

PUBLIC RECORD

Dates: 04/05/2021 - 10/05/2021

Medical Practitioner's name: Dr Ian CRACKNELL
GMC reference number: 2212241
Primary medical qualification: MRCS 1974 Royal College of Surgeons of England

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Impaired

Summary of outcome

Suspension, 9 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Jetinder Shergill
Medical Tribunal Member:	Dr Deborah Brooke
Medical Tribunal Member:	Dr Helen Grote
Tribunal Clerk:	Mr Josh Dayco

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Thomas Moran, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 07/05/2021

Background

1. Dr Cracknell qualified from the University of London in 1976. Prior to the events which are the subject of the hearing Dr Cracknell took various medical posts before serving a ten-year apprenticeship in general practice. Thereafter, Dr Cracknell alongside his fellow partner established Maples Family Medical Practice ('the Practice') in 1991. Dr Cracknell sat on hospital management committees and undertook numerous medical responsibilities before retiring in 2016. He remained on the medical register but relinquished his licence to practise.
2. The allegation that has led to Dr Cracknell's hearing relates to his dealings with Patient A and alleged dishonesty arising from that. Patient A had memory difficulties. Mr B was Patient A's son and one of three siblings who held a lasting power of attorney ('LPA') over Patient A's affairs. The Office of the Public Guardian (OPG) had oversight over the LPA and acts carried out under it. There was some level of disquiet amongst the siblings with Mrs C, Patient A's daughter, raising concerns about monies being spent by the other two siblings, and in particular Mr B.
3. So far as Dr Cracknell's involvement in the case was concerned, he had been Patient A's GP until his retirement in 2016. He was also a family friend and in particular with Mr B. In 2018, Mr B asked Dr Cracknell to give his written opinion regarding Patient A's capacity to make a decision to change an LPA, in particular to remove Mrs C from the LPA as one of her attorneys, leaving Mr B and the younger sibling to manage her affairs under the LPA. The GMC case was not that Mr B specifically told Dr Cracknell that there was any particular purpose behind the assessment/letter, or that Dr Cracknell was going to gain financially. They relied on the friendship with Mr B and concerns raised by Mrs C to set the backdrop to the allegations. The initial concerns were raised with the GMC on 28 August 2018 by Mrs C.
4. It is alleged that in a letter dated 21 May 2018, Dr Cracknell examined and gave his opinion that Patient A would had capacity to be able to make decisions regarding her appointments for an LPA. Further, in a letter dated 29 May 2018, he made a similar statement to the first letter and said that 'I have known in the capacity as her doctor for

more than 25 years'. Dr Cracknell also imprinted his old practice stamp on it. It is further alleged that Dr Cracknell knew he did not hold a licence to practise, was no longer a practising doctor at the Practice, was not Patient A's GP, and had neither examined (or adequately examined) Patient A's mental capacity. The allegation alleges the doctor knew the first and second letter were untrue, and that his actions were dishonest.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the GMC's application, made pursuant to Rules 40 and 31 respectively, of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that notice of this hearing had been served on Dr Cracknell and that this hearing should proceed in his absence. Its full determination can be found in Annex A.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Cracknell is as follows:

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

1. On 21 May 2018, you wrote a letter in support of a deed of revocation ('the First Letter') in which you stated that you:
 - a. had 'examined [Patient A]' on the same day;
To be determined
 - b. 'found [Patient A] to have sufficient mental capacity to be able to make decisions regarding her appointments for lasting power of attorney' ('LPA').
To be determined
2. On 29 May 2018, you wrote a letter in support of a deed of revocation ('the Second Letter'):
 - a. in which you stated that you had:
 - i. 'examined [Patient A]' on 21 May 2018;
To be determined
 - ii. known Patient A 'in the capacity as her doctor for more than 25 years';
To be determined
 - iii. 'found [Patient A] to have sufficient mental capacity to be able to make decisions regarding her appointments for [LPA]';
To be determined

- b. upon which you had imprinted with a Maples Family Medical Practice ('the Practice') stamp.
To be determined
3. When you wrote the First Letter and the Second Letter as set out at paragraphs 1 and 2 above you knew that:
- a. you:
- i. did not hold a licence to practise medicine;
To be determined
 - ii. were no longer a doctor practising at the Practice;
To be determined
 - iii. were not Patient A's GP;
To be determined
 - iv. had not examined Patient A;
To be determined
- b. in the alternative to paragraph 3.a.iv, you had not examined Patient A adequately to assess her mental capacity;
To be determined
- c. the content of the:
- i. First Letter was untrue;
To be determined
 - ii. Second letter was untrue.
To be determined
4. Your actions as set out at paragraphs 1.a – b and 2.a – b above were dishonest by reason of paragraphs 3.a – c.
To be determined
7. The Tribunal received evidence on behalf of the GMC in the form of witness statements from three witnesses who were not called to give oral evidence as the doctor was absent, and the Tribunal did not have any questions. The witnesses were:
- Mrs C, daughter of Patient A;
 - Mr D, Operations Manager at the Practice; and
 - Dr E, Consultant Psychiatrist.

