PUBLIC RECORD

Dates: 08/01/2024 - 17/01/2024

Medical Practitioner's name:	Dr Aleksejs CVETKOVS
GMC reference number:	7077337
Primary medical qualification:	MD 1996 Latvijas Medicinas Akademija

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

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Duncan James Ritchie
Lay Tribunal Member:	Mr Paul Hepworth
Medical Tribunal Member:	Dr Jeffrey Phillips

Tribunal Clerk:	Mr Joel Taylor-Garratt

Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Georgina Goring, Counsel
Special Counsel:	Ms Rosalind Emsley-Smith, 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 - 12/01/2024

1. This determination will be handed down in private. However, as this case concerns Dr Cvetkovs' misconduct and conviction a redacted version will be published at the close of the hearing.

Background

2. Dr Cvetkovs qualified as a doctor in Latvia in 1996. At the time of the events Dr Cvetkovs was employed by North Cumbria Integrated Care NHS Foundation Trust ('the Trust') as a Locum Foundation Year 2 doctor at the Cumberland Infirmary.

3. The allegation that has led to Dr Cvetkovs' hearing can be summarised as in December 2020 and January 2021, Dr Cvetkovs behaved in a sexually motivated way towards Patient A who was vulnerable due to a mental health condition. It is also alleged that on or around 14 December 2020, Dr Cvetkovs was dishonest in a statement to his employer relating to his interactions with Patient A following her discharge from the Hospital.

4. It is also alleged that, on 17 April 2021, at Grimsby Magistrates' Court, Dr Cvetkovs was convicted of without good reason or lawful authority, in a public place, being in possession of a folding pocketknife which had a blade the cutting edge of which exceeded 7.62 centimetres (3 inches), contrary to section 139(1) and (6) of the Criminal Justice Act 1988. It is further alleged that on 22 July 2021, Dr Cvetkovs was sentenced to 8 weeks' imprisonment, suspended for 6 months.

5. The events which led to Dr Cvetkovs' conviction can be summarised that on the morning of 16 April 2021 in Grimsby a member of the public reported to the police that a man (Dr Cvetkovs) XXX. Officers attended and searched Dr Cvetkovs, locating the blade in his pocket.

6. The police reported that whilst in custody Dr Cvetkovs XXX. Dr Cvetkovs was charged XXX. Dr Cvetkovs pleaded guilty and was bailed by the court for a further hearing on 3 June 2021. Dr Cvetkovs failed to attend that hearing XXX. A further hearing was arranged for 22 July 2021 when Dr Cvetkovs was sentenced.

7. XXX

8. The initial concerns were raised with the GMC on 13 October 2021 by Humberside Police, following Dr Cvetkovs' conviction. The alleged inappropriate relationship with Patient A was also investigated by the Trust, resulting in restricting Dr Cvetkovs' practice to avoid all patient contact.

The Outcome of Applications Made during the Facts Stage

9. The Tribunal granted the GMC's application, made pursuant to Rule 17(2)(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to make two amendments to the Allegation in order to correct minor typographical errors. The Tribunal considered that these amendments did not alter the substance of the Allegation and no injustice would be caused by doing so. Dr Cvetkovs did not oppose the application.

10. The Tribunal granted the GMC's application, made pursuant to Rule 17(6), to withdraw certain paragraphs of the Allegation. The details of this decision are set out in Annex A.

11. The Tribunal considered the GMC's suggestion to sit in private for Dr Cvetkovs' evidence but determined to remain in public. The details of this decision are set out in Annex B.

12. The Tribunal granted, in part, Dr Cvetkovs' application, made pursuant to Rule 17(2)(g), of no case to answer. The details of this decision are set out in Annex C.

13. At the close of the facts stage, but before considering the facts, the Tribunal determined to make a further amendment to the Allegation in light of Dr Cvetkovs' evidence. The details of this decision are set out in Annex D.

14. At the close of the facts stage, the Tribunal granted Ms Goring, Counsel for the GMC's application for the parties to attend the remainder of the hearing virtually.

The Allegation and the Doctor's Response

15. The Allegation made against Dr Cvetkovs is as follows:

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

Patient A

1. On or around 10 or 11 December 2020, you entered Patient A's private hospital room ('the Room') at The Cumberland Infirmary ('the Infirmary') and you:

   a. shut the door behind you; Admitted and found proved

   b. ~~did not explain to Patient A why you were in the Room;~~ Withdrawn under Rule 17(6)

   ~~c. said to Patient A:~~

      i. ~~"you have a little neck";~~ Withdrawn under Rule 17(6)

      ii. ~~"you have the body of child, this is a good thing";~~ Withdrawn under Rule 17(6)

      iii. ~~that she was extraordinary;~~ Withdrawn under Rule 17(6)

      ~~or words to that effect;~~

   ~~d. asked Patient A:~~

      i. ~~whether she had a boyfriend;~~ Withdrawn under Rule 17(6)

      ii. ~~if she enjoyed sex;~~ Withdrawn under Rule 17(6)

      ~~or words to that effect;~~

   e. ~~leaned in close to Patient A's neck and said, 'I wish you didn't have a boyfriend', or words to that effect;~~ Withdrawn under Rule 17(6)

   f. ~~grabbed Patient A's body with both of your hands;~~ Withdrawn under Rule 17(6)

   g. ~~turned Patient A's body away from you, so that she was facing the head of the bed and wall;~~ Withdrawn under Rule 17(6)

   h. ~~put one of your hands on Patient A's thigh and moved it upwards towards her genitalia;~~ Withdrawn under Rule 17(6)

   i. ~~penetrated Patient A's anus with your thumb;~~ Withdrawn under Rule 17(6)

j. ~~used your finger to gesture towards Patient A's vagina;~~ Withdrawn under Rule 17(6)

k. were present throughout Patient A's psychiatric assessment at the Infirmary:

i. despite there being no clinical reason for you to be there; Admitted and found proved

ii. whilst stroking her hand. Admitted and found proved. Amended under Rule 17(6)

2. On or around 10 or 11 December 2020 you:

a. met Patient A in Costa Coffee at the Infirmary; Admitted and found proved

~~b. after Patient A showed you a bag of cocaine and asked you how the valve on the medication port in her neck ('the Valve') worked, implying that she wanted to administer the drugs directly through the valve, you said:~~

i. ~~'you're a very clever girl';~~ Withdrawn under Rule 17(6)

ii. ~~'I want to help you but maybe not now, maybe when you're stronger'~~; Withdrawn under Rule 17(6)

~~or words to that effect;~~

c. ~~on one or more occasion sent Patient A text messages of a sexual nature;~~ Withdrawn under Rule 17(6)

d. were present:

i. when Patient A had her central line removed at the Infirmary, despite there being no clinical reason for you to be there; Admitted and found proved

ii. while Patient A was injecting illegal drugs on one or more occasion; Admitted and found proved

e. ~~told Patient A that you would give her money to buy whatever drugs she wanted if she left the Infirmary with you, or words to that effect;~~ Withdrawn under Rule 17(6)

f. ~~after~~ at around the time Patient A was discharged from the Infirmary: Amended under Rule 17(6).

i. gave Patient A around ~~£500~~ £100 in cash when you knew that she would use all or part of it to purchase illegal drugs; Amended under Rule 17(6). To be determined

ii. inappropriately gave Patient A a lift in your car to:

1. an address in XXX, when you knew that she would be buying illegal drugs there; To be determined

2. her home address; To be determined

iii. whilst inside Patient A's home address, you said "you can't stay here, come with me and I'll look after you", or words to that effect. Admitted and found proved

3. Between around 11 or 12 December 2020 and January 2021, following Patient A's discharge from hospital you:

a. XXX for around two weeks; Admitted and found proved

b. engaged in a sexual relationship with Patient A; To be determined

c. ~~on one or more occasion gave Patient A money, when you knew that she would use all or part of it to purchase illegal drugs.~~ Withdrawn following Rule 17(2)(g) application

4. ~~At all material times Patient A was vulnerable due to a mental health condition.~~ Withdrawn following Rule 17(2)(g) application

5. Your actions as described at paragraph(s):

~~a. 1f-1j were:~~

~~i. not clinically indicated;~~ Withdrawn under Rule 17(6)

~~ii. carried out without Patient A's consent;~~ Withdrawn under Rule 17(6)

b. 1k, 2a, ~~2c, 2e~~, 2fiii, 3a and 3b were sexually motivated. To be determined. Amended under Rule 17(6)

6. On or around 14 December 2020, following a meeting with Mr B, you provided a statement regarding the matters set out at paragraph 2f ('Trust Statement') in which you falsely stated:

a. "I came back from her place immediately after I have seen that she came into the house using her own keys"; Admitted and found proved

b. "On arrival I remained in the car and watched as she opened the door and came into her property". Admitted and found proved

7. You knew that the information provided in your Trust Statement as set out at paragraph 6 was untrue, in that you went into Patient A's home and did not remain in the car. Admitted and found proved

8. Your actions as described at paragraph 6 were dishonest by reason of paragraph 7. To be determined

Conviction

9. On 17 April 2021 at Grimsby Magistrates' Court you were convicted of, without good reason or lawful authority, in a public place, being in possession of a folding pocketknife which had a blade the cutting edge of which exceeded 7.62 centimetres (3 inches), contrary to section 139(1) and (6) of the Criminal Justice Act 1988. Admitted and found proved

10. On 22 July 2021 you were sentenced to 8 weeks' imprisonment, suspended for 6 months. Admitted and found proved

XXX

11. XXX

12. XXX

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

a. misconduct in relation to paragraphs 1 to 8; To be determined

b. conviction in relation to paragraphs 9 and 10; To be determined

c. XXX

The Admitted Facts

16. At the outset of these proceedings, Dr Cvetkovs made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, 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 and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

17. In light of Dr Cvetkovs' response to the Allegation made against him, the Tribunal is required to determine whether the remaining paragraphs of the Allegation are true.

