council ("the GMC"), the Respondent to this appeal as provided for by section 40(9) of the Medical Act 1983 ("the 1983 Act"). The Tribunal's decisions were taken in exercise of its power under section 35D of the 1983 Act; this appeal is brought under section 40 of that Act. The Tribunal took four decisions: a Determination on the Facts (made on 21 June 2022); a Determination on Impairment (made 27 June 2022); a Determination on Sanction (made on 29 June 2022); and a Determination on Immediate Order (also made on 29 June 2022). By its Determination on the Facts the Tribunal reached conclusions on whether the allegations made against Mr Adil were proved. The Determination on Impairment concerned whether what had happened amounted to misconduct and was such as to amount to an impairment of Mr Adil's fitness to practise. The final two decisions considered the penalty to be imposed. The Tribunal concluded that Mr Adil's registration in the register of medical professionals should be suspended for six months and that immediate suspension was necessary – i.e., that "in order to protect public confidence in the medical profession" Mr Adil would be suspended pending any appeal against the substantive suspension order.

(1) The allegations against Mr Adil and the Tribunal's conclusions.

3. The allegations against Mr Adil fell into two broad groups. The first group concerned treatment he had provided at the Chesterfield Hospital in November 2019 to a patient referred to as Patient A. There were six such allegations. In its Determination on the Facts, the Tribunal concluded that only three of these allegations were proved. At the Determination of Impairment stage, the Tribunal concluded that none of those three matters amounted to misconduct and that none demonstrated any impairment of Mr Adil's fitness to practise. None of these matters is therefore the subject of this appeal.

4. The second group of allegations concerned matters that took place when Mr Adil worked at the North Manchester Hospital NHS Trust. These allegations did not concern treatment given to any patient, but rather Mr Adil's appearances in videos published on YouTube between April 2020 and October 2020. The allegations were set out as follows in what has been referred to before me as the 'charge-sheet' (which the Tribunal set out in full in the body of its Determination on the Facts).

> "2. Between April 2020 and October 2020, you appeared in videos that were uploaded to video sharing platforms in which you said that:
>
> a. the Sars-CoV-2 virus and/or Covid-19 disease do not exist or words to that effect;

b. the Covid 19 pandemic is a conspiracy brought by the United Kingdom, Israel and America or words to that effect;

c. the Covid-19 pandemic is a multibillion scam which was being manipulated for the benefit of:

i. Bill Gates;

ii. pharmaceutical companies;

iii. the John Hopkins Medical Institute of Massachusetts;

iv. the World Health Organisation,

or words to that effect;

d. the Covid-19 pandemic was being used to impose a new world order or words to that effect;

e. the Sars-CoV-2 virus was made as part of a wider global conspiracy or words to that effect;

f. Bill Gates infected the entire world with Sars-CoV-2 in order to sell vaccines or words to that effect;

g. Covid-19 vaccines:

i. would be given to everyone, by force if necessary;

ii. could potentially contain microchips that affect the human body and further the 5G mobile phone technology agenda;

iii. will transform human psychology and beliefs;

iv. could be used to control and/or reduce the world's population,

or words to that effect.

3. In the videos referred to at paragraph 2, you used your position as a doctor in the UK on one or more occasion, to promote your opinion.

4. Your actions as referred to at paragraph 2:

a. undermined public health, and/or;

b. were contrary to widely accepted medical opinion, and/or;

c. undermined public confidence in the medical profession.

> 5. On or around 12 May 2020 you said to your responsible officer, Professor B, that you had and/or would remove the videos referred to at paragraph 2 from video sharing platforms or words to that effect.
>
> 6. Further to the discussions with Professor B referred to at paragraph 5, you subsequently:
>
> a. Failed to remove the videos;
>
> b. appeared in further videos which were uploaded to video sharing platforms and in which you made comments as referred to at paragraph 2."

5. Mr Adil did not dispute what he had said in the videos. The Tribunal found each of the allegations at paragraph 2 proved. At paragraphs 34 – 37 of its Determination on the Facts the Tribunal stated as follows:

> "34. The Tribunal considered each paragraph and sub-paragraph of Paragraph 2 and the statements made as set out in the Allegation. It considered the whole of Paragraph 2 in the context of the transcripts and videos provided in evidence.
>
> 35. The Tribunal considered all the transcripts in full and watched a number of the videos. It noted that all the videos related to the period between April 2020 and October 2020, as set out in the stem of Paragraph 2 of the Allegation. The GMC had provided a colour coded schedule of transcript page numbers, which assisted the Tribunal in locating some of the most pertinent comments. However, the Tribunal also identified numerous other relevant references in the transcripts, to which its attention had not specifically been drawn by the GMC in the schedule.
>
> 36. The Tribunal took into account Mr Adil's remarks throughout the proceedings to date, in which he admitted he had made the statements and accepted that he had expressed these views at that time. He now regretted making the comments and also disagreed with the comments he had made in the videos.
>
> 37. The Tribunal carefully considered the wording of the Allegation, which as Mr Kitching had submitted on behalf of the GMC, did not contain verbatim quotations from the videos, but summarised and amalgamated the statements made to reflect the meaning of what was being said in the same or similar words to that effect. The Tribunal was satisfied that, in relation to each sub-paragraph of Paragraph 2 of the Allegation, the wording correctly characterised the statements being made in the videos. It had seen evidence in the transcripts, and in the videos it had

> viewed, in support of each sub-paragraph of Paragraph 2 of the Allegation. It was satisfied, on the balance of probabilities, that Mr Adil had made the statements alleged."

