Neutral Citation Number: [2021] EWHC 435 (Admin)

Case No: CO/132/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/03/2021

Before :

MR JUSTICE CAVANAGH

- -

Between :

PROFESSOR AKHILESH BASI REDDY	**Appellant**
- and -	
GENERAL MEDICAL COUNCIL	**Respondent**

- -
- -

Selva Ramasamy QC (instructed by **Medical Defence Union**) for the **Appellant**
Ivan Hare QC (instructed by **GMC Legal**) for the **Respondent**

Hearing date: 3 February 2021

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Approved Judgment

Mr Justice Cavanagh:

Introduction

1. This is an appeal by Professor Akhilesh Reddy against the decision of a Medical Practitioners Tribunal ("Tribunal") to direct that his registration in the Medical Register should be suspended for a period of nine months, on the ground that his fitness to practise is impaired as a result of misconduct. The penalty was imposed on 17 December 2019, but no immediate order was made and hence the effect of this appeal is that the substantive sanction of suspension has not entered into force.

2. The appeal has been brought under the Medical Act 1983, section 40(1)(a).

3. Professor Reddy is a doctor and a distinguished medical specialist, who has for many years carried out complex medical research and clinical work at the highest level. In 2008, Professor Reddy commenced work at the University of Cambridge ("UOC"). In 2014, he applied for and obtained an offer of a new position, which was to be held jointly at the Francis Crick Institute in London and at University College, London ("UCL"), though he was to be employed exclusively by UCL. Professor Reddy's employment with UCL began in September 2015. However, his employment with UOC did not end until 30 November 2016. During the period from 28 September 2015 until 30 November 2016, Professor Reddy was in receipt of two full-time salaries, one from UOC and one from UCL. This was not in dispute at the hearing before the Tribunal (save that Professor Reddy contended that the first salary payment from UCL was on 30 October 2015: nothing rests on this).

4. The central issue before the Tribunal was whether Professor Reddy had acted dishonestly in receiving two full-time salaries for over a year.

5. By the time the Tribunal hearing took place, Professor Reddy had moved to the USA and had taken up a post at the University of Pennsylvania. The hearing before the Tribunal was originally due to start on 1 April 2019 but it was adjourned because Professor Reddy fell seriously ill with a medical condition which required intensive treatment. The hearing recommenced on 11 November 2019, and Professor Reddy participated via Skype from the USA, as his health difficulties made it impossible for him to travel. He was represented at the hearing by leading counsel, Mr Selva Ramasamy QC. The Tribunal's sitting times were adjusted to take account of the time difference between the UK and the USA, and also because Professor Reddy needed treatment on alternate days.

6. The fact-finding stage of the hearing lasted from 11 November 2019 to 10 December 2019. Both sides called witnesses. The General Medical Council ("GMC") called eight witnesses. These were Professor Alistair Compston, retired Professor of Neurology at UOC, Dr Anne Taylor, Head of Grants Operations at the Wellcome Trust, Professor Sir Stephen O'Rahilly, Professor and Head of the Clinical Biochemistry Department at UOC, Sir Paul Nurse, Director of the Francis Crick Institute, Mr Geoffrey Dunk, Director of Operations for the Faculty of Brain Sciences at UCL, Professor Alan Thompson, Dean of the Faculty of Brain Sciences at UCL, Mr Paul Swainsbury, Finance Manager for the UCL Institute of Neurology, and Ms Sarah Howells, Assistant Director (Post Award) for Research Services at UCL. The Tribunal also received and read a witness statement from Ms Caroline Newman, HR

Business Manager for the Clinical School at UOC. Professor Reddy gave evidence and provided written statements from four witnesses, who were not required to give live evidence. Professor Reddy's witnesses were Drs Sandipan Ray and Utham Valekunja, Postdoctoral Research Fellows, Dr Christopher Allen Director of Addenbrooke's (Cambridge) MND Care and Research Centre, and Sir Keith Peters, Senior Consultant to the Francis Crick Institute. The Tribunal was also provided with a large amount of documentary evidence. I have been provided with a transcript of the hearing before the Tribunal, and with the key documentary evidence.

7. The Tribunal stated in its Determination on Facts that it considered the witnesses called on behalf of the GMC to be "credible, honest, balanced, and generally consistent" and said that the GMC's witnesses were "helpful, credible and reliable." The Tribunal did not doubt the sincerity of Professor Reddy's witnesses. Each of these witnesses emphasised that Professor Reddy is highly respected in his field and said that he found it difficult to believe that Professor Reddy had been dishonest.

8. As for Professor Reddy, the Tribunal noted that he was of good character, and said that he was an articulate witness, a highly intelligent man, and an exceptional scientist. The Tribunal noted, however, that Professor Reddy had difficulty in directly answering a number questions put to him by counsel for the GMC, Mr Gilbart. The Tribunal said that in his oral evidence, Professor Reddy appeared forgetful and was, at times, inconsistent, and that this undermined the credibility and reliability of his evidence generally.

9. Professor Reddy's defence case was that he had been unaware that he was in receipt of two full-time salaries from the two universities. This had been the result of an administrative mix-up between the two universities. There had been delays in the changeover of Professor Reddy's work from Cambridge to London. This was for a number of reasons, including delays in the construction of Professor Reddy's laboratories in London, and delays in the administrative work required for starting clinical work in London and in transferring grants to London. As a result, even after the start-date of his job with UCL, in September 2015, Professor Reddy continued to carry out clinical and research work in Cambridge. Professor Reddy accepted that he became aware that he was receiving salary payments from UOC and UCL in February 2016, when he looked at his bank statement, but said that he did not think that anything was amiss. This was because the two salary figures, when added together, made up a total amount which he believed broadly reflected the monthly salary that he would be receiving from the UCL post (which paid him a salary about twice as much as the salary that he received from UOC). Accordingly, Professor Reddy said, he assumed that the two universities had come to an arrangement to the effect that both would contribute to his salary whilst he was still doing clinical and research work in Cambridge. Professor Reddy had repaid the overpayment after it had come to light.

10. At the end of the Determination of Facts stage of the proceedings, the Tribunal found that it had been proved that:

(1) Professor Reddy had failed to inform UCL that he remained in full-time employment with UOC;

(2) Professor Reddy knew that he was in receipt of two full-time salaries from 28 September 2015 until 30 November 2016;

(3) Professor Reddy had failed to inform UOC and UCL that he was in receipt of two full-time salaries; and

(4) Professor Reddy's actions in failing to inform UCL that he remained in full-time employment with UOC and in failing to inform UOC and UCL that he was in receipt of two full-time salaries were dishonest.

11. The Tribunal subsequently determined that Professor Reddy's fitness to practise was impaired by reason of this misconduct and, as stated above, imposed the sanction of suspension from the Medical Register for a period of nine months, such suspension not to take effect until the conclusion of the appeal process.

12. Though this appeal is in form an appeal against the direction that he should be suspended from practice, in substance the appeal is against the findings of fact set out paragraph 10, above. Mr Selva Ramasamy QC, on behalf of Professor Reddy, accepts that if the Tribunal was justified in making these findings of fact, then the determination that his fitness to practise was impaired was appropriate, and the decision to suspend for nine months was not an excessive sanction.

13. Professor Reddy relies on the following grounds of appeal:

(1) There were serious procedural irregularities in that the Tribunal took into account evidence that was not relied on or dealt with by the parties. Professor Reddy says that these failings led to two mathematical errors in the Tribunal's Determination which in turn had an adverse effect on the Tribunal's assessment of Professor Reddy's credibility;

(2) The Tribunal unfairly and inappropriately speculated about the disciplinary proceedings which had been taken by UCL against Professor Reddy (and which had led to his dismissal by UCL). Once again, this had an adverse effect on his credibility;

(3) The Tribunal's Determination had failed to deal with crucial defence evidence, namely that when Professor Reddy was first approached by UCL in early August 2016 for relevant financial information about the transfer of his grants from UOC to UCL, he immediately told UCL that the person at UOC to whom UCL should speak was Mr Chris Ford. It was submitted that this was highly significant because once UCL spoke to Chris Ford the error in relation to the two salaries would inevitably have come to light. The defence submitted that this showed that Professor Reddy could not have had a dishonest intent; and

(4) The Tribunal had displayed apparent bias, prejudice, and general unfairness towards Professor Reddy.

14. I will first set out the correct approach to appeals such as this. I will next summarise the Tribunal's findings on Professor Reddy's credibility, and I will then deal in turn with the four grounds of appeal.

15. Before me, Professor Reddy was represented by Mr Ramasamy QC, and the GMC was represented by Mr Ivan Hare QC (who did not appear before the Tribunal). I am grateful to both counsel for their helpful submissions, both oral and in writing.

