

PUBLIC RECORD

Dates: 17/03/2021 - 25/03/2021

Medical Practitioner's name: Dr Ashraful MIRZA

GMC reference number: 4518585

Primary medical qualification: MB BS 1998 University of London

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

Summary of outcome

No warning

Tribunal:

Legally Qualified Chair	Mr Richard Tutt
Medical Tribunal Member:	Prof (Dr) Alastair McGowan
Medical Tribunal Member:	Dr John Smith

Tribunal Clerk:	Miss Kanwal Rizvi Ms Evelyn Kramer
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr James Leonard, Counsel, instructed by RadcliffesLeBrasseur
GMC Representative:	Mr Charles Garside, QC

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

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 - 24/03/2021

Background

1. Dr Ashraf Mirza qualified with an MBBS in 1998 from St George's Hospital Medical School, University of London. He worked in various hospitals after receiving his medical degree. In 2005, Dr Mirza started working as a Locum General Practitioner in a number of different Practices within London. Dr Mirza then joined the Faccini House Surgery ('the Practice') in Morden, London, in May 2006, becoming a partner at the Practice in April 2007.
2. At the time of the events in 2014, Dr Mirza was practising as a senior partner at the Practice and was a Locality Lead for Carshalton Primary Care Network under The Sutton Clinical Commissioning Group ('CCG'). He oversaw nine Practices within that role.
3. In outline, the allegation that has led to Dr Mirza's hearing is that between 18 and 27 March 2014, Dr Mirza dishonestly made entries in the medical records of 45 patients in order to create a false picture of QOF activity. It was the GMC's case that Dr Mirza's dishonesty was demonstrated by the fact that he had not consulted or treated the patients on the relevant dates and that he had not marked any of the entries as being a retrospective record. The GMC submitted that the records were false and recorded information for which no basis or evidence had been found. The records gave a materially false impression.
4. A local investigation by NHS England and NHS Improvement ('NHSEI') took place following the Quality and Outcomes Framework ('QOF') audit at the Practice. This is an annual data read coding exercise for all GP surgeries in England, detailing practice achievement results by the end of the financial year. The NHSEI found discrepancies in a number of cases between the date of the consultation as indicated by the patient record and the date that the QOF related data were entered as shown by the audit trail.

5. The Tribunal was provided with a 550-page bundle which included, amongst other things, entries and audit trails from the medical records of the 45 patients. The bundle was heavily redacted to excise, amongst other details, material which might identify the individual patients. The records relating to each patient were identified by a QR code from QR1 to QR45. This determination will not rehearse the details of the bundle save to the extent that it is necessary to provide context to the Tribunal’s determination.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal refused in part the GMC’s application at the outset of the proceedings, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended (‘the Rules’), to amend the Allegation. It rejected the GMC’s application to amend the Allegation, save for the agreed amendments to Schedule 1. The Tribunal’s full decision is included at Annex A.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Mirza is as follows:

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

1. Between 18th March 2014 and 27th March 2014, you made entries in patient medical records as set out in Schedule 1 (‘Entries’).

Admitted and found proved

2. You:
 - a. had not consulted/treated the patients:
 - i. on the dates when the Entries were made, or
To be determined
 - ii. on the dates on which the Entries set out in Schedule 1 stated that you had obtained the information recorded;
To be determined
 - b. did not mark any of the Entries as being a retrospective record of:
 - i. any earlier consultation with the patient, or
To be determined

- ii. any review of the patient’s records.

To be determined

- c. knew that you had not consulted/treated the patients as alleged in paragraphs 2.a. and 2.b. above.

To be determined

3. Your actions at paragraph 1 were dishonest by reason of paragraph 2.

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

8. At the outset of these proceedings, through his counsel Mr James Leonard, Dr Mirza admitted paragraph 1 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 that paragraph of the Allegation as admitted and found proved.

The Facts to be Determined

9. In light of Dr Mirza’s response to the Allegation made against him, the Tribunal was required to determine the paragraphs and sub-paragraphs remaining.

Evidence

10. The Tribunal received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Ms A, Senior Performance Case Manager for NHSEI – London Region, dated 21 December 2020.

11. Dr Mirza provided his own witness statement, dated 17 January 2021, and gave oral evidence at the hearing. In addition, the Tribunal received the following documents on behalf of Dr Mirza:

- Minutes of QP Meeting on 25 February 2014, and
- Carshalton Locality Lead Statement for the QP 001-009, Year 2013-14, dated 21 March 2014.

12. The Tribunal had regard to the documentary evidence provided by the parties. This evidence comprised:

- NHS England Case Report ('NHS report'), dated March 2018.

The Tribunal's Approach

13. In reaching its determination on the 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 Mirza does not need to prove anything at all. 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.

14. In respect of the allegation that Dr Mirza acted dishonestly, the Tribunal applied the test set out by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67* ('Ivey'), namely that when considering the matter of dishonesty:

- a) The Tribunal should first ascertain (subjectively) the actual state of Dr Mirza's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence going to whether he held the belief, it is not an additional requirement that his belief must be reasonable; the question is whether it was genuinely held.
- b) The Tribunal should then determine whether Dr Mirza's conduct was honest or dishonest, applying the objective standards of ordinary decent people. There is no requirement for Dr Mirza to appreciate that what he has done is, by those standards, dishonest.

