PUBLIC RECORD

Dates: 19/06/2023, 21/06/2023 - 28/06/2023

Medical Practitioner's name:	Dr Abdul BHUTTO
GMC reference number:	4354088
Primary medical qualification:	MB BS 1984 University of Sind

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

Summary of outcome

Suspension, 1 month

Tribunal:

Legally Qualified Chair	Mr Richard Wood
Lay Tribunal Member:	Ms Sue Disley
Medical Tribunal Member:	Dr Matthew O'Meara

Tribunal Clerk:	Miss Emma Saunders

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Alexandra Tampakopoulos, Counsel, instructed by BTO Solicitors LLP
GMC Representative:	Ms Priyadarshani Khanna, Counsel

Attendance of Press / Public

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

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 and Impairment - 26/06/2023

FACTS

Background

1. Dr Bhutto qualified in 1984 from the University of Sindh, before working in cardiology and paediatrics. He joined the GMC's Specialist Register for paediatrics on 7 February 1997. In 2003 he started practising paediatrics in secondary care at registrar level, which he has done since. At the time of the events in question, Dr Bhutto was working as a locum registrar in paediatrics at the relevant hospital, from around 11 October to 11 November 2019. He then worked at other hospitals from November 2019 to July 2022. Dr Bhutto also worked as a locum paediatric registrar at Scunthorpe General Hospital from 13 March 2023 to 5 May 2023.

2. The allegations that have led to Dr Bhutto's hearing relate to the care he provided to Patient A. It is alleged by the GMC that, on 20 October 2019 and 6 November 2019, Dr Bhutto failed to provide good clinical care to Patient A. It is also alleged by the GMC that, on 6 November 2019, Dr Bhutto failed to ask for a senior consultant review of Patient A and/or advice.

3. Patient A was taken to a GP appointment at the Surgery on 4 July 2019, as she had an increased temperature, was pulling at both ears, had no fluids or food that morning, nappies less full, and a one-off episode of diarrhoea the previous day but no bowel motion that morning. Advice and antibiotics were given.

4. A health visitor home visit took place on 27 August 2019 as Patient A's mother was concerned about Patient A's weight and lack of dietary intake. Advice was sought from a paediatric dietician. There was a call to Patient A's mother from the health visitor on 3 September 2019 to relay advice from the dietician. A review by the health visitor took place

on 26 September 2019. Patient A's weight had decreased and Patient A's mother was very concerned.

5. Patient A was taken to GP appointments on 2 October 2019 and 3 October 2019 (Patient A was 19 months old at this point). Patient A was not eating, managing fluids, and had a high temperature. Patient A's mother reported that she had brought Patient A back into the Surgery as there had been blood in the nappy overnight. It was noted that, on examination, Patient A's abdomen was soft non tender but she became distressed on attempting further examination. No further action was taken but a low threshold for further review was set.

6. Patient A's mother contacted the out of hours NHS 24 hour line on 20 October 2019 as she was concerned that Patient A had a lump in her stomach and, by now, had passed a blood clot into her nappy, following earlier concerns about losing weight. This prompted a face to face review at an out of hours service and, in light of examination findings of a distended abdomen, a referral to the Paediatric Assessment Unit (PAU) where Dr Bhutto was working at the time. Dr Bhutto examined Patient A, noted a large mass in Patient A's abdomen which he diagnosed as constipation and gave an enema.

7. Patient A's mother took Patient A to GP appointments at the Surgery with a continuation of the same issues on three further occasions, 28 October 2019, 1 November 2019 and 6 November 2019. Another referral was made to the PAU on 6 November 2019. Dr Bhutto examined Patient A and diagnosed constipation; a further enema was given and Patient A was discharged.

8. The initial concerns were raised with the GMC via the Crown Office & Procurator Fiscal Service via an online referral form. It was stated within the referral form that incomplete observations were made when Patient A attended the PAU, that treatment did not follow local or national guidance, and no differential diagnosis was made. It stated that Patient A had a palpable tumour, passed a large blood clot into her nappy, and had high blood pressure. It stated that no further investigations were instructed, and that there were *"real concerns about Dr Bhutto's knowledge, decision making and overall fitness to practise"*. The referral form also stated that Patient A collapsed on 15 November 2019 and was taken by ambulance to hospital. Her tumour was diagnosed and she was transferred to Glasgow for specialist treatment. Unfortunately, Patient A passed away on 25 November 2019. The cause of death was listed as *"Complications of left neuroblastoma and associated therapy"*. Patient A's parents provided a statement to the Police on 27 November 2019.

The Outcome of Applications made during the Facts Stage

9. On 19 June 2023 the Tribunal granted Dr Bhutto's application, made pursuant to Rule 29(2) of the Rules, for a short adjournment until 21 June 2023. The Tribunal's full decision on the application is included at Annex A. The Tribunal agreed, in accordance with Rule 41 of the Rules, that parts of this hearing should be heard in private where the matters under consideration were confidential, as detailed in Annex A.

10. On 21 June 2023 the Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the Rules, for the withdrawal of paragraph 1(b) of the Allegation. The Tribunal determined that this withdrawal was appropriate given the evidence in the documentation before it, and could be made without injustice to either party.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Bhutto is as follows:

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

1. On 20 October 2019, you were involved in the care and treatment of Patient A and you:

a. failed to obtain an adequate medical history in that you incorrectly stated that there was a history of constipation when the General Practitioner ('GP') records do not show this;
Admitted and found proved

~~b. failed to carry out a chest examination in light of a raised respiratory rate;~~
Withdrawn

c. failed to check Patient A's:

i. pulse;
Admitted and found proved

ii. blood pressure;
Admitted and found proved

d. failed to arrange:

i. an abdominal x-ray;
Admitted and found proved

ii. an ultrasound of the abdomen.
Admitted and found proved

2. On 6 November 2019, you were involved in the care and treatment of Patient A and:

a. you failed to obtain an adequate medical history, including further details:

i. of the duration of the symptoms that Patient A was being febrile and irritable with reduced oral intake;
Admitted and found proved

ii. to establish the cause of Patient A's fever;
Admitted and found proved

b. you failed to identify that there was no history of constipation;
Admitted and found proved

c. you failed to adequately act upon Patient A's raised blood pressure, including:

i. commenting on the results;
Admitted and found proved

ii. repeating a measurement of Patient A's blood pressure;
Admitted and found proved

iii. arranging further investigations;
Admitted and found proved

d. you failed to arrange:

i. an ultrasound of the abdomen;
Admitted and found proved

ii. an abdominal x-ray;
Admitted and found proved

iii. a CT scan of the abdomen;
Admitted and found proved

iv. blood tests;
Admitted and found proved

e. you failed to admit Patient A to hospital for further investigations;
Admitted and found proved

f. you failed to consider differential diagnoses, including but not limited to:

i. an abdominal tumour, such as:

1. Wilms tumour;
Admitted and found proved

2. neuroblastoma;
Admitted and found proved

ii. lymphoma;
Admitted and found proved

g. you failed to ask for a senior consultant review of Patient A and/or advice.
Admitted and found proved

And that by reason of the matters set out above your fitness to practise is impaired because of your misconduct.
To be determined

The Admitted Facts

12. At the outset of these proceedings, through his counsel, Ms Tampakopoulos, Dr Bhutto made admissions to all paragraphs of the Allegation, as set out above and following the withdrawal of paragraph 1(b), in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

IMPAIRMENT

13. 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 before, Dr Bhutto's fitness to practise is impaired by reason of misconduct.

The Evidence

Witness Evidence

14. The Tribunal received evidence from an expert witness on behalf of the GMC, Dr B, Consultant Paediatric Oncologist. She provided an expert report dated 25 February 2023 and gave oral evidence to the Tribunal on 22 June 2023. Dr B's evidence was to assist the Tribunal in understanding the professional standards expected in respect of the care provided to Patient A.

15. Dr Bhutto provided his own witness statement dated 11 May 2023 and a reflective statement dated 14 June 2023. Dr Bhutto also gave oral evidence at the hearing where he answered questions about the events in question, his insight and steps taken in respect of remediation.

