

## PUBLIC RECORD

Dr Dutta has lodged an appeal against decisions of this Tribunal. His registration remains suspended while his appeal is considered, as a result of the immediate order imposed by the Tribunal.

Dates: 06/11/2023 - 24/11/2023

Medical Practitioner's name: Dr Ashish DUTTA

GMC reference number: 4089731

Primary medical qualification: MB BS 1988 Calcutta

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

## Summary of outcome

Erasure  
Immediate order imposed

## Tribunal:

Legally Qualified Chair	Mr Gerry Wareham
Lay Tribunal Member:	Ms Elizabeth Daughters
Medical Tribunal Member:	Dr Deborah Brooke

Tribunal Clerk:	Mr Michael Murphy
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## Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Andrew Coleman, Counsel, instructed by Hill Dickinson
GMC Representative:	Ms Kathryn Johnson, 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. 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 - 20/11/2023

### Background

1. Dr Dutta qualified in India and has been practising in the UK since 1989. He qualified as a GP in 1996 and in 2000 he became a Cosmetic Surgeon. At the time of the events in the Allegation Dr Dutta was practising as a Cosmetic Surgeon in the private sector as Aesthetic Beauty Centre LLP (ABC clinics) with clinical premises in Sunderland and Newcastle.
2. The Allegation that has led to this hearing arose from Care Quality Commission (CQC) inspections after complications following Dr Dutta's treatment of Patient A and Patient C. The GMC alleged that Dr Dutta, or persons acting on his behalf, attempted to contact Patient A's wife, Ms B, which was inappropriate as she had specifically told him to stop. The GMC also alleged that Dr Dutta undertook a procedure on Patient C in 2019 and informed the CQC that Patient C did not have a cardiac arrest when he knew this was untrue. It was further alleged that Dr Dutta had made assurances to the CQC that he was not undertaking procedures at ABC Sunderland which he knew was untrue. It is also alleged that Dr Dutta informed the CQC Inspector he had stopped doing 'Brazilian Butt Lift' procedures, knowing this to be untrue. As such, the GMC alleged that Dr Dutta's was dishonest.
3. The GMC allege that in June and July Dr Dutta performed procedures which were in breach of assurances provided to the CQC, a dormancy notice, and IOT conditions imposed on Dr Dutta's registration on 1 May 2020. In addition, the GMC alleged that, in

response to a CQC query, Dr Dutta stated that he had not had *‘incidental findings on histology for over six years’*, or words to that effect, which he knew was untrue and was therefore dishonest.

4. The initial concerns were raised with the GMC on 23 September 2019 in a phone call made by Dr Dutta to the GMC. In this, Dr Dutta detailed an incident that had occurred on 20 September 2019 at an ABC clinic during a male chest reduction procedure with the patient (Patient C) under sedation. He stated that Patient C’s heart rate slowed down, but didn’t stop as far as the anaesthetist was concerned. Following this, Dr Dutta said that Patient C was transferred in a stable condition to hospital, and that he had informed the CQC, along with his supervisors, of the incident. Dr Dutta also said that he had since spoken to Patient C’s partner. The following day Newcastle upon Tyne Hospitals NHS Foundation Trust (the Trust) sent a letter to the GMC, dated 24 September 2019, to give an account of the events and stated that the cause of the event was not yet established but that it represented *‘an extremely serious adverse event of a minor procedure’*. The Trust also informed the CQC of the adverse event which led to the CQC inspection of the ABC Newcastle clinic.
5. A further letter was sent by the CQC to the GMC, dated 12 August 2020. This letter detailed that the CQC had inspected the ABC clinic locations in Newcastle and Sunderland and found evidence that Dr Dutta had acted outside of his IOT conditions by carrying out procedures on Patients D, E and F. The CQC reported that it had found evidence Dr Dutta had carried out non-essential activity during the COVID 19 restrictions in 2020 and whilst being dormant.

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

6. The Tribunal granted Ms Johnson’s application on behalf of the GMC, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), that paragraphs 1 to 5 should be removed from the Allegation in light of the joint expert report dated 26 October 2023. Mr Colman, counsel for Dr Dutta, made no objection to this. The Tribunal determined that the amendment could be made without injustice to any party and that it was in the interest of fairness to allow it to be made.
7. The Tribunal refused Mr Colman’s application at the close of the GMC’s case, made pursuant to Rule 17(2)(g) of the Rules, that there was no case to answer for paragraphs 8(a), 8(b), 10 and parts of paragraph 15 of the Allegation. The Tribunal’s full reasoning can be found at Annex A.

## The Allegation and the Doctor's Response

8. The Allegation made against Dr Dutta is as follows:

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

### Patient A

~~1. Between 26 October 2018 and 22 March 2019 you consulted with Patient A, and you failed:~~

~~a. to take an adequate history in that you did not explore Patient A's:~~

~~i. specific concerns; Successful application under Rule 17(6)~~

~~ii. motive for treatment; Successful application under Rule 17(6)~~

~~iii. requirements; Successful application under Rule 17(6)~~

~~iv. expectations. Successful application under Rule 17(6)~~

~~2. On 26 October 2018 you failed to take an adequate assessment and examination of Patient A in that you did not:~~

~~a. undertake a detailed assessment and/or examination of Patient A's face including:~~

~~i. forehead; Successful application under Rule 17(6)~~

~~ii. eyelids; Successful application under Rule 17(6)~~

~~iii. cheeks; Successful application under Rule 17(6)~~

~~iv. nose; Successful application under Rule 17(6)~~

~~v. mouth; Successful application under Rule 17(6)~~

~~vi. lips; Successful application under Rule 17(6)~~

~~b. evaluate the:~~

- ~~i. condition of the skin; Successful application under Rule 17(6)~~
  - ~~ii. soft tissue; Successful application under Rule 17(6)~~
  - ~~iii. muscles; Successful application under Rule 17(6)~~
- ~~3. On 22 March 2019 you undertook a bilateral facelift procedure ('Procedure 1') to address a localised deformity to Patient A's right cheek:~~
  - ~~a. which was not an appropriate procedure to deal with Patient A's concerns; Successful application under Rule 17(6)~~
  - ~~b. you failed to communicate to Patient A why you thought this was the correct procedure to recommend and/or undertake. Successful application under Rule 17(6)~~
- ~~4. You undertook Procedure 1 at the Aesthetic Beauty Clinic, Newcastle ('ABC Newcastle') which was inappropriate because:~~
  - ~~a. Patient A was at a higher risk of general medical complications; Successful application under Rule 17(6)~~
  - ~~b. ABC Newcastle did not have:~~
    - ~~i. general anaesthetic capabilities; Successful application under Rule 17(6)~~
    - ~~ii. adequate personnel or facilities to deal with major blood loss. Successful application under Rule 17(6)~~
- ~~5. You undertook Procedure 1 under local anaesthetic which was inappropriate because:~~
  - ~~a. Patient A was at a higher risk of general medical complications; Successful application under Rule 17(6)~~
  - ~~b. of Patient A's continuation of their antiplatelet medication. Successful application under Rule 17(6)~~
- 6. You, or persons acting on your behalf continued to:

- a. contact; **To be determined**
- b. attempt to contact; **To be determined**

Mrs B on one or more of the dates set out in Schedule 1 which was inappropriate, as she had specifically told you to stop.

