Record of Determinations – Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 22/05/2017 – 12/06/2017, 14/06/2017-16/06/2017 and 06/07/2017 – 07/07/2017

Medical Practitioner's name: Dr Zholia ALEMI

GMC reference number: 4246372

Primary medical qualification: MB ChB 1992 University of Auckland

Type of case
New - Misconduct

Outcome on impairment
Not Impaired

Summary of outcome
No action (warning not considered)

Tribunal:

<table>
<thead>
<tr>
<th>Lay Tribunal Member (Chair)</th>
<th>Ms Lisa Smith</th>
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<tbody>
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<td>Lay Tribunal Member:</td>
<td>Mr Colin Davis</td>
</tr>
<tr>
<td>Medical Tribunal Member:</td>
<td>Mr Thomas George</td>
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</tbody>
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| Legal Assessor:                  | Mr Angus MacPherson           |
| Tribunal Clerk:                  | Ms Jean Gleeson: 22/05/2017 – 12/06/2017  |
|                                  | Ms Florence Ravelle: 14/06/2017 - 16/06/2017 and 06/07/2017 – 07/07/2017 |

Attendance and Representation:

| Medical Practitioner:            | Present and not represented   |
| Medical Practitioner’s Representative: | NA                           |
| GMC Representative:              | Mr Carlo Breen, Counsel       |
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Allegation and Findings of Fact

That being registered under the Medical Act 1983 (as amended):

XXX

Norfolk and Suffolk NHS Partnership Trust

3. On 29 April 2014, you signed a form to confirm that you had ‘no prior or current record of any complaint from patients or staff, regarding your personal or professional conduct.’ Found Proved

4. You knew that the confirmation detailed at paragraph 3 above was untrue. Found Proved

5. Your conduct as set out at paragraphs 3 and 4 above was:

   a. misleading; Found Not Proved
   b. dishonest. Found Not Proved

And that by reason of the matters set out above your fitness to practise is impaired because of your:

   a. misconduct in respect of paragraphs 3, 4 and 5.

XXX

Attendance of Press / Public

The tribunal agreed, in accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004, that the press and public be excluded from those parts of the hearing where matters under consideration were deemed confidential.

XXX

Determination on whether to admit documentation to the Tribunal - 07/06/2017

Dr Alemi:

1. You made an application to admit into evidence further documentation relating to matters raised in relation to Care Principles and Dr C. The Care Principles documents you wished to provide included correspondence between you and the GMC. In relation to Dr C you said that his alleged complaint was made in response to matters raised by you to the GMC when acting as his responsible officer. You said
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he submitted the alleged complaint to the particular GMC staff member to whom you had written rather than through the general complaints submission process and that he made this alleged complaint very soon after you had raised issues about him. You submitted that regardless of the status of the material the issues had been resolved by the time the declaration was signed by you on 29 April 2014.

2. Mr Breen submitted that if the Tribunal was considering accepting the documents into evidence then he would need to take formal instruction. However, he expressed concerns that submissions were being made about a variety of matters and the Tribunal’s area of enquiry was limited. If the scope was being widened the Tribunal may need to hear evidence from a GMC investigation officer to get a full and accurate background to the case. He submitted that the second document is a character assassination of Dr C and he would need to seek instruction before he could fully address the Tribunal on this point.

The Tribunal’s Decision

3. In all the circumstances, the Tribunal does not consider it necessary to explore the matters relating to the alleged complaints in further detail to determine their exact status. It does not consider that admitting these documents into evidence will assist it in determining the exact status of these matters. This Tribunal is not required to determine the alleged facts relating to these matters. Accordingly it has determined not to admit these documents into evidence.

XXX

Determination on Facts - 12/06/2017

Dr Alemi:

1. This determination will be handed down in private; the references to those matters which relate to XXX will be redacted from any version that may be published.

Application for the evidence of Mrs D to be heard by telephone link

2. Mr Breen, on behalf of the General Medical Council (‘the GMC’), made an application for the evidence of Mrs D to be heard by telephone link. Mr Breen told the Tribunal that due to health reasons it was not possible for the witness to travel and give her evidence in person. He requested that the Tribunal allow her to give evidence by telephone link.