Documentary Evidence

16. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, the following:

- Post-mortem report of Patient A dated 8 May 2020;
- Dr Bhutto's statement to the Crown Office & Procurator Fiscal Service dated 18 May 2020;
- Significant Adverse Event Review Report dated 27 May 2020;
- Patient A's medical records from the GP Surgery and the Hospital;
- Photograph of Patient A's nappy demonstrating a blood clot taken on 3 October 2019;
- Statement of Patient A's mother to the Police on 27 November 2019 and Dr Bhutto's statement to the Police on 30 November 2019;
- Statement dated 30 May 2023 from Dr Bhutto's Responsible Officer, Dr C; and
- A bundle on behalf of Dr Bhutto including Continuing Professional Development (CPD) certificates, PowerPoint presentations prepared for training, case based discussion documentation, and testimonials.

17. Within Dr B's expert report dated 25 February 2023, she concluded that:

"In summary there was adequate note keeping for a case of simple constipation and safety netting was adequate.

History taking and the management of presumed constipation were below standard as the maternal and the GP concerns about the abdominal mass were not taken sufficiently into account. If this had been a case of first presentation of constipation, the management fell below standard by the use of a suppository without first a sufficient trial of oral laxatives. Care was also below standard in the failure to discuss the case with the consultant on the second presentation.

Care fell seriously below standard in Dr Bhutto's lack of adequate examination skills, failure to act upon abnormal or missing observations, failure to consider a differential diagnosis and failure to investigate the abdominal mass on the second presentation. Patient A was therefore not diagnosed at a time when management of the tumour could have taken place before she became critically ill.

When considering all of the above, in my opinion the overall standard of care fell seriously below standard due to the lack of consideration of an alternative diagnosis of constipation at the second presentation, the raised blood pressure on the second presentation which was not considered and the failure to identify a large abdominal tumour on clinical examination."

18. Within Dr Bhutto's witness statement dated 11 May 2023, he stated:

"I was involved in Patient A's care on 2 occasions, on 20 October and 6 November 2019. I am aware that Patient A passed away shortly thereafter. I am very sorry for her tragic outcome. I wish to take this opportunity to pass on my sincerest condolences to her family. I have been very distressed by this case. I have reflected deeply on my involvement in Patient A's care. I have also proactively carried out education by reading papers and completing CPD modules. I will be attending a face to face course on 18 and 19 May 2023 at King's College London on tumours in children. I now have two mentors who are consultant paediatricians with whom I have worked with in the past. I have discussed my involvement in Patient A's care with them and they have directed me to resources, which I have also found useful. I am using my up-to-date clinical knowledge in my day to day practice to ensure that my errors are not repeated in the future.

...

I have reflected on my involvement in Patient A's care since that time and will continue to do so. I am now very wary when a patient presents with an abdominal mass that this may be a tumour. My mind goes to Patient A. I still think about her often. I made a mistake by not arranging further investigations for Patient A, particularly on 6 November when she had presented with a mass for a second time. I accept these mistakes and have discussed this case with colleagues and carried out CPD. I have learned from my involvement in Patient A's care. I will continue to reflect on this case for the rest of my career. I accept my mistakes, have educated myself and will continue to keep up-to-date to ensure that no mistakes of this nature are repeated in the future."

Submissions

Submissions on behalf of the GMC

19. Ms Khanna submitted that there was a foundation, due to paragraph 1 and 2 of the Allegation, for the Tribunal to make a finding of misconduct and impairment in this case.

20. Ms Khanna referred the Tribunal to a number of paragraphs of Good Medical Practice (2013) ('GMP'):

"15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

a adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient
b promptly provide or arrange suitable advice, investigations or treatment where necessary
c refer a patient to another practitioner when this serves the patient's needs.

16 In providing clinical care you must:
...
b provide effective treatments based on the best available evidence
...
d consult colleagues where appropriate

18 You must make good use of the resources available to you.

21 Clinical records should include:

a relevant clinical findings
b the decisions made and actions agreed, and who is making the decisions and agreeing the actions
c the information given to patients
...
e who is making the record and when.

35 You must work collaboratively with colleagues, respecting their skills and contributions.

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

21. Ms Khanna submitted that paragraph 15 of GMP was engaged due to the factual landscape in respect of the events of both 20 October and 6 November 2019. She submitted that, as per paragraph 16, this was certainly a live issue in that Dr Bhutto did not call upon a consultant for advice or review. Regarding paragraph 18, Ms Khanna stated that it had been suggested that Dr Bhutto had some difficulty as a consultant was not present given that the patient presented out of hours. She stated that this did not preclude a phone call being made and that help would have been available if required.

22. In terms of paragraph 21, Ms Khanna stated that one of the allegations was that a proper history was not taken, partly evidenced by the scarcity of information in some of the documentation that Dr Bhutto filled out. Regarding paragraph 35, Ms Khanna stated that Dr Bhutto was working collaboratively with the junior doctor present but there was no collaboration with the consultant to ask his/her guidance on 6 November 2019. In terms of paragraph 65, Ms Khanna submitted that doctors must make sure their conduct justifies a patient's trust placed in them and that a loss of trust would result if things were not done properly. She stated that it was on this limited basis upon which this provision in GMP may be engaged.

23. Ms Khanna stated that it was the GMC's case that there was a presumptive diagnosis of constipation which arose from an inadequate taking of the medical history of Patient A. She stated that if a proper history had been taken by Dr Bhutto then he would have known

that there was not a history of constipation. Ms Khanna stated that there was clearly, in this case, an underlying condition, to which Dr Bhutto's mind was completely shut off.

24. Ms Khanna referred to Dr B's evidence and stated that she did not consider this to be a constipation case. Ms Khanna submitted that Dr B stated that a skilled paediatric doctor in a general hospital setting would be expected to conduct these sort of examinations/investigations to consider the range of diagnoses. Further, Ms Khanna referred to the fact that a parent was alerting professionals to concerns about the abdomen in particular.

25. Ms Khanna submitted that, had it been picked up in October with appropriate tests being carried out, the result would have almost certainly been a diagnosis at an earlier stage. Ms Khanna submitted that Dr B had not fundamentally changed her position from her written report in terms of what was below or serious below the required standard.

26. In respect of 6 November 2019, Ms Khanna submitted that these facts justify a finding of misconduct based on the fact that this was not a constipation case and that, particularly by November, the differential diagnosis should have been much broader. However, everyone was still being guided by the constipation diagnosis made by Dr Bhutto in October.

27. Ms Khanna submitted that this was a case where the consequences were so serious and the risk so direct, culminating eventually in the very late treatment and untimely death of Patient A, that it would justify a finding of impairment from the viewpoint of public confidence in the profession and upholding professional standards.

28. Ms Khanna submitted that there had not been, particularly after Dr Bhutto had been given an opportunity to give oral evidence, any demonstrable insight into the matters before the Tribunal today. She stated that Dr Bhutto had been asked about the level of training undertaken and that his motivation appeared to be, rightly or wrongly, because of these proceedings. Ms Khanna referred to an issue in respect of Dr Bhutto's most recent employment in Scunthorpe - the Tribunal has addressed this in a standalone section below.

29. Ms Khanna submitted that Dr Bhutto had not shown complete insight and without this there could not be full remediation. She submitted that there was the risk that Dr Bhutto presented to Patient A in the past, and that risk was very much a live issue today. She stated that this was despite the training that Dr Bhutto had done and suggested that he had delayed training in the specific issues relating to this case. Ms Khanna submitted that there was also a

live concern in terms of the nature of his relationship with his junior doctors. It was a concern that when they appeared to agree with his diagnosis, he felt there was less need for him to take matters further with a consultant. She submitted that, had Dr Bhutto learnt from his mistakes, one would expect the default position to be that he would seek advice/review from the consultant irrespective of whether the junior doctor agreed or disagreed with the diagnosis.

30. Ms Khanna stated that there may have been a degree of learning about the importance of taking a medical history but the risks were still ongoing. She submitted that there was insufficient evidence before the Tribunal that the risk had been fully remedied. Ms Khanna stated that it was expected that an experienced and skilled registrar would not miss things and that his care of Patient A was reckless.

31. Ms Khanna submitted that it was important that even if the Tribunal made a finding that there was sufficient insight and remediation and the risk of repetition was managed to a degree, this was a case where it was essential to make a finding of impairment to maintain public confidence in the profession.

