PUBLIC RECORD

Dr Agoe has lodged an appeal against decisions of this Tribunal. She remains free to practise unrestricted while the appeal is considered.

Dates: 03.07.2023 – 21.07.2023,
30.10.2023 – 10.11.2023,
09.02.2024 - 10.02.2024,
08.03.2024

Medical Practitioner's name:	Dr Belinda AGOE
GMC reference number:	5151701
Primary medical qualification:	Vrach 1989 Peoples' Friendship University, Moscow

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

Summary of outcome
Suspension, 3 months.

Tribunal:

Legally Qualified Chair	Mr Andrew Mcloughlin
Lay Tribunal Member:	Mrs Lorna Taylor
Medical Tribunal Member:	Mrs Deborah McInerny

Tribunal Clerk:	Mr Mark Hibbert, 03.07.2023 – 14.03.2023 Mr John Poole, 18.07.2023 – 21.07.2023 30.10.2023 – 10.11.2023, 09.02.2024 - 10.02.2024 and 8.03.2024

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Oluwaseyi Ojo, Solicitor Advocate of Taylor Wood Solicitors
GMC Representative:	Ms Amy Rollings, Counsel

Attendance of Press / Public

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

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts - 07/11/2023

1. Dr Agoe qualified in 1986 from the Peoples' Friendship University in Moscow. She joined the Staunton Group Practice ('the Practice') as a GP Trainee in August 2005, becoming a GP partner with seven other GPs in 2008. By 2013 the Practice had reduced to having four Partners: Dr Agoe, Dr Y and two other GPs.

2. This hearing relates to two doctors, Dr Agoe and Dr Y, although they both face separate particulars of the allegations.

3. The Tribunal will inquire into allegations against Dr Agoe that between 1 November 2018 and 6 November 2018, whilst the Staunton Group Practice's registration with the Care Quality Commission (CQC) was suspended, Dr Agoe obstructed the transfer of provision of patient services to an alternative caretaker provider (Federated 4 Health) nominated by NHS England and on more than one occasion organised and/or delivered patient services when she knew it was unlawful to do so, following guidance and advice from several sources.

4. It is further alleged that in January 2019:-

1. Dr Agoe gave oral evidence under oath to the First Tier Tribunal that she was unaware until 1 November 2018 that there was to be a handover to a caretaking practice and
2. That an application to cancel the Staunton Group Practice's CQC registration was to be made to the Magistrates Court on 6 November 2018.

It is alleged that each of these actions was dishonest.

5. Accordingly, as a result of this, the GMC suggests that Dr Agoe's actions in the First Tier Tribunal hearing were dishonest and contrary to Good Medical Practice.

6. The initial concerns were raised with the GMC by NHS England (London) on 10 July 2019.

The Outcome of Applications Made during the Facts Stage

7. At the outset of the hearing, prior to Ms Rollings opening the case on behalf of the GMC, Mr Ojo, on behalf of Dr Y and Dr Agoe, made an application to submit that there was insufficient evidence provided by the GMC for the Tribunal to continue with some paragraphs of the Allegation (paragraphs 1.a.(i-v) and 3). The Tribunal refused the application; its reasoning is at Annex A.

8. On day five of the hearing Ms Rollings made an application on behalf of the GMC, pursuant to Rule 34(1) of the Fitness to Practise Rules (2004) as amended ('the Rules') to admit further evidence. The application was not opposed by Mr Ojo. The Tribunal granted the application and its reasoning is at Annex B.

9. Following the closing of the GMC's case, Mr Ojo, on behalf of Dr Agoe, made an application under Rule 17(2)(g) of the Rules in respect of paragraphs 1, 2, 3 and 4(a) of the Allegation. The application was refused by the Tribunal. Its reasoning is attached at Annex C.

10. XXX

11. Mr Ojo made an application to stay proceedings as an abuse of process on behalf of both doctors. The application was refused by the Tribunal. Its reasoning is attached at Annex E.

