

## PUBLIC RECORD

Dates: 15/03/2021 - 18/03/2021

Medical Practitioner's name: Dr Alexander WOOTTON

GMC reference number: 4610621

Primary medical qualification: MB ChB 1999 University of Edinburgh

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

## Summary of outcome

Erasure

## Tribunal:

Legally Qualified Chair	Mr Neil Mercer
Lay Tribunal Member:	Mr Andrew Gell
Medical Tribunal Member:	Dr Shazad Amin

Tribunal Clerk:	Mr Josh Dayco
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## Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr David Birrell, 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 - 16/03/2021

### Background

1. Dr Wootton qualified in 1999 from the University of Edinburgh. Prior to the events which are the subject of the hearing, between 2005 to 2008, Dr Wootton worked as a Trainee in Learning Disability Psychiatry. Subsequently, Dr Wootton took up a Consultant post in 2009. At the time of the events Dr Wootton was practising as a Consultant Psychiatrist at NHS Greater Glasgow and Clyde (GGC) specialising in Learning Disability.
2. The allegation that has led to Dr Wootton's hearing relates to dishonesty. By way of background, Dr Wootton agreed undertakings with the GMC in 2012 and in the early part of 2018, his employer raised further concerns with the GMC regarding his performance. As a result of these concerns, the GMC launched an investigation into Dr Wootton's fitness to practise and he was informed of this investigation in a letter dated 14 May 2018. The concerns that form the subject of this hearing, relate to an allegation that Dr Wootton was repeatedly dishonest during an appraisal process in June 2018 in that he failed to mention that he was subject to a GMC fitness to practise investigation.
3. Between June 2018 to January 2019, it is alleged that Dr Wootton failed to disclose his GMC investigation whilst completing his 2018/2019 Scottish Online Appraisal Resource (SOAR) Form 3, during an appraisal meeting with his Appraiser and when signing off his self-declaration in the SOAR Form 4. Further, during a meeting with his clinical supervisor on 31 January 2019, Dr Wootton stated that he was not subject to an investigation at the point of his appraisal in June 2018 nor informed of the formal investigation until October 2018. It is alleged that Dr Wootton acted dishonestly on multiple occasion as set out

above.

### The Outcome of Applications Made during the Facts Stage

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

### The Allegation and the Doctor's Response

5. The Allegation made against Dr Wootton is as follows:

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

1. In a letter dated 14 May 2018 the GMC notified you that an investigation had been opened into your fitness to practise ('the GMC investigation').

**To be determined**

2. On or around 11 June 2018 you completed your 2018/2019 Scottish Online Appraisal Resource (SOAR) Form 3 ('Form 3') and you answered 'No' to the following question:

*'Are there any cases pending against you with any of the following organisations? 1. The General Medical Council.'*

**To be determined**

3. You knew that the answer you provided on Form 3 as set out in paragraph 2 was untrue.

**To be determined**

4. Your actions as described at paragraph 2 were dishonest by reason of paragraph 3.

**To be determined**

5. During your appraisal meeting with Dr A on 20 June 2018 ('your appraisal meeting'), you failed to disclose the GMC investigation.

**To be determined**

6. You knew that you should have disclosed the GMC investigation to Dr A during your appraisal meeting.

**To be determined**

7. Your actions as described at paragraph 5 were dishonest by reason of paragraph 6.  
**To be determined**
8. On 25 June 2018 you approved and signed off on your 2018/2019 SOAR Form 4 ('Form 4'), which contained a self-declaration that there were no issues in relation to your probity.  
**To be determined**
9. You knew that you should have ensured that the GMC investigation was mentioned in Form 4.  
**To be determined**
10. Your actions as described at paragraph 8 were dishonest by reason of paragraph 9.  
**To be determined**
11. During a supervision meeting on 31 January 2019, your clinical supervisor, Dr B, advised you that there was no mention of the GMC investigation in the body of Form 4, or words to that effect, and you stated that you weren't:
- a. subject to investigation at the point of the appraisal in June 2018;  
**To be determined**
  - b. informed of the formal investigation until October 2018; or words to that effect.  
**To be determined**
12. You knew that the information you provided to Dr B, as set out in paragraph 11, was untrue.  
**To be determined**
13. Your actions as described at paragraph 11 were dishonest by reason of paragraph 12.  
**To be determined**

### Factual Witness Evidence

6. 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 B, Clinical Supervisor and Medical Appraisal Lead at NHS GGC; and
  - Dr A, Appraiser and a retired Consultant in Child and Adolescent Psychiatry.