The Tribunal's Analysis of the Evidence

15. The Tribunal had regard to Mr Charles Garside QC's opening of the case for the GMC. He submitted that the selected entries of Dr Mirza into the patients' medical records were false and recorded information for which no basis or evidence had been found. He suggested

that in all but a small number of instances there was no possibility of a consultation on the day the entries were made. He observed that the entries were not recorded by Dr Mirza as being retrospective, rather they were recorded as being from ordinary examinations or consultations. Mr Garside conceded that the GMC could not say that Dr Mirza's false entries were carried out with a view to financial gain from the QOF system. However, he submitted that to create false entries, for whatever reason, was dishonest and that this was a dishonest course of conduct over a period of days. He submitted that dishonesty was made out by the sheer weight of numbers of entries lacking supporting evidence.

NHS report

16. The Tribunal gave careful consideration to the NHS Report, prepared by the Case Investigator/Medical Assessor, Dr B. The Tribunal noted that Dr B qualified in 1982 and had been a practising GP for 27 years. She was a GP Partner for 20 years and more recently a salaried GP in Tower Hamlets. She had been a GP appraiser since 2003, a GP Tutor for the East Midlands Healthcare Workforce Deanery from 2008-2012 and was approved as a GP Trainer in 2013. She became a Revalidation Lead for NHS England London (South) in 2014 and Associate Medical Director for NHS England London (South) in 2017. She completed her Case Investigator training with NCAS in 2016. She was a member of the South London Performance Advisory Group and Performers List Decision Panel.

17. The Tribunal noted, as it had observed when dealing with the GMC's application to amend the Allegation, that the GMC did not present any evidence of the accepted practice for recording QOF data.

18. In considering the NHS Report, the Tribunal noted Dr B's general observation that staff at the Practice entered information from external sources, such as hospital letters, and attributed this to the date on which the patient had been seen. Dr B also observed that Practice staff logged on either as 'docman' or by their own name. The audit trail showed the date of the data entry.

19. Dr B observed that in the 45 specific cases in question she was unable to confirm a reliable source of the data or information entered onto the patients' EMIS record by Dr Mirza. In all 45 cases a discrepancy was found between the date of the consultation as indicated by the patient record and the date that the QOF related data were entered, as shown by the audit trail. There were some examples of data that were entered retrospectively and attributed to dates nine months (QR14); seven months (QR42); six

months (QR11) and five months (QR17 and QR19) earlier, according to the audit trail for those entries.

20. Dr B noted that the audit trail showed that for the 45 records in question, data were entered into the patients' notes by Dr Mirza on the following dates:

- Tuesday 18th March 2014, 19 entries made between 09.46 and 17.23.
- Saturday 22nd March 2014, 1 entry made at 23.23.
- Sunday 23rd March 2014, 17 entries made between 12.18 and 17.18.
- Monday 24th March 2014, 8 entries made between 14.15 and 19.39.
- Thursday 27th March 2014, 4 entries made between 12.27 and 17.56.

21. Dr B provided a summary of her findings. She noted that the majority of Dr Mirza's QOF data entries in the 45 records in question were attributed to dates when the patient had other data entries, such as hospital letters or an appointment for a flu vaccination. In some cases (QR10, QR14, QR15, QR16, QR39 and QR42) the patient had a booked appointment with Dr Mirza. She noted in the case of QR10 that it was not clear whether it was the patient or the patient's husband who was seen. The audit trail showed that data were entered from those consultations contemporaneously; however, QOF data, while attributed to the date of the appointment, was added at a later date. In one case (QR14) these data were added nine months after the appointment.

22. Dr B noted a difference in the quality of the patients' notes between those that correlated with verified appointments with Dr Mirza and those entries which correlated with QOF targets. The latter lacked the narrative quality of Dr Mirza's usual entries.

23. The Tribunal paid close regard to the records in 11 cases where Dr B identified what she suggested were 'significant discrepancies'. The Tribunal also scrutinised with care the explanations given by Dr Mirza in relation to each, none of which were contradicted or challenged when he was cross-examined.

24. Dr B listed the QOF domains relevant to the 45 patients and summarised the relevant data within each domain. She noted that the most frequently found data entries were blood pressure ('BP') readings, found in 41 records. All of those readings lay within at least one QOF target range. BP readings were the sole data entry in ten records (QR2, QR22, QR24, QR26, QR31, QR33, QR34, QR40, QR41 and QR43). No corresponding appointment or other source of those BP readings was found.

25. The second domain was 'Urine albumin:creatinine ratio'. Dr B found relevant data entries in 14 records (QR3, QR5, QR6, QR7, QR8, QR9, QR10, QR11, QR12, QR14, QR16, QR17, QR18 and QR44). Those results did not have corresponding reference ranges.

