PUBLIC RECORD

**Dates**: 20/11/2024 - 9/12/2025; 18/03/2025

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| **Doctor:** | Dr Alexandra KENNARD |
| **GMC reference number:** | 7051197 |
| **Primary medical qualification:** | Vrach 1998 Ivano-Frankovsk State Medical Academy |

| Type of case | Outcome on facts | Outcome on impairment |
|---|---|---|
| New - Conviction | Facts relevant to impairment found proved | Impaired |
| New - Caution | Facts relevant to impairment found proved | Not Impaired |
| New - Misconduct | Facts relevant to impairment found proved | Impaired |
| XXX | XXX | XXX |

**Summary of outcome**

Suspension, 6 months.
Review hearing directed

**Tribunal:**

| | |
|---|---|
| Legally Qualified Chair | Mr Tim Bradbury (20/11/24 - 9/12/24)<br>Ms Amarjit Sagar (18/3/25) |
| Lay Tribunal Member: | Mr Geoff Brighton |
| Registrant Tribunal Member: | Mr Gurpreet Singh |

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| Tribunal Clerk: | Ms Rachael Gill (20/11/24 - 28/11/24)<br>Ms Hinna Safdar (29/11/24 - 5/12/24 & 18/03/25)<br>Ms Ciara Fogarty (5/12/24) |

**Attendance and Representation:**

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|---|---|
| Doctor: | Present, represented |
| Doctor's Representative: | Ms Vivienne Tanchel, Counsel, instructed by MDDUS |
| GMC Representative: | Mr Alan Taylor, 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 - 02/12/2024

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

## Background

2. Dr Kennard qualified in 1998 from Ivano-Frankovsk State Medical Academy, Ukraine. She practiced as a Senior House Officer ('SHO') in Child and Adolescent Psychiatry at Ivano-Frankivsk Regional Psychiatric Hospital from 1999 to 2003. She transitioned to Adult Psychiatry in April 2003, working as a middle grade until her move to the UK.

3. Dr Kennard moved to the UK in 2005 where she began working in non-medical posts, learning English and studying for the Professional and Linguistic Assessments Board ('PLAB') exams. Dr Kennard was granted a full UK medical licence in November 2010, and she entered the core training program at the Royal College of Psychiatrists as a Local Appointment for Training ('LAT') doctor. After completion of 18 months in LAT posts, she was accepted as a Core Trainee at CT3 level by the London deanery in 2012. Dr Kennard gained MRCPsych status in 2017. Subsequently Dr Kennard worked in various middle-grade roles both in the NHS and private settings.

4. Dr Kennard joined a Specialty Training Programme in Forensic Psychiatry with Health Education England - Wessex ('HEEW') in February 2019 and she undertook her clinical training in forensic psychiatry with Southern Health Southern Health NHSFT ('Southern Health'). Following the completion of both Dr Kennard's educational and clinical training on 1 June 2022, and after a short break, Dr Kennard worked in locum posts as a Consultant Psychiatrist in the South of England until 31 March 2023.

5. On 20 May 2022, during the late morning, Dr Kennard was the driver of a car involved in a minor road accident with another vehicle. Police attended and searched her car where they found a canister containing incapacitant CS spray. Dr Kennard was also subsequently breathalysed for alcohol with a reading of 100 mg of alcohol per 100 millilitres of breath (the legal limit is 35 mg). On 20 May 2022 at Southampton Central Police Station, Dr Kennard accepted a caution for having a CS spray in her possession but was charged with driving with excess alcohol and bailed to appear before Southampton Magistrates Court.

6. On 21 July 2022 at Southampton Magistrates, Dr Kennard pleaded not guilty to the excess alcohol offence, and she was bailed to attend her trial on 21 October 2022.

7. On 21 October 2022, Dr Kennard changed her plea to guilty and was convicted. She was sentenced to a fine of £2,500 and disqualified from driving for 24 months.

8. It is alleged that, whilst undertaking her Specialty Training at HEEW and Southern Health between February 2019 and June 2022, Dr Kennard failed to inform them that she had accepted a caution and that she had been charged with a criminal offence of driving with excess alcohol.

9. It is further alleged that on or around 7 July 2022 Dr Kennard submitted a registration form to a medical recruitment agency, HCL Doctors ('HCL'), and she failed to declare that she had been charged with a criminal offence. It is alleged that Dr Kennard knew that she should have declared within the form that she had been charged and her actions were dishonest. It is also alleged that after registering with HCL, and following her conviction on 21 October 2022, Dr Kennard failed to inform them of the conviction and that she failed to inform them that, on or around 30 November 2022, she had been advised by the GMC that she was subject of an investigation.

10. It is further alleged that, in July 2022, after initially registering with Pertemps Medical (Pertemps), another medical recruitment agency, Dr Kennard failed to inform that she had been convicted of driving with excess alcohol.

11. It is further alleged that, on 27 October 2022, Dr Kennard made untrue statements to Southern Health, for which she was working, in an email in which she had stated she had a car problem and a flat tyre, when she knew she had been disqualified from driving and it is alleged that her actions in doing so were dishonest.

12. Dr Kennard self-referred to the GMC on 11 November 2022.

13. XXX

14. XXX

15. XXX

16. XXX

## The Allegation and the Doctor's Response

17. The Allegation made against Dr Kennard is as follows:

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

Caution

1. On 20 May 2022 at Southampton Central Police Station, you accepted a conditional caution, in that at Nursling, Hampshire, without the authority of the Secretary of State, you had in your possession a weapon designed or adapted for the discharge of a noxious liquid, namely CS spray contrary to section 5(1)(b) of and Schedule 6 to the Firearms Act 1968. **Admitted and found proved**

Conviction

2. On 21 October 2022 at Southampton Magistrates' Court you were:

    a. convicted of an offence that on 20 May 2022 at Nursling, Hampshire you drove a motor vehicle on a road, namely Junction 3, M27, after consuming so much alcohol that the proportion of it in your breath, namely 100 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; **Admitted and found proved**

    b. sentenced to:

        i. a fine of £2500;

        **Admitted and found proved**

ii. disqualification from driving for 24 months.

Admitted and found proved

3. You failed to notify the GMC without delay that:

a. you had accepted the conditional caution detailed at paragraph 1;

Admitted and found proved

b. on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. Admitted and found proved

Health Education England – Wessex ('HEEW) and Southern Health NHSFT ('Southern Health')

4. Between 6 February 2019 and 1 June 2022 you joined a Speciality Training Programme with HEEW and undertook training with Southern Health. You failed to inform:

a. HEEW that:

i. you had accepted the conditional caution detailed at paragraph 1; To be determined

ii. on 20 May 2022 you been charged with the criminal offence detailed at paragraph 2a; To be determined

b. Southern Health that:

i. you had accepted the conditional caution detailed at paragraph 1;

Admitted and found proved

ii. on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. Admitted and found proved

HCL Doctors ('HCL')

5. On or around 7 July 2022 you submitted a Registration form ('the Form') to HCL and you failed to declare within Section 7 that on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. To be determined

6. You knew that you should have declared within the Form that on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. To be determined

7. Your actions as set out at paragraph 5 were dishonest by reason of paragraph 6. To be determined

8. After registering with HCL, you failed to inform them:

   a. of the matters set out at paragraph 2; To be determined

   b. that on or around 30 November 2022 you were advised that you were the subject of a GMC investigation. To be determined

Pertemps Medical

9. After initially registering with Pertemps Medical on or around 22 July 2022, you failed to inform them of the matters set out at paragraph 2. To be determined

Southern Health

10. In an email to Dr A on 27 October 2022, you asked whether it would be possible to move your ward round to tomorrow, or words to that effect, falsely stating *'I have a car trouble and absolutely stuck in terms of transportation? I will sort this out but cant* [sic] *go to work with a flat tire* [sic]'. To be determined

11. After being on leave for three weeks from a locum post at Ravenwood House, during a telephone call with Dr B on 30 December 2022 you said that you had been in a car accident in November 2022 and since then felt anxious about driving and you were not planning on driving for another few months, or words to that effect, which was untrue. To be determined

12. You knew that the comments you made to:

    a. Dr A as set out at paragraph 10; To be determined

    b. Dr B as set out at paragraph 11; To be determined

    were untrue, in that on 21 October 2022 you had been disqualified from driving as set out at paragraph 2bii.

13. Your actions as set out at paragraph(s):

a. 10 were dishonest by reason of paragraph 12a; To be determined

b. 11 were dishonest by reason of paragraph 12b. To be determined

14. XXX

15. XXX

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

a. caution in respect of paragraph 1;
To be determined

b. conviction in respect of paragraph 2;
To be determined

c. misconduct in respect of paragraphs 3 to 13;
To be determined

XXX

## The Admitted Facts

18. At the outset of these proceedings, through her counsel, Ms Vivienne Tanchel, Dr Kennard made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above. In accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'), the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

## The Facts to be Determined

19. In light of Dr Kennard's response to the Allegation made against her, the Tribunal is required to determine whether the remaining facts not admitted, or any of them, have been proved by the GMC upon the balance of probabilities.

## Witness Evidence

20. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Ms E, Revalidation and Accreditation Manager at NHSE Education Wessex, gave oral evidence in person, together with a witness statement dated 18 May 2023 and supplemental witness statement dated 2 May 2024.
- Dr B, Medical Director for specialised services division in the Southern Health NHS Foundation Trust and Dr Kennard's line manager at Ravenswood House, gave oral evidence by video link, together with a witness statement dated 19 May 2024.
- Ms F, currently Head of Compliance at HCL Doctors, gave oral evidence by video link, together with a witness statement dated 27 June 2023 and a supplemental witness statement dated 4 June 2024.
- Ms G, Managing Director at Healthcare Licensing Support Ltd ('HLS'), gave oral evidence in person, together with a witness statement dated 26 May 2023.
- Ms H, currently Quality Assurance Director at Pertemps Medical, gave oral evidence by video link, together with a witness statement dated 17 June 2024.

21. The Tribunal also 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:

- Mr I, investigations officer at the GMC, dated 3 July 2024.
- Dr A, Consultant Forensic Psychiatrist at Southern Health NHS Foundation Trust, dated 17 September 2024.
- Ms K, Workforce Business Partner for Corporate and Medical Services at Southern Health NHS Foundation, dated 12 June 2024.

22. Dr Kennard provided her own witness statement dated 21 October 2024 and gave oral evidence at the hearing.

23. The Tribunal also received evidence on behalf of Dr Kennard in the form of written testimonials from the following witnesses who were not called to give oral evidence:

- Dr L, Locum Consultant Child and Adolescent Psychiatrist.
- Dr M, Consultant Psychiatrist.