Submissions on behalf of Dr Bhutto

32. Ms Tampakopoulos stated that it was accepted by Dr Bhutto that the balance of these matters do amount to misconduct. However it was contended that Dr Bhutto's fitness to practise was not currently impaired.

33. Ms Tampakopoulos stated that she wished to provide some context in respect of the admissions. In respect of paragraph 1(a) of the Allegation, Ms Tampakopoulos stated that it was Dr Bhutto's clinical judgement that there was evidence of a history of constipation and had made that diagnosis having regard to the information he had obtained. She stated that it was on this basis that Dr Bhutto made all subsequent decisions. There was no evidence that Dr Bhutto saw, nor could have seen, the information from the GP.

34. In respect of paragraph 2(a)(i), Ms Tampakopoulos stated that Dr Bhutto did not obtain the details of the duration of the symptoms himself, in that Patient A was febrile and irritable. She stated that this was information available to him as provided by other clinicians and that it was his usual practice to read the relevant documentation.

35. In relation to paragraph 2(a)(ii), Ms Tampakopoulos stated that whilst Dr Bhutto did ask questions to exclude some possible causes in relation to Patient A's fever, with the benefit of hindsight he of course accepts he did not correctly establish the actual cause, as we now understand it, of Patient A's fever.

36. In respect of paragraph 2(b), Ms Tampakopoulos stated that the context was that Dr Bhutto remained of the clinical view, albeit erroneously, that there was a history of constipation.

37. Ms Tampakopoulos referred to Dr B's evidence and submitted that the balance of this evidence pointed to misconduct in relation to the second assessment on 6 November 2019 and not the first assessment on 20 October 2019. Ms Tampakopoulos submitted that this was significant and crucial contextual evidence from Dr B, including as to how rare incidents of childhood tumours are and how infrequently a doctor in a general paediatric unit would come across this.

38. Ms Tampakopoulos stated that she would also ask the Tribunal to have regard to the fact that there was no certainty about the timings of the start of the tumour or its size at various points. She stated that it would have been present over many months and Patient A was seen by a number of healthcare professionals who also did not pick up on the possibility that it might be something else.

39. Ms Tampakopoulos also asked the Tribunal to take into consideration that Dr B was a specialist paediatric oncologist, not a general paediatrician, and she had the advantage of time when looking at the documents and the benefit of hindsight when considering the case. Ms Tampakopoulos submitted that, taking all of that into account, misconduct was not made out in respect of the first assessment. She reiterated that misconduct was accepted in respect of the second assessment.

40. In terms of impairment of fitness to practise, Ms Tampakopoulos submitted that Dr Bhutto does have insight, has made significant attempts to remedy the issues, made full admissions, and there was no risk of repetition. In terms of Dr Bhutto's oral evidence, Ms Tampakopoulos asked the Tribunal to take into account that it was difficult giving evidence in circumstances where his professional career is on the line. She referred to Dr Bhutto's reflective piece and stated that this was produced with time and without the pressure and scrutiny inherent in this process. Ms Tampakopoulos submitted that Dr Bhutto had been affected by what happened and learned a significant lesson. She stated that Dr

Bhutto's job was to save children's lives and not to miss the matters that he did, so of course this stayed with him.

41. Ms Tampakopoulos submitted that it was Dr Bhutto's evidence that Patient A's case had stayed with him every time he saw a patient. She stated that it was very clear that Dr Bhutto would be highly sensitive to anything similar to this case going forward.

42. In relation to remediation, Ms Tampakopoulos stated that the Tribunal has significant evidence of further learning and training before it, which focused on the relevant issues that have been identified. She stated that Dr Bhutto had also conducted a number of case studies and assessments, as well as many hours of self-study and reflection. Ms Tampakopoulos submitted that Dr Bhutto had clearly strived to make himself an expert in childhood tumours such that, going forward, he just simply would not miss a diagnosis and it would be forever current in his mind. She stated that it was difficult to see what more Dr Bhutto could do in terms of learning.

43. Ms Tampakopoulos submitted that there was no risk of repetition, in that Dr Bhutto had changed his practice and seriously reformed and improved his clinical knowledge and approach. She stated that Bhutto was vigilant in terms of looking for the more sinister explanation as to symptoms and with a far lower threshold in terms of his approach. Ms Tampakopoulos submitted that Dr Bhutto has been practising for decades without any issue and that, since the index concerns in 2019, he had worked for three years without further concern.

44. Ms Tampakopoulos also referred to the testimonials provided on Dr Bhutto's behalf. She submitted that Patient A's case represented a snapshot and not a reflection of the practitioner that is described in the testimonials.

45. Ms Tampakopoulos submitted that, given the insight, remediation and absence of the risk of repetition, Dr Bhutto's fitness to practise was not currently impaired. She submitted that members of the public, having a grasp of all of the facts and the context of the rareness of the tumour, would agree with his submission.

The Relevant Legal Principles

46. 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.

47. 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; whether that the misconduct was serious; and then whether the finding of that misconduct, which was serious, could lead to a finding of impairment.

48. The Tribunal must determine whether Dr Bhutto's fitness to practise is impaired today, taking into account Dr Bhutto'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.

49. Ms Khanna, on behalf of the GMC set out the relevant legal principles in respect of misconduct and impairment, which were agreed by Ms Tampakopoulos and the Legally Qualified Chair. The principles included:

50. There is no strict definition of the principle of misconduct, however Lord Clyde in *Roylance v GMC* [2000] 1 AC 311, stated that:

> *"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances".*

51. Ms Khanna stated that any finding of misconduct as to fitness to practise should relate to serious misconduct, as described by Lord Justice Elias in *Remedy UK Ltd v GMC* [2010] EWHC 124, as *"sufficiently serious misconduct in the exercise of professional practice such that it can be properly described as misconduct going to fitness to practise"*.

52. Further, that serious professional misconduct had been described in case law as *"conduct which would be regarded as deplorable by fellow practitioners"* [*Nandi v GMC* [2004] EWHC 2317 (Admin)].

53. Ms Khanna referred to the approach set out by Dame Janet Smith in The Fifth Shipman Report, as approved by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 (Admin):

> *"Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
> *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..."*

The Tribunal's Determination on Impairment

Issue related to Dr Bhutto's employment at Scunthorpe in 2023

54. Dr Bhutto started working at Scunthorpe General Hospital on 13 March 2023. Within Dr Bhutto's witness statement dated 11 May 2023, he stated that, during a telephone call with his solicitor on 25 April 2023, he realised that he had *"unintentionally omitted to tell the hospital and the locum agency about the GMC investigation before starting"*. Dr Bhutto stated that he was aware of the obligation as he had told a previous locum agency employer about it. Dr Bhutto stated that a locum agency had called him *"out of the blue"* to ask him if he was interested in the Scunthorpe post. Dr Bhutto stated that he had registered with the agency a number of years ago but had not worked with them for a long time. Dr Bhutto stated that it therefore did not register with him that he had not told them about the GMC investigation as they approached him about the job. Dr Bhutto informed his line manager and the locum agency of the GMC investigation on 26 April 2023. Dr Bhutto apologised for his mistake within his witness statement dated 11 May 2023. He stated that it was an error on his part and that it had not occurred to him at the time that the locum agency would not know about the GMC investigation.

55. Ms Khanna submitted, in respect of insight, that if Patient A was at the forefront of Dr Bhutto's mind everyday as he told the Tribunal, then it was wholly surprising that he did not tell his employers about the GMC investigation. The Tribunal understood the suggestion to

be that Dr Bhutto was either lying or misleading the hospital, which could lead the Tribunal to think that his insight was not complete.

56. Ms Tampakopoulos submitted that there was no evidence to contradict Dr Bhutto's explanation, that he expected that the relevant people would have been informed and did so once he became aware that they had not been. She submitted that Dr Bhutto had been completely open and transparent with the Tribunal about this.

57. The Tribunal has borne in mind that the GMC has not brought any allegation against Dr Bhutto with respect to any failure to notify Scunthorpe Hospital about him being subject to this GMC investigation.

58. The Tribunal only has the evidence which Dr Bhutto has provided. It has not heard from the GMC any further about this point or what Dr Bhutto's previous employers had to say about this matter. The Tribunal also did not have any detail about whether, or to what extent, Dr Bhutto breached an obligation. It has Dr Bhutto's explanation from his statement. The Tribunal found that there was insufficient evidence to infer anything adverse to Dr Bhutto in terms of insight given the limited information before it.

