SECOND DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 11
XA49/25

Lord Justice Clerk
Lord Malcolm
Lord Armstrong

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in the appeal under section 11 of the Tribunal Inquiries Act 1992

by

SANJIT NANDHRA

Appellant

against

a decision and associated order of the NHS Tribunal dated 12 May 2025

and

LOTHIAN HEALTH BOARD, FIFE HEALTH BOARD AND LANARKSHIRE HEALTH BOARD

Interested Parties

Appellant: McGregor KC; BTO Solicitors LLP
Respondent: Clair; NHS Scotland Central Legal Office

12 March 2026

Introduction

[1] This is an appeal under section 11 of the Tribunals and Inquiries Act 1992 by Saranjit Nandhra, a dentist. He was included in the dental lists maintained by the interested parties to this appeal - Lothian Health Board, Fife Health Board and Lanarkshire Health

Board - until 12 May 2025 when the NHS Tribunal determined that he was "unsuitable" to continue to be included because of his professional conduct.

[2] The tribunal found that he exploited the Scottish Government's emergency payment scheme the during the COVID-19 pandemic. Whilst accepting that the appellant claimed only payments he was legally entitled to, the tribunal found that he had artificially limited the number of NHS patients his practice, Sayegh Orthodontics Ltd, would see, maximising his return from the scheme in a manner compliant with its letter, but not its spirit. As a result, he was unconditionally disqualified from the health boards' lists and, if this appeal fails, may no longer provide NHS dental services. The allegation sustained stated:

> "e) The respondent exploited the NHS emergency payment system (designed to encourage the maximum possible care), by artificially limiting the number of patients that can be seen and attempting to solicit dentists under his control to do so."

[3] The appellant seeks to overturn the tribunal's decision and invites this court to determine that he is not unsuitable to provide NHS dental services, failing which he seeks to have the decision quashed and that we remit his case to be redetermined. He contends on seven grounds that the tribunal: applied the wrong legal test; erred in law in finding him unsuitable; failed to take into account relevant factors; took into account an irrelevant factor; proceeded on a misapprehension of the evidence before it; reached an irrational and disproportionate decision on sanction; and failed to provide adequate reasons.

[4] In the absence of a respondent, the three health boards entered process as interested parties in the public interest. They invite the court to refuse the appeal, maintaining that the tribunal applied the correct legal tests, took account of all relevant considerations and gave a well-reasoned and rational decision.

Factual background

[5] The appellant qualified as a dentist in 1984. Other than this case, he has no adverse findings as to his character or conduct. He is the owner of Sayegh Orthodontics Limited. Between January 2011 and January 2018, MM worked for SOL as a self-employed associate. That relationship ended in January 2018 in acrimonious circumstances, resulting in MM making a complaint, under five separate heads, to the NHS Tribunal and raising Employment Tribunal proceedings.

[6] The sole allegation that the tribunal found proved related to the Scottish Government's emergency payment system for dentists during the COVID-19 pandemic. In late March 2020, the Chief Dental Officer ordered all dental practices to close, with the sole exception of urgent dental care centres for emergency care only. The Scottish Government supported NHS dental practices through this period by way of a "top-up payment" of 80% of their "gross item of service" – i.e. their pre-COVID gross income. Limited re-opening of practices was permitted from August 2020, albeit the health restrictions imposed – principally a requirement that surgeries be deep-cleaned between patients – very substantially reduced throughput. Throughout this period, the top-up payment was provided on an unconditional basis.

[7] On 26 October 2020, the CDO wrote to practices advising that, from 1 November 2020, Scotland would move to phase 4 of the "NHS Dental Remobilisation Plan" and practices could then offer, "the full range of NHS treatments to all patients in need of both urgent and non-urgent care". The CDO acknowledged that this was not "business as usual" because COVID-19 mitigation continued to represent a significant constraint. The emergency payment system was therefore modified. NHS dental practices would be paid, again on an unconditional basis, 85% of their gross item of service until 28 February 2021.

[8] The Scottish Government anticipated introducing a system of "tiered financial support" from 1 March 2021 when the system was intended to work as follows: NHS Scotland would calculate, for each dental practice, a "baseline monthly item of service activity" according to the practice's activity between 1 April 2019 and 31 March 2020. From 1 March 2021, the practice's dental activity and NHS registrations would be measured against the baseline. The extent of financial support offered was contingent upon the level of service provided. Entitlement to the highest "Raise Tier" top-up payment of 85% of gross item of service required a practice to achieve a throughput of NHS patients of at least 20% of pre-pandemic levels. At the other end of the scale, no NHS activity and deregistration of NHS patients would result in withdrawal of NHS financial support entirely.