XXX

24. XXX

25. XXX

26. XXX

## Documentary Evidence

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

- Certificate of conviction/court extract, dated 22 December 2022.
- Emails between the GMC and HEEW, various dates 2023.
- A Reference Guide for Postgraduation and Speciality Training in the UK – The Gold Guide 8th Edition, dated 31 March 2020.
- Various emails between Dr B, colleagues, Southern Trust regarding Dr Kennard, various dates 2022-2023.
- Various emails between the GMC and HCL, various dates 2023.

## The Tribunal's Approach

28. The Tribunal accepted the legal advice from the Legally Qualified Chair (LQC).

29. 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 Kennard 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. There is only one standard of proof. However, the Tribunal, subject to the particular circumstances of the case, are entitled to take into account the inherent probabilities of an event occurring in determining whether an allegation has been proved to the requisite standard.

30. Where relevant to its decision-making process, the Tribunal will have regard to the test of dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67, which 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…*

*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

31. 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.

## Health Education England – Wessex ('HEEW) and Southern Health NHSFT ('Southern Health')

Paragraph 4(a)

32. The Tribunal dealt with 4(a) in its entirety.

33. There was no dispute that between 6 February 2019 and 1 June 2022 Dr Kennard was engaged in a Speciality Training Programme with HEEW and undertook her clinical training with Southern Health.

34. Dr Kennard admitted that she was under a duty, and had failed, to inform Southern Health of her caution and that she had been charged with driving with excess alcohol. However, she denied that, at the relevant time, she was under any duty or obligation to inform HEEW of these matters.

35. In essence, the GMC submitted that, although there were two distinct parts to Dr Kennard's training programme (educational training which HEEW provided and clinical training provided by Southern Health), the 'training programme' was provided by HEEW. Therefore, the GMC submitted that Dr Kennard's obligation to inform HEEW of the matters alleged at paragraphs 4(a)(i) and 4a(ii) continued beyond the completion of her educational training and would not cease until she had successfully completed her clinical training and been issued with her Certificate of Completion of Training (CTT) from the GMC on 1 June 2022 or alternatively until such time Dr Kennard had been formally disconnected from HEEW. HEEW remained her designated body until she was disconnected on 29 September 2022. The Tribunal understood that this delayed date arose through an oversight.

36. Conversely, it was submitted on behalf of Dr Kennard that the 'educational training' provided by HEEW was separate and distinct from the 'clinical training' provided by Southern Health and once her final Annual Review of Competency (ARCP) had been signed off, which was 4 May 2022, her educational training came to an end and Dr Kennard no longer had any obligation to inform HEEW of the matters alleged.

37. The Tribunal were in no doubt that, if Dr Kennard was still responsible to HEEW at the relevant time (20 May onwards), she would have had a duty to inform them of cautions and/or charges under the terms under which she was engaged in the programme by HEEW in February 2019 and also as set out in HEEWs 'Gold Guide' provided to trainees.

38. However, the Tribunal determined that while Dr Kennard was undoubtedly still undergoing her Specialty Training at the relevant time, the training programme comprised two distinct parts provided by two separate providers: the educational component overseen by HEEW, and the clinical component managed by Southern Health. The ARCP obtained on 4 May 2022 signified the completion of the educational aspect. The Tribunal accepted Dr Kennard's evidence that from this time her training number was removed. Furthermore, from April 2022 Dr Kennard ceased to have an educational supervisor. However, following the ARCP sign-off the Tribunal observed that Dr Kennard remained engaged with Southern Health as her employer as her training had ended with HEEW.

39. The Tribunal had regard to the evidence of Ms E, Accreditation and Revalidation Manager at NHSE Education Wessex. Her opinion was that Dr Kennard remained responsible to HEEW throughout the entirety of the Training Programme and therefore her obligations to HEEW did not cease until she had been issued with her CCT or potentially later when she was disconnected from HEEW as her Designated Body.

40. However, the Tribunal did not consider that the Specialty Training Programme agreement of 18 November 2018 or the Gold Guide, necessarily led to this conclusion and the Tribunal considered that a trainee's status and continuing relationship with HEEW after gaining their ARCP was at the very least ambiguous.

41. The Tribunal acknowledged that in the absence of a clear duty to inform and an ambiguity about whether reporting the caution to HEEW was required, the ambiguity should be resolved in Dr Kennard's favour. Additionally, the Tribunal considered what the position might have been had Dr Kennard informed Southern Health of her caution and charge. The Tribunal concluded that had Dr Kennard reported the caution to Southern Health, she could not realistically have faced criticism for not informing HEEW as well, particularly as she had

completed the educational aspect of her training and no longer had an active relationship with HEEW.

42. Ultimately, the Tribunal was satisfied that at the relevant time Dr Kennard owed a duty to Southern Health as outlined in the Allegation she had admitted. However, the Tribunal did not consider that the GMC had proved to the requisite standard that at the relevant time (after the sign-off of her ARCP) Dr Kennard was under a duty to inform HEEW as well.

43. The Tribunal therefore found the whole of paragraph 4(a) of the Allegation not proved.

## HCL Doctors ('HCL')

Paragraph 5

44. The Tribunal was required to determine whether Dr Kennard failed to disclose on or around 7 July 2022, that she had been charged with a criminal offence when submitting a registration form ("the Form") to HCL, a medical recruitment agency. Specifically, it was alleged that Dr Kennard omitted to declare in Section 7 of the Form that she had been charged on 20 May 2022, with driving a motor vehicle on Junction 3 of the M27 after consuming alcohol to an extent exceeding the legal limit. This offence, which occurred in Nursling, Hampshire, ultimately led to her conviction at Southampton Magistrates' Court on 21 October 2022, under Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

45. At the time of completing the registration form, Dr Kennard had completed her specialty training and was seeking employment through HCL. It was submitted on behalf of Dr Kennard that the Registration Form did not specifically, or by necessary implication, require the registrant to declare whether they have been charged with a criminal offence.

46. The Tribunal examined the specific wording of the Form and the questions asked and particularly within Section 7:

> *Question 3; 'For enhanced with or without barred list/Standard DBS check; Do you have any convictions, cautions, reprimands, warnings, or additional information that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended 2013).*

*Question 4; Are you aware of any previous, current or pending investigations, police enquiries or legal proceedings following allegations made against you (in the UK or any other country)?*

47. In relation to Question 3, Dr Kennard did not tick either the '*yes*' or '*no*' box provided. Dr Kennard's evidence was that she had not understood the question and therefore had left it blank, but she had later been contacted by '[Ms T]', a Human Resources employee at HCL, who had asked her whether she had any convictions or cautions. Dr Kennard said she had explained about her caution, but Ms T had not specifically asked about any charges.

48. With regard to question 4, Dr Kennard ticked the '*yes*' box and when prompted at question 5 to give details, she disclosed details of her caution for the CS spray, but no reference was made to the fact that she had been charged with driving with excess alcohol, or that she was due to attend court of 21 July 2022. This was despite the fact that the caution and charge both arose from the same set of circumstances namely the attendance of police and Dr Kennard's arrest following the road traffic accident on 20 May 2022.

49. Additionally, the Tribunal noted that on the same date as the Registration Form, Dr Kennard emailed Mr N, a recruitment consultant at HCL. In this email, she provided a detailed explanation of the events surrounding her conditional caution for possessing pepper spray and her engagement with the police. However, she made no reference to her arrest or the charge for drink driving.

50. The Tribunal concluded that Dr Kennard was under a clear duty to disclose her drink driving charge, as evidenced by the terms in Question 4 of the Form. Her omission of information regarding her charge and her pending hearing before the Southampton Magistrates court plainly fell within 'legal proceedings' and should have been declared – it was not.

51. The Tribunal therefore found paragraph 5 of the Allegation proved.

Paragraph 6

52. The Tribunal was required to determine whether Dr Kennard knowingly failed to declare on the Form that she had been charged on 20 May 2022, with the criminal offence detailed in paragraph 2a. This offence related to her conviction on 21 October 2022, at Southampton Magistrates' Court for driving a motor vehicle on Junction 3 of the M27 after

consuming alcohol to a level that exceeded the legal limit. The incident, which occurred in Nursling, Hampshire, contravened Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

53. Dr Kennard claimed that her failure to declare the charge stemmed from confusion and an unawareness that she needed to do so. However, the Tribunal noted her actions, particularly her email correspondence with Mr N of HCL, in which she provided a detailed account of the conditional caution she received for possession of pepper spray and her dealings with the police. The Tribunal considered it significant that in this email, Dr Kennard omitted any mention of her arrest, breathalyser results, or the drink driving charge, despite these incidents occurring as part of the same episode. The Tribunal found that this was not because Dr Kennard was confused or because she thought this information to be irrelevant but that it was a deliberate omission because she wished to not disclose to HCL that she had an outstanding offence with which she had been charged.

54. Further, the Tribunal considered it significant, that when Dr Kennard gave evidence with regard to her communication with '[Ms T]' she stated that, Ms T had asked why Dr Kennard had not ticked the relevant box on the Form for Question 3. Dr Kennard, in her evidence, stated that she had felt "*relieved*" that Ms T had not specifically asked about charges. The Tribunal interpreted this as indicative of Dr Kennard's awareness of the importance of the charge and a desire not to disclose details of it.

55. The Tribunal determined that the question Dr Kennard was required to answer on the Form was clear and unambiguous. It found it implausible that a forensic consultant psychiatrist applying for a medical position would not understand that disclosing a legal charge was essential information for a prospective employer. Moreover, if Dr Kennard had any doubts about the terms of the question, it was reasonable to expect her to seek advice from a third party or directly from the employer or recruiter. The Tribunal noted that she did not, despite having the opportunity to do so, when she spoke to Ms T.

56. The Tribunal acknowledged that Dr Kennard would have been anxious about the implications of being charged with driving with excess alcohol and which she acknowledged she knew to be a serious offence. In particular, the potential impact on her career only having just become a consultant. The Tribunal also took account of the difficulties in Dr Kennard's private life, XXX, which might have adversely affected her judgment. However, the Tribunal was entirely satisfied that she should have disclosed her charge, and she knew that she should. Nevertheless, she chose not to and, as Dr Kennard was to say at one point in her evidence, she was "*sticking her head in the sand*," rather than doing what she knew she had

to do. The Tribunal rejected her claim of being "*muddle-headed*" or confused to the point of not knowing what she was required to do, and it noted the clarity and coherence with which she addressed the pepper spray caution in her email to Mr N that, in the Tribunal's judgement, carefully avoided any reference to her arrest or charge for driving with excess alcohol. The Tribunal concluded that the omission of the drink driving charge was deliberate and not coincidental.

