

PUBLIC RECORD

Dates: 15/02/2021 - 25/02/2021

Medical Practitioner's name: Dr Alistair STEEL
GMC reference number: 6157485
Primary medical qualification: MB ChB 2007 University of Aberdeen

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

Summary of outcome

Warning

Tribunal:

Legally Qualified Chair	Mr Julian Weinberg
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Stephen Duxbury

Tribunal Clerk:	Mr Laurence Millea
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Anthony Haycroft, Counsel, instructed by Bevan Brittan LLP
GMC Representative:	Mr Paul Williams, 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 - 23/02/2021

Background

1. Dr Steel qualified in 2007 with an MB ChB from the University of Aberdeen, receiving a BSc (Hons) in Immunology and Pharmacology in 2001 from the Strathclyde Institute of Pharmacy and Biomedical Sciences. From August 2007 to February 2013, Dr Steel undertook NHS Grampian Hospital Rotations and within this time, from August 2011 to February 2013, undertook GP training. Dr Steel then moved to London and took up a post as a Disability Analyst with the Centre for Health and Disability Assessments (“CHDA”) in March 2013. At the time of the events in question Dr Steel was practising as a Disability Analyst, having been in this role since March 2013.
2. The allegation that has led to Dr Steel’s hearing can be summarised as dishonestly failing to include information provided before or during a work capability assessment of Claimant A (the ‘Assessment’) in an ESA85 Medical Report Form (dated 16 November 2017) (the ‘Medical Report Form’), and dishonestly including information which was not elicited before or during the Assessment in the Medical Report Form.
3. The initial concerns were raised with the GMC on 3 September 2018 by Claimant A, following his appeal against the decision of the DWP and a written complaint to the CHDA in February 2018.

The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted the GMC’s application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to amend parts of the Allegation and attached schedules. This amendment was to correct reference to “Patient A” to “Claimant A” to accurately reflect the nature of the relationship between Dr Steel and Claimant A. This application was supported by Mr Haycroft, Counsel, on behalf of Dr Steel.

The Allegation and the Doctor's Response

5. The Allegation (as amended) made against Dr Steel is as follows:

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

1. On 8 November 2017 you conducted a work capability assessment of ~~Patient~~ **Claimant A** (the 'Assessment') following which you prepared an ESA85 Medical Report Form dated 16 November 2017 (the 'Medical Report Form'), within which you:
Amended under Rule 17(6)
 - a. failed to include the information as set out in schedule 1;
Admitted and found proved in relation to Items 1, 2, 3, 4, 6, 7 and 8 of Schedule 1, to be determined in relation to Items 5 and 9 of Schedule 1
 - b. included:
 - i. the information as set out in schedule 2;
Admitted and found proved
 - ii. results of a peak expiratory flow rate ('PEFR') examination.
Admitted and found proved
2. During the Assessment you did not:
 - a. elicit the information as set out in schedule 2;
To be determined
 - b. conduct a PEFR examination of ~~Patient~~ **Claimant A**.
Amended under Rule 17(6), To be determined
3. You knew that:
 - a. before and/or during the Assessment you were provided with the information as set out in schedule 1;
To be determined
 - b. you should have included the information as set out in schedule 1 within the Medical Report Form;
To be determined
 - c. omitting the information as set out in schedule 1 from the Medical Report Form could:

- i. diminish the seriousness of ~~Patient~~ **Claimant A's** medical symptoms;
Amended under Rule 17(6), To be determined
 - ii. have an adverse effect upon ~~Patient~~ **Claimant A's** work capability assessment;
Amended under Rule 17(6), To be determined
 - d. you had not elicited the information as set out in schedule 2 during the Assessment;
To be determined
 - e. including the information as set out in schedule 2 within the Medical Report Form could:
 - i. diminish the seriousness of ~~Patient~~ **Claimant A's** medical symptoms;
Amended under Rule 17(6), To be determined
 - ii. have an adverse effect upon ~~Patient~~ **Claimant A's** work capability assessment;
Amended under Rule 17(6), To be determined
 - f. you had not conducted a PEFR examination of ~~Patient~~ **Claimant A** during the Assessment.
Amended under Rule 17(6), To be determined
4. Your actions as set out in paragraph(s):
- a. 1. a., 1. b. i. and 1. b. ii. were misleading;
Admitted and found proved in respect of paragraph 1.a.
To be determined in respect of paragraphs 1.bi. and 1.b.ii.
 - b. 1. a. were dishonest by reason of paragraphs 3. a., 3. b. and 3. c.;
To be determined
 - c. 1. b. i. were dishonest by reason of paragraphs 2. a., 3. d. and 3. e.;
To be determined
 - d. 1. b. ii. were dishonest by reason of paragraphs 2. b. and 3. f.
To be determined

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

The Admitted Facts

6. At the outset of these proceedings, through his Counsel, Mr Haycroft, Dr Steel 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'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

7. In light of Dr Steel's response to the Allegation made against him, the Tribunal is required to determine whether Dr Steel's failure to include the information set out at Schedule 1 was misleading; whether the inclusion of the information set out at Schedule 2 was misleading; and, whether Dr Steel's actions in doing so were dishonest.

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

- Claimant A, by video link, who provided a testimonial dated 16 August 2019, and supplemental testimonials dated 7 May 2020 and 17 July 2020.

9. 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:

- Dr B, Chief Medical Officer of the Centre for Health and Disability Assessments, dated 12 January 2021;

10. Dr Steel provided his own witness statement, dated 11 January 2021 and also gave oral evidence at the hearing.

11. The Tribunal also received evidence on behalf of Dr Steel, in the form of written testimonials from the following persons who were not called to give oral evidence:

- Dr C, Disability Analyst CHDA and Dr Steel's GMC appraiser in January 2020, dated 12 January 2021;
- Ms E, Functional Assessor at the CHDA Marylebone Assessment Centre, dated 26 January 2021;
- Ms F, Registered Nurse and employee at the CHDA Marylebone Assessment Centre, dated 26 January 2021;

- Ms G, Clinical Standards Lead at the CHDA Marylebone Assessment Centre, dated 2 February 2021;
- Person H, Team Performance Lead at the CHDA Marylebone Assessment Centre, dated 27 January 2021;
- Dr I, Disability Analyst at the CHDA Marylebone Assessment Centre, dated 13 February 2021.

Expert Witness Evidence

12. The Tribunal also received evidence from one expert witness by video link. Dr J was called as a witness by the GMC and provided oral expert evidence to the Tribunal at this stage of proceedings. Dr J has been a lead assessor in general practice for the GMC since 1997 and has previously given expert advice for the GMC relating to the conduct and performance of General Practitioners. Dr J's evidence was directed at assisting the Tribunal in determining whether aspects of Dr Steel's assessment of Claimant A, or the overall standard of care, fell below, or seriously below, the standards expected of a registered medical practitioner.

Documentary Evidence

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

- ESA85 Medical Report Form, dated 8 November 2017;
- Claimant A's complaint to CHDA, dated 28 February 2018;
- CHDA complaint response, dated 5 April 2018;
- HMCTS appeal documentation, various dates 2018;
- HMCTS appeal outcome documentation, dated December 2018 and January 2019;
- Claimant A's GMC complaint, dated 3 September 2018;
- Further information from Claimant A, dated 19 September 2018;
- Letter from Sleeping Disorder Centre to Paradise Road Practise, dated 15 July 2017;
- ESA50 capability for work questionnaire, dated 23 October 2017;
- Claimant A's letter to DWP enclosing GP statement of fitness to work, dated 20 December 2017
- Claimant A's reconsideration request to DWP, dated 28 December 2017;
- Claimant A's follow-up letter to DWP, dated 8 January 2018;
- Claimant A's HMCTS appeal letter, dated 12 February 2018;

- Claimant A's GP blood pressure readings, dates 25 March 1998 to 28 November 2017;
- Letter from Ms K, Psychotherapist, dated 30 March 2018;
- Claimant A's letter following Dr Steel's Rule 4 comments, dated 22 February 2019 (received 22 January 2019);
- Dr Steel's Rule 4 Comments, dated 5 December 2018;
- Claimant A's GP medical records, various dates;
- GMC Expert report, dated 25 February 2019;
- Dr Steel's Rule 7 response, dated 14 November 2019;
- Email from Dr B, Chief Medical Officer, Centre for Health and Disability Assessments, dated 20 April 2020;
- Supplemental GMC Expert report, dated 24 June 2020;
- Dr Steel's Online GP record, dates 4 August 2015 to 26 June 2020;
- Dr Steel's GP statements of fitness to work, dated 7 December 2017 to 2 January 2018;
- Dr Steel's CPD record 30/01/2018
- LiMA screenshots, undated

The Tribunal's Approach

14. 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 Steel 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.