26. The third domain was 'Patient on maximal tolerated therapy for diabetes'. Dr B noted that the exception reporting for maximal tolerated therapy for diabetes (exception criterion D) was made for the following patients: QR1, QR3, QR4, QR6, QR7, QR13, QR16, QR17, QR18, QR19, QR32, QR35 and QR44. In some cases, the patients' notes showed that their treatment was being actively managed and intensified (QR1, QR18 and QR32) or the patient was referred to secondary for optimisation of treatment shortly after the entry was made (QR3). In one case (QR19) there was evidence elsewhere in the patient's record to show that they were reluctant to increase their diabetes therapy and the basis of this exemption reporting was therefore clear.

27. The fourth domain was 'Diabetic foot risk assessments'. Dr B observed that the following patients had data entries for diabetic foot assessments made without corresponding details of a foot examination having taken place: QR4, QR6, QR10, QR13, QR14, QR15, QR16, QR17, QR18 and QR44. The following patients were coded by Dr Mirza as having diabetic feet at low risk in contradiction to other data in the records: QR4, QR14 and QR18.

28. The final domain was 'Chronic Obstructive Pulmonary Disease ('COPD')'. Dr B noted that in some cases the accuracy of the disease register for COPD appeared to be in question as two patients (QR21 and QR27) had normal spirometry results recorded in their records.

Dr Mirza's evidence

29. The Tribunal gave careful consideration to Dr Mirza's witness statement and his oral evidence. The following represents a summary of the key evidence given by Dr Mirza insofar as the Tribunal was concerned.

30. Dr Mirza explained that QOF is an annual records review/data read coding exercise, which was introduced in 2004. It relates to patients with long-term chronic diseases. It provides a means for the Department of Health ('DoH') to monitor the work done by GP Practices to manage such patients' conditions. The QOF data provide evidence of the quality of patient healthcare. QOF targets require GPs to carry out certain actions. If a Practice failed

to meet its QOF targets it would become an outlier on the published data, which would invite extra inspections. QOF data for each year were due by 31 March.

31. Dr Mirza explained that the QOF system provides IT generated read codes. The DoH would only be able to extract the relevant information from the medical records to their central Quality Management and Analysis System ('QMAS') through the QOF data read codes. Dr Mirza told the Tribunal that the QOF read codes can be entered by anyone who has access to the EMIS medical records system. In order to enter QOF data, an individual would select the relevant patient and then enter the data through drop down boxes on the patient records. Dr Mirza stated that an individual could only enter numerical values or tick boxes as required. The drop down boxes would provide standard sentences. Dr Mirza explained that an individual patient might be on several different QOF disease registers. He stated that his Practice would input up to 50,000 items of QOF data each year. He personally would enter thousands, potentially tens of thousands. QOF entries would not appear on patient records immediately, but would appear within 24 hours of being entered. Dr Mirza confirmed that QOF data could be provided from a source external to the Practice. Staff would scan the supporting paperwork for the data into the patient medical records using the 'docman' software, to the appropriate section, file or folder.

32. Dr Mirza denied that he had acted dishonestly when making the 52 entries to the medical records of the 45 patients in question. He denied making up the entries as he went along. He denied making up entries to look efficient in the eyes of his superior management. Dr Mirza stated that the exercise he was engaged in, inputting QOF data, was a legitimate one. He stated that the entries he had made were consistent with the data available to him at the time. He accepted that there might have been some innocent mistakes.

33. Dr Mirza explained that it was difficult for him fully to advance his defence to the Allegation without having been provided with unredacted electronic access to the whole patient record for each of the 45 patients. Not being in possession of the facts in relation to the GMC's disclosure decision, the Tribunal drew no inference adverse to the GMC from it. However, in considering Dr Mirza's evidence, the Tribunal acknowledged the effect that such a decision would necessarily have had on his ability to present his case fully. Notwithstanding the GMC stance, Dr Mirza was in fact able to identify 15 of the 45 patients, principally because not all of the material within the NHS Report had been redacted.

34. Dr Mirza stated that his 'appointment screen' would not include patients who were not booked in, whom he might have seen on an ad hoc basis as 'extras' when he was at the

Practice. He suggested that sometimes if a husband and wife were both patients of his and one had an appointment, he might take QOF readings for both if they had attended together. Similarly, Dr Mirza explained that his appointment screen would not include patients for whom he had undertaken home visits or telephone appointments.

35. Dr Mirza informed the Tribunal that to the extent that any errors might have arisen in the patient medical records, towards the end of March 2014 he was under significant professional and personal pressure. He was the senior partner at his Practice at that time. He was also the Locality Lead in his CCG, overseeing nine Practices which were engaged in a Quality Improvement Project. Additionally, he was involved in court proceedings arising from the breakdown of his marriage.

36. Dr Mirza suggested that as QOF is a records review/data read coding exercise, there was no requirement for a consultation to have taken place in order for the data to be entered into the patient records. Such data could be entered at any time, including out of hours. The Tribunal noted that it appeared to be common ground that there had been consultations in the following cases: QR10, QR14, QR15, QR16, QR39 and QR42. In response to a question from the Tribunal, Dr Mirza stated that perhaps 50% of QOF data arose from booked 'QOF appointments' whereas the remaining 50% arose opportunistically.