Expert Witness Evidence

8. The Tribunal also received evidence from one expert witness, Dr F, a Consultant Psychiatrist instructed on behalf of the GMC. He submitted an expert report dated 27 June 2019. He and Dr E were asked to comment on two points of clarification from the Tribunal, and that additional evidence was received by email.

Documentary Evidence

9. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
 - Exhibits submitted by Mrs C;
 - Exhibits submitted by Mr D;
 - Exhibits submitted by Dr E;
 - Correspondence from Dr Cracknell to the GMC dated between 24 September 2019 to 16 March 2020;
 - Letter from Mr B dated 13 February 2020;
 - Patient A's GP records;
 - GMC letter to Dr Cracknell dated 15 January 2016 about remaining on the register without a licence to practise;
 - Screenshots from the GMC's online website pages about registration and holding a licence to practise; and
 - Email response from Dr F and Dr E from the Tribunal's questions.

The Tribunal's Approach

10. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Cracknell does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.
11. Where relevant to its decision-making process, the Tribunal had regard to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67. It states at paragraph 74:

'When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent

people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

12. The LQC gave detailed legal advice which was handed down in writing and forms part of the Tribunal file. Mr Moran did not have any observations on that advice. The LQC advised on various issues including that:

- the Tribunal is entitled to consider the surrounding circumstances of any allegation of dishonesty including whether an issue has an innocent explanation;
- the Tribunal may legitimately consider motive but must not speculate; and
- the lack of any specific or obvious motive may still leave open the possibility that the act was nevertheless dishonest.

13. As Dr Cracknell had been unrepresented throughout, and was absent, the LQC gave some specific advice in relation to key matters for reasons of fairness, as set out below:

“22. ...the doctor had voluntarily absented himself but clearly the tribunal must still act in a fair and rational manner. You will note he has also not been represented at any stage and therefore there are a number of issues I need to raise as a matter of fairness to him.

23. There has been a significant amount of seemingly superfluous evidence put before the tribunal which I raised some concerns about at the outset. I raised that because there was a danger of blurring the family disputes between Patient A's daughter (the key GMC witness) and Patient A's son (alleged to have been mishandling Patient A's affairs). The case we are dealing with is confined to the charges that are before us. We must not speculate about matters but we are entitled to make collateral findings of fact. The doctor has provided evidence which tends to indicate that there was a pre-existing relationship [between him and both Patient A and her son] (as the GMC relied on in opening). That bare issue does not appear controversial. There are references in the expert evidence about potential conflicts of interest. These matters may or may not be relevant at this stage.

24. However, I would urge caution about issues of motive arising from the key GMC witness's statement. The implied/oblique nature of that motive appears to go beyond setting the backdrop to a case. As this is a dishonesty case, the GMC must show not only that the evidence is cogent but the charges must also be 'fairly and squarely put' to the doctor. There are no express charges about the doctor being in cahoots with Patient A's son as is implied in aspects of the evidence. My advice is that the tribunal would be in danger of acting unfairly to the doctor by taking this alleged motive into account, as it goes beyond collateral findings. If we decided to rely on it, we would need to set out clear rationale for doing so.

25. The concerns I had from a legal perspective were addressed in closing. GMC counsel was asked to clarify matters and we were told that: a) the GMC case is not that the doctor was going to gain financially; or b) that Patient A's son specifically told the doctor

that he had any particular purpose. The GMC case was stated to be that the doctor must have been aware of some of the circumstances and that should have made him wary as to what Patient A's son was doing. My advice is that the manner in which that particular clarification was put by GMC counsel, falls within the collateral fact finding that we are entitled to make. It is open to the tribunal to make reasonable inferences about this but only if it can be done based on a reasoned assessment of the evidence and surrounding circumstances, and without veering into speculation.

26. The case law on 'good character' directions in disciplinary proceedings is mixed as to their relevance. There is no express requirement to provide one. The doctor has not attended the hearing and not provided any testimonials to the GMC going to his character. However, the tribunal should take account that the doctor was otherwise in good standing with the GMC prior to these proceedings, having practised medicine for many years. Such matters may go to the likelihood of someone now acting in a dishonest manner. It is for the tribunal to consider what importance to attach to that good standing."