15. The issue for the Tribunal to determine at this stage in relation to paragraph 4 of the Allegation is whether Dr Steel's conduct was dishonest. The Tribunal has had regard to the case of *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*.

16. In that case the Court held that the correct test of dishonesty is for the Tribunal:

- (i) To ascertain (subjectively) the state of Dr Steel's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence going to whether he genuinely held the belief but it is not a requirement that the belief must be reasonable; and
- (ii) To then consider whether that conduct was honest or dishonest by applying the (objective) standards of ordinary decent people.

17. There is no requirement that Dr Steel must appreciate that what he has done was, by those standards, dishonest.

18. Even though it is not required to make a formal determination on the issue, the Tribunal was invited by both Counsel to give consideration as to whether or not Dr Steel's conduct, if not found to be dishonest, was either reckless or careless. The agreed legal definition of 'recklessness' is set out in *R v G [2004] 1 AC 1034* and adopted in the case of *Brett v SRA 2014 EWHC 2974*:

"with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk"

The Tribunal's Analysis of the Evidence and Findings

19. The Tribunal has considered each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Paragraph 1

Paragraph 1(a)

20. This paragraph of the Allegation was admitted, except for in respect of items 5 and 9 of Schedule 1. In reaching its determination on this paragraph the Tribunal considered whether Dr Steel had an obligation to disclose this information and if so, whether he failed to do so.

21. Item 5 of Schedule 1 states that Claimant A:

"5. only goes to supermarkets at night when there are less people"

22. The Tribunal concluded that Dr Steel would have had a duty to disclose this information if it was provided to him as part of the assessment process.

23. The Tribunal noted that Claimant A's ESA50 Capability for Work questionnaire ('ESA50'), dated 23 October 2017 does not include any reference to his ability to go to supermarkets, nor does Claimant A state that he informed Dr Steel of this fact in his assessment interview.

24. The first reference to Claimant A only going to supermarkets at night is contained within his complaint letter to the CHDA, dated 28 February 2018, where Claimant A states:

“He did not report what I said as I said it. I told him due to anxiety and panic attacks I only go to supermarket at night when there are less people.”

25. However, in his request for reconsideration of the decision to stop his Employment and Support Allowance (‘ESA’), dated 28 December 2017, Claimant A states:

“I drive to supermarket mostly at night where there are few people around.”

26. In his GMC witness statement, dated 16 August 2019, Claimant A states:

“I chose the times I go shopping to avoid contact with the public.”

27. In his oral evidence to the Tribunal, Claimant A confirmed that sometimes he does drive to the supermarket in the daytime, particularly on Sundays when the supermarket closes earlier at 4 or 5 pm.

28. The Tribunal was mindful that the information that he only goes to supermarkets at night was not forthcoming until 28 December 2017. There was insufficient evidence before the Tribunal for it to conclude that this information was available to Dr Steel prior to submitting the Medical Report Form dated 16 November 2017. Given the date when this information became available, the Tribunal found that Dr Steel cannot have failed to include this information in November 2017. In the circumstances the Tribunal found this paragraph of the Allegation not proved in respect of Item 5.

29. Item 9 of Schedule 1 states that Claimant A:

9. had blood pressure of 140/90.”

30. In considering this paragraph of the Allegation, the Tribunal considered the accounts of Dr Steel and Claimant A. Throughout his evidence, Dr Steel stated that he had no specific recollection of the assessment with Claimant A, but stated that he recorded a blood pressure reading of 118/73, which would have been entered as free text to reflect the reading taken at the time.

31. The account of Claimant A was that a blood pressure reading of 140/90 was taken and the fact that this was somewhat high and he should seek an appointment with his GP regarding this was discussed. During his oral evidence, Claimant A initially stated that the

reading was 150/90, but confirmed this was in fact 140/90 when questioned on this. He stated that as a result of this reading he arranged an appointment with his GP for a follow-up consultation.

32. Dr Steel could not explain why Claimant A thought this was the reading and stated that given the positioning of himself and Claimant A on the day, it would not have been possible for Claimant A to see the reading. He did suggest that it was possible he had at some point hit the memory button on the electronic blood pressure reader and this could, perhaps, explain why an alternative reading was observed by Claimant A but the Tribunal considered that this was speculation on Dr Steel's part.

33. The GP records for Claimant A, whilst incomplete, show that following his assessment by Dr Steel he received a text from his GP practice requesting he book an appointment for a diabetes check (Claimant A has diabetes). This evidence seemed to suggest that Claimant A attended his GP practice and had his blood pressure taken and discussed as part of this diabetes-related appointment. The Tribunal was not satisfied that there was sufficient evidence before it that Claimant A had booked an appointment as a result of the Assessment specifically to discuss the blood pressure reading taken then.

34. The Tribunal was mindful of the evidence of Dr J that it is not necessary to take a blood pressure reading in every assessment and that there would have been no concerns or issues raised regarding Dr Steel had he not recorded a blood pressure reading.

35. In light of the fact that Dr Steel was not required to record a blood pressure reading and that he stated that he was under pressure to complete the Assessment quickly, there was no apparent reason why Dr Steel would have recorded an incorrect blood pressure reading when he could have left the field blank, saving time. Furthermore, the blood pressure reading is a free text box on the digital form that Dr Steel completed and so the Tribunal considered it more likely than not that he would have entered the reading taken directly at the time.

36. Whilst it is accepted that Claimant A was giving an honest account of what he recollected, there was some inconsistency around the actual reading in his written account and his oral evidence, combined with the fact that he had seemingly not recalled the request and subsequent appointment in relation to his diabetes check-up.

37. The Tribunal noted that whilst it found, and Mr Haycroft accepted on Dr Steel's behalf that Claimant A was an honest witness, it did identify a number of examples where Claimant A's recollection of events was unreliable, for example:

- Claimant A made an error in recollecting his children's ages;
- Claimant A mistakenly believed and subsequently stated that he had confirmed that Dr Steel was a dentist. In his Notice of Appeal Form against the DWP decision, Claimant A stated that:

"I have checked the HCP's professional background and I was very concerned when I found out that HCP is a dentist and not mental health professional, and therefore not qualified to undertake mental health assessment."

Dr Steel is not a dentist.

38. The Tribunal considered that the above undermined the overall reliability of Claimant A's evidence. In the absence of other supporting, corroborating evidence, where there was a dispute of facts between Claimant A and Dr Steel, the Tribunal preferred the evidence of Dr Steel.

39. The Tribunal concluded that, on the balance of probabilities, it was more likely than not that Dr Steel recorded the correct blood pressure reading at the time and Claimant A went to see his GP, having another blood pressure reading, as a result of a request from his GP to attend for another reason.

40. The Tribunal therefore determined that Dr Steel had not failed to include item 9 of Schedule 1 as he had recorded the blood pressure reading taken at the Assessment. Accordingly, the Tribunal found this paragraph of the Allegation not proved in respect of Item 9.

Paragraph 1(b)

41. This paragraph of the Allegation was admitted in its entirety and therefore found proved.

Paragraph 2

Paragraph 2(a)

42. In reaching its determination on this paragraph of the Allegation, the Tribunal considered each item of Schedule 2 in turn, and whether he was given the information included, either via the ESA50 form or during the Assessment.

43. Dr Steel stated that he had no specific recollection of the Assessment interview and that any view he gave as to what occurred was based on a retrospective reconstruction of events based on the information now available to him.

1. is able to wash and dress himself each day;

44. Claimant A stated in his oral evidence that he does not remember any questions being asked during the Assessment about his ability to wash and dress himself.