The correct approach to appeals such as this

16. The correct approach to appeals against a Tribunal's Determinations of Fact, under section 40 of the 1983 Act, is now very well-established. It is not significantly in dispute in the present proceedings. Nonetheless, it is worth summarising it relatively briefly in this judgment.

17. Appeals under section 40 are by way of re-hearing: see CPR PD 52D, paragraph 19.1(2). However, such an appeal 'is a re-hearing without hearing again the evidence': see **Fish v General Medical Council** [2012] EWHC (Admin) 1269, at paragraph 28.

18. The correct approach was summarised by the Divisional Court (Sharp LJ and Dingemans J) in **General Medical Council v Jagjivan & Anor** [2017] EWHC 1247 (Admin); [2017] 1 WLR 4438. **Jagjivan** was an appeal under section 40A of the Medical Act 1983 (appeals by the GMC) but the Divisional Court made clear that the same approach applies to appeals under section 40 (appeals by the doctor), and this was reiterated by the Court of Appeal in **GMC v Bawa-Garba** [2018] EWCA Civ 1879; [2019] 1 WLR 1929**,** at paragraph 60. At paragraph 40 of its judgment in **Jagjivan**, the Divisional Court summarised the correct approach as follows:

> *i)* Proceedings under section 40A of the 1983 Act are appeals and are governed by CPR Part 52. A court will allow an appeal under CPR Part 52.21(3) if it is 'wrong' or 'unjust because of a serious procedural or other irregularity in the proceedings in the lower court'.
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> *ii)* It is not appropriate to add any qualification to the test in CPR Part 52 that decisions are 'clearly wrong': see **Raschid's** case [[2007] EWCA Civ 46] at paragraph 21 and **Meadow** [[2006] EWCA Civ 1390] at paragraphs 125 to 128.
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> *iii)* The court will correct material errors of fact and of law: see **Raschid's** case at paragraph 20. Any appeal court must however be extremely cautious about upsetting a conclusion of primary fact, particularly where the findings depend upon the assessment of the credibility of the witnesses, who the Tribunal, unlike the appellate court, has had the advantage of seeing and hearing (see **Assicurazioni Generali SpA v Arab Insurance Group (Practice Note)** [2002] EWCA Civ 1642; [2003] 1 WLR 577, at paragraphs 15 to 17, cited with approval in **Datec Electronics Holdings Ltd v United Parcels Service Ltd** [2007] UKHL 23, [2007] 1 WLR 1325 at paragraph 46, and **Southall [**[2010] EWCA Civ 407] at paragraph 47).
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> *iv)* When the question is what inferences are to be drawn from specific facts, an appellate court is under less of a disadvantage. The court may draw any inferences of fact which it considers are justified on the evidence: see CPR Part 52.11(4).
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> *v)* In regulatory proceedings the appellate court will not have the professional expertise of the Tribunal of fact. As a

consequence, the appellate court will approach Tribunal determinations about whether conduct is serious misconduct or impairs a person's fitness to practise, and what is necessary to maintain public confidence and proper standards in the profession and sanctions, with diffidence: see **Raschid's** case at paragraph 16; and **Khan v General Pharmaceutical Council** [2016] UKSC 64; [2017] 1 WLR 169, at paragraph 36.

vi) However there may be matters, such as dishonesty or sexual misconduct, where the court "is likely to feel that it can assess what is needed to protect the public or maintain the reputation of the profession more easily for itself and thus attach less weight to the expertise of the Tribunal …": see **Council for the Regulation of Healthcare Professionals v GMC and Southall** [2005] EWHC 579 (Admin); [2005] Lloyd's Rep. Med 365 at paragraph 11, and **Khan** at paragraph 36(c). As Lord Millett observed in **Ghosh v GMC** [2001] UKPC 29; [2001] 1 WLR 1915 and 1923G, the appellate court "will afford an appropriate measure of respect of the judgment in the committee … but the [appellate court] will not defer to the committee's judgment more than is warranted by the circumstances".

vii) Matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public.

viii) A failure to provide adequate reasons may constitute a serious procedural irregularity which renders the Tribunal's decision unjust (see **Southall** at paragraphs 55 to 56)."

19. The present appeal is concerned with the primary findings of fact that were made by the Tribunal, rather than with the Tribunal's assessment as to whether, in light of those findings of fact, Professor Reddy's conduct was such as to impair his fitness to practice.

20. In **Southall v GMC** [2010] EWCA Civ 407**,** the Court of Appeal said:

"…. First, as a matter of general law, it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually unassailable (see **Benmax v Austin Motor Co Ltd** [1955] AC 370); more recently, the test has been put that an appellant must establish that the fact-finder was plainly wrong (per Stuart-Smith LJ in **National Justice Cia Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer)** [1995] 1 Lloyd's Rep 455 at 458). Further, the court should only reverse a finding on the facts if it "can be shown that the findings … were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread" (per Lord Hailsham of St Marylebone LC in **Libman v General Medical Council** [1972] AC

217 at 221F, more recently confirmed in **R(Campbell) v General Medical Council** [2005] 1 WLR 3488 at [23] per Judge LJ). Finally, in Gupta v General Medical Council [2002] 1 WLR 1691, Lord Rodger put the matter in this way (at [10] page 1697D):

"In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position.""

21. The present case is concerned with dishonesty, and I accept Mr Ramasamy QC's submission that this is therefore not a case in which the appellate court should show deference to the Tribunal's specialist expertise in the way that it might if the subject matter of the proceedings were concerned were technical or scientific matters. However, I bear in mind that, as the Divisional Court said in **Jagjivan,** an appellate court should be extremely cautious about upsetting the Tribunal's primary findings of fact in circumstances in which the Tribunal, as in the present case, had the advantage, which this court has not had, of seeing the witnesses and of assessing their credibility.

The Tribunal's reasoning on Professor Reddy's credibility

22. At the heart of these proceedings was the issue of the credibility of Professor Reddy himself. Was he telling the truth when he said that he had not been aware that he had simultaneously been receiving a full-time salary from UOC and from UCL, and that he had no dishonest intent? The first three grounds of appeal are directed towards the Tribunal's adverse conclusions on Professor Reddy's credibility. Before addressing the submissions made by Mr Ramasamy QC on behalf of Professor Reddy, therefore, it is helpful to set out the Tribunal's reasoning on the issue of Professor Reddy's credibility.

23. At paragraphs 25 to 29 of the Determination on Facts, the Tribunal made some observations regarding Professor Reddy's credibility.

24. The Tribunal said that, notwithstanding that Professor Reddy was an articulate and highly intelligent witness, and was highly respected and of good character, there were aspects of his oral evidence that had undermined his credibility.

25. In particular, there were two areas of his evidence in which he had had difficulty in answering direct questions asked of him by counsel for the GMC.

26. The first was concerned with a letter that Professor Reddy had written to the Medical Director at Cambridge University Hospitals NHS Foundation Trust on 27 February 2017 about the dual salaries. This letter had been written after the issue had come to light. In this letter, Professor Reddy said that:

> "…. without any arrangements being in place between UCL and Cambridge, I could not simply resign from my post in Cambridge, since I was line-managing a team of 10 post-doctoral researchers, a lab manager and two PhD students at that time. Furthermore, I was then holding grants in Cambridge from various organisations (Wellcome, European Research Council, Lister Institute, BBSRC). **Therefore, at that time, I thought that there would be a temporary overlap of my employments in order to allow UCL to set up the necessary arrangements with Cambridge to enable me to continue to work in Cambridge while being employed by UCL**.
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> ….**This was always my intention, to balance the books for any overlap period, and I paid this back immediately, following recent correspondence with Cambridge**."

(Emphasis in the original letter)

27. Thus, as the Tribunal pointed out, in this letter Professor Reddy had asserted that any overlap between UCL and UOC would be temporary, and that he would pay back any overpayment. The letter suggests that Professor Reddy was aware at the time, i.e. September 2015 to October 2016, that there would be a temporary overlap of his employments, which may lead to him being overpaid, and that he had always intended to "balance the books" for any overlap period in which he was overpaid salary.

28. This was contradicted by Professor Reddy's witness statement for the Tribunal hearing, in which he had said that he believed that UOC and UCL had come to an agreement about balancing payments for the two institutions. In other words, he had not thought that there would be an overlap or overpayment, which he would have to repay. On the face of it, as the Tribunal pointed out, these were two different explanations. When asked about this in cross-examination, Professor Reddy was asked how he had come to "misexpress" himself in the letter of 27 February 2017, and he answered, "I don't know".

29. The second time when Professor Reddy had given an answer which the Tribunal regarded as unsatisfactory was when he was asked in cross-examination what account he had given at his UCL disciplinary hearing. Professor Reddy said that he could not remember. The Tribunal observed, at paragraph 26, "The Tribunal did not find it credible that Professor Reddy could not recall an event of such importance."