Witness Evidence

18. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Dr E, Responsible Officer at the Trust;
- Ms F, psychiatric nurse at the Infirmary.

19. A statement made by Patient A was contained within the bundle of evidence, but Patient A did not attend the hearing to give oral evidence. The GMC did not apply for Patient A's witness statement to be admitted as hearsay evidence and, therefore, the Tribunal disregarded the contents of Patient A's witness statement.

20. Dr Cvetkovs did not provide a witness statement but did give oral evidence at the hearing.

Documentary Evidence

21. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to, XXX, Police documents, Dr Cvetkovs' certificate of conviction, extracts from the transcript of Dr Cvetkovs' Interim Orders Tribunal ('IOT') hearing, Dr Cvetkovs' statement to the Trust and his Rule 7 response.

The Tribunal's Approach

22. 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 Cvetkovs 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.

23. It is not the case that the more serious the nature of allegation, the higher the standard of proof is required. The Tribunal should take into account the inherent probability or improbability of an event occurring in the sense that a more inherently improbable event will require better evidence to persuade the Tribunal that it happened, but that it is not the case that, the more serious the allegation, the more cogent the evidence needed to prove it.

24. The test for dishonesty comes from the case of *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67:*

> *'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.'*

25. For Dr Cvetkovs to be found dishonest, it must be proved to the requisite standard that, when he provided his statement to the Trust, he knew or believed that his account to the effect that he had not entered Patient A's house was not correct. The Tribunal must consider the test of dishonesty in relation to each extract of the doctor's statement contained in paragraphs 6(a) & 6(b) of the Allegation.

26. It is alleged that several of Dr Cvetkovs' actions in relation to Patient A were sexually motivated. In determining whether the Doctor's actions were sexually motivated, the Tribunal must consider whether the Doctor's actions were done in pursuit of either sexual gratification or in pursuit of a future sexual relationship. This comes from the case of *Basson v General Medical Council [2018] EWHC 505 (Admin)*. The various allegations referred to in paragraph 5(b) of the Allegation should be considered separately when deciding if the Doctor's actions were sexually motivated. The Tribunal should ask itself in respect of each of the allegations referred to in paragraph 5(b) whether it is satisfied to the required standard that the doctor's actions were sexually motivated.

27. The Tribunal is advised to avoid the fallacy of the confident witness – a confident witness may still be mistaken or misremember important details. An honest but mistaken witness can construct an entirely false memory. The Tribunal should remember that demeanour is not a reliable pointer to the honesty of a witness' account and the Tribunal should not rely exclusively on a witness's demeanour when giving evidence.

28. The Tribunal may draw reasonable inferences from the facts, using common sense and from experience. The Tribunal may also attach what weight it considers appropriate to the evidence it has received. However, it would be wrong for the Tribunal to enter into speculation about matters or for example to consider what evidence might or might not have been available in the case. The Tribunal must decide the case purely on the evidence that has been put before it and must not speculate about what other evidence there may have been.

29. The Tribunal has heard that Dr Cvetkovs was, at the time of these incidents, of good character having worked in the UK for 7 years without regulatory issue or concerns being raised at regular appraisals. His good character must be taken into account by the Tribunal when assessing his credibility and the likelihood of his having done what has been alleged. Dr Cvetkovs' good character is particularly relevant to the issue of dishonesty because it may lead the Tribunal to conclude that it is less likely that a doctor of good character acted dishonestly. His good character is not a defence to the allegations, however: it is simply one factor to take into account when considering all of the evidence in the round. The weight to assign his good character is a matter for the Tribunal to determine.

30. The papers before the Tribunal contain hearsay evidence, which is evidence that has not been given orally during these proceedings, for example, medical notes and a note relating to the disciplinary proceedings at the Trust. Hearsay evidence is admissible in these proceedings but the Tribunal must consider the weight, if any, to assign such evidence. When considering hearsay evidence, the Tribunal must consider the extent to which the evidence is agreed or disputed. The source of the evidence should be identified and the Tribunal should consider whether the witness was independent or may have had a purpose of their own or another to serve. The Tribunal must also consider the reliability of the evidence and should identify any mistakes or inconsistences found in it. There has been no opportunity to see the sources of disputed hearsay evidence tested under cross-examination, for example as to accuracy, truthfulness, ambiguity or misperception, and how the witnesses would have responded to this process. It may be that a witness has not addressed an issue in their written accounts that they may have been questioned about at this hearing.

31. The Tribunal should also take into account the submissions of the parties. However, the submissions are not evidence and the Tribunal may accept them or reject them as it sees fit. It is the evidence and the Tribunal's decision on the evidence that is important.

The Tribunal's Analysis of the Evidence and Findings

32. 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. The Tribunal also considered the submissions of both parties. After considering the content of the written and oral evidence in respect of each allegation, the Tribunal considered the manner in which Dr Cvetkovs had given evidence.

33. The Tribunal noted that during the hearing Dr Cvetkovs made apparently frank admissions to some of the allegations made against him by the GMC. The Tribunal compared Dr Cvetkovs' admissions made during the hearing with his admissions made at the start of the hearing, his previous accounts during the Trust investigation, his Rule 7 response and the transcript of his IOT hearing. The Tribunal noted that his account of events during the hearing was consistent and coherent, and his admissions during the hearing were also broadly consistent with the accounts he gave to the IOT and in his Rule 7 response.

34. The Tribunal gave consideration to Dr Cvetkovs' demeanour. The Tribunal observed that Dr Cvetkovs had appeared able to give considered and full answers to questions which were asked of him by the Tribunal and in cross-examination by Ms Goring. The Tribunal observed that Dr Cvetkovs on occasion appeared reluctant to go into detail of his actions, particularly in response to questions about sexual activity with Patient A. The Tribunal considered that the Doctor's reticence about these matters may be explained by embarrassment or shame. Although he was not always immediately forthcoming, Dr Cvetkovs' evidence was consistent, reliable and credible. The Tribunal did not see anything in Dr Cvetkovs' demeanour that undermined his credibility or reliability and considered that he had given an honest account of events.

35. The Tribunal accepted that Dr Cvetkovs was of previous good character but the weight that this could be given was limited in light of his evidence and admissions, which included admitting dishonesty.

<u>Paragraph 2(f)(i)</u>

36. The Tribunal recalled Dr Cvetkovs' evidence in chief that, on 10 December 2020 after going to Costa Coffee with Patient A, he had withdrawn £200, in the presence of Patient

A, because he was out of cash and that he had given some of that to Patient A. Later, in response to questions, he estimated that he had given Patient A around £100 after she had asked for money. The Tribunal considered that this evidence was consistent with what Dr Cvetkovs had said to the IOT:

'I admit that I taken £200 from cash machine but not for her but for me. However, later, she asked this money for her…'

37. In his evidence, Dr Cvetkovs told the Tribunal that he had heard from other staff on the ward, prior to going to Costa Coffee with Patient A, that she was *'a drug addicted person'*. He said that he thought that she was probably *'emotionally unstable'*. In response to questions, Dr Cvetkovs acknowledged that, at the time that he gave money to Patient A, he knew that she had an addiction to illicit drugs and would likely use some or all of the money to buy more.

38. In light of Dr Cvetkovs' oral evidence, and his account to the IOT, the Tribunal determined that this paragraph of the Allegation was proved.

Paragraph 2(f)(ii)

39. The Tribunal reminded itself of Dr Cvetkovs' evidence that Patient A got into his car and entered her home address into the satnav system. He went on to say that, whilst enroute to Patient A's home, she complained of pain and asked to be taken to another address in XXX so she could get something to help. Dr Cvetkovs said that he realised that Patient A was talking about illicit drugs and that she would be buying some from the address in XXX.

40. Dr Cvetkovs told the Tribunal that he took Patient A to the address in XXX knowing that she was going to buy drugs. He said that he didn't know exactly what she was buying but described it as *'illicit'*. When questioned by Ms Goring, on behalf of the GMC, Dr Cvetkovs said that he understood that when Patient A asked to go to an address in XXX, she intended to purchase drugs with the money which he had earlier given to her. The Tribunal noted that Dr Cvetkovs had told the Tribunal that he had previously observed Patient A injecting the contents of a syringe into her central line whilst she was in hospital and that, at the time he had seen this, he had assumed that she was injecting cocaine.

41. Dr Cvetkovs also described how he then took Patient A back to her home address and gave details about the inside of her home, saying it had no furniture and the bedroom had *'just a mattress on the floor and surrounded by needles'*. The Tribunal considered

that Dr Cvetkovs had made clear admissions to the fact of having driven Patient A to each of these addresses, which was further supported by his comments to the IOT: *'when I brought her in her place in XXX'*. The Tribunal considered that this was also consistent with Dr Cvetkovs' statement to the Trust, where he wrote:

> *'I suggested* [Patient A] *to take a front passenger seat. She activated Google satellite on her smartphone and led me to the address she was living.'*

42. The Tribunal also noted the consistency of Dr Cvetkovs' Rule 7 response to this point: *'I confirm that I brought* [Patient A] *to her house…in XXX by my personal car…'*

43. The Tribunal then considered whether it was inappropriate for Dr Cvetkovs to have driven Patient A to the address in XXX or to her home address. The Tribunal considered Dr Cvetkovs' statement to the Trust investigation:

> *'I realise that the fact I brought her to her house with no witness is totally inappropriate.'*

44. The Tribunal considered that Dr Cvetkovs had acknowledged, both in his statement to the Trust and in his oral evidence that it was inappropriate for him to have driven Patient A to her home. It also recalled Dr Cvetkovs' evidence he agreed that Patient A was vulnerable because of her drug abuse and that, by this time, he had been told by Ms F that his relationship with Patient A was inappropriate.