### Patient C

- 7. On 20 September 2019 you undertook a bilateral gynaecomastia excision ('Procedure 2') on Patient C at ABC Newcastle. **Admitted and found proved**
- 8. Between December 2019 and January 2020, on one or more occasions you told the CQC inspector(s) that 'Patient C did not have a cardiac arrest at ABC' or words to that effect which was:
  - a. untrue; **To be determined**
  - b. known by you to be untrue. **To be determined**
- 9. Between September and December 2019 on one or more occasion you made assurances to the CQC that you were not undertaking procedures at the Aesthetic Beauty Centre, Sunderland ('ABC Sunderland') premises which was:
  - a. untrue; **To be determined**
  - b. you knew to be untrue. **To be determined**
- 10. Between September and December 2019, you told the CQC inspector that you had stopped doing Brazilian Butt lift procedures a while ago which:
  - a. was untrue; **To be determined**
  - b. you knew was untrue, as you had more than one booked in the diary. **To be determined**
- 11. You undertook the following procedures:
  - a. on 23 June 2020: removal of a cyst on Patient D; **Admitted and found proved**

- b. on 30 June 2020: two lesion removals on Patient E; **Admitted and found proved**
- c. on 15 July 2020: a mole removal on Patient F. **Admitted and found proved**

12. When you undertook the procedures as described at paragraph 11.a.-c., you did so knowing that:

- a. written assurances had been provided to the CQC on 31st March 2020 that no face to face consultations or surgical procedures would be carried out at the ABC clinics in Newcastle and Sunderland in response to the COVID19 Pandemic; **Admitted and found proved**
- b. a dormancy notice signed by your wife dated 1 June 2020 ('the Dormancy Notice') had been sent to the CQC confirming the following procedures would not be undertaken at the ABC clinics in Newcastle and Sunderland:
  - i. treatment of disease, disorder or injury; **Admitted and found proved**
  - ii. surgical procedures; **Admitted and found proved**
  - iii. diagnostic and screening procedures; **Admitted and found proved**
- c. on 1 May 2020 a Medical Practitioners Interim Orders Tribunal issued conditions on your GMC registration as detailed at Schedule 2. **Admitted and found proved**

13. Your conduct at paragraph 11.a.-c.:

- a. contravened the assurances made to the CQC at paragraph 12.a.; **To be determined**
- b. contravened the Dormancy Notice at paragraph 12.b.; **To be determined**
- c. was in breach of your interim order of conditions at paragraph 12.c. as the CQC had not certified the ABC clinics in Newcastle and/ or Sunderland as 'safe'. **To be determined**

14. On 28 July 2020 in response to a query raised by the CQC about not having a policy on ‘incidental findings’ you stated that you had not had ‘incidental findings on histology for over six years’ or words to that effect which:

- a. was untrue; **To be determined**
- b. you knew to be untrue. **To be determined**

15. Your conduct at paragraphs 8, 9, 10, 14 was dishonest. **To be determined**

### The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr Colman, Dr Dutta 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.

### Witness Evidence

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

- Mrs B;
- Patient C;
- Ms G, Inspection Manager at the CQC;
- Ms H, CQC Inspector;
- Ms I, Inspection Manager for the CQC.

11. 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:

- Patient A;
- Mr J, Consultant Plastic and Reconstructive Surgeon at the Trust;
- Mr K, Consultant plastic surgeon at the Trust;
- Dr L, Consultant in Intensive Care and Anaesthesia at the Trust;
- Ms M, former CQC Inspector;



- Mr N, Investigation Officer for the GMC.
12. Dr Dutta provided his own witness statements dated 3 November 2021 and 6 November 2023. He also gave oral evidence at the hearing.

### Expert Witness Evidence

13. The Tribunal received evidence from two expert witnesses; Dr O and Mr X who were both Consultant Plastic Surgeons. Dr O was called by the GMC and gave oral evidence at this hearing. In addition, he provided expert reports dated 4 October 2019, 5 December 2019, 3 February 2021, 28 September 2022, 21 December 2022 and 28 July 2023. Mr X was called by Dr Dutta and gave oral evidence at this hearing. He also provided an expert report, dated 10 October 2023. The expert reports were directed at assisting the Tribunal in understanding the professional standards to be expected and whether Dr Dutta's standard of care fell below this standard. Dr O and Mr X also provided a joint expert report, dated 26 October 2023.

### Documentary Evidence

14. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included but was not limited to:
- Mr K's initial account of matter relating to Patient A, dated 7 May 2019;
  - Dr L's initial account of matter relating to Patient A, dated 7 May 2019;
  - Mr J's initial account of matter relating to Patient A, dated 10 May 2019;
  - Minutes of Medical Advisory Meeting, dated 23 September 2019;
  - CQC Quality reports for ABC clinic Newcastle from inspections on 27 September 2019, 9 December 2019 and 2 January 2020, 26 July 2020;
  - Ms I's witness statement to the CQC, dated 20 November 2019;
  - Ms H's CQC statement, dated 21 November 2019;
  - CQC notice to stop ABC clinics Newcastle, dated 4 October 2019;
  - AED Rescue Data Review, dated 28 January 2020;
  - CQC Quality report for ABC clinic Sunderland from inspections on 13 February 2020 and 26 July 2020;
  - CQC notice to stop ABC clinic Sunderland, dated 14 February 2020;
  - Letter from the CQC to ABC Clinics, dated 14 April 2020;
  - Dr Dutta's training and development record, dated November 2020;

- High Court witness statement of Mr Q, Plastic Surgeon, dated 12 December 2020;
- High Court witness statement of Mr R, Independent Consultant, dated 13 December 2020;
- High Court witness statement of Miss S, Registered Nurse, dated 14 December 2020;
- High Court witness statement of Mr T, Plastic Surgeon, dated 14 December 2020;
- Statement of purpose for ABC Clinic;
- Numerous testimonials.

### The Tribunal's Approach

15. 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 Dutta 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. The standard of proof does not change for a more serious allegation, but the Tribunal should consider that the more serious the allegation, the less probable it may be that it was committed.
16. The Tribunal had regard to the Supreme Court judgment in the case of *Ivey v Genting Casinos (UK) Limited [2017] UKSC 67*, in which Lord Hughes set out the correct test for dishonesty, which is as follows:

*'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'*

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

17. 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.

Paragraphs 6(a) and 6(b) of the Allegation

18. The Tribunal considered whether Dr Dutta, or persons acting on his behalf, contacted or attempted to contact Mrs B on one or more occasion which was inappropriate as she had asked him to stop; the occasions alleged are set out in Schedule 1. In doing so it noted Mrs B's witness statement, dated 24 July 2019, which she made shortly after the events in question with the support of contemporaneous notes. Mrs B stated *'Dr Dutta and his wife kept phoning me to ask how Patient A was and telling me that they wanted to go and see him. I told the staff at the RVI that Dr Dutta kept contacting me and they advised me to stop answering his calls...I made notes of all of the times that Dr Dutta and his wife attempted to contact me following Patient A's facelift. I was advised to do this by one of the Consultants at the Hospital'*.
19. The Tribunal also noted Dr Dutta's witness statements. In his statement, of 3 November 2021, Dr Dutta said *'I accept that I contacted Patient A's wife after the complications to ask after Patient A's welfare. He was my patient and I was concerned about him. I have never been asked directly by anyone not to ring the patient's wife or family. I understand that my wife contacted Patient A's wife to offer support acting in her capacity as the Registered Manager of the clinic. This contact was on behalf of the clinic and not at my instigation. Some days/weeks later (I do not now recall the precise date), Patient A's son answered the phone and asked [Ms U] not to contact the Patient A's wife again as it was causing her distress. From that date forward neither [Ms U] nor myself contacted the family again'*. In his statement of 7 November 2023, Dr Dutta said *'My usual practice would be to meet with my clinical supervisors (either in person or remotely) on a Tuesday to discuss any events that had happened in the preceding week. I believe therefore that I would have spoken to my clinical supervisors...on Tuesday 2 April about Patient A and, specifically, about the request not to contact his wife. I do specifically recall having this conversation'*.
20. The Tribunal recognised that Dr Dutta's second witness statement set out a different narrative from the first. It could discern no clear explanation as to why this information was not originally included. The Tribunal found significant discrepancies between Dr Dutta's evidence and Mrs B's. Dr Dutta claims to have informed Mrs B that Patient A was in intensive care whereas she claims Dr Dutta attempted to minimise Patient A's condition and told her that there was no cause for concern.

21. Mrs B's account was supported by and consistent with her early statement and her contemporaneous notes. Dr Dutta stated that he did not dispute the accuracy of the notes, though stated he had no recall of being asked by Mrs B not to contact her further. On consideration of the evidence received, the Tribunal took the view that it was more likely than not that Dr Dutta was aware of the message from Mrs B's son to stop calling and also that he was directly told by Mrs B to desist. As such, the Tribunal was satisfied, on the balance of probabilities, that all of the calls listed in Schedule 1 took place.
22. The Tribunal therefore found paragraphs 6(a) and 6(b) of the Allegation proved.