[9] As the tribunal observed:

> "The clear purpose of both remobilisation and the announcement that there was to be a correlation between the number of patients seen and the level of top up payments to be paid was to encourage an increase in the number of patients being seen."

[10] The pandemic intervened. From 26 December 2020 "Level 4" restrictions were introduced in Scotland. The CDO wrote to NHS dental practices on 5 January 2021, advising that the move to tiered financial support would be delayed by 3 months.

[11] On 18 January 2021, the appellant emailed his colleagues in SOL as follows:

> "1. Please ignore figures [SM] sent to you regarding the amount of money each practice has to claim to maintain the grant. [SM] gave each practice figures that needed to be claimed to maintain the grant. The grant is now guaranteed with no submissions required up till June. As things stand, each practice will need to submit X amount as of June. I will supply the figures nearer the time.
>
> 2. To generate a big schedule payable in February, SOL practices have been working flat out including Saturday. This is no longer necessary. No further Saturdays are to be worked as of February. We might need to restart them second half of April_ If there are any Saturdays open in February but full, then don't cancel.

> 3. After this week when all the debond claims have been sent, I think we should slow down on the number of patients we see daily. This is because we are still getting the grant whether we see 10 or 100 patients. We will need to delay seeing new patients and recalls. We only need to keep [R] super busy as her income is extra so book her new patients and make sure that her approvals are sent off on a timely manner.
>
> 4. [K], your primary role with your and new assistant is TC for fife (*sic*) and London street. [S] is apparently struggling and needs support. Your other two duties are to deal with staff complaints , contracts such as electricity and services and to look after myself and [J] until we have mastered the Scottish system. I want to thank you all for the hard work you put in with regards to these horrendously large number of debond claims. I know it has been stressful. I am open to suggestions as to how we can make this exercise easier in the future.…".

The reference to "debonding" patients is a reference to submitting claims for payment to the NHS once orthodontic work is completed.

[12] In response to an email of 19 January 2021 from a colleague stating, "Here's a suggestion to guarantee that we all have approved cases ready to go once the 'grant' stops," the appellant replied, emailing also his colleagues in SOL:

> "…I want the staff to have a chance to catch up on other business unrelated to claims in February. Also, the new patients need addressing, but I am open to suggestions about when we see them. [R] is not fully busy right now, so my priority is to get her up to speed. We have more than the number of new patients and recalls and retainers check to get everyone busy post grant. [N], I agree that we need to see new patients so that we can send off approvals, and we will do this soon. At the moment I think let's just slow down, keep expenses low and reevaluate in a few weeks. Please let me know what your options are. Thanks."

[13] The allegation against the appellant is that these emails were a profit-motivated instruction to exploit the system by reducing the number of NHS patients seen, damaging patients' interests "because of, for example, waiting lists increasing". The appellant's evidence was that the policy he had proposed was intended to give overworked staff a break. He submitted that, in any event, there was no evidence that SOL treated any more or fewer NHS patients than he was required to.

The hearing and the tribunal's decision

[14] Following a preliminary hearing on 17 March 2023, the complainer's "representations for inquiry" and the appellant's answers were lodged. The tribunal heard the evidence of several witnesses including the complainer and the appellant in a hearing that took place on 1 November 2023 and 24 -25 February 2025. Thereafter, written submissions were exchanged with a hearing on them held on 2 April 2025. The tribunal found three of MM's allegations not proved. A fourth allegation, that the appellant had used MM's login details to process financial claims, was found proved but the tribunal held that it was not a culpable act in the circumstances.

[15] On the fifth allegation, the tribunal rejected the appellant's evidence. It considered that the reference to, "still getting the grant whether we see 10 or 100 patients" in his email of 18 January 2021 (reproduced at para [11] above), his observations in the first and second paragraphs of that email that the top-up payment was now "guaranteed with no submissions required" and that it was no longer necessary to "generate a big payment schedule in February" made clear the financial motivation behind his instructions.