3. You did not object to the application and the Tribunal determined that it was in the interests of justice to agree to this application.
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Determination on whether to admit a list of matters to the Tribunal

4. On day two of the hearing the Tribunal had asked Mr Breen if he intended to present it with any documentation relating to the Care Principles concerns raised with the GMC. On day six of the hearing Mr Breen, on behalf of the GMC, submitted that the Tribunal should consider other matters which may constitute a complaint. On the afternoon of day six the Tribunal therefore requested that Mr Breen provide a list of matters that the GMC seeks to rely on as constituting a ‘prior or current record of any complaint from patients or staff, regarding your personal or professional conduct’. This list was compiled and was available for presentation to the Tribunal on the afternoon of day eight.

5. You objected to the list being put before the Tribunal. You submitted that only one of the matters on the list contains information relating to what could reasonably be considered to be a complaint. You submitted that the other matters referred to are not formatted as complaints and were related to GMC investigations.

6. Mr Breen submitted that it would be fair, proportionate and reasonable for the Tribunal to see the list as it was requested by the Tribunal.

The Tribunal’s Decision

7. The Tribunal heard and accepted the advice of the Legal Assessor. He advised that in order to determine whether the information contained in the list was relevant to paragraph 3 of the Allegation, it would be necessary to see the list. He further advised that if the Tribunal later decided that the list contained matters which were not relevant, as an experienced Tribunal it should put those matters out of its mind. Accordingly the Tribunal determined that it would see the list, read it and then determine whether it should then see the documents related to the matters identified.

On whether to admit documentation into evidence

8. Once the list was received, the Tribunal invited submissions from parties as to whether it should receive some or all of the documents in respect of the matters listed to determine whether they should be accepted into evidence in accordance with Rule 34 (1) of the GMC (Fitness to Practise) Rules (‘the Rules’) which states:

‘(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law’

9. Mr Breen took the Tribunal through the list. He said that paragraph 3 of the Allegation was very clear and that you were asked to disclose whether you had any prior or current record of any complaint from patients or staff regarding your
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personal or professional conduct. Mr Breen explained that the GMC understood your case to be that you signed the form referred to in paragraph 3 of the Allegation after discussions with Mrs D as she told you that, if you did not sign it, a clinic would have to be cancelled and patients would suffer. Further, it was your case that you had already disclosed that you were subject to GMC investigations to the Trust. Mr Breen took the Tribunal through the several matters listed and submitted that they were disclosed to you, although he acknowledged that some had been closed. Mr Breen told the Tribunal that this was not new information to you. He submitted said that it would be relevant and fair for the Tribunal to admit documents relating to these matters into evidence.

10. You opposed this application. You submitted that it would be unfair to admit this documentation into evidence at this late stage of the hearing. You said that most of these documents related to investigations. You did not consider them to be complaints. You said that the letter from Dr C was made in response to a complaint that you had made about this doctor when acting as his Responsible Officer. You said that there was documentation missing regarding how these matters were resolved, which the GMC should have, and if any of the documents were admitted, you would like the Tribunal to see this documentation.

The Tribunal’s decision

11. The Tribunal heard and accepted the advice of the Legal Assessor that it must first consider whether these documents were relevant to the hearing. In doing so it must consider whether the bundle of documents relating to each of the matters listed could amount to a complaint from staff. The Legal Assessor stated that there was nothing in the bundles which indicated that there had been any complaints from patients. He further advised that if the Tribunal finds that some or all of these bundles of documents do amount to what may be considered to be a complaint, the Tribunal should consider whether it would be fair to admit them into evidence. When considering this he advised the Tribunal to bear in mind a number of factors, including that these documents were being presented to it on day eight of a 14 day case, and that it should reflect upon any difficulties that you may be faced with due to the late admission of this documentation.

12. The Tribunal determined to receive the bundles in order to consider whether to admit them in evidence. It then read and considered the bundles of documents provided by the GMC. It determined that three out of the four bundles of documents provided to it contained information which could reasonably be considered to be complaints from members of staff.