Paragraph 8(a) of the Allegation

23. The Tribunal considered whether Dr Dutta, between December 2019 and January 2020, told the CQC inspectors that Patient C did not have a cardiac arrest at ABC, or words to that effect, which was untrue. It noted that both expert witnesses, in their joint report, were in agreement that the definition of a cardiac arrest was as follows:

*'the term cardiac arrest can be used to describe a clinical condition when the heart stops beating or a clinical state when the heart slows to a rate that leads to circulatory collapse'.*

24. The Tribunal accepted this definition and also noted that Mr X defined bradycardia as 'a slowing down of the heart, medically defined as below 60 bpm'. Dr Dutta accepted that Patient C's heart rate fell to 30 beats per minute, that the anaesthetist stated that 'at the point of commencement of CPR I was not sure if the Patient had a pulse or not'. He referred to a return of spontaneous circulation (ROSC). All this indicated to the Tribunal that at some point the anaesthetist could not find evidence of circulation, CPR was initiated and was successful.
25. The Tribunal therefore found paragraph 8(a) of the Allegation proved.

Paragraph 8(b) of the Allegation

26. The Tribunal considered whether Dr Dutta knew his statement that Patient C did not have a cardiac arrest at ABC was untrue. The Tribunal regarded Dr Dutta's description of bradycardia to be so economical with the truth as to represent a deliberate attempt to downplay the severity of the incident. The term was offered as an alternative to cardiac

arrest, with no qualification or further expansion. Whilst it was true that technically there was bradycardia, with his considerable experience Dr Dutta must have known the importance of the circulatory collapse when he denied there was a cardiac arrest. Mr X, in his oral evidence, stated that ‘bradycardia’ on its own was not enough to describe the patient’s condition. He said an accurate description would have been ‘*severe bradycardia with circulatory collapse*’. As such, the Tribunal was satisfied, on the balance of probabilities, that Dr Dutta was purposefully trying to mislead with his limited description and knew it to be untrue.

27. The Tribunal therefore found paragraph 8(b) of the Allegation proved.

Paragraph 9(a) of the Allegation

28. The Tribunal considered whether, between September and December 2019, Dr Dutta made assurances to the CQC that he was not undertaking procedures at ABC Sunderland which were untrue. It had regard to Ms H’s witness statement, dated 14 May 2020, in which she said ‘*Dr Dutta and XXX made assurances that the Sunderland premises did not have any procedures being undertaken under sedation or anaesthetic. We were told it was a consulting room only and therefore we did not believe there was a need to inspect the Sunderland facility*’.
29. The Tribunal noted Ms H’s evidence was consistent with the related and accepted facts. She stated that it was because the CQC was assured that no procedures were being carried out at ABC Sunderland, as it was a consulting room only, that no inspection was arranged. Once they became aware, this triggered an urgent inspection from the CQC.
30. The Tribunal had regard to the statement of purpose for ABC Clinic Sunderland which listed certain procedures as available there. It considered this to be of limited significance as inclusion on the statement of purpose was not an indication that the Newcastle CQC inspection team were aware they were taking place. The Tribunal noted that at this point ABC Sunderland was not in the remit of the CQC team who were investigating ABC Newcastle, and in any event, its registration was limited to procedures under local anaesthetic. Once the CQC became aware of the true situation the team inspecting ABC Newcastle also assumed responsibility to inspect ABC Sunderland. The Tribunal was satisfied, on the balance of probabilities, that Ms H’s evidence was accurate.

31. The Tribunal therefore found paragraph 9(a) of the Allegation proved.

Paragraph 9(b) of the Allegation

32. The Tribunal considered whether Dr Dutta knew that the assurances he gave to the CQC that he was not undertaking regulated procedures at ABC Sunderland were untrue. It found that the assurances given that no procedures were taking place were untrue, as regulated procedures were being booked in the clinic's diary. Dr Dutta denied saying that no procedures were taking place at Sunderland, and said that he only gave an assurance that there were none which required sedation or general anaesthetic. CQC inspectors provided evidence that they only became aware that any procedures were happening at Sunderland when they discovered Dr Dutta was transporting used instruments between the sites. The Tribunal took the view that Dr Dutta must have been aware that these assurances were untrue. It concluded that the false assurances made to the CQC were deliberately deceptive and designed to avoid an inspection of ABC Sunderland.

33. The Tribunal therefore found paragraph 9(b) of the Allegation proved.

Paragraph 10(a) of the Allegation

34. The Tribunal considered whether Dr Dutta, between September and December 2019, told the CQC inspector that he had stopped doing Brazilian Butt Lift procedures a while ago, and whether this was untrue. It considered whether Dr Dutta had said this to Ms H, and had regard to Dr Dutta's original witness statement in which he said *'during the course of an inspection, one of the CQC inspectors and I were discussing a Brazilian Butt Lift (BBL) procedure that I had performed on a patient about 4 weeks earlier. I was therefore asked whether I undertook BBL procedures. I advised that I was no longer undertaking those procedures. I did this in the context of the conversation - that we were discussing a BBL procedure that I had performed four weeks prior. I therefore did not think it was necessary to include the procedure that we were already discussing. I had understood that she would be aware of this from the nature of our discussions'*.

35. The Tribunal noted that as it was agreed that a BBL procedure had taken place on 5 August, the time period of 4 weeks which Dr Dutta stipulated was consistent with this conversation taking place in September 2019 when Ms H was conducting a CQC inspection. The Tribunal also noticed that Dr Dutta referred to the CQC inspector as 'she'.

36. However, in his oral evidence, Dr Dutta suggested that the conversation he was referring to was with a specialist advisor who was present in December 2019 and was a surgeon; the surgeon specialist advisors in both the September and December 2019 inspections were male.
37. The documentary evidence indicated that Dr Dutta was still performing BBLs as he had one booked in his diary. Also, in his oral evidence he stated he had done them for a long time and they were *'part and parcel'* of his operation. He stated that the medical community had been aware of concerns regarding the operation for some time, but that these concerns became more prominent following publication of articles in October and November of that year. The Tribunal viewed Dr Dutta's evidence as inconsistent and was satisfied, on the balance of probabilities, that he had booked a patient in for a BBL in October 2019.
38. In summary, the Tribunal found that, on 27 September 2019, Dr Dutta told the CQC inspector that he had stopped performing BBLs but that he had done one on 5 August 2019 and admitted that there may have been at least one other booked in his diary for 9 October 2019, albeit this was cancelled but on the day of the CQC inspection it was booked in. Dr Dutta stated that there may have been other BBL's booked in but that these did not take place. He was unclear why they were cancelled, however the Tribunal noted that an urgent notice was issued by the CQC on 4 October 2019 requiring the provider to cease carrying out any surgical procedures under local anaesthetic and sedation.
39. The Tribunal therefore found paragraph 10(a) of the Allegation proved.

Paragraph 10(b) of the Allegation

40. The Tribunal considered whether Dr Dutta knew it was untrue when he told the CQC inspector that he had stopped doing BBL procedures. The Tribunal took the view that these were clearly matters within Dr Dutta's knowledge and that he would have appreciated the importance of giving an accurate account. As such, it was satisfied, on the balance of probabilities, that Dr Dutta knew what he said was untrue.
41. The Tribunal therefore found paragraph 10(b) of the Allegation proved.

Paragraph 13(a) of the Allegation

42. Paragraphs 11 and 12, the procedures and the practice restrictions, were admitted in their entirety. The Tribunal therefore considered whether Dr Dutta's conduct, in undertaking procedures on Patients D, E and F contravened the assurances, notice and Interim Orders. Mr Colman told the Tribunal that paragraph 13 was admitted as regards (b) and (c), but asked that the Tribunal make a finding of fact for all three elements of the allegation as to whether the contraventions were deliberate. Ms Johnson for the GMC agreed this was appropriate.