45. In his written accounts, Claimant A states that he does not have a typical day and each day is different and dependent on his mood and that some days, he struggles.

46. The Tribunal noted that the question around washing and dressing is a drop-down box which would have been populated during the course of the Assessment. The Tribunal considered that it would have been unlikely that this item would be included had it not been discussed at all.

47. In reaching its conclusion, the Tribunal was mindful of the evidence of Dr Steel that he was rushed and under pressure during the Assessment, and his acknowledgement that he had failed to adequately enquire further into the detail of Claimant A's responses. His Assessment and subsequent record failed to identify that Claimant A's abilities are variable and largely dependent on his mental state on the day.

48. The Tribunal determined that it was more likely than not that Dr Steel had asked Claimant A about dressing himself but had failed to enquire further into the detail of his situation. It concluded that he had elicited the information he recorded, although this information was an incomplete description of Claimant A's true circumstances.

49. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 1.

2. tidies indoors;

50. The Tribunal did not accept that Dr Steel had not asked any questions in this regard as this item was completed via a free text box, albeit in a hurried manner. The Tribunal considered that Dr Steel had asked Claimant A about this matter in a cursory fashion. Whilst it is a further example where Dr Steel should have enquired more carefully into Claimant A's

detailed circumstances, the Tribunal accepted that this information was, nevertheless, provided to him.

51. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 2.

3. cooks for himself;

52. Claimant A stated that he was not asked about cooking during the Assessment, and in his Capability for Work Questionnaire states that it is a “*struggle to even prepare, cook or eat food.*”

53. The Tribunal noted that Dr Steel had recorded that Claimant A uses a microwave, as reported by Claimant A in his written accounts and oral evidence. The Tribunal accepted that whilst Dr Steel may not have enquired further into the variability of Claimant A’s mood and its impact on his ability to cook and eat, the information he recorded appears to be strictly accurate, in that Claimant A is capable of using a microwave and this can fairly be considered ‘cooking’.

54. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 3.

4. drives to the supermarket by himself when needed;

55. In light of its finding regarding paragraph 1(a) of the Allegation in respect of Item 5 of Schedule 1, the Tribunal determined that this is a correct reflection of the circumstances of Claimant A. In his witness statement to the GMC, Claimant A said that Dr Steel had stated that he walks to the supermarket which was inconsistent with what Dr Steel wrote on the Medical Report Form.

56. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 4.

5. had children of 9 and 13 years of age;

57. The Tribunal noted that Claimant A reported in his written statement that he had told Dr Steel that his children were 10 and 12 years of age, when in fact they were 9 and 12 at the time. During his oral evidence he stated that they had been 9 and 13 at the time. The Tribunal was of the opinion that this demonstrated that Claimant A has not accurately recalled his children’s ages.

58. The Tribunal considered that it is more likely than not that Dr Steel recorded what he was told at the time. Dr Steel recorded the younger child’s age correctly and it is conceivable that Claimant A gave the wrong age for his older child as he did in his written statement. The

Tribunal could find no other reason for Dr Steel writing an age other than that which he was told.

59. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 5.

6. has his children stay with him at weekends;

60. In reaching its determination on this item, the Tribunal considered the supplemental witness statement, dated 17 July 2020, in which Claimant A stated:

“I do not remember my children staying nights at my flat.”

61. Claimant A then went on to state:

“When my children would come and stay for the weekend...”

62. The Tribunal accepted the oral evidence of Claimant A that his children do not stay overnight with him due to his condition, but concluded that what Dr Steel recorded reflects what is in Claimant A’s statement. Whilst further detail on this was not obtained during the Assessment and “stay with him at weekends” could be considered ambiguous and indicate that they stayed overnight, the specific period of time when Claimant A’s children stayed was not defined.

63. As Dr Steel’s record reflects the written statement and wording used by Claimant A, the Tribunal determined that it was more likely than not that Dr Steel had recorded what he was told at the Assessment.

64. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 6.

7. takes his children the local swimming pool each week;

65. The Tribunal considered that Claimant A was consistent that he does not take his children swimming every week. However, Claimant A has not stated anywhere what he told Dr Steel in relation to this during the Assessment. Claimant A’s statements and appeal form largely reflected and focused on what was correct and incorrect in the Medical Report form and less so on what was said during the assessment.

66. Dr Steel does not remember the details of what was discussed. No reliable evidence had been provided as to what Claimant A said on this matter during the Assessment. With no indication of what Claimant A said during the Assessment, the Tribunal considered that it could not rely on any reliable evidence to assess the accuracy of Dr Steel’s record of this item.

67. Given the inconsistencies in Claimant A's evidence, where he was unable to state with any certainty how frequently these trips to the swimming pool occurred and given the absence of any evidence indicating what Dr Steel was told on this matter, the Tribunal concluded that the GMC had not proved its case to the requisite standard in respect of this item.

68. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 7.

8. takes his children to the drive thru;

69. In his oral evidence to the Tribunal, Claimant A stated that he does not take his children to a drive thru, and does not believe there are any in his local area. He stated that he picks up a takeaway on his way home, then clarified that he means he picks up a 'meal deal' from Tesco or Sainsbury's. When asked if he could have used the expression 'takeaway' when discussing with Dr Steel, he stated that he has no recollection of being asked what he did after swimming, but could have used this expression.

70. The Tribunal was mindful that the burden is on the GMC to demonstrate that Claimant A did not tell Dr Steel that he took his children to a drive thru, and noted that no reference to this is made in respect of Claimant A's appeal against the DWP's decision to stop his benefits.

71. The Tribunal concluded that given the lack of evidence as to what was said at the Assessment and Claimant A's lack of recollection of this conversation, combined with the various and ambiguous descriptions of what Claimant A did do, this paragraph of the Allegation has not been proved to the required standard.

72. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 8.

9. undergoes counselling;

73. The Tribunal noted that Claimant A regularly sees a psychotherapist. Dr J, the expert witness, stated that the terms are interchangeable and is reasonable to call a 'Psychotherapist' a 'Counsellor'.

74. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 9.

10. walks to his counselling sessions;

75. Claimant A's account that he never walks to these sessions has remained consistent, and in the absence of evidence as to what he said during the Assessment, the Tribunal considered this item on the balance of probabilities to be made out.

76. The Tribunal was of the opinion that it is unlikely that Claimant A would have said he walked there given his consistency on the matter, but that he may have said that it was a 10 minute walk, which was misinterpreted by Dr Steel.

77. Accordingly the Tribunal found this paragraph of the Allegation proved in respect of Item 10.

11. can speak to his neighbour(s);

78. In his written statement dated 16 August 2019, Claimant A stated:

"I was shocked that the report stated that I can speak to my neighbour. This is untrue as I have an incredibly level of anxiety and I struggle with questions."

79. In a letter requesting reconsideration of the DWP's decision dated 28 December 2017, Claimant A states:

"I do not know most of my neighbours, so how can I speak to them when I do not know them. I avoid any conversation as I believe will lead to personal questions that will affect my self-confidence further or make me feel uncomfortable. When I see familiar face I say "Hi" and that is basically it."

80. The Tribunal determined that it is likely that Claimant A reported that he says "hi" to his neighbours as stated in his earlier letter and that whilst such an answer should have given rise to further questioning on the matter, it does not make Dr Steel's statement inaccurate.

81. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 11.

12. goes to church once a week;

82. Whilst the specific timing and frequency of Claimant A's attendance at church was somewhat unclear from his evidence, he remained consistent in stating that he has not attended regularly for quite some time. The Tribunal considered that it was more likely than not that he would not have told Dr Steel that he attended weekly. In the Tribunal's opinion it was more likely that Dr Steel incorrectly recorded or misinterpreted this information owing to the fact that he was rushing to complete the Assessment.

83. Accordingly the Tribunal found this paragraph of the Allegation proved in respect of Item 12.

13. sees whichever GP is around;

84. In his oral evidence, Claimant A stated that there two GPs at his local practice, potentially with a third who is a locum. He confirmed that he had seen Dr L when his regular GP was on leave. In addition, given that he said in his appeal form that he sees his regular GP “unless on holiday”, the statement recorded by Dr Steel is not inaccurate.

85. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 13.

14. can wait if there is a change to appointments;

86. The Tribunal was mindful that the only evidence on this matter is what Claimant A said on the day of the Assessment, which suggested he was prepared to wait as he stated that he would prefer to wait for the Assessment rather than reschedule the appointment. The Tribunal concluded that while there was insufficient information provided to clarify which appointments he was referring to, or if this is always the case, it was reasonable for Dr Steel to record this information as he did, as it was factually correct.

87. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 14.

15. has no stated thoughts of suicide or self-harm;

88. The Tribunal noted that Claimant A unequivocally stated on the ESA50 form that he struggles with suicidal thoughts.

89. During Dr Steel’s evidence it was suggested that item 15 may reflect that Claimant A does not discuss, or “state” his suicidal thoughts due to cultural reasons. However, the Medical Report Form should have stated words to the effect that “he has thoughts of suicide or self-harm but does not state them for cultural reasons.”

90. The Tribunal concluded that Dr Steel had failed to accurately reflect or elicit the correct information and accordingly found this paragraph of the Allegation proved in respect of item 15.

16. had been told that his sleep apnoea was not severe enough for breathing machines or inhalers;

91. It appears from the documentation that Claimant A discussed sleep apnoea with his dentist, who had recommended a certain type of appliance to assist him, which was too expensive for Claimant A. Claimant A then discussed this appliance with a specialist sleep clinic and his GP, who Claimant A stated advised him that such a device was not available on the NHS.

92. The Tribunal concluded that on balance there was insufficient evidence that Claimant A said anything different to what was recorded on the Medical Report Form and that Dr Steel's record broadly reflected and is in line with the evidence provided.

93. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 16.

17. had blood pressure:

a. of 118/73;

94. The Tribunal, having already found that Dr Steel correctly took and recorded Claimant A's blood pressure, found this paragraph of the Allegation not proved in respect of Item 17(a).

b. that was 'normal'.

95. The Tribunal determined that the correctly recorded blood pressure could fairly be considered 'normal' and so found this paragraph of the Allegation not proved in relation to Item 17(b).

Paragraph 2(b)

96. Claimant A's account is that a PEFR examination was not undertaken. The submission on behalf of the GMC was that as a qualified nurse, Claimant A would have known if this had been carried out, and that due to the importance of the Assessment to him, he would have recollected if it had taken place. Dr Steel stated that he does not specifically remember what took place but that he would not have recorded the PEFR result in a free text box if he had not conducted the PEFR.

97. The Tribunal noted that Claimant A made no reference to a PEFR not being conducted in his appeal letter dated 12 February 2018, by which time he had received a copy of the Medical Report Form, and the first reference to this is in his complaint to the CHDA dated 28 February 2018.

98. The Tribunal considered the evidence of Dr J that a PEFR does not need to be carried out and could be left off the Medical Report Form if it was not conducted for any reason. The Tribunal was of the opinion that as Dr Steel was in a hurry to conclude the Assessment and it would have been quicker and easier for him to have left this field blank. Given the

circumstances, it could find no reason why Dr Steel would have taken the time and effort to include a fabricated PEFR reading.

99. The Tribunal concluded that it was more likely that Dr Steel did conduct a PEFR and that Claimant A's recollection in this matter is incorrect, particularly as the physical aspects of the Assessment would have been carried out first and that Claimant A was, understandably, focused on the mental health aspects of the Assessment.

100. Accordingly the Tribunal found this paragraph of the Allegation not proved.

Paragraph 3

Paragraph 3(a)

Items 1, 2 and 3

101. The written statement of Claimant A stated that he told Dr Steel that he had to plan attendance at parents' evenings and new places in advance, and it was accepted by the Tribunal that Claimant A does need to plan such activities in advance. Whilst Claimant A did not state in his letter for reconsideration of the DWP's decision or his appeal letter, the Tribunal noted the consistency of his account in this regard and deemed it likely that he would have provided this information to Dr Steel during the Assessment.

102. The Tribunal therefore accepted the account of Claimant A that he had informed Dr Steel of this, and accordingly, the Tribunal found this paragraph of the Allegation proved in respect of items 1, 2 and 3.

Item 4

103. Claimant A did not state that he said this to Dr Steel, and whilst he spoke about planning swimming visits in advance, he did not state that he said this to Dr Steel. In his statements he focused on his capabilities not what was or was not discussed at the Assessment. As one of his criticisms of Dr Steel is that he did not probe further on such issues, the Tribunal concluded it was unlikely Dr Steel would have been provided with this information.

104. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 4.

Item 5

105. As the Tribunal determined that Dr Steel had not failed to include this information at paragraph 1(a) of the Allegation, it therefore found this paragraph of the Allegation not proved in respect of Item 5.

Item 6

106. In his ESA50 form, provided for the Assessment, Claimant A stated:

“I have to push myself to go out but find it difficult to socialise or meet friends due to low self-esteem.”

and:

“I feel anxious meeting people and it makes no difference whether I know them or not.”

107. The Tribunal concluded that this information provided by Claimant A does not reflect the wording of Item 6 and accordingly found this paragraph of the Allegation not proved.

Item 7

108. Whilst this information was unequivocally stated in Claimant A’s ESA50 Form, Dr Steel’s account was that he did not read the ESA50 Form in sufficient detail or take sufficient notice of the information, and so at the time did not know this was the case. The Tribunal accepted that as the wording of the ESA50 Form is unambiguous, Dr Steel should therefore have known this information. However, by giving the document a cursory read and having failed to absorb its contents and significance, Dr Steel did not in fact know that Claimant A suffered from suicidal ideation. However, the Tribunal concluded that he should have known this if he had properly read the ESA50 Form, but that is not what is alleged.

109. In the absence of sufficient evidence that this information was discussed in the Assessment with Claimant A, the Tribunal concluded that Dr Steel did not know that he had been provided this information at the time as a result of his failure to properly read Claimant A’s ESA50 Form. Accordingly, it found this paragraph of the Allegation not proved in respect of Item 7.

Item 8

110. As with Item 7, this information was explicitly stated on the ESA50 Form. However, given that Dr Steel was acting under pressure and in a hurry to complete the Assessment, the Tribunal accepted that he had not given proper care to reading and assimilating the information in the ESA50 Form. Therefore, but only as a result of his failure to fully read the ESA50 Form, Dr Steel did not have the alleged requisite knowledge when completing the Medical Report Form.

111. Accordingly the Tribunal found this paragraph of the Allegation not proved in respect of Item 8.

Item 9

112. As the Tribunal determined that Dr Steel had not failed to include this information at paragraph 1(a) of the Allegation, it therefore found this paragraph of the Allegation not proved in respect of Item 9.

Paragraph 3(b)

113. Given the Tribunal's finding in respect of paragraph 3(a), the Tribunal has considered this paragraph in relation to Items 1, 2 and 3 of schedule 1. It has not considered this paragraph in relation to other items which he should have known as they were included on the ESA50 Form, but were not discussed during the Assessment and of which he has not been found to have knowledge.

114. The Tribunal concluded, given the purpose of Claimant A's assessment, that Items 1, 2 and 3 of Schedule 1 should have been included in the Medical Report Form. Given Dr Steel's experience in undertaking DWP assessments, the Tribunal has concluded that he knew that this information should have been included. Accordingly, the Tribunal found this paragraph of the Allegation proved in respect of Items 1, 2 and 3, but not proved in respect of Items 4 - 9.

Paragraph 3(c)

3(c)(i)

115. The Tribunal considered that as a doctor experienced in undertaking DWP assessments, Dr Steel would have had an understanding of the effect on any claim of the inclusion or omission of any relevant piece of information.

116. Dr Steel accepted the potential impact that the omitted information as set out in Schedule 1 might have had. In reaching its determination on this paragraph the Tribunal has borne in mind that in order for it to find this paragraph proved, Dr Steel must have known the

information at the time and that this could have had an effect on Claimant A's claim and should have been included.

117. Given its earlier findings, the Tribunal found this paragraph of the Allegation proved in respect of Items 1, 2 and 3, but not proved in respect of Items 4 - 9.