12. On 20 July 2023, the Tribunal refused an application made by Mr Ojo to adjourn the hearing in order to await the outcome of a judicial review claim to the High Court regarding the Tribunal's refusal to stay these proceedings for abuse of process. The Tribunal's reasoning is at Annex F.

13. On 21 July 2023, the Tribunal granted an application made by Mr Ojo to adjourn the hearing to allow independent legal advice to be sought by both doctors on the basis that there may be a conflict of interest in Taylor Wood continuing to act because reference had been made to an email that had been sent dated 31 October 2018 by that firm. The Tribunal's reasoning is at Annex G.

14. On 30 October 2023, the Tribunal refused a renewed application made by Mr Ojo to stay proceedings. Its reasoning is at Annex H.

15. On 2 November 2023, the Tribunal granted an application made by Mr Ojo to admit statements from three witnesses as hearsay evidence, including the statements of Dr Agoe and Dr Y. The Tribunal reasoning is at Annex I.

The Allegation and the Doctor's Response

16. The Allegation made against Dr Agoe is as follows:

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

1. Between 1 November 2018 to 6 November 2018, whilst your previous practice's (the Staunton Group Practice) registration with the Care Quality Commission ('CQC') was suspended, you:

    a. obstructed the transfer of provision of patient services at Morum House Medical Centre (the 'Premises') to an alternative caretaker provider named Federated4Health (the new caretaker practice) who had been nominated by NHS England to replace the Forest Road Group Practice (the previous caretaker practice) in that you:

        i. informed Ms A, Chief Operating Officer of Federated4Health, that Federated4Health would not be allowed to commence as the new caretakers, or words to that effect, on 1 November 2018; To be determined

        ii. refused to assist in a handover to Federated4Health when requested to do so by representatives of NHS England and/or Federated4Health on 1 November 2018; To be determined

        iii. refused to speak to Ms B, a representative of NHS England, when invited to do so on 1 November 2018; To be determined

        iv. refused to provide computer codes to allow Federated4Health access to patient information; To be determined

        v. refused to permit Federated4Health, its employees or agents to:

            1. have unfettered access to the Premises for the provision of patient services; To be determined

            2. supervise staff and/or operate safe governance systems at the Premises; To be determined

    b. on more than one occasion organised and/or delivered patient services in place of Federated4Health at the Premises. To be determined

2. You organised and/or delivered patient services as described at paragraph 1b when you knew it was unlawful to do so. To be determined

3. As a consequence of your actions at paragraphs 1 you occasioned:

    a. an application to be made by the CQC to a Justice of the Peace at Highbury Corner Magistrates Court on 6 November 2018 pursuant to section 30 Health and Social Care Act 2008 ('the Act'); To be determined

b. a Justice of the Peace on 6 November 2018 to make an Order pursuant to section 30 of the Act in order to protect the public interest in the protection of the health, safety and well-being of patients and the maintenance and promotion of public confidence in the system of regulation. To be determined

4. In January 2019 you gave oral evidence to the First Tier Tribunal ('FTT') under oath words to the effect that you were unaware:

a. until 1 November 2018 that there was to be a handover to Federated4Health as caretaking practice; To be determined

b. an application to cancel Staunton Group Practice's CQC registration was to be made to the Magistrates Court on 6 November 2018. To be determined

5. You knew your evidence referred to:

a. at paragraph 4a to be untrue in that you:

i. had provided a witness statement for the purposes of the FTT proceedings in which you acknowledge that Forest Road Group Practice's contract was coming to an end and that Federated4Health would take over as the new caretaker practice; To be determined

ii. had instructed solicitors to object to the handover to Federated4Health prior to 1 November 2018; To be determined

b. at paragraph 4b to be untrue in that you had instructed a solicitor to appear at the Magistrates Court on your behalf. To be determined

6. Your actions at paragraph 4 were dishonest by reason of paragraph 5. 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 Facts to be Determined

17. Dr Agoe made no admissions to the Allegation against her. The Tribunal is therefore required to determine the entirety of the Allegation.