So far as concerns the complaint that Mr Adil had used his position as a doctor to promote these opinions (the allegation at paragraph 3 of the charge sheet), the Tribunal referred to the transcripts of videos uploaded on 3 June 2020 and 6 September 2020 concluding it was "in no doubt" that the allegation was proved.

6. The Tribunal further concluded that the complaints at paragraph 4 of the charge sheet were proved. Those matters were by way of conclusions following from the complaints of fact listed at paragraphs 2 and 3 of the charge-sheet. The material parts of the Tribunal's decision were as follows:

> "Paragraph 4a
>
> 46. The gravity of the impact of the coronavirus and Covid-19 on public health was being explained on a daily basis to the public and disseminated to medical professionals. The general public was required to comply with the restrictions and the messages were provided to set out the rationale for the restrictions and the reasons compliance was required. Statements of the kind set out in Paragraph 2 of the Allegation formed no part of the public health messages being provided through official channels. In the Tribunal's view they ran counter to the public health messages being disseminated at the time.
>
> 47. As it had already determined, Mr Adil had used his position as a doctor in the UK to promote his opinions. In the Tribunal's view, and in the context of the status of the pandemic at the time, hearing such opinions expressed by an NHS consultant surgeon would, on the balance of probabilities, have the effect of undermining public health. One of the key government messages at the time was that compliance with restrictions for required to 'Protect the NHS'. The Tribunal considered that an NHS consultant asserting as fact such statements of the kind as set out in Paragraph 2 of the Allegation undermined important public health messages.
>
> 48. The Tribunal was in no doubt that, in the context of the status of the pandemic at the time and Mr Adil's declared credentials in the videos, it was more likely than not that public health was undermined by his comments.
>
> …
> Paragraph 4b
>
> 50. As the Tribunal has already said, during the early days of the pandemic medical information and opinion was being

disseminated in daily bulletins held by the UK government and its senior clinical and scientific advisors, including the Chief Medical Officer, Deputy Chief Medical Officer, Chief Scientific Officer, and members of their teams.

51. Mr Adil's statements that, for example, the Sars-CoV-2 virus and Covid-19 pandemic did not exist, or had been created as some form of conspiracy in order to sell vaccines, or that vaccines were being created in order to harm people, formed no part of widely accepted medical opinion as was being set out, for example, for the general public by the UK Chief Medical Officer.

52. The Tribunal was firmly of the view that the statements set out in Paragraph 2 of the Allegation, formed no part of widely accepted medical opinion and were, on the balance of probabilities, contrary to such opinion.

…

Paragraph 4c

54. The Tribunal had already determined that Mr Adil made the statements alleged in Paragraph 2 of the Allegation. In addition, he had done so when using his position as a doctor in the UK to promote his opinions. The Tribunal had also now determined that the statements made undermined public health and were contrary to widely accepted medical opinion. In addition, many of the statements related to conspiracy theories and the deliberate manipulation of the population by those with another agenda for the infection and vaccine development. Mr Adil had not only stated that the vaccine was damaging but that it had been designed to do harm and control the world population.

55. In the context of the pandemic at the time, and particularly the concerns of a public confined to home and dependent upon the provision of responsible and trustworthy information, the Tribunal's view was that such statements, containing mis-information and conspiracy theories, could be both confusing and destabilising. They had been made by a senior UK surgeon with many years' experience in the NHS. In addition, Mr Adil had promoted his professional experience and credentials in the videos so as to engender trust and confidence in their content in the minds of his audience. The Tribunal determined that, it was more likely than not, such comments undermined public confidence in the medical profession."

7. As to allegations 5 and 6 the Tribunal held both were proved. The Tribunal concluded that Mr Adil had told Professor Youseff that he would remove the videos but had then not removed the videos. The Tribunal further concluded that Mr Adil had continued to upload videos until late September 2020.

8. Next, in its 27 June 2022 Determination on Impairment, the Tribunal considered whether Mr Adil's actions amounted to misconduct and if so, whether his fitness to practise was impaired. As to the former, the Tribunal referred to paragraphs 65, 68 and 69 of the GMC's "Good Medical Practice" (published March 2013, updated April 2014), and to paragraph 17 of GMC guidance "Doctors' use of social media" ("the Social Media Guidance" – published March 2013). The Tribunal also referred to ECHR article 10. It concluded that Mr Adil's actions "fell seriously short of the conduct of a doctor and amounted to misconduct". The Tribunal's reasons were as follows:

> "70. The Tribunal bore in mind that numerous potentially controversial comments had been made by Mr Adil in the videos that had not been brought by the GMC to form part of any allegation. These included, for example, opinions on mask wearing and the discharge of elderly patients from hospital. Whilst potentially controversial, the Tribunal agreed with the GMC's position that these remained within the domain of freedom of expression for doctors as well as the wider public.
>
> 71. However, the statements made by Mr Adil that formed the basis of Paragraph 2 of the Allegation stated that the virus was a hoax and did not exist, promoted and perpetuated various conspiracy theories and suggested that vaccines were in development for the deliberate harm or manipulation of the public. The Tribunal had already found that these were contrary to widely accepted medical opinion and undermined public health and public confidence in the medical profession. It was gravely concerned that these were made by Mr Adil using his credentials as a doctor in the UK to promote his opinions and to engender trust in him on the part of those listening.
>
> 72. In the Tribunal's view, these could not fall within the domain of legitimate freedom of expression for a doctor in the context of the pandemic at the time; such statements breached the trust that the public had a right to expect of him as a doctor in the UK. Despite his protestations that he was trying to help in a period of widespread confusion, his comments went far beyond helpful legitimate comment into the realms of scaremongering conspiracy theories, which added to public confusion. The effect of these statements could have been that, believing Mr Adil, members of the public failed to adhere to required restrictions or failed to get vaccinated when the vaccines became available. The Tribunal had explained the context of the pandemic in its earlier determination.
>
> …

> 74. Whilst mindful of these mitigating circumstances, the Tribunal considered that the impact of Mr Adil's statements as set out in paragraph 4 of the Allegation, whilst promoting his standing as an experienced UK doctor, fell seriously short of the professional standards expected of him and would be considered deplorable by his peers. It considered that all three limbs of the overarching objective were invoked in this case. It also considered that the health concerns, whist important, did not negate the seriousness of the failings. The Tribunal was in no doubt that this fell seriously short of the conduct expected of a doctor and amounted to misconduct."

9. On the question of whether Mr Adil's fitness to practise was impaired, the Tribunal's reasons were as follows:

> "Paragraphs 2-4
>
> 78. The Tribunal acknowledged the findings of the health assessors, as well as Dr Byrne and Dr Edgar that in early 2020 Mr Adil was likely to have experienced an acute stress-induced period of acute mental illness. By November 2020 Mr Adil had stated that he was feeling better. As the Tribunal had already determined, this period of mental illness did not negate the seriousness of the failings. In the Tribunal's view, neither did it provide the whole explanation for the statements having been made at all in the context in which they were made. Although the illness provided a part explanation, in the Tribunal's view it was not the whole story.
>
> …
> 81. When considering Mr Adil's level of insight, the Tribunal noted that there was evidence in the bundles in which he still denied having made the statements as set out in Paragraph 2 of the Allegation, as recently as 1 May 2022. In an email he sent to the GMC on that date he said:
>
> *"These are all wrong and ludicrous statements which you are trying to allege me falsely with your own modified words to make my case look even worst purposely. You are trying to implicate me falsely rather discriminatory which seems to be racially motivated on your behalf. If you continue doing it I may take it further to the Chief Executive and you do not need to make any further correspondence with me in future and take you hand away from my case notes any more. Please correct the statement you attributed to me falsely."*
>
> …

> 84. The Tribunal was concerned that Mr Adil's expressions of regret and apology had come very late in the day and had continued to develop even during the course of these proceedings. Mr Adil had submitted numerous iterations of his witness statement at the facts stage, after commencement of the proceedings, each of which developed and refined further the earlier version in light of what had been said.
>
> 85. While the Tribunal was satisfied that in relation to its findings on health impairment, it was not likely there would be a relapse in his mental health, it was concerned that, beyond the health issues, Mr Adil did not have full insight into the consequences of his actions in relation to Paragraphs 2 to 4 of the Allegation, particularly Paragraph 4.
>
> …
>
> **Overall**
>
> 91. The overall view of the Tribunal was that Mr Adil had limited appreciation of what he had done, and its impact. He had shown some developing insight and had, during these proceedings expressed his regret and remorse. However, that came late in the day in the face of recent denials that the statements in Paragraph 2 of the Allegation were ever made by him. In the Tribunal's view, Mr Adil still lacked adequate understanding and appreciation of the impact of his actions in relation to Paragraphs 2-6 of the Allegation. In the whole of this context, the Tribunal was not satisfied that in the face of an opportunity to proclaim his views in such a way again, there was no risk he would do so.
>
> 92. The Tribunal concluded that all three limbs of the overarching objective were engaged in this case and determined that Mr Adil's current fitness to practise is impaired by reason of his misconduct in relation to Paragraphs 2-6 of the Allegation."