30. It is clear that the Tribunal regarded these answers as being unconvincing and evasive. The question about the UCL disciplinary hearing is the subject of Ground 2 of the grounds of appeal and I will return to it when dealing with that ground.

31. There were two other matters which the Tribunal regarded as undermining Professor Reddy's credibility and which are referred to at paragraphs 25 to 29 of the Determination.

32. The first was that Professor Reddy had written in his witness statement that between August and November 2015, he was "barely attending to other tasks, and mostly remotely" following the birth of his child and subsequent illness to his family. This was put forward as an explanation for why Professor Reddy had not noticed that he was being paid two full-time salaries. The Tribunal was sceptical about this explanation, saying that "However, Professor Reddy had attended a meeting with Sir Paul Nurse and others and sent numerous work-related emails during this period; when questioned about this Professor Reddy accepted that, despite his difficulties, he was still dealing with work-related matters."

33. The other matter was concerned with Professor Reddy's assertion that did not check his bank statements until February 2016. The Tribunal said that it did not find it credible that he did not check his bank account prior to February 2016, given the documentary evidence. The Tribunal did not accept that Professor Reddy was financially naïve. The Tribunal pointed out that he had set up a number of savings accounts, he had put in place regular transfers, and made two significant payments to his offset mortgage. The Tribunal also noted Professor Reddy's meticulous attention to detail in negotiating the terms of his contract and salary package at UCL.

34. In a later section of the Determination of Facts, at paragraphs 45-53, the Tribunal gave several reasons why it did not consider Professor Reddy's statement that, when he checked his bank balance in February 2016 and saw that he was being paid both by UCL and UOC, he believed that "UCL and UOC had come to a mutual agreement about the monies to be paid to me" to be credible.

35. First, the Tribunal concluded, on the balance of probabilities, that, since the evidence showed Professor Reddy to be adept in managing his finances and financially aware, it was likely that he would have checked his bank accounts from October 2015 to February 2016. The significance of this conclusion was that it was clear from the payments from the two universities that were recorded in the bank statements for October 2015 to January 2016 that Professor Reddy was receiving two full-time salaries, one from each institution. (This was not so clear from the February 2016 statement as the payment for that month from UCL was considerably less than a month's worth of his UCL salary.) The Tribunal took the view that the evidence showed that Professor Reddy was financially adept because he had negotiated a salary with UCL which was almost double his salary with UOC, he made regular payments to an ISA and a savings account, and he had made two large payments to his offset mortgage in the relevant period.

36. Second, the Tribunal was not persuaded by Professor Reddy's evidence that he thought that there was nothing untoward because the payments shown in his February 2016 bank statement from the two universities together amounted to the salary that he was expecting from UCL. The Tribunal said, at paragraph 47of the Determination:

> "Professor Reddy stated that he thought that the February 2016 payments would together amount to the salary he was expecting from UCL. The Tribunal was not persuaded by this argument. In the bank

> statement dated 13 January to 12 February 2016 Professor Reddy was paid three sums by UOC: £960.62 on 18 January, £657.35 on 25 January; and £5047.97 on 26 January. The latter sum represented his full-time pay. He also received £4740.51 from UCL, a sum which he said was "considerably less" than he was expecting to receive from them."

37. This passage is the subject-matter of the challenge in Ground 1 of the grounds of appeal and I will return to it later in this judgment.

38. The Tribunal went on to say that it was not credible that Professor Reddy would not have scrutinised his bank account when he appreciated that he was being paid by both institutions, as he expected there to be some overlap. The significance of this observation was that if Professor Reddy had looked at his bank statements for the preceding months, it would have become obvious to him that the total amount that he was being paid by UCL and UOC was substantially in excess of the full-time salary he was receiving from UCL. This would have made clear to him that the explanation could not be that the two universities had agreed to split his salary costs between them. The Tribunal said that it found it implausible that, if Professor Reddy had expected some overlap of pay between the two institutions, he did not query the overpayments with them.

39. This point was spelled out slightly earlier in the Determination, at paragraph 45, in which the Tribunal had said that:

> "On the balance of probabilities, the Tribunal did not consider it likely that, being as financially aware as the evidence showed him to be, Professor Reddy would not have checked his bank accounts from October 2015 to February 2016."

40. The Tribunal reiterated that there were a number of inconsistencies in Professor Reddy's accounts of events. In particular, there was the inconsistency between what he said in his letter of 27 February 2017 to UCL and what he said in his witness statement to the Tribunal, as described above.

41. The Tribunal also concluded that it did not find Professor Reddy's assertion that the UOC payment represented his clinical practice to be credible. The Tribunal said, at paragraph 50:

> "The written evidence from Ms Caroline Newman suggested that the remuneration for Professor Reddy's clinical work comprised a small part of his overall salary. In the year 1 May 2014 to 30 April 2015, for example, the clinical payment was £14,923 plus smaller payments for on-call and a local excellence award. The £5047.92 paid by UOC in February 2016 was similar to Professor Reddy's full-time net monthly salary from UOC. In the circumstances, the Tribunal rejected Professor Reddy's evidence that he believed the sum merely to represent his clinical work."

42. This passage is also the focus of a challenge in Ground 1 of the grounds of appeal and I will return to it.

43. The Tribunal relied on two other matters relating to Professor Reddy's credibility in this part of its Determination.

44. First, Professor Reddy had met Professor Thompson, of UCL, in March 2016 and during this meeting they discussed finance, but he did not mention the arrangement between UCL and UOC to split his salary between them. The Tribunal considered that, if Professor Reddy believed such an arrangement to be in place, he would have done so.

45. Second, Professor Reddy made a payment to his offset mortgage of £50,000 on 15 February 2016. The Tribunal did not think that he would have done so if, as he asserted in his letter of 27 February 2017, he had believed that he would have to repay a salary overpayment in the future. The Tribunal said that "Professor Reddy was unable to provide a satisfactory answer during cross-examination as to how he would fund the repayment if called upon to do so at that time."

46. In a later part of the Determination, at paragraph 61, the Tribunal referred to Professor Reddy's response to an email from Mr Swainsbury of UCL, on 6 January 2017, asking him to "kindly clarify if you have continued to receive salary payments from Cambridge since you became an employee of UCL." As the Tribunal said, Professor Reddy's response was ambiguous. He said that:

> "The end of grant reports for the Wellcome fellowship should be available soon. This will show my salary costs in Cambridge deducted until September 2015."

47. On the face of it, this implies that Professor Reddy believed that he had only received salary payments from UOC up until September 2015. This was not right, as he had seen from his bank statement in February 2016 that he had received a salary payment from Cambridge at that time. At the very least, it was an evasive answer that did not respond to the direct question that had been asked by Mr Swainsbury. The Tribunal said:

> "61. In cross-examination Professor Reddy admitted that his response had not answered Mr Swainsbury's question, stating that Mr Swainsbury "already knew" that he was being paid twice. He added that it would have been "impolite" to challenge Mr Swainsbury on this matter. The Tribunal rejected that explanation and concluded that Professor Reddy's failure to respond directly to his question was an attempt to avoid disclosing the true facts.
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> 62. The Tribunal therefore concluded that, even if Professor Reddy initially believed that there was an overpayment which UOC and UCL would resolve between them, he subsequently retained and used some of the money for his own purposes knowing that he was not entitled to do so, having failed to directly address the overpayment with both UOC and UCL.
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> 63. The Tribunal then considered the second limb of the **Ivey** test [the test for dishonesty]. It concluded that ordinary, decent people would consider that, by knowingly retaining salary that he was not entitled to

> receive, failing to take prompt action to alert the universities to the two salaries, and using the funds for his own purposes, Professor Reddy was dishonest.
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> 64. The Tribunal therefore finds that Professor Reddy acted dishonestly as alleged…."

Ground (1) Serious procedural irregularities arising from taking account of evidence that was not relied on or dealt with by the parties

48. Although this Ground was put as a challenge on the basis of procedural irregularities, it is better characterised, in my judgment, as being primarily a challenge to the Tribunal's adverse findings on Professor Reddy's credibility, which in turn influenced the Tribunal's findings on the key issues.

49. This Ground has two parts to it.

Expenses wrongly taken into account

50. Mr Ramasamy QC referred to paragraph 47 of the Determination on Facts, the relevant part of which is set out at paragraph 36 above. The defence case was that Professor Reddy had been falsely reassured by his February 2016 bank statement because the two salary payments shown, £4740 from UCL and £5047 from UOC, added up to a global figure which broadly reflected what he thought he would be receiving from his new UCL salary (which was about £190,000 p.a. gross, equivalent to something over £9,000 pcm net). Mr Ramasamy QC pointed out that, at paragraph 47, the Tribunal identified, and thus appears to have taken into account, two other payments from UOC, in the sums of £960 and £657. If these sums are added to the £4740 and £5047, they result in a global figure which would have been substantially higher than a sum equivalent to Professor Reddy's full-time pay from UCL. It was submitted that this must have had an impact upon the Tribunal's assessment of Professor Reddy's credibility and to have undermined his argument that he had been mistakenly reassured by the salary figures he saw in the February 2016 bank statement. Put bluntly, if the four sums are added together, it is not credible that anyone in Professor Reddy's position could have been mistakenly reassured into thinking that the total was equivalent to his UCL salary, thus indicating that the two institutions had agreed to split his salary between them.