13. The Tribunal then considered whether it would be fair to admit these three bundles of documents into evidence. The Tribunal found that, although there had been delay in the GMC providing the documents, you would have had a high degree of awareness of the matters contained within these bundles. The Tribunal directed
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that the GMC should provide the further information requested by you. The Tribunal also noted that it is your case that you felt pressured into signing the form by Mrs D and that you had also disclosed your GMC investigation to the relevant people.

14. In all the circumstances of this case the Tribunal has determined that it would be relevant and fair to allow three of the four bundles of documents to be admitted into evidence.

Background to the case

15. You were born in Iran, moved abroad and lived in New Zealand and America before returning to Iran. You returned to New Zealand and studied medicine there between 1986 and 1992. XXX You have worked in various roles in the UK and abroad and have worked as a locum Consultant Psychiatrist since July 2001. You are on the Specialist Register of the GMC. Concerns were raised about your professional practice and conduct in December 2010. XXX

Witnesses and Evidence

XXX

17. The Tribunal heard oral evidence and received witness statements from the following GMC witnesses:

- Dr E, Medical Director of Norfolk and Suffolk NHS Foundation Trust (‘Norfolk and Suffolk Trust’);
- Mrs D, Learning Disability Specialist Nurse (Band 7) in the learning and disability adult teams in the Norfolk and Suffolk Trust;
- Dr F, Clinical Director for Memory and Later Life at Cumbria Partnership NHS Foundation Trust;
- Dr G, Medical Director for Worcestershire Health and Care NHS Trust, previously Medical Director at Plymouth Community Healthcare.

18. The Tribunal also heard oral evidence and received a witness statement from you, together with other supporting documents including testimonial documentation. You gave very detailed evidence to the Tribunal. You demonstrated an excellent memory and you were able to recall events very clearly. The Tribunal found you to be a credible witness, not evasive, candid and open in your responses. At times you became distressed, in particular when you addressed concerns raised about your conduct. You were very troubled about the manner in which your behaviour at several Trusts was portrayed by members of staff from those Trusts XXX.

The Tribunal’s approach

19. The Tribunal has given consideration to all of the oral and documentary evidence adduced in this case. It has also taken account of the submissions made by
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you and those made by Mr Breen on behalf of the GMC. Both submissions are a matter of record and the Tribunal has not rehearsed them in this determination. The Tribunal is aware that, in respect of the matters set out in the paragraphs of the Allegation, the burden of proof rests with the GMC and the standard of proof is that applicable to civil proceedings, namely the balance of probabilities. The Tribunal has considered each paragraph of the Allegation separately.

XXX

The Tribunal’s findings

The Tribunal has made the following findings on the facts:

XXX

Paragraph 3

On 29 April 2014, you signed a form to confirm that you had ‘no prior or current record of any complaint from patients or staff, regarding your personal or professional conduct.’ Found Proved

26. You told the Tribunal that you started your contract at the Norfolk and Suffolk Trust on 29 April 2014. You said that you saw Mrs D on that morning and gave her a bundle of documents relating to your interactions with the GMC which ran to some 320 pages. You said that Mrs D had told you that the Trust had checked the GMC website and that, as you did not have any restriction on your licence, she wanted you to begin work by doing a clinic on that day.

27. You stated that you were provided with documentation to read and some forms to fill in. One of these was the form referred to in paragraph 3 of the Allegation. You explained that, on seeing the form, you returned to Mrs D’s office and told her that you could not sign the form. You stated that Mrs D told you that if you did not sign the form then the clinic would be cancelled and that this would have a negative impact on patients. You said that you then signed the form to enable the clinic in the afternoon to go ahead.

28. In her evidence Mrs D stated that she could not recall much about this conversation with you. She did not address this matter at all in her witness statement. The Tribunal found Mrs D’s evidence to be very general. She appeared to have no specific recollection of some of these matters. She did not challenge your account of the conversation. Mrs D did accept that she received some documents from you and that she was aware of your ongoing GMC issues.
29. Dr E produced in evidence a copy of a letter dated 28 April 2014, addressed to you from the HR administrator at Norfolk and Suffolk Trust which invited you to:

‘...sign this form to confirm that you have no prior or current record of any complaint from patients of staff, regarding your personal or professional conduct.’