(2) Mr Adil's grounds of appeal

10. The grounds of appeal focus primarily on whether the Tribunal's decisions are consistent with Mr Adil's article 10 rights. Ground 1 is that the conclusions on misconduct and impairment were contrary to article 10(1) because they give rise to an interference with article 10 rights that is not "prescribed by law" that, for that reason alone, does not meet the requirements laid down within article 10(2) and is unlawful. Ground 2 is that, in any event, the conclusions on misconduct and impairment are a disproportionate interference with Mr Adil's rights under article 10(1). Grounds 3 and 4 are aspects of Ground 2. The former is that the Tribunal was wrong to conclude that expressing views "outside widely accepted medical opinion" either amounted to misconduct or was capable of providing justification for interference with Mr Adil's

right to freedom of expression. The latter is that there was no evidence to support a conclusion that what Mr Adil said damaged the reputation of the medical profession. This too, it is submitted, goes to whether the conclusions of misconduct, impairment, and the penalty imposed can be proportionate interferences with Mr Adil's Convention rights. Ground 5 is that the decisions to impose a final order for suspension and to make an immediate order suspending Mr Adil pending any appeal were disproportionate in that each failed to give sufficient weight to mitigating or compensating circumstances.

B. Decision

11. Article 10(1) of the ECHR is a right to freedom of expression including the right "…to receive and impart information and ideas without interference by public authority…". By article 10(2)

> "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

(1) Ground 1. Were the decisions on misconduct and impairment interferences with the right to freedom of expression that were "prescribed by law"?

12. The prescribed by law condition is a requirement for legal certainty. What is required in principle, has been stated by the Strasbourg Court on numerous occasions both in the context of restrictions on qualified Convention rights such as article 10, and in the context of the requirement implicit within article 7 that laws must meet qualitive standards of accessibility and foreseeability. In *Sunday Times v United Kingdom* (1980) 2 EHRR 245, which concerned whether an injunction preventing publication of a newspaper article was consistent with article 10, the Court addressed the prescribed by law condition as follows:

> "49. In the Court's opinion, the following are two of the requirements that flow from the expression 'prescribed by law'. First, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able—if need be with appropriate advice—to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty:

> experience shows this to be unattainable. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice."

13. Mr Hoar, counsel for Mr Adil, has referred me to more recent judgments of the European Court of Human Rights; these continue to put the matter in the same way. Mr Hoar's submission is that the material parts of Good Medical Practice and the Social Media Guidance fall short of the requirement for foreseeability. Mr Forde KC for the GMC submits that the requirement for foreseeability is met by the provisions of the 1983 Act alone, and that there is no need to consider either Good Medical Practice or the Social Media Guidance.

14. I do not accept Mr Forde's submission. He relies on section 35 of the 1983 Act, read with section 1(1A) and (1B) of the Act, and submits that this is the statutory framework under which the GMC acts. That is correct, but it is not the answer to the prescribed by law enquiry. By section 35 of the 1983 Act, the GMC has the power to provide advice for members of the medical profession on standards of professional conduct, standards of professional performance, and medical ethics; by section 1(1A) of the 1983 Act the GMC must exercise its functions (including the section 35 function) for the purpose of an over-arching objective of public protection; and by section 1(1B) that requirement is explained as involving the following objectives:

> "(a) to protect, promote and maintain the health, safety and well-being of the public,
>
> (b) to promote and maintain public confidence in the medical profession, and
>
> (c) to promote and maintain proper professional standards and conduct for members of that profession."

Section 35C(2) of the 1983 Act could also be added to Mr Forde's list. That is the provision that specifies when a practitioner's fitness to practise is to be regarded as impaired. That includes situations where there has been misconduct: see section 35C(2)(a).

15. These are, self-evidently, important provisions that set the role of the GMC. They are also a premise for the GMC's further powers, through its Investigation Committee to investigate a practitioner's fitness to practise, and through the Tribunal to reach decisions that a practitioner's fitness to practise is impaired. However, they are not, on their own, provisions that are sufficient to meet the requirement of foreseeability that is part of the prescribed by law condition. Taken alone, the provisions in the 1983 Act do no more than authorise the GMC to set standards of professional conduct; make clear that "misconduct" can be a premise for a conclusion that a practitioner's fitness to practise is impaired; and provide that where fitness to practise is impaired, a range of

disciplinary sanctions arises for consideration and application. These matters only go so far in terms of permitting relevant medical practitioners, with reasonable foreseeability, to understand how they are required to conduct themselves.

16. The provisions in 1983 Act need to be read together with the further documents the GMC has issued pursuant to its power under section 35 of the Act. Good Medical Practice is the most important. This states that it is intended to describe what is expected with all doctors registered with the GMC, and is to be read together with the other explanatory guidance the GMC publishes. Good Medical Practice is then set out by reference to four "domains": "knowledge, skills and performance": "safety and quality"; "communication, partnership and teamwork"; and "maintaining trust". This fourth domain is relevant for present purposes. Paragraph 65, under the heading "act with honesty and integrity" states as follows:

> "You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession"

The Social Media Guidance refers to paragraph 65:

> "3. In this guidance, we explain how doctors can put these principles into practice. You must be prepared to explain and justify your decisions and actions. Only serious or persistent failure to follow our guidance that poses a risk to patient safety or public trust in doctors will put your registration at risk.
>
> **Social media**
>
> 4. Social media describes web-based applications that allow people to create and exchange content. In this guidance we use the term to include blogs and microblogs (such as Twitter), internet forums (such as doctors.net), content communities (such as YouTube and Flickr), and social networking sites (such as Facebook and LinkedIn).
>
> 5. The standards expected of doctors do not change because they are communicating through social media rather than face to face or through other traditional media. However, using social media creates new circumstances in which the established principles apply.
> …
>
> 17. If you identify yourself as a doctor in publicly accessible social media, you should also identify yourself by name. Any material written by authors who represent themselves as doctors is likely to be taken on trust and may reasonably be taken to represent the views of the profession more widely."