The Tribunal's Analysis of the Evidence and Findings

14. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.
15. The Tribunal decided to remind itself about the difference between being registered with a licence to practise and remaining on the register solely as a registered doctor. It also noted the letter addressed to Dr Cracknell dated 15 January 2016. In this letter, the GMC confirmed Dr Cracknell's request to relinquish his license to practise and stated that he was not allowed to undertake any form of medical practise within the United Kingdom for which a licence to practise with the GMC was needed.

The entirety of paragraph 1 and 2 of the Allegation

16. The Tribunal considered whether Dr Cracknell wrote two letters in support of a deed of revocation, the first letter dated 21 May 2018 and a second letter dated 29 May 2018.
17. The Tribunal had regard to the documentary evidence provided by the GMC which included a copy of two letters; dated 21 May 2018, which states '*I have today examined [Patient A]... and found her to have sufficient mental capacity to be able to make decisions regarding her appointments for lasting power of attorney*' and another letter dated 29 May 2018, which states '*I examined [Patient A]... whom I have known in the capacity as her doctor for more than 25 years, and found her to have sufficient mental capacity to be able to make decisions regarding her appointments for lasting power of attorney*'. Both letters have similar wording and style. Both have his address and what appears to be the same signature.

18. The Tribunal also considered Dr Cracknell's own evidence in his correspondence with the GMC where he stated:

'I only wrote one very short paragraph I did not write a second letter... I have already admitted to the inappropriate use of [an] old personal stamp that had been in my possession since... I founded the practice in 1991...'

'I wrote the letter at the behest of the solicitor... the addition of an old stamp was, I have to agree, regrettable and inappropriate.'

19. Dr Cracknell says he did not write a second letter and refers to stamping a letter with the use of his old personal stamp. The letters are dated eight days apart. The Tribunal noted that Dr Cracknell responded to the GMC inquiry in March 2020 and Dr Cracknell may have simply forgotten some of the detail. The Tribunal determined that both letters were written in the same style, with the same content which included Dr Cracknell's address and signature. Therefore, the Tribunal concluded that on the balance of probabilities it was more likely than not Dr Cracknell did write two letters dated 21 May 2018 and 29 May 2018.

20. As regards paragraph 2(b), Dr Cracknell admits using the practice stamp.

21. Accordingly, the Tribunal found the entirety of Paragraph 1 and 2 of the Allegation proved.

Paragraph 3(a)(i), 3(a)(ii) and 3(a)(iii) of the Allegation

22. The Tribunal considered whether Dr Cracknell knew he did not hold a licence to practise medicine, was no longer a doctor practising at the Practice and was not Patient A's GP when he wrote the two letters set out in paragraph 1 and 2 of the Allegation.

23. The Tribunal had regard to the GMC's letter dated 15 January 2016, confirming Dr Cracknell's request to relinquish his licence to practise. The Tribunal was satisfied that he knew he did not have a licence to practise medicine as of that date and/or as of May 2018. As such subparagraph 3(a)(i), is found proved.

24. In relation to 3(a)(ii) and (iii), the Tribunal decided there was no material dispute that Dr Cracknell was no longer practising at his old practice at the time of writing the letters. He admits he retired from it and he relinquished his licence in 2016 when he did so. As of that time, he knew was no longer have been Patient A's GP. As such both subparagraphs 3(a)(ii) and (iii) were found proved.