Misconduct

59. The Tribunal considered whether Dr Bhutto's actions amount to misconduct.

20 October 2019 - paragraph 1 of the Allegation

60. Within Dr B's report, she provided a chronology, which included the events in question on 20 October 2019:

> *"20.10.19 She was seen at the general practice as grandmother has noticed a lump in her abdomen. There was an episode of loose stools and no history of constipation. The GP reviewed her and examined her. The GP noted the abdomen to be distended but did not identify a mass. She was referred to the paediatric assessment unit at [the] hospital with a "RAPTOR" referral form which highlighted the concern of a lump in her abdomen. At the paediatric assessment unit (PAU) she was reviewed by a nurse, an FY2 and a locum registrar, Dr Abdul Bhutto. Observations taken did not include a pulse or a blood pressure as she was upset. Her respiratory rate was 33/min, temperature was 37 degrees and she was noted to be alert. A history was taken that she was opening her bowels every day and that the stools were small and hard. She had not been noted to be straining on opening bowels. A photo of a blood clot in her nappy*

was shown to the medical team. She was examined and the mass in the abdomen had been considered to be hard stools. She was given an enema in the assessment unit with a result (according to the Ambulatory Emergency Care report) and she was prescribed Movicol 1 sachet to be taken twice a day for 2 weeks. She was given 48 hours of open access."

61. In terms of the Allegation, Dr Bhutto has admitted that, on 20 October 2019, he failed to: obtain an adequate medical history in that he incorrectly stated that there was a history of constipation when the General Practitioner ('GP') records do not show this; check Patient A's pulse and blood pressure; arrange an abdominal x-ray and an ultrasound of the abdomen.

62. The Tribunal had regard to the conclusions within Dr B's expert report in respect of this first occasion, including:

[Obtaining an adequate medical history]
"The medical history taking was below standard on the first presentation as there was not a history of constipation but this was the diagnosis made... On the first occasion it was felt to be constipation as two weeks before she had passed some blood in the stool and the stools were said to be "hard and ball like". This led to a presumed diagnosis of constipation. Therefore, the history taken was not seriously below standard in view of the documentation of previous hard stool. However, there were gaps in the history taking as there were no further questions regarding the blood clot which is not expected in the first presentation of simple constipation. Also, further history taking around the comment that the patient was not eating should have been made... Finally, the concerns of the grandmother and mother with regard to the palpation of a mass were not adequately explored. The GP had also raised concern about a tense abdomen and this concern had not been adequately addressed. Therefore, in my opinion the history taking was below but not seriously below standard on this first occasion."

[Adequately assess and examine Patient A]
"The examination was seriously below standard as on the first occasion incomplete observations were obtained. The pulse and blood pressure were not obtained. Sometimes a blood pressure measurement is difficult on an upset child but a further attempt should have been made once the child had settled. The examination failed to identify that this was a large tumour."

[Adequately reviewed and acted upon the results of any tests and investigations]
"No suitable tests or investigations were carried out. Patient A should have had an abdominal x-ray and an ultrasound scan of the abdomen in the first instance. Once the abdominal mass was found, further tests would be indicated but are beyond the scope of a doctor in the PAU."

63. Within Dr Bhutto's reflective statement dated 14 June 2023, he stated:

> *"I was the Locum Paediatric Registrar on-call at [the] Hospital on the 20th October 2019. I was covering GP referrals, A&E referrals, inpatients and Maternity.*
>
> *Patient A was referred by a GP and I received a telephone call... from the out of hours team about Patient A. We agreed Patient A should be seen in the PAU.*
>
> *My examination of Patient A revealed that she was a distressed child which made the assessment challenging. However, I established a normal respiratory and cardiac examination. The abdomen was distended with bowel sounds present. I erroneously considered that stool was palpable on abdominal examination.*
>
> *My first impression at this stage was that Patient A was suffering from an obstruction. However, I was falsely reassured by hearing normal bowel sounds and I therefore thought that it was most probable that Patient A was suffering from constipation. I recognise now that I should have arranged further investigations to confirm my diagnosis. [The Foundation Year 2 doctor] prescribed a glycerine suppository on my request. Patient A then passed a stool which I had understood to mean that she had responded well to the laxative. I saw her playing after this and she seemed happy. I had originally considered the need for abdominal x-ray to exclude the possibility of an obstruction. However, due to the reassuring bowel sounds, and what I thought to be a positive response to the laxative, I balanced the risks and regrettably concluded that an x-ray was not indicated because my working diagnosis was constipation with overflow diarrhoea.*
>
> *I eventually discharged Patient A with an oral laxative. Safety netting was provided by ensuring that Patient A had open access to the ward for 48 hours. This meant that if Patient A's parents had any concerns, they had a direct phone number to call the ward."*

64. The Tribunal had regard to Dr B's oral evidence to the Tribunal. She was asked for her conclusions about Dr Bhutto's actions on 20 October 2019. She discussed the importance of differential diagnosis and stated that, in the context of the possibility that it could have been constipation, the failure to organise the ultrasound and x-ray would not be below standard as you would not put a child through investigations for constipation, especially where there would be an exposure to radiation.

65. The Tribunal noted that the criticism made by Dr B was that Dr Bhutto too quickly narrowed his focus on the issue of constipation. Also, by the time of the consultation in October 2019, the mass would have been palpable to a skilled paediatric doctor, but accepted that examining upset children was often difficult in general terms. She stated that

constipation was a diagnosis open to Dr Bhutto as it was one of the more common causes of abdominal pain in children, and that an abdominal tumour was very rare. Dr B confirmed that it was at least a possibility that Patient A was presenting with both constipation and a tumour. Constipation can be the result of compression caused by the mass in the abdomen. Dr Bhutto made the diagnosis of constipation and treated it. The Tribunal noted that Dr B referred to the safety netting in place, in that 48 hours of open access to the ward was appropriate. The Tribunal was mindful that, in that context, it could understand how Dr Bhutto was viewing this situation on 20 October 2019. There is criticism of Dr Bhutto's clinical performance but, broadly, it was below rather than seriously below the expected standard.

66. In relation to paragraph 1(a), (b) and (c) of the Allegation, the Tribunal noted that the medical history was a mixed picture where there was other evidence to support a diagnosis of constipation. It accepted that Dr Bhutto failed to check Patient A's pulse and blood pressure but has also heard that Patient A was upset and crying when this was going to be checked, such that it would have been difficult to complete. Even if readings had been taken, they were likely to be unreliable for diagnostic purposes. The Tribunal also accepted that the nursing staff had already attempted to take these readings, albeit without success, and that Dr Bhutto was entitled to expect that nursing staff would make further efforts, where necessary. The Tribunal noted that Dr Bhutto had identified a working diagnosis of constipation, came up with a treatment plan which appeared to be successful in the short term. He had also put appropriate safety netting in place.

67. The Tribunal determined that there were failings in respect of paragraph 1 of the Allegation but overall they fell below the standard expected, as opposed to seriously below that standard. Thus, these failings were not so serious as to amount to misconduct. There was less than ideal clinical practice but there was not a strict departure from the principles of GMP such that it was a sufficiently serious breach.

<u>6 November 2019 - paragraph 2 of the Allegation</u>

68. Within Dr B's report, she provided a chronology, which included the events in question on 6 November 2019:

> *"06.11.19 Reviewed at the GP surgery as she was more unwell including having a fever. She was having 6 sachets of Movicol per day. She was febrile at 39o and was said to be sleeping all the time and had not eaten for 3 days. On examination she was*

distressed, temperature was 37.8 and her abdomen was tense. She was referred again to the PAU using the "RAPTOR" referral form.

At the PAU she was reviewed by a nurse, an FY2 and the same locum registrar, Dr Abdul Bhutto, as on the previous occasion. A photo of her abdomen was shown to the medical team showing a large abdominal swelling. She was noted to be irritable and crying with tenderness of the left side of her abdomen and assumed faecal loading. She was again given a suppository. Her blood pressure was 124/75. She was prescribed increased Movicol of 8 sachets per day for 5 days. Mum was asked to phone the PAU the next day for a fluid review."