3(c)(ii)

118. On the same rationale as set out at paragraph 3(c)(i) above, the Tribunal found this paragraph of the Allegation proved in respect of Items 1, 2 and 3, but not proved in respect of Items 4 - 9.

Paragraph 3(d)

119. Given its findings in respect of paragraph 2(a), the Tribunal found this paragraph not proved in respect of Items 1 – 9, 11, 13, 14, 16 and 17. It then went on to consider this paragraph in respect of Items 10, 12 and 15.

120. Dr Steel stated that he was rushed when conducting the Assessment, and that he had wrongly interpreted the information provided by Claimant A in interview and failed to adequately identify the significance of the information included in the ESA50 Form. As a result, even though he recorded it inaccurately on the Medical Report Form, he stated he did not know the information was inaccurate or misleading, save for where he has made an express admission.

121. The Tribunal has already found that Items 10, 12 and 15 were discussed in the Assessment but not documented accurately.

122. The Tribunal accepted Dr Steel's account that he had come back from a number of days of emergency leave during which he had to XXX, and as a result, did not apply proper scrutiny to the Assessment. At the time he submitted the Medical Report Form, the Tribunal found that he mistakenly believed that he had completed the form accurately and correctly. He inserted the 'facts' noted on the day of the Assessment and when completing the report eight days later without access to the ESA50 Form, completed it in the mistaken belief that the information provided was correct. As such, the Tribunal was not satisfied to the required standard that Dr Steel knew he had this information at the time.

123. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Paragraph 3(e)

124. The Tribunal was mindful that Dr Steel was experienced in undertaking DWP assessments and understood their purpose. It concluded that Dr Steel had an understanding of the effect on any claim of the inclusion or omission of relevant information.

125. Given the nature and purpose of the assessment, Dr Steel would have been aware, and he accepted in evidence that this information, by its nature, could have diminished the seriousness of Claimant A's claim or had an adverse effect on Claimant A's Work Capability Assessment. This would be true whether Dr Steel believed the information to be true or not.

126. However, the Tribunal found that the minor error in recording Claimant A's children's ages would neither diminish the seriousness of Claimant A's medical symptoms nor, on the balance of probabilities would it have an adverse effect on Claimant A's Work Capability Assessment.

127. Similarly, the Tribunal found that accurately recording Claimant A's blood pressure as 118/73, and by stating that it was 'normal', cannot be said to diminish the seriousness of Claimant A's medical condition or have an adverse effect on Claimant A's Work Capability Assessment.

128. Accordingly, the Tribunal found this paragraph of the Allegation proved save in respect of Item 5 and 17 of Schedule 2.

Paragraph 3(f)

129. As the Tribunal had already determined that Dr Steel had conducted and recorded the PEFR examination it found this paragraph of the Allegation not proved.

Paragraph 4

Paragraph 4(a)

130. In considering paragraph 4(a) the Tribunal has borne in mind the ordinary meaning of 'misleading' as giving the wrong idea or impression.

131. Dr Steel admitted this paragraph in respect of paragraph 1(a) and accepted that this was misleading, save for Items 5 and 9.

132. In respect of paragraph 1(b)(i), the Tribunal found that the information included by Dr Steel was not qualified by what surrounding circumstances need be in place to enable Claimant A to undertake the specified activities. Dr Steel did not present an accurate picture or fair reflection of Claimant A's circumstances or mental health considerations, despite the information Claimant A had included on the ESA50 Form.

133. Dr Steel conceded that these factors should have been more thoroughly explored. What Dr Steel submitted gave the impression of a person who was not depressed, anxious, had suicidal thoughts and who struggled with day to day activities. Dr Steel accepts that he misrepresented Claimant A's status and situation.

134. Accordingly, the Tribunal found this paragraph of the Allegation proved in respect of paragraph 1(a) for Items 1 to 4 and 6 to 8 of Schedule 1, but not proved in respect of Items 5 and 9, reflecting its finding at paragraph 1(a) that Dr Steel had not failed to include this information. It found this paragraph of the Allegation proved in respect of paragraph 1(b)(i) for Items 1 to 16 of Schedule 2, but not proved in respect of Item 17, which was an accurate record of Claimant A's blood pressure and was therefore not misleading.

135. For the avoidance of doubt, the Tribunal does not make any determination in relation to dishonesty in respect of paragraph 1(b)(ii) given that it found the underlying facts not proved.

Paragraph 4(b)

136. On the basis of its earlier findings and the evidence before it, the Tribunal determined that Dr Steel, at the time he submitted the Medical Report Form, believed that he had included factually correct information. However, he had rushed the process and conducted an inadequate assessment due to his failure to read Claimant A's ESA50 Form properly and question Claimant A fully. It concluded that there was no intention to deceive or attempt to undermine Claimant A's claim, but concluded that Dr Steel had not given sufficient care to the preparation of the Medical Report Form. Mindful that this Tribunal need not make any determination regarding motive, it nevertheless notes that there was no incentive for Dr Steel to act dishonestly or downplay Claimant A's condition. As supported by the evidence of

Dr J, there was no obligation or influence on him to steer the Medical Report Form to any particular conclusion. The Tribunal concluded that Dr Steel's intention was to submit the Medical Report Form as quickly as possible, having returned to work.

137. The Tribunal then considered whether, in those circumstances, the ordinary, decent person would consider that Dr Steel was dishonest, and it concluded that they would not. The Tribunal therefore finds that Dr Steel's actions at paragraph 1(a) were not dishonest.

138. Having concluded that Dr Steel's actions were not dishonest, the Tribunal went on to consider whether his actions could be considered careless or reckless.

139. The Tribunal determined that Dr Steel's actions were reckless because he submitted the Medical Report Form knowing he had not given Claimant A's personal circumstances sufficient scrutiny or taken sufficient care in completing it. Dr Steel knew that he had not fully processed the contents of Claimant A's ESA50 Form properly and that he had not had a thorough discussion with Claimant A to establish all relevant circumstances. The sole purpose of the Assessment was to review Claimant A's circumstances on the basis of what he told him on the ESA50 Form and during the assessment. Dr Steel now accepts that he did not properly read the underlying documentation or ask the necessary follow-up questions to responses Claimant A provided. The Tribunal concluded that despite being aware of these shortcomings and its potential impact on Claimant A's claim for benefits, Dr Steel nevertheless submitted the Medical Report Form.

140. Accordingly, the Tribunal determined that Dr Steel's actions, whilst not being dishonest in respect of paragraph 4(b) of the Allegation, were nevertheless reckless.

Paragraph 4(c)

141. As set out above, the Tribunal concluded that Dr Steel had not acted dishonestly in not including the information set out at Schedule 1, but had done so recklessly. The Tribunal found that Dr Steel had failed to include Items 10, 12 and 15 of Schedule 2 and that the information he provided in respect of the other Items was misleading as the Medical Report Form failed to accurately reflect the extent of Claimant A's health issues and circumstances.

142. The Tribunal concluded that Dr Steel 'cut corners' and would have been aware of the risk of including misleading information, yet he proceeded with the Assessment and completion of the Medical Report Form. The Tribunal noted that Dr Steel accepted that he

had not read the ESA50 Form properly, and in his evidence, he accepted that it was likely that he had read it during the Assessment rather than before as initially stated, as he only had seven minutes to do so following the previous Assessment. As stated above, the Tribunal concluded that Dr Steel's intention was to submit the Medical Report Form as quickly as possible, having returned to work. Dr Steel accepts that he had not investigated the mental health aspects of Claimant A's situation. The Tribunal accepted that Dr Steel did not deliberately seek to create a false impression or intentionally mislead the DWP. The Tribunal considered that ordinary, decent people would not consider Dr Steel's actions, in all the circumstances, to be dishonest.

143. The Tribunal nevertheless determined that Dr Steel was reckless in providing misleading information on the Medical Report Form.

144. This recklessness was a result of the manner in which Dr Steel conducted and recorded the Assessment. He accepted that he rushed the Assessment to conclude it by the 5pm deadline. He had neither adequately processed Claimant A's ESA50 Form, nor made sufficient enquiries of Claimant A to provide a fair assessment and reporting of Claimant A's circumstances.