17. The obligation within paragraph 65 of Good Medical Practice to maintain public trust in the medical profession is framed in general terms. The Social Media Guidance confirms that the obligation applies when using social media, such as YouTube, and also makes clear that "serious or persistent failure" that presents a risk to public trust in

doctors can be misconduct. That is the only sensible way to understand the statement that such action "… will put your registration at risk". Although the obligation is stated generally, in the context of the regulation of a profession that is sufficient for the purposes of the prescribed by law condition. Standards such as paragraph 65 of Good Medical Practice reflect the general body of obligations attaching to a profession and are capable of being readily understood by the members of that profession, and certainly with the assistance of appropriate advice.

18. In the present case, Mr Hoar noted that the charges made against Mr Adil were not formulated expressly by reference to paragraph 65 of Good Medical Practice or by reference to the GMC's Social Media Guidance. That point is well-made. In cases where the professional standard alleged to have been contravened arises from Good Medical Practice or guidance the GMC has issued, it is advisable to refer the relevant provisions in the statement of charges. On the facts of this case, however, I do not consider this error to be a matter of substance.

19. Mr Hoar's further submission was that paragraph 4 of the charge sheet describes Mr Adil's public statements not only as matters that "undermine public trust in the medical profession" (paragraph 4c., which is language equivalent to paragraph 65 of Good Medical Practice) but also as statements "contrary to widely accepted medical opinion" (paragraph 4b.) and matters that "undermine public health" (paragraph 4a.). These, he submits, are not standards expressly set out in Good Medical Practice or any other guidance the GMC has relied on. This too is a point well-made. It is a matter of significant misfortune that in paragraphs 4a. and 4b. the misconduct alleged against Mr Adil is characterised (and classified as misconduct) by reference to rubrics that cannot be directly traced either to Good Medical Practice or any other GMC guidance. This risks the impression that the GMC is formulating the rules on what amounts to misconduct only after the event. In this instance, however, I do not consider that the way the matter is put at paragraph 4a. and paragraph 4b. of the charge sheet document goes to the legality of the Tribunal's decision. In substance, paragraph 4a. and paragraph 4b. are no more than further particulars of paragraph 4c.

20. That being so, these matters do not affect the outcome of the submission on the prescribed by law condition. That condition concerns the position prospectively, i.e. whether it was or should have been reasonably foreseeable to Mr Adil that his actions might conflict with professional standards set by the GMC. On the facts of this case, taking account of paragraph 65 of Good Medical Practice, and the GMC's Social Media Guidance, the answer to that question is yes. The first ground of appeal therefore fails.

(2) Ground 2. Were the conclusions on misconduct and fitness to practise a disproportionate interference with article 10 rights?

Ground 3. Was the Tribunal wrong to apply a standard of whether Mr Adil's statements were "contrary to widely accepted medical opinion"?

Ground 4. Was the Tribunal wrong to conclude Mr Adil's actions had "undermined public confidence in the medical profession" without specific evidence of the same?

21. There is no dispute that the comments made by Mr Adil in the YouTube videos were made in exercise of his right to freedom of expression, protected by article 10. Nor is

there any dispute that the Tribunal's decisions concluding that those statements amounted to misconduct, that the misconduct was such as to amount to impairment of Mr Adil's fitness to practise, and to impose a disciplinary sanction, each comprises an interference with Mr Adil's article 10 rights.

22. The first submission for Mr Adil emphasises that when the issue is whether an interference with the right to freedom of expression is justified, the margin of appreciation that a court should afford a decision maker is a narrow margin. The right to freedom of expression is a right jealously guarded.

23. I accept that submission, up to a point. The interest in preserving the article 10 right to freedom of expression is important. On an appeal under section 40 of the 1983 Act (which is by way of rehearing, see Practice Direction 52D at paragraph 19.1), the question for the High Court was whether the Tribunal's decision was "wrong": see the judgment of the Court of Appeal in *General Medical Council v Bawa-Garba* [2019] 1 WLR 1929. However, when deciding that question, because the decision-maker is a specialist adjudicative body for a profession, some significance must attach to its assessment, at least so far as the Tribunal is dealing with matters squarely within the scope of its expertise. This was the point explained at some length by the Court of Appeal in *Bawa-Garba*: see the judgment of the court at paragraph 60 – 67. In the present case, the Tribunal applied its expertise in the course of the application of article 10 to Mr Adil's conduct: see Determination on Impairment at paragraph 69 to 72 (material passages above, at paragraph 8).