[16] The instruction in that email to "slow down on the number of patients we see daily" was plainly an instruction to see fewer patients. The observation in the email of 19 January 2021 that, "We have more than the number of new patients and recalls and retainers check to get everyone busy post-grant" was "inelegantly-phrased" but taken by the tribunal as "a clear instruction to 'queue' patients so that when the universal top up payment was to come to an end in June 2021, the practice would benefit from a higher number of patients being processed thereafter."

[17] The tribunal accepted that the emails referred to staff workload, particularly the "horrendous number" of patients who had been debonded. The tribunal further accepted

that SOL's staff were working hard on debonding. It noted that debonding was for the financial benefit of SOL and the instruction to slow down debonding came only when it was clear that it had no relationship to the level of top-up payments SOL would otherwise be entitled to. Had the purpose of the slowdown been to give SOL's overworked staff a break, the tribunal considered the appellant would have said so in the emails. He did not.

[18] Turning to the appellant's submission that there was no evidence that fewer NHS patients were actually seen, the tribunal considered this "a curious submission" given that the appellant's answers to MM's representations (not lodged with this appeal) included the following excerpts:

> "There was a transition period following COVID lockdown whereby there was the slowing down of patients seen within SOL…
>
> …Therefore, SOL had to reduce the numbers of patients attending at the practice…
>
> …There was no artificial limitation of patients but rather there was a limitation of the number of patients in accordance with the NHS operating procedures in place at that time. During the timeframes in which the patient numbers were reduced.
>
> …no emails/feedback were received by [the appellant] disputing the strategy to limit patient numbers…
>
> …Therefore, given the support payments were made on the basis of the patient documentation submitted, the NHS were aware of SOL's patient limits and were by making payment, agreeable with them…"

The tribunal found that these passages demonstrated that it had never been in dispute that SOL limited patient numbers. It attached weight to the fact that SOL had access to information about the numbers of patients seen but led no evidence on the point.

[19] The tribunal considered that the top-up payment scheme was "poorly designed and constructed". That the appellant had operated within the letter of the rules did not alter the fact he had significantly transgressed their spirit. The purpose of the NHS was to provide high-quality healthcare, free at the point of use, in a timely manner. A dentist is obliged to

put patient care first. The appellant had undermined that purpose. He had drawn funds from the NHS without providing the expected level of patient care and he had, by reducing the availability of appointments, created a systemic burden of increasing waiting times. Whilst the tribunal did not consider the fraud ground was engaged, because the appellant had not secured a benefit to which he was not entitled, it found the unsuitability ground made out. SOL's policy was at odds with the obligation of dentists to put patients' interests first and contravened the spirit of the top-up scheme. The tribunal considered this was unprofessional conduct rendering him "unsuitable," under the National Health Service (Scotland) Act 1978 section 29(7A), to be included on dental lists maintained by certain NHS Health Boards.

[20] In written submissions, the appellant had explained (in mitigation on the hypothesis that his defence to the proceedings may not succeed) that he had been providing dental care since 1984 without complaint by the GDC or any NHS Health Board or tribunal. It would be unjust to disqualify him. His 1500 NHS patients would suffer as his colleagues could not take them on and the need for them to find treatment elsewhere would have considerable adverse impact on patients in central Scotland generally.

[21] On sanction, an order for conditional disqualification was not appropriate when the appellant had shown no insight and the nature of his conduct did not involve clinical failings that might be remediable with training. His conduct was "deliberate and calculated" and had damaged the NHS and patients alike. There was no material mitigation offered. The tribunal saw no reason not to disqualify the appellant.

Appellant's submissions

[22] Senior counsel invited the court to allow the appeal, reduce the tribunal's decision, and substitute for it a finding that there was no lawful basis to determine the appellant "unsuitable" for inclusion in NHS dental lists.

[23] The tribunal had been obliged to conduct a holistic assessment in determining both unsuitability and sanction, *Kelly* v *Shetland Health Board* [2009] CSIH 3, 2009 SC 248. It had failed to do so and had failed to consider the impact of the appellant's removal from NHS lists on patients in need of NHS dental services. That was an important factor in itself: *Bawa-Garba* v *General Medical Council* [2018] EWCA Civ 1879, [2019] 1 WLR 1929 at [93]. The final iteration of the top-up payment scheme required the appellant to achieve 20% of his pre-COVID level of patient throughput and he had achieved it. There had been no wrongful conduct in circumstances where the appellant had been lawfully entitled to the sums that he had claimed.