37. Dr Mirza explained that, excluding appointments, QOF data might arise from a number of sources, and he gave generic examples from the patients concerned where he could:

- General Practice Physical Activity Questionnaire ('GPPAQ').
- 'Batch data', for example, BP readings collated by staff.
- Multi-disciplinary meeting notes.
- Patients who had sought treatment from St Helier Hospital, which was 'Pathlinked' to the Practice, or other non-Pathlinked local Hospitals.
- Patients who had sought private treatment (QR5 and QR11) or treatment abroad (QR14, QR16, QR18 and QR42).
- Home BP readings (QR8, QR40 and QR41) or readings from the machine in the Practice waiting room or pharmacy.

38. Dr Mirza stated that not all QOF data from the above sources could or would be scanned into EMIS. He gave the following examples:

- Nurses undertaking batch data BP records would record the information relating to a number of patients onto a single piece of paper. Once the data were entered into the individual patient records, the piece of paper would be destroyed.
- Meeting notes from multi-disciplinary meetings in which a number of patients were discussed.
- Test/Lab results from non-Pathlinked NHS Hospitals might be provided over the telephone.
- Information about private treatment or treatment abroad might be provided orally by the patient. He explained that some patients would not want to hand over their documents to be scanned, sometimes for fear of them being lost. Reports from hospitals abroad might not be in English.
- Blood pressure readings might be provided orally.

39. Without having had unredacted electronic access to the whole patient record for each of the 45 patients Dr Mirza expressed a concern that documentation that might support his case could have been scanned onto parts of EMIS that Dr B may not have seen, such as a urine results folder or a spirometry folder.

40. Dr Mirza stated that he had been trained to attribute QOF data to the date on which the data arose rather than to the date on which it was being input. He accepted that this practice was distinct from the approach taken with ordinary consultation records. Furthermore, Dr Mirza stated that he did not believe that there was any requirement to mark such entries as being retrospective. That was in accordance with his vocational training and the guidance he received as a 'fledgling GP'. Dr Mirza confirmed that the same approach was taken in all 27 Practices in his CCG.

41. Dr Mirza stated that if during a consultation with a patient, he did not have sufficient time to deal both with the patient record and the QOF data, he would write a manuscript note on a piece of paper or in a notebook to remind him to input the QOF data later. He would provide all such notes to his Practice Manager for transparency purposes, albeit the Practice Manager was not expected to do anything with that information.

42. Dr Mirza suggested that the financial impact of the QOF payments in relation to all of the 45 patients in question would have been very low indeed. He estimated that it would amount to approximately £70-£80 for the Practice. He accepted that at a macro level, the income from meeting QOF targets might make up to approximately 15%-20% of the income of his Practice.

43. The Tribunal noted that Dr Mirza provided explanations relating to his entries on the medical records for each of the 45 patients. Given the passage of time and the fact that he did not know the identities of 30 of the patients, Dr Mirza could not speak directly to each case which meant that sometimes he provided the Tribunal with the most likely scenario. The Tribunal noted that when he was cross-examined Dr Mirza was only taken to the specific medical records of one patient (QR41).

Submissions

44. Mr Garside QC suggested that the issue for the Tribunal was whether Dr Mirza had made the entries in the patient medical records, dishonestly, to create a false picture at the end of the QOF period. He suggested that Dr Mirza had been acting as his own expert as to how EMIS worked. However, Mr Garside QC recognised that neither side had called experts and he accepted that might cause difficulties for the Tribunal. He submitted that in light of all the anomalies, discrepancies and lack of supporting evidence, Dr Mirza's entries in the medical records could not have been honestly made.

45. Mr Leonard, for Dr Mirza, provided the Tribunal with written submissions which he supplemented by oral submissions. Mr Leonard's principal points were as follows. The case brought by the GMC was deeply flawed from an evidential perspective. It was difficult to understand why the GMC had not disclosed the names of the 45 patients to Dr Mirza. There was no evidence to contradict any of the evidence given by Dr Mirza as to the practice and procedure relating to QOF data recording, nor as to his state of mind. Whatever was decided in relation to paragraph 2 of the Allegation, any suggestion of dishonesty was not sustainable on the evidence.

The Tribunal's Findings

46. 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.

47. The Tribunal had already accepted Dr Mirza's admission that he made 52 entries in the medical records of the 45 patients between 18 and 27 March 2014 as set out in Schedule 1 to the Allegation.

48. The Tribunal determined that Dr Mirza was a credible and reliable witness whose evidence was straightforward and consistent. His answers to questions were clear and the Tribunal found the explanations that he gave to be entirely plausible.