43. Dr Dutta accepted in his evidence and through his counsel that the procedures in paragraph 11 were surgical, but states that he did not appreciate this at the time and that there was considerable confusion as to whether the procedures carried out on Patients D, E and F were regulated and thus within the remit of the CQC. However in the ABC Clinic's statement of purpose, dated 29 January 2019, includes within the list of minor surgical removals the removal of moles:

*'Minor surgical removals...:*

*This minimally invasive procedure involves the surgical removal of skin tags, lumps/bumps, moles, wart and verruca treatment, cryotherapy, aspiration, incision & drainage under local anaesthesia'*

44. The Tribunal had regard to the letter sent from the CQC to ABC Clinics, dated 14 April 2020, which stated:

*'We would also ask you to formally advise CQC two weeks before you commence any face to face contact with clients or carry out any surgical procedures so that CQC can arrange a further comprehensive inspection of both locations.'*

45. Dr Dutta claimed that he did give the CQC the required 2 weeks' notice. It took account of Mr Colman's submission that an email from Ms H amounted to evidence that Dr Dutta had told the CQC, as he should have, that he was going to open the clinic and perform the procedures. The Tribunal took the view that this email, of itself, only evidenced that there was indication of an intention to recommence. It did not specify any dates or details of what was planned.



46. The Tribunal had regard to Ms I's witness statement, dated 26 March 2021. In this she stated *'On 10 June 2020 [Ms H] and I spoke to XXX and their representative regarding their dormancy response which identified they planned to re-open on 01 July 2020...They said they would recommence consultations related to regulated activities on 1 July 2020. XXX asked us which patients they could see as they were unable to test the new documentation. We reiterated our concerns regarding patient selection and risk assessment and the documentation of this. However, patient consultations were able to take place in preparation for patients going for surgery at Liverpool off[sic] London (where Dr Dutta has practicing privileges). The conditions imposed by the GMC in May 2020 prevented surgical procedures being carried out at both ABC locations, and were in essence a continuation of the CQC conditions which expired 04 April 2020, this meant the risk was reduced and we would not need to undertake an urgent risk based inspection'*.
47. The Tribunal noted that Ms I gave a different account of the communication between ABC clinics and the CQC and what was agreed. It was satisfied on the balance of probabilities that Dr Dutta did not give clear notice that would negate the written assurance, subject of paragraph 12(a) of the Allegation, given to the CQC on 31 March 2020. Therefore Dr Dutta's actions in carrying out the procedures on Patients D, E and F contravened this assurance. Bearing in mind the importance of the assurances that had been given, in the absence of evidence of any clear and coherent notice from Dr Dutta to the CQC of his intentions, the Tribunal was satisfied that, on the balance of probabilities, this was a deliberate deception.
48. The Tribunal therefore found paragraph 13(a) of the Allegation proved.

Paragraph 13(b) of the Allegation

49. The Tribunal bore in mind that Dr Dutta admitted that undertaking the procedures on Patients D, E and F contravened the dormancy notice sent to the CQC on 1 June 2020. However, he did not admit that this was deliberate.
50. The issue of whether the procedures set out in paragraph 11 were 'surgical' is considered below, and the Tribunal concluded that they are. However, the Tribunal was satisfied that even if they did not constitute surgery, the removal of a lesion via an incision, the subsequent stitching of the wound and sending the excised lesion for histology clearly fell within *'treatment of disease, disorder or injury'* or *'diagnostic and*

*screening procedures*'. In such circumstances, the Tribunal was satisfied on the balance of probabilities of Dr Dutta's awareness his actions contravened the dormancy notice.

51. The Tribunal therefore found paragraph 13(b) of the Allegation proved. It was also satisfied on the balance of probabilities that as Dr Dutta was aware of the terms of the dormancy notice. Dr Dutta's contravention in this regard was deliberate.

Paragraph 13(c) of the Allegation

52. The Tribunal bore in mind that Dr Dutta admitted that undertaking the procedures on Patients D, E and F was in breach of his IOT conditions. However he denied that this breach was deliberate.
53. The Tribunal bore in mind that the IOT conditions on Dr Dutta's registration forbade him from undertaking any surgical procedures. It had regard to the telephone note of Dr Dutta's phone call with the GMC on 5 August 2020 which detailed that Dr Dutta said he *'has done Botox fillers, three or more removals – small things are being done in Newcastle and Sunderland – bigger cases being booked in Liverpool. CQC visited three days ago and are happy with progress being made. Him doing botox fillers etc doesn't need CQC involvement he suggested, as it's not invasive surgery'*. Whilst this suggests that Dr Dutta did not appreciate that the procedures he performed were classed as surgical procedures, the Tribunal noted that this information was provided after the procedures had already taken place and shortly after the CQC visited his premises. The Tribunal noted the evidence provided in written statements by Dr Dutta that others were confused as to whether the procedures constituted 'surgery'. These witnesses were not called and not cross examined, and the Tribunal also had the contrary and agreed view of the two experts that such procedures as these were clearly surgical in nature.
54. The Tribunal noted that the CQC had not certified the ABC Clinics in Newcastle and Sunderland as being safe and therefore in performing these procedures Dr Dutta was in breach of his IOT conditions.
55. The Tribunal took the view that Dr Dutta's behaviour was deliberate; he knew the terms of the Interim Order and nevertheless performed the procedures in breach of those terms. He later provided a minimal amount of information to the CQC and the GMC. This did not excuse the breach. The Tribunal was satisfied, on the balance of probabilities that Dr Dutta deliberately breached his IOT conditions.

56. The Tribunal therefore found paragraph 13(c) of the Allegation proved.

Paragraph 14(a) of the Allegation

57. The Tribunal considered whether on 28 July 2020, in response to a query raised by the CQC about not having a policy on incidental findings, Dr Dutta stated that he had not had incidental findings on histology for over six years, which was untrue and he knew to be untrue.

58. Dr Dutta denied making this statement. He said that he discussed with the CQC inspector a recent mole that he had sent off for analysis, and that when he referred to six years, that was the previous similar instance. He stated that he was not being deceptive, and felt he did not need to mention the most recent incidental finding, as it was discussed that day and the CQC therefore were fully aware. Mr Colman on his behalf reminded the Tribunal that the allegation was not that he did not have a policy, but that he denied the recent finding. It would be of little consequence that whether he had one or two findings, over a 6 year period, as either situation illustrated his point that they were very rare. The Tribunal did however bear in mind that Dr Dutta confirmed there was no policy in place, and that the CQC found this relevant in their reasoning for cancelling his registration.

59. A letter from the CQC to ABC Clinics, dated 25 August 2020, stated *‘During interview the lead doctor described a process, however, agreed it was not documented. During the interview the lead doctor gave several iterations of what would happen and advised he had not had to do this for 6 years. However, we spoke with one patient who had an excision of a mole on 15 July 2020 and an incidental finding was returned. The patient told us you had organised an urgent referral to his GP and shared the histology result before our inspection and the lead doctor’s interview’.*

60. Ms I of the CQC was clear in her evidence that there was no conversation regarding a recent finding, just the reference to the last one being 6 years ago. She stated that at that time the CQC did not know of the recent incidental finding.

61. Based on all the evidence received, the Tribunal was satisfied that, on the balance of probabilities, Dr Dutta stated to the CQC that he had not had incidental findings on histology for over six years and that this was untrue.

62. The Tribunal therefore found paragraph 14(a) of the Allegation proved.

Paragraph 14(b) of the Allegation

63. The Tribunal considered whether Dr Dutta knew his statement that he had not had incidental findings on histology for over six years was untrue in response to the query raised by the CQC about not having a policy on ‘incidental findings’.

64. Based on the evidence received, the Tribunal concluded it was clear that Dr Dutta did not have an incidental findings policy and therefore had potential motivation to minimise the need for such. On his own account he was very aware of the recent finding. On the balance of probabilities, the Tribunal was satisfied that Dr Dutta made the deliberate decision not to mention the most recent incidental finding.

65. The Tribunal therefore found paragraph 14(b) of the Allegation proved.

Paragraph 15 of the Allegation

66. The Tribunal considered if Dr Dutta’s conduct at paragraphs 8, 9, 10 and 14 of the Allegation was dishonest.

67. In relation to paragraph 8 of the Allegation, the Tribunal has found that Dr Dutta knew his statement to be untrue. It is of the view that in this regard Dr Dutta was consistently economical with the truth to the extent that he made deliberate misrepresentations to underplay Patient C’s condition. The Tribunal is satisfied to the requisite standard that his actions were intended to mislead and were thereby dishonest.

68. In relation to paragraph 9 of the Allegation, the Tribunal concluded that Dr Dutta was aware that the assurances he gave to the CQC were untrue. The Tribunal is satisfied on the balance of probabilities that this was consistent with a desire to avoid an inspection of ABC Sunderland and as such was dishonest.