## Documentary Evidence

7. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included but was not limited to the Scottish Online Appraisal Resource (SOAR) Form 4 checklist and Medical Appraisal Report for Dr Wootton; correspondence between Dr B and the GMC dated 20 October 2019; correspondence between Dr B and Dr Wootton dated 1 February 2019; correspondence between the GMC and Dr Wootton from 14 May 2019 to 2 September 2019.

## The Tribunal's Approach

8. 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 Wootton 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.
9. Where relevant to its decision-making process, the Tribunal had regard to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67. It states:

*'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.'*

## The Tribunal's Analysis of the Evidence and Findings

10. 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.

### Paragraph 1

11. The Tribunal had regard to the documents provided by the GMC, including a letter dated 14 May 2018, sent to Dr Wootton's registered address, notifying him that an investigation had been opened into his fitness to practise.
12. Having regard to the documents set out above, the Tribunal is satisfied that Dr Wootton was informed that an investigation was opened through a letter dated 14 May 2018.
13. Accordingly, the Tribunal found this paragraph of the Allegation proved.

#### Paragraph 2

14. The Tribunal had regard to the email correspondence provided by Dr B, Clinical Director and Medical Appraisal Lead to the GMC with regard to the answer provided by Dr Wootton in his 2018/2019 SOAR Form 3. The Tribunal accepted Dr B's opinion that if a positive response is entered by the appraisee in the probity section of the SOAR Form 3, it will trigger the SOAR Form 4 recording as 'issues' within the 'Self Declarations', 'Probity Statement' section, under the 2018/2019 column. No issues were recorded on Dr Wootton's SOAR Form 4. Further, within Check 7 of the SOAR form 4 checklist state:

*'Are there any outstanding concerns about the doctor's fitness to practise which are not currently being addressed through local or GMC mechanisms?'*

15. Therefore, having regard to the factual evidence provided by the GMC. The Tribunal found this paragraph of the Allegation proved.

#### Paragraph 3

16. The Tribunal had regard to the submissions of Mr David Birrell, Counsel, on behalf of the GMC that Dr Wootton was informed by letter of the investigation on his fitness to practise dated 14 May 2018. Further, Dr Wootton had been under a GMC investigation prior to the recent investigation and the Tribunal is satisfied that he knew the process of these investigations better than most doctors.
17. The Tribunal also considered the wording of this letter and specifically whether Dr Wootton could have misunderstood whether an investigation had already been opened or was due to be opened. It determined that Dr Wootton did not misunderstand this, as he did not subsequently raise any concerns with regards to any such ambiguity, and as

an experience professional would have interpreted the letter as a whole in a reasonable manner to conclude that an investigation had been opened.

18. In light of the Tribunal's finding in paragraph 2 and the reasons set out above, the Tribunal found this paragraph of the Allegation proved.

#### Paragraph 4

19. Having reached its conclusions on paragraph 2 and 3 of the Allegation, the Tribunal proceeded to determine whether Dr Wootton's conduct was dishonest.
20. The Tribunal is satisfied that Dr Wootton was aware and understood that he is under a GMC investigation prior to completing his 2018/2019 SOAR Form 3. The Tribunal had the view that the question put to Dr Wootton was clear and his answer was false and misleading. Therefore, the Tribunal found that a well-informed member of the public would regard Dr Wootton's conduct set out in paragraph 2 and 3 as dishonest.
21. Accordingly, the Tribunal found this paragraph of the Allegation proved.