[24] The tribunal, in determining sanction, had stated there was no mitigation. That was simply incorrect. The appellant's unblemished forty-year career as a dentist was powerful mitigation. There had been no similar events in the period since the disputed claims, and no risk of repetition since the scheme was revoked. Reference was made to *Cheatle* v *General Medical Council* [2009] EWHC 645 (Admin) and to the observations of Cheema-Grubb J in *Watters* v *Nursing and Midwifery Council* [2017] EWHC 1888 (Admin) at [38]. To disqualify the appellant against that backdrop was irrational.

[25] The tribunal's reasoning was based on both a misunderstanding of the evidence and took into account irrelevant matters. The tribunal had decided for itself that the appellant had failed to provide "the expected volume of care". By fixing the entitlement to the "Raise Tier" at 20% of pre-COVID activity, the NHS had implicitly defined "the expected volume of

care" at that level. The evidence demonstrated that the appellant and SOL had achieved that level. There was no relevant basis to criticise him. At worst, it could be said there was a "grey area". In such circumstances, a finding of a lack of integrity was not appropriate (*Hoodless* v *Financial Services Authority* [2003] UKFTT FSM007 at [19]) and it was not appropriate to set unrealistically high standards or to require the appellant to be a paragon of virtue (*Wingate & Evans* v *Solicitors Regulation Authority* [2018] EWCA Civ 366, [2018] 1 WLR 3969 at [102]). The tribunal had also failed to consider the context in which the complaint arose – the bitter dispute between the appellant and MM, in which MM had unsuccessfully pursued the appellant in the Employment Tribunal. It was suggested that the complaint was retaliatory, a factor to which the tribunal had attached insufficient weight.

[26] The tribunal had indulged in impermissible speculation. The top-up payment scheme was deliberately drafted by the Scottish Government to permit a dentist, in the period prior to June 2021, to receive financial support regardless of how many patients were treated. Before June 2021 there was no connection whatsoever between the number of patients treated and the financial claims made. From June 2021, when top-up payments were linked to activity, the appellant treated the number of patients required. No evidence was led from any patient, or any other source, to suggest that the appellant had failed to treat any patient who was mid-treatment. There was no evidence of any adverse outcome. The tribunal's assessment of both suitability and sanction was coloured by speculation.

[27] Finally, the tribunal had failed to provide adequate reasons: *Wordie Property Co Limited* v *Secretary of State for Scotland* 1984 SLT 345. The appellant's written submissions before the tribunal had set out mitigation which the tribunal had not only failed to address but had also wrongly suggested that no mitigation was advanced. The informed reader, and

the court, were left in real and substantial doubt why the tribunal had concluded that it was not unjust to impose unconditional disqualification. Failure to evaluate mitigatory factors put forward by a regulated professional is an error of law: *O* v *Nursing & Midwifery Council* [2015] EWHC 2949 (Admin) at [75]. In the present case, there was no public interest in sacrificing the appellant's career, nor of leaving SOL's 1500 NHS patients without an NHS dentist, simply to "satisfy a demand for blame and punishment": *Bijl* v *General Medical Council* [2001] UKPC 42 at [13].

Interested parties

[28] Counsel for the interested parties invited us to refuse the appeal and adhere to the decision of the tribunal. Counsel agreed with, and adopted, the reasoning of the tribunal and emphasised the deference this court ought to show to specialist tribunals: *Professional Standards Authority* v *Nursing & Midwifery Council* [2017] CSIH 29; 2017 SC 542. It should not be readily inferred that a specialist tribunal has fallen into error, *South Bucks District Council & Anor* v *Porter* (No 2) [2004] UKHL 33, [2004] 1 WLR 1953, and the court should only interfere with its decision-making if it had been plainly wrong. It was well-settled that cases involving non-clinical conduct could, nonetheless, engage the specialist knowledge of the tribunal: *Black* v *General Dental Council* [2013] CSIH 39 at [21].

[29] The interested parties referred to this court's decision in *Fyfe* v *Council of the Law Society of Scotland* [2017] CSIH 6, 2017 SC 283, particularly the observation of the Lord Justice Clerk (Dorrian) that sanction is an area where professional tribunals' views are to be given, "the utmost respect". It is a fundamental principle of professional regulation that the interests of the profession are paramount and best served by a response to misconduct which protected the public and maintained their confidence. Accordingly, personal

hardship was not particularly strong mitigation: *Bolton* v *Law Society* [1994] 1 WLR 512 at 517– 519.