25. Accordingly, the Tribunal found paragraph 3(a)(i), 3(a)(ii), 3(a)(iii) of the Allegation proved.

Paragraph 3(a)(iv) and 3(b) of the Allegation

26. The Tribunal considered the wording of the charges carefully. Paragraph 3 of the Allegation states *'When you wrote the First Letter and the Second Letter as set out at paragraphs 1 and 2 above you knew that... 3(a)(iv) you had not examined Patient A; 3(b) in the alternative to paragraph 3(a)(iv) you had not examined patient A adequately to assess her mental capacity'*.
27. The Tribunal felt that paragraph 3(b) of the Allegation was more appropriate, given that it referred to Patient A's mental capacity. It had regard to the letters written by Dr Cracknell, in which he simply states that *'...he had found her to have sufficient mental capacity to make decisions regarding her appointments for lasting power of attorney'*. However, no evidence of a formal capacity assessment was presented to the Tribunal.
28. Dr F, in his expert evidence stated *'Dr Cracknell...does not appear to have made any adequate record of cognitive assessment, but only provided a very brief statement...I would have expected a formal capacity assessment in writing.'* Furthermore, Dr Cracknell would have been aware that he had not reviewed Patient A's updated medical records. If he had, he would have seen that her cognitive status had deteriorated in 2017, over a year after he retired. Patient A's first appointment with the memory nurse was in July 2017. Therefore, on the balance of probabilities, it was the opinion of the Tribunal that Dr Cracknell, as an experienced, retired GP, would have known that he had not undertaken an adequate assessment of Patient A's mental capacity.
29. Furthermore, in his response to the Rule 7 letter, Dr Cracknell states that *'...he had a long conversation with [Patient A] but was not prepared to disclose the contents of this conversation'*. He also states that in a conversation with Mr B and the solicitor he suggested that Patient A be assessed by hearing and dementia specialists. This suggests that some examination of Patient A had occurred, however inadequate, for Dr Cracknell to suggest onward referral to other specialists. Nevertheless, there is no evidence that this was an adequate assessment of her mental capacity.
30. The Tribunal found that it was more likely than not Dr Cracknell spoke with Patient A to undertake what he considered was a mental state examination albeit any such 'examination' was likely to have been inadequate as set out in the expert report. Having regards to the evidence set out above, the Tribunal found that the GMC had failed to show on balance with sufficiently cogent evidence that Dr Cracknell 'had not examined Patient A'. Therefore, paragraph 3(a)(iv) of the Allegation is not proved.
31. Accordingly, the Tribunal found paragraph 3(a)(iv) of the Allegation not proved, and the Tribunal found paragraph 3(b) of the Allegation proved.

Paragraph 3(c)(i) and 3(c)(ii) of the Allegation

32. The Tribunal considered whether Dr Cracknell knew that the contents of his first letter and second letter were untrue at the time when he wrote the letters as set out in paragraphs 1 and 2 of the Allegation. The Tribunal considered that the two letters should be taken separately.
33. With regards to the first letter, dated 21 May 2018, Dr Cracknell stated that he had examined Patient A, and found her to have sufficient mental capacity to make decisions regarding lasting power of attorney. This letter was on a headed paper with his home address and was signed by Dr Cracknell with his medical qualifications. The Tribunal concluded that as 3(b) was found proved, the very fact that he had not examined Patient A adequately to assess her medical capacity, meant that the content of this first letter was untrue.
34. In the second letter, written on the 28 May 2018, Dr Cracknell again stated that he had examined Patient A, and found her to have sufficient mental capacity to make decisions regarding lasting power of attorney. There was an additional sentence to state that he had known Patient A *'in the capacity as her doctor for 25 years'*. This letter was prepared in a similar style, on headed paper bearing the same address, and with the same signature and qualifications, but also this time, a practice stamp was used from Dr Cracknell's old practice.
35. The Tribunal determined that the content of this letter was also untrue. Not only did Dr Cracknell again state that he had examined Patient A and found her to have sufficient mental capacity to make decisions regarding lasting power of attorney, but the Tribunal concluded that use of the practice stamp, together with the statement of knowing Patient A *'as her doctor for 25 years'* without any indication that he was retired, no longer her GP, and no longer licensed to practice medicine, indicated a level of deception. The manner in which it was written by Dr Cracknell, together with the practice stamp, suggested that he was Patient A's current GP, which was also untrue.
36. The Tribunal had regard to the stem of the paragraph 3 of the Allegation and the question of whether Dr Cracknell knew that the content of the letters was untrue. It was of the opinion of the Tribunal that as an experienced retired GP, Dr Cracknell would have known that the content of both letters was untrue for the reasons set out above.
37. Accordingly, the Tribunal found paragraph 3(c)(i) and 3(c)(ii) of the Allegation proved.

Paragraph 4 of the Allegation

38. The Tribunal considered whether Dr Cracknell's actions as set out in paragraph 1 and 2 of the Allegation were dishonest by reasons of paragraph 3 of the Allegation.
39. The Tribunal had regard to the contents of both letters and its findings set out above. The first letter, although brief, was untrue in stating that he had adequately examined Patient

A's mental capacity.