69. In terms of the Allegation, Dr Bhutto has admitted that, on 6 November 2019, he failed to: obtain an adequate medical history; identify that there was no history of constipation; adequately act upon Patient A's raised blood pressure; arrange an ultrasound of the abdomen, an abdominal x-ray, a CT scan of the abdomen and blood tests. Further that Dr Bhutto failed to: admit Patient A to hospital for further investigations; to consider differential diagnoses, including but not limited to an abdominal tumour, lymphoma; and to ask for a senior consultant review of Patient A and/or advice.

70. The Tribunal had regard to the conclusions within Dr B's expert report in respect of this second occasion, including:

[Obtaining an adequate medical history]
"On the second presentation the medical history taken was seriously below standard... On the second occasion the history was less detailed as she was documented as being febrile and irritable with reduced oral intake. There should have been further questioning regarding the duration of these symptoms and further questioning to establish the cause of the fever which would not have been due to constipation. On this occasion the history taking fell seriously below the standard."

[Adequately assess and examine Patient A]
"On the second presentation the photo supplied shows a very large left sided flank mass which was far larger than expected with constipation. In any child with such a huge mass visible without palpation, the possibility that this was a tumour should have been considered. Therefore, an abdominal x-ray and ultrasound scan of the abdomen should have been arranged. On the second presentation Patient A had a raised blood pressure but this was not commented upon, repeated or investigated."

[Arrange all clinically indicated tests and investigations]
"The investigations were seriously below standard as on the second presentation with an abdominal mass, in association with a distressed or irritable child, an ultrasound scan of the abdomen should have been arranged. An abdominal x-ray should have

been carried out on the day which would not have shown constipation and, although not a definitive test for an abdominal mass, it is likely to have given the impression of a large space occupying mass in the abdomen. An ultrasound scan should have been arranged and this would have confirmed the diagnosis of a kidney tumour. Once the ultrasound scan or xray had shown a mass then a CT scan of the abdomen and blood tests should have been arranged. The child should, in this situation, have been admitted for further investigation and these further investigations would not have necessarily been indicated on the day of admission."

[Adequately reviewed and acted upon the results of any tests and investigations]
"No suitable tests or investigations were carried out. Patient A should have had an abdominal xray and an ultrasound scan of the abdomen in the first instance. Once the abdominal mass was found, further tests would be indicated but are beyond the scope of a doctor in the PAU."

[Appropriately diagnosed Patient A's condition, including consideration of differential diagnoses]
"Patient A was not appropriately diagnosed as differential diagnoses were not considered even at the second presentation of abdominal swelling and an unhappy child. The differential diagnosis should have included an abdominal tumour such as Wilms tumour or neuroblastoma. A lymphoma would also be in the differential. Rarely some benign conditions may also present with a large abdominal mass. Therefore, the differential is mainly between a tumour (benign or malignant) and constipation. Patient A did not improve after the first presentation and treatment with Movicol and this should have led to consideration of alternative diagnoses. The lack of consideration of a differential diagnosis fell seriously below standard."

[Arranged all necessary referrals]
"Patient A should have been referred for an ultrasound scan of the abdomen. No referrals for any further investigation or management were made. After the second presentation a discussion with the consultant on call should have taken place. The second presentation with a persisting abdominal mass, which had not resolved with constipation treatment and which was associated with irritability and lack of appetite in a child, should have been discussed with the consultant as the diagnosis of constipation should have been questioned. There is no evidence on either of the two presentations that the consultant was made aware of the patient. Therefore, the lack of any necessary referrals fell below standard. If constipation is the favoured diagnosis then a consultant would not need to be involved and therefore I do not think the lack of consultant involvement was seriously below standard. It is the lack of consideration of a differential diagnosis that falls seriously below standard."

[Implemented an adequate and appropriate treatment plan, including: follow-up/review, safety netting, following local or national guidance]
"There was some safety netting in place as the mother was given 48 hours direct access to the ward after the first presentation. After the second presentation the

mother was asked to contact the ward to report how Patient A was doing. This phone call did take place and no concern was raised therefore the safety netting was not below standard. However, national guidance for the management of abdominal masses was not followed as the diagnosis of constipation was not challenged. If a differential diagnosis had been considered and abdominal imaging arranged, then this would have led to the discovery of an abdominal mass and the management could then have followed the national guidance for childhood cancer. As above, in view of the fact that constipation was considered to be the problem, the management only fell below standard, However, it is the lack of consideration of a differential diagnosis which fell seriously below standard.

National referral guidelines for childhood cancer are available in both England and Scotland (Ref 2) and these guide clinicians regarding concerning or red flag signs and symptoms in children which raise concern for childhood cancer. A unilateral abdominal mass with or without pain in a well child should raise concern of an abdominal tumour such as Wilms tumour. The general practice made the appropriate referral to a specialist paediatric service but despite the clear concern that there was a left sided abdominal mass, Dr Bhutto failed to act on this information, failed to identify that there was no history of constipation and failed to ask for a senior consultant review or advice and in my opinion, this fell seriously below the standard of care to be expected by a Registrar in Paediatrics."

[Adequately communicated with medical colleagues]
"The lack of discussion with the consultant after the second review fell below standard. As stated... in the face of a diagnosis of constipation, the lack of communication with the consultant fell below standard but not seriously below standard. But if a differential diagnosis of a tumour had been considered, then it falls seriously below standard, not to have discussed with a consultant."

71. Within Dr Bhutto's reflective statement dated 14 June 2023, he stated:

"Unfortunately, Patient A presented again on 6 November 2019. She presented in the evening as she had seen a GP as she was complaining of a fever and had not eaten or taken any fluids. I carried out an examination of her abdomen and noted that she was tender on the left hand side and I could palpate a faecal mass. Bowel sounds were present. At this stage I increased her Paediatric Movicol.
...

Patient A presented with constipation secondary to external compression of the gut by a tumour. Constipation is very common in children. If I had considered a more sinister diagnosis earlier then it may have led to earlier diagnosis. In retrospect, I should have considered that there was a more sinister underlying cause. I was falsely reassured by Patient A's normal bowel sounds and apparent response to laxative. I considered doing an abdominal x-ray but I felt that the history and examination were in keeping with

constipation. My usual practice at the time was to consider abdominal x-rays carefully in terms of advantages and disadvantages in your children. I would have assessed the risk of radiation which did make me think carefully about whether referral for an x-ray was appropriate.

I was under a lot of pressure due to having several paediatric commitments on the ward, however, I now know that I should have arranged imaging or, if unsure, sought a second opinion from a Consultant to discuss whether imaging was required. This is particularly important where a child has re-presented more than once for similar concerns. Although I do think that I took a thorough examination and considered the history, I should have thought about a differential diagnosis and carried out further tests in order to rule out a more sinister cause. I should have sought a second opinion from a consultant, this may have led to tests being undertaken at an earlier stage and the tumour being identified earlier.

When Patient A's symptoms had not improved after initial management, I should have involved a consultant for a second opinion. I regret that I discharged Patient A on 6 November. I should have admitted Patient A or asked that she be brought back to the hospital to be seen during the morning ward round as a consultant could have assessed her.

I have reflected deeply on this case and consider that if I had arranged a Consultant review of Patient A; arranged further tests such as an X-ray or ultrasound and sought input from colleagues; this could have led to an earlier diagnosis."

72. The Tribunal had regard to Dr B's oral evidence to the Tribunal. She explained that a differential diagnosis was an important part of medical history taking and examination. Dr B stated that, when a practitioner is faced with an uncertain diagnosis, it is important for the practitioner to take a broad enough history of the symptoms and signs and then an appropriate examination. She said that, if the practitioner was still unable to make a clear diagnosis, they would then consider what actions they would need to take to work through the list of possibilities.

73. Dr B stated that she thought that the most important thing was the repeated presentation with similar symptoms, and despite management of constipation in the period since 20 October 2019. Dr B felt that this was a red flag. She reiterated the conclusions in her report about the aspects she found to be seriously below the expected standard, as set out at paragraph 2 of the Allegation.

74. The Tribunal noted that Patient A presented again to Dr Bhutto at the hospital, less than a month after the first instance, with the same issues. Patient A had been seen

repeatedly in the interim, receiving treatment for constipation. The Tribunal was clear, from Dr B's evidence, that there was a broader range of diagnoses that should have been considered by Dr Bhutto on 6 November 2019. In this regard, it made a distinction between the events of 20 October 2019 and 6 November 2019.