[30] Applying those principles to its decision, the tribunal's judgement could not be faulted. The tribunal had a wide discretion to determine suitability, as befitting its specialist knowledge. Its conclusions were logical and reasonably open to it on the evidence. The tribunal's observation that there was "no mitigation offered" was referring to the lack of an explanation why the appellant had acted as he did. The only three outcomes open were to do nothing, impose a conditional disqualification, and make an unconditional disqualification. The third was the only suitable response to conduct it had found to be deliberate, damaging to the NHS and patients and committed at a time of national need. The tribunal's conclusions that the top-up payment scheme was intended to increase the number of patients seen, and that reducing the number of NHS patients seen was both contrary to the intent of the scheme and would harm the interests of those patients, were both readily available to it. Indeed, they were axiomatic.

[31] The tribunal's reasons were adequate. It was not required to address every point raised in the appellant's favour and it could not seriously be suggested by the appellant that he did not understand why he was found to be unsuitable. The tribunal had explicitly stated that it was "greatly assisted" by parties' written submissions demonstrating that it gave them detailed consideration. Finally, if the appeal was allowed, counsel invited the court to remit the case to the NHS tribunal for reconsideration. There was no prejudice to the appellant from a remit when the decision of the tribunal would not take effect until this appeal was determined.

Applicable law

[32] The NHS Tribunal is established by section 29 of the National Health Service (Scotland) Act 1978. The effect of section 29(2) and 29(3) of the 1978 Act is that where the tribunal receives representations that an individual included in a relevant list meets any of the conditions for disqualification, it either shall inquire (where the representations come from a Health Board) or may inquire (where the representations come from any other person) into the case.

[33] The conditions for disqualification are set out in s 29(6) – (7A):

> "(6) The first condition for disqualification is that the inclusion or continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list—
>
> (a) in relation to a list referred to in subsection (8)(a), (cc) or (e), perform;
>
> (b) in relation to a list referred to in subsection (8)(c) or (d), undertake to provide or are approved to assist in providing;
>
> […]
>
> (7) The second condition for disqualification is that the person concerned—
>
> (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
>
> (b) knew that he or (as the case may be) the other was not entitled to the benefit.
>
> (7A) The third condition for disqualification is that the person concerned is unsuitable (by virtue of professional or personal conduct) to be included, or to continue to be included, in the list."

Subsection (8)(c) defines a list as including "a list of dental practitioners…undertaking to provide, and of persons who are approved to assist in providing, general dental services". Subsection (11) provides that cases engaging the first, second, and third conditions are, respectively "efficiency", "fraud", and "unsuitability" cases. The civil standard of proof applies.

[34] Where the tribunal is satisfied that the conditions of disqualification are met, the 1978 Act provides:

> "**29B Powers of NHS Tribunal.**
> (1) Subsection (2) applies where the Tribunal are of the opinion—
> (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
> (b) on inquiring into a fraud case, that the person meets the second condition for disqualification;
> (c) on inquiring into an unsuitability case, that the person meets the third condition for disqualification.
>
> (2) The Tribunal shall disqualify him for inclusion in—
> (a) the list to which the case relates;
> (b) all lists within the same paragraph of subsection (8) of section 29 as that list; and
> (c) where the list to which the case relates is a list referred to in—
> (i) paragraph (c) of that subsection, all lists within paragraph (cc) of that subsection;
> (ii) that paragraph (cc), all lists within that paragraph (c).
>
> (4) The Tribunal shall not make disqualification…under this section if they are of the opinion that it would be unjust to do so.
>
> (5) A disqualification under this section shall have effect when the case is finally concluded.
>
> (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list."
> […]
> (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme."

[35] Section 29C provides that disqualification may be conditional:

> "**29C Conditional disqualification etc.**
> (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
>
> (2) Conditions may be imposed by virtue of subsection (1) with a view to—
> (a) removing any prejudice to the efficiency of the services in question;…

(b) preventing any acts or omissions within section 29(7)(a);
(c) ensuring that the person—
(i) performs, undertakes to provide or assists in providing only services specified (or of a description specified) in the condition;
(ii) undertakes an activity (or course of activity) of a personal or professional nature, or refrains from conduct of a personal or professional nature, so specified (or of a description so specified), (as the case may be).