51. In fact, however, the two sums of £960 and £657 had nothing to do with salary. They were the reimbursement of expenses owed by UOC to Professor Reddy. It was submitted that it was therefore wrong in fact and in principle to take them into account when evaluating Professor Reddy's evidence about the inferences he had drawn from the figures in his February 2016 bank statement.

52. Mr Ramasamy QC also submitted that it was procedurally unfair for the Tribunal to take the two extra payments into account in circumstances in which the Tribunal had not asked the parties for assistance with these figures at any stage, and they had not asked any questions at all of Professor Reddy at the end of his cross-examination.

53. I am unable to accept Mr Ramasamy QC's submission that the reference to the two expense figures in paragraph 47 of the Determination means that the Tribunal's findings on credibility or the Tribunal's findings of fact, including the finding of dishonesty, were wrong.

54. The starting-point is that the submission on behalf of Professor Reddy is based on the proposition that the very fact that the two expense payments were mentioned in the Determination on Facts means that the Tribunal saw them as being relevant to the credibility of his evidence. In my judgment, this simply does not follow. It made sense for the Tribunal to refer to the two expense payments in paragraph 47 of the Determination, because the Tribunal was there referring to the information about payments from the two universities that was set out in the February 2016 bank statement. It was part of the background. However, it does not follow that the Tribunal fell into the trap of thinking that when Professor Reddy said that the global figure seemed more or less the same as his total salary entitlement from UCL, he had included the two expenses payments in his calculation. Indeed, it was clear on the face of paragraph 35 that the Tribunal recognised that only the sum of £5047 "represented his full time pay" from UOC. It is clear, therefore, that the Tribunal appreciated that the only figures on the bank statement that were relevant to salary were the sum of £5047 from UOC and the sum of £4740 from UCL.

55. In any event, however, it is clear from the relevant part of the Determination that the main reason why the Tribunal did not accept Professor Reddy's explanation for his failure to clarify his salary position after seeing his February 2016 bank statement was that the Tribunal took the view that it was implausible that, if Professor Reddy had expected some overlap of pay between the two institutions, as he had said, he did not query the overpayments with them or otherwise check the position. In other words, even if the two salary payments in February 2016 roughly equated to the expected salary from UCL, Professor Reddy would not have left it at that. He would have gone back to check his earlier back statements. This was what had been said by the Tribunal at paragraph 45 of the Determination (set out in relevant part at paragraph 39, above). If he had done that, then it would have become clear that there had been overpayments, as the totals received in the previous months substantially exceeded his salary from UCL. Moreover, at paragraphs 49-52, the Tribunal set out a number of other reasons why the explanation provided by Professor Reddy was not credible. These were because it was not credible that Professor Reddy could have thought that the UOC payment represented his clinical practice (a matter I will return to below), because he did not mention the payment arrangement in his meeting with Professor Thompson in March 2016, even though they discussed finance, and because he made a payment of £50,000 to his offset mortgage, which he would not have done if there had been uncertainty about overpayments.

56. There was, therefore, ample material to sustain the Tribunal's findings of fact, and it did not make the factual error alleged in the grounds of appeal. Even if the Tribunal had done so, this would not have rendered its decision "wrong".

57. As for the complaint that there was a procedural irregularity because the Tribunal had not asked for clarification about the sums of £960 and £657, and had not asked Professor Reddy about it, in my judgment this is misconceived. It is clear from the language of paragraph 47 of the Determination that the Tribunal appreciated that the two payments were not part of his salary from UOC. The reference to the two

payments did not mean that the Tribunal made a mathematical error, or that the record of the two payments in the bank statement had any impact on the Tribunal's evaluation of Professor Reddy's credibility. As I have said, the fact that the two payments are mentioned in the Determination does not mean that the Tribunal thought that they were relevant. It follows that there was no procedural irregularity arising from the Tribunal failing to ask any questions about them.

58. In the Grounds of Appeal, Mr Ramasamy QC said that the Tribunal's approach to these payments gives the appearance that the Tribunal was actively seeking evidence that was apparently detrimental to Professor Reddy, even when such evidence was not being relied upon by the GMC. This is not the case. Mr Ramasamy QC's argument places far too much weight upon a passing reference to the expenses payments in the Determination. The Tribunal did not regard the note of these payments on the February 2016 bank statement as being evidence that was detrimental to Professor Reddy.

Errors in calculation in relation to clinical work

59. This part of Ground 1 relates to the passage in paragraph 50 of the Tribunal's Determination of Facts which is set out at paragraph 41, above.

60. Mr Ramasamy QC said that it was an important part of the Defence case that Professor Reddy expected to continue receiving payments for clinical work from UOC after he began at UCL, because delays with the start of his UCL clinical work meant that he had been forced to continue to do his clinical work in Cambridge. Professor Reddy had told the Tribunal that he had believed the UOC salary payment that was shown on his February 2016 bank statement represented payment for his clinical practice in Cambridge. The Tribunal did not accept this because the £5047 shown on the February 2016 bank statement was similar to Professor Reddy's full time net monthly salary from UOC.

61. It was submitted that the Tribunal's reference to a payment of £14,923 for clinical payment in the year from 1 May 2014 to 30 April 2015 (plus smaller payments for on-call and a local excellence award) demonstrated a fundamental misunderstanding on the Tribunal's part. The payment of £14,923 was a payment for an Additional Programmed Activity ("APAs"), but the majority of Professor Reddy's clinical work was paid by way of Programmed Activities ("PAs") which were part of his basic salary. Accordingly, Mr Ramasamy QC submitted, when Professor Reddy's clinical work continued at Cambridge, it would have been reasonable for him to assume that part of his basic salary would also continue to be paid as well, to reflect the PAs which constituted the payments for clinical work that formed part of his basic salary. The documentary evidence showed that, in 2014-2015, 4 PAs had been allocated to Professor Reddy's clinical work within his basic salary. Mr Ramasamy QC said that if the Tribunal had appreciated that the payments made to Professor Reddy for his clinical work included four PAs as well as the one APA that the Tribunal referred to, this would have affected its assessment of his credibility. The closer the correct figure for clinical work is to that shown on the February 2016 bank statement, the easier it is to understand how Professor Reddy may have fallen into error and been wrongly reassured.

62. It was further submitted that there had been a procedural irregularity, because the Tribunal had not asked any questions of Professor Reddy at all, let alone as to what the figure of £14,923 represented, and had not asked the parties anything about those figures. Also, it was submitted that this again gave the impression that the Tribunal was actively seeking evidence which was apparently detrimental to Professor Reddy, even though it had not been advanced by the parties.

63. I do not accept these submissions on behalf of Professor Reddy.

64. There was no material error on the part of the Tribunal. The central point that was being made by the Tribunal was that the sum of £5047 that was paid to Professor Reddy by UOC in February 2016 was similar to the entirety of his full-time net monthly salary from UOC. Therefore, it could not have been understood by Professor Reddy to be a contribution in return for his clinical work. This point remains a good one even if the Tribunal had underestimated somewhat the proportion of Professor Reddy's full-time salary that was paid to him for his clinical work. It was not all for clinical work. Moreover, and in any event, the key reason set out in the Determination for doubting Professor Reddy's credibility was that he had said that he knew that there would be some overpayments and so the Tribunal took the view that he would at least have gone back to look at his bank statements for the period from October 2015 to February 2016. If he had done this, it would have become clear that he was being paid two full-time salaries at once, and it would have been equally clear that the discrepancy could not be explained by the fact that UOC was still paying him for clinical work in Cambridge. It did not matter, for the purposes of this point, how much of the Cambridge salary was payment for clinical work.

65. In addition, Mr Hare QC, for the GMC, pointed out that it was Professor Reddy who was asserting that he thought that the February 2016 payment from UOC reflected his clinical work at Cambridge. It was therefore for him to lead evidence about the amounts he was paid for that clinical work, but he did not do so. All he said, at paragraph 53 of his witness statement, was that he expected that the UOC would be paying him "some money" for his clinical work. Professor Reddy did not lead any evidence about how much he would have been paid for his clinical work during the relevant period, or about the difference between APAs and PAs. In the absence of such evidence, the Tribunal understandably drew upon the figures in the bundle for payment for clinical work (APAs) in an earlier year, 2014-15. Mr Hare QC submitted that Professor Reddy can hardly complain if the Tribunal had an incomplete understanding of the proportion of his pay from UOC which represented payment for clinical work, when Professor Reddy had not provided them with the relevant evidence.