69. In relation to paragraph 10 of the Allegation, the Tribunal concluded that when Dr Dutta told the CQC inspector that he had stopped doing BBLs a while ago he knew this was untrue. The Tribunal was satisfied that this deliberate untruth was also dishonest.

70. In relation to paragraph 14 of the Allegation, the Tribunal concluded that Dr Dutta knew his statement as to when the most recent incidental finding occurred was untrue. The Tribunal is satisfied to the requisite standard that this false statement was intended to mislead the CQC and was therefore dishonest.

71. The Tribunal therefore found paragraph 15 of the Allegation proved in its entirety.

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

72. The Tribunal has determined the facts as follows:

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

#### Patient A

~~1. Between 26 October 2018 and 22 March 2019 you consulted with Patient A, and you failed:~~

~~a. to take an adequate history in that you did not explore Patient A's:~~

~~i. specific concerns; Successful application under Rule 17(6)~~

~~ii. motive for treatment; Successful application under Rule 17(6)~~

~~iii. requirements; Successful application under Rule 17(6)~~

~~iv. expectations. Successful application under Rule 17(6)~~

~~2. On 26 October 2018 you failed to take an adequate assessment and examination of Patient A in that you did not:~~

~~a. undertake a detailed assessment and/or examination of Patient A's face including:~~

~~i. forehead; Successful application under Rule 17(6)~~

~~ii. eyelids; Successful application under Rule 17(6)~~

~~iii. cheeks; Successful application under Rule 17(6)~~

- ~~iv. nose; Successful application under Rule 17(6)~~
- ~~v. mouth; Successful application under Rule 17(6)~~
- ~~vi. lips; Successful application under Rule 17(6)~~
- ~~b. evaluate the:~~
  - ~~i. condition of the skin; Successful application under Rule 17(6)~~
  - ~~ii. soft tissue; Successful application under Rule 17(6)~~
  - ~~iii. muscles; Successful application under Rule 17(6)~~
- ~~3. On 22 March 2019 you undertook a bilateral facelift procedure ('Procedure 1') to address a localised deformity to Patient A's right cheek:~~
  - ~~a. which was not an appropriate procedure to deal with Patient A's concerns; Successful application under Rule 17(6)~~
  - ~~b. you failed to communicate to Patient A why you thought this was the correct procedure to recommend and/or undertake. Successful application under Rule 17(6)~~
- ~~4. You undertook Procedure 1 at the Aesthetic Beauty Clinic, Newcastle ('ABC Newcastle') which was inappropriate because:~~
  - ~~a. Patient A was at a higher risk of general medical complications; Successful application under Rule 17(6)~~
  - ~~b. ABC Newcastle did not have:~~
    - ~~i. general anaesthetic capabilities; Successful application under Rule 17(6)~~
    - ~~ii. adequate personnel or facilities to deal with major blood loss. Successful application under Rule 17(6)~~
- ~~5. You undertook Procedure 1 under local anaesthetic which was inappropriate because:~~

- ~~a. Patient A was at a higher risk of general medical complications;~~  
**Successful application under Rule 17(6)**
- ~~b. of Patient A's continuation of their antiplatelet medication.~~  
**Successful application under Rule 17(6)**

6. You, or persons acting on your behalf continued to:
- a. contact; **Determined and found proved**
  - b. attempt to contact; **Determined and found proved**

Mrs B on one or more of the dates set out in Schedule 1 which was inappropriate, as she had specifically told you to stop.

#### Patient C

7. On 20 September 2019 you undertook a bilateral gynaecomastia excision ('Procedure 2') on Patient C at ABC Newcastle. **Admitted and found proved**
8. Between December 2019 and January 2020, on one or more occasions you told the CQC inspector(s) that 'Patient C did not have a cardiac arrest at ABC' or words to that effect which was:
- a. untrue; **Determined and found proved**
  - b. known by you to be untrue. **Determined and found proved**
9. Between September and December 2019 on one or more occasion you made assurances to the CQC that you were not undertaking procedures at the Aesthetic Beauty Centre, Sunderland ('ABC Sunderland') premises which was:
- a. untrue; **Determined and found proved**
  - b. you knew to be untrue. **Determined and found proved**
10. Between September and December 2019, you told the CQC inspector that you had stopped doing Brazilian Butt lift procedures a while ago which:
- a. was untrue; **Determined and found proved**

- b. you knew was untrue, as you had more than one booked in the diary.  
**Determined and found proved**

11. You undertook the following procedures:

- a. on 23 June 2020: removal of a cyst on Patient D; **Admitted and found proved**
- b. on 30 June 2020: two lesion removals on Patient E; **Admitted and found proved**
- c. on 15 July 2020: a mole removal on Patient F. **Admitted and found proved**

12. When you undertook the procedures as described at paragraph 11.a.-c., you did so knowing that:

- a. written assurances had been provided to the CQC on 31st March 2020 that no face to face consultations or surgical procedures would be carried out at the ABC clinics in Newcastle and Sunderland in response to the COVID19 Pandemic;  
**Admitted and found proved**
- b. a dormancy notice signed by your wife dated 1 June 2020 ('the Dormancy Notice') had been sent to the CQC confirming the following procedures would not be undertaken at the ABC clinics in Newcastle and Sunderland:  
**Admitted and found proved**
  - i. treatment of disease, disorder or injury; **Admitted and found proved**
  - ii. surgical procedures; **Admitted and found proved**
  - iii. diagnostic and screening procedures; **Admitted and found proved**
- c. on 1 May 2020 a Medical Practitioners Interim Orders Tribunal issued conditions on your GMC registration as detailed at Schedule 2. **Admitted and found proved**

13. Your conduct at paragraph 11.a.-c.:



- a. contravened the assurances made to the CQC at paragraph 12.a.; **Determined and found proved**
  - b. contravened the Dormancy Notice at paragraph 12.b.; **Determined and found proved**
  - c. was in breach of your interim order of conditions at paragraph 12.c. as the CQC had not certified the ABC clinics in Newcastle and/ or Sunderland as 'safe'. **Determined and found proved**
14. On 28 July 2020 in response to a query raised by the CQC about not having a policy on 'incidental findings' you stated that you had not had 'incidental findings on histology for over six years' or words to that effect which:
- a. was untrue; **Determined and found proved**
  - b. you knew to be untrue. **Determined and found proved**
15. Your conduct at paragraphs 8, 9, 10, 14 was dishonest. **Determined and found proved.**

#### Determination on Impairment - 22/11/2023

1. 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 above, Dr Dutta's fitness to practise is impaired by reason of misconduct.

#### The Evidence

2. 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 further evidence as follows:
  - Responsible Officer statement, dated 15 October 2019;
  - Responsible Officer statement, dated 10 March 2023;
  - Summary of Dr Dutta's GMC history;
  - Determinations of previous MPTS Tribunals dated 28 September 2012, 13 January 2014 and 2 February 2016.

## Submissions

3. On behalf of the GMC, Ms Johnson submitted that Dr Dutta's conduct breached fundamental tenets of the medical profession as set out in Good Medical Practice. She stated that Dr Dutta should have respected Mrs B's privacy and acted in accordance with her wishes when she asked for no further contact. Ms Johnson submitted that Dr Dutta's actions could have been seen as an attempt to influence any potential complaint and that he failed to consider the impact of repeated calls.
4. Ms Johnson submitted that the Tribunal has found that Dr Dutta repeatedly misled the CQC, and that this was in an attempt to avoid restrictions being placed upon his clinics. She stated that the motivation for Dr Dutta's dishonesty was self-interest and financial. Ms Johnson submitted that Dr Dutta's behaviour demonstrated a flagrant disregard for those seeking to ensure his practice is safe and reminded the Tribunal that both expert witnesses were in agreement that deliberately misleading the CQC and breaching an interim condition fell seriously below the required standard.
5. As such, Ms Johnson submitted that Dr Dutta's behaviour was so serious it amounted to serious misconduct.
6. Ms Johnson went on to submit that Dr Dutta has demonstrated no insight into his misconduct nor has he showed any remediation. She reminded the Tribunal that Dr Dutta is fully entitled to challenge allegations made about him and that as such, his denials should not be held against him. Ms Johnson stated that there is a real risk of repetition as Dr Dutta's dishonesty was repeated on several occasions in this case. She said that the 2012 Tribunal had found that Dr Dutta's fitness to practise was impaired because of failures in the care of a patient and because he had provided clinical care whilst suspended by an IOT. The 2012 Tribunal noted that in its view *'his integrity cannot be relied upon'*.
7. As such, Ms Johnson submitted that, given the serious nature of the Tribunal's findings, a finding of impairment would be necessary to protect the public, to maintain proper standards of behaviour and to maintain public confidence in the profession.
8. On behalf of Dr Dutta, Mr Colman reminded the Tribunal of the dispute between the experts about the seriousness of the behaviour found proved under paragraph 6 of the Allegation, as regards contact with Mrs B. He submitted that this should not be viewed as

constituting serious misconduct. He stated that he had no submissions to make with regard to misconduct or impairment.