(3) Conditions so imposed shall have effect when proceedings in the case are finally concluded."

[36] Section 11 of the 1992 Act provides for a right of appeal, on a point of law only, to this court. Considerable guidance is found in the authorities on how the tribunal, and the court, are to carry out their functions.

[37] The tribunal has a duty to give reasons for its decision. Those reasons may be given "shortly and succinctly" but must be intelligible and adequate: *Kelly* at [18]. They must leave the informed reader, and the court, without "real and substantial doubt as to what the reasons for [their decision] were and what were the material considerations which were taken into account in reaching it": *Kelly* at [15], quoting *Wordie*, the Lord President (Emslie) at 348 and *South Bucks* at 1964. As Lord Brown of Eaton-under-Heywood observed in that case:

> "'The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ''principal important controversial issues'', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required [depends] entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration."

[38] The purpose of the tribunal is not to punish appellants for their past wrongdoing, which is the role of the regulatory authorities or the criminal justice system. Instead, the tribunal's function is to balance the interests of the public in relation to the health service and the practitioner's interest in continuing their professional career (*Kelly* at 16). It follows that the point of assessment for the tribunal is as at the date on which the decision is made, looking forward rather than back: *Meadow* v *General Medical Council* [2006] EWCA Civ 1390; [2007] 1 QB 462 at [32]. In *Cheatle* Cranston J observed at [22]:

> "In circumstances where there is misconduct at a particular time, the issue becomes whether that misconduct, in the context of the doctor's behaviour both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired. The doctor's misconduct at a particular time may be so egregious that, looking forward, a panel is persuaded that the doctor is simply not fit to practise medicine without restrictions, or maybe at all. On the other hand, the doctor's misconduct may be such that, seen within the context of an otherwise unblemished record, a Fitness to Practise Panel could conclude that, looking forward, his or her fitness to practise is not impaired, despite the misconduct."
>
> [Emphasis added]

These observations apply to the inclusion of a practitioner in a health board's list.

[38] The court will not lightly overturn the decision of a specialist tribunal. It will interfere only where it is demonstrated there is a serious flaw in the decision-making process, such as a failure to consider a relevant factor. Absent such a flaw, provided the tribunal's decision is not "plainly wrong", the court will afford respect to the tribunal's specialist knowledge and the benefit it has from seeing and hearing witnesses: *Professional Standards Authority*, Lord Malcolm delivering the opinion of the court at [25].

Decision

[39] Parties advised that the NHS tribunal included an experienced dentist alongside a solicitor and a lay member with a health service background. Accordingly, the tribunal had

relevant knowledge and experience of dentistry during the pandemic. The tribunal set out the evolution of what dental services were permitted and when, and associated NHS funding arrangements, over the pandemic period before examining the appellant's email correspondence in that context. This was a specialist tribunal enjoying the advantage of seeing and hearing witnesses and entitled to institutional respect for its determination as Lord Malcolm explained in *Professional Standards Authority*. We shall identify certain material passages in the tribunal's decision before adjudicating on the grounds of appeal. All emphasis is added.

[40] We particularly note the following passages:

> "In relation to the facts found proved under Allegation (e), in making its decision, the Tribunal concluded that the rules around remobilisation and the payment of top up payments were poorly designed and constructed, such that they left the door open for exploitation by the unscrupulous. The top up payment of 85% was intended to act as a safety net to ensure preservation of practices and continuity of income. It was not intended to act as a lavish gift or an invitation to be unethically abused for financial advantage. The clear intention behind remobilisation was to encourage practices to speed up seeing and caring for patients, in order to begin to tackle the backlog of patients awaiting care and to meet ever-increasing patient needs. The Tribunal recognises that the approach of the [the appellant] complied with the letter of the rules in force at that time, but in the Tribunal's opinion it plainly did not comply with the spirit of the provision of NHS services during the pandemic or, indeed, the dentist's primary obligation to put patient care first.
>
> Instead of endeavouring to increase or even maintain the number of patients being seen, during a period in which there was no change in the ability of his practice to do so, [the appellant] chose to prioritise profit over patient care and "slow down on the number of patients". In its judgement, [the appellant's] deliberate approach displayed a complete lack of concern for delivery on behalf of the NHS and / or for patient care. It was a conscious decision to adopt a tack which he knew would be detrimental to patients' interests for no reason other than to benefit his practice financially. The Tribunal considers that this amounted to exploitation of the system at the expense of both the NHS and patient care.
>
> The National Health Service exists to provide high-quality healthcare that is free at the point of need, ensuring that all patients receive timely, effective, and compassionate treatment, regardless of their financial means. It aims to improve the health of the nation by delivering comprehensive care, reducing health inequalities, and using public funds efficiently to benefit the greatest number of patients.