#### Paragraph 5 and 6

22. The Tribunal had regard to the witness statement of Dr A, Appraiser. In her statement she said that following:

*'I don't recollect whether or not Dr Wootton mentioned receiving any GMC correspondence...'* [sic]

*'Anything relating to GMC previous or ongoing investigations would have been summarised as it would have formed part of the discussion.'*

23. Further, in Dr A's SOAR Form 4 report on Dr Wootton, there is no mention of Dr Wootton's GMC investigation in the 'Domain 4', 'Probity Statement' section, under the column 2018/2019.
24. The Tribunal's view is that a GMC investigation is significant factor within a doctor's practise. It should be discussed during any appraisal meeting, with the appraisee having a responsibility to raise it if the appraiser does not. Dr Wootton would have been aware

of this duty of disclosure.

25. Therefore, the Tribunal found paragraph 5 and 6 of the Allegation proved.

#### Paragraph 7

26. Having reached its conclusions on paragraph 5 and 6 of the Allegation, the Tribunal proceeded to determine whether Dr Wootton's conduct was dishonest.

27. The Tribunal is satisfied that Dr Wootton knew about the GMC investigation and chose not to disclose it to Dr A during his appraisal meeting. The Tribunal accepted the evidence of Dr A that if the GMC investigation was raised, it would have been summarised and formed part of the discussion.

28. The Tribunal concluded that, Dr Wootton was aware of the GMC investigation and his duty to disclose and chose not to during his appraisal meeting with Dr A. Therefore, the Tribunal found that a well-informed member of the public would regard Dr Wootton's conduct set out in paragraph 5 and 6 as dishonest.

29. Accordingly, the Tribunal has found this paragraph of the Allegation proved.

#### Paragraph 8 and 9

30. The Tribunal had regard to the SOAR Form 4 declaration that was approved by Dr Wotton on 25 June 2018. The Tribunal is satisfied that there were no issues were recorded in relation to Dr Wootton's probity within his SOAR Form 4.

31. The Tribunal also had regard to Dr B's witness statement.

*'Form 4 is the summary of the appraisal interview prepared by the appraiser and then agreed and signed off by the appraisee as an accurate reflection of the discussion.'*

*'Form 4 is the appraisers' documentation of the summary of the appraisal interview. It is possible that Dr Wootton and his appraiser had a discussion about the GMC investigation but his appraiser did not record it on the Form 4. In any event, the appraiser would send Dr Wootton the document and Dr Wootton would have the opportunity to request any*

*changes prior to signing it off as accurate.'*

32. The Tribunal accepted Dr B's statement that Dr Wootton should have ensured that his SOAR Form 4 contained all the relevant material which included the GMC investigation. Furthermore, the Tribunal regarded Dr Wootton as a highly experienced professional and should have known to disclose any investigation.
33. Accordingly, the Tribunal found these paragraphs of the Allegation proved.

Paragraph 10

34. The Tribunal is satisfied that Dr Wootton knew that he was under a GMC investigation and that he should have declared the issues with regard to his probity. The Tribunal was of the view that Dr Wootton had the opportunity to review and remedy his SOAR Form 4 before submitting it but failed to do so. Therefore, the Tribunal found that a well-informed member of the public would regard Dr Wootton's conduct set out in paragraph 8 and 9 as dishonest.
35. Accordingly, the Tribunal has found this paragraph of the Allegation proved.

Paragraph 11(a), 11(b) and 12

36. The Tribunal found that Dr Wootton was informed by a letter a dated 14 May 2018, of his GMC investigation. Subsequently, the appraisal took place on 20 June 2018.
37. The Tribunal also had regard to the witness statement of Dr B, in which she said that following:

*'I noticed there wasn't any mention of a Fitness to Practise GMC investigation that was ongoing. I knew about the GMC investigation because he had told me about it on 21 May 2018 when we had a supervision meeting together.'*

*'I had a pre-planned line management supervision meeting with Dr Wootton on 31 January 2019 so took the opportunity to discuss the content of his 2018/19 Form 4 from his appraisal interview on 20 June 2018 during this meeting.'*

*'Dr Wootton said he wasn't subject to investigation at the point of the appraisal which was in June 2018. Dr Wootton said he wasn't informed of the formal investigation until October 2019. [this is a typographical error in Dr B's statement the date should be October 2018] He said the GMC wasn't doing a FTP investigation, ... and that if there are issues they can then call a fitness to practice investigation.'*

*'My view is that Dr Wootton should have recorded that he was subject to an ongoing GMC investigation during his appraisal in June 2018 and I said the same to him during our meeting on 31 January 2019.'*