24. While I must apply article 10 for myself, when doing so it is right that I attach weight to the Tribunal's evaluation of the substance of this complaint, so far as it affects matters of professional standing. Moreover, maintaining the good-standing of the medical profession is, for the purposes of article 10(2), pursuit of a legitimate objective. The opinion of a specialist tribunal on what is necessary for that purpose cannot but be relevant to my application of article 10(2) in the circumstances of this appeal. That, to adopt Lord Millet's approach in *Ghosh v General Medical Council* [2001] 1 WLR 1915 at paragraph 34, is no more than is warranted in the circumstances.

25. Be that as it may, for the reasons that follow, in the circumstance of this case, regardless of the possibility for debate over how narrow a margin for evaluation I ought to permit the Tribunal, the outcome is clear.

26. Mr Hoar's next submission is that the Tribunal's decisions were in breach of article 10 because when Mr Adil took part in the YouTube videos he was acting was outside the professional sphere. I disagree. In this regard it is significant that when Mr Adil spoke in the YouTube videos he presented himself as a doctor. At paragraph 40 of its Determination of the Facts, the Tribunal quoted from the transcript of a video uploaded on 6 September 2020. Dr Adil is recorded as saying this:

> "*DR ADIL: Thank you. I graduated my basic medical degree from Nishtar Medical College, Multan, Pakistan, in 1986 and I came to this country in 1990 for higher qualification, experience and to complete the work which I successfully did. I got fellowship from the Royal College of Surgeons and I am a teacher and trainer. I have a significant contribution towards scientific innovation, towards teaching and training not only to*

> *UK but also in rest of the world. I am known as a speaker with a scientific innovation. I'm a general surgeon, but I am specialist in colorectal surgery and breast surgery. I have unblemished record of my medical career, not only in UK in the last 30 years, but prior to that in Ireland and Pakistan. I have great regard for you all who have travelled far and across to know what exactly is the problem. As a scientist with the longstanding experience, knowledge and skills, and a lot of contribution on scientific research and publication, I wanted to contribute my services towards identifying the truth. That's why I critically questioned about the far-reaching restrictions on the public's personal and social lives in order to reduce the spread of the coronavirus. I had no intentions to play down the virus or to criticise it, with my scientific knowledge and experience I wanted to make a scientific contribution towards the humanity as I have been doing in the last 35 years.*"

27. At paragraph 71 of its Determination on Impairment the Tribunal noted grave concern that Mr Adil had used "his credentials as doctor in the UK to promote his opinions and engender trust in him on the part of those listening". At paragraph 72, the Tribunal concluded:

> "1. In the Tribunal's view … such statements breached the trust that the public had a right to expect of him as a doctor in the UK. Despite his protestations that he was trying to help in a period of widespread confusion, his comments went far beyond helpful legitimate comment into the realms of scaremongering conspiracy theories, which added to public confusion. The effect of these statements could have been that, believing Mr Adil, members of the public failed to adhere to required restrictions or failed to get vaccinated when the vaccines became available. The Tribunal had explained the context of the pandemic in its earlier determination."

28. It is clear that the substance of Mr Adil's remarks squarely engaged his professional responsibilities. What he said was to the effect that the SARS-CoV-2 virus did not exist; that the pandemic was a result of a conspiracy between the United States, the United Kingdom, and the Israeli governments to impose a new world order, and was being exploited for profit by pharmaceutical companies, reputable medical organisations, and Bill Gates. He further contended that Mr Gates had infected the world with SARS-CoV-2 virus to sell vaccines that would be given to all, by force if necessary, might contain microchips to further the "agenda" of 5G mobile technology, and would be used to control or reduce the worlds' population. All this was outlandish. None of this was mitigated by the fact that Mr Adil was "outside work"; where or when the YouTube videos were made is largely immaterial, what mattered was that Mr Adil used his position as a doctor to promote an opinion on a matter of medical importance. Nor is it material that Mr Adil was not acting in the course of treating any patient. Had that been so – for example if there had been a complaint that his approach to providing clinical

treatment to a patient suffering from Covid-19 been on the premise that the virus did not exist – that would have aggravated the complaint of professional misconduct. But the absence of a complaint of that nature does not mitigate Mr Adil's actual conduct.

29. Drawing these matters together, it was clearly open to the Tribunal to conclude that such remarks, presented by Mr Adil on the basis of his medical credentials, were likely to diminish public trust in the medical profession. The Tribunal's further specific assessments: (a) that making such remarks, claiming during a pandemic that the virus that was its cause did not exist, and that vaccines being developed to combat the virus were, among other matters, aimed at promoting population control, would undermine the protection of public health; and (b) that Mr Adil's opinions, as broadcast, were so far removed from anything capable of being described as legitimate medical opinion, were conclusions that were reasonable. In the context of this case, these matters were not discrete from the obligation not to act in a way that would tend to impair public trust in the profession; rather they were particular aspects of that obligation.

30. The position does not change when considered from the perspective of the article 10 right to freedom of expression. The article 10 right is a qualified right. Exercise of the right to freedom of expression may be restricted when necessary in the interests of public safety, and for the protection of public health, and for the protection of the rights of others. Each of these legitimate objectives was material to the Tribunal's consideration of Mr Adil's YouTube videos. The requirement that any restriction must be necessary sets a high bar, but the decisions of this Tribunal (a) that what Mr Adil had broadcast amounted to misconduct, (b) that by reason of that misconduct his fitness to practise was impaired, and (c) that his registration should be suspended for six months, were not disproportionate interference with Mr Adil's article 10 rights.