> [The appellant] has undermined this purpose in two significant ways. First, he has incurred a financial cost to the NHS – drawing funds from the NHS without providing the expected volume or quality of care, thus diverting resources from other patients and services. Second, he has imposed a broader systemic burden – by reducing the availability of appointments, increasing waiting times, and ultimately impacting the overall health outcomes of the population the NHS is designed to serve."

[41] In considering the appellant's unsuitability, the tribunal noted that his emails displayed:

> "…a deliberate intention to limit the number of patients to be seen, in order to create a reservoir of patients who could be seen after the top up payment was limited. The purpose of this was to be able to claim as much as possible once the tiering system came into effect, while in the meantime getting paid for doing as little as possible contrary to the purpose and spirit of the remobilisation process. This policy was at odds with the primary obligation of dentists to put patients interests first and contravened the spirit of rules that were designed to support dentists in doing what they could to maintain their practices and attend, so far as possible, to patient needs during the pandemic for the ultimate benefit of patients. Ongoing orthodontic patients would require regular appointments to monitor and influence progress. Reducing patient contact would therefore be detrimental to those patients who were mid-treatment. In the Tribunal's judgement, [the appellant] exploited the system and artificially reduced the number of patients being seen for personal gain / the benefit of his practice, to the detriment of patients and the NHS which was paying the top up payments. That is conduct of a professional nature which the Tribunal considers to fall within the scope of the suitability ground for disqualification, notwithstanding that the rules permitted the unscrupulous to exploit them."

As counsel for the health boards put it, more pithily, the aim of the scheme was to remobilise dental services and the appellant's actions were intended to demobilise them.

[42] The tribunal considered that it would be unjust to make no order at all. The tribunal noted that the appellant's conduct was:

> "…deliberate and calculated. It damaged the NHS and patients alike. It was motivated by self-interest. The Tribunal had no material before it that persuaded it that disqualification would be unjust. There was no mitigation offered: indeed [the appellant] sought to justify his actions by reference to staff welfare, an explanation which the Tribunal rejected. In the circumstances, an order for disqualification is appropriate."

[43] The tribunal then considered, with reference to s 29C of the 1978 Act, if a conditional disqualification would suffice. The conditions in subsection 2 were not apt because the appellant had not displayed clinical failings that would be remediable. Nor had he shown a lack of judgement into which he has insight. The tribunal concluded:

> "Rather, in a time of national need, he has exploited a government scheme, putting profit and self-interest above patient care and the interests of the NHS. The Tribunal considered this to be conduct which renders [the appellant] unsuitable for continued inclusion in the list and it did not consider that conditional disqualification would be adequate or appropriate."

[44] We have considered all the written and oral submissions on behalf of the appellant and those in reply. We have also considered the tribunal's reasons as a whole and place particular significance on the passages quoted above, some of which we have given emphasis where they are particularly relevant to the grounds of appeal and arguments for the appellant. We will address the individual grounds of appeal in turn.

Ground 1

[45] We are not persuaded that the tribunal misdirected itself or transgressed the approach proposed by Lord Clarke in *Kelly*. We note that whilst prosecution and punishment may be addressed in criminal proceedings, his lordship added that the tribunal's function was to balance the interests of the public in relation to the proper operation of the health service and the interests of persons pursuing a dental career. The tribunal found that the appellant took steps to the disadvantage of his patients for financial advantage at a time of crisis in society generally, and in dentistry specifically. Given its findings, we infer that the tribunal considered that the appellant acted with a lack of integrity. In any event the tribunal was entitled to conclude, given the appellant's conduct, that the professional requirements of a person carrying out skilled dental procedures at the

expense of the public purse - for which the trust of individual patients, patients generally and health boards is essential - could not be met by the appellant. Accordingly, the tribunal was entitled to conclude that he should not remain on the health boards' lists.