57. Dr Kennard's subsequent conversation with Ms T represented another opportunity to seek clarification or disclose the charge if she had any doubts. However, she did not take this opportunity and instead expressed relief that Ms T had not raised the issue. The Tribunal considered this further evidence of Dr Kennard's intentional avoidance of the subject. It concluded that Dr Kennard's failure to disclose the drink driving charge was deliberate and that she had knowingly chosen not to address the matter when prompted.

58. The Tribunal therefore found paragraph 6 of the Allegation proved.

Paragraph 7

59. The Tribunal was required to determine whether Dr Kennard's actions as set out at paragraph 5 were dishonest by reason of paragraph 6. Specifically, the Tribunal had established that Dr Kennard failed to declare her drink driving charge when completing the registration form and that she knew she was obligated to disclose this information. The Tribunal found that her failure to declare was deliberate.

60. The Tribunal considered her oral evidence, which provided the clearest indication of her state of mind at the time. This was followed by her failure to declare the charge on the registration form and her omission of any reference to it in a detailed email to Mr N. The email, which addressed the events of 20 May 2022 in relation to her carrying pepper spray, was comprehensive and well-written but excluded any mention of the circumstances that led to her being charged. The Tribunal found this omission significant and deliberate.

61. The Tribunal, having already concluded in relation to paragraph 6, that Dr Kennard knew that she should have declared her charge, it had also concluded that she had deliberately failed to disclose it to HCL, a recruitment agency, through which she was seeking to become registered in order to obtain work as a doctor. Accordingly, the Tribunal concluded that Dr Kennard's actions would be regarded as dishonest by the standards of ordinary decent people.

62. In reaching this conclusion, the Tribunal had regard to Dr Kennard's difficult personal circumstances at the time that may have affected her judgement. The Tribunal also considered the two positive testimonials provided on her behalf.

63. The Tribunal therefore found paragraph 7 of the Allegation proved.

Paragraph 8(a) and 8(b)

64. The Tribunal dealt with 8(a) and 8(b) together.

65. The Tribunal was required to determine whether, after registering with HCL, Dr Kennard failed to inform the agency of the matters set out in paragraph 2. These included her conviction on 21 October 2022, at Southampton Magistrates' Court for driving on May 20, 2022, with a breath alcohol level of 100 micrograms per 100 millilitres, exceeding the legal limit. Additionally, the Tribunal considered whether Dr Kennard failed to disclose that she was advised on or around 30 November 2022, that she was the subject of a GMC investigation.

66. The registration form that Dr Kennard submitted to HCL explicitly required her to disclose convictions and included a declaration stating: *"I declare that all information that I supplied in this application is true to the best of my knowledge, and I agree to comply with all of the declarations and requirements listed throughout this registration form and will notify HCL immediately of any changes*." This placed a clear obligation on Dr Kennard to disclose any significant changes, and in the Tribunal's judgment, this would necessarily include a criminal conviction.

67. The Tribunal received documentary evidence in the form of an email from Mr N to others (not Dr Kennard) recording that on 24 January 2023, HCL received a 'Pathfinder email' from the GMC informing them that Dr Kennard had self-referred, which prompted Mr N (Dr Kennard's Recruitment Consultant at HCL) to call Dr Kennard that same day. The contemporaneous email recorded that, during this call, Dr Kennard had told Mr N that she had failed to disclose her conviction for drink driving which had subsequently appeared on a DBS check.

68. Dr Kennard argued that since she was not actively seeking employment through HCL at the time of her conviction, having concluded an HCL placement with the Isle of Wight NHS Trust some days before her conviction. Thereafter, she had been pursuing opportunities with another agency, Pertemps Medical. Dr Kennard believed she was not obligated to disclose

the conviction to HCL whilst she was 'inactive' as she could make a disclosure if she were to seek employment with them in the future. The Tribunal rejected this argument. It found that her duty to disclose changes in her circumstances, including criminal convictions, remained in effect as long as she was registered with HCL, regardless of whether she was 'actively' seeking work through the agency. In the absence of Dr Kennard expressly stating to HCL that she no longer wanted to obtain work from HCL they were likely to continue to do so as indeed they did as they offered Dr Kennard a new appointment on 10 January 2023. The Tribunal concluded that her registration terms clearly required her to notify HCL of such changes.

69. On 10 January 2023, Mr N offered Dr Kennard a job and she gave evidence that she had told him of her conviction and self-referral to the GMC then.

70. The Tribunal bore in mind that it had not received any evidence from Mr N directly and that the GMC case relied upon the hearsay contained within his emails and the accuracy of that which was asserted in them. Accordingly, there was no direct evidence from Mr N as to whether he had, or had not, been told earlier of the conviction and/or self-referral. However, the Tribunal considered it unlikely that Dr Kennard had told Mr N of her conviction or self-referral prior to the 24 January when, on direct questioning, she made the disclosures to Mr N in the circumstances described in his email.

71. The Tribunal considered that had Mr N been made aware of the conviction and that Dr Kennard was being investigated by the GMC following his offering a job to Dr Kennard, it is unlikely that he would fail to record anywhere that this had happened or taken action with regard to Dr Kennard's registration. The Tribunal concluded that it would be unlikely for Mr N to fail to take any action and ignore what he had been told. It was inevitable, in the Tribunal's judgment, that the conviction would ultimately be disclosed as soon as a prospective employer conducted a DBS check.

72. The Tribunal found the contemporaneous email communications of 24 January 2023, to be entirely consistent with, and supportive of, the conclusion that Mr N was not aware of Dr Kennard's self-referral or conviction until the Pathfinder email prompted a conversation with her on 24 January 2023. The correspondence was wholly inconsistent with a suggestion that these matters had been disclosed to him voluntarily by Dr Kennard a fortnight earlier.

73. Furthermore, the Tribunal considered it to be a theme of Dr Kennards evidence in relation to a number of the allegations that she did not want to disclose her charge or convictions because of the sense of shame she felt about it. During the course of her

evidence Dr Kennard said in a different context '*If I am asked a direct question, I will answer it'*. The Tribunal considered this attitude typified her approach to the disclosure of her charge, conviction and/or self -referral as it was only when directly questioned that would she disclose them.

74. The Tribunal concluded that Dr Kennard failed to disclose her conviction or that she had been informed that she was being investigated by the GMC of her own volition and only revealed it after she was questioned by Mr N. It determined that her failure to disclose was a breach of her obligations under the terms of her registration with HCL.

75. Consequently, the Tribunal found paragraph 8 of the Allegation proved.

## Pertemps Medical

Paragraph 9

76. The Tribunal was required to determine whether, after initially registering with Pertemps Medical on or around 22 July 2022, Dr Kennard had failed to inform the agency of her conviction, as outlined in paragraph 2. The Tribunal first considered whether Dr Kennard was under a duty to disclose this conviction and then whether the GMC had proven that she had not informed Pertemps.

77. The Tribunal were satisfied that there was a clear duty on Dr Kennard to disclose her conviction despite the fact that it had arisen post registration with Pertemps.

78. In the application for Registration form Dr Kennard declared *'I will notify Pertemps… of any change to my circumstances immediately, including, but not limited to changes relating to any …criminal investigations'*

79. Further, the Agency's Induction Handbook, which Dr Kennard had declared that she had read and understood stated *'You are reminded that should you receive any cautions and/or criminal convictions whilst you are working on behalf of Pertemps…you are required to inform us immediately.*

80. However, Dr Kennard's case was that she had had a telephone conversation with Mr O, at Pertemps in early November 2022 and following her conviction of 21 October. She said that she had informed him of the conviction and enquired about the identity of her Responsible Officer so she could enquire about self-referring to the GMC.

81. The Tribunal considered evidence presented by the GMC in relation to this charge, which relied almost exclusively on testimony from Ms G and Ms H. The Tribunal found their evidence unhelpful with regard to the issue of whether or not there had been any communication from Dr Kennard with Pertemps staff at the relevant time regarding her conviction.

82. Ms G, who was not a member of Pertemps staff but was the Managing Director of a company to which Pertemps outsourced its appraisal and revalidation work, said she had no direct communication with Dr Kennard.

83. Ms H, who began working at Pertemps sometime in March 2023, after the relevant events, provided testimony about Pertemps' current policies and what she had understood them to be at the relevant time. However, she had no direct engagement with Pertemps practices and procedures at the relevant time or the extent to which they were or were not complied with. Therefore, the Tribunal was unable to attach a great deal of weight to her assertion that, if Dr Kennard had disclosed her conviction to Pertemps *'it would have been recorded and an email sent to the Quality Assurance Director'.* However, Ms G was able to confirm that the recruitment consultants at Pertemps, including Mr O, were responsible for direct contact with candidates. Ms G was unaware of Dr Kennard's self-referral to the GMC and could not confirm or dispute that Dr Kennard had spoken to Mr O in November 2022 and disclosed her conviction. Accordingly, the Tribunal found her testimony insufficient to rebut Dr Kennard's evidence that she had spoken to Mr O.

84. The Tribunal also considered it significant that Dr Kennard had named Mr O in her self referral to the GMC on 11 November 2022. Despite this fact and that Dr Kennard had given more detail in her witness statement, the GMC did not appear to have made any effort to contact Mr O or to verify Dr Kennard's evidence in this regard.

85. The Tribunal agreed with submissions made by Dr Kennard's counsel, Ms Tanchel, that the evidence provided by the GMC was insufficient. It noted the lack of direct testimony from individuals who had interacted with Dr Kennard during the relevant period and the failure to confirm details with Mr O, a key point of contact. While the Tribunal concluded that Dr Kennard was under a duty to notify Pertemps of her conviction, it was not satisfied that the GMC had met its burden of proof to establish that Pertemps had not been informed.

86. As a result, the Tribunal found paragraph 9 of the Allegation not proved.

Southern Health

Paragraph 10

87. The Tribunal was required to determine whether, in an email to Dr A on 27 October 2022, Dr Kennard asked whether it would be possible to move her ward round to tomorrow, or words to that effect, falsely stating *'I have a car trouble and absolutely stuck in terms of transportation? I will sort this out but cant [sic] go to work with a flat tire [sic]'.*

88. Dr Kennard admitted to sending the email to Dr A as outlined in paragraph 10 of the Allegation. However, she maintained that the statement regarding her transport difficulties was truthful and reflected actual events. In evidence Dr Kennard explained that the *'car trouble'* referred to her friend's car, who had agreed to drive her to work and that her friend had stayed overnight and when they left to drive to her work, they discovered that the tyre on the car was flat, and they had no spare. She further asserted that the statement "*I will sort this out"* referred to efforts she would make to address her transport difficulties.