75. The Tribunal had regard to GMP. It noted the paragraphs of GMP identified by Ms Khanna in her submissions, as above. The Tribunal determined that Dr Bhutto's actions in respect of paragraph 2 of the Allegation represented a serious departure from the following two paragraphs of GMP:

> *"15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*
>
> *a adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient*
> *b promptly provide or arrange suitable advice, investigations or treatment where necessary*
> *c refer a patient to another practitioner when this serves the patient's needs.*
>
> *16 In providing clinical care you must:*
> *...*
> *d consult colleagues where appropriate"*

76. With regard to paragraph 18 of GMP *"You must make good use of the resources available to you"*, the Tribunal was of the view that this did not apply in this case. It determined that the departure from GMP in respect of this point was better placed under paragraph 16(d). It was also not persuaded that the other paragraphs of GMP identified by Ms Khanna were engaged in this case, including paragraphs 35 and 65. The Tribunal noted that there had been no criticism of Dr Bhutto's integrity, honesty, or ability to work collaboratively with colleagues. In fact there was uncontested positive testimonial evidence to the contrary.

77. The Tribunal was of the view that Dr B's overall summary or conclusion was highly demonstrative of the issues:

> *"Care fell seriously below standard in Dr Bhutto's lack of adequate examination skills, failure to act upon abnormal or missing observations, failure to consider a differential diagnosis and failure to investigate the abdominal mass on the second presentation.*

Patient A was therefore not diagnosed at a time when management of the tumour could have taken place before she became critically ill.

When considering all of the above, in my opinion the overall standard of care fell seriously below standard due to the lack of consideration of an alternative diagnosis of constipation at the second presentation, the raised blood pressure on the second presentation which was not considered and the failure to identify a large abdominal tumour on clinical examination."

78. The Tribunal was concerned about the apparent narrow focus and puzzling inflexibility of Dr Bhutto to consider alternative diagnoses on the second occasion, in spite of the fact that the family had presented with a lump, which they themselves could appreciate. He had, for the second time, laid his hand on a mass in the child's abdomen. Dr B had informed the Tribunal of relevant national guidance regarding the diagnosis of childhood cancer, which she explained highlights in clear terms that children usually repeatedly present with similar symptoms and concerns from their family. The Tribunal determined that Dr Bhutto, with his level of experience and in his role, should have been alive to the principles underpinning this guidance and had regard to them when assessing Patient A on the second occasion.

79. In all the circumstances, and with particular reference to Dr B's conclusions, the Tribunal has concluded that Dr Bhutto's conduct fell so far short of the standards of conduct reasonably expected of a doctor as to amount to serious misconduct in respect of paragraph 2 of the Allegation.

Impairment by reason of misconduct

80. The Tribunal, having found that the facts proved amounted to misconduct in respect of paragraph 2 of the Allegation, went on to consider whether Dr Bhutto's fitness to practise is currently impaired by reason of his misconduct.

81. The Tribunal had regard to the details of the misconduct on 6 November 2019, including that this occasion represented the second time when Dr Bhutto saw Patient A within a month of her presentation with a lump in her abdomen, and in circumstances where the treatment for constipation had not dealt with the concern. It considered whether Dr Bhutto had taken steps to remedy his misconduct and whether he had insight into his actions and the impact of them upon others and the wider public/medical profession.

82. With regards to remediation, the Tribunal determined that the concerns regarding Dr Bhutto's clinical performance, namely his too narrow and inflexible approach to the diagnostic process on 6 November 2019, had the potential to be remedied. It asked itself whether Dr Bhutto had done so.

83. The Tribunal had regard to the various CPD certificates, details of courses attended, learning undertaken, testimonials, and presentations he produced intended for peers. The CPD included courses on: Febrile Neutropenia in Paediatric Cancer Patients, Management of Hepatoblastoma, Renal Tumours in Children, Soft Tissue Tumours in Children and Foundation Oncology Skills for Healthcare Professionals.

84. The Tribunal determined that it was impressed by the steps taken to demonstrate remediation. It was of the view that Dr Bhutto had changed his practice and built upon the learning he has undertaken. He had significantly improved his knowledge about childhood tumours.

85. In respect of insight, the Tribunal had regard to Dr Bhutto's written and oral evidence. In particular, his reflective statement dated 14 June 2023, in which he stated:

> *"This case is stuck in [my] mind every single day. When I treat other patients in hospital, I think of Patient A. Above all I am very sad for the parents and the wider family on the passing of Patient A.*
>
> *I have considered deeply whether there was anything I could have done differently to alter the course of events. I want to be sure that this is not something that will happen again and I have thought very carefully about my practice. I have reflected considerably and this very tragic incident has led me to seek input from my paediatric consultants, who have been mentoring me. I have also attended training courses and undertaken self-study, in order to give me peace of mind that something like this will not happen again.*
> ...
> *The incident has massively affected my practice, even if the paediatric ward is busy, I seek further input from a consultant when I am unsure.*
>
> *I have spent a considerable amount of time learning about the presentation of childhood tumours, focusing on renal tumours in childhood, in order to improve my clinical knowledge and practice. I am very aware that the presentation of constipation may mask something more sinister.*
> ...

The training that I have attended and the self-study I have undertaken has made me more vigilant and aware of symptoms indicative of a tumour. If I am unsure of a diagnosis, I will ask a consultant for a second opinion.

If my management plan has not been successful, for example, if a patient re-attend[s] with similar complaints, then I will assess whether further tests need to be undertaken at an earlier stage. The training I have attended has provided an insight into when ultrasounds, CT scans, MRIs and biopsies are appropriate to determine the cause and type of mass.

I am much more active with my investigations, for example, I consider whether an ultrasound, CT scan, MRI scan or urine/blood test is appropriate, at an earlier stage.

I now discuss every child that presents to hospital with the same complaint on more than one occasion with the supervising consultant or a senior colleague. This is to ensure that I get a second opinion on my diagnosis and management plan. It is also to ensure that I engage in ongoing learning, to gain practical lessons from my colleagues' experience. I also have a lower threshold for admitting patients on their second presentation with the same complaint.

If I were faced with a similar situation, I know that I would be more vigilant. I would not want anything like this to ever happen again. I will always consider a more sinister, underlying diagnosis and I will undertake appropriate tests to ensure those diagnoses are ruled out..."

86. The Tribunal had regard to the apologies made by Dr Bhutto. In doing so, it was mindful that no apology could ever remedy the loss of a child. However, in respect of Dr Bhutto's insight, it considered his apologies to be immediate, sincere, persistent and consistent. The Tribunal was of the view that Dr Bhutto was genuinely sorry for his failings. Furthermore, these failings were repeatedly discussed in his appraisals and with his mentors in the context of case based discussions and presentations to colleagues, specifically about the nature of Patient A's condition. The Tribunal had regard to Dr Bhutto's reflections, as above, and his admissions to the entirety of the Allegation at this hearing.

87. The Tribunal determined that Dr Bhutto had shown insight into his contributory role in Patient A's care and the errors he made. He had shown clear contrition and understanding into his misconduct. The Tribunal determined that, with particular reference to the written statements, Dr Bhutto had demonstrated full insight into his misconduct.

88. Having regard to the risk of repetition, the Tribunal noted that there was no previous fitness to practise history and that Dr Bhutto had continued to practise for a period of three

years since the index events without any further concerns. The Tribunal determined that the risk associated with Dr Bhutto failing to identify a suspected tumour in a child was certainly no higher than for any other general paediatrician. Given his insight and remediation, it was likely to be lower. The Tribunal was clear that Dr Bhutto was very conscious of not making the same error again. It was of the view that he had changed his practice and would seek consultant advice or review if similar circumstances were to arise.

89. Thus, the Tribunal determined that Dr Bhutto had full insight; had taken significant steps to remediate his misconduct, leading to a conclusion that he had remedied his failings; and was unlikely to repeat his misconduct.