45. The Tribunal considered that it was clearly inappropriate for a doctor to knowingly drive a vulnerable patient who had just been released from hospital to their home address or to buy illegal drugs. In light of this, Dr Cvetkovs' evidence and his statements to the IOT and the Trust, the Tribunal determined that this paragraph of the Allegation was found proved in its entirety.

<u>Paragraph 3(b)</u>

46. The Tribunal considered the evidence that Dr Cvetkovs gave at the hearing and his answers in cross examination. It considered that Dr Cvetkovs had admitted to having a sexual relationship with Patient A XXX. He gave evidence that Patient A slept naked in the same bed as him, had attempted to make sexual advances towards him and that he and Patient A had touched each other sexually. Dr Cvetkovs described cuddling Patient A in bed, touching her hands, legs, breasts and vagina and her touching his penis. He said that they had never had intercourse but accepted that a sexual relationship did not require intercourse.

47. The Tribunal considered that this evidence was consistent with Dr Cvetkovs statement to the IOT, where he said *'So a few days I was dating* [Patient A] *in this room.'* Dr Cvetkovs, in his submissions, conceded that *'in reality, there was a sexual relationship'*. The Tribunal determined that, in light of the evidence it had seen and heard, this paragraph of the Allegation was proved.

Paragraph 5(b)

48. The Tribunal recalled Dr Cvetkovs' evidence that he was a XXX and had found Patient A to have a *'warm personality'* and that he wanted a friendship with her for *'emotional comfort'*. Regarding paragraph 1(k), the Tribunal considered that, on the balance of probabilities that it was more likely that, at this point, Dr Cvetkovs was of the belief that he was making friends with Patient A and was staying with her in the Infirmary out of a desire to seek mutual emotional support.

49. The Tribunal also recalled Dr Cvetkovs' evidence that he did not consider either occasion in Costa Coffee to be a romantic date. He had originally accepted under cross examination that these were *'dates'* but, upon clarifying questions, refuted that they were romantic in nature. He said that he was seeking a friendly, emotional relationship. Regarding paragraph 2(a), the Tribunal considered it was more likely that, at this time, Dr Cvetkovs was still only seeking a friendship with Patient A.

50. The Tribunal reminded itself of Dr Cvetkovs' evidence that, when he took Patient A to her home address, he was not *'excluding the possibility of a relationship'* and hoped that Patient A would become his girlfriend. Dr Cvetkovs was unable to offer an explanation for why he went into Patient A's bedroom after entering her house. The Tribunal considered that Dr Cvetkovs must have known that going into Patient A's bedroom was highly inappropriate and it could not identify any credible alternative motive for Dr Cvetkovs going there, other than that he was sexually motivated. Accordingly, the Tribunal considered that, on the balance of probabilities, it was around this time that Dr Cvetkovs' motivations had progressed to include seeking a sexual relationship.

51. In light of this, the Tribunal considered Dr Cvetkovs' evidence, when questioned by Ms Goring, that he did not exclude the possibility of a relationship when he asked Patient A XXX. Dr Cvetkovs told the Tribunal that, in offering Patient A XXX, he wanted to help her to improve her circumstances and to help her with her drug addiction. The Tribunal accepted that Dr Cvetkovs was motivated to help Patient A with her drug addiction. However, the Tribunal also noted that Dr Cvetkovs was sexually motivated because he told the Tribunal that he looked after Patient A because he hoped that she would

become his girlfriend. For these reasons, the Tribunal determined that, on the balance of probabilities, Dr Cvetkovs' request for Patient A to come back with him, so he could look after her, was laying the groundwork for a future sexual relationship.

52. The Tribunal considered that, in inviting Patient A to XXX, Dr Cvetkovs was clearly sexually motivated. His evidence was that he and Patient A had a sexual relationship XXX, which was for sexual gratification and so clearly sexually motivated.

53. The Tribunal noted that, in his submissions, Dr Cvetkovs appeared to agree with the GMC's case as to his motivation with regards to 2(f)(iii), 3(a) and 3(b), noting that *'in reality, there was a sexual relationship.'*

54. In light of this, the Tribunal determined that paragraph 5(b) was proved in relation to paragraphs 2(f)(iii), 3(a) and 3(b), but was not proved in relation to paragraphs 1(k) and 2(a).

Paragraph 8

55. The Tribunal turned to Dr Cvetkovs' statement to the IOT:

> *'I did this lie because I thought that general it could be more or less okay but I see it's principal difference.'*

56. The Tribunal also had regard to Dr Cvetkovs' Rule 7 response:

> *'On arrival* [Patient A] *invited me to come into her property and this fact I decided to hide in my statement. This is only untrue information in my statement.'*

57. In his evidence in chief, Dr Cvetkovs described that, when he was told that there had been a complaint raised about his relationship with Patient A, he knew that something bad had happened and that he didn't mention in his statement about going into her house because he was frightened of getting in trouble. In cross examination, Dr Cvetkovs accepted that this was dishonest.

58. The Tribunal considered that Dr Cvetkovs' statements to the IOT and in his Rule 7 response demonstrated that he had made a conscious decision to withhold information from the Trust investigation.

59. Turning to the test set out in *Ivey*, the Tribunal considered that Dr Cvetkovs' state of mind at the time he made his statements to the Trust was that he knew that his written

statement and reflection gave the false impression that he had not gone into Patient A's house. The Tribunal accepted Dr Cvetkovs' account that at the time he made the statement he was frightened and that he made a purposeful decision to hide the truth that he had gone into Patient A's house. He knew that he was deliberately omitting the fact that he had entered Patient A's house from his statement because of his fear of the consequences of admitting this fact. The Tribunal considered that this would be seen as dishonest by the objective standards of ordinary, decent people. Consequently, the Tribunal determined that this paragraph of the Allegation was proved.

The Tribunal's Overall Determination on the Facts

60. The Tribunal has determined the facts as follows:

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

Patient A

1. On or around 10 or 11 December 2020, you entered Patient A's private hospital room ('the Room') at The Cumberland Infirmary ('the Infirmary') and you:

   a. shut the door behind you; Admitted and found proved

   b. ~~did not explain to Patient A why you were in the Room;~~ Withdrawn under Rule 17(6)

   ~~c. said to Patient A:~~

      i. ~~"you have a little neck";~~ Withdrawn under Rule 17(6)

      ii. ~~"you have the body of child, this is a good thing";~~ Withdrawn under Rule 17(6)

      iii. ~~that she was extraordinary;~~ Withdrawn under Rule 17(6)

      ~~or words to that effect;~~

   ~~d. asked Patient A:~~

      i. ~~whether she had a boyfriend;~~ Withdrawn under Rule 17(6)

      ii. ~~if she enjoyed sex;~~ Withdrawn under Rule 17(6)

      ~~or words to that effect;~~

e. ~~leaned in close to Patient A's neck and said, 'I wish you didn't have a boyfriend', or words to that effect;~~ Withdrawn under Rule 17(6)

f. ~~grabbed Patient A's body with both of your hands;~~ Withdrawn under Rule 17(6)

g. ~~turned Patient A's body away from you, so that she was facing the head of the bed and wall;~~ Withdrawn under Rule 17(6)

h. ~~put one of your hands on Patient A's thigh and moved it upwards towards her genitalia;~~ Withdrawn under Rule 17(6)

i. ~~penetrated Patient A's anus with your thumb;~~ Withdrawn under Rule 17(6)

j. ~~used your finger to gesture towards Patient A's vagina;~~ Withdrawn under Rule 17(6)

k. were present throughout Patient A's psychiatric assessment at the Infirmary:

i. despite there being no clinical reason for you to be there; Admitted and found proved

ii. whilst stroking her hand. Admitted and found proved. Amended under Rule 17(6)

2. On or around 10 or 11 December 2020 you:

a. met Patient A in Costa Coffee at the Infirmary; Admitted and found proved

~~b. after Patient A showed you a bag of cocaine and asked you how the valve on the medication port in her neck ('the Valve') worked, implying that she wanted to administer the drugs directly through the valve, you said:~~

i. ~~'you're a very clever girl';~~ Withdrawn under Rule 17(6)

ii. ~~'I want to help you but maybe not now, maybe when you're stronger'~~; Withdrawn under Rule 17(6)

~~or words to that effect;~~

c. ~~on one or more occasion sent Patient A text messages of a sexual nature;~~ Withdrawn under Rule 17(6)

d. were present:

i. when Patient A had her central line removed at the Infirmary, despite there being no clinical reason for you to be there; Admitted and found proved

ii. while Patient A was injecting illegal drugs on one or more occasion; Admitted and found proved

e. ~~told Patient A that you would give her money to buy whatever drugs she wanted if she left the Infirmary with you, or words to that effect;~~ Withdrawn under Rule 17(6)

f. ~~after~~ at around the time Patient A was discharged from the Infirmary: Amended under Rule 17(6).

i. gave Patient A around ~~£500~~ £100 in cash when you knew that she would use all or part of it to purchase illegal drugs; Amended under Rule 17(6). Determined and found proved

ii. inappropriately gave Patient A a lift in your car to:

1. an address in XXX, when you knew that she would be buying illegal drugs there; Determined and found proved

2. her home address; Determined and found proved

iii. whilst inside Patient A's home address, you said "you can't stay here, come with me and I'll look after you", or words to that effect. Admitted and found proved

3. Between around 11 or 12 December 2020 and January 2021, following Patient A's discharge from hospital you:

a. XXX for around two weeks; Admitted and found proved

b. engaged in a sexual relationship with Patient A; Determined and found proved

c. ~~on one or more occasion gave Patient A money, when you knew that she would use all or part of it to purchase illegal drugs.~~ Withdrawn following Rule 17(2)(g) application

4. ~~At all material times Patient A was vulnerable due to a mental health condition.~~ Withdrawn following Rule 17(2)(g) application

5. Your actions as described at paragraph(s):

~~a. 1f-1j were:~~

~~i. not clinically indicated;~~ Withdrawn under Rule 17(6)

~~ii. carried out without Patient A's consent;~~ Withdrawn under Rule 17(6)

b. 1k, 2a, ~~2c, 2e~~, 2fiii, 3a and 3b were sexually motivated. Amended under Rule 17(6). Determined and found proved in relation to 2fiii, 3a and 3b. Found not proved in relation to 1k and 2a.