145. Accordingly, the Tribunal found this paragraph of the Allegation not proved.

Paragraph 4(d)

146. Having found that Dr Steel conducted and recorded a PEFR examination, the Tribunal found this paragraph of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

147. The Tribunal has determined the facts as follows:

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

1. On 8 November 2017 you conducted a work capability assessment of ~~Patient~~ **Claimant A** (the 'Assessment') following which you prepared an ESA85 Medical Report Form dated 16 November 2017 (the 'Medical Report Form'), within which you:
Amended under Rule 17(6)
 - a. failed to include the information as set out in schedule 1;

Admitted and found proved in relation to Items 1, 2, 3, 4, 6, 7 and 8 of Schedule 1

Not proved in relation to Items 5 and 9 of Schedule 1

- b. included:
- i. the information as set out in schedule 2;
Admitted and found proved
 - ii. results of a peak expiratory flow rate ('PEFR') examination.
Admitted and found proved
2. During the Assessment you did not:
- a. elicit the information as set out in schedule 2;
Not proved in respect of Items 1 – 9, 11, 13, 14, 16 and 17
Determined and found proved in respect of Items 10, 12 and 15
 - b. conduct a PEFR examination of ~~Patient~~ **Claimant A**.
Amended under Rule 17(6), Not proved
3. You knew that:
- a. before and/or during the Assessment you were provided with the information as set out in schedule 1;
Not proved in respect of Items 4 - 9
Determined and found proved in respect of Items 1, 2 and 3
 - b. you should have included the information as set out in schedule 1 within the Medical Report Form;
Not proved in respect of Items 4 - 9
Determined and found proved in respect of Items 1, 2 and 3
 - c. omitting the information as set out in schedule 1 from the Medical Report Form could:
 - i. diminish the seriousness of ~~Patient~~ **Claimant A's** medical symptoms;
Amended under Rule 17(6),
Not proved in respect of Items 4 - 9
Determined and found proved in respect of Items 1, 2 and 3
 - ii. have an adverse effect upon ~~Patient~~ **Claimant A's** work capability assessment;
Amended under Rule 17(6),
Not proved in respect of Items 4 - 9
Determined and found proved in respect of Items 1, 2 and 3

- d. you had not elicited the information as set out in schedule 2 during the Assessment;
Not proved
 - e. including the information as set out in schedule 2 within the Medical Report Form could:
 - i. diminish the seriousness of ~~Patient~~ **Claimant A's** medical symptoms;
Amended under Rule 17(6), Determined and found proved in relation to Items 1 - 4 and 6 - 16 of Schedule 2
Not proved in respect of Items 5 and 17 of Schedule 2
 - ii. have an adverse effect upon ~~Patient~~ **Claimant A's** work capability assessment;
Amended under Rule 17(6), Determined and found proved in relation to Items 1 - 4 and 6 - 16 of Schedule 2
Not proved in respect of Items 5 and 17 of Schedule 2
 - f. you had not conducted a PEFR examination of ~~Patient~~ **Claimant A** during the Assessment.
Amended under Rule 17(6), Not proved
4. Your actions as set out in paragraph(s):
- a. 1. a., 1. b. i. and 1. b. ii. were misleading;
Admitted and found proved in respect of paragraph 1(a) for Items 1 - 4 and 6 - 8 of Schedule 1
Not proved in respect of Items 5 and 9 of Schedule 1
Determined and found proved in respect of paragraph 1(b)(i) for Items 1 - 16 of Schedule 2
Not proved in respect of Item 17 of Schedule 2
Not proved in respect of 1.b.ii.
 - b. 1. a. were dishonest by reason of paragraphs 3. a., 3. b. and 3. c.;
Not proved
 - c. 1. b. i. were dishonest by reason of paragraphs 2. a., 3. d. and 3. e.;
Not proved
 - d. 1. b. ii. were dishonest by reason of paragraphs 2. b. and 3. f.
Not proved

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

Determination on Impairment - 24/02/2021

1. This determination will be read in private. However, as this case concerns Dr Steel's misconduct, a redacted version will be published at the close of the hearing XXX.
2. 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 Steel's fitness to practise is impaired by reason of misconduct.

The Evidence

3. 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 the following further evidence:
 - Dr Steel's CPD spreadsheet for 2020/21;
 - CPD supporting evidence & reflections, various dates;
 - List of remote educational programme topics, March – May 2020;
 - Dr Steel's 2020 Personal Development Plan ('PDP');
 - Dr Steel's 2021 PDP;
 - Unredacted version of Claimant A's letter to the GMC following Dr Steel's Rule 4 comments, dated 22 February 2019.
4. The Tribunal has also considered ten testimonials from colleagues in support of Dr Steel.

Submissions

5. On behalf of the GMC, Mr Williams submitted that Dr Steel's actions, in recklessly producing an inaccurate Medical Report Form as part of his assessment of Claimant A, amount to serious misconduct.
6. Mr Williams submitted that the opinion of Dr J, the GMC expert witness, given during his oral evidence, was that if Dr Steel was found to have been reckless in his completion and submission of Claimant A's Medical Report Form, this would fall seriously below the standard expected of a registered medical practitioner. He submitted that Dr J is experienced in his field and gave measured and fair evidence, and so the Tribunal should determine that Dr

Steel's actions did indeed fall seriously below the standard expected, and therefore amount to misconduct.

7. Mr Williams submitted that Dr Steel breached a number of paragraphs of Good medical practice (2013) ('GMP'), namely 19 and 71, which state:

19 *Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.*

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.*

8. Mr Williams submitted that Dr Steel's recklessness resulted in serious and long-term distress to Claimant A, both in terms of him being forced to appeal the DWP decision to stop his Employment and Support Allowance ('ESA') and the subsequent GMC investigation and current proceedings. Mr Williams submitted that this is particularly serious in the circumstances given that Claimant A has, and continues to struggle with, very significant mental health problems, and is therefore properly regarded as a vulnerable individual.

9. Mr Williams went on to submit that the GMC's position is that Dr Steel's fitness to practise is currently impaired by reason of his misconduct. He submitted that in determining whether Dr Steel is currently impaired, his level of insight is the key consideration, and that this was not yet fully developed. He submitted that Dr Steel did not fully admit the allegations made against him and appeared to be going through a process of realisation during his oral evidence, having initially contended that his actions were careless, not reckless, as the Tribunal has found at the facts stage. Until Dr Steel 'owns' all his errors, his departures from GMP and fully accepts the findings made against him, he should not be considered to have full insight.

10. Mr Williams submitted that fellow practitioners would consider Dr Steel's actions deplorable and the public would be concerned at his actions, and therefore it is necessary to make a finding of impairment in order to uphold the overarching objective. He went on to

submit that until Dr Steel achieves full insight there remains a risk of repetition of his misconduct.

11. Mr Williams also submitted that when attributing weight to the testimonials provided on behalf of Dr Steel, the Tribunal should be mindful of the fact that they were written prior to, and without knowledge of the findings of fact and recklessness, and that they come with a certain amount of partiality as the background provided to the authors was from Dr Steel's point of view.

12. On behalf of Dr Steel, Mr Haycroft reminded the Tribunal that it did not follow that a breach of GMP need result in a finding of impairment.

13. Mr Haycroft submitted that whilst the evidence of Dr J was that if Dr Steel was reckless then this would fall seriously below the standard expected, this does not amount to misconduct being conduct regarded as "deplorable" by fellow practitioners. This was a single serious incident with no consistent pattern of such conduct over a number of cases. Although a number of errors were committed in this single case, they were based on the central issue of not taking into account the impact that Claimant A's mental health issues have on his day to day physical activities.

14. Mr Haycroft submitted that if the Tribunal finds that Dr Steel's actions amounted to misconduct, the Tribunal should have in mind the following factors in reaching its determination on impairment, which demonstrate that Dr Steel's fitness to practise is not currently impaired:

- The event occurred over 39 months ago and no further such incidents have occurred in that intervening period.
- All of the good character and testimonial evidence supports the fact Dr Steel is a good and caring clinician. This isolated incident was clearly out of character and an "off day" when Dr Steel was not himself owing to his personal circumstances XXX at the time.
- Dr Steel's whole witness statement is a reflection on his errors, how they may have occurred and why they are very unlikely to reoccur.
- Dr Steel has appropriately apologised from the outset of proceedings in his witness statement, through Counsel and in his evidence.