66. There is considerable force in this submission by Mr Hare QC, but the principal reason why I reject this part of Professor Reddy's appeal is that the apparent misunderstanding on the part of the Tribunal about the scale of the payments made to him by UOC for clinical work had no practical impact upon the findings of fact. This is a paradigm case in which the Tribunal has an advantage over the appellate court, because the Tribunal was able to see the witnesses and form a view of their credibility. It was the Tribunal's view of Professor Reddy's credibility which informed its conclusion on the findings of fact and, in particular, its finding on dishonesty. The reference to the payment of £14,923 was only a small and minor part

of the Tribunal's reasoning. To the extent that it was an error by the Tribunal, it was not a material error. The error made no difference to the outcome of the case.

67. I also reject the submission that there was a procedural error in relation to the Tribunal's failure to probe the parties in questioning about the payment of £14,923 to Professor Reddy in 2014-2015. It was for Professor Reddy to put forward evidence to make good his assertion that he had believed that the £5047 payment reflected his clinical work (though the burden of proof, of course, rested with the GMC). In absence of much evidence on this point, the Tribunal had to do the best it could with the evidence available. It is not a fair criticism of the Tribunal that it was looking out for evidence that was detrimental to Professor Reddy. The Tribunal was referring to the only evidence that had been put before it about the scale of the payments by UOC for clinical work.

Ground 2: The Tribunal's consideration of the UCL disciplinary proceedings

68. As I have said, in advance of the proceedings before the Tribunal, Professor Reddy was subjected to disciplinary proceedings by UCL, as a result of which he was dismissed. These proceedings took place in 2017. The Tribunal was informed of this, and the parties placed very limited evidence relating to the UCL proceedings before the Tribunal, such as passages from the evidence in the UCL proceedings in which a witness had praised Professor Reddy. Other than that, the Tribunal was not told anything about what transpired in the UCL proceedings, save the Tribunal was aware that Professor Reddy had been dismissed.

69. During cross-examination of Professor Reddy, on Day 24 of the Tribunal hearing, he was asked the following question:

> "How long did you persist in that explanation, Professor Reddy, that it was anticipated on commencement of the post that there would be a period of overlap and you would pay it back? Was that the account you gave in the UCL disciplinary proceedings? Can you remember?"

70. Professor Reddy's answer was, "I can't remember".

71. This question was relevant to Professor Reddy's credibility. It was, in particular, relevant to the two different explanations that Professor Reddy had given in relation to his understanding of the overpayments of salary. In his letter to UCL of 27 February 2017, he had said, in effect, that he had always appreciated that there would be an overpayment of salary and that he had always intended to pay it back. In his evidence to the Tribunal he had said, in contrast, that he had not appreciated that he was receiving salary payments both from UOC and from UCL until he saw his February 2016 bank statement, which had led him to believe that an arrangement had been reached to split his salary between the two institutions. This was not consistent with the explanation given in the letter of 27 February 2017, because the explanation given at the Tribunal hearing meant that Professor Reddy had not thought that there was any overpayment, nor any need to make a correcting repayment. The purpose of counsel's question on Day 24 was to elicit from Professor Reddy which of these two alternative explanations he had given to the UCL disciplinary hearing.

72. Upon receiving the answer "I don't remember" from Professor Reddy, Mr Gilbart, counsel for the GMC indicated to the Tribunal that he might have an application to make. Though he did not say so in so many words, it was obvious that he was considering applying to put in evidence what Professor Reddy had said to the UCL disciplinary panel. The defence objected to any questions on this topic. Mr Gilbart took instructions and considered the matter over the weekend and decided not to apply to put before the Tribunal any evidence that had been given in the UCL proceedings or to ask Professor Reddy any further questions about them. He informed the Tribunal of this decision on Day 25.

73. At the closing stage of the hearing, the defence written submissions on the law, which had been agreed in advance by the GMC and by the Legal Assessor, warned the Tribunal against speculation and, in particular, made specific reference to the fact that the Tribunal had been given some documents from the UCL proceedings, but that it had to avoid speculation in relation to any other aspects of the UCL proceedings.

74. As stated above, the Tribunal found that Professor Reddy's credibility had been undermined, inter alia, by two occasions in which he had had difficulty in answering direct questions asked of him by counsel for the GMC. The second occasion was the one referred to at paragraph 26 of the Determination. The Tribunal regarded it as unsatisfactory that when he was asked in cross-examination what account he had given at his UCL disciplinary hearing, Professor Reddy said that he could not remember. The Tribunal said, "The Tribunal did not find it credible that Professor Reddy could not recall an event of such importance." This was a reference to the question and answer on Day 24 that is set out above.

75. Mr Ramasamy QC submitted that this shows that, contrary to the agreed directions on the law, the Tribunal appears to have engaged in some degree of speculation as to what was said or happened at the UCL proceedings. Moreover, this point had not been pursued by the GMC. If it had been, then Professor Reddy would have been allowed to refresh his memory about what he said at the UCL proceedings and could have explained why he said what he said. Mr Ramasamy QC submitted that this point ought not to have featured in the Tribunal's thinking at all. He submitted that as Professor Reddy was not given a fair opportunity to deal with the point, there was a serious procedural irregularity. Finally, he said that this was another example of the Tribunal positively seeking out evidence that was detrimental to Professor Reddy.

76. I do not accept these submissions. The Tribunal was engaged in the exercise of evaluating the credibility of Professor Reddy. This was of central importance to the case. In my judgment, the Tribunal was fully entitled to take into account an apparently evasive answer that was given by Professor Reddy to the question from Mr Gilbart. The Tribunal was entitled to take the view that his credibility was damaged by his stated inability to recall the explanation that he had given to the UCL disciplinary panel on this point of central importance. This was not a question of the Tribunal speculating about what Professor Reddy had actually said in the UCL proceedings. Rather, the Tribunal was focusing on Professor Reddy's statement in the Tribunal proceedings that he could not remember the defence that he had put forward at the UCL proceedings. It not surprising that the Tribunal found that this strained credulity. Professor Reddy had put forward two inconsistent versions of his thinking at the relevant time, one in his letter of 27 February 2017 and one in his evidence before the Tribunal. It was highly surprising that he could not remember which of the

two versions he had put forward at the UCL proceedings. Even though the UCL proceedings had taken place over two years previously, one might think that this is not something that a person in Professor Reddy's position would readily forget.

77. This did not amount to speculation on the part of the Tribunal, and it did not mean that the Tribunal was acting inconsistently with the agreed directions on the law. It did not mean that the Tribunal was basing its decision on what Professor Reddy had or had not said to the UCL disciplinary panel. The Tribunal was basing this part of its reasoning on an answer that Professor Reddy had given in the Tribunal proceedings.

78. There was no unfairness. The question and answer had taken place during the Tribunal proceedings and there was nothing to stop either party making closing submissions on it if they chose. The Tribunal was not bound to invite submissions on the point, especially as it was not the sole or even the principal reason for its conclusion about Professor Reddy's credibility. Professor Reddy and his counsel were well aware that the Tribunal was troubled by inconsistent explanations as to Professor Reddy's state of mind. It would not have assisted Professor Reddy to have given him the opportunity to refresh his recollection about what he had told the UCL disciplinary panel: what mattered was that when he was asked in the Tribunal proceedings about a central issue in the case, he claimed that he could not remember what he had said about it to UCL, and the Tribunal did not believe this answer.

79. The fact that the Tribunal referred to this evidence, and that it was unhelpful to Professor Reddy, does not mean that the Tribunal was seeking out detrimental material. The evidence came from a question from counsel for the GMC, not from a question from a Tribunal member.

Ground 3: Failure to deal with crucial defence evidence

80. The first time that Mr Swainsbury, on behalf of UCL, contacted Professor Reddy about his salary arrangements was on 29 July 2016. During a telephone call shortly afterwards, on 4 August 2016, Professor Reddy gave Mr Swainsbury the name of Chris Ford as the appropriate person to contact at UOC. The defence closing submission said that this was a "crucial window into the mind of Professor Reddy", because Mr Ford was the very person who would be able to provide UCL with all the relevant figures, as he eventually did in December 2016. The provision of these figures was what had led to the allegations against Professor Reddy. In other words, it was submitted that the suggestion that Mr Swainsbury should contact Mr Ford was a sign of a clear conscience on the part of Professor Reddy, because Professor Reddy would have known that as soon as Mr Ford was contacted the true position would come to light. Further delays in contacting Mr Ford, between August and December 2016, were the fault of UCL and were nothing to do with Professor Reddy. As Mr Ramasamy QC put it in the Grounds of Appeal, "if the Appellant was acting dishonestly, why would he direct UCL to the very person who would inevitably cause that dishonesty to be revealed?" Further, he submitted that there was no reason to think that Professor Reddy would not have volunteered Mr Ford's name had UCL approached him 10 months earlier, as UCL should have done.