40. The Tribunal considered Dr Cracknell's style of writing on the second letter with the use of the Practice stamp. The Tribunal found that the second letter gave the impression that he was Patient A's current GP. He did not state that he was retired or that he was no longer registered with a licence to practise. The Tribunal noted that Dr Cracknell, as a professional, he would have known that the contents of the second letter were misleading. Dr Cracknell himself states that the use of the Practice stamp was '*regrettable and inappropriate*', and the delay between the two letters should have provided him with time to reflect on whether his actions were defensible.
41. In his response to the Rule 7 letter, Dr Cracknell offers the explanation that he had been informed by the solicitor that '*anyone, civilian, medical or otherwise, can offer evidence to the Office of the Public Guardian, and that it was on this basis that he prepared the letter*'. The Tribunal was satisfied that Dr Cracknell knew the letters were going to be used for legal proceedings; Dr Cracknell states in his response to the Rule 7 letter that there was a conversation together with Mr B and the solicitor, and furthermore he prepared a letter with the Practice stamp, likely to mislead the reader into believing he was Patient A's current GP providing a valid medical opinion on her mental capacity.
42. The Tribunal then drew inference from its findings on paragraph 3 of the Allegation and noted the following:
- Dr Cracknell did not adequately examine Patient A to assess her mental capacity;
 - Dr Cracknell was not Patient A's GP;
 - The contents of the second letter were particularly misleading;
 - Dr Cracknell did not hold a licence to practise medicine; and
 - Dr Cracknell was no longer a doctor at the Practice and therefore the use of the Practice's stamp was inappropriate.
43. The Tribunal decided that ordinary decent people would regard Dr Cracknell's actions as dishonest under the objective test set out in *Ivey*. Therefore, the Tribunal found that Dr Cracknell has acted dishonestly by reason of his actions set out in paragraphs 1 and 2.
44. Accordingly, the Tribunal found paragraph 4 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

45. The Tribunal has determined the facts as follows:

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

1. On 21 May 2018, you wrote a letter in support of a deed of revocation ('the First Letter') in which you stated that you:

- a. had 'examined [Patient A]' on the same day;
Determined and found proved
 - b. 'found [Patient A] to have sufficient mental capacity to be able to make decisions regarding her appointments for lasting power of attorney' ('LPA').
Determined and found proved
2. On 29 May 2018, you wrote a letter in support of a deed of revocation ('the Second Letter'):
- a. in which you stated that you had:
 - i. 'examined [Patient A]' on 21 May 2018;
Determined and found proved
 - ii. known Patient A 'in the capacity as her doctor for more than 25 years';
Determined and found proved
 - iii. 'found [Patient A] to have sufficient mental capacity to be able to make decisions regarding her appointments for [LPA]';
Determined and found proved
 - b. upon which you had imprinted with a Maples Family Medical Practice ('the Practice') stamp.
Determined and found proved
3. When you wrote the First Letter and the Second Letter as set out at paragraphs 1 and 2 above you knew that:
- a. you:
 - i. did not hold a licence to practise medicine;
Determined and found proved
 - ii. were no longer a doctor practising at the Practice;
Determined and found proved
 - iii. were not Patient A's GP;
Determined and found proved
 - iv. had not examined Patient A;
Determined and not proved

- b. in the alternative to paragraph 3.a.iv, you had not examined Patient A adequately to assess her mental capacity;
Determined and found proved

- c. the content of the:
 - i. First Letter was untrue;
Determined and found proved

 - ii. Second letter was untrue.
Determined and found proved

- 4. Your actions as set out at paragraphs 1.a – b and 2.a – b above were dishonest by reason of paragraphs 3.a – c.
Determined and found proved

Determination on Impairment - 07/05/2021

- 1. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out above, Dr Cracknell's fitness to practise is impaired by reason of misconduct.

The Evidence

- 2. No further evidence was adduced at this stage of the proceedings.

Submissions

- 3. On behalf of the GMC, Mr Moran, Counsel, submitted that Dr Cracknell's actions amount to misconduct and his fitness to practise is impaired. He referred the Tribunal to the relevant paragraphs of the Good Medical Practice (2013 edition) ('the GMP'). He submitted that paragraphs 1, 4, 7 and 14 apply; and that paragraphs 65, 66 and 71 of the GMP were particularly pertinent in this case.

- 4. Mr Moran submitted that the GMC relies on the Tribunal's findings on facts, where the Tribunal found Dr Cracknell's actions to be dishonest in relation to both First and Second Letters. Further, he submitted that Dr Cracknell knew that the letters would be used in legal proceedings and also that Dr Cracknell did not provide any other evidence to show remorse or insight into his misconduct.