6. On or around 14 December 2020, following a meeting with Mr B, you provided a statement regarding the matters set out at paragraph 2f ('Trust Statement') in which you falsely stated:

a. "I came back from her place immediately after I have seen that she came into the house using her own keys"; Admitted and found proved

b. "On arrival I remained in the car and watched as she opened the door and came into her property". Admitted and found proved

7. You knew that the information provided in your Trust Statement as set out at paragraph 6 was untrue, in that you went into Patient A's home and did not remain in the car. Admitted and found proved

8. Your actions as described at paragraph 6 were dishonest by reason of paragraph 7. Determined and found proved

Conviction

9. On 17 April 2021 at Grimsby Magistrates' Court you were convicted of, without good reason or lawful authority, in a public place, being in possession of a folding pocketknife which had a blade the cutting edge of which exceeded 7.62 centimetres (3 inches), contrary to section 139(1) and (6) of the Criminal Justice Act 1988. Admitted and found proved

10. On 22 July 2021 you were sentenced to 8 weeks' imprisonment, suspended for 6 months. Admitted and found proved

XXX

11. XXX

12. XXX

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

a. misconduct in relation to paragraphs 1 to 8; To be determined

b. conviction in relation to paragraphs 9 and 10; To be determined

c. XXX

Determination on Impairment - 15/01/2024

61. This determination will be handed down in private. However, as this case concerns Dr Cvetkovs' misconduct and conviction a redacted version will be published at the close of the hearing.

62. 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 Cvetkovs' fitness to practise is impaired by reason of misconduct, XXX or a conviction or caution for a criminal offence.

The Evidence

63. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

Submissions

64. On behalf of the GMC, Ms Goring, Counsel, reminded the Tribunal that, whilst there is no definition of misconduct, it is described in the case of *Nandi v General Medical Council [2004] EWHC 2317 (Admin)*:

'31 [misconduct is observed] as "a falling short by omission or commission of the standards of conduct expected among medical practitioners, and such falling short must be serious". The adjective "serious" must be given its proper weight, and in other contexts there has been reference to conduct which would be regarded as deplorable by fellow practitioners. It is of course possible for negligent

conduct to amount to serious professional misconduct, but the negligence must be to a high degree.'

65. Ms Goring set out the relevant facts that were encompassed within the case. She said that, at the time that Dr Cvetkovs met Patient A, she was in hospital recovering from an operation. Ms Goring submitted that any patient in this position had inherent vulnerabilities but that these were enhanced by Patient A's well known and long-standing drug addiction problems. Ms Goring reminded the Tribunal that Dr Cvetkovs had admitted to being present when Patient A administered illicit drugs in the Infirmary and also admitted to facilitating Patient A obtaining further illicit drugs. Ms Goring also reminded the Tribunal that Dr Cvetkovs had admitted to having a sexual relationship with Patient A and to being dishonest in his statement to the Trust. Ms Goring submitted that, both individually and collectively, these factors amounted to serious misconduct.

66. Ms Goring submitted that paragraphs 25, 53, 65, 71b and 73 of Good Medical Practice (2013) ('GMP') were relevant in this case and that, because of this, Dr Cvetkovs' fitness to practise was impaired. She submitted that Dr Cvetkovs observing Patient A administering illicit drugs, but doing nothing to intervene, breached paragraph 25 of GMP. She said that Dr Cvetkovs had used his professional position to pursue a sexual relationship with Patient A and so had breached paragraph 53 of GMP.

67. Ms Goring submitted that Dr Cvetkovs had knowingly left out information when he had made his statement to the Trust, which was done out of his own self-interest. She submitted that this was a failure to cooperate with a formal inquiry and so breached paragraphs 71b and 73 of GMP. Ms Goring submitted that all of these actions amounted to a breach of paragraph 65 of GMP, which states: *'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'*

68. Ms Goring reminded the Tribunal of Dame Janet Smith's test on impairment in the Fifth Shipman Report, cited in *CHRE v NMC and P Grant [2011] EWHC 927 (Admin):*

'a) Whether the registrant 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;

b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;

c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

d) Whether the registrant has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

69. Ms Goring submitted that Dr Cvetkovs' actions engaged all four limbs of this test. She submitted that Dr Cvetkovs had put Patient A at unwarranted risk of harm by giving her money, knowing that it was likely she would use it to buy illicit drugs, and by not intervening when seeing Patient A administer what he believed was cocaine. Ms Goring submitted that Dr Cvetkovs' conviction and the factual findings of his dishonesty engaged limbs (c) and (d) as his actions in receiving a conviction and his failure to make Patient A's care his primary concern breached a fundamental tenet of the profession.

70. Turning to limb (b), Ms Goring submitted that this was engaged across all three heads of impairment. She submitted that Dr Cvetkovs' actions towards a vulnerable patient – observing illicit drug use, providing her with money, driving her to buy illicit drugs and engaging in a sexual relationship with her – clearly brought the profession into disrepute. Ms Goring said that a member of the public would be *'incredibly concerned'* to hear of this behaviour from a practising doctor. Ms Goring submitted that Dr Cvetkovs' conviction undermined public confidence in the profession, XXX.

71. XXX

72. Ms Goring then turned to consider the issues of insight and remediation. She acknowledged that Dr Cvetkovs had entered a guilty plea to the offence at court, which gave rise to his conviction, and he had also made significant admissions at the hearing. However, she said that Dr Cvetkovs had only admitted the sexual relationship upon questioning.

73. Ms Goring submitted that Dr Cvetkovs had demonstrated no insight into the seriousness of his behaviour towards Patient A. She said that it was of significant concern that Dr Cvetkovs did not recognise the perversity of a doctor watching a patient administer illicit drugs, an act that Dr Cvetkovs said lasted two or three minutes, without seeking help or trying to intervene.

74. Ms Goring also said that Dr Cvetkovs had shown no insight into why his pursuit of a relationship with a vulnerable patient was problematic. She reminded the Tribunal of Dr Cvetkovs' evidence that he did not think his relationship with Patient A was inappropriate until Ms F told him so. Ms Goring submitted that Dr Cvetkovs had no insight into why it was wrong to pursue the relationship as he proceeded to do so even

after being told it was inappropriate. She also said that Dr Cvetkovs had shown no remorse or understanding of how his actions may have affected Patient A.

75. Ms Goring told the Tribunal that no evidence of remediation had been provided and so it cannot be satisfied that Dr Cvetkovs' behaviour has been remediated. In light of this, the Tribunal must conclude that there is a real risk of repetition in this case.

76. Ms Goring submitted that the Tribunal should find Dr Cvetkovs' fitness to practise to be impaired by reason of his misconduct, conviction XXX.

77. Dr Cvetkovs submitted that he agreed that the events happened and that he did not argue against a finding of misconduct. Dr Cvetkovs said that he had not done any courses following the events with Patient A, but it had been a very bad experience, leading to him losing his job, and he had thought about it a lot. He said that he had been unable to work as a doctor for the last three years and so understood the seriousness of what happened with Patient A. He said that he would not allow such a thing to happen again in the future.

78. Dr Cvetkovs submitted that he understood that Patient A was very upset by the events as she then made the complaint against him. He said that he didn't know what he could do to improve Patient A's situation as he had not had contact with her since December 2020, but it had been a good lesson for him as he knew that the punishment could be very serious. Dr Cvetkovs said that he could not defend his actions in watching Patient A administer illicit drugs as his *'knowledge of IV drugs is not very good'*, he described this as *'bad management'* on his part.

79. Dr Cvetkovs told the Tribunal that he didn't know how serious his sexual relationship with Patient A was, but he would not allow it in the future.

80. XXX

81. XXX

The Relevant Legal Principles

82. 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.

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

84. Misconduct is defined in the case of *Roylance v. The General Medical Council (Medical Act 1983) [2000] 1 A.C. 311* as:

> *'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 medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious.'*

85. The Tribunal must determine whether Dr Cvetkovs' fitness to practise is impaired today, taking into account Dr Cvetkovs' conduct at the time of the events, XXX, his conviction and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

86. The Tribunal also had regard to the case of *Grant*, which set out the test above as well as:

> *'74 In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

87. The Tribunal must determine whether he has demonstrated insight, and if so, to what extent. It is proper to take into account, when weighing up insight, the Doctor's understanding of and attitude towards the underlying allegation. When considering insight, the Tribunal should not equate maintenance of innocence with a lack of insight. A doctor who maintains his innocence may nevertheless show that he fully appreciates the gravity of the offence alleged. If, on the other hand, a doctor defends an allegation of primary fact by giving dishonest evidence and by deliberately seeking to mislead a tribunal then that conduct is relevant to consideration of impairment and fitness to practise in the future. However, if the registrant does no more than put the regulator to proof, then that

stance should not be held against them during the impairment and sanctions stages. *(Sayer v General Osteopathic Council [2021] EWHC 370 (Admin)).*

88. The Tribunal must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made.

The Tribunal's Determination on Impairment

Misconduct

89. The Tribunal began by considering if Dr Cvetkovs' actions, as found proved, amounted to misconduct.

90. The Tribunal first considered Patient A and Dr Cvetkovs' initial visit to Costa Coffee. In considering this, the Tribunal had regard to paragraph 53 of GMP:

> *'You must not use your professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.'*

91. Although that Tribunal had found that, at this stage, Dr Cvetkovs was not pursuing a sexual relationship, he was pursuing an emotional one. The Tribunal considered Ms Goring's submission that Patient A was inherently vulnerable and Dr Cvetkovs' evidence that he knew that she had addiction issues from the outset, even before letting her sit with him in the doctors' room. The Tribunal determined that this amounted to the pursuit of an inappropriate emotional relationship from the outset, even when not sexually motivated, and was in breach of paragraph 53 of GMP.