The Tribunal accepted this letter as constituting the form referred to in paragraph 3 of the Allegation. You accepted that you signed and dated the form on 29 April 2014. The Tribunal therefore found paragraph 3 proved.

**Paragraph 4**

You knew that the confirmation detailed at paragraph 3 above was untrue.

**Found Proved**

30. You challenged the GMC’s case that the declaration that you signed on 29 April 2014 was, or should be regarded as, inaccurate. The Tribunal had regard to the Oxford Dictionary of English definition of the word complaint:

'A statement that something is unsatisfactory or unacceptable’

During Tribunal questions you accepted this definition.

31. The Tribunal then considered whether the three document bundles adduced by the GMC purporting to demonstrate that there were records of prior or current complaints from patients or staff did, in fact, amount to such, and, if so, whether you were aware of them.

32. In respect of the bundle relating to Care Principles dated 9 December 2010, you contended that this was an investigation and not a complaint. The Tribunal noted that in the second paragraph of this letter it states:

'We need to review the information provided by Dr H and look at the concerns that she has raised’

33. In the fifth paragraph it also states:

'... I need to contact your employers to provide them with a copy of the complaint’

34. The Tribunal also had regard to the correspondence which was attached to this GMC letter. This included a letter dated 3 December 2010 from Dr H. In this letter Dr H states:
'A number of concerns arose concerning Dr Alemi’s practice and conduct at the hospital... As a consequence of ... [a] review a number of issues of concern have become apparent ...

Specific issues of concern
1. Dr Alemi did not adequately consult colleagues within the Multi Disciplinary Team who all had extensive knowledge of the patient group, their history and risk profile.
2. A number of interventions were put in place by Dr Alemi that led to concerns to be raised by member of the MDT ...
3. Concerns were also raised to the hospital Director regarding Dr Alemi’s actions and behaviour by a number of staff

35. The Tribunal has not determined whether the concerns raised had any validity. However, it was of the view that this bundle, which was sent to and received by you, properly construed, should be considered to be a prior or current record of a complaint from staff regarding your personal or professional conduct. It also considered that you were or should have been aware of this on 29 April 2014.

36. The Tribunal next considered the second bundle containing a letter dated 9 July 2013 from the GMC relating to you. Enclosed with this letter was a letter from Dr I, Medical Director at Saint Mary’s Hospital, dated 25 June 2013. You again contended that this bundle related to an investigation and not a complaint. Further you submitted that this matter was closed and the information contained within it was baseless.

37. The Tribunal noted that in the second paragraph of the GMC letter it states:

'We need to review the information provided by Saint Mary’s Hospital and look at the concerns raised’

In the fifth paragraph it also states:

‘... I need to contact your employers to provide them with a copy of the complaint’

38. The Tribunal also had regard to the letter from Dr I which stated:

'I am writing to express my concerns on the issue of probity in respect of Dr Alemi’

A handwritten note from a junior member of staff outlining an incident was also included with this GMC letter. This note was written on sheets which stated at the top:
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‘Document as much information as is possible about the complaint.’

39. The Tribunal noted that this matter was closed prior to your signing the form on 29 April 2014. However, it was of the view that this letter and its enclosures, properly construed, should be considered to be a prior record of a complaint from staff regarding your personal or professional conduct. It also considered that you were or should have been aware of this on 29 April 2014.

40. In relation to the third GMC bundle which related to matters raised by Dr C, dated 9 August 2013, the Tribunal accepted your evidence that at the time that this letter was sent, you were homeless and you did not receive this letter. Your contention was further supported by your submission to an employment tribunal on 30 November 2015 which was written after you signed the form on 29 April 2014. In this document you stated that in relation to the complaint of Dr C:

‘I was never aware of this investigation’

In all the circumstances the Tribunal has determined that, on the balance of probabilities, you did not receive the GMC’s letter of 9 August 2013 and therefore you would not have been aware of this complaint at the time that you signed the form.