The Relevant Legal Principles

5. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.
6. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct which was serious, and whether that serious misconduct could lead to a finding of impairment.
7. The Tribunal must determine whether Dr Cracknell's fitness to practise is impaired today, taking into account Dr Cracknell's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal's Determination on Impairment

Misconduct

8. The Tribunal first considered whether the facts found proved amounted to misconduct.
9. The Tribunal considered that Dr Cracknell was particularly in breach of the GMP in relation to the following paragraphs:

'4 You must use your judgement in applying the principles to the various situations you will face as a doctor, whether or not you hold a licence to practise, whatever field of medicine you work in, and whether or not you routinely see patients. You must be prepared to explain and justify your decisions and actions.'

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

'66 You must always be honest about your experience, qualifications and current role.'

'68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge

and make reasonable checks to make sure any information you give is accurate.'

'71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.22 You must make sure that any documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.'

10. The Tribunal had regard to Dr F's expert evidence and found that the following are relevant at this stage of the proceedings.

'Dr Cracknell has not disclosed any records of his assessment and therefore there is no evidence that he adequately and appropriately supported [Patient A] to make informed decisions about her treatment. It does not appear that he has made any contact with the patient's general practitioner or reviewed the GP records, and indeed as he no longer had a licence to practise, would not have been able to examine and undertake that review as a medical professional.'

'I would consider that on the information currently available the assessment by Dr Cracknell was both inappropriate professionally by having no licence to practise and yet describing his qualifications suggesting he was able to examine as a medical practitioner, and was also not undertaken in a formal manner with detailed records of the cognitive assessment. There is also no statement given describing any issues related to potential conflict of interest, or that information had been sought from the patient's usual Medical Practitioner. On each of these factors I would feel, on the basis of present information, that Dr Cracknell's care was seriously below the standard expected of a reasonably competent general practitioner.'

11. The Tribunal also considered the dates of the First Letter and Second Letter which show that Dr Cracknell had eight days in between writing the two versions, when he had time to reflect on the propriety of what he had written in the First Letter. However, he persisted in his improper conduct and compounded his dishonesty by writing a Second Letter imprinted with the Practise stamp together with the statement that he had known Patient A in the capacity as her doctor for more than 25 years. He was not honest in his communication: he did not set out that he was retired; that he no longer had a licence to

practise; and that he was no longer Patient A's GP.

12. Dr Cracknell admitted that the use of the Practice stamp was regrettable and inappropriate. Additionally, multiple elements of the letter were misleading and would be regarded as deplorable by fellow practitioners.
13. In all of the circumstances, the Tribunal concluded that Dr Cracknell's actions fell far short of the standards reasonably to be expected of a doctor. The Tribunal determined that the facts found proved, together with the breaches of GMP, amounted to serious misconduct.

Impairment

14. The Tribunal having found that the facts found proved amounted to serious misconduct, it went on to consider whether, as a result of that serious misconduct, Dr Cracknell's fitness to practise is currently impaired.
15. The Tribunal noted that there is little evidence of insight and none of remediation. The Tribunal did consider Dr Cracknell's correspondence with the GMC, where he accepted that the use of the Practice's stamp was inappropriate. However, the Tribunal found that this correspondence does not convey if he has insight into what went wrong nor suggest how he would act differently in the future. The correspondence also did not explain the root of Dr Cracknell's dishonest actions.
16. Given Dr Cracknell's lack of insight and remediation, the Tribunal could not be satisfied that Dr Cracknell would not repeat his actions in the future.
17. The Tribunal considered paragraph 76 of the judgment in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox provided a helpful approach to the determination of impairment. It found three of the limbs to be engaged in this case:

'Do our findings of fact in respect of the doctor's misconduct...show that his/her fitness to practise is impaired in the sense that s/he:

a. ...

- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or...*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

18. Having regard to Dr Cracknell's serious misconduct, the Tribunal found that all limbs of the overarching objective are engaged in this case. The Tribunal was satisfied that a finding of current impairment was required in order to uphold proper professional standards and public confidence in the profession.

19. Therefore, the Tribunal has determined that Dr Cracknell's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 10/05/2021

1. Having determined that Dr Cracknell's fitness to practise is impaired by reason of misconduct, the Tribunal now has to decide in accordance with Rule 17(2)(n) of the Rules on the appropriate sanction, if any, to impose.