### The Relevant Legal Principles

9. 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.
10. 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 which was serious and then whether the finding of that serious misconduct could lead to a finding of impairment.
11. The Tribunal must determine whether Dr Dutta's fitness to practise is impaired today, taking into account his 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.
12. In its deliberations, the Tribunal had regard to the questions posed by Dame Janet Smith in the Fifth Shipman Report, as referred to in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as follows:

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

- a. 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*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

13. The Tribunal also had regard to the case of *Cohen v GMC [2008] EWHC 581 (Admin)* in which Mr Justice Silber stated:

*'It must be highly relevant in determining if a doctor's fitness to practise is impaired that; first his or her conduct which led to the charge is easily remedied, second that it has been remedied and third that it is highly unlikely to be repeated'*

## The Tribunal's Determination on Impairment

### Misconduct

14. In its deliberations, the Tribunal first considered whether Dr Dutta's actions in contacting Mrs B (Patient A's wife) amounted to serious misconduct. In doing so, it noted that Dr Dutta had accepted responsibility for the calls made to Mrs B by his wife.
15. The Tribunal was satisfied that the continued contact after two requests not to do so was inappropriate and ill-advised. However, looking at the whole issue in context, and in particular that Dr Dutta stated that he felt some responsibility as Patient A's surgeon, the Tribunal concurred with Mr X's view that the behaviour was not serious misconduct. In his expert report, dated 10 October 2023, he stated that *'If it were determined that Dr Dutta or his wife had called Patient A's wife after being asked not to then this would be considered to fall below the standard expected of a reasonably competent Cosmetic Surgeon. In my opinion this would not be considered to fall seriously below the standard expected'*.
16. Accordingly, the Tribunal concluded that Dr Dutta's actions fell below the standard expected but not seriously below as to amount to serious misconduct.
17. The Tribunal next considered whether Dr Dutta's actions of telling the CQC that Patient C did not have a cardiac arrest, that he was not undertaking procedures at ABC Sunderland, that he had stopped doing BBLs and that he had not had incidental findings on histology for over six years when he knew they were all untrue and were found to have been dishonest, amounted to serious misconduct (paragraphs 8, 9, 10, 14 and 15 of the Allegation).
18. The Tribunal considered each of these allegations found proved individually amounted to serious misconduct as each was a deliberate and dishonest attempt by Dr Dutta to mislead his regulator.
19. The Tribunal took the view that the facts found proved in relation to these matters indicated a pattern of behaviour in which Dr Dutta deceived the CQC. It found this to be

deliberate dishonesty by Dr Dutta. The Tribunal noted the GMC's submission that *'his motivation for his dishonesty was self-interest and financial'*.

20. The Tribunal was satisfied that Dr Dutta's misconduct put his own interests ahead of the interests of patients and the wider public. It was of the view that he thereby put patients at risk of harm. It noted that there were no exceptional circumstances in this case and concluded Dr Dutta's dishonesty, in the course of his professional behaviour, was designed to mislead.
21. The Tribunal then considered if Dr Dutta's actions in undertaking procedures on Patients D, E and F when he knew that written assurances and a dormancy notice had been provided to the CQC, and breaching his IOT conditions, amounted to serious misconduct (paragraphs 11, 12 and 13 of the Allegation). The Tribunal was of the view that this amounted to one course of misconduct, conducting the procedures in breach of the written assurances, the dormancy notice and the conditions imposed by an Interim Orders Tribunal.
22. The Tribunal had regard to Good Medical Practice (2013)(GMP) and was satisfied that Dr Dutta's actions breached the following paragraphs:

*'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.'*

23. The Tribunal had already concluded that Dr Dutta deliberately contravened the restrictions on his practise. It was satisfied that in so doing Dr Dutta had demonstrated a persistent disregard for regulation and restrictions which had been imposed to promote patient safety. As such, the Tribunal was of the view that Dr Dutta's actions would be considered deplorable by fellow practitioners, and amounted to serious misconduct.
24. Accordingly, the Tribunal concluded that Dr Dutta's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

## Impairment

25. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Dutta's fitness to practise is currently impaired.
26. In its deliberations the Tribunal noted that impairment was not contested in this case. It concluded that Dr Dutta's misconduct was in relation to his regulators and that the intent of his actions was to avoid complying with regulations and therefore undermine safeguards. Dr Dutta purposefully gave misleading information in an attempt to circumvent the frameworks put in place for patient safety.
27. Based on the evidence received, the Tribunal was satisfied that Dr Dutta's misconduct showed disregard for appropriate regulation and thereby patient safety, and could only conclude it was done for personal interests and financial gain.
28. The Tribunal had regard to *Grant* (above, paragraph 12), and took the view that Dr Dutta's actions put patients at an unwarranted risk of harm and brought the medical profession into disrepute as he told untruths to the CQC, acted in breach of written assurances and breached his IOT conditions. It also took the view that through these actions and by virtue of his dishonesty, Dr Dutta breached fundamental tenets of the medical profession. The Tribunal was also of the view that there was a significant risk of repetition. Dr Dutta has demonstrated no insight into his actions at this point, and the Tribunal noted the previous finding of Dr Dutta failing to comply with conditions set by an Interim Orders Tribunal in 2012. On repeated occasions he had demonstrated a tendency to seek to find a way around restrictions rather than adhering to them.
29. The Tribunal was aware that dishonesty is not easily remediated. It bore in mind that Dr Dutta was entitled to mount a defence to the allegations, and thereby had limited opportunity at this stage to demonstrate insight and remediation. However, the Tribunal noted that no evidence has been provided of remediation. Based on the evidence presented at this hearing, the Tribunal took the view that Dr Dutta appeared to have a deep seated attitudinal problem and demonstrated a repeated willingness to step outside regulation.

30. The Tribunal concluded that Dr Dutta's misconduct undermined patient safety, public confidence in the medical profession and proper standards of conduct for members of the profession.
31. The Tribunal has therefore determined that Dr Dutta's fitness to practise is impaired by reason of misconduct.

#### **Determination on Sanction - 24/11/2023**

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

#### **The Evidence**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.
3. The Tribunal received further evidence on behalf of Dr Dutta including:
  - Testimonial from Ms V, dated 22 November 2023;
  - Patient satisfaction survey for ABC from August 2022 to October 2023.

#### **Submissions**

4. On behalf of the GMC, Ms Johnson submitted that there were aggravating factors in this case in relation to Dr Dutta's dishonesty. She stated his dishonesty was designed to mislead and was repeated over a sustained period such that it could be considered persistent. She stated that the motivation for this dishonesty was self-interest and financial gain, and that Dr Dutta had put his own interests above those of his patients. Ms Johnson reminded the Tribunal that Dr Dutta's fitness to practise was found to be impaired by the 2012 Tribunal and he was suspended, there was also a breach of an interim order. She submitted that this was evidence of his lack of insight into his past and present misconduct and indicated that any remediation following the 2012 finding had not been effective. The current misconduct demonstrated a persistent disregard for regulation and restrictions which had been imposed to promote public safety. Ms Johnson submitted that the mitigating factors in this case could include the passage of time between the allegations and this hearing. She conceded that the testimonials

received show he is held in high regard by a number of people. However, she submitted that these factors do not sufficiently mitigate the seriousness of this case.