81. Mr Ramasamy QC submitted that the Tribunal's failure to refer to this evidence in its Determination meant that it had failed in its duty to give adequate reasons for its

findings of fact. In addition, he submitted that the failure on the part of the Tribunal to deal with this part of the evidence (and the Tribunal's failure to ask Professor Reddy any questions about it), coupled with the Tribunal's failure to remind itself of the need for cogent evidence in cases of dishonesty, shows that the Tribunal failed to apply the standard of proof properly. Still further, Mr Ramasamy submitted that this was a further sign that the Tribunal was giving the impression of only looking for evidence that was detrimental to the Appellant. I will deal with these submissions in turn.

Adequacy of reasons

82. The extent of the obligation of a Medical Practitioners' Tribunal to give reasons was examined by the Court of Appeal in **Southall v GMC** [2010] EWCA Civ 407. At paragraph 54, Leveson LJ, giving the judgment of the Court of Appeal, endorsed the following observations by Sir Mark Potter P in **Phipps v GMC** [2006] EWCA Civ 397, at paragraph 106:

> "The latter case [**English v Emery Reimbold & Strick** [2002] 1 WLR 2409] made clear that the so-called "duty to give reasons", is essentially a duty which rests upon judicial and quasi-judicial tribunals to state their decisions in a form which is sufficient to make clear to the losing party why it is that he has lost. This requirement will be satisfied if, having regard to the issues as stated and decided and to the nature and content of the evidence in support, the reasons for the decision are plain, whether because they are set out in terms, or because they are implicit i.e. readily to be inferred from the overall form and content of the decision. I do not think that there is any real difference or substantial inconsistency, other than one of emphasis, between that principle and what was stated in **Gupta [**[2001] UKPC 61, [2002] ICR 785], namely that there is no general duty on the PCC of the GMC to give reasons for its decisions on matters of fact, in particular where the essential issue is one of credibility or reliability of the evidence in the case, whilst at the same time recognising that there are cases where the principle of fairness requires reasons to be given "even on matters of fact": see paragraph 14 of **Gupta**. It seems to me that such cases are those where, without such reasons, it will not be clear to the losing party why he has lost. It is not a necessary ingredient of the requisite clarity that the reasons should be expressly stated when they are otherwise plain or obvious."

83. In **Southall**, Leveson LJ continued at paragraphs 55 and 56:

> "55. For my part, I have no difficulty in concluding that, in straightforward cases, setting out the facts to be proved (as is the present practice of the GMC) and finding them proved or not proved will generally be sufficient both to demonstrate to the parties why they won or lost and to explain to any appellate tribunal the facts found. In most cases, particularly those concerned with comparatively simple conflicts of factual evidence, it will be obvious whose evidence has been rejected and why. In that regard, I echo and respectfully endorse the observations of Sir Mark Potter.

> 56. When, however, the case is not straightforward and can properly be described as exceptional, the position is and will be different. Thus, although it is said that this case is no more than a simple issue of fact (namely, did Dr Southall use the words set out in the charge?), the true picture is far more complex. First, underlying the case for Dr Southall was the acceptance that Mrs M might perfectly justifiably have perceived herself as accused of murder with the result that the analysis of contemporaneous material some eight years later is of real importance: that the evidence which touched upon this conversation took over five days is testament to that complexity. Furthermore it cannot be said that the contemporaneous material was all one way: Dr Corfield's note (and, indeed, her evidence) supported the case that it was (or at least could have been) Mrs M's perception alone. Ms Salem's note (accepted by Mrs M as 100% accurate so far as it went) did not support the accusation and her evidence was that if those words had been said, she would have recorded them. I am not suggesting that a lengthy judgment was required but, in the circumstances of this case, a few sentences dealing with the salient issues was essential: this was an exceptional case and, I have no doubt, perceived to be so by the GMC, Dr Southall and the panel."

84. It is clear, therefore, that, even in a complex case, the duty to give reasons is satisfied if the parties are given sufficient reasons to know why they have won or lost, and if the Tribunal provides a few sentences dealing with the salient issues.

85. Moreover, as Mr Hare QC pointed out, it is well-established that an appeal court is bound, unless there is compelling reason to the contrary, to assume that the lower court has taken the whole of the evidence into its consideration: **Henderson v Foxworth Investments Ltd** [2014] UKSC 41; [2014] 1 WLR 2600, at paragraph 48, per Lord Reed JSC.

86. In the present case, the Tribunal gave detailed and thorough reasons for its conclusion that Professor Reddy's evidence that he had not acted dishonestly was not credible. I have summarised them above. The Tribunal went considerably further than providing a few sentences dealing with the salient issues. It is true that the Tribunal did not specifically refer to the fact that Professor Reddy volunteered the name of Mr Ford in August 2016, but that does not mean that the Tribunal failed to give adequate reasons. The duty to give reasons does not require a Tribunal to deal with every matter that has been canvassed in the evidence or in the submissions. In **Jenyo v GMC** [2016] EWHC 1708 (Admin), Andrews J said at paragraph 44:

> "It is clear from the case law that the duty to give reasons does not oblige a tribunal to make express reference to every matter relied on by the doctor as supporting his version of events and to explain why it has decided that those factors are outweighed by other factors. In a case hinging on credibility, all the doctor needs to be told is why the Panel did not believe him."

87. Professor Reddy was told in detail why the Tribunal did not believe him.

88. Furthermore, I do not agree with Mr Ramasamy QC's characterisation of the (undisputed) evidence that Professor Reddy gave Mr Swainsbury the name of Mr Ford as a contact at UOC as a crucial window into the mind of Professor Reddy. By the time Professor Reddy had his conversation with Mr Swainsbury on 4 August 2016, it was clear that, one way or another, UCL would make contact with UOC and the true position in relation to the salary payments would come to light. In those circumstances, the fact that Professor Reddy gave Mr Ford's name to Mr Swainsbury was not of any great significance. It was neutral. It might have been a sign of a clear conscience, but it might equally simply have demonstrated that Professor Reddy was making a virtue out of a necessity. It would have been very suspicious if he had withheld the name of the person at UOC who dealt with these matters.

Failure to apply the standard of proof properly

89. At paragraph 20 of the Determination on Facts, the Tribunal reminded itself that "The standard of proof is that applicable to civil proceedings, namely the balance of probabilities. Applying this standard, the Tribunal must ask itself whether it is more likely than not that the events in question occurred." At paragraph 21, the Tribunal stated that it had accepted the advice of the Legal Assessor, which is a matter of record. The Legal Advisor had advised the Tribunal that cogent evidence is required in cases concerning allegations of dishonesty. In the vast majority of cases it is inherently less likely that something will be the result of fraud or dishonesty, rather than negligence or simple error. There is nothing, anywhere in the main body of the Determination, to suggest that the Tribunal applied a different standard of proof.

90. In those circumstances, I reject Mr Ramasamy QC's submission that the Tribunal failed to apply the standard of proof properly. The fact that the Tribunal did not specifically mention that Professor Reddy had suggested to Mr Swainsbury that he should get in touch with Mr Ford does not come anywhere close to lending support to a submission that the Tribunal failed to apply the correct standard of proof.

91. Still further, there is no basis for inferring, from the Tribunal's failure to mention that Professor Reddy mentioned Mr Ford, that the Tribunal was only interested in finding evidence that was detrimental to Professor Reddy.

Ground 4: The Tribunal's apparent prejudice, bias and general unfairness

92. On behalf of Professor Reddy, Mr Ramasamy QC relied upon a number of matters which he said amounted to apparent prejudice, bias, and general unfairness on the part of the Tribunal. In his oral submissions he frankly accepted that, while on its own this ground is unlikely to persuade a Court that the Tribunal's decision was wrong and/or unjust because of a serious procedural or other irregularity, it adds to the undercurrent of the Tribunal's behaviour towards the Defence, where the Tribunal is only looking for detrimental evidence. Though Mr Ramasamy QC therefore played down Ground 4, to a certain extent, any allegation of apparent prejudice, bias, or general unfairness against a judicial or quasi-judicial body is a serious matter.