31. Mr Hoar relied in particular on two matters to make good his submission that the interference with Mr Adil's article 10 rights was disproportionate: Ground 3, that it was wrong for the Tribunal to address the matter before it by reference to a standard of whether what had been said was "contrary to widely accepted medical opinion"; and Ground 4, that there was no evidence to support the conclusion that Mr Adil's actions had undermined the confidence in the medical profession. I do not consider either of these matters is sufficient to make good Mr Adil's case.

32. On different facts Ground 3 could be a matter of substance. It is not difficult to think of examples of matters on which doctors' opinions on medical matters will differ. The simple fact that one opinion could legitimately be described as "widely accepted" ought not, of itself, provide a sufficient justification for professional discipline of medical practitioners who held a different opinion. In many instances, there will be obvious value in legitimate discussion of different or conflicting medical hypotheses, or of whether received wisdom should be revisited. Disciplinary action in such circumstances could amount to an unjustified interference with article 10 rights. Neither holding nor expressing an outlying opinion on a matter of professional practice ought to give rise to punishment, absent clear justification, for example where there is evidence of harm to patients or public health.

33. To this extent, this Tribunal's use of the standard that asked whether what Mr Adil had said was "contrary to widely accepted medical opinion" (taken from paragraph 4b. of the charge sheet), was hostage to fortune. Any general practice on the part of the GMC of applying disciplinary sanctions to medical practitioners simply because they held or

expressed views that were "not part of widely accepted medical opinion" (Determination on the Facts at paragraph 52) would engage the operation of article 10, and applying that standard to a particular case is clearly capable of leading to disciplinary conclusions amounting to unjustified interference with article 10 rights. From the perspective of compliance with article 10, action taken by reference to such a standard would require clear justification. As a general rule it would be preferable for the Tribunal to address such situations within the confines of standards expressly set by the GMC, and consider by reference to those standards whether the misconduct found to be taken place was sufficiently serious as to amount to impairment of fitness to practise (a standard that this Tribunal did refer to a paragraph 42 of its Determination on Impairment).

34. However, given the facts of the present case, the reference to the "contrary to widely accepted medical opinion" standard when dealing with Mr Adil did not produce any breach of article 10. Whether a breach of article 10 has occurred is a matter of substance not form. What Mr Adil said (and through YouTube, broadcast) was so far removed from any conceivable notion of received medical opinion that the Tribunal's reference to "widely accepted medical opinion" does not become close to being a decisive matter. In its Determination on Impairment the Tribunal described what Mr Adil had said as promotion and perpetration of conspiracy theories. At paragraph 72 (set out above), the Tribunal referred to his comments as going "… far beyond helpful legitimate comment into the realms of scaremongering conspiracy theories". That was an accurate description of the matter. There is a clear qualitative difference between claims of the sort made by Mr Adil – for example, that the SARS-CoV-2 virus did not exist – and situations where the issue might concern competing opinions on other such as the measures that should be taken to combat or reduce the spread of a disease. As has been said before, on so many occasions, the application of article 10 is to be measured in specifics. The Tribunal's conclusions on the matters of substance before it: that misconduct had occurred; that the misconduct was such as to impair Mr Adil's fitness to practise; and that he should be suspended from the register of medical practitioners for six months, were each entirely consistent with a correct application of article 10.

35. Mr Hoar's further point (Ground 4) is in error. The application of a standard such as paragraph 65 of Good Medical Practice, in substance whether conduct had tended to diminish public trust and confidence in a profession, requires a tribunal such as this one to apply its own expertise to assess whether, objectively, the conduct found to have occurred had that effect on ordinary, reasonable members of the public. In some cases, specific evidence relevant to public trust and confidence may be available. But because the matter is an objective standard applied by an expert tribunal, such evidence is neither necessary for such a conclusion nor, when available, need not be determinative of the conclusion the tribunal may reach. On the facts of this case, given the public statements Mr Adil made, the Tribunal's conclusion that his conduct was in breach of paragraph 65 of Good Medical Practice was one that was correctly reached.

36. For these reasons, each of Grounds of appeal 2, 3 and 4 fails.

(3) Ground 5. Was either the decision to suspend, or the decision on the immediate order, flawed?

37. This ground relies in part on Ground 3. That aspect of this Ground does not assist Mr Adil for the reasons I have already given. The further submission is that the six-month suspension from the register of medical practitioners was disproportionate given that Mr Adil had been the subject of an interim order suspending him from practice between 1 June 2020 and 11 January 2022 (when the interim suspension was lifted by decision of an Interim Orders Tribunal); that the Tribunal had not concluded that what Mr Adil had done presented any risk to patients; and that the penalty prevented Mr Adil taking up new employment at another hospital. The further submission for Mr Adil is that the Tribunal's decision to make an Immediate Order pursuant to rule 17(2)(o) of the General Medical Council (Fitness to Practise) Rules 2004 was also disproportionate, for the same reasons. The effect of the Immediate Order is that the six-month suspension imposed by the Tribunal as the substantive penalty will not start to run until the conclusion of these appeal proceedings.