89. The Tribunal examined the content and context of the email and the evidence presented. The Tribunal reminded itself that Dr Kennard was not charged with failing to avail herself of the opportunity to disclose her disqualification rather it was that her account in relation to her car difficulties was untrue.

90. The Tribunal noted that Dr Kennard had successfully attended work on two of the three days between 24 to 26 October and inferred that she had been able to make arrangements to get to work on these days despite her disqualification. In the Tribunal's judgment this demonstrated her ability to manage transport despite her disqualification.

91. The Tribunal did not consider it was inherently implausible that Dr Kennard would have arranged a lift from a friend or that the friend's car may have had a flat tyre, and that Dr Kennard should then have notified her employer and colleagues of the cause of her being unable to attend work that day. Neither did the Tribunal consider that the circumstances or context in which the email was sent necessitated Dr Kennard to refer to her disqualification.

92. Accordingly, in the absence of any evidence that what Dr Kennard had said in the email was untrue, the Tribunal found paragraph 10 not proved.

Paragraph 11

93. The Tribunal was required to determine whether, after being on leave for three weeks from a locum post at Ravenwood House, during a telephone call with Dr B on 30 December 2022, Dr Kennard said that she had been in a car accident in November 2022 and since then felt anxious about driving and she was not planning on driving for another few months, or words to that effect, which was untrue.

94. There was no evidence from either the GMC or Dr Kennard to support the assertion that she had been in a car accident in November 2022 or that she felt anxious about driving due to this event. Therefore, the Tribunal concluded that the statement as recorded by Dr B was not true. However, Dr Kennard contended that Dr B had conflated this telephone conversation with an earlier informal interaction in November 2022. According to Dr Kennard, this earlier conversation occurred in the car park of Ravenswood House and concerned the possibility of Dr Kennard being appointed to a substantive post, where she mentioned to Dr B her intent to rely on public transportation and her feelings of trauma related to an earlier car accident, which had influenced her decision not to drive for the foreseeable future, '*even if she could*'. She further stated that she had assumed Dr B was already aware of her drink-driving conviction, as she had disclosed it to both Pertemps and the GMC in November 2022.

95. In her witness statement, Dr Kennard recalled that during the 30 December phone call, she and Dr B discussed her return-to-work date after her leave and commuting challenges due to train strikes. She admitted mentioning her difficulties with commuting but insisted that the conversation about her driving was limited to logistical issues and adjustments at work, such as delegating external assessments to colleagues. She denied making any false claims as alleged about a car accident or anxiety stemming from one.

96. However, Dr B's account was wholly at odds with Dr Kennard's. In an email of the same day of the telephone call (30 December 2022), Dr B recorded that Dr Kennard had informed him during the call that she could not drive due to anxiety after a car accident in November 2022. He stated he concluded this explanation was untrue and, following Dr B's discovery of the conviction, on 24 January 2023 he spoke to Dr Kennard. He told her that he considered that she had lied to him and this conversation with her was recorded in an email by Dr B to others the same day.

97. The Tribunal carefully evaluated Dr B's testimony and oral evidence. It found him to be a credible and straightforward witness, with no apparent reason to fabricate or exaggerate his account. His evidence was consistent and measured, and he demonstrated a good recollection of the events, supported by the contemporaneous nature of his email. The

Tribunal noted that Dr B's account was in line with what he said was his usual practice of documenting important information by email to the people who needed to know it and at the time the information was received.

98. In weighing the evidence, the Tribunal concluded that Dr B's version of events was more reliable and that it was inherently improbable that Dr B would have conflated two separate and different conversations to the extent suggested. The Tribunal determined that Dr B had accurately recorded the substance of his conversation with Dr Kennard on 30 December 2022 and that her statements during the phone call with him were untrue and, in the absence of any other reasonable conclusion, they were made to conceal Dr Kennard's disqualification from driving.

99. The Tribunal therefore found paragraph 11 of the Allegation proved.

Paragraph 12(a)

100. As the Tribunal had found paragraph 10 of the Allegation not proved, paragraph 12(a) of the Allegation falls away.

Paragraph 12(b)

101. The Tribunal was required to determine whether Dr Kennard knew the comments she made to Dr B (Dr B) as set out at paragraph 11 were untrue, in that on 21 October 2022 you had been disqualified from driving as set out at paragraph 2(b)(ii).

102. The Tribunal concluded that Dr Kennard must have known her statement was untrue. At no point, either in her witness statement or oral testimony, did Dr Kennard assert that she had been involved in a car accident in November 2022. Nor did she claim that such an event had caused her anxiety about driving. The suggestion that she had been unable to drive due to anxiety was rendered irrelevant by the fact that she was already legally disqualified from driving following her conviction in October 2022.

103. The Tribunal found it improbable that Dr Kennard could have genuinely believed or mistakenly stated that she was unable to drive due to a car accident in November 2022. Instead, the Tribunal concluded that her comments to Dr B were a deliberate misrepresentation of her circumstances, intended to conceal the true reason for her inability to drive.

104. Based on this analysis, the Tribunal determined that Dr Kennard knowingly made untrue statements, and it found paragraph 12(b) of the Allegation proved.

Paragraph 13(a)

105. As the Tribunal had found paragraph 10 and 12(a) of the Allegation not proved, paragraph 13 of the Allegation falls away.

Paragraph 13(b)

106. The Tribunal was required to determine whether Dr Kennard's actions as set out at paragraphs 11 were dishonest by reason of paragraph 12(b). Specifically, the Tribunal had to consider whether Dr Kennard knowingly misrepresented the reason for her inability to drive in her statements to Dr B.

107. The Tribunal concluded that Dr Kennard's actions were indeed dishonest. It determined that she knowingly chose not to tell Dr B the truth about her inability to drive, which stemmed from her disqualification following a drink-driving conviction. Instead, she fabricated an explanation of being involved in a car accident in November 2022, accompanied by claims of resultant anxiety about driving.

108. The Tribunal noted that Dr Kennard's dishonesty lay in her deliberate decision to conceal the true circumstances and to present a false picture of the reasons behind her inability to drive.

109. Based on these findings, the Tribunal determined that Dr Kennard's actions were self-evidently dishonest and would be regarded as such by the standards of ordinary decent people.

110. Accordingly, it found paragraph 13(b) of the Allegation proved.

## The Tribunal's Overall Determination on the Facts

111. The Tribunal has determined the facts as follows:

Caution

1. On 20 May 2022 at Southampton Central Police Station, you accepted a conditional caution, in that at Nursling, Hampshire, without the authority of the Secretary of State, you had in your possession a weapon designed or adapted for the discharge of a noxious liquid, namely CS spray contrary to section 5(1)(b) of and Schedule 6 to the Firearms Act 1968. Admitted and found proved

Conviction

2. On 21 October 2022 at Southampton Magistrates' Court you were:

   a. convicted of an offence that on 20 May 2022 at Nursling, Hampshire you drove a motor vehicle on a road, namely Junction 3, M27, after consuming so much alcohol that the proportion of it in your breath, namely 100 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; Admitted and found proved

   b. sentenced to:

      i. a fine of £2500;
      Admitted and found proved

      ii. disqualification from driving for 24 months.
      Admitted and found proved

3. You failed to notify the GMC without delay that:

   a. you had accepted the conditional caution detailed at paragraph 1;
   Admitted and found proved

   b. on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. Admitted and found proved

Health Education England – Wessex ('HEEW) and Southern Health NHSFT ('Southern Health')

4. Between 6 February 2019 and 1 June 2022 you joined a Speciality Training Programme with HEEW and undertook training with Southern Health. You failed to inform:

   a. HEEW that:

i. you had accepted the conditional caution detailed at paragraph 1; Determined and found not proved

ii. on 20 May 2022 you been charged with the criminal offence detailed at paragraph 2a; Determined and found not proved

b. Southern Health that:

i. you had accepted the conditional caution detailed at paragraph 1; Admitted and found proved

ii. on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. Admitted and found proved

HCL Doctors ('HCL')

5. On or around 7 July 2022 you submitted a Registration form ('the Form') to HCL and you failed to declare within Section 7 that on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. Determined and found proved

6. You knew that you should have declared within the Form that on 20 May 2022 you had been charged with the criminal offence detailed at paragraph 2a. Determined and found proved

7. Your actions as set out at paragraph 5 were dishonest by reason of paragraph 6. Determined and found proved

8. After registering with HCL, you failed to inform them:

a. of the matters set out at paragraph 2; Determined and found proved

b. that on or around 30 November 2022 you were advised that you were the subject of a GMC investigation. Determined and found proved

Pertemps Medical

9. After initially registering with Pertemps Medical on or around 22 July 2022, you failed to inform them of the matters set out at paragraph 2. Determined and found not proved

Southern Health

10. In an email to Dr A on 27 October 2022, you asked whether it would be possible to move your ward round to tomorrow, or words to that effect, falsely stating *'I have a car trouble and absolutely stuck in terms of transportation? I will sort this out but cant* [sic] *go to work with a flat tire* [sic]'. Determined and found not proved

11. After being on leave for three weeks from a locum post at Ravenwood House, during a telephone call with Dr B on 30 December 2022 you said that you had been in a car accident in November 2022 and since then felt anxious about driving and you were not planning on driving for another few months, or words to that effect, which was untrue. Determined and found proved

12. You knew that the comments you made to:

    a. Dr A as set out at paragraph 10; Determined and found not proved

    b. Dr B as set out at paragraph 11; Determined and found proved

    were untrue, in that on 21 October 2022 you had been disqualified from driving as set out at paragraph 2bii.

13. Your actions as set out at paragraph(s):

    a. 10 were dishonest by reason of paragraph 12a; Determined and found not proved

    b. 11 were dishonest by reason of paragraph 12b. Determined and found proved

14. XXX

15. XXX

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

a. caution in respect of paragraph 1;
   To be determined
b. conviction in respect of paragraph 2;
   To be determined
c. misconduct in respect of paragraphs 3 to 13;
   To be determined

XXX

Determination on Impairment - 05/12/2024

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

113. 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 Kennard's fitness to practise is impaired by reason of misconduct, XXX, and a conviction and/or caution for a criminal offence.

## The Evidence

114. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received a bundle of documents from Dr Kennard including:

- Unredacted reflections from Dr Kennard's Witness Statement.
- XXX
- XXX
- CPD, dated 2023 to 2024.
- XXX
- XXX
- XXX
- XXX
- Testimonials from Ms M and Dr L.
- Email from Ms R (Managing Director of 123 Medical Services), dated 28 November 2024.
- Letter from Dr S (Appointed Supervisor of 123 Medical Services).
- Reflective statement of Dr Kennard, dated 3 December 2024.