49. The Tribunal accepted the submission made by Mr Leonard that it had before it no evidence to contradict the evidence given by Dr Mirza as to the proper practice and procedure relating to QOF data recording, specifically in relation to the two key areas. First, whether there was any requirement to have a consultation with a patient. Secondly, whether QOF data entries made retrospectively needed to be marked as such. Mr Leonard pointed to the fact that the Dr B had not specifically addressed either area, and there was no comment from her on any apparent breaches of Guidance, Good Medical Practice ('GMP'), QOF guidance, good practice more generally or otherwise. The Tribunal noted that when he was cross-examined, at no stage was it suggested to Dr Mirza that he was in breach of any Guidance, although in his closing submissions Mr Garside QC submitted that in not marking his QOF data entries as being retrospective, Dr Mirza was in breach of GMP Paragraphs 19 – 21.

Paragraph 2a (i) and (ii)

50. The Tribunal went on to consider whether the GMC had proved, on the balance of probabilities, that Dr Mirza had not consulted/treated the patients on the dates when the Entries were made, or on the dates on which the Entries set out in Schedule 1 stated that he had obtained the information recorded.

51. The Tribunal gave careful consideration to the stem of paragraph 2a of the Allegation. The Tribunal determined that the wording 'had not consulted/treated the patients' could be read two ways. First, it could be read as alleging that Dr Mirza 'had not consulted/treated *'any'* of the patients. Secondly, it could be read as alleging that Dr Mirza 'had not consulted/treated *'all'* of the patients. In light of that ambiguity the Tribunal determined that it should select the interpretation that favoured Dr Mirza's case and therefore construed the stem to allege that Dr Mirza had not consulted/treated *'any'* of the patients on the relevant dates.

52. In light of the evidence it had received, including the credible and reliable evidence of Dr Mirza, the Tribunal was satisfied, on the balance of probabilities, that Dr Mirza had consulted/treated some of the 45 patients on the relevant dates.

53. Accordingly, the Tribunal found paragraph 2a (i) and (ii) of the Allegation not proved.

Paragraph 2b (i) and (ii)

54. The Tribunal went on to consider whether the GMC had proved, on the balance of probabilities, that Dr Mirza had not marked any of the Entries as being a retrospective record or any earlier consultation with the patient, or any review of the patient's records.

55. The Tribunal noted that paragraph 2b (i) and (ii) of the Allegation were drafted as assertions of fact and did not specifically allege any failing or failure on the part of Dr Mirza.

56. In light of the evidence it had received, the Tribunal was satisfied, on the balance of probabilities, as a matter of fact, that Dr Mirza had not marked any of the Entries as being a retrospective record either of any earlier consultation with the patient, or any review of the patient's records.

57. Therefore, the Tribunal found paragraph 2b (i) and (ii) of the Allegation proved.

Paragraph 2c

58. The Tribunal went on to consider whether the GMC had proved, on the balance of probabilities, that Dr Mirza knew that he had not consulted/treated the patients as alleged in paragraphs 2a and 2b.

59. In light of the Tribunal's finding in relation to paragraph 2a, it found that the first part of the allegation in paragraph 2c, which refers back to paragraph 2a, was not proved.

60. The Tribunal went on to consider whether the second part of the allegation in paragraph 2c, which purports to refer back to paragraph 2b, could in fact do so given that paragraph 2b does not relate to the consultation or treatment of patients. The Tribunal determined that consulting/treating a patient could not include marking an entry in patient medical records as being a retrospective record. The Tribunal therefore found the second part of the allegation in paragraph 2c was not proved.

61. Accordingly, the Tribunal found paragraph 2c of the Allegation not proved.

Paragraph 3

62. Following on from its findings in relation to paragraphs 2a, b and c of the Allegation, the Tribunal had to determine whether the fact that Dr Mirza had not marked any of the entries in the patient medical records as being retrospective records was dishonest.

63. The Tribunal had before it no evidence to contradict the credible and reliable evidence given by Dr Mirza as to the proper practice and procedure relating to QOF data recording, specifically in relation to whether QOF data entries made retrospectively needed to be marked as such.

64. The Tribunal reminded itself that paragraph 2b did not specifically allege any failing or failure on the part of Dr Mirza.

65. The Tribunal was not satisfied that Dr Mirza's actions, in not marking the Entries in the patient medical records as being retrospective records, were dishonest.

66. Therefore, the Tribunal found paragraph 3 of the Allegation not proved.

67. Further to the Tribunal's approach to paragraph 2a of the Allegation and its consequent finding on the relevant part of paragraph 2c of the Allegation, the Tribunal determined that even in the event of adverse findings against Dr Mirza on those paragraphs, the Tribunal would not have found Dr Mirza to have been dishonest, as alleged by paragraph 3 of the Allegation, for the reasons set out at paragraphs 48-49 of this determination.

The Tribunal's Overall Determination on the Facts

68. The Allegation made against Dr Mirza is as follows:

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

1. Between 18th March 2014 and 27th March 2014, you made entries in patient medical records as set out in Schedule 1 ('Entries').