38. The Tribunal also considered Dr B's formal correspondence with Dr Wootton dated 1 February 2019. Within this, Dr B has set out the outcome of the meeting which took place on 31 January 2019, and states:

*'You said that you were not subject to a fitness to practice investigation by the GMC at the time of your appraisal interview on 20 June 2018. You said that you were undergoing a GMC performance assessment, which you didn't know about until October 2018, and that it would be the outcome of that that would inform whether or not a fitness to practice investigation is instigated.'*

39. The Tribunal accepted Dr B's evidence of what took place in the meeting between her and Dr Wootton on 31 January 2019.
40. The Tribunal was satisfied that Dr Wootton was subject to an investigation and was informed on 14 May 2018, prior to his appraisal in 20 June 2018. The Tribunal formed the view that Dr Wootton concealed the truth from Dr B in saying that he was not subject to an investigation at his appraisal in 20 June 2018.
41. The Tribunal was also satisfied having regard to all the relevant evidence, Dr Wootton was fully aware that the answers he provided in relation to his GMC investigation to Dr B during their supervision meeting on 31 January 2019 were untrue.

42. The Tribunal found paragraphs 11(a), 11(b) and 12 of the Allegation proved.

### Paragraph 13

43. The Tribunal was satisfied that Dr Wootton falsely claimed that he was not subject to an investigation and that he had not been informed of the formal investigation during his

supervision meeting with Dr B on 31 January 2019. Therefore, the Tribunal found that a well-informed member of the public would regard Dr Wootton’s conduct set out in paragraph 11(a), 11(b) and 12 as dishonest.

44. Accordingly, the Tribunal has found this paragraph of the Allegation proved.

### The Tribunal’s Overall Determination on the Facts

45. The Tribunal has determined the facts as follows:

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

1. In a letter dated 14 May 2018 the GMC notified you that an investigation had been opened into your fitness to practise (‘the GMC investigation’).  
**Determined and found proved**
2. On or around 11 June 2018 you completed your 2018/2019 Scottish Online Appraisal Resource (SOAR) Form 3 (‘Form 3’) and you answered ‘No’ to the following question:  
*‘Are there any cases pending against you with any of the following organisations? 1. The General Medical Council’.*  
**Determined and found proved**
3. You knew that the answer you provided on Form 3 as set out in paragraph 2 was untrue.  
**Determined and found proved**
4. Your actions as described at paragraph 2 were dishonest by reason of paragraph 3.  
**Determined and found proved**
5. During your appraisal meeting with Dr A on 20 June 2018 (‘your appraisal meeting’), you failed to disclose the GMC investigation.  
**Determined and found proved**
6. You knew that you should have disclosed the GMC investigation to Dr A during your appraisal meeting.  
**Determined and found proved**
7. Your actions as described at paragraph 5 were dishonest by reason of paragraph 6.  
**Determined and found proved**
8. On 25 June 2018 you approved and signed off on your 2018/2019 SOAR Form 4 (‘Form 4’), which contained a self-declaration that there were no issues in

relation to your probity.

**Determined and found proved**

9. You knew that you should have ensured that the GMC investigation was mentioned in Form 4.  
**Determined and found proved**
10. Your actions as described at paragraph 8 were dishonest by reason of paragraph 9.  
**Determined and found proved**
11. During a supervision meeting on 31 January 2019, your clinical supervisor, Dr B, advised you that there was no mention of the GMC investigation in the body of Form 4, or words to that effect, and you stated that you weren't:
  - a. subject to investigation at the point of the appraisal in June 2018;  
**Determined and found proved**
  - b. informed of the formal investigation until October 2018; or words to that effect.  
**Determined and found proved**
12. You knew that the information you provided to Dr B, as set out in paragraph 11, was untrue.  
**Determined and found proved**
13. Your actions as described at paragraph 11 were dishonest by reason of paragraph 12.  
**Determined and found proved**

#### **Determination on Impairment - 17/03/2021**

46. 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 Wootton's fitness to practise is impaired by reason of misconduct.