92. The Tribunal considered Dr Cvetkovs' presence at Patient A's mental health assessment to be further evidence of his pursuit of an inappropriate relationship. It considered that it was not inherently inappropriate for a doctor to stroke a patient's hand, but considered Dr Cvetkovs' presence to be in a non-clinical capacity and was in service of developing his relationship with Patient A. The Tribunal accepted Dr Cvetkovs' evidence that he did not know the details of the assessment or Patient A's mental health but considered that he knew that Patient A had drug dependence issues and that she was undergoing a mental health assessment, which Dr Cvetkovs ought to have appreciated, made her vulnerable. The Tribunal also recalled that Ms F told Dr Cvetkovs at this point that his relationship with Patient A was inappropriate.

93. The Tribunal considered that Dr Cvetkovs had been aware of Patient A's vulnerability due to her drug addiction from the start of his pursuit of her. It considered that this understanding would have been further informed by knowing that she potentially had a mental health condition. The Tribunal noted Dr Cvetkovs' evidence that he was seeking an emotional relationship, which it considered breached paragraph 53 of GMP. Therefore, the Tribunal determined that Dr Cvetkovs' presence at Patent A's mental health assessment was serious misconduct.

94. The Tribunal considered that it was clearly serious misconduct for Dr Cvetkovs to observe Patient A inject, via a central line, what he believed to be an illicit drug without intervening or seeking help. Patient A was not Dr Cvetkovs' patient, but she was in the hospital where he worked and doing something inherently dangerous. The Tribunal considered Dr Cvetkovs' evidence that he had observed Patient A after she injected the substance and had remained in the room with her in case she collapsed but concluded that this showed a serious lack of judgement on Dr Cvetkovs' part and also a failure to make the care of a patient his first concern. The Tribunal considered that Dr Cvetkovs was the most readily available doctor, yet he did nothing to help, because he was motivated by pursuing an inappropriate relationship with Patient A rather than ensuring her safety. The Tribunal considered this to be a breach of one of the fundamental tenets of the medical profession.

95. The Tribunal considered Dr Cvetkovs actions in watching Patient A administer illicit drugs was clearly serious misconduct as it was in breach of paragraph 25 of GMP:

> *'25 You must take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised.'*

96. The Tribunal considered that Dr Cvetkovs' actions in giving Patient A money, taking her home in his car, taking her to the address in XXXX and XXX were all further breaches of paragraph 53. These actions were all in pursuit of an inappropriate relationship with Patient A, which became sexually motivated. The Tribunal determined that these actions all amounted to serious misconduct.

97. The Tribunal considered that Dr Cvetkovs living with Patient A and engaging in a sexual relationship with her was also in breach of paragraph 53 of GMP and clearly amounted to serious misconduct, even more so because of her vulnerabilities. The Tribunal considered that this was a breach of one of the fundamental tenets of the medical profession.

98. The Tribunal then turned to consider the dishonesty allegations and had regard to paragraphs 71 and 73 of GMP:

> *'71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. 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.*
>
> *...*
>
> *73 You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in Confidentiality.'*

99. The Tribunal noted Dr Cvetkovs' admissions that he had provided a false statement to the Trust because he was afraid of the ramifications of having been inside Patient A's house. The Tribunal considered that Dr Cvetkovs had deliberately withheld information to protect his own self-interests, which clearly amounted to dishonesty. The Tribunal considered that this was in breach of both paragraphs 71 and 73 of GMP and amounted to serious misconduct.

100. The Tribunal also considered paragraph 65 of GMP, which it determined had also been breached by Dr Cvetkovs' actions detailed above:

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

101. The Tribunal concluded that Dr Cvetkovs' conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

102. The Tribunal, having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct as well as his conviction XXX, Dr Cvetkovs' fitness to practise is currently impaired.

103. The Tribunal began by considering the misconduct allegations.

104. The Tribunal recalled that, when questioned, Dr Cvetkovs had said that his actions were wrong. It also noted that Dr Cvetkovs had said to the IOT that *'I did nothing bad, I think, in my heart; however, I breached policy; I agree.'* Further, the Tribunal recalled that, in cross examination, Dr Cvetkovs had said he thought his relationship with Patient A was appropriate and he thought he could help her. The Tribunal noted his submission at the impairment stage that he did not know how serious it was that he had a relationship with Patient A.

105. The Tribunal considered that Dr Cvetkovs had multiple opportunities to stop his relationship with Patient A, including being told by Ms F that it was inappropriate. After the Trust investigation, Dr Cvetkovs knew that the relationship was inappropriate, but still he pursued it further. The Tribunal considered that Dr Cvetkovs had ignored multiple warnings and proceeded to pursue a sexual relationship with a vulnerable patient.

106. The Tribunal considered that Dr Cvetkovs' insight appeared to be limited to the fact that he knew his actions were serious because he had lost his job and breached policy. He showed no insight into what he did or the impact on Patient A. He recognised that he was lonely and so sought an emotional relationship but only understands that he did something seriously wrong because of the impact on him. The Tribunal also noted that it had been provided no evidence of any remediation efforts.

107. The Tribunal considered that the impact of the investigation, XXX, meant that the risk of repetition was somewhat reduced but there was still a possibility because of Dr Cvetkovs' lack of insight.

108. The Tribunal considered that Dr Cvetkovs put Patient A at risk of harm, pursued and engaged in a sexual relationship with her and then sought to conceal that fact from the Trust and that these all breached fundamental tenets of the profession to act with integrity and to protect patients. The Tribunal also noted Dr Cvetkovs' submission that he agreed his fitness to practise was impaired by reason of his misconduct.

109. The Tribunal reminded itself of its duty under the overarching objective to protect, promote and maintain the safety and wellbeing of the public, public confidence in the profession and proper professional standards. The Tribunal considered that Dr Cvetkovs' misconduct was so serious as to engage all three limbs of this objective.

110. The Tribunal considered that a member of the public or another member of the profession would be shocked if a finding of current impairment were not made under these circumstances.

111. Accordingly, the Tribunal determined that Dr Cvetkovs' fitness to practise is currently impaired by reason of his misconduct.

XXX

112. XXX

113. XXX

114. XXX

115. XXX

116. XXX

117. XXX

118. XXX

119. XXX

120. XXX

121. XXX

122. XXX

Conviction

123. The Tribunal then went on to consider Dr Cvetkovs' conviction.

124. The Tribunal considered that any conviction brings the profession into disrepute. However, it was mindful that XXX led to his conviction, including that he was unable to attend court XXX.

125. The Tribunal considered that Dr Cvetkovs' conviction was remediable, XXX, but had received no evidence of attempts at remediation.

126. The Tribunal considered that the nature of Dr Cvetkovs' offence would be of concern to the public and that it breached paragraph 65 of GMP. In light of this, the Tribunal

determined that it was necessary to find that Dr Cvetkovs' fitness to practise is impaired by reason of his conviction in order to protect public confidence in the profession.

127. The Tribunal has therefore determined that Dr Cvetkovs' fitness to practise is impaired by reason of misconduct, XXX and a conviction or caution for a criminal offence.

Determination on Sanction - 17/01/2024

128. This determination will be handed down in private. However, as this case concerns Dr Cvetkovs' misconduct and conviction a redacted version will be published at the close of the hearing.

129. Having determined that Dr Cvetkovs' fitness to practise is impaired by reason of misconduct, a conviction XXX, 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

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

Submissions

131. On behalf of the GMC, Ms Goring, Counsel, submitted that the appropriate sanction in this case was one of erasure. She reminded the Tribunal that the main reason for imposing sanctions is to protect the public and that the reputation of the profession is more important than the interests of any individual doctor.

132. Ms Goring said that the Tribunal should begin by considering the least restrictive sanction, that being to take no action, before then moving up through the available options. She submitted that to take no action required there to be exceptional circumstances in the case, as set out in the Sanctions Guidance (2020) ('the SG'). Ms Goring submitted that no such exceptional circumstances were present in this case and, as such, the Tribunal should not take no action.

133. Ms Goring submitted that this was not a case where an order of conditions would be appropriate. She said that conditions must be workable but there are no conditions that could address the breadth of Dr Cvetkovs' misconduct. She also submitted that

conditions would not be sufficient to address the negative impact on public confidence caused by the sexually motivated and dishonest aspects of Dr Cvetkovs' misconduct.

134. Ms Goring submitted that Dr Cvetkovs' misconduct and conviction meant that suspension would not sufficiently serve the public interest in this case and that an order of erasure was necessary. She referred the Tribunal to paragraph 92 of the SG:

> *'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).'*

135. Ms Goring said that Dr Cvetkovs' misconduct, that of sexual misconduct and dishonesty, was at the top end of the spectrum of severity. She submitted that this misconduct, coupled with his conviction, meant that Dr Cvetkovs' behaviour was fundamentally incompatible with continued registration.