Admitted and found proved

2. You:
 - a. had not consulted/treated the patients:

- i. on the dates when the Entries were made, or
Not proved
 - ii. on the dates on which the Entries set out in Schedule 1 stated that you had obtained the information recorded;
Not proved
 - b. did not mark any of the Entries as being a retrospective record of:
 - i. any earlier consultation with the patient, or
Determined and found proved
 - ii. any review of the patient’s records.
Determined and found proved
 - c. knew that you had not consulted/treated the patients as alleged in paragraphs 2.a. and 2.b. above.
Not proved
3. Your actions at paragraph 1 were dishonest by reason of paragraph 2.
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 - 25/03/2021

1. The Tribunal now had to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it had found proved, Dr Mirza’s fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal took into account all the evidence received during the facts stage of the hearing, both oral and documentary. No further evidence was adduced at this stage of the proceedings.

Submissions

3. The Tribunal noted that in light of its findings on the facts, Mr Garside QC, did not put forward a positive case that Dr Mirza is impaired by way of misconduct and therefore made no submissions on behalf of the GMC.

4. On behalf of Dr Mirza, once again Mr Leonard provided the Tribunal with written submissions which he supplemented by oral submissions. He submitted that if misconduct arose in this case it would be categorised as misconduct in the exercise of professional practice. A serious breach would be required, mere negligence would not constitute misconduct. Mr Leonard submitted that there was no basis for a finding that Dr Mirza's approach to QOF data entry fell below the standard to be expected, let alone 'far below' that standard.

The Relevant Legal Principles

5. The Tribunal reminded itself that at this stage of proceedings there was no burden or standard of proof and the decision of impairment was a matter for the Tribunal's judgement.

6. 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 secondly, whether as a result, the doctor's fitness to practise was thereby impaired.

7. The Tribunal had in mind that the question of impairment related to Dr Mirza's fitness to practise 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.

The Tribunal's Determination on Impairment

8. The Tribunal first considered whether Dr Mirza's actions amounted to misconduct.

9. The Tribunal had already determined that Dr Mirza made the 52 relevant entries into the medical records of the 45 patients in question. As a statement of fact, the Tribunal had determined that Dr Mirza had not marked any of those entries as being a retrospective record.

10. The Tribunal went on to consider whether by reason of those matters Dr Mirza's fitness to practise is currently impaired because of his misconduct.

11. The Tribunal had regard to its earlier finding that Dr Mirza was a credible and reliable witness whose evidence had been straightforward and consistent. The Tribunal found that his answers to questions were clear and the explanations that he gave were entirely plausible.

12. The Tribunal reminded itself that it had accepted the submission, made earlier in the proceedings by Mr Leonard, that it had before it no evidence to contradict the evidence given by Dr Mirza as to the proper practice and procedure relating to QOF data recording, particularly in relation to whether QOF data entries made retrospectively needed to be marked as such. Dr B had not specifically addressed this issue, and there was no comment from her to suggest that not marking retrospective QOF data entries accordingly represented a breach of Guidance, GMP, QOF guidance, good practice more generally or otherwise. The Tribunal noted that when Dr Mirza was cross-examined, at no stage was it suggested to him that he was in breach of any Guidance, although in his closing submissions Mr Garside QC submitted that in not marking his QOF data entries as being retrospective, Dr Mirza was in breach of GMP Paragraphs 19 – 21.

13. The Tribunal determined that it had no basis for finding that in not marking retrospective QOF data entries accordingly, Dr Mirza had fallen below the standard to be expected.

14. Therefore, the Tribunal determined that the facts found proved did not amount to misconduct and consequently, Dr Mirza's fitness to practise is not impaired.

Determination on Warning - 25/03/2021

1. The Tribunal determined that the facts found proved did not amount to misconduct and therefore Dr Mirza's fitness to practise was not impaired. Pursuant to s.35D(3) of the 1983 Act the Tribunal invited submissions from the parties as to whether it should take no action or give Dr Mirza a warning regarding his future conduct or performance.

Submissions

2. Mr Garside QC, for the GMC, submitted that in light of the Tribunal's earlier findings, the test for the imposition of a warning was not met in this case.

3. On behalf of Dr Mirza, Mr Leonard agreed that the test for the imposition of a warning was indeed not met in this case.

The Tribunal's Determination on Warning

4. The Tribunal had regard to the GMC 'Guidance on warnings', in particular the section which sets out the test for issuing a warning which states:

"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 a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- *there has been a significant departure from GMP ..."*

5. The Tribunal had already determined that it had before it no evidence to contradict the evidence given by Dr Mirza as to the proper practice and procedure relating to QOF data recording, particularly in relation to whether QOF data entries made retrospectively needed to be marked as such. Dr B did not specifically address that issue, and there was no comment from her to suggest that not marking retrospective QOF data entries accordingly represented a breach of Guidance, GMP, QOF guidance, good practice more generally or otherwise.

6. The Tribunal noted that when he was cross-examined, at no stage was it suggested to Dr Mirza that he was in breach of any Guidance, although in his closing submissions Mr Garside QC submitted that in not marking his QOF data entries as being retrospective, Dr Mirza was in breach of GMP Paragraphs 19 – 21.

7. The Tribunal determined that it had no basis for finding that in not marking retrospective QOF data entries accordingly, Dr Mirza had departed from the guidance in GMP or any other GMC supplementary guidance.