#### **The Evidence**

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

#### **Submissions**

48. On behalf of the GMC, Mr Birrell submitted that Dr Wootton's actions amount to misconduct and his fitness to practise is impaired. He referred the Tribunal to the Good

Medical Practice (2013 edition) ('GMP') and said that paragraphs 65, 68 and 71 were engaged since these gave clear guidance that a doctor should be honest and trustworthy. Mr Birrell told the Tribunal that this was a serious case of dishonesty and it was not an isolated event. Mr Birrell submitted that Dr Wootton acted dishonestly on four occasions between 11 June 2018 and 31 January 2019. He also submitted that Dr Wootton was challenged by Dr B regarding his GMC investigation, however, Dr Wootton persisted in his lie and provided an explanation that did not stand up to scrutiny.

49. Mr Birrell submitted that there is no evidence of insight and remediation. He submitted that dishonesty is difficult to remediate but noted that he could have attempted courses relevant to remediation, however, there is no evidence that Dr Wootton has availed himself of these opportunities. Mr Birrell submitted that there is a real risk of repetition in this case given the repeated and persistent dishonesty and the absence of evidence, insight or remediation. In conclusion, Mr Birrell submitted that a finding of impairment is necessary to maintain public confidence in the profession and to declare and uphold proper standards of conduct and professionalism.

### The Relevant Legal Principles

50. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision on impairment is a matter for the Tribunal's judgement alone.
51. 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 then whether the finding of that misconduct which was serious, could lead to a finding of impairment.
52. The Tribunal followed the guidance set out in *R (Cohen) v GMC [2008] EWHC 581 (Admin)*, and acknowledged it must determine whether Dr Wootton's fitness to practise is impaired today, taking into account Dr Wootton's conduct at the time of the events and any relevant factors such as whether the matters are easily remediable, have been remedied and whether it was highly unlikely that there would be any repetition.
53. The Tribunal reminded itself of the statutory overarching objective which is 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.

## The Tribunal's Determination on Impairment

### Misconduct

54. The Tribunal first considered whether the facts found proved amounted to misconduct.

55. The Tribunal considered its findings at the facts stage in relation to Dr Wootton's dishonest actions. The Tribunal noted that Dr Wootton acted dishonestly by failing to disclose his GMC investigation on four different occasions. On 11 June 2018, when Dr Wootton completed his SOAR Form 3, on 20 June 2018, in the appraisal meeting between Dr Wootton and Dr A, on 25 June 2018, when Dr Wootton submitted his SOAR Form 4 declaration, and on 31 January 2019, during a supervision meeting between Dr Wootton and Dr B.

56. The Tribunal also considered the following paragraphs of the GMP:

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

*'68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.'*

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

- a. You must take reasonable steps to check the information is correct.*
- b. You must not deliberately leave out relevant information.'*

57. The Tribunal considered that probity and professional standards are at the core of the appraisal and revalidation process. For a doctor to conceal the fact that he was under GMC investigation fundamentally undermines this process.

58. Therefore, the Tribunal determined that the facts found proved amount to misconduct.

### Impairment by reason of Misconduct

59. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Wootton's fitness to practise is currently impaired.
60. The Tribunal noted that there is no evidence of insight. The Tribunal considered Dr Wootton's brief email response to the Allegation, but finds that this attempts to deflect the issue away from his dishonesty to what he perceives to be a breach of his privacy. This underlines the absence of meaningful insight.
61. Given Dr Wootton's lack of insight and remediation, the Tribunal could not be satisfied that Dr Wootton would not repeat his actions in the future.
62. The Tribunal considered paragraph 76 of the judgment in the case of **CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)**, in which Mrs Justice Cox provided a helpful approach to the determination of impairment. It found three of the limbs to be engaged in this case:

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

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

63. The Tribunal found Dr Wootton's actions demonstrated his lack of integrity and lack of candour. Therefore, the Tribunal found that Dr Wootton breached fundamental tenets of the profession and has brought the profession into disrepute, thus undermining public confidence in the profession.

64. In all of the circumstances, the Tribunal determined that Dr Wootton’s fitness to practice is impaired by reason of misconduct. It determined that such a finding is necessary in order to promote and maintain public confidence in the medical profession and declare and uphold proper professional standards and conduct for the members of the profession.