38. It is clear from the Determination on Sanction that when deciding what sanction to apply the Tribunal had well in mind that Mr Adil had been subject to an interim suspension order. That matter was referred to both by counsel for the GMC and by Mr Adil himself (see the Determination on Sanction at paragraphs 11 and 31).

39. The Tribunal's conclusion on the sanction to be imposed was as follows:

> "68. The Tribunal had determined that Mr Adil's fitness to practise was currently impaired; its assessment being made at the present time, when Mr Adil was fit and well and not suffering any adverse health condition. He had begun to show some insight into his conduct, but this remained limited in scope. He had apologised for his conduct in making the statements in Paragraph 2 of the Allegation and expressed his regret. However, it was clear to the Tribunal that Mr Adil still failed to appreciate both the gravity of his misconduct and its impact, specifically as set out in Paragraph 4 of the Allegation. This necessitated a period for Mr Adil to reflect carefully on the findings of this Tribunal in order to be able to demonstrate that he fully understood and appreciated that impact and its consequences.
>
> 69. The Tribunal also noted that Mr Adil was a competent surgeon, whose skills would undoubtedly be of use to the NHS at a time when it was dealing with a significant backlog of patients needing surgery as a result of the pandemic.
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> 70. The Tribunal determined that a period of suspension of six months would:
>
> - mark the seriousness of the misconduct and send the appropriate signal to Mr Adil, the public and the profession about such conduct being unbefitting of a registered doctor;

> - allow sufficient time for Mr Adil to continue his remediation and to reflect carefully and deeply on the Tribunal's finding and his conduct such that he was able to demonstrate his understanding and appreciation of the impact of his conduct on public health and confidence in the profession. The Tribunal noted that a review tribunal would expect to see evidence of meaningful reflection and genuine insight in order to consider allowing Mr Adil to return to unrestricted practice; and
>
> - if Mr Adil was able so to reflect and demonstrate his genuine insight, not deprive the NHS of the services of a very capable surgeon for any longer that was necessary.
>
> 71. Accordingly, the Tribunal determined that a suspension of Mr Adil's registration for six months was the appropriate and proportionate sanction in this case."

This decision rested on careful consideration of the GMC's Sanctions Guidance. The decision is entirely consistent with that guidance, including paragraph 22 which concerns the significance attaching to interim suspension orders:

> "The doctor may have had an interim order to restrict or remove their registration while the GMC investigated the concerns. However, the tribunal should not give undue weight to whether a doctor has had an interim order and how long the order was in place. This is because an interim orders tribunal makes no findings of fact, and its test for considering whether to impose an interim order is entirely different from the criteria that medical practitioner tribunals use when considering an appropriate sanction on a doctor's practice."

40. Considered in the round, the Tribunal's decision on sanction is entirely consistent with the Sanctions Guidance, and the Tribunal's reasons fully explain why a sanction of six-month suspension from the register of practitioners was appropriate. Having regard in particular to paragraph 68 of the Determination on Sanction – in particular the conclusion that Mr Adil's fitness to practise "was currently impaired" – I am satisfied that the Tribunal's decision that there should be a 6-month suspension was one properly available to it. The Tribunal did not refer to Mr Adil's new employment, but it did not need to do so. The key conclusion for this purpose too, was the conclusion that fitness to practise was currently impaired. The point advanced concerning risk to patients is a false trail. It is clear from the Tribunal's reasons that it did not consider this to be material to the sanction decision. The suspension was not imposed on account of any such risk but rather as a way of addressing the need to maintain public trust in medical practitioners.

41. The same conclusions apply to the decision on whether, pending the outcome of this appeal, a further immediate suspension should apply. The Tribunal's reasons were as follows (at paragraphs 9-12 of the Determination on Immediate Order):

> "9. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the best interests of the practitioner. It also considered that an immediate order may be particularly appropriate where there was a risk to patient safety or a need to protect public confidence in the profession.
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> 10. The Tribunal acknowledged that there was no risk to patient safety in this case. It had made serious findings of misconduct and had significant concerns about the impact of the conduct on public health and public confidence in the profession. It balanced the public interest with Mr Adil's own personal interests and considered whether it was appropriate to return an otherwise competent surgeon to practise pending the substantive determination taking effect.
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> 11. On balance, the Tribunal considered that the maintenance and promotion of public confidence in the profession could not be assured by Mr Adil being permitted to return to unrestricted practise pending the conclusion of any appeal he may choose to lodge. The Tribunal therefore determined that an immediate order of suspension was necessary in order to protect public confidence in the medical profession.
>
> 12. This means that Mr Adil's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded."

The assessment at paragraph 11 logically followed from what the Tribunal had said at paragraph 68 of its Determination on Sanction (above, at paragraph 39). In the circumstances of this case, the conclusion reached was properly available to the Tribunal. For these reasons, Ground 5 of the appeal also fails.

C. Disposal

42. In the premises, Mr Adil's appeal is dismissed.