- Dr Steel has shown insight and it has not just started. In the interim, Dr Steel has undertaken relevant CPD on record keeping and other related topics involved in the Assessment.

15. Mr Haycroft submitted that it is not correct to state that because some failings were not admitted but were found proven, that this shows limited insight on the part of Dr Steel. He did not admit what he could not remember but overall, he has admitted the gravamen of the charges and the detrimental impact on Claimant A. So far as recklessness is concerned, this was not foreshadowed at all by the GMC prior to commencement of these proceedings and Dr Steel admitted he was reckless in cross-examination and so that demonstrates acceptance and insight into his state of mind. “Recklessness” is a legal concept which Dr Steel was entitled to have tested by his legal team, but this does not diminish his insight.

16. Mr Haycroft submitted that Mr Williams’ submission that Dr Steel’s testimonials are weakened because recklessness is not addressed in its background summary is unfair. It was not until the first day of the hearing that the term “reckless” was raised. Furthermore, the summary in the testimonial letter is accurate. The testimonials are the views of those witnesses according to their own experience and should be given due weight.

The Relevant Legal Principles

17. 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.

18. 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 conduct that was sufficiently serious so as to amount to misconduct, and then whether the finding of that misconduct could lead to a finding of impairment.

19. The Tribunal must determine whether Dr Steel’s fitness to practise is impaired today, taking into account Dr Steel’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.

20. The case of *Remedy UK (Ltd) v GMC [2010] EWHC 1245 (Admin)* sets out two types of misconduct, where Lord Justice Elias states:

(1) Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession.

21. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. In particular, the Tribunal considered whether its findings of fact showed that Dr Steel's fitness to practise is impaired in the sense that he:

- a. *'Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. *Has in the past or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or*
- d. *...'*

22. The Tribunal also bore in mind the guidance in *Grant* (above) at paragraph 71, *'it is essential when deciding whether fitness to practise is impaired, not to lose sight of fundamental considerations [...] namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession'*, and as enshrined in the three elements of the overarching objective.

The Tribunal's Determination on Impairment

Misconduct

23. The Tribunal first considered whether Dr Steel’s actions at the time of events amounted to misconduct.

24. In reaching its decision, the Tribunal was mindful of the oral evidence of the expert witness Dr J that if Dr Steel was found to have acted recklessly in his completion and submission of the Medical Report form, this would, in his opinion, fall seriously below the standards expected of a registered practitioner.

25. The Tribunal concluded that Dr Steel’s actions were in breach of paragraphs 19 and 71 of GMP, as submitted by Mr Williams. It also determined that Dr Steel’s actions were in breach of paragraph 15(a) of GMP, which states:

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

a *adequately assess the patient’s conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient*

...

26. Dr Steel recklessly made misleading statements when conducting the Assessment and completing the Medical Report Form, which breached the standards set out in GMP, as referenced above. That Medical Report Form was the sole purpose of the Assessment and Dr Steel failed to adequately assess Claimant A’s circumstances during interview or check the supporting documentation provided in the ESA50 Form.

27. The Tribunal concurred with the view of Dr J, the GMC expert, that Dr Steel’s actions fell seriously below the expected standard of a registered medical practitioner.

28. The Tribunal was mindful that the findings of fact made against Dr Steel relate to a single event where his actions fell seriously below the expected standards, when carrying out the Assessment in respect of Claimant A. However, given the seriousness of the failings identified, the impact they have had on Claimant A and the finding that these actions were seriously below expected standards, the Tribunal concluded that the matters found proved amount to misconduct.

29. The Tribunal therefore determined that Dr Steel’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.
30. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Steel’s fitness to practise is currently impaired.
31. The Tribunal did not accept the submission of Mr Williams that Dr Steel had demonstrated a lack of insight by not accepting all the allegations against him from the outset. It acknowledged the submissions of Mr Haycroft in this regard that the concept of “reckless” was fairly challenged and that Dr Steel accepted in his evidence that his actions could be considered reckless. It also noted that multiple components of the overall Allegation made against Dr Steel were found not proved and the charges made against him were not necessarily straightforward or clear-cut.
32. The Tribunal was impressed by the testimonials provided on behalf of Dr Steel and did not attribute them less weight because they were provided before findings of facts were made. It noted the testimonial of Dr N, Clinical Standards Lead at the CHDA, which states:
- “Dr Steel has recently been selected by the Head of Audit/Quality Assurance Lead (QAL) to take part in a pilot scheme. This is being carried out to trial assessments via video following COVID. Only 3 practitioners were selected for this pilot: Dr Steel, myself and 1 other doctor.”*
33. The Tribunal was mindful that Dr Steel appears to be an otherwise competent doctor, who made failures in respect of one isolated, single assessment.
34. The Tribunal was of the opinion that Dr Steel’s failures were not the result of deficiencies in his clinical skills, competence, or entrenched attitudinal issues, but resulted from a lapse in judgement at the time of events. In this regard, the Tribunal took into account Dr Steel’s personal circumstances and XXX.
35. The Tribunal also noted that Dr Steel’s CPD activities and reflections include a ‘Safeguarding in Vulnerable Adults’ module, a ‘Record Keeping’ module, an ‘Assessing Capacity’ module and self-directed learning in relation to ‘Wellbeing: Depression/Physical Activity’.

36. The Tribunal has taken into account that Dr Steel made a number of factual admissions at the outset of this hearing and recognised that he provided a poor service to Claimant A, that his report was inadequate and that this had a detrimental effect on Claimant A.

37. The Tribunal noted that Dr Steel has acknowledged his failure to maintain proper standards from the outset of the hearing, as well as the unfair distress caused to Claimant A as a result of his failures. In his evidence, both written and oral, Dr Steel has demonstrated reflection on the events and his actions and state of mind, demonstrating insight into his misconduct.

38. Whilst not seeking to diminish his responsibility, Dr Steel has acknowledged that his circumstances and state of mind at the time were the predominant factors affecting his assessment of Claimant A. He has stated that were he to find himself in the same situation again, he would be aware of the risks and XXX.

39. The Tribunal noted that Dr Steel has continued to work without there being any ongoing concerns about his conduct or professionalism in the intervening three years.

40. The Tribunal accepted that Dr Steel now has a sufficiently high level of insight into his behaviour and actions at the time and is genuinely remorseful for the poor service he provided to Claimant A. It concluded that Dr Steel's misconduct resulted from a lapse in judgement rather than due to deficient skills or lack of knowledge. The remediation he has undertaken through CPD activities has consolidated his insight. Multiple CPD activities have been undertaken by Dr Steel which were relevant to specific areas of assessment where gaps have been identified in this case, which compliments the broader reflection and insight demonstrated by him.

41. The Tribunal concluded that the nature of Dr Steel's failings were remediable, and given the factors identified above, concluded that his misconduct was highly unlikely to be repeated.

42. The Tribunal did not identify any ongoing patient safety concerns in this case and therefore determined that a finding of impairment was not necessary in order to protect the public.

43. In reaching its determination, the Tribunal acknowledged the impact of events on Claimant A and the distress and inconvenience which he was put through, which was both unjustified and unnecessary.

44. However, the Tribunal concluded that Dr Steel's actions failed to uphold the standards and reputation of the profession, but that following his admissions, reflection, insight and remediation, this has now been sufficiently addressed. Therefore, a finding of impairment was not necessary in order to uphold proper standards in the profession.

45. The Tribunal has taken account of Dr Steel's admissions, the isolated and uncharacteristic nature of his misconduct, expressions of regret, insight and remediation, as well as the passing of time with there being no ongoing concerns as to his conduct. The Tribunal therefore determined that in all the circumstances, the confidence of a fully informed member of the public would not be undermined if a finding of impaired fitness to practise were not made. Dr Steel is an otherwise competent doctor who exercised poor judgement under extenuating circumstances.