5. Ms Johnson submitted that it would be inappropriate to take no action in this case given that the Tribunal's finding of misconduct is based upon a finding that there have been serious departures from Good Medical Practice. She also submitted that an order of conditions would not be appropriate as the misconduct is too serious and conditions were not appropriate to address the issue of Dr Dutta's dishonesty. Ms Johnson referred the Tribunal to the Sanctions Guidance which states that suspension is appropriate when a Tribunal is satisfied that a doctor has insight and that there is no risk of repetition. However, she submitted that this is not the case here as the Tribunal has found that Dr Dutta appears to have *'a deep-seated attitudinal problem and demonstrated a repeated willingness to step outside regulation...He has demonstrated no insight into his actions at this point'* and that there is *'a significant risk of repetition'*.
6. Ms Johnson reminded the Tribunal that it had found serious breaches of GMP in this case and that Dr Dutta has demonstrated a persistent lack of insight. She submitted that Dr Dutta's actions were fundamentally incompatible with continued medical registration and that erasure is the appropriate response to protect patient safety, to maintain public confidence in the medical profession and to maintain proper standards of conduct for members of the profession.
7. On behalf of Dr Dutta, Mr Colman referred the Tribunal to the latest patient satisfaction survey from ABC in which he stated patients describe the care they received in glowing terms. He stated this was consistent with the testimonials provided to the Tribunal on the Doctor's behalf. Mr Colman reminded the Tribunal that there were positive aspects of Dr Dutta's practice. Mr Colman submitted that the CQC has been in a protracted confrontation with Dr Dutta, to the extent it had made unwarranted claims that he was not qualified as a cosmetic surgeon or as any kind of surgeon at all. Mr Colman submitted that this was a ludicrous allegation from the CQC considering Dr Dutta's roles as a trainer, an international examiner in cosmetic surgery and his training and development record. Mr Colman informed the Tribunal that this was one of the allegations the GMC persuaded the Case Examiner to drop during its two attempts to drop the whole case against Dr Dutta. Mr Colman said that Dr Dutta has been under GMC investigation and supervision for 9 years.



8. Mr Colman submitted that against this background that Dr Dutta was at a loss to understand how he is now facing erasure and the termination of his long and valued career. He acknowledged this Tribunal has made serious findings of dishonesty and the deliberate flouting of regulation, but reminded the Tribunal to act proportionately and to consider the public interest in retaining the services of a valued clinician and also the impact on Dr Dutta.
9. Mr Colman stated that the events in the Allegation occurred three to four years ago, that there has been no repetition since and that Dr Dutta's clinics no longer hold CQC registration so there is no continuing confrontation in that regard. He also stated that Dr Dutta now only performs surgery in hospital sites.
10. Mr Colman referred the Tribunal to the statement of Ms V which showed that Dr Dutta had immediately put himself on the front line of the response during the COVID19 pandemic. This involved treating COVID positive patients and carrying out house calls in full PPE, at considerable risk to his own health. He stated that these were not the actions of a doctor with a *'deep-seated attitudinal problem who puts his own personal interests and financial gain ahead of patient safety'*. Mr Colman invited the Tribunal to revise any provisional judgments to that effect that it may have reached at the impairment stage.
11. Mr Colman submitted that even significant or sustained dishonesty involving disregard for restrictions and a want of honesty in investigations can be addressed by suspension. He referred the Tribunal to paragraph 102 of the SG which, in listing such misconduct as a potential aggravating factor when considering the length of suspension, clearly indicated that suspension could be appropriate. He asked the Tribunal to act with proportionality and compassion.

### **The Tribunal's Determination on Sanction**

12. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement.
13. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (2020) (SG) and GMP. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it may have a punitive effect.

14. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Dutta's interests with the public interest. It has taken account of the overarching objective and its previous determinations.
15. In its deliberations, the Tribunal considered the aggravating and mitigating factors in this case. With regard to aggravating factors it noted Dr Dutta's repeated and persistent dishonesty which was designed to mislead, the previous finding of impairment in 2012 where Dr Dutta was suspended for 12 months and his lack of insight. This dishonesty was more serious in that it was directed at his regulators and thereby potentially put patient safety at risk. With regard to mitigating factors, the Tribunal noted the passage of time since the events in the Allegation, with no issues in the intervening period, and the high regard in which Dr Dutta is held, as evidenced in the testimonials received. However, the Tribunal was of the view the testimonials had limited relevance due to the nature of the concerns raised in this case.

#### No action

16. In reaching its decision as to the appropriate sanction, if any, to impose in this case, the Tribunal first considered whether to conclude by taking no action.
17. The Tribunal determined that due to the seriousness of Dr Dutta's misconduct, to take no action would not uphold the statutory overarching objective. It found that there were no exceptional circumstances to justify taking no action in this case.

#### Conditions

18. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Dutta's registration. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. In doing so, it noted that Mr Colman did not make any submissions about appropriate conditions on Dr Dutta's behalf. The Tribunal had regard to the following paragraphs of the SG:

*'81. Conditions might be most appropriate in cases:*

- a. involving the doctor's health*
- b. involving issues around the doctor's performance*

- c. where there is evidence of shortcomings in a specific area or areas of the doctor's practice*
- d. where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.*

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.'*

19. The Tribunal did not consider any of the above to be met in this case. It bore in mind the nature of the misconduct, its findings as to insight and that Dr Dutta had breached conditions imposed on his registration on more than one occasion. As such, it took the view that no conditions could be formulated to address the concerns raised by the misconduct.
20. The Tribunal therefore concluded that conditions would be insufficient to ensure protection of patients, meet the public interest or maintain proper standards of conduct for the members of the profession.

## Suspension

21. The Tribunal then went on to consider whether imposing a period of suspension on Dr Dutta's registration would be appropriate and proportionate. In doing so it had particular regard to the following paragraphs of the SG:

*'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*

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

- ...g. The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour'*
22. Based on the evidence received, the Tribunal took the view that none of the examples in paragraph 93 of the SG were applicable. It had already found that Dr Dutta, at this stage, has not demonstrated insight and that there was a significant risk of repetition.
23. The Tribunal bore in mind the seriousness of the misconduct found proved and noted that Dr Dutta had not complied with a previous suspension imposed on his registration. It further noted that the remediation recorded by the 2016 Tribunal seemed to have had limited impact. The seriousness of the misconduct, involving persistent acts of dishonesty and risk to patient safety, and the significant risk of repetition were such that the Tribunal was of the view that suspension would not be sufficient to protect members of the public and maintain public confidence in the profession.
24. For these reasons, the Tribunal determined that suspension would not be an appropriate or proportionate sanction.

### **Erasure**

25. In its deliberations, the Tribunal had regard to the following paragraphs of the SG:

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

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

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

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

*...h. Dishonesty, especially where persistent and/or covered up*

*i. Putting their own interests before those of their patients'*

26. The Tribunal gave due consideration to the multiple testimonials received on Dr Dutta's behalf and to the patient satisfaction survey. His clinical abilities were not a concern for the Tribunal and it accepted the evidence of the regard in which many held him. However, it was mindful that he had shown a disregard for safeguards put in place to protect members of the public and put his own interests above those of his patients along with repeated and persistent dishonesty. It took the view that Dr Dutta, if permitted to practise, would present a risk to patient safety. It noted his previous failure to comply with the terms of an Interim Tribunal order, the lack of any evident insight and the persistent nature of the dishonest misconduct designed to circumvent regulation. In light of these factors the Tribunal concluded there remained a significant risk of repetition of him breaching any restrictions placed on his registration. This would put members of the public at risk of harm.
27. The Tribunal was satisfied that the seriousness of Dr Dutta's misconduct needed to be adequately marked. The public have a right to expect that a doctor would adhere to any restrictions placed upon their practise. As such, it concluded that any sanction other than erasure would undermine public confidence in the medical profession and the regulatory process.
28. Accordingly, the Tribunal determined that erasure is the only appropriate and proportionate sanction to protect patients, maintain public confidence in the profession and uphold proper standards of conduct. The Tribunal therefore directed to erase Dr Dutta's name from the Medical Register.