136. Ms Goring said that Dr Cvetkovs' actions fell squarely within the guidelines set out at paragraph 109 of the SG, which, she submitted, indicated that erasure is the appropriate and proportionate sanction. She said that, even putting aside the sexual and dishonesty aspects, just the act of Dr Cvetkovs watching Patient A inject cocaine without seeking help would be a serious departure from GMP, which would be fundamentally incompatible with continued registration. Even considered in isolation, this would justify a sanction of erasure.

137. Ms Goring referred the Tribunal to the section of the SG that deals with examples of cases that indicate more serious action is likely to be required, in particular paragraph 143:

> *'Doctors must not use their professional position to pursue a sexual or improper emotional relationship with a patient or someone close to them.'*

138. Ms Goring accepted that Patient A was not Dr Cvetkovs' patient but submitted that they did meet in a hospital setting whilst Dr Cvetkovs was working as a doctor. She submitted that, although the Tribunal had found that there was insufficient evidence that Patient A was vulnerable by reason of a mental health condition, she was vulnerable by reason of being a patient recovering from surgery and by reason of her drug addiction.

139. Ms Goring referred the Tribunal to paragraph 147(c) of the SG and submitted that Dr Cvetkovs fell under this part of the guidance:

> *'147 If a doctor has demonstrated predatory behaviour, motivated by a desire to establish a sexual or inappropriate emotional relationship with a patient, there is a significant risk to patient safety, and to public confidence and/or trust in doctors. More serious action is likely to be appropriate where there is evidence of (this list is not exhaustive):*
>
> *…*
>
> *c visiting a patient's home without an appointment or valid medical reason.'*

140. Regarding dishonesty, Ms Goring referred the Tribunal to paragraph 124 of the SG and submitted that the totality of Dr Cvetkovs' misconduct means that a sanction of erasure would be the correct one in this case.

141. Ms Goring submitted that the aggravating factors in this case were the vulnerability of Patient A, the sexual relationship, which persisted over several days and Dr Cvetkovs' lack of insight and remediation.

142. Ms Goring also set out some mitigating factors for the Tribunal to consider. She pointed out that Dr Cvetkovs had engaged fully with proceedings, attending each day and making admissions at the start of the hearing. She reminded the Tribunal that Dr Cvetkovs had made further admissions during his evidence and submitted that, had he been represented, Dr Cvetkovs may have made fuller admissions at the outset. She reminded the Tribunal of Dr Cvetkovs' guilty plea, leading to his conviction, XXX.

143. Ms Goring reminded the Tribunal of Dr Cvetkovs' previous good character, having worked in the UK for seven years without any regulatory concerns. She pointed out that a significant amount of time had now passed since the index events and that no further issues had been raised. Ms Goring also submitted that Dr Cvetkovs had expressed some limited regret. Ms Goring said that all of these factors could be taken into account as mitigation.

144. Ms Goring concluded by saying that, even taking all the mitigation into account, it does not come close to negating the need to impose a sanction of erasure in order to uphold proper professional standards and to protect public confidence in the profession. She

reminded the Tribunal of its finding at the sanction stage that all three limbs of the overarching objective were engaged in this case.

145. Dr Cvetkovs submitted that the situation with Patient A was very unusual for him. He said that he had worked as a locum at a number of different hospitals and had always had relationships with patients and colleagues that were within boundaries. He said that the difference with Patient A was that her behaviour had made him feel like he was someone special to her. He said that it was bad luck for him to meet someone like Patient A and that he was vulnerable to her because of his loneliness and emotional state.

146. Dr Cvetkovs said that, when he discussed the issue with his line manager at the Trust investigation, he was told that Patient A was a good manipulator and would use any weak points in Dr Cvetkovs' character. Dr Cvetkovs submitted that he had not considered that Patient A may have been manipulating him until after they had separated in XXX. He said that he believed that Patient A had made the complaint against him to take revenge on him after he had ended their relationship. Dr Cvetkovs submitted that Patient A had tried to use him but accepted that his behaviour did have some predatory features in that he had visited Patient A's house. He said that he had character features that meant that he *'sometimes may behave very silly.'*

147. Dr Cvetkovs said that, at the time, he did not think about the seriousness of him conducting a sexual relationship with Patient A but was now clear on the seriousness. He said that he would not repeat this in the future and would not have allowed it to happen if he had had more information about how serious the matter was considered in this country. He submitted that he did not now regret his decision to not pay for legal representation at the hearing because, now he fully understood the Allegation, he did not think he could have defended himself from it even if he had had legal representation at the hearing. He maintained, however, that he did not think that he had done something *'very bad'* to Patient A.

148. Dr Cvetkovs told the Tribunal that he was not overly worried by Patient A injecting into her central line because he believed that this was a common thing for her to be doing and therefore he believed that she would be safe to do so.

149. Dr Cvetkovs said that if he was given a *'second chance'* he would not repeat his behaviour and that he was very sorry, but, having read the SG, he agreed with Ms Goring's submission. He said that he understood that there is no other sanction possible other than his erasure from the register.

The Tribunal's Determination on Sanction

150. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken into account the SG and the statutory overarching objective.

151. The Tribunal bore in mind that the reason for imposing sanctions is to uphold the overarching objective to protect the public. Sanctions are not imposed to punish doctors, although they may have a punitive effect.

152. The Tribunal took a proportionate approach, balancing the interests of Dr Cvetkovs with the public interest. It bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor.

153. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgement. It must consider the least restrictive sanction first and then, if necessary, consider the other sanctions, taking into account the evidence and submissions that have been read and heard. The Tribunal must consider its determination on impairment and take those matters into account during its deliberations on sanction.

154. The Tribunal must consider any relevant mitigating and aggravating factors and address them within the context of the determination.

Aggravating and Mitigating factors

155. The Tribunal began by considering the aggravating and mitigating factors in the case. It considered it an aggravating factor that Dr Cvetkovs had abused his professional position to pursue an improper relationship with a patient. It also considered it an aggravating factor that Patient A was vulnerable by reason of being a post-operative patient and by reason of her drug addiction.

156. The Tribunal also considered that Dr Cvetkovs had engaged in a sexual relationship with Patient A, which persisted for a number of days, and had shown a lack of insight into the seriousness of his actions or of any remediation efforts. The Tribunal considered that these were also aggravating factors.

157. The Tribunal considered that the mitigating factors in the case included that Dr Cvetkovs had engaged fully with the proceedings. The fact that he made admissions was also a mitigating factor and the Tribunal agreed it was likely he would have made further admissions if he were represented. The Tribunal noted that he had pleaded guilty to the criminal offence which gave rise to his conviction. XXX .

158. Additionally, the Tribunal accepted as mitigation that Dr Cvetkovs was of previous good character, with no previous regulatory issues, that it was three years since the index events and that no further issues had been raised.

159. The Tribunal accepted that Dr Cvetkovs had offered an apology but considered that this was of little weight considering his lack of insight into the seriousness of his misconduct. The Tribunal also accepted Dr Cvetkovs' submission that he was susceptible to being taken advantage of by Patient A because he was lonely but could not accept this to be a mitigating factor because it considered that, as a doctor, he ought to have placed Patient A's interests above his own wish to have a relationship with Patient A.

160. The Tribunal then went on to consider what sanction, if any, it should impose.

No action

161. The Tribunal first considered whether it would be appropriate to take no action. It accepted Ms Goring's submission that there would need to be exceptional circumstances in the case to justify taking no action. The Tribunal considered that there were no such exceptional circumstances in this case and so determined that it could not take no action.

Conditions

162. The Tribunal then went on to consider imposing an order of conditions. The Tribunal had regard to paragraph XXX and 82 of the SG:

'XXX

82 Conditions are likely to be workable where:

a the doctor has insight…'

163. The Tribunal considered that, whilst conditions may be sufficient to address XXX, the serious nature of Dr Cvetkovs' misconduct meant that conditions would not be proportionate. Because of Dr Cvetkovs' lack of insight, the Tribunal considered that an order of conditions would not provide sufficient protection to the public. The Tribunal also considered that an order of conditions would not be able to address Dr Cvetkovs' dishonesty and would not be proportionate to the seriousness of the proven misconduct.

Suspension

164. The Tribunal then went on to consider an order of suspension. The Tribunal considered paragraph 92 of the SG, as set out by Ms Goring. It recalled its findings at the sanction stage that Dr Cvetkovs had failed to put the care of Patient A at the front of his mind and that this had breached a fundamental tenet of the profession. The Tribunal had regard to paragraph 129 of the SG, which discusses cases that require more severe action and that the Tribunal considered to be relevant in this case:

'Cases in this category are those where a doctor has not acted in a patient's best interests and has failed to provide an adequate level of care, falling well below expected professional standards (set out in domains one and four of Good medical practice on knowledge, skills and performance, and maintaining trust). Particularly where there is a deliberate or reckless disregard for patient safety or a breach of the fundamental duty of doctors to 'Make the care of [your] patients [your] first concern' (Good medical practice, paragraph 1).'

165. The Tribunal considered that Dr Cvetkovs' breach of a fundamental tenet of the profession, coupled with his lack of insight or remediation, meant that a member of the public would be shocked if this misconduct were not found to be fundamentally incompatible with continued registration.

166. in light of this, the Tribunal considered that Dr Cvetkovs' actions were fundamentally incompatible with continued registration and so went on to consider the sanction of erasure.

Erasure

167. The Tribunal had regard to the relevant paragraphs of the SG, including:

'107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.

108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration

as a doctor.

109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).

a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.

b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.