46. Therefore, the Tribunal determined that a finding of impairment was not required to uphold the overarching objective.

47. The Tribunal has therefore determined that Dr Steel's fitness to practise is not impaired.

Determination on Warning - 25/02/2021

1. As the Tribunal determined that Dr Steel's fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

2. On behalf of the GMC, Mr Williams submitted that issuing a warning is appropriate in this case, referring the Tribunal to the Guidance on Warnings (February 2018) ('the Guidance'). In considering whether or not it was appropriate to impose a warning, he referred the Tribunal to paragraphs 10 and 19 of the Guidance.

10 The power to issue warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes

protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

19 *Once the decision makers are satisfied that the doctor’s fitness to practise is not impaired, they will need to consider whether the concerns raised are sufficiently serious to require a formal response from the GMC or MPTS tribunals, by way of a warning. When doing so the decision makers must have regard to the public interest (See paragraph 10 above.)*

3. Mr Williams submitted that Dr Steel’s actions were found by the Tribunal to have been a serious departure from GMP, breaching multiple paragraphs, and that this indicates that a warning is appropriate in this case, as indicated at paragraph 16 of the Guidance:

16 *A warning will be appropriate if there is evidence to suggest that the practitioner’s behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*

- *there has been a significant departure from Good medical practice, or*
- *...*

4. Mr Williams submitted that paragraph 20 of the Guidance is relevant as there has been a clear breach of GMP, that if Dr Steel’s actions were repeated then a finding of fitness to practise would likely be made, and that a warning would serve to function as a formal record of the particular concerns identified. He added that the reference to repetition in this paragraph is not predicated on the likelihood of repetition and so can be applied in this case even if the likelihood has been identified as low.

20 *The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*

a *There has been a clear and specific breach of Good medical practice or our supplementary guidance.*

b *...*

c *A warning will be appropriate when the concerns are sufficiently serious*

that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

d There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

5. Mr Williams submitted that, as at paragraph 14 of the Guidance, a warning would also serve the purpose of acting as a deterrent, not only to Dr Steel, but also to other members of the profession, and to uphold the overarching objective in respect of professional standards.

14 *Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable.*

6. Mr Williams submitted that the issuance of a warning would be proportionate in this case and would not interfere with Dr Steel's ability to practise, gain future employment, earn a living or continue to provide a service to patients and claimants, but would serve a positive function in regard to the public impact and confidence in the profession, citing paragraph 25 of the Guidance.

25 *In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.*

7. On behalf of Dr Steel, Mr Haycroft submitted that the Tribunal should find that a warning is not necessary, appropriate or proportionate in this case.

8. Mr Haycroft submitted that whilst any warning is only published for two years, it will be provided to employers on request indefinitely after that period, and so would have a long-term impact on Dr Steel's future. He submitted that in respect of paragraph 25 of the

Guidance, whilst a warning may not restrict Dr Steel's ability to practise or interfere with his current employment, it could have a permanent effect on his future career.

9. Mr Haycroft submitted that the Guidance is provided to assist Tribunals, and whilst paragraph 16 of the Guidance may indicate that a warning is appropriate, it is for the Tribunal to determine based on the details and circumstances of the case. He submitted that the basis of this case is somewhat unusual and the Tribunal should be mindful of Dr Steel's circumstances at the time, as set out in its determination on impairment.

10. Mr Haycroft submitted that the misconduct found relates to a single incident over three years ago and that the finding of misconduct, in conjunction with Dr Steel's insight and the substantial, targeted remediation activities (by way of CPD) he has undertaken sufficiently address the concerns and findings of the Tribunal. The Tribunal made it clear that such behaviour should not be repeated and this is accepted and clear to Dr Steel, reflected in the Tribunal's earlier finding that the risk of repetition is low. Therefore, the issuance of a warning would be disproportionate and in effect, punitive, in light of the circumstances of the case.

The Tribunal's Determination on Warning

11. In reaching its determination, the Tribunal has had regard to all the facts of this case, the submissions of both Mr Williams and Mr Haycroft, and has taken into account the Guidance and the MPTS' Tribunal Circular, dated 4 April 2019, in relation to warnings guidance.

12. The Tribunal reiterated its finding at the impairment stage that the likelihood of repetition is very low and it does not have any concerns over Dr Steel's current practice or current risks to patient safety. Therefore, it determined that a warning was not necessary to protect patient safety.

13. The Tribunal accepted that whilst highly unlikely, if Dr Steel's actions were repeated then they would in all likelihood lead to a finding of impairment, and therefore paragraphs 16, 20(a), (c) and (d) of the Guidance are applicable in this case.

14. The Tribunal went on to consider whether a warning is necessary in order to maintain and uphold proper standards within the profession, or to protect public confidence in the profession, in line with the overarching objective.

15. The Tribunal noted its findings that Dr Steel was found to have acted in a reckless manner, seriously departing from the standards expected and set out in GMP. His actions resulted in Dr Steel recklessly submitting a misleading medical assessment in respect of Claimant A. The impact this had on Claimant A was distressing for him, demonstrating the seriousness of Dr Steel’s misconduct and the effect of his recklessness.

16. The Tribunal also noted that whilst it found that Dr Steel’s fitness to practise is not currently impaired, this finding was due to the level of insight demonstrated and the low risk of repetition, which does not diminish the seriousness of his failures in respect of Claimant A’s assessment.

17. The Tribunal determined that a warning would be appropriate and proportionate in this case and that such a warning would mark the seriousness of the departures from GMP to both the public and fellow members of the profession, as well as Dr Steel. This would serve to maintain and uphold proper standards in the profession and protect public confidence. It concluded that to not issue a warning could not be justified in light of the circumstances of the case and the applicability of the Guidance in respect of its earlier findings of fact and misconduct.

18. The Tribunal therefore determined to impose the following Warning on Dr Steel’s registration:

‘Dr Steel,

On 8 November 2017 you conducted a work capability assessment (the ‘Assessment’) following which you prepared an ESA85 Medical Report Form dated 16 November 2017 (the ‘Medical Report Form’). In doing so you failed to conduct an adequate assessment and failed to produce an adequate report, recklessly providing misleading information about the claimant’s circumstances.

This conduct does not meet with the standards required of a doctor. It risks undermining public confidence and professional standards in the profession and it must not be repeated. The required standards are set out in Good Medical Practice and associated guidance. In this case, paragraphs 15(a), 19 and 71 of Good Medical Practice are particularly relevant. These paragraphs state:

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

a adequately assess the patient’s conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient

...

19 *Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.*

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.

Although this Warning does not place any restriction on your registration, it is a necessary response to your misconduct.’

19. This Warning will be published on the List of Registered Medical Practitioners (LRMP) in line with our publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy.

20. That concludes this case.

Confirmed

Date 25 February 2021

Mr Julian Weinberg, Chair

Schedule 1

That ~~Patient~~ Claimant A: **Amended under Rule 17.6**

1. must plan his attendance at parents' events well in advance;
2. must work with his Psychotherapist to manage his anxiety in advance of his attendance at parents' events;
3. must work with his Psychotherapist to manage his anxiety in advance of his attendance at new places;
4. must plan swimming visits with his children well in advance;
5. only goes to supermarkets at night when there are less people;
6. does not have contacts or meet friends or relatives;
7. suffers from suicidal ideation;
8. suffers from feeling of hopelessness;
9. had blood pressure of 140/90.

Schedule 2

That ~~Patient~~ Claimant A: **Amended under Rule 17.6**

1. is able to wash and dress himself each day;
2. tidies indoors;
3. cooks for himself;
4. drives to the supermarket by himself when needed;
5. had children of 9 and 13 years of age;
6. has his children stay with him at weekends;
7. takes his children to the local swimming pool each week;
8. takes his children to the drive thru;
9. undergoes counselling;
10. walks to his counselling sessions;
11. can speak to his neighbour(s);
12. goes to church once a week;
13. sees whichever GP is around;
14. can wait if there is a change to appointments;

15. has no stated thoughts of suicide or self-harm;

16. had been told that his sleep apnoea was not severe enough for breathing machines or inhalers;

17. had blood pressure:

a. of 118/73;

b. that was 'normal'.