The allegations

93. The main, but not the only complaint, relates to an issue that arose on Day 17 of the hearing, the eighth day of hearing evidence in the case, 20 November 2019. As

Professor Reddy was following the proceedings from the United States, it had been agreed that Mr Ramasamy QC would be given a break after each witness had been questioned, in order to take instructions from Professor Reddy on the evidence just given and to give Professor Reddy an opportunity suggest any further questions that might usefully be asked of the witness. Mr Ramasamy QC would retire to a different room and have a conversation with Professor Reddy over Skype or over the telephone. On this day, there was a break after the evidence of one of the GMC witnesses, Mr Dunk, Director of Operations for the Faculty of Brain Sciences at UCL, and the Tribunal called the defence team back into the hearing room after about 10 minutes. Mr Ramasamy QC said he was not ready and asked for some more time. A few minutes later, the hearing assistant was sent to the defence team's room to ask them to return to the hearing. Mr Ramasamy QC again said that he needed more time. When the parties returned to the hearing, the following exchange took place between the Chair and Mr Ramasamy QC:

"**The Chair**: Mr Ramasamy, normally speaking, if the doctor is present of course it would take no more than a minute, if that, to work out whether there were follow-up questions to tribunal questions when those tribunal questions have been quite – well, they have been minimal. I am disappointed that it took about a quarter of an hour, but do you have any questions arising out of tribunal questions?

Mr Ramasamy QC: Madam, you will appreciate that I am taking instruction remotely over a link which itself is complicating. You will understand that we are dealing with a bundle that runs to 517 pages, and in those circumstances, in my submission, it is wrong, with the greatest of respect, to suggest that I should have a minute or two to take instruction on tribunal questions.

The Chair. That is why I didn't call you in until it had been ten minutes, and we have now wasted more time, to be honest.

Mr Ramasamy QC. We have.

The Chair. Can I ask, are there any questions arising out of tribunal questions?

Mr Ramasamy QC. There are, madam, and I will be ready to ask those questions, I hope, in a matter of further minutes if I can complete the process. It will take me, I suspect, five or ten minutes, which is what has passed from that.

The Chair. You mean you need further time?

Mr Ramasamy QC. Yes. I am sorry to ask for time but you will appreciate that when I do have to go to pages in the bundle in order to cross-check and doing it is over a link, it is not the most straightforward process. It is obviously easier if we are all in the same room, we can turn pages up, but when it is remote it just adds a further degree of complexity.

The Chair. I have to say, I don't think this bundle extraordinary in any way in terms of its length.

Mr Ramasamy QC. It is not that, with respect, madam. It is the fact that we are doing it over a link which means that from the moment we step out we have to phone, make the link, we have to then ensure that everyone is on the right page, rather than, for example, me opening it and having it in front of everyone at the same time. It just slows the matter by a small proportion.

The Chair. 16.15, please.

Mr Ramasamy QC. Madam, I am not going to be ready by then. I am sorry. May I ask why it is that I am not being afforded in these circumstances time to take instructions on matters that I feel are appropriate? I would like, please, a reasoned answer with legal advice on that point. I am sorry.

The Chair. I do feel that you – you had the opportunity, and I assume that you spoke to the doctor when we had a coffee break earlier on.

Mr Ramasamy QC. Before tribunal questions.

The Chair. Yes, and I didn't consider the tribunal's questions were so extraordinary that it would take quite so long to sort it out. If you wish me to have the Legal Assessor's advice, then Mr Weinberg.

Mr Ramasamy QC. Madam, may I make it clear, I am asking for sufficient time to take instructions from my client remotely over a TV link about matters that I am to raise which arise from tribunal questions, and I would like, please, legal advice on whether it is appropriate to prevent me from having that time. Obviously, I well understand that the tribunal wishes to time-manage. It is now 4.10. The agreed position is that we will sit to 6.30 if need be. That was agreed a long time ago. I would like, please, sufficient time to take instructions from my client.

The Chair. Mr Weinberg.

The Legal Assessor. Madam, if it will assist you, I think that the position is really that the overriding objective is to ensure a fair hearing, and in the usual way that would include the advocates in the room having a reasonable amount of time to be able to take instructions. That reasonable period of time should reflect the matters that remain at large after the panel questions. Mr Ramasamy has made the position clear that there are additional matters that he needs to take. The question is would it be unfair to him to be precluded from having that additional time. I am not quite sure how long Mr Ramasamy is asking for actually.

Mr Ramasamy QC. Well the time that was given to me was five minutes or six minutes from the point it was pronounced. Allowing me time to get back to my room through a security code, make a telephone call to Philadelphia, make sure that is satisfactory, identify the pages, take instructions, make notes, return to the room and be ready, that give me less than six minutes. That is the difficulty. Every single part of the process requires additional delay.

The Chair. How long do you need?

Mr Ramasamy QC. If I could have 10 to 15 minutes now I will be ready. We are pretty much at the end of the process.

The Chair. I am determined that this will be a fair hearing. However, we also have to think about reasonableness, as the Legal Assessor said, of the amount of time that it takes. 25 past in that case. Thank you very much.

Mr Ramasamy QC. May I just note for the record it is now, according to the clock on the wall, 14 minutes past.

The Chair. Yes.

Mr Ramasamy QC. Thank you.

The Legal Assessor. Madam, can I suggest, there seems to be a difference between the parties that the princely sum of five minutes, could I suggest ----

Mr Ramasamy QC. Not the parties the tribunal.

The Legal Assessor. Sorry, the tribunal, Mr Ramasamy. There is a difference of five minutes and I think to avoid the potential of any future difficulties for the sake of five minutes, it may be more prudent to say that you would resume at 4.30 and that way it avoid any difficulties in practice for that short period of time. I appreciate that it wasn't your original view, but it may potentially avoid any difficulties.

The Chair. Okay. If you are ready before then, can you please let the tribunal know."

94. On his return, after the time allotted for taking instructions, Mr Ramasamy QC asked Mr Dunk a number of questions.

95. The day after this exchange, Mr Ramasamy QC raised the matter at the start of the hearing. He said that the approach taken by the Chair the day before had caused dismay and concern for the defence. He pointed out that each witness so far had been completed within his allotted time, and that Mr Ramasamy QC had not asked for a break after completing his cross-examination of Mr Dunk, because he had an arrangement with Professor Reddy that Professor Reddy would nod if he was content with the questions that had been asked. Mr Ramasamy QC said that he entirely understood and supported proper case management and proper time management.

However, he complained that pressure was being put on the defence to complete taking of instructions. He said that a reasonable observer would appreciate that he would require some more time than normal to take instructions. Mr Ramasamy QC also objected to the explicit criticism of the defence by the use of the words "disappointed" and "wasted more time". He said that these were words that reflected badly on the whole defence team if they were not withdrawn. He said that the concern was that it might reflect criticism of Professor Reddy or the defence team collectively. He said that the views that were expressed by the Chair were "prejudicial and critical".

96. Mr Ramasamy QC then reminded the Tribunal of the test for apparent bias, as set out in the well-known case of **Porter v Magill** [2002] 2AC 357. The test is whether a fair-minded and informed observer would conclude that there was a real possibility of bias. Mr Ramasamy QC said that in responding to the application for more time, the Tribunal should have adopted a more understanding and forgiving stance and should have stayed well away from expressing those critical views of the defence. He said that in some circumstances, advocates invite Tribunals to recuse themselves. However, he did not make such an application in the present case. He acknowledged that the first seven days had been conducted in good spirits and with efficiency, and said that the defence would very much like to return to that spirit and mode, rather than the mode and spirit which pervaded the events of the day before.

97. In responding to Mr Ramasamy QC's submissions, Mr Gilbart, for the GMC, and the Legal Assessor both noted that the defence was not inviting the Tribunal to recuse itself because of the appearance of bias.

98. In reply, Mr Ramasamy invited the Tribunal to withdraw the critical comments it had made the day before.

99. The Tribunal took some time to consider the submissions and then returned. The Chair said as follows:

> **"The Chair.** Thank you very much for that time. Mr Ramasamy, thank you for your words. I would like to make the point that I am of course a lay Chair and not a trained lawyer. My LLM does not make me a lawyer, I am very aware. The words "disappointed" and "time-wasting" were used in a lay context, so clearly I did not understand them in the way in which you took them.
>
> My principal concern yesterday was to time-manage. There was absolutely no intention to demonstrate any bias or prejudice against the defence or against Dr Reddy. If it was interpreted in that way, it was wholly unintentional and it is regretted.
>
> Moving forwards, it would certainly be helpful if the tribunal is kept up-to-date with an estimate of the time that you require when you are taking instructions, but I also, like you, look forward to returning to the workmanlike but cordial atmosphere that we have had for the last week and a half."

100. Mr Ramasamy QC replied as follows:

> "Madam, may I thank the tribunal and the Chair particularly for those words, and I well recognise, as somebody who has to sit in other settings, that things are sometimes said on reflection, such as the words you have just uttered are required. They are received in the spirit in which they are intended and they are gratefully received."

101. Mr Ramasamy QC then proposed an arrangement by which he would indicate to the clerk via hand signals whether he was ready to return to the hearing when the clerk came to his room whilst he was taking instructions from his client. The Chair agreed to this suggestion and said that the issue the day before was that the Tribunal was left "twiddling our thumbs wondering what the heck was going on with no clue", and that this was why she called the defence team back into the hearing when she did.