41. Having determined that the matters raised about you by Care Principles and Dr I, properly construed, did amount to prior or current records of complaints from staff regarding your personal or professional conduct, and that you were or should have been aware of these, the Tribunal was of the view that you were giving inaccurate information by signing the form. It went on to consider whether you knew this. It noted that initially you did not feel that it was appropriate to sign this form, as you went and sought out Mrs D to tell her that you had misgivings about signing it. Your actions indicate that you knew that by signing the form you would be giving inaccurate information. Accordingly the Tribunal was of the view that you knew that the information provided in the form as detailed in paragraph 3 was untrue.

Paragraph 5

Your conduct as set out at paragraphs 3 and 4 above was:

a. misleading; Found Not Proved

42. The Tribunal accepted the Legal Assessor’s advice that, in the ordinary way, a Tribunal would reckon to consider this without reference to any additional material. However in this situation he advised that the Tribunal should bear in mind the evidence about the particular circumstances of this case. The Tribunal considered paragraphs 3 and 4 together in respect of paragraph 5(a). Bearing in mind the Legal Assessor’s advice, it was of the view that your conduct could have been considered
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to be misleading were it not able to consider the circumstances in which you came to sign the declaration. In particular it took account of your evidence, which Mrs D did not dispute, and which the Tribunal accepted, that you gave a bundle of documentation to her relating to the GMC matters prior to your signing the form referred to in paragraph 3 of the Allegation. Likewise it took into account the reference from Dr G attached to your CV for this job, which also referred to your ongoing investigation by the GMC. In his evidence Dr E accepted that your CV and references would have been viewed by those appointing you to the role prior to you being accepted for this role.

43. The Tribunal was of the view that the person who was most likely to be misled by you giving inaccurate information in the form was Mrs D and that you had effectively appraised her of the relevant information.

44. The Tribunal also had regard to your email dated 13 May 2014 to Dr J, your Clinical Supervisor at Norfolk and Suffolk Trust, in which you state:

'Please read my papers that I have left with the team manger Mrs D I gave her all my papers and told everyone about GMC…'

The Tribunal is therefore of the view that Norfolk and Suffolk Trust was not misled by the inaccurate information on the form and that the inaccuracy only came to light after the GMC’s investigation trawl.

45. The Tribunal was of the view that by providing a bundle of GMC investigation documents to the Trust and by your verbal explanations to Mrs D your conduct in inaccurately filling out this form could not be said to be misleading.

b. dishonest. Found Not Proved

46. In order to determine whether the GMC has proved that you were acting dishonestly, the Tribunal accepted the advice of the Legal Assessor that there is a two stage test to be determined, on the balance of probabilities. First, the Tribunal has to determine whether your actions or omissions, in the circumstances of this case, would be considered dishonest by the ordinary standards of reasonable and honest people. If so, the Tribunal would go on to determine whether you were aware that, by those standards, your actions or omissions were dishonest.

47. In respect of the first limb of the test, the Tribunal approached this issue on the basis that it accepted that you provided documentary evidence of your ongoing investigation with the GMC. Further it accepted that you explained to Mrs D that you had ongoing GMC issues before you signed the declaration in the form. The Tribunal was of the view that material relating to ongoing GMC investigations, which started with the concerns raised by Care Principles, would disclose that you were or had been subject to complaints from staff regarding your personal or professional
conduct. It therefore determined that you made the necessary disclosure of records of complaint.

48. In the circumstances it was not satisfied that your actions or omissions would be considered to be dishonest by the ordinary standards of reasonable and honest people. It did not therefore have to consider the second limb of the test, but it did note your evidence that you reject any suggestion of dishonesty on your part. Accordingly the Tribunal has found this paragraph not proved.

**Determination on Impairment - 06/07/2017**

Dr Alemi:

1. Having announced its findings on the facts, the Tribunal has now considered whether, on the basis of the facts found proved, your fitness to practise is impaired by reason of misconduct XXX. The Tribunal has taken into account all of the evidence before it, together with submissions made by Mr Breen on behalf of the General Medical Council ('GMC') and the submissions made by you.