The Evidence

2. No further evidence was adduced at this stage of the proceedings.

Submissions

3. On behalf of the GMC, Mr Moran submitted that erasure from the medical register is the appropriate and proportionate sanction to impose on Dr Cracknell's registration. He referred the Tribunal to its findings on dishonesty and stated that taking no action is not appropriate. He said imposing conditions is not a realistic option in this case bearing in mind that Dr Cracknell does not intend to practice as a doctor in the future.
4. Mr Moran referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2020 edition) ('the SG') and supplementary guidance to the SG entitled 'The relevance of whether a doctor holds a Licence to Practise'. These guidance documents were considered by the Tribunal in reaching its findings.
5. Mr Moran said that Dr Cracknell's reference in his correspondence to ongoing personal issues seemed to have no causative link to his misconduct. Mr Moran invited the Tribunal

to consider any evidence of remorse, insight and remediation in light of the Tribunal's findings on impairment. Mr Moran also submitted that Dr Cracknell to some extent blames the solicitor given that the letter was written with the solicitor's involvement. In addition, Mr Moran referred the Tribunal to Dr Cracknell's acknowledgment of the inappropriate use of the Practice stamp. Mr Moran said that this does not explain why Dr Cracknell acted that way and how he would change his conduct in the future. Further he submitted that there was no indication that Dr Cracknell has any real insight in to the seriousness of his actions and that there is no evidence of remediation.

6. Mr Moran submitted that Dr Cracknell's conduct was aggravated by the use of the Practice stamp and there was at least a degree of persistency having regard to the opportunity for reflection between writing the two letters. Mr Moran concluded his submissions by stating that it was the view of the GMC, that considering the overall gravity of Dr Cracknell's misconduct and because Patient A was a vulnerable person, erasure was the proportionate and appropriate sanction in this case.

The Tribunal's approach

7. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and borne in mind the over-arching objective.
8. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and maintain the reputation of the profession. Sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Cracknell's interests with the public interest.
9. At the outset, the Tribunal made it clear that even though Dr Cracknell is retired and does not intend to practice, the Tribunal's decision will not be biased or influenced by that. The Tribunal was aware of the need to apply principles from GMP and the SG, as well as a supplementary guidance of the relevance of whether holds a licence to practise.

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

10. The Tribunal took account of the aggravating factor which is:
 - Dr Cracknell knew the letters were to be used for important proceedings and the presence of the solicitor solidifies that view.
11. The Tribunal then went on to consider the mitigating factors in this case:

- The Tribunal considered that Dr Cracknell has personal issues and accepted that even though they do not link directly into his misconduct, Dr Cracknell was somewhat vulnerable;
- The Tribunal considered he was likely to have been in a slightly difficult position when he was requested to write the letter by his close friend, as Dr Cracknell describes in his own evidence '*I pointed out to him that as a retired and unregistered doctor, I could not do so...*';
- The Tribunal had regard to Dr Cracknell's unblemished record as a GP prior to these proceedings; and
- Dr Cracknell's recognition that the use of the Practice stamp was inappropriate and regrettable.

No action

12. The Tribunal first considered whether to conclude the case by taking no action. It noted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, appropriate, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

13. The Tribunal next considered whether to impose conditions on Dr Cracknell's registration. The Tribunal noted that conditions are appropriate and workable in certain circumstances. The Tribunal noted that the SG provides that in cases of dishonesty, it is difficult to identify any conditions that could be appropriate, proportionate, workable, and measurable. The Tribunal also noted that Dr Cracknell does not have a licence to practise and does not intend to work, and therefore it would be difficult to formulate workable and appropriate conditions.

14. As such, the Tribunal decided that conditions were not an appropriate or proportionate sanction.

Suspension

15. The Tribunal went on to consider whether to impose a period of suspension on Dr Cracknell's registration. The Tribunal accepted that suspension does have a deterrent effect and could be used to send a signal to Dr Cracknell, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor.

16. The Tribunal considered paragraphs 91, 97a, 97f and 97g of the SG, which states:

‘91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbecoming a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.’

‘97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

a. A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

f. No evidence of repetition of similar behaviour since incident.

g. The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.’

17. The Tribunal noted that Dr Cracknell had an unblemished career before his retirement. The GMC accepted his dishonesty was not covered up, and the Tribunal agrees. However, the Tribunal did not accept the submission made by the GMC that this was persistent dishonesty. Whilst there were two letters written eight days apart, these can be properly characterised as a continuum.

18. The Tribunal noted its findings in the impairment determination that there is ‘little evidence of insight and none of remediation’. It also noted its conclusions that:

‘16. Given Dr Cracknell’s lack of insight and remediation, the Tribunal could not be satisfied that Dr Cracknell would not repeat his actions in the future.’

However, those conclusions did not lead the Tribunal to conclude that there is a significant risk of repeating his behaviour. It also noted there had been no repetition of such incidents in the intervening three years.

19. The misconduct found proved was a serious breach of the GMP but it was not fundamentally incompatible with Dr Cracknell’s continued registration.