## Submissions

On behalf of the GMC

115. Mr Taylor submitted that Dr Kennard's misconduct occurred in the exercise of professional practice, such that it can properly be described as going to her fitness to

practise. It took place in the context of her exercising her clinical practice and professional role as a registered medical doctor with the GMC, while training with and whilst working for Southern Health NHS Foundation Trust, and when applying to register with HCL Doctors.

116. Mr Taylor submitted that Dr Kennard's conduct was also dishonourable, bringing disgrace upon herself and thereby prejudicing the reputation of the medical profession. She failed to notify her regulator without delay that she had been cautioned and charged, in breach of her obligations under Good Medical Practice. Furthermore, she failed to inform her employer of these developments, violating her duties towards them. Subsequently, Dr Kennard also failed to inform her recruitment agency that she had been convicted and was under investigation by her regulator, breaching her obligations under the terms of her registration with HCL.

117. Mr Taylor submitted that this constituted a pattern of repeated misconduct over a not insignificant period, from May 2022 to January 2023, during which Dr Kennard's actions plainly fell short of the standards expected of a registered medical practitioner. Each individual failure amounts to serious professional misconduct. Further, taken together these failings unequivocally amount to serious professional misconduct.

118. Additionally, Dr Kennard was found to have acted dishonestly on two separate occasions. On 7 July 2022, she deliberately failed to disclose her drink-driving charge to HCL. On 30 December 2022, she deliberately misrepresented her circumstances to Dr B with the intention of concealing the true reason for her inability to drive—namely, her two-year disqualification from driving. This dishonesty, spanning nearly six months, would undoubtedly be regarded as deplorable by fellow practitioners. It was not an isolated incident but rather a deliberate effort to conceal her pending criminal case and subsequent disqualification from driving. Mr Taylor submitted that this conduct undermined systems designed to protect the public.

119. Mr Taylor submitted that each incident of dishonesty, on its own, constituted serious professional misconduct. He stated that it was concerning that the period of deception lasted as long as it did. Taken together, he submitted that these dishonest acts clearly amount to serious professional misconduct.

120. Mr Taylor submitted that paragraphs 1, 65, 68, 71, and 75 of *Good Medical Practice* (2013) are engaged in this case.

121. Mr Taylor submitted that the need to uphold proper professional standards and public confidence in the medical profession would be undermined if no finding of impairment were made in this case. Reasonable and properly informed members of the public would be shocked and concerned by two specific incidents. Firstly, Dr Kennard's caution for possessing CS spray, contrary to the Firearms Act 1968. Secondly, her conviction for driving on a weekday morning while almost three times over the prescribed alcohol limit, presumably on her way to or from work.

122. Mr Taylor submitted that members of the public would also be shocked and concerned by Dr Kennard's actions in failing to meet her professional obligations. These include her failure to inform her regulator and trainer/employer about her caution and charge, her failure to inform her recruitment agency of her conviction, driving disqualification, and the GMC investigation, her dishonesty in failing to disclose her drink-driving charge to her recruitment agency, and subsequently her dishonesty in concealing her conviction and disqualification from driving from a senior consultant colleague.

123. Mr Taylor submitted that Dr Kennard's acts of misconduct bear a closer resemblance to the type of conduct identified in the case of *Yeong v General Medical Council* (2009) EWHC 1923 (Admin) rather than case of *R (on the Application of Cohen) v General Medical Council* (2008) EWHC 581 (Admin). Dishonesty of this nature and gravity is not easily remediable. Consequently, any efforts the doctor may have made to address her behaviour for the future should carry very little weight.

124. In terms of insight, while Mr Taylor accepted that Dr Kennard made admissions at the outset of the hearing, her denial of most of the misconduct allegations suggests that her insight cannot be regarded as complete. This aligns with the principles outlined in *General Medical Council v. Khetyar (2018) EWHC 813* (Admin) and *Sayer v. General Osteopathic Council (2021) EWHC 370* (Admin). Furthermore, although Dr Kennard has accepted responsibility for her caution, conviction, and failure to notify her regulator about these matters, Mr Taylor submitted that she has displayed limited insight into the seriousness of her other actions.

125. In the regulatory context, Mr Taylor submitted that Dr Kennard has demonstrated a limited understanding of the broader impact of her actions. Specifically, she appears to lack appreciation for how her conduct affects public confidence in the profession and undermines the promotion and maintenance of proper professional standards and behaviour among medical practitioners. Dr Kennard's actions, in terms of the caution, conviction and

misconduct, represent serious departures from the standards of conduct and behaviour expected of registered medical practitioners and require a finding of impairment to be made.

126. XXX

127. XXX

128. In all the circumstances, Mr Taylor submitted that the Tribunal should find that Dr Kennard's fitness to practise is impaired due to her caution, conviction, misconduct, XXX

On behalf of Dr Kennard

129. Ms Tanchel conceded that, on the basis of the Tribunal's findings, all of the paragraphs of the Allegation that the Tribunal found proved amount to misconduct apart from paragraph 4(b) of the Allegation. Ms Tanchel submitted that it was noteworthy that Dr Kennard pleaded guilty on 21 October 2022 and self-referred on 11 November 2022. In the interim, she sought the advice of her defence organization and whilst that may have caused some delay as admitted it is not of such magnitude as to amount to serious misconduct.

130. By reference to caselaw, Ms Tanchel submitted that historic conduct can result in a finding of impairment; however, allegations that are several years old may not necessarily indicate current impairment if it can be shown that the individual has taken effective steps to address past shortcomings and has practiced safely since. In the case of Dr Kennard, Ms Tanchel submitted that the allegations stem from incidents that occurred nearly three years and two years ago, respectively. The passage of time and the evidence of her remediation and safe practice are critical in assessing the relevance of these allegations to her current professional standing.

131. Ms Tanchel submitted that the circumstances surrounding Dr Kennard's conviction demonstrate that, at the time, she faced a unique and extraordinarily challenging set of personal difficulties, including significant stress XXX.

132. Regarding public interest, Ms Tanchel argued that a well-informed member of the public would not be shocked or dismayed to learn that Dr Kennard's fitness to practise was not found to be impaired, particularly in light of the circumstances of the offence. The financial penalty and driving ban imposed by the magistrates were at the lower tier of sentencing, suggesting recognition of mitigating factors or benign facts surrounding the incident. Notably, there is no evidence indicating that Dr Kennard was intoxicated on her way

to work. Rather, Ms Tanchel submitted that the evidence suggests that her consumption of alcohol occurred after becoming confused and distressed when she encountered unexpected road closures that prevented her from getting to work.

133. Ms Tanchel submitted that the caution admitted by Dr Kennard relates to a strict liability offence involving possession of pepper spray, which was not committed intentionally. Dr Kennard has since become fully aware of the relevant legal prohibitions, eliminating any risk of recurrence. Ms Tanchel submitted that an objective and informed member of the public is unlikely to be shocked or dismayed by the unintentional nature of this incident, particularly as it has no bearing on her current professional competence.

134. With respect to the allegation of failing to declare the caution to the GMC (Allegation 3(a)), Ms Tanchel submitted that Dr Kennard operated under a misunderstanding regarding her obligations. She was unaware at the time that this declaration was required. There is no suggestion that the failure was intentional. While she should have been cognisant of her professional responsibilities, this issue pertains to her past understanding, not her current fitness to practice. Furthermore, in relation to Allegation 3(b), her delay in informing the GMC of her conviction stemmed from her seeking legal advice, a reasonable action under the circumstances.

135. Ms Tanchel submitted that Dr Kennard accepted that, on the basis of the Tribunal's findings, her practice is impaired on public interest grounds concerning the proven facts of Allegations 5–7 and 8, as well as Allegations 11, 12(b), and 13(b). However, she does not accept that she is currently impaired due to XXX.

136. Ms Tanchel submitted that Dr Kennard has demonstrated significant insight and taken meaningful steps toward remediation. She has reflected deeply on her past conduct, acknowledged the ways in which she could have behaved differently, and implemented measures to prevent recurrence. Ms Tanchel submitted that these efforts are evident in the evidence presented to the Tribunal and show a genuine commitment to maintaining high professional standards.

137. Although the GMC has not emphasized public safety in its arguments, Ms Tanchel submitted that the evidence demonstrated that Dr Kennard has worked diligently XXX.

138. Furthermore, while stress is acknowledged XXX, Ms Tanchel submitted that Dr Kennard has successfully returned to work in a high-pressure role, further indicating her stability and resilience.

139. Ms Tanchel reminded the Tribunal that maintaining public confidence in the profession involves balancing the upholding of professional standards with recognition of the steps taken by practitioners to address past issues. In Dr Kennard's case, her acknowledgment of XXX and her robust remediation efforts would reassure an objective and informed member of the public that she poses no current risk. XXX.

140. Ms Tanchel submitted that Dr Kennard's admissions, both factual and reflective, illustrate her capacity to confront and accept responsibility for the challenging circumstances she faced in 2022–2023. These incidents, while not isolated, stem from a singular context rather than a broad failure across different areas of her practice. Ms Tanchel submitted that Dr Kennard's proactive and sustained engagement in addressing these issues demonstrates a clear understanding of her professional obligations and a strong commitment to maintaining the trust placed in her as a medical professional.

141. Ms Tanchel concluded that current impairment in this case should be assessed primarily on the basis of the conviction and misconduct. However, the evidence of Dr Kennard's remediation, insight, and low risk of recurrence strongly supports a finding that she is not currently impaired.

## The Relevant Legal Principles

142. 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.

143. 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 could lead to a finding of impairment.

144. The Tribunal reminded itself of the test set out in *Council for Healthcare Regulatory Excellence v (1) Nursing and Midwifery Council (2) Grant* (2011) EWHC 927 (Admin), which asks whether the findings of fact in relation to the doctor's misconduct, deficient professional performance, adverse health, conviction, caution, or determination demonstrate that the doctor:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

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

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

## The Tribunal's Determination on Impairment

Misconduct
Paragraphs 3(a) and 3(b)

146. On behalf of Dr Kennard, Ms Tanchel did not seek to argue that Paragraphs 3(a) or 3(b) of the Allegation which had been admitted did not amount to misconduct.

147. The Tribunal had regard to GMP which provides:

> *"75 You must tell us without delay if, anywhere in the world:*
> *a you have accepted a caution from the police or been criticised by an official inquiry*
> *b you have been charged with or found guilty of a criminal offence*
> *c another professional body has made a finding against your registration as a result of fitness to practise procedures."*

148. The Tribunal considered that this is a fundamental requirement of any medical practitioner. Dr Kennard, who was at the end of her training as a consultant forensic psychiatrist, should have, with her level of knowledge and experience as a medical practitioner, been well aware of this fundamental requirement. The Tribunal agreed with GMC counsel that Paragraphs 3(a) and 3(b) of the Allegation amounted to misconduct.