Ground 2

[46] A member of a profession owes a duty to the public and a duty to colleagues to uphold the reputation of his or her profession. The tribunal properly assessed the appellant's conduct and did not set unrealistically high standards or judge him against the standards of a paragon of virtue. The finding that the appellant had exploited the system and sought to sustain a level of payment under a scheme intended to mobilise dental services after their pandemic-enforced disruption, whilst reducing the numbers of patients he treated for financial benefit, and no therapeutic reasons so far as his patients were concerned, demonstrated a serious lack of integrity even if the tribunal did not use that term. We note that in *Fyfe*, at para [36], the court adopted what was said by Sharp LJ in *Scott* v *Solicitors Regulation Authority* [2016] EWHC 1256 (Admin) that:

> "'[A] person lacks integrity if he/she acts in a way which, although falling short of dishonesty, lacks moral soundness, rectitude and steady adherence to an ethical code. For this purpose a person may lack integrity even though it is not established that he/she has been dishonest…"

Adopting what was acknowledged in *Cheatle*, the appellant's misconduct over a period of four months, albeit occurring some time ago and preceded by a long and unblemished career, was so egregious that, the tribunal was entitled to conclude that he was not a suitable person to continue to be included on NHS lists of the respective health boards.

Ground 3

[47] The tribunal, who had heard evidence and submissions, confirmed that it had considered the evidence and the written and oral submissions on the appellant's behalf. We are not persuaded that lack of explicit reference to such factors as may have been available as mitigation generally in determining suitability, and whether it was unjust to disqualify, vitiates the tribunal's decision. The tribunal's findings, summarised in this regard in the passage we quote at para [42] above, amply justified the decision that there were no sufficient mitigating considerations to refrain from disqualification. The tribunal's explanation that it: "… had no material before it that persuaded it that disqualification would be unjust" demonstrates that it considered such material as may be favourable to the appellant and found it wanting in cogency. The use of the words "no mitigation" does not demonstrate that the tribunal failed to consider mitigation. We understand it to mean that it found no acceptable explanation which may ameliorate, excuse or mitigate the implications of what the appellant did and his motivation in doing it.

Ground 4

[48] We are not persuaded that the tribunal took account of an irrelevant consideration as proposed in this ground which quotes a phrase in isolation from the whole findings. The passages we have quoted at paras [40]-[43] above are material parts of the wider context of the whole decision. We understand the relevant context to be the tribunal finding that the appellant reduced the numbers of patients being seen to the detriment of his patients, at a time when dental services were being remobilised following periods of substantial limitation on their availability.

Ground 5

[49] The tribunal's reasons demonstrate that it understood the purpose of the scheme and made findings it was entitled to make about the appellant's misuse of the scheme over a period of four months. It was not necessary for there to be evidence from patients for this specialist tribunal, including a dentist, to infer a detriment to patients some of whom would be subject to ongoing treatment but would find they could not get appointments during a four-month period because of the appellant's decisions.

Ground 6

[50] In *Fyfe* at [43], the court adopted observations of Sir Thomas Bingham MR in *Bolton* that resonate and bear repeating in this case:

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again… All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness… The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

Lord Bingham's words were noticed and adopted by this court in *Black*. In delivering the opinion of the court, Lord Bracadale explained that the principal purposes for a tribunal in disposing of cases of this kind are the protection of the public and the protection of the reputation of the profession. Whilst the effect on the appellant is considerable and there may be some effect on his patients and on other patients given increased pressures on other

dental practices, this is the consequence of his extreme lack of professional integrity. The appellant deliberately reduced the number of appointments available and maximised practice income over a period of four months at the expense of patients: a paradigm of lack of professional integrity; *Wingate* at 101 (iii). The appellant broke the trust patients must place in their dentist by acting against their interests. Even allowing for the appellant's long and otherwise unblemished career, appreciation of the whole circumstances amply justified the conclusions the tribunal reached on the evidence and submissions before it. Accordingly, we reject the sixth ground. We would add that if the appellant had not been disqualified from the health board lists but his patients knew what he had done and why, we consider that they would have been unlikely to continue to seek his services.

Ground 7

[51] The final ground of appeal is a reasons challenge. We have set out some of the tribunal's principal reasoning above. We find its reasons intelligible and adequate leaving us, and any informed reader including the appellant, in no doubt of what the reasons for the decisions were and the material considerations evaluated in reaching them.

[52] For the foregoing reasons we reject each ground of appeal and refuse the appeal.