90. Notwithstanding what Dr Bhutto has done since, the Tribunal looked back at the failings in their context. It asked itself, in relation to the second consultation, whether the failings were so serious as to require a finding of impairment in order to maintain public confidence in the profession and to promote and maintain proper standards in the medical profession. The Tribunal considered that a failure to open his mind to alternative diagnoses in spite of the repeated presentations of Patient A with a large abdominal tumour, as highlighted by the child's own family, was so serious as to determine a finding of impairment. This is because public confidence would be undermined if no finding of impairment was made.

91. The Tribunal therefore determined that Dr Bhutto's fitness to practise is impaired by reason of misconduct.

92. The Tribunal would like to take this opportunity again to express its condolences to the family for the loss of Patient A.

Determination on Sanction - 28/06/2023

93. Having determined that Dr Bhutto'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

94. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant when reaching a decision on sanction.

Submissions

Submissions on behalf of the GMC

95. Ms Khanna submitted that this was a case where suspension was warranted. She submitted that suspension was appropriate and proportionate.

96. Ms Khanna referred to various paragraphs of the Sanctions Guidance (16 November 2020) ('the SG'). She made reference to the mitigating factors in this case, including that Dr Bhutto made full admissions in a timely manner, that the Tribunal was impressed by the efforts Dr Bhutto had undertaken in respect of remediation, and that Dr Bhutto had satisfactorily reflected about the consequences of his actions. Ms Khanna also referred to the lapse of time since the incident occurred, namely some three and a half years, and that Dr Bhutto had been practising without any repetition or further concerns raised.

97. Ms Khanna submitted that there were a number of aggravating features in this case. She stated that this included the overall context in which the misconduct arose. She submitted that paediatrics was one area where doctors would keep a really wide view on presenting symptoms, particularly where there were repeated presenting symptoms, and where previously administered treatment was not working. Ms Khanna further submitted that, perhaps crucially, what aggravated this case was ignoring or not fully taking into account the information provided by family members. She stated that, while the factors in this case may not necessarily fit into the list of aggravating factors within the SG, it was a non-exhaustive list which allowed flexibility.

98. Ms Khanna stated that no action could only be taken in an exceptional case. She submitted that taking no action would be an inappropriate in these circumstances.

99. In respect of conditions, Ms Khanna submitted that these would be inappropriate and unworkable. She referred to paragraph 81 of the SG, which sets out some instances when conditions might be appropriate, including cases that involve the doctor's health, or issues around the doctor's performance. Ms Khanna submitted that the Tribunal has found there to have been remediation, full insight, and a low risk of repetition. Therefore, Dr Bhutto's performance was not a live concern.

100. Ms Khanna submitted that, in terms of workability, there was no training or supervision that might appropriately address the live concerns that the Tribunal had, which

was public confidence in the profession. She submitted that suspension had a deterrent effect and could be used to send out a signal in this case. Ms Khanna submitted that the seriousness of this case lay in paragraph 2 of the Allegation and that a sanction of suspension would be a proportionate response.

101. Ms Khanna stated that suspension could be imposed for up to 12 months and noted that, if the Tribunal was satisfied that a review hearing was not required, a short period of suspension would achieve the statutory overarching objective. Ms Khanna stated that it was a very sad case and must have been a difficult one for Patient A's family to observe. She submitted that there were a number of factors about the case that were so serious that cried out for a period of suspension, including a doctor who kept a closed mind on a repeated presentation, who did not follow the NICE guidelines, who did not consult with an available consultant for advice or review. It was appropriate for the Tribunal to have regard to the tragic consequences of this case.

102. Ms Khanna submitted that anything less than suspension would not reflect the seriousness of this case and send out a very wrong message to other doctors and the public as to how a case such as this is to be dealt with.

Submissions on behalf of Dr Bhutto

103. Ms Tampakopoulos submitted that, having regard to the Tribunal's previous determination, it was appropriate for this case to be dealt with by way of conditions on Dr Bhutto's registration.

104. Ms Tampakopoulos submitted that the nature of the misconduct, namely the failure to consider a differential diagnosis on 6 November 2019, was an isolated incident in Dr Bhutto's lengthy career. She submitted that there was no pattern here. It was not a case where there was any deliberate or reckless disregard for the patient.

105. Ms Tampakopoulos submitted that conditions were appropriate because, not only could this matter be remediated, but that Dr Bhutto had taken significant steps to demonstrate remediation. Ms Tampakopoulos submitted that Dr Bhutto had changed his practice, built upon the learning he had undertaken, and significantly improved his knowledge about childhood tumours.

106. Ms Tampakopoulos submitted that Dr Bhutto had made full admissions from the outset and was genuinely remorseful. She stated that Dr Bhutto acknowledged the seriousness of his errors.

107. Ms Tampakopoulos submitted that Dr Bhutto had shown insight into his role in Patient A's care and, as previously submitted, the risk of repetition was negligible. She referred to the Tribunal's comments that *"the risk associated with Dr Bhutto failing to identify a suspected tumour in a child was certainly no higher than for any other general paediatrician. Given his insight and remediation, it was likely to be lower"*.

108. Ms Tampakopoulos stated that there had been no previous concerns raised about Dr Bhutto in his 30 year career, nor anything post the events in question, which are now some three and a half years ago. She submitted that this was evidence that Dr Bhutto is fundamentally safe. Ms Tampakopoulos also stated that this was reflected in the testimonials where Dr Bhutto was described as caring and thoughtful.

109. With reference to aggravating factors, Ms Tampakopoulos urged caution in how the Tribunal approached its analysis. She submitted that the application of a narrow focus and the inflexibility to consider an alternative diagnosis constituted the misconduct. To consider these matters again, as aggravating factors, would risk double counting, and would be unfair.

110. Ms Tampakopoulos submitted that conditions were the only appropriate and proportionate sanction having regard to all of the circumstances of this case and the circumstances of the doctor. She stated that conditions would properly balance the interests of this doctor with maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct.

111. Ms Tampakopoulos referred to Ms Khanna's comments in respect of paragraph 81 of the SG, which sets out some instances when conditions might be appropriate. Ms Tampakopoulos submitted that the guidance must be flexibly applied to the particular facts of this case and that the list of examples in paragraph 81 was not a mandatory one.

112. Ms Tampakopoulos stated that it was not agreed or accepted that suspension was the proportionate approach in this case. She referred to how the Tribunal had previously characterised and decided this case thus far. Ms Tampakopoulos stated that conditions were workable and met the issues in terms of maintaining public confidence and professional

standards. She suggested that, if the Tribunal was minded to impose conditions, it give specific consideration to:

- no locum post of less than three months,
- the imposition of general medical supervision, and
- no condition prohibiting out of hours or on call work.

113. Ms Tampakopoulos stated that these would ensure consistency and workability, and involve a level of monitoring and interaction to properly manage the concerns identified. She also identified the difficulty that Dr Bhutto would experience finding other locum work if he was prohibited from working out of hours or on call.

The Tribunal's Determination on Sanction

114. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own judgement.

115. In reaching its decision, the Tribunal has taken account of the SG and of the overarching objectives. It has borne in mind that the purpose of the sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

Aggravating and mitigating factors

116. The Tribunal had regard to all of the matters it set out in its previous determination. It did not identify any additional aggravating factors. The Tribunal identified the following mitigating factors in this case:

- Dr Bhutto had made full admissions to the Allegation in a timely manner. Dr Bhutto had made immediate and sincere apology for his misconduct. The Tribunal previously noted that it was of the view that Dr Bhutto was genuinely sorry for his failings and that he had repeatedly discussed the failings in his appraisals and with his mentors.

- Dr Bhutto had demonstrated full insight into his misconduct and "*shown clear contrition and understanding into his misconduct*". The Tribunal had previously noted that it was impressed by the steps taken to demonstrate remediation and

was of the view that Dr Bhutto had changed his practice and built upon the learning he had undertaken.

- There had been a period of three and a half years since the events in question and Dr Bhutto has continued to work in paediatrics for most of the time since then without concern or restriction by the GMC. He had no previous fitness to practise history.

No action

117. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Bhutto's case, the Tribunal first considered whether to conclude the case by taking no action.

118. The Tribunal had regard to its findings at the impairment stage. It determined that the seriousness of the lapse of clinical judgement was such that some positive action was required in respect of sanction.

119. The Tribunal determined that it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action. It was unable to identify any exceptional circumstances which might justify the taking of no action.