Paragraph 4

149. The Tribunal was of the view that if Dr Kennard did not know that she was required to disclose the caution and/or the criminal charge to Southern Health, she should have enquired. At the time, Southern Health were her employer. She was responsible to them and

under an obligation to disclose information of this type. As a consultant forensic psychiatrist, she should have known they would require this information.

150. The Tribunal considered that the duty for Dr Kennard to disclose criminal matters to Dr Kennard's employer was in line with paragraphs 1 and 65 of GMP:

> *"1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law."*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

151. In the Tribunals judgment, her failure to disclose such important information would be regarded as deplorable by fellow medical practitioners and therefore the Tribunal did consider it amounted to misconduct.

Paragraphs 5 ,6, 7, and 8

152. The Tribunal took into account the deliberate and dishonest failure to disclose by Dr Kennard in seeking to obtain registration through a medical recruitment agency, namely HCL, that she had been charged with a criminal offence by driving after consuming excess alcohol. This was, in the Tribunal's judgment, self-evidently misconduct and conduct of an order and degree that fellow practitioners would find deplorable. Furthermore, Ms Tanchel did not seek to argue otherwise.

153. In this regard, the Tribunal took into account provisions of paragraph 1, 65 (as above), 68, and 71 of GMP:

> *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. 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."*

154. Accordingly, the Tribunal found that Dr Kennard's action in relation to paragraphs 5, 6, 7 and 8 of the Allegation amounted to misconduct.

Paragraphs 11, 12(b), and 13(b)

155. Again, in relation to these paragraphs of the Allegation, Ms Tanchel, on behalf of Dr Kennard, accepted that, based on the facts found proved, Dr Kennard's actions amounted to misconduct in relation to the paragraphs 11, 12(b) and 13(b) of the Allegation. Similarly, the Tribunal considered that Dr Kennard's deliberate and dishonest failure to disclose her disqualification from driving as a consequence of her conviction on 21 October 2022 to her then existing employer (Southern Health) was self-evidently misconduct and would be regarded as deplorable by fellow medical practitioners.

156. The Tribunal noted that, as well as paragraph 1 of GMP, that paragraphs 65 and 68 (as above) of GMP were engaged.

157. Accordingly, the Tribunal found that Dr Kennard's action in relation to paragraphs 11, 12(b) and 13(b) of the Allegation amounted to misconduct.

Impairment

Caution
Paragraph 1

158. The Tribunal accepted that this was a strict liability offence and it accepted that the CS Gas Canister had not been possessed for any unlawful purpose.

159. The Tribunal had regard to paragraph 1 of GMP (as above). It had particular regard to the circumstances in which this offence was committed. The pepper spray canister that was found in Dr Kennard's car had been acquired in the Ukraine where possession of it was not illegal. It had been brought to the UK and at some stage had been placed in Dr Kennard's vehicle where it remained for some time. By the time it was found on 20 May 2022, Dr Kennard had forgotten it was there. It was Dr Kennard's evidence that she was unaware that possession of this sort of item in the UK was an offence and this was not contradicted either by the GMC or the evidence.

160. In these circumstances, there was, in the Tribunal's judgement, little risk of repetition. Further, it noted that no issues of patient safety arose from it.

161. The Tribunal accordingly found that she was not impaired in relation to paragraph 1 of the Allegation.

Conviction
Paragraph 2

162. The Tribunal again referred to paragraph 1 of GMP (as above) and the importance of medical practitioners complying with the law.

163. The Tribunal considered that it had not been submitted on behalf of the GMC that the conviction gave rise to any patient safety concerns and the Tribunal accepted that, XXX, there was no evidence that she had ever been under the influence or abused alcohol whilst at work.

164. However, despite Ms Tanchel's efforts to persuade the Tribunal that the offence for which Dr Kennard was convicted was not as serious as it might otherwise have been and was not such that would necessarily result in a finding of impairment. The Tribunal disagreed.

165. In the Tribunal's judgement, the offence involved Dr Kennard during the morning of 20 May 2022 driving on a motorway at a time when her alcohol breath level exceeded the legal limit by almost 3 times. The Tribunal considered that Dr Kennard's account as to the precise circumstances in which she had become over the limit were at times vague and contradictory. Initially, Dr Kennard claimed that she did not know that there was alcohol in the bottle she was drinking from. XXX. Finally, Dr Kennard suggested that she had drank from the bottle containing alcohol because she had become confused and distressed on coming upon a road-block. In the Tribunal's view, none of these explanations sufficiently explained much less excused drinking alcohol whilst in control of a vehicle. What was clear to the Tribunal was that, at some stage of her journey, Dr Kennard had chosen to drink from a bottle containing a mixture of Coca-Cola and brandy or whiskey and subsequently had chosen to drive. She was then involved in a road traffic accident.

166. The Tribunal considered that these actions, given the potential of harm being caused to other road users, demonstrated the height of irresponsibility and a complete lack of judgement. Fellow practitioners and members of the public alike would be appalled that a

registered medical practitioner would behave in this fashion. The Tribunal considered that this was conduct that was liable to bring the reputation of the profession into disrepute.

167. In the Tribunal's view therefore, Dr Kennard's fitness to practise was impaired in relation to her conviction.

Misconduct
Paragraph 3(b)

168. The Tribunal did not consider in the circumstances in this case that her failure gave rise to patient safety issues. However, it considered that her actions in relation to paragraph 3(b) of the Allegation were liable to bring the profession into disrepute and undermine the confidence in the profession.

169. The Tribunal gave careful consideration to Dr Kennard's description of the circumstances at the time mainly that she had considerable personal and domestic worries. These included matters relating to XXX these factors resulted in her avoiding confronting difficult issues and that she had a tendency to *"stick her head in the sand"*. The Tribunal accepted that these matters may have contributed to her failure to notify the GMC that she had been charged with driving with excess alcohol.

170. Dr Kennard gave evidence as to her current circumstances and how they are very different and much improved since May 2022. In particular, she has reflected on her failure to disclose and sought to rectify the deficit in her knowledge of GMP, her personal and professional life is more settled, XXX. The Tribunal accepted her evidence and considered that there was evidence of good insight and of appropriate remediation in relation to the reasons for her failure to disclose both the caution and the conviction to the GMC.

171. In the Tribunal's judgement however, her misconduct was so serious that the need to uphold proper professional standards in the profession would be undermined if a finding of impairment were not made.

172. It is a fundamental tenet of the medical profession, as is evident from GMP, that medical practitioners are open and honest, and this includes disclosing matters regarding any criminal proceedings against them because such matters may have an impact on their fitness to practice and registration. The effective regulation of medical practitioners and the system of self-reporting relies upon medical practitioners being trusted to voluntarily disclose such

matters to the GMC. If they cannot be trusted to do so, then confidence in the regulatory system is undermined.

Paragraph 4(b)

173. The Tribunal found that the misconduct in relation to paragraph 4(b)(ii) of the Allegation and the circumstances of it are essentially the same to that of paragraphs 3(a) and 3(b) of the Allegation. The only difference was that paragraphs 3(a) and 3(b) of the Allegation related to Dr Kennard failing to disclose to the GMC and paragraph 4(b) of the Allegation related to Dr Kennard failing to disclose to her employer.

174. The Tribunal accepted that these findings did not impact on patient safety in the circumstances of this case. However, the Tribunal was satisfied that Dr Kennard's proven conduct would bring the reputation of the medical profession into disrepute and that she has breached fundamental tenets of the medical profession for the same reasons given above.

175. Accordingly the Tribunal found Dr Kennard's fitness to practise was impaired in relation to paragraph 4(b) of the Allegation.

Paragraphs 5, 6, 7, and 8:

176. The Tribunal considered that paragraphs 1, 65, 68 and 71 (as above) of GMP were engaged in relation to paragraphs 5, 6, 7 and 8 of the Allegation.

177. In the Tribunal's judgement, honesty and integrity goes to the heart of medical practice. The facts found proved demonstrated that Dr Kennard had failed in this regard and that she acted with deliberate dishonesty.

178. The Tribunal considered the extent to which Dr Kennard had demonstrated insight into this aspect of her conduct and/or any steps she had taken to remediate. The Tribunal acknowledged that although dishonest conduct is difficult to remediate, it is not impossible.

179. As to insight, the Tribunal recognised that Dr Kennard maintained her position that her conduct had not been dishonest although she acknowledged the findings of the Tribunal to the contrary.

180. The Tribunal, having considered Dr Kennard's evidence at the facts stage and in particular the unredacted copy of her statement and the reflective statement she submitted

in light of the Tribunal's findings of fact and supplied to the Tribunal at the impairment stage (where she had not given evidence), reflected some limited insight into the seriousness of the Tribunal's findings. However, the Tribunal did not consider that there was sufficient evidence to demonstrate an appreciation by Dr Kennard of the seriousness of the matters proved or the impact that her misconduct would have had on her colleagues, the medical profession generally, and/or members of the public. If medical practitioners cannot be trusted to tell the truth, during the course of their practice of medicine, confidence in the medical profession is significantly undermined.

181. The Tribunal was encouraged by the fact that Dr Kennard has, since these events, taken CPD courses including one titled 'Probity for doctors', on 7 December 2023. However, it considered that Dr Kennard had failed to explain what she had learnt from this course or how she had reflected upon this learning. Essentially, with regard to the Tribunal's findings, there was little indication that she understood the gravity of its finding of dishonesty.

182. Despite the fact that the Tribunal did not consider that there was full insight or remediation, it considered that the risk of repetition to be low, recognising that the regulatory proceedings themselves would have had a profound and salutary effect on Dr Kennard, the experience of which alone ought to deter future repetition.

183. The Tribunal reminded itself that as a matter of principle remedial action may be highly relevant in relation to impairment that arises from clinical errors and errors of judgment. However, there are some forms of misconduct which are so serious that the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made. Whatever the remedial steps taken, in the Tribunal's judgment, this is such a case.

184. Accordingly, the Tribunal determined that Dr Kennard's fitness to practise was impaired by reasons of paragraphs 5, 6, 7 and 8 of the Allegation.

Paragraphs 11, 12 and 13(b)

185. The Tribunal considered that it's reasoning for its decision in relation to paragraphs 11, 12(b) and 13(b) followed similar reasoning as set out in relation to paragraphs 5, 6, 7 and 8 of the Allegation.

186. The Tribunal considered that Dr Kennard's conduct did not represent a risk to patient safety. But for the reasons stated in relation to paragraphs 5, 6, 7 and 8 of the Allegation, it was conduct that would undermine the public confidence in the profession.