102. The Grounds of Appeal contended that the Chair's statements to the effect that the Tribunal was "disappointed" that the defence was "wasting more time" were "startlingly inappropriate" words to use.

103. No further complaint is made about the Tribunal failing to give the defence team enough time to take instructions from Professor Reddy during the remainder of the hearing. However, Mr Ramasamy submitted that there were a number of other respects in which the Tribunal behaved unfairly, or in a prejudiced or biased manner towards his client. These were:

(1) There was resistance to a defence request to allow time for Professor Reddy to give evidence fresh, and with time to read his statement in advance, rather than starting his evidence part-time through a sitting day. The Tribunal did, in the event, relent on this point, but only after sustained defence submissions;

(2) The Tribunal acted unfairly in handing down its Stage 2 Determination (that Professor Reddy's fitness to practise was impaired) at the point at which he had to leave for medical treatment, rather than waiting until the next day. This meant that he could not discuss the Stage 2 Determination with his counsel for a day or so after it was handed down. The Grounds of Appeal described this as "cruel";

(3) The Tribunal only appeared to look for negative points in relation to Professor Reddy's finances; and

(4) The Tribunal did not ask any questions of Professor Reddy at all, and did not wish to hear from any of the defence witnesses.

104. Mr Ramasamy QC submitted that these criticisms of apparent bias etc, when taken together with the criticisms in Grounds 1-3, meant that the Tribunal's conduct fell short of the proper standards of fairness.

Discussion of the allegations of apparent bias, prejudice and procedural unfairness

105. Notwithstanding Mr Ramasamy QC's frank acceptance that this fourth Ground of Appeal would not, in itself, be enough to persuade an appellate court to set aside the Tribunal's decision, I have set out the factual background behind the main complaint

of apparent bias in considerable detail, because, as I have said, it is a serious matter to accuse a Tribunal of apparent bias, prejudice or procedural unfairness.

106. In my judgment, the criticisms made by Mr Ramasamy QC of the Tribunal's treatment of him and his client do not come close to giving rise to the appearance of bias, or to demonstrating that the Tribunal engaged in prejudicial or procedurally unfair conduct. Nor do these criticisms serve to bolster or support the other grounds of appeal. Indeed, I am dubious whether allegations of apparent bias, prejudice, or procedural unfairness can ever have the limited function simply of providing support for other challenges. Either a Determination or judgment is vitiated by apparent bias, prejudice, or procedural unfairness, or it is not. In any event, however, the criticisms made in Ground 4 do not give rise to a free-standing reason for allowing this appeal, and they do not assist Professor Reddy with his arguments in Grounds 1-3.

107. As for the main criticism, relating to the time given to Mr Ramasamy QC to speak to Professor Reddy over the link at the end of the Tribunal's questioning of Mr Dunk, Tribunals are entitled to case-manage their cases and this often requires them to take a robust approach to time-management. The fact that other witnesses had been concluded within their allotted time-frame did not mean that the Tribunal was not entitled to ensure that the case continued to proceed efficiently, so long as this was consistent with fairness and the interests of justice. The break for Mr Ramasamy QC to take instructions at the end of Mr Dunk's questions was solely in order for him to check whether there were to be any follow-up questions to the Tribunal's own questions. Mr Ramasamy QC had already had the opportunity to cross-examine Mr Dunk. The Tribunal Chair was right to say that, in a normal case in which the doctor was physically present, it would normally take the doctor's advocate no more than a minute or so to take instructions at the end of the Tribunal's questions. The Chair was fully entitled to press Mr Ramasamy QC about whether he really needed more time. Mr Ramasamy QC was equally entitled to stand his ground and say that he did indeed need more time. In the end, he was given what he asked for. It is clear from the extracts from the transcript set out above that the exchange between the Chair and Mr Ramasamy QC became a little waspish and ill-tempered. However, these things happen in long hearings where the stakes are high. Anyone who has spent any significant time appearing as advocate in judicial or quasi-judicial proceedings will have come across more robust behaviour on the part of a court or tribunal than this. The Chair's statements to the effect that the Tribunal was "disappointed" that the defence was "wasting more time" displayed some irritation, but they did no more than that. They were not startlingly inappropriate. The Chair apologised for them the following day, and Mr Ramasamy QC gracefully accepted the apology on Professor Reddy's behalf. When, in the middle of the exchange, the Chair said, "we have now wasted more time, to be honest.", Mr Ramasamy QC replied, "We have". It is obvious from the context in which this was said that what Mr Ramasamy QC was implying was that it was now the Tribunal that was wasting time. It follows that he is essentially criticising the Tribunal for saying something to him that he said back to the Tribunal.

108. It is also significant that, whilst the matter was obviously of concern to Mr Ramasamy QC and Professor Reddy, and Mr Ramasamy QC raised the matter with the Tribunal the following day, he did not make any application for the Tribunal to recuse itself or

to halt the proceedings on the grounds of apparent bias, prejudice or procedural unfairness.

109. In my judgment, no reasonable fair-minded and informed observer would conclude that there was a real possibility of bias as a result of the Chair's conduct on 20 November 2019. Her behaviour did not exhibit prejudice and there was no procedural unfairness. This was, to be blunt, a storm in a teacup.

110. Each case depends on its own facts, but I respectfully agree with the observation of Auld LJ in **Aaron v The Law Society** [2003] EWHC 2271 (Admin), at paragraph 40, in which he said:

> "….irritation with those appearing before them is, sadly, the common lot of most courts and tribunals from time to time, and is not of itself a basis, subjectively or objectively, for requiring them to recuse themselves on account of bias from further proceedings between the same parties."

111. As for the other criticisms of apparent bias, prejudice and procedural unfairness:

(1) There is nothing at all unfair in expecting a party to give his evidence as soon as the previous witness's evidence has come to an end. Professor Reddy had a day's warning that this was the Tribunal's intention, and it had been made clear that the Tribunal would not go straight into Professor Reddy's cross examination – there was to be a break for him to speak to his counsel first. Case management issues such as this are quintessentially matters for the Tribunal to decide and the suggestion that the appearance of bias exists because the Tribunal did not (at first) accede to the doctor's request is, frankly, hopeless. It would be wholly invidious if, every time a court or tribunal took a decision on a matter of procedure that was adverse to a party, that party was able to say that this demonstrated apparent bias. In any event, the Tribunal eventually agreed to postpone the start of Professor Reddy's evidence;

(2) There is no possible valid cause for complaint about the timing of the Stage 2 Determination. As Mr Hare QC submitted, and as the sensible and realistic approach that has been taken by Professor Reddy in this appeal to the issue of impairment demonstrates, once the Tribunal had made a Stage 1 finding of dishonesty, a Stage 2 Determination of impairment was virtually certain. There was no need to allow Professor Reddy time to prepare himself for it, or to obtain his counsel's advice before the Determination was made. A day had passed between the findings of fact and the parties' submissions on impairment. It is a gross exaggeration to describe the Tribunal's conduct in this regard as "cruel". A finding that his fitness to practise was impaired was bound to be a heavy blow for Professor Reddy, whenever the Determination was announced;

(3) I have already rejected the submission that there is any valid basis for the contention that the Tribunal only looked for negative points in relation to Professor Reddy's finances;

(4) I must confess that I find mystifying the submission that the fact that there was apparent bias, prejudice or procedural unfairness arising from the fact that

Tribunal did not ask any questions of Professor Reddy at the end of his oral evidence. There is nothing improper in a court or tribunal deciding not to ask questions of a party, or indeed of any witness. In this case, a very great deal of evidence was heard by the Tribunal over many days. The GMC's witnesses were cross-examined extensively by Mr Ramasamy QC and Professor Reddy's case was clearly and skillfully set out by those questions and through his own witness statement. He was then cross-examined by counsel for the GMC. It is very often the case, in my experience, that in lengthy proceedings the court or tribunal asks few if any questions of the most important witnesses. This is not a sign of apparent bias, or of a lack of interest. Rather, it is a sign that the court or tribunal feels that the case has been fully set out before them. Indeed, sometimes, by asking too many questions or by asking particularly penetrating questions, a court or tribunal might inadvertently give the impression of partiality towards one side or the other. Proceedings such as these are essentially adversarial, not inquisitorial. As for the decision that there was no need to hear from any of the defence witnesses, this was a decision in Professor Reddy's favour, not against him. It meant that the factual evidence that was provided by these witnesses was not challenged. These witnesses said that, from what they knew of Professor Reddy, they found it difficult to believe that he would be dishonest. There was no reason whatsoever for the Tribunal to doubt this evidence, but it was of limited significance, because the witnesses had not heard and seen the evidence that the Tribunal heard and saw.

Conclusion

112. For these reasons, this appeal is dismissed.