…

d Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').

e Violation of a patient's rights/exploiting vulnerable people (see Good medical practice, paragraph 27 on children and young people, paragraph 54 regarding expressing personal beliefs and paragraph 70 regarding information about services).

f Offences of a sexual nature, including involvement in child sex abuse materials (see further guidance below at paragraphs 151 - 159).

…

h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128).

i Putting their own interests before those of their patients (see Good medical practice paragraph 1: – 'Make the care of [your] patients [your] first concern' and paragraphs 77–80 regarding conflicts of interest).

j Persistent lack of insight into the seriousness of their actions or the consequences.'

168. The Tribunal also considered paragraphs 112 – 119 in relation to Dr Cvetkovs conviction. The Tribunal accepted that the conviction was XXX and did not reach the threshold for erasure, but that this was overshadowed by the gravity of Dr Cvetkovs' misconduct.

169. The Tribunal considered paragraph 124 to also be relevant because of Dr Cvetkovs' dishonesty:

'124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.'

170. The Tribunal also reflected upon paragraphs 133 – 162 of the SG, dealing with cases that indicate a more severe sanction, and identified two of these categories to be present in this case. It considered these to be that Dr Cvetkovs abused his position as a doctor and engaged in a sexual relationship with a patient. The Tribunal also considered Ms Goring's submission that Dr Cvetkovs had demonstrated predatory behaviour. It considered that, although Dr Cvetkovs had exploited the vulnerability of Patient A, it stopped short of agreeing that this was 'predatory' in the meaning of the SG.

171. The Tribunal considered that all the sub-paragraphs of paragraph 109 above were relevant in this case and indicated that the appropriate sanction should be erasure. The Tribunal considered that Dr Cvetkovs had shown a persistent lack of insight and so an order of erasure would be the only way to protect the public.

172. The Tribunal considered that Dr Cvetkovs' submissions had all been self-regarding, without giving consideration to the impact of his actions on Patient A. It considered that Dr Cvetkovs had no insight into the seriousness of his actions except by reference to the severity of the punishment for him. The Tribunal considered that Dr Cvetkovs' summary submissions were all about himself and contained no reflection on how he had manipulated Patient A by, for example, providing financial inducements to her to enter a sexual relationship with him.

173. The Tribunal also considered that in his submission Dr Cvetkovs sought to inappropriately lay blame on Patient A, who was vulnerable and ripe for exploitation. The Tribunal did accept that Patient A saw in Dr Cvetkovs an opportunity to obtain money to feed her drug addiction, by having a relationship with him, but considered that Dr Cvetkovs should have appreciated this and should not have started or continued the relationship. The Tribunal found that Dr Cvetkovs had ignored multiple red flags and even continued to pursue the relationship after giving his statement to the Trust investigation.

174. The Tribunal rejected Dr Cvetkovs' submission that he did not understand until after his relationship with Patient A that this was a problem. He had been told by Ms F before he

engaged in a sexual relationship with Patient A that the relationship was inappropriate and he clearly appreciated that it was so because he then lied to the Trust investigation to conceal his relationship with her.

175. The Tribunal considered that, even were all the other misconduct and sexual relationship to be disregarded, the fact that Dr Cvetkovs watched Patient A inject an illicit drug into her central line and did nothing to help would have brought the case into the territory of erasure. It considered that a member of the public or of the profession would be shocked to hear of this behaviour.

176. The Tribunal considered that a lesser sanction than erasure would not sufficiently serve the public interest in this case. It considered that public confidence would be seriously undermined by Dr Cvetkovs' actions if a sanction of erasure were not imposed. Due to Dr Cvetkovs' lack of insight, the Tribunal considered that a sanction of erasure was also necessary to protect the public from a risk of harm.

177. Therefore, the Tribunal determined to erase Dr Cvetkovs' name from the register.

Determination on Immediate Order - 17/01/2024

178. Having determined that Dr Cvetkovs' name should be erased from the register, the Tribunal now has to decide, in accordance with Rule 17(2)(o) of the Rules, whether Dr Cvetkovs' registration should be subject to an immediate order.

Submissions

179. On behalf of the GMC, Ms Goring, Counsel, submitted that an immediate order was necessary in this case. She referred the Tribunal to the relevant paragraphs of the SG and submitted that, despite not fitting squarely within the need to protect patient safety, this case was one where an immediate order was required to protect public confidence in the profession.

180. Dr Cvetkovs submitted that he was not currently working as a doctor, did not intend to appeal the decision and did not oppose an immediate order.

The Tribunal's Determination

181. In reaching its decision, the Tribunal has exercised its own judgement, taking into account all the circumstances. The Tribunal has borne in mind the guidance given in paragraphs 172 - 178 of the SG, in particular:

> *'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… where immediate action must be taken to protect public confidence in the medical profession.*
>
> *…*
>
> *178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'*

182. The Tribunal noted that Dr Cvetkovs was not currently working as a doctor so there were no patients who may be put at risk if an immediate order were imposed.

183. The Tribunal reminded itself of its findings as to the seriousness of Dr Cvetkovs' misconduct and its determination on sanction that Dr Cvetkovs' name should be erased from the register under all three limbs of the overarching objective.

184. The Tribunal considered it particularly serious that Dr Cvetkovs had shown no insight into the seriousness of his misconduct. The Tribunal considered that the gravity and seriousness of this misconduct meant that the public confidence would require immediate action to be taken. The Tribunal also considered that, bearing in mind its previous findings, it was necessary to make an immediate order for the protection of patients.

185. Considering paragraph 173 of the SG, the Tribunal was satisfied that an immediate order of suspension was appropriate in these circumstances and determined to impose such an order because of the serious nature of Dr Cvetkovs' misconduct. It considered that a member of the public would be shocked if Dr Cvetkovs were allowed to practise free from restrictions during the appeal period.

186. This means that Dr Cvetkovs' registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, 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.

187. The interim order is hereby revoked.

188. This concludes the case.

ANNEX A – 10/01/2024 Announced orally on 09/01/2024

Application to Amend the Allegation

189. On Day two of the hearing, Ms Goring, Counsel on behalf of the GMC, made an application, pursuant to Rule 17(6), to withdraw certain paragraphs of the Allegation. She submitted that she was making this application in light of the fact that Patient A, the chief complainant in the misconduct allegations, was not engaging and would not be attending to give oral evidence. Therefore, she was seeking to withdraw all the allegations that rely solely upon Patient A's evidence, with the exception of those paragraphs to which Dr Cvetkovs had already admitted.

190. Ms Goring submitted that she was making this application rather than a hearsay application because of the gravity of the allegations against Dr Cvetkovs. She said that, in particular, the alleged events that took place in the ward room would likely have lead to extensive cross examination from Dr Cvetkovs.

191. Ms Goring submitted that the paragraphs that she sought to withdraw were paragraphs 1(b)-(j), 2(b)-(c), 2(e) and 5(a). She said that, consequently, paragraph 5(b) should also be amended to reflect the reduction of paragraph 1 to only paragraph 1(k).

192. Dr Cvetkovs did not oppose the application.

The Tribunal's decision

193. The Tribunal noted that Ms Goring had not sought to make a hearsay application and rather had applied to simply withdraw the allegations pertaining to Patient A. The Tribunal considered that the withdrawal of the paragraphs as set out was in Dr Cvetkovs' favour and so clearly caused no injustice to him.

194. In light of this, the Tribunal determined to grant the application and withdraw the above paragraphs of the Allegation.

ANNEX B– 10/01/2024 Announced orally on 09/01/2024

Consideration to sit in private

195. This determination will be handed down in private. However, as this case concerns Dr Cvetkovs' misconduct and conviction a redacted version will be published at the close of the hearing.

196. On Day two of the hearing, Ms Goring, Counsel for the GMC, reminded the Tribunal of its power pursuant to Rule 41(2) to sit in private while Dr Cvetkovs gave evidence. This arose because of the prospect of a large number of members of the public sitting in to observe the hearing and her concern about the pressure this may add to Dr Cvetkovs as he gave evidence, particularly as he was unrepresented. She submitted that, in the circumstances, it may be more fair to allow Dr Cvetkovs to give evidence in private because of XXX and the possible impact that giving evidence before a large audience may have.

197. Ms Goring did not apply for the Tribunal to sit in private, but rather, in fairness to Dr Cvetkovs, who was unrepresented, she reminded the Tribunal of its power to sit in private.

198. Dr Cvetkovs submitted that it would be difficult for him to give evidence in those circumstances but that his difficulty speaking in public predated his medical conditions. When asked, Dr Cvetkovs was unsure if XXX affected his ability to speak to the Tribunal in front of an audience.

The Tribunal's decision

199. The Tribunal was mindful that Rule 41(2) provided the power to decide to sit in private if the interest of doing so outweighed the public interest in hearings proceeding in public.

200. The Tribunal was mindful of Dr Cvetkovs' submission that it would be more stressful for him to give evidence with the public present, but also noted that he had said this difficulty was not related to XXX.

201. The Tribunal considered that the default position was that hearings should occur in public and that it was an exception, not the norm, to sit in private XXX. The Tribunal noted that, whilst XXX would form part of his evidence and submissions, evidence addressing his misconduct and conviction should be heard in public.

202. The Tribunal considered its powers under Rule 41.2 but concluded that the circumstances of this case did not outweigh the public interest in proceedings being conducted in public. XXX.

ANNEX C – 10/01/2024

Application of no case to answer

203. On day two of the hearing, after Ms Goring had closed the case for the GMC, Dr Cvetkovs made an application, pursuant to Rule 17(2)(g), that there was no case to answer regarding certain paragraphs of the Allegation.