Witness Evidence

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

- Dr E, Associate Medical Director for NHS England (London Region) since 2015 and in 2020 he was Deputy Medical Director [witness statement dated 30 June 2021 and supplementary statement 30 Aug 2021].
- Ms F, Deputy Regional Head of Professional Standards at NHS England.

- Ms B, Head of Primary Care for Commissioning and Contracting for North Central London Clinical Commissioning Group.
- Dr G, GP Partner at Medicus Health Partners ("MHP") working at Forest Road Group Practice ("Forest").
- Dr H, GP partner at MHP, working at Forest.
- Mr I, Inspector with the Care Quality Commission ('CQC') since 2012.
- Mr J, National Registration Adviser for the CQC.

19. Dr Agoe provided her own witness statement, dated 27 March 2023, and a supplemental statement dated 11 October 2023. She did not give oral evidence to the Tribunal and her statements were admitted into evidence as hearsay along with a statement from Dr Y and a statement from Dr K, GP.

Documentary Evidence

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

- CQC report, 8 May 2018
- Email from Ms L (Hill Dickinson – solicitors for NHS England) to Taylor Wood, 31 October 2018
- Email from Mr Ojo (Taylor Wood), 31 October 2018
- Clinical appointment lists of patients at the premises, 1 November 2018
- Email from Dr M (Taylor Wood), 2 November 2018
- Email to Dr Y and Agoe from Dr E, 7 November 2018
- Witness Statement of Dr Belinda Agoe in FTT, 3 December 2018
- Outcome letter of Performance Advisory Group, 14 December 2018
- Dr Y and Agoe's legal representative's response, 14 December 2018
- Ms B's CQC statement for use at the FTT hearing, 4 November 2018
- Order of Highbury Corner Magistrates Court, 6 November 2018
- Decision and Reasons from FTT, 4 February 2019

<u>The witnesses</u>

21. Dr E assisted the Tribunal in setting the context of the Staunton Group Practice in association with NHS England. He gave evidence that was consistent with his written statement and answered questions in a balanced manner.

22. Ms F had met neither Dr Agoe nor Dr Y but supported Dr E's evidence. She gave evidence to the Tribunal in a measured manner and demonstrated no malice towards either Dr Agoe or Dr Y in the Tribunal's judgement.

23. Dr G gave a detailed and consistent account of her experiences running the Forest Group caretaker practice. She remained helpful and greatly assisted the Tribunal in ensuring that it had a detailed understanding of the circumstances surrounding the transfer to

Federated4Health. The Tribunal found her to be sympathetic to both doctors' positions despite her impartiality being challenged on a number of occasions.

24. Dr H gave evidence consistent to her written witness statement. At times she reasonably conceded that her memory was not as clear as it was due to the passage of time. The Tribunal considered her evidence to be helpful in order to understand the events at the Premises when she was in attendance in order to attempt to ensure a smooth handover to Federated4Health.

25. Ms B gave detailed evidence with a view to assisting the Tribunal which in the main was consistent with her own witness statement. She was challenged on a number of occasions in cross examination made sensible concessions once being scrutinised about her memory of events which on occasion was somewhat hazy. The Tribunal concluded that she was overall a reliable witness doing her level best to recount events which were almost 5 years ago. The Tribunal noted that she was able to refer to a number of contemporaneous documents that supported the evidence that she had given to the Tribunal.

26. Mr I was clear and consistent when giving evidence to the Tribunal. He significantly assisted the Tribunal in explaining the context of the involvement of the CQC and Dr Agoe and Dr Y. He had an accurate recall of the events which were in accordance with his witness statement. The Tribunal was satisfied that he was giving evidence in an impartial manner and without displaying any animosity to either Dr Agoe or Dr Y.

27. Mr J provided factual information with regards to the CQC registration process in relation to GP practices and had met neither Dr Agoe nor Dr Y. He provided helpful evidence to enable the Tribunal to understand the technicalities surrounding GP partnerships.

28. Dr Agoe had provided detailed witness statements to the Tribunal. Unfortunately, a number of the allegations that she faced were not dealt with in the detail that one would expect someone facing allegations of this particular nature. The Tribunal would have been assisted in having a better understanding of her case had she chosen to give evidence but acknowledge that she was under no obligation to do so.