187. In the Tribunal's judgement, the level of insight and remediation was essentially the same as in relation to paragraphs 5, 6, 7 and 8 of the Allegation.

188. Indeed, the Tribunal considered that in Dr Kennards's evidence and her statements there was a notable absence of an appreciation of the impact that her actions would have had on Dr B. The Tribunal heard evidence from Dr B, who had discovered that a junior colleague with whom he had worked had lied to him, and yet Dr Kennard's evidence and/or statements had failed to disclose any meaningful regret, remorse or insight into how her actions might have been perceived by Dr B even if from her perspective she was not being untruthful.

189. In these circumstances, the Tribunal find Dr Kennard's fitness to practice impaired by reason of her misconduct.

XXX

190. XXX

191. XXX

192. XXX

193. XXX

194. XXX

195. XXX

196. XXX

197. XXX

198. XXX

199. XXX

200. XXX

201. The Tribunal determined that Dr Kennard's fitness to practise is impaired by reason of her conviction, her misconduct, XXX.

## Determination on Sanction - 18/03/2025

202. Having determined that Dr Kennard's fitness to practise is impaired by reason of conviction, her misconduct, 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

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

## Submissions

On behalf of the GMC

204. Mr Taylor submitted that the appropriate sanction was one of suspension. He referred the Tribunal to its determination on impairment as well as a number of paragraphs in the Sanctions Guidance (February 2024) (the 'SG').

205. Mr Taylor reminded the Tribunal sanctions are not imposed to punish or discipline doctors but they may have a punitive effect. He reminded the Tribunal that action is taken where a serious departure from professional standards means that the doctor poses a current and ongoing risk to public protection. Mr Taylor reminded the Tribunal the sanction imposed must be proportionate and the Tribunal must weigh the interests of the doctor against the interests of the public.

206. Mr Taylor referred the Tribunal to the relevant guidance relating to mitigating factors and outlined the case of *Bolton v Law Society (1994) 1 WLR 512*, in which Lord Bingham stated,

*''The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.''*

207. Mr Taylor cited the Tribunal's determination on impairment namely paragraphs 72 and 77. He submitted in terms of remediation it is of course difficult to apologise for something you say you have not done, even if you acknowledge findings made by a Tribunal. He reminded the Tribunal of its previous findings that Dr Kennard's evidence and statements had failed to disclose any meaningful regret, remorse or insight into how her actions might have been perceived by Dr B, even if from her perspective she was not being untruthful.

208. Mr Taylor reminded the Tribunal that it had rejected Dr Kennard's minimisation of the seriousness of the conviction. He reminded the Tribunal of its findings that Dr Kennard maintained her position that her conduct could not have been dishonest. Mr Taylor referred the Tribunal to *Sayer v General Osteopathic Council (2021) EWHC 370 (Admin))* , which provides guidance in relation to the attitude to the underlying allegations properly to be taken into account when weighing up insight. It states that where the registrant continues to deny impropriety, it makes it more difficult to demonstrate insight. Mr Taylor referred the Tribunal to its previous findings that Dr Kennard's reflective statement showed some limited insight into the seriousness of the Tribunal's findings. However, he pointed out the Tribunal's finding that Dr Kennard had not fully demonstrated an appreciation of the seriousness of the matters proved or the impact that her misconduct would have had on her colleagues, Dr B, the medical profession and members of the public.

209. Mr Taylor then made submissions regarding aggravating factors. He submitted the dishonesty was repeated and occurred over almost six months from July 2022 to December 2023 and the misconduct spanned from May 2022 to January 2023. He submitted Dr Kennard's actions undermined systems that were put in place to protect he public and that this is an aggravating feature.

210. Mr Taylor submitted that taking no action would be wholly inadequate and there are no exceptional factors present in this case.

211. Mr Taylor submitted that conditions might be most appropriate in XXX. However, he submitted this is not the position here as this case involves a conviction and repeated dishonesty. Mr Taylor submitted the findings of the Tribunal are far too serious for conditions and therefore conditions would be an inappropriate sanction.

212. Turning to the sanction of a period of suspended registration, Mr Taylor submitted that this is a case where the misconduct is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. He acknowledged

that there has been limited acknowledgment of fault, and as such, Dr Kennard's conduct is not fundamentally incompatible with continued registration.

213. Mr Taylor submitted that the factors which indicate that suspension is the appropriate sanction are that there has been a serious departure from GMP but not one which is so difficult to remediate that complete removal from the register is necessary. He referred the Tribunal to the relevant guidance in the SG, in particular paragraphs 97 (a,e,f,g):

> ***97.*** *Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
>
> > ***a)*** *A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.*
> > *…*
> > ***e)*** *No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
> > ***f)*** *No evidence of repetition of similar behaviour since incident.*
> > ***g)*** *The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

214. Mr Taylor submitted there is some evidence of insight, albeit limited, and a low risk of repetition.

215. Turning to the length of any suspension to be imposed, Mr Taylor submitted that the Tribunal should consider imposing a suspension of significant length. He submitted that the Tribunal should consider the risk to patient and/or public safety and the seriousness of the findings, including the aggravating and mitigating factors and to ensure that Dr Kennard has adequate time to remediate. Mr Taylor submitted that a review hearing should be directed at the end of the period of suspension.

216. Mr Taylor finally submitted that erasure would be disproportionate in this case and suspension would be the most appropriate sanction

<u>On behalf of Dr Kennard</u>

217. Ms Tanchel submitted that the fair and proportionate sanction in this case falls between a conditions of practice order or a suspension of less than 6 months.

218. Ms Tanchel referred the Tribunal to the case of *Bawa-Garba v GMC [2018] EWCA Civ 1879*, which found that there is a fundamental difference in the task of the sentencing court and the Tribunal. The task of the Criminal Court is to punish the defendant for passed failings, the task of the Tribunal is to look into the future to decide what sanction most appropriately meets the statutory objectives. Furthermore, a Tribunal is entitled to take into account that the doctor is a competent and useful doctor who presents no material danger to the public and can provide considerable useful service to society.

219. Ms Tanchel invited the Tribunal to bear in mind that Dr Kennard was suspended between June 2023 and July 2024. She submitted this plainly prevented Dr Kennard from working and had a catastrophic impact on her finances which in turn effected XXX who relies on Dr Kennard for financial support. Ms Tanchel invited the Tribunal to consider the proportionality of a further suspension.

220. Ms Tanchel reminded the Tribunal of its findings that the risk of repetition is low and the Tribunal found that although XXX.

221. With regards to mitigating factors, Ms Tanchel submitted that there is some evidence that Dr Kennard understands the problem and has insight, and of her attempts to address or remediate it. This could include Dr Kennard admitting facts relating to the case, and making efforts to prevent the behaviour recurring. Ms Tanchel submitted that Dr Kennard is adhering to important principles of GMP and is of previous good character. Ms Tanchel reminded the Tribunal of the lapse of time since the incident occurred and reminded the Tribunal at the time of events Dr Kennard had personal and professional matters causing her stress.

222. Ms Tanchel submitted that Dr Kennard has taken a significant number of steps to remediate her failings all of which including dishonesty are remediable in the circumstances. She invited the Tribunal to contend that Dr Kennard's dishonesty must be viewed in the context of XXX.

223. As to insight, Ms Tanchel submitted that in relation to the admitted allegations, Dr Kennard accepts that she should have behaved differently, has taken steps to remediate the same, and has demonstrated developed insight. In respect of the contested allegations Dr Kennard has taken some steps towards remediation including attendance on the probity course. Ms Tanchel submitted that the Tribunal has found some insight and observed that Dr Kennard herself conceded that developing insight is a process. She submitted there is no evidence that Dr Kennard has attempted remediation and failed on previous occasions.

224. In respect of aggravating features, Ms Tanchel submitted only two could apply:

a. failure to work collaboratively with colleagues;
b. XXX.

225. Ms Tanchel invited the Tribunal not to "double count" b as an aggravating factor for a matter which is in fact a proven allegation. Therefore, she submitted there is only one aggravating factor in this case.

226. Ms Tanchel submitted there is a complete absence of any criticism of Dr Kennard's practice and reminded the Tribunal of the testimonials, including that of Dr B, regarding Dr Kennard's clinical competence. She reminded the Tribunal not to confuse or conflate a lack of remorse for a lack of insight. XXX. Moreover, she submitted, there is no evidence to suggest that Dr Kennard has been dishonest at any other time in her life apart from when XXX. She submitted that this does not undermine the Tribunal's finding that she was deliberately dishonest but emphasised that Dr Kennard was deliberately dishonest whilst XXX. Ms Tanchel submitted therefore that the allegations and findings in this case all stem from Dr Kennard's XXX stressful personal circumstances. XXX.

227. Ms Tanchel submitted the imposition of sanction is a balancing exercise for the Tribunal in weighing up whether, on careful analysis, the public interest is protected sufficiently by a conditions of practice order or whether a short suspension is the proportionate sanction. Ms Tanchel submitted Dr Kennard is currently working under conditions therefore it is plain that they are workable and that she complies with them. She reminded the Tribunal that conditions are appropriate to XXX and submitted that is consistent with the finding of the Tribunal in respect of XXX. She submitted there is no evidence that remediation is unlikely to be successful and there is evidence that Dr Kennard has insight XXX. Ms Tanchel submitted that if the Tribunal accepts, that but for XXX, Dr Kennard would not have behaved in the manner she did as accepted / or found proven, then it is plain that a conditions of practice order would be the most appropriate sanction in the circumstances of this case.

228. Ms Tanchel submitted that a sanction of suspension will create a very real risk that Dr Kennard will never have an opportunity to return to work when taking into account her age and the level of her experience and XXX. She submitted if the Tribunal is not persuaded that conditions of practice is the appropriate order in this case, then it should impose a very short suspension to ensure that proportionality is maintained, and that Dr Kennard is able to return to work.

## The Tribunal's Determination on Sanction

229. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken the SG into account and has borne in mind the overarching objective. It noted that all three limbs are engaged in this case.

230. The Tribunal reminded itself that the main reason for imposing any sanction is not to punish or discipline doctors, even though the sanction may have a punitive effect. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Kennard's interests with the public interest. The Tribunal bore in mind that the interest of the medical profession as a whole was more important than that of an individual doctor.

231. The Tribunal first considered and balanced the aggravating and mitigating factors in this case.

Aggravating Factors

232. The Tribunal found that Dr Kennard's misconduct and conviction amounted to instances of dishonesty over a prolonged period. The Tribunal understood the underpinning factor in this case to be XXX. The Tribunal found Dr Kennard's insight to be limited and found a failure to work collaboratively with colleagues.

233. The Tribunal noted Dr Kennard's dishonesty occurred within the context of medical practice and involved deceiving employers about the existence of previous charges and convictions. It found this is to be serious. The Tribunal further reminded itself that the dishonesty persisted for several months.