#### **Determination on Immediate Order - 24/11/2023**

1. Having determined to erase Dr Dutta's name from the medical register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

#### **Submissions**

2. On behalf of the GMC, Ms Johnson submitted that an immediate order should be imposed in this case in order to ensure patients are protected and public confidence is maintained. She reminded the Tribunal of its findings that there is a risk of repetition and submitted that an immediate order is the only way of protecting patients.

3. On behalf of Dr Dutta, Mr Colman submitted that an immediate order is not in Dr Dutta's interests and that there is little risk to patients in this case. He reminded the Tribunal that there was no allegation of any patient having been harmed by Dr Dutta's clinical abilities and stated that Dr Dutta has been practising safely with satisfactory supervision reports for years.
4. Mr Colman submitted that an immediate order of suspension would have catastrophic effects on Dr Dutta's businesses and would not allow him to practise if he lodged an appeal against the substantive sanction of erasure. He reminded the Tribunal that Dr Dutta is popular with his patients and that he has post operative appointments booked with patients so if immediately suspended these will have to be transferred to another doctor.
5. Mr Colman submitted that it would not be in the public interest nor would it be in the interests of patients to impose an immediate order on Dr Dutta's registration.

#### The Tribunal's Determination

6. In its deliberations, the Tribunal noted the submissions of both parties and the authorities presented in support. It had regard to Section 38 of the Medical Act 1983 and 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.'*

*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.'*

7. The Tribunal noted the seriousness of Dr Dutta's dishonesty and took the view that the public interest outweighs Dr Dutta's interests in this case due to potential risk to members of the public if Dr Dutta were permitted to continue to practice. As such, it was satisfied that an immediate order is necessary in this case in order to protect members of the public and to maintain public confidence in the medical profession.
8. The Tribunal therefore determined to impose an immediate order of suspension on Dr Dutta's registration.
9. This means that Dr Dutta's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.
10. The interim order is hereby revoked.
11. That concludes the case.

ANNEX A – 13/11/2023

**Application under Rule 17(2)(g)**

1. At the close of the case on behalf of the GMC, Mr Colman made an application under Rule 17(2)(g) of the Rules that there is insufficient evidence to support paragraphs 8(a), 8(b), 10, and the parts of paragraph 15 that relate to these, of the Allegation. Rule 17(2)(g) states:

*“The practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld.”*

**Submissions**

2. Mr Colman submitted that, with regard to paragraph 8(a) of the Allegation, the GMC relies upon the evidence of Dr O, who has expressed that he is not a qualified cardiologist or anaesthetist. His evidence was given as a doctor trained in basic resuscitation which is the same level as Dr Dutta. He stated that the anaesthetist’s comments and statement are hearsay and that no evidence has stated that Patient C suffered a full cardiac arrest as opposed to bradycardia. Mr Colman also stated that the Medical Advisory Meeting of 23 September 2019 made no mention of a cardiac arrest, only bradycardia, and that there was no attempt to hide that a serious incident had occurred. Mr Coleman submitted that the AED Rescue Data Review, dated 28 January 2020, established that Patient C’s heart did not stop beating at any time and that the defibrillator detected a non-shockable bradycardic rhythm. He reminded the Tribunal that Dr O, during re-examination, said that he would have treated Patient C as having had a cardiac arrest at the time but *‘two weeks later, particularly with the analysis from the machine, it’s difficult to say’*.
3. With regard to paragraph 8(b), Mr Colman submitted that the statement of Miss W, dated 20 September 2019, who worked as a nurse at the Newcastle ABC clinic, as well as the evidence mentioned above reflect Dr Dutta’s state of mind at the time of the events in the Allegation. He stated that Dr Dutta had no motivation to misrepresent what had happened to Patient C as life threatening bradycardia, of itself a very serious event, as opposed to a cardiac arrest. Mr Coleman went on to submit that even if Patient C did suffer from a cardiac arrest, a difference of opinion about the proper classification of a life-threatening cardiac event is not a deliberate untruth.



4. With regard to paragraph 10, Mr Colman submitted that there is clear evidence Dr Dutta ceased to perform Brazilian butt lift procedures after 5 August 2019 when he last performed one. He stated that Ms H's notes did not support the contention that Dr Dutta had performed or intended to perform this procedure again.
5. Finally, Mr Colman submitted that if no case to answer is found for paragraphs 8 and 10 of the Allegation then these in respect of paragraph 15 of the Allegation should fall.
6. On behalf of the GMC, Ms Johnson submitted that there is a case to answer for in relation to paragraph's 8 and 10 of the Allegation.
7. In relation to paragraph 8 of the Allegation, Ms Johnson submitted that the anaesthetist described Patient C as follows

*'the patient had a severe bradycardia and cardiac arrest...he was not breathing. So he had an arrest, he got revived, he basically needs an urgent transfer to RVI...it's a patient who had an arrest on table'*

8. She submitted that there had been time for the anaesthetist to assess Patient C and to have identified what had happened. She stated that the Medical Advisory Meeting was not an independent account of what has happened.
9. Ms Johnson informed the Tribunal that in the joint expert report the experts agreed that the term cardiac arrest can be used to describe either a condition where the heart stops beating or one where it slows to a rate that leads to circulatory collapse. They also said that there was conflicting information as to which of those situations occurred. Ms Johnson accepted Dr O's evidence that it was difficult to say in retrospect which of these conditions applied to Patient C's adverse event.
10. With regard to paragraph 10 of the Allegation, Ms Johnson submitted that the evidence to support this is not limited to one conversation about 'Brazilian butt lifts'. She stated that there is evidence from Ms H that she asked Dr Dutta about the procedure, albeit she had no notes of this it was clear in her oral evidence.

### **The Tribunal's approach**

11. In its deliberations as to whether there was a case to answer for paragraphs 8(a) and 8(b) of the Allegation, the Tribunal had regard to the experts' agreement in their joint report

that *‘the term cardiac arrest can be used to describe a clinical condition when the heart stops beating or a clinical state when the heart slows to a rate that leads to circulatory collapse’.*

12. The Tribunal noted Ms H’s statement that *‘Both Dr Dutta and [Ms U] Dutta said that Patient C did not have a cardiac arrest at ABC, during a face to face engagement meeting with [Ms I], CQC Inspection Manager, prior to our inspection in December 2019. The same comments were made again at our inspections in December 2019 and January 2020. However, when the Anaesthetist rang for the ambulance, the ambulance transcripts show that he confirmed that the patient had had a cardiac arrest’.*
13. The Tribunal noted the evidence of the joint expert report as regards to the general application of the term cardiac arrest, as quoted above at paragraph 11. On that basis, there was evidence upon which a Tribunal could be satisfied that there was a cardiac arrest. There was also evidence that Dr Dutta had said there was not. At this stage it would be open to the Tribunal to find that as a doctor with the knowledge he had of the incident it could be found that he knew his statement was untrue. As such, it took the view that there is sufficient evidence for a case to answer for paragraphs 8(a) and 8(b) of the Allegation.
14. The Tribunal then considered if there was a case to answer as regards paragraph 10 of the Allegation. It noted there was evidence that Dr Dutta had stated that he had stopped performing Brazilian butt lift procedures, and that he had one booked in his diary for 9 October 2019, before the CQC notice suspending the carrying out of any procedures requiring local anaesthetic or sedation. There was also evidence of other procedures that had taken place at the Clinic that could have been Brazilian butt lifts. As such, the Tribunal took the view that there is sufficient evidence for a case to answer for paragraph 10 of the Allegation.
15. Accordingly, the Tribunal was satisfied that there was sufficient evidence upon which a Tribunal could properly find those paragraphs of the Allegation proved. It therefore determined that the 17(2)(g) application of no case to answer was not upheld in relation to paragraphs 8(a), 8(b) and 10 and therefore also paragraph 15 of the Allegation.

### Schedule 1

Friday 5 April 2019 x two telephone calls

Tuesday 9 April 2019 x three telephone calls

Wednesday 10 April 2019 x one telephone call

Thursday 11 April 2019 x one telephone call

Saturday 13 April 2019 x one telephone call

Sunday 14 April 2019 x one telephone call

### Schedule 2

He [Dr Dutta] must not recommence any surgical procedures at either the Newcastle or Sunderland Clinics until the CQC has certified the clinics 'safe' and given its approval for cosmetic and aesthetic procedures to be performed at these clinics.