#### **Determination on Sanction - 18/03/2021**

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

#### **The Evidence**

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

#### **Submissions**

67. On behalf of the GMC, Mr Birrell submitted that this is a serious case of dishonesty and erasure from the medical register is the appropriate and proportionate sanction to impose on Dr Wootton’s registration. He referred the Tribunal to its findings on impairment, that Dr Wootton had breached fundamental tenets of the profession and had brought the profession into disrepute. Dr Wootton’s dishonesty was both persistent and covered up. Mr Birrell informed the Tribunal that Dr Wootton relinquished his license to practise in October 2019 and has no plans to return to practice.

68. Mr Birrell referred the Tribunal to the Sanctions Guidance (November 2020 edition) (‘the SG’).

69. Mr Birrell submitted that, taking no action would be inappropriate and undertakings do not arise in this case. He also submitted that there are no workable conditions in this case, therefore imposing conditions on Dr Wootton’s registration would be inappropriate. Mr Birrell submitted that suspension would be insufficient and would not satisfy the Overarching Objective. In addition, he reminded the Tribunal of its findings that there is no evidence of mitigation, no acknowledgment of fault, and that there is a real risk of repetition.

## The Tribunal's approach

70. The decision as to the appropriate sanction, if any, to impose in this case is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and borne in mind the over-arching objective.
71. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish or discipline doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Wootton's interests with the public interest.
72. The legally qualified chair also referred the Tribunal to the case of *Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin)*. He advised that the following observation of Mr Justice Mitting, while relating to the nursing profession, was also applicable in this case:

*'A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.'*

## The Tribunal's Determination on Sanction

### Mitigating and Aggravating Factors

73. The Tribunal has already set out its decision on the facts and impairment which it considered during its deliberations on sanction. Before considering what action, if any, to take in respect of Dr Wootton's registration, the Tribunal considered and balanced the mitigating and aggravating factors in this case.
74. The Tribunal identified that there are no mitigating factors in this case.
75. The Tribunal identified the following aggravating factors:

- Dr Wootton’s persistent deceit about his GMC investigation on four occasions, twice whilst submitting his SOAR Form 3 and Form 4 and twice during a face to face meetings firstly at his appraisal with Dr A and secondly at his supervision meeting with Dr B;
- The seriousness of Dr Wootton’s dishonest actions which affected his integrity and probity as a doctor; and
- The absence of Dr Wootton’s insight into his dishonesty.

### **No action**

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

### **Conditions**

77. The Tribunal next considered whether to impose conditions on Dr Wootton’s registration. The Tribunal noted that conditions are appropriate and workable in certain circumstances including where a doctor has been open and honest and has shown insight. It also noted that conditions may also be appropriate where a Tribunal is satisfied that the doctor will comply with them and has the potential to respond positively to their work being supervised.

78. The Tribunal noted that the SG provides that in cases of dishonesty, it is difficult to identify any conditions that could be appropriate, proportionate, workable, and measurable. In light of Dr Wootton’s misconduct, the Tribunal determined that it would be difficult to formulate appropriate and workable conditions.

79. The Tribunal was also of the view that imposing conditions on Dr Wootton’s registration would not sufficiently mark the seriousness of his dishonest conduct.

### **Suspension**

80. The Tribunal went on to consider whether to impose a period of suspension on Dr Wootton’s registration. The Tribunal accepted that suspension does have a deterrent effect and could be used to send a signal to Dr Wootton, the profession, and the public

about what is regarded as behaviour unbefitting a registered doctor.

81. The Tribunal considered paragraphs 93, paragraph 97 a, 97 g and paragraph 128 of the SG, which states:

*'93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).'*

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

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

...

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

82. The Tribunal noted the SG provides that suspension may be appropriate where there is an acknowledgement of fault and it is satisfied the conduct will not be repeated. In light of the Tribunal's findings in relation to Dr Wootton's misconduct, the persistent dishonesty and concealment of the GMC investigation. The Tribunal concluded that a period of suspension would not be appropriate to sufficiently protect the public interest.

## Erasure

83. The Tribunal went on to consider whether the sanction of erasure was appropriate and proportionate in this case. The Tribunal reminded itself of the aggravating factors it had identified in this case and noted the following paragraphs of the SG were relevant to its deliberations:

*'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*

...