Mitigating Factors

234. The Tribunal considered the context in which the conduct took place, it noted at that time Dr Kennard was XXX**.** The Tribunal noted in particular, the considerable remediation that Dr Kennard had carried out XXX. The Tribunal took into account that Dr Kennard was under considerable stress at the time of events due to personal XXX reasons. XXX.

235. The Tribunal further noted that Dr Kennard has no previous findings of impaired fitness to practise and has provided testimonials which speak of her character and competent clinical skills. Finally, the Tribunal noted that there has been a lapse of over two years since Dr Kennards conviction and there is no evidence of repetition of the behaviour.

No action

236. The Tribunal first considered whether to conclude the case by taking no action. It accepted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal found that there are no exceptional circumstances in this case that would justify taking no action. XXX.

237. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings and Dr Kennard's ongoing recovery, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

## Conditions

238. The Tribunal considered paragraphs XXX 82 and 84 of the SG which might indicate that conditions are appropriate in this case,

> *'XXX*
>
> *82. Conditions are likely to be workable where:*
> *a) the doctor has insight*
> *b) a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
> *c) the tribunal is satisfied the doctor will comply with them*
> *d) the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*
>
> *84. Depending on the type of case (eg health, language, performance or misconduct), some or all of the following factors being present (this list is not exhaustive) would indicate that conditions may be appropriate:*
> *a) no evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage*
> *…*
> *XXX*

239. The Tribunal took the above paragraphs of the SG into account and found that conditions may be appropriate and workable to address XXX. However, the Tribunal reminded itself of its finding that due to the seriousness of Dr Kennard's conviction and misconduct including dishonesty, public confidence and trust in the profession and the maintenance of proper professional standards have been undermined.

240. The Tribunal found that conditions could not be formulated which would address the misconduct and conviction in this case. In particular, the Tribunal was concerned that

dishonesty featured in both the misconduct and conviction. The Tribunal further found that a period of conditional registration would not adequately mark the seriousness of Dr Kennard's conviction, nor would it mark the damage which dishonesty does to public trust in the profession. The Tribunal therefore concluded that while conditions may be workable for XXX, such a sanction would not mark the seriousness of the misconduct and conviction.

## Suspension

241. The Tribunal found that the following paragraphs of the SG are relevant in this case,

> *'**91**. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> ***92**. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*
>
> ***93**. Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. 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 departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.*
> > *…*
> > ***e)** No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
> > ***f)** No evidence of repetition of similar behaviour since incident.*

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

242. The Tribunal considered that the factors at paragraph 97, set out above, are relevant in this case. The Tribunal found that Dr Kennard's actions constituted serious departures from GMP, but it has been impressed with the extensive remediation that Dr Kennard has undertaken XXX. The Tribunal has also noted that there is no evidence that Dr Kennard has repeated the behaviours since her conviction. Furthermore, the Tribunal was satisfied that the risk of repetition is low.

243. As set out above, the Tribunal has found that more serious action than a period of conditional registration is necessary to mark the seriousness of the conduct. The Tribunal considered whether a period of suspension would uphold proper professional standards and conduct and public confidence in the profession. The Tribunal found that a member of the public, fully informed of the nature of XXX and the way in which they provide important context to their conviction and misconduct, would conclude that a period of suspension is the appropriate sanction. The Tribunal bore in mind that the conviction related to Dr Kennard being three times over the legal limit. It also was mindful that there is a strong need to deter doctors from driving whilst under the influence of alcohol and as such this misconduct and the conviction must be marked.

244. The Tribunal therefore determined that a suspension would be the appropriate sanction in this case. The Tribunal found that a suspension would send a signal to Dr Kennard, the profession and the public that this behaviour is not befitting a registered doctor, whilst balancing the need to eventually return a competent doctor to practice.

## Erasure

245. Before determining that a suspension was the appropriate sanction, the Tribunal considered the sanction of erasure. The Tribunal was mindful of the impact of XXX on their decision making at the relevant times and felt that erasure would be a disproportionately punitive sanction where Dr Kennard has undertaken extensive remediation XXX. Furthermore, the Tribunal noted the positive testimonials from Dr Kennard's colleagues and employers and concluded that erasure would not be necessary to serve the public interest.

### Length of Suspension

246. The Tribunal then considered the length of suspension to be imposed. The Tribunal considered the factors which the SG sets out,

*'100. The following factors will be relevant when determining the length of suspension:*

*a) the risk to patient safety/public protection*

*b) the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)*

*c) ensuring the doctor has adequate time to remediate.'*

247. The Tribunal was satisfied that Dr Kennard's remediation and insight were such that the upper length of suspension was not necessary to further develop these factors. Furthermore, the Tribunal has balanced the aggravating and mitigating factors in this case and taken into account the impact which XXX had on their actions at the time.

248. The Tribunal was concerned, however, that any sanction imposed must mark sufficiently the seriousness of the misconduct and conviction, in particular the repeated dishonesty and the risk posed to the public by driving under the influence of alcohol. The Tribunal concluded that a suspension of six months would send a signal to the profession that this is behaviour which is unbefitting a registered doctor and will result in a serious sanction, whilst not having an excessively punitive effect to Dr Kennard. The Tribunal bore in mind that Dr Kennard is keen to return to clinical practice. In all the circumstances, the Tribunal determined that a suspension for a period of six-months was the proportionate outcome.

Review Hearing

249. The Tribunal determined to direct a review of Dr Kennard's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Kennard to demonstrate how she has kept her medical skills and knowledge up to date and XXX. The Tribunal considered that the reviewing Tribunal may be further assisted by Dr Kennard providing the following:

- A further reflective statement
- Further evidence as to insight
- XXX
- Evidence of further CPD
- Dr Kennard will also be able to provide any other information that she considers will assist.

Determination on Immediate Order - 18/03/2025

250. Having determined to impose a six-month suspension with a review onto Dr Kennard's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Kennard's registration should be subject to an immediate order.

## Submissions

On behalf of the GMC

251. Mr Taylor submitted that the Tribunal should impose an immediate order of suspension on Dr Kennard's registration. He referred to relevant paragraphs of the SG, including paragraphs 172, 173, 177 and 178.

252. Mr Taylor submitted that an immediate order is necessary in this case on all three grounds:

a) to protect, promote and maintain the health, safety and well-being of the public;
(b) to promote and maintain public confidence in the medical profession; and,
(c) to promote and maintain proper professional standards and conduct for members of that profession.

253. Mr Taylor referred to the Tribunal's earlier findings in its determination on impairment, XXX. The Tribunal had expressed concern that if Dr Kennard were to face challenging circumstances in the future, she might be unable to maintain her resolve. Mr Taylor submitted that this risk justified an immediate order to protect the public. He also submitted that an immediate order is necessary to maintain public confidence in the medical profession, particularly given the seriousness of the matter and the identified risk to patient safety. Furthermore, he stated that an immediate order would be in Dr Kennard's own interests, XXX. Mr Taylor submitted that, given the Tribunal's findings, it would not be appropriate for Dr Kennard to continue practicing without restriction.

254. Mr Taylor noted that Dr Kennard has been subject to an interim order for almost two years, initially with conditions imposed on 29 March 2023, followed by a variation to interim suspension on 7 September 2023, and then a return to conditions on 11 June 2024. The interim order was most recently reviewed and maintained on 19 February 2025. He submitted that the Tribunal should revoke the interim order at the conclusion of the case, effectively replacing it with an immediate order of suspension. This would align with the Tribunal's substantive determination on sanction and ensure continuity in safeguarding the public and the profession.

On behalf of Dr Kennard

255. Ms Tanchel submitted that no immediate order should be imposed on Dr Kennard's registration. She stated that an immediate order is unnecessary in the circumstances of this case and expressed regret over the way GMC Counsel has referenced the interim order and its recent review, which she considered were irrelevant to the Tribunal's decision on an immediate order. She emphasised that the Tribunal's focus should be solely on whether an immediate order is necessary to protect the public or is otherwise in the public interest.

256. Ms Tanchel referred to the Tribunal's determination on sanction, which concluded that the risk of XXX or repetition is low. She submitted that this finding undermines the necessity of an immediate order on public safety grounds. She drew the Tribunal's attention to the relevant paragraphs of the SG. In particular, she outlined that the guidance states that an immediate order may be necessary where a doctor poses a risk to patient safety, such as through poor clinical care or abuse of trust, or where immediate action is required to protect public confidence in the medical profession. Ms Tanchel submitted that none of these factors apply in this case. She noted that it is unusual for an immediate order to be made solely in the public interest and argued that there is no public interest justification here. Ms Tanchel pointed out that the Tribunal's decision to impose a substantive suspension is already a matter of public record, which would adequately address the public interest ground during the intervening 28-day period or any potential appeal.

257. Regarding the submission that an immediate order would be in Dr Kennard's own interests, Ms Tanchel disagreed. She stated that this was not a matter for the GMC to opine on and should instead be advanced by those representing the doctor. She further noted that no evidence has been presented during the proceedings to suggest that an immediate order would be in Dr Kennard's interests. She highlighted the Tribunal's own findings in its determination on sanction, where it acknowledged the strenuous efforts Dr Kennard has made XXX, which demonstrated her commitment to remediation.

258. Ms Tanchel further emphasised the financial significance of an additional month of income for Dr Kennard, XXX. Secondly, she noted that Dr Kennard has outstanding medical-legal reports to complete as part of her current role, which would be disrupted by an immediate order. Furthermore, Ms Tanchel respectfully invited the Tribunal not to impose an immediate order, arguing that it is unnecessary for public protection, not in the public interest, and would have significant personal and professional consequences for Dr Kennard.

## The Tribunal's Determination

259. In reaching its decision, the Tribunal exercised its own discretion. It took into account the submissions from both parties as well as the facts of this case and its findings at the previous stages of this hearing. It had regard to the following paragraphs of the SG:

> *172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*
> *…*
>
> *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.*

260. The Tribunal bore in mind that there are no patient safety concerns in this case, and, in any case, that the risk of repetition was low. The Tribunal noted that Dr Kennard is currently practising with conditions without any issue.

261. The Tribunal finely balanced the decision, considering both the interest of the public and the interests of Dr Kennard. It noted that it was not the purpose of an immediate order to be punitive if a substantive sanction would appropriately address the relevant limbs of the overarching objective.

262. Therefore, acknowledging the seriousness of the case, but noting the low risk of repetition, the Tribunal was satisfied that the substantive sanction would address the public interest in this case. It determined that an immediate order was not necessary.

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

264. The interim order is hereby revoked.

265. That concludes this case.