**Submissions on behalf of the GMC**

2. At the facts stage of this hearing Mr Breen made submissions which are relevant to the impairment stage of the hearing. At this stage of the hearing Mr Breen drew the Tribunal’s attention to the facts found proved. He submitted that paragraphs three and four amount to a serious finding that you had signed a declaration knowing it to be untrue. Although there was no finding that your behaviour was misleading or dishonest, Mr Breen submitted that a doctor must act with integrity and transparency at all times in accordance with Good Medical Practice (2013). Mr Breen submitted that your actions amounted to misconduct. Although Mr Breen conceded that you were unlikely to repeat your actions, he submitted that your behaviour had brought the medical profession into disrepute and undermined public confidence in the profession.

XXX

4. For these reasons he submitted that the Tribunal should find your fitness to practise impaired. He relied upon a number of authorities, the salient parts of which he provided in a document to the Tribunal.

**Your submissions**

5. You submitted that the Tribunal should consider the reason for your signing a form containing an untrue declaration. You reminded the Tribunal that you had already handed over a bundle of documents relating to the GMC investigations and that it was explained to you that if you did not sign the form, clinics would be cancelled and this
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would have had serious impact upon patients. You drew the Tribunal’s attention to case law including The Queen (on the Application of Remedy UK) v. GMC [2010] EWHC 1245 (Admin) in which Elias J stated:

‘Accordingly, action taken in good faith and for legitimate reasons, however inefficient or ill-judged, is not capable of constituting misconduct within the meaning of section 35C(2)(a) merely because it might damage the reputation of the profession.’

6. You submitted that you had acted in good faith for the health and wellbeing of psychiatric patients. You also drew the Tribunal’s attention to Calhaem v GMC [2007] EWHC 2606 (Admin) in which Jackson J stated:

‘A single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission, if particularly grave, could be characterised as misconduct.’

7. You submitted that the single act in your case, when seen in its context, was not particularly grave and therefore should not be considered misconduct. You submitted that nobody involved in your case had identified a risk of repetition and you would not repeat your action in signing such a declaration. You explained to the Tribunal that you now have support in place so that you can discuss any form filling with HR as it arises which further guards against the risk of repetition.

XXX

12. In all the circumstances, you submitted that the Tribunal should not find you impaired.

The Tribunal’s Decision

13. In deciding whether your fitness to practise is impaired, the Tribunal bore in mind the statutory overarching objective, which is the protection of the public which includes protecting, promoting and maintaining the health, safety and wellbeing of the public, maintaining public confidence in the profession, and promoting and maintaining proper professional standards and conduct. Whilst the Tribunal has borne in mind the submissions made, the decision as to whether your fitness to practise is impaired is one for it to determine exercising its own judgement.

Misconduct

14. In determining whether your fitness to practise is impaired by reason of misconduct, the Tribunal adopted a two-step approach. It therefore started by considering whether the facts found proved constitute misconduct. Misconduct can
be found in circumstances where there has been a departure from expected standards of conduct and behaviour, and where that departure is serious. The Tribunal has found that on 29 April 2014, you signed a form to confirm that you had ‘no prior or current record of any complaint from patients or staff, regarding your personal or professional conduct’. It further found that you knew that this confirmation was untrue. However, having taking into account the circumstances of the case, the Tribunal determined that your actions were neither misleading nor dishonest.

15. The Tribunal noted that you had already given a bundle of GMC papers, which related to the GMC investigations about you, to Mrs D. Later, you sought advice from her on whether or not you should sign the declaration. She encouraged you to sign the form, notwithstanding that you informed her that you could not, in view of the GMC investigations. You did so only to avoid cancellation of the clinic. You explained that you had acted out of concern for patients. Moreover, Dr G had referred to these GMC investigations in a reference which your agency had earlier sent to the Trust with your CV. Given these circumstances, the Tribunal was of the opinion that you acted in good faith and your behaviour was a single act. It was of the view that members of the public and profession, being made aware of the full circumstances of the case, would not consider your behaviour to be deplorable. The Tribunal did not find that your actions amounted to misconduct.

XXX

Confirmed
Date 30 June 2017

Ms Lisa Smith, Chair