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

*'128 Dishonesty, if persistent and/or covered up, is likely to result in erasure (see further guidance at paragraph 120–128).'*

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

84. The Tribunal determined Dr Wootton's conduct represented a serious departure from Good Medical Practice and he had also shown a deliberate disregard for the principles therein.

85. The Tribunal concluded that erasure is the only appropriate sanction to promote and maintain public confidence in the medical profession, and to uphold proper professional standards and conduct for members of the profession.

86. The Tribunal therefore determined that Dr Wootton's name be erased from the Medical Register.

87. Unless Dr Wootton exercises his right of appeal, his name will be erased from the Medical Register 28 days from the date on which written notice of this decision is deemed to have been served upon him. A note explaining his right of appeal will be sent to him.

**Determination on Immediate Order - 18/03/2021**

88. Having determined to erase Dr Wootton’s name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

### Submissions

89. Mr Birrell submitted that the GMC does not seek an immediate order of suspension. He submitted that such an order was not necessary bearing in mind that Dr Wootton has given up his licence to practise and is not subject to any interim orders.

### The Tribunal’s Determination

90. The Tribunal had regard to the relevant paragraphs of the SG which advise when an immediate order may be necessary.

91. The Tribunal concurred with Mr Birrell’s submissions that an immediate order was not necessary. It considered that given there are no clinical concerns in this case, an immediate order of suspension is not necessary to protect the public. Further, an immediate order is not necessary to protect the public interest which is served by the finding of impairment and the substantive sanction of erasure.

92. This means that Dr Wootton’s registration will be erased from the Medical Register 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Wootton does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

93. There is no interim order to revoke.

94. That concludes the case.

**Confirmed**

**Date** 18 March 2021

Mr Neil Mercer, Chair

ANNEX A – 15/03/2021

## Determination on Service and Proceeding in Dr Wootton's absence

### Service of Notice of the Hearing

95. Dr Wootton is neither present nor represented at this hearing. The Tribunal has considered whether notice of this hearing has been properly served upon Dr Wootton in accordance with Rules 20 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (the Rules).
96. Mr David Birrell, Counsel, on behalf of the GMC, provided the Tribunal with documents regarding service of these proceedings on Dr Wootton. This included a copy of the GMC Notice of Allegation letter, dated 27 January 2021 and a copy of the MPTS Notice of Hearing letter, dated 2 February 2021. The Tribunal noted that these letters were posted to Dr Wootton's registered address by Royal Mail Special Delivery. In particular, the Tribunal noted the Royal Mail Track and Trace documentation confirmed that the Notice of Hearing letter was successfully delivered and signed for on 4 February 2021.
97. The Tribunal was satisfied that all reasonable efforts have been made by the GMC to serve Dr Wootton with notice of the hearing. It was satisfied that the GMC has discharged its duty in accordance with the Rules.

### **Proceeding in Dr Wootton's absence**

98. The Tribunal went on to consider whether it would be appropriate to proceed with this hearing in Dr Wootton's absence pursuant to Rule 31 of the Rules. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with appropriate care and caution, balancing the interests of the doctor with the wider public interest.
99. Mr Birrell invited the Tribunal to proceed in Dr Wootton's absence. He submitted that Dr Wootton has waived his right to attend the hearing and that there is no suggestion an adjournment would secure his attendance at a future date. He submitted that there was a public interest in the hearing proceeding and told the Tribunal that the allegations are now two years old and that any further delay could affect the memories of the witnesses.

100. The Tribunal has balanced Dr Wootton’s interests with the public interest in deciding whether to proceed in his absence. In doing so it took account of the submissions of Mr Birrell and the relevant case law as set out in the cases of *R v Jones* [2003] 1AC 1 and *General Medical Council v Adeogba*; *General Medical Council v Visvardis* [2016] EWCA Civ 162
101. The Tribunal was satisfied that Dr Wotton was aware of the investigation process and had previously engaged with the GMC. The Tribunal was also satisfied that Dr Wotton had voluntarily absented himself from these proceedings. The Tribunal found that the public interest in the proceeding outweighed Dr Wootton’s interests.
102. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Wootton’s absence.