Conditions

120. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Bhutto's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

121. The Tribunal had regard to paragraph 81 of the SG that conditions might be most appropriate in cases involving the doctor's health, lack of necessary knowledge of English, or involving issues around the doctor's performance. It did not consider that the factors at paragraph 81 were a live concern in this case.

122. The Tribunal had regard to its previous comments as to Dr Bhutto's insight, remediation, and in terms of the low risk of repetition. The Tribunal determined that the imposition of conditions on Dr Bhutto's registration would not be appropriate. It concluded that conditions would not address the misconduct and impairment found in this case. The

seriousness of the misconduct would not be satisfied by the imposition of conditions given the impact on public confidence. Indeed, the Tribunal took the view that in the light of its findings that there was no ongoing risk to patients, that the imposition of the conditions proposed by Ms Tampakopoulos would send out a rather confusing message to the public and the profession.

Suspension

123. The Tribunal then went on to consider whether suspending Dr Bhutto's registration would be appropriate and proportionate.

124. The Tribunal had regard to its findings in respect of misconduct and impairment, and to its previous comments as to Dr Bhutto's insight, remediation and the low risk of repetition. The Tribunal took account of the relevant parts of the SG in relation to suspension, including paragraphs 91 to 93:

> *"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 unbefitting 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.*
>
> *92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*
>
> *93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated..."*

125. The Tribunal noted that Dr Bhutto had been practising since the incident without further concern, had made full admissions and was genuine in terms of his apology and

remorse for his failings. The Tribunal was of the view that Dr Bhutto had demonstrated that he is a safe and effective paediatrician.

126. The Tribunal determined to suspend Dr Bhutto's registration. It concluded that, with reference to paragraph 91 of the SG, suspension had a deterrent effect and would effectively send out a signal to Dr Bhutto, the profession and the public about what is regarded as professional conduct unbefitting a registered doctor. The Tribunal was clear that suspension was appropriate in these circumstances to ensure the necessary action to maintain public confidence in the profession. The Tribunal was also of the view that suspension would mark the seriousness of the misconduct and the departure from the principles of GMP that it had previously identified. It concluded that Dr Bhutto's misconduct was serious but fell short of being fundamentally incompatible with continued registration.

127. The Tribunal, in balancing all of the factors and the need to maintain public confidence in the profession, determined to impose the suspension for a period of one month. It considered this a careful balancing exercise, including with reference to the mitigating factors, and concluded that this period of time was sufficient to mark the misconduct and proportionate given the specifics in this case. It had had regard to paragraphs 101 and 102 of the SG that *"The tribunal's primary consideration should be public protection and the seriousness of the findings"*, and was of the view that this period of suspension met this requirement.

128. The Tribunal had regard to the relevant paragraphs of the SG, including paragraph 164, that *"In some misconduct cases it may be self-evident that, following a short suspension, there will be no value in a review hearing. However, in most cases where a period of suspension is imposed, and in all cases where conditions have been imposed, the tribunal will need to be reassured that the doctor is fit to resume practice - either unrestricted or with conditions or further conditions..."* The Tribunal was of the view that Dr Bhutto would be fit to resume unrestricted practice after the conclusion of the period of suspension and, having fully appreciated the gravity of his misconduct and the steps taken to remediate, this would be appropriate. As such, the Tribunal determined not to direct a review of Dr Bhutto's case.

Determination on Immediate Order - 28/06/2023

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

Submissions

Submissions on behalf of the GMC

130. Ms Khanna stated that she did not make any application in respect of immediate order. She confirmed that there was no interim order in place on Dr Bhutto's registration.

Submissions on behalf of Dr Bhutto

131. Ms Tampakopoulos made an initial application for the imposition of an immediate order on the understanding that this would bring forward the start date of the substantive suspension. This would have avoided the practical effect of Dr Bhutto being unable to work in the period before the substantive suspension started. The LQC assisted by clarifying the legal position around this point and, with reference to the Medical Act 1983, as quoted below, it was clarified that an immediate order would not give the benefit anticipated and would have the effect of imposing an additional period of suspension. This clarification was accepted.

The Tribunal's Determination

132. In making its decision the Tribunal had regard to Section 38(1) and (3) of the Medical Act 1983 as amended, in respect of *"Power to order immediate suspension etc. after a finding of impairment of fitness to practise"*:

> *"(1) On giving a direction for erasure or a direction for suspension under section 35D(2), (10) or (12) above, or paragraph 5A(3D) or 5C(4) of Schedule 4 to this Act, in respect of any person the Medical Practitioners Tribunal, if satisfied that to do so is necessary for the protection of members of the public or is otherwise in the public interest, or is in the best interests of that person, may order that his registration in the register shall be suspended forthwith in accordance with this section.*
> ...
> *(3) Where, on the giving of a direction, an order under subsection (1) or (2) above is made in respect of a person, his registration in the register shall, subject to subsection (4) below, be suspended (that is to say, shall not have effect) or made conditional, as the case may be, from the time when the order is made until the time when -*
> *(a) the direction takes effect in accordance with -*
> *(i) paragraph 10, 10A or 10B of Schedule 4 to this Act; or*

(b) an appeal against it under section 40 below or paragraph 5A(5) or 5C(7) of Schedule 4 is (otherwise than by the dismissal of the appeal) determined."

and to paragraph 172 of the SG, which states:

"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."

133. With regard to Ms Tampakopoulos' initial point about an immediate order being in Dr Bhutto's own interests by bringing forward the start date of the substantive suspension, the Tribunal reiterated the comments above that this would not be achieved by the imposition of an immediate order.

134. The Tribunal, with reference to paragraph 172 of the SG, considered whether an immediate order should be imposed in this case. It had regard to its comments in its previous determinations about the low risk of repetition and the significant period of time since 2019 during which Dr Bhutto has been practising unrestricted without further concern. The Tribunal determined that an immediate order was not necessary to protect members of the public, as there was no concern about a continuation of practice in the interim period before the substantive suspension comes into effect. Neither was an immediate order in the *"best interests"* of Dr Bhutto as defined. It is clear that Section 38(1) above has in mind risk to the doctor. It does not encompass practicalities or convenience to the doctor.

135. In all the circumstances, the Tribunal determined not to impose an immediate order of suspension on Dr Bhutto's registration.

136. This means that Dr Bhutto's registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Bhutto does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

137. There is no interim order to revoke.

138. That concludes this case.

ANNEX A - 21/06/2023

Application for adjournment

139. The Tribunal agreed, in accordance with Rule 41 of the General Medical Council (GMC) (Fitness to Practise Rules) 2004 as amended ('the Rules'), that parts of this hearing should be heard in private where the matters under consideration are confidential, namely where they involve XXX. As such, this determination will be read in private but a redacted version will be published following the conclusion of this hearing, with those matters relating to XXX removed.

140. On 19 June 2023 Ms Tampakopoulos, Counsel on behalf of Dr Bhutto, made an application under Rule 29(2) of the Rules, which states:

> *"Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Tribunal considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit."*

141. A non-sitting day for the parties on Tuesday 20 June 2023 had been agreed at the end of May 2023, via a MPTS Case Manager following a request from Dr Bhutto's legal representatives.

Submissions

Submissions on behalf of Dr Bhutto

142. XXX

143. Ms Tampakopoulos stated that Dr Bhutto wanted to participate in these proceedings and that a short adjournment was proportionate and in the interests of justice as the Tribunal would ideally want to hear evidence from Dr Bhutto. She said that, with regret, the adjournment was requested.

Submissions on behalf of the GMC

144. Ms Khanna, Counsel, submitted that the GMC was neutral in respect of the application to adjourn until Wednesday. She stated that the GMC had made enquiries and the GMC expert witness was unavailable on Wednesday but could give evidence on Thursday 22 June 2023. Ms Khanna stated that it was hoped that the issues could be narrowed down by discussion between the parties/expert witness.

Tribunal's Decision

145. The Tribunal had regard to Rule 29(2) of the Rules, the submissions from the parties, and of the principle of proportionality.

146. The Tribunal took account of XXX.

147. The Tribunal determined to grant the application for the adjournment of the hearing until Wednesday 21 June 2023. It noted that the GMC expert witness is unavailable to attend the hearing on this date so the Tribunal will hear the opening and whatever else it can do before hearing her evidence on Thursday 22 June 2023.