8. Therefore, the Tribunal determined to take no action.

9. XXX.

10. That concludes this case.

Confirmed

Date 25 March 2021

Mr Richard Tutt, Chair

ANNEX A – 17/03/2021

Application to Amend the Allegation under Rule 17(6)

93. At the outset of the hearing, Mr Charles Garside QC, made an application on behalf of the General Medical Council (GMC), to amend the Allegation pursuant to Rule 17(6) of the GMC (Fitness to Practise) Rules 2004 ('the Rules').

Submissions

94. Mr Garside proposed amendments to Schedule 1 of the Allegation and to replace paragraphs 2c and 3 with the following:

3. You knew that you:

a. had not consulted/treated the patients as alleged in paragraph 2 above;

b. should mark any retrospective entries as being such.

4. Your actions at paragraphs 1 and 2 were dishonest by reason of paragraph 3.

95. Mr Garside reminded the Tribunal of its powers pursuant to Rule 17(6) and submitted that the documents on which the GMC's case relies will not be changing as a result of the proposed amendments and that no further evidence will be adduced. Mr Garside submitted that the amendments sought to clarify rather than to change the Allegation brought by the GMC against Dr Mirza.

96. Mr Garside submitted that the proposed amendments could be made without any injustice to Dr Mirza as his witness statement directly addresses the allegations set out in the proposed paragraph 3. Mr Garside submitted that there is no material difference between the Quality and Outcomes Framework ('QOF') data that is central to this case, and patients' medical records and referred the Tribunal to paragraphs of Good Medical Practice (2013) ('GMP') that deal with record-keeping.

97. In further submissions, Mr Garside accepted that the Tribunal could allow the proposed amendments to Schedule 1 without allowing the proposed amendments to the Allegation.

98. Mr James Leonard, Counsel, on behalf of Dr Mirza, informed the Tribunal that prior to receiving the proposed amendments to the Allegation from the GMC on the evening before the hearing commenced, all communications about any proposed amendments had focused on Schedule 1. Mr Leonard accepted that the amendments sought in relation to Schedule 1 could be made without injustice.

99. Regarding the proposed amendments to the Allegation itself, Mr Leonard submitted that they could not be made without injustice being caused to Dr Mirza. Mr Leonard rehearsed the background to this case and stated that the Rule 7 process had begun in January 2020, with Dr Mirza's statement being dated January 2021. Mr Leonard submitted that this is an unusual case, in that it is about the recording of QOF data, rather than direct record-keeping of clinical events, which he suggested were different types of record. He identified the material change to the Allegation proposed by the GMC as being the addition of 'You knew that you' to the stem of paragraph 3 and the addition of sub-paragraph 3b, 'should mark any retrospective entries as being such'.

100. Mr Leonard submitted that knowledge of the accepted practice, regarding the inputting of QOF data, was not a matter previously alleged by the GMC, nor had Dr Mirza's representatives prepared its case with that in mind. Mr Leonard submitted that sub-paragraph 3b implicitly suggests that there is an accepted practice for inputting QOF data, in relation to which there is no evidence before the Tribunal. Mr Leonard submitted that there would be a clear injustice to Dr Mirza if the amendment were allowed, given the lateness of the application and the new allegation which Dr Mirza could not fairly be expected to meet.

The Tribunal's Decision

101. The Tribunal had regard to Rule 17(6) of the Rules:

(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and

(b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.

102. The Tribunal noted the agreed position of the parties in regard to Schedule 1 of the Allegation. It accepted that that amendments to Schedule 1 might assist in clarifying the QOF data in issue in this case. Accordingly, the Tribunal was satisfied that such amendments could be made without injustice to Dr Mirza and granted the GMC's application in that regard.

103. In considering the proposed amendments to the Allegation at paragraphs 3 and 4, the Tribunal considered the submissions of both parties. It was concerned by the extreme lateness of the application in the context of the case as a whole.

104. The Tribunal considered that at this stage of the hearing it is not clear what, if any, difference there is between recording QOF data as opposed to direct record-keeping of clinical events. The Tribunal was concerned that, in the absence of confirmation that there is no difference, and in light of the parties' clear disagreement in relation to this matter, it could not safely conclude that there was no difference.

105. The Tribunal accepted that there was no evidence currently before it of what accepted practice for recording QOF data was, and it was submitted on behalf of the GMC that it would not be adducing any further evidence on the matter. The Tribunal was therefore concerned that there could be an injustice to Dr Mirza, if the addition of sub-paragraph 3b were allowed, as it would create a new allegation which Dr Mirza's defence will not have been properly able to address.

106. The Tribunal also noted the GMC's submission that the proposed amendments to the Allegation did not alter the substance of the Allegation. The Tribunal was of the view, that if that were the case, no such amendment could be required.

107. Taking all of the above into account, the Tribunal determined to reject the GMC's application to amend the Allegation, save for the agreed amendments to Schedule 1.