20. The Tribunal considered whether a sanction of suspension was one which struck a fair balance between the competing personal interests of Dr Cracknell and the wider public interest. The Tribunal decided that going beyond suspension would be wholly disproportionate in all the circumstances in this case.
21. Accordingly, the Tribunal was satisfied that the statutory overarching objective could be met with the imposition of a period of suspension upon Dr Cracknell's registration. It considered that this would reflect the gravity of his conduct and send out a clear signal to the doctor, the profession and the wider public.
22. Turning to the duration of the suspension, the Tribunal determined that a period of nine month's suspension would be appropriate and proportionate. It would properly mark the seriousness with which such misconduct should be dealt with and will also give sufficient time for Dr Cracknell to reflect on his actions.
23. The Tribunal determined to direct a review of Dr Cracknell's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Cracknell to demonstrate how he has reflected on to his actions and how he would act in the future to reduce any risk of repetition. It therefore may assist the reviewing Tribunal to be provided with the following material:
 - Further written reflection from Dr Cracknell to demonstrate insight into his misconduct, the decision-making which led up to this misconduct, and assurance of what he would do differently in the future, to ensure that his actions will not be repeated; and
 - Any other information which Dr Cracknell considers would assist the Tribunal.

Determination on Immediate Order - 10/05/2021

1. Having determined to suspend Dr Cracknell's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Cracknell's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Mr Moran submitted that an immediate order of suspension is necessary in this case given the seriousness of Dr Cracknell's misconduct. He referred the Tribunal to the relevant paragraphs of the SG, which were considered by the Tribunal.

The Tribunal's Determination

3. The Tribunal had regard to paragraphs 172 and 173 of the SG which states:

'172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.'

'173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.'

4. Having made the various findings on impairment and sanction, the Tribunal determined that it was necessary to impose an immediate order on Dr Cracknell's registration to maintain public confidence in the profession.
5. This means that Dr Cracknell's registration will be subject to an immediate order of suspension from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Cracknell, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.
6. There is no interim order to revoke.
7. That concludes the case.

Confirmed

Date 10 May 2021

Mr Jetinder Shergill, Chair

ANNEX A – 04/05/2021

Determination on Service and Proceeding in Dr Cracknell's absence

Service of Notice of Hearing

1. Dr Cracknell is neither present nor represented at this hearing. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Cracknell in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) ('the Rules').
2. Mr Thomas Moran, Counsel, on behalf of the GMC, provided the Tribunal with documents to show proof of service on Dr Cracknell. This included a copy of the GMC Notice of Allegation letter, dated 25 March 2020 and a copy of the MPTS Notice of Hearing letter, dated 31 March 2021. The Tribunal noted that these letters were posted to Dr Cracknell's registered address by Royal Mail Special Delivery. In particular, the Tribunal noted the Royal Mail Track and Trace documentation confirmed that the Notice of Hearing letter was successfully delivered and signed for on 3 April 2021. The documents had also been emailed to a registered email address, and one which Dr Cracknell had corresponded from with the GMC.
3. The Tribunal was satisfied that all reasonable efforts have been made by the GMC to serve Dr Cracknell with notice of the hearing. It was satisfied that the GMC has discharged its duty to serve a notice of hearing in accordance with the Rules.

Proceeding in Dr Cracknell's absence

4. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Cracknell's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
5. Mr Moran invited the Tribunal to proceed in Dr Cracknell's absence. He submitted that Dr Cracknell has waived his right to attend the hearing and that there is no suggestion an adjournment would secure his attendance at a future date.
6. The Tribunal was given legal advice by the LQC on the discretionary nature of proceeding in absence. The Tribunal took account of that advice. The Tribunal has balanced Dr Cracknell's interests with the public interest in deciding whether to proceed in his absence. In doing so it took account of the submissions of Mr Moran and considered Dr Cracknell's personal issues raised within his correspondence with the GMC. Those personal issues indicated it was unlikely that Dr Cracknell would be in a position to attend

a future hearing date.

7. The Tribunal was satisfied that Dr Cracknell was aware of the investigation process and had previously engaged with the GMC. He was also likely to be aware of the date of hearing given that service had been effective on him. The Tribunal was satisfied that Dr Cracknell had voluntarily absented himself from these proceedings. The Tribunal found that the public interest, in particular that the hearing should take place within a reasonable time, outweighed Dr Cracknell's interests. The Tribunal was aware of its duty to take what evidence there was from Dr Cracknell into account, and to discharge its duty of inquiry. The Tribunal was satisfied it could deal with the case fairly and in accordance with the Overarching Objective.
8. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Cracknell's absence.