Submissions

204. Dr Cvetkovs submitted that the GMC had not provided sufficient evidence to prove paragraphs 2(f)(i), 3(b), 3(c), 4, 5(b) and 8 of the Allegation. He said that there was no evidence of him giving Patient A money to buy drugs or knowing that she would use any money to do so. Dr Cvetkovs also submitted that he did not have a sexual relationship with Patient A, nor had he pursued a sexual relationship and that the GMC had not provided enough evidence that proved either point.

205. Dr Cvetkovs submitted that there was insufficient evidence for the Tribunal to find that Patient A was vulnerable at all material times due to a mental health condition. He also said that, despite his admissions to providing false statements to the Trust investigation, the GMC had not provided sufficient evidence to prove that he was dishonest in doing so.

206. On behalf of the GMC, Ms Goring submitted that, regarding paragraphs 2(f)(i) and 3(c) of the Allegation, although there was no evidence of a specific amount of money that Dr Cvetkovs had given to patient A, the IOT transcript showed that he admitted withdrawing £200, which he subsequently gave to Patient A. Ms Goring submitted that the second element of these allegations related to Dr Cvetkovs' knowledge that Patient A would use the money to buy illegal drugs. She submitted that Dr Cvetkovs' admissions, statements to the IOT and Rule 7 response all demonstrate that he was aware of her drug abuse problems. Ms Goring submitted that it was clear that Patient A had problems with drug abuse, that Dr Cvetkovs knew this and that it was common sense that there was a high likelihood that Patient A would use at least some of any money Dr Cvetkovs gave to her to buy illegal drugs. Ms Goring submitted that this was sufficient evidence for both these paragraphs of the Allegation to remain.

207. Turning to the issue of sexual motivation and Dr Cvetkovs engaging in a sexual relationship, Ms Goring referred the Tribunal to the IOT transcript where Dr Cvetkovs described dating Patient A, wanting her to be his girlfriend and gave intimate details of

her genitalia. She also highlighted Dr Cvetkovs' statements that there was no penetration in the Hospital. Ms Goring submitted that these statements, coupled with the actions such as meeting in Costa Coffee and stroking Patient A's hand, were all indicative of the pursuit of a sexual relationship and so paragraphs 3(b) and 5(b) should stand. She submitted that Dr Cvetkovs' admitted behaviour was clearly in pursuit of a sexual relationship.

208. Ms Goring submitted that the evidence that Patient A was vulnerable by virtue of her mental health condition came from the witness statement of Ms F, a psychiatric nurse. She told the Tribunal that Ms F's statement says that she had met Patient A on multiple occasions in her capacity as a psychiatric nurse and was aware of her history of vulnerabilities. Ms Goring accepted that no specific health condition was indicated but, taking the evidence at its highest, this was clear evidence that Patient A had psychiatric involvement for a number of years and was vulnerable due to her health condition. She said that, in these circumstances, paragraph 4 of the Allegation should stand.

209. Turning to the issue of dishonesty, Ms Goring reminded the Tribunal that Dr Cvetkovs had admitted to providing false statements to the Trust investigation. She submitted that telling deliberate untruths is synonymous with dishonesty and referred the Tribunal to Dr Cvetkovs' statements to the IOT that he had lied. Ms Goring submitted that this was sufficient evidence for paragraph 8 of the Allegation to remain.

Legal Advice

210. Rule 17(2)(g) states that the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld.

211. In deciding whether sufficient evidence has been adduced to find the facts proved at this stage, the Tribunal's task is not to determine whether, on the balance of probabilities, the GMC has proved its case. The approach the Tribunal should take is to apply the same test as would be apply at the close of the prosecution case in criminal proceedings – namely the test set out in the case of *R v Galbraith [1981] 1 WLR 1039.*

212. If there is no evidence that the doctor behaved in the manner alleged by the GMC then the Tribunal will stop the case. If the Tribunal determines that there is some evidence, but it is of a weak and tenuous character, for example, because of inherent weaknesses or because it is inconsistent with other evidence, then the Tribunal should consider whether the GMC's case at it's highest is such that a properly directed tribunal could not

properly find the allegations proved. If the Tribunal finds that a properly directed tribunal could not properly find the allegations proved, the Tribunal will stop the case. Where the GMC's evidence is such that the strength or weakness of it depends on the view the Tribunal takes of a witness' reliability, or other matters which are within the province of the Tribunal as finders of fact, and where there is evidence on which the Tribunal could properly come to the conclusion that the doctor behaved as alleged, then the Tribunal should allow the case to proceed.

The Tribunal's Decision

Paragraph 2(f)(i)

213. The Tribunal noted that this paragraph alleged that Dr Cvetkovs had given Patient A *'around £500'*, not a specific amount of money. The Tribunal had regard to Dr Cvetkovs' statements to the IOT where he said *'I admit that I taken £200 from cash machine but not for her but for me. However, later, she asked this money for her because I need to add because there is nothing to hide from me'*. The Tribunal also reminded itself of Dr Cvetkovs' admissions that he had observed Patient A using illegal drugs, as well as his statements to the IOT and in his Rule 7 response.

214. The Tribunal was satisfied that there was sufficient evidence that it could make a finding that Dr Cvetkovs gave Patient A around £500 on the day of her discharge. It also considered that there was sufficient evidence that Dr Cvetkovs knew about Patient A's drug abuse and likely intentions to use that money to buy illegal drugs. Therefore, the Tribunal determined to refuse Dr Cvetkovs' application to withdraw this paragraph of the Allegation.

Paragraph 3(c)

215. This paragraph of the Allegation is concerned with a two-week period following Patient A's discharge from the Hospital. The Tribunal considered that the references to evidence cash changing hands, as set out above, were all in relation to the day of Patient A's discharge and not in the weeks afterwards. The Tribunal identified no evidence of any money being given by Dr Cvetkovs to Patient A after the date of Patient A's discharge from the Hospital. In light of this, the Tribunal determined that there was no evidence upon which it could find this paragraph proved and therefore Dr Cvetkovs' application should be upheld.

Paragraph 3(b)

216. The Tribunal considered the IOT transcript where Dr Cvetkovs had described dating Patient A, wanting her to be his girlfriend, XXX and having intimate knowledge of her anatomy. The Tribunal considered that this evidence could be sufficient to find that Dr Cvetkovs and Patient A were engaged in a sexual relationship but that there could also be another explanation for why Dr Cvetkovs had such intimate knowledge of Patient A. The Tribunal determined that this paragraph of the Allegation should proceed.

Paragraph 5(b)

217. The Tribunal considered that the same evidence that was relevant to paragraph 3(b) was relevant to paragraph 5(b) and, as such, paragraph 5(b) should also remain as it could be possible to make a finding of fact based on the evidence produced by the GMC. The Tribunal determined that there was sufficient evidence upon which the Tribunal could conclude that Dr Cvetkovs' actions were sexually motivated and that the hearing should proceed in respect of this paragraph of the Allegation.

Paragraph 4

218. The Tribunal considered the witness statement of Ms F and her exhibit. The Tribunal noted that, in her statement, Ms F set out that Patient A had a history of mental health problems and vulnerabilities. However, the Tribunal considered that this description of Patient A's history did not provide evidence that she was vulnerable at all material times due to her mental health conditions.

219. The Tribunal considered that Ms F's evidence amounted to allusions to Patient A's previous condition but not any current state of mind or mental health. In particular, the Tribunal noted Ms F's note on the MDT continuation form that Patient A had *'politely declined to see me stating that she was not currently in crisis.'* Ms F did not state why Patient A had been referred to her.

220. The Tribunal considered that the evidence was limited to saying that Patient A suffered from drug addiction but did not provide evidence of a specific mental health condition, nor did it sufficiently demonstrate that she was vulnerable because of any previous mental health condition at all the material times. In light of this, the Tribunal determined that the GMC had not produced sufficient evidence that this paragraph could be found proved and so this paragraph of the Allegation should not proceed any further.

Paragraph 8

221.The Tribunal reminded itself of Dr Cvetkovs' admissions that he had made untrue statements to the Trust investigation. It also had regard to Dr Cvetkovs' Rule 7 response where he said he had lied. The Tribunal considered that this was clearly evidence that could support a finding of dishonesty and so this paragraph of the Allegation should remain.

222.In conclusion, the Tribunal determined to grant Dr Cvetkovs' application to remove paragraphs 3(c) and 4 of the Allegation but refuse it in regards to paragraphs 2(f)(i), 3(b), 5(b) and 8.

ANNEX D – 10/01/2024

Determination to amend the Allegation.

223. On day four of the hearing, at the close of the facts stage, the Tribunal informed the parties that, in light of Dr Cvetkovs' evidence, it intended to amend paragraph 2(f)(i), and the stem of paragraph 2(f). The Tribunal advised the parties that it wished to amend the stem to read *'at around the time Patient A was discharged from the Infirmary'* and the amount of money particularised in paragraph 2(f)(i) to be £100.

224. The Tribunal wished to make this amendment because Dr Cvetkovs had, in his evidence, admitted to giving Patient A around £100 on 10 December 2020 but the way the Allegation was drafted suggested that this happened after she had been discharged from the Infirmary.

225.The Tribunal said that it had considered the case of *Ahmedsowida v GMC 2021 EWHC 3466 (Admin)* and did not believe that this amendment would cause any injustice to Dr Cvetkovs as it would be made to accurately reflect the evidence that had been given to the Tribunal.

226.The Tribunal invited submissions from the parties. On behalf of the GMC, Ms Goring submitted that she agreed it would be proper, and not cause any injustice, to reflect the evidence that had been heard. Dr Cvetkovs did not oppose the proposed amendment.

227.As the application was not opposed, the Tribunal therefore determined to make the amendment as proposed.