SCHEDULE

Schedule 1 – Amended under Rule 17(6)

<u>Date</u>	<u>Time</u>	<u>Patient Record Number</u>
<i>18 March 2014</i>	<i>9:46</i>	<i><u>QR18</u></i>

Record of Determinations –
Medical Practitioners Tribunal

<i>18 March 2014</i>	<i>9:50</i>	<i><u>QR18</u></i>
<i>18 March 2014</i>	<i>10:12</i>	<i><u>QR28</u></i>
<i>18 March 2014</i>	<i>10:15:11</i>	<i><u>QR6</u></i>
<i>18 March 2014</i>	<i>10:15:39</i>	<i><u>QR6</u></i>
<i>18 March 2014</i>	<i>10:29</i>	<i><u>QR45</u></i>
<i>18 March 2014</i>	<i>11:31</i>	<i><u>QR21</u></i>
<i>18 March 2014</i>	<i>12:15</i>	<i><u>QR38</u></i>
<i>18 March 2014</i>	<i>12:19</i>	<i><u>QR4</u></i>
<i>18 March 2014</i>	<i>13:22</i>	<i><u>QR40</u></i>
<i>18 March 2014</i>	<i>13:37</i>	<i><u>QR36</u></i>
<i>18 March 2014</i>	<i>13:54</i>	<i><u>QR42</u></i>
<i>18 March 2014</i>	<i>13:55</i>	<i><u>QR34</u></i>
<i>18 March 2014</i>	<i>15:54</i>	<i><u>QR39</u></i>
<i>18 March 2014</i>	<i>15:55</i>	<i><u>QR30</u></i>
<i>18 March 2014</i>	<i>15:59</i>	<i><u>QR1</u></i>
<i>18 March 2014</i>	<i>16:20</i>	<i><u>QR11</u></i>
<i>18 March 2014</i>	<i>16:32</i>	<i><u>QR31</u></i>
<i>18 March 2014</i>	<i>17:12</i>	<i><u>QR32</u></i>
<i>18 March 2014</i>	<i>17:23</i>	<i><u>QR33</u></i>
<i>22 March 2014</i>	<i>23:23</i>	<i><u>QR37</u></i>
<i>23 March 2014</i>	<i>12:18</i>	<i><u>QR9</u></i>
<i>23 March 2014</i>	<i>12:31</i>	<i><u>QR1</u></i>

Record of Determinations –
Medical Practitioners Tribunal

<i>23 March 2014</i>	<i>12:33</i>	<i><u>QR19</u></i>
<i>23 March 2014</i>	<i>12:34</i>	<i><u>QR35</u></i>
<i>23 March 2014</i>	<i>12:50</i>	<i><u>QR3</u></i>
<i>23 March 2014</i>	<i>12:51</i>	<i><u>QR4</u></i>
<i>23 March 2014</i>	<i>12:53</i>	<i><u>QR32</u></i>
<i>23 March 2014</i>	<i>15:25</i>	<i><u>QR7</u></i>
<i>23 March 2014</i>	<i>15:30</i>	<i><u>QR44</u></i>
<i>23 March 2014</i>	<i>15:50:30</i>	<i><u>QR17</u></i>
<i>23 March 2014</i>	<i>15:50:48</i>	<i><u>QR17</u></i>
<i>23 March 2014</i>	<i>15:55</i>	<i><u>QR16</u></i>
<i>23 March 2014</i>	<i>15:58</i>	<i><u>QR8</u></i>
<i>23 March 2014</i>	<i>16:07</i>	<i><u>QR29</u></i>
<i>23 March 2014</i>	<i>16:12</i>	<i><u>QR22</u></i>
<i>23 March 2014</i>	<i>16:20</i>	<i><u>QR23</u></i>
<i>23 March 2014</i>	<i>16:58</i>	<i><u>QR20</u></i>
<i>23 March 2014</i>	<i>17:05</i>	<i><u>QR41</u></i>
<i>23 March 2014</i>	<i>17:18</i>	<i><u>QR24</u></i>
<i>24 March 2014</i>	<i>14:15</i>	<i><u>QR12</u></i>
<i>24 March 2014</i>	<i>14:16</i>	<i><u>QR25</u></i>
<i>24 March 2014</i>	<i>14:18</i>	<i><u>QR26</u></i>
<i>24 March 2014</i>	<i>14:39</i>	<i><u>QR2</u></i>
<i>24 March 2014</i>	<i>16:10</i>	<i><u>QR13</u></i>

Record of Determinations –
Medical Practitioners Tribunal

<i>24 March 2014</i>	<i>17:44</i>	<i><u>QR45</u></i>
<i>24 March 2014</i>	<i>19:12</i>	<i><u>QR27</u></i>
<i>24 March 2014</i>	<i>19:39</i>	<i><u>QR5</u></i>
<i>27 March 2014</i>	<i>12:27</i>	<i><u>QR43</u></i>
<i>27 March 2014</i>	<i>12:47</i>	<i><u>QR10</u></i>
<i>27 March 2014</i>	<i>12:49</i>	<i><u>QR14</u></i>
<i>27 March 2014</i>	<i>17:56</i>	<i><u>QR15</u></i>