29. Dr Agoe believed that the referral to the GMC was a direct response to the position taken in the litigation against NHS England and the CQC to secure her livelihood. She believed that the referral was not one of a genuine belief in protecting patients or integrity of the profession but a collateral action to punish herself and Dr Y for showing the courage to stand up to the CQC and NHS England.

30. Dr Agoe believed that the GMC had acted unfairly and in a discriminatory manner in their failure to charge two other doctors, who were both white European colleagues, and were also working at the same time in the practice.

31. Dr Y had provided a witness statement in which he denied that he had been personally involved in events between 1 November 2018 and 6 November 2018. He stated that all communications were between lawyers and at no stage was he asked to provide

computer codes, explaining that they would have been provided by Forest Group. He stated that "*since we handed over to the Forest Group Practice, we stopped being involved in the management of the practice."* He suggested that *"NHSE was in collusion with CQC to frustrate all our efforts to run the practice and were against a group of ethnic minority doctors… The conduct of NHS England, CQC and now the GMC is corruption at the highest level which we do not expect in a decent democratic society".* He adopted Dr Agoe's statement and therefore added very little by way of evidential detail in relation to the allegations that they jointly face. He commented in his witness statement about the allegation of dishonesty surrounding the completion of his appraisal form. He said that he has suffered tremendously in the last few years which have been a nightmare for him and that his only sin was because of his love for his patients and the sense of obligations that he could just not abandon the practice but could do something to address the problems identified by the CQC.

32. Dr K had provided an account of her involvement in this matter and specifically her attendance at the Premises on 1 November 2018. The Tribunal would have been assisted in her giving evidence as to her full recollection of events on that day and thereafter. Her witness statement stated that she denied agreeing to be safeguarding lead as she had not been asked to do so and had been told not to get involved by Ms B.

The Tribunal's Approach

33. 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 allegations. Dr Agoe 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.

34. The Tribunal had regard to the case of *Byrne v General Medical Council [2021] EWHC 2237 (Admin)* which confirmed the principle that there is only one standard of proof in civil and regulatory cases and that is proof that the fact in issue more probably occurred than not.

35. The Tribunal may draw reasonable inferences from the facts, using common sense and from experience. However, it must not enter into speculation about matters or consider what evidence might or might not have been available in this case.

36. The Tribunal should have regard to the whole of the evidence and form its own judgement about the witnesses, and which evidence is reliable, and which is not. It is up to the Tribunal to decide what weight it attaches to the evidence. The fact that both doctors have denied all the parts of the Allegations cannot be a factor to be held against either of them when assessing their evidence. The Tribunal's role is to determine if the denial is supported or undermined by the evidence – *Okpara v GMC [2019] EWHC 2624 (Admin).*

37. The Tribunal had regard to the case of *R (on the application of Dutta) v GMC [2020] EWHC 1974 (Admin)*. The Tribunal should make a rounded assessment of a witness's reliability, rather than approaching their reliability in respect of each charge in isolation from the others. The Tribunal should not assess a witness's credibility exclusively on their demeanour when giving evidence, but their veracity should be tested by reference to

objective facts proved independently in their evidence, in particular by reference to the documents in the case.

38. When assessing evidence, the Tribunal should give consideration to factors such as inconsistencies within a witness's own evidence; a conflict of evidence with another witness or documents; the presence or lack of evidence to corroborate what a witness says; how contemporaneous a piece of evidence is and if there is a reason why an allegation could not be true.

39. A witness's credibility can be divisible: a witness can be truthful about some parts of their evidence and not truthful about another.

40. The inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether an event occurred.

Hearsay

41. The Tribunal was mindful that the witness statements of Dr Y, Dr Agoe (who both attended the hearing but did not give evidence) and Dr K (who did not attend to give oral evidence) is 'hearsay' evidence and the Tribunal should consider what weight separately to give each witness's evidence.

Dishonesty

42. In relation to the allegation of dishonesty the Tribunal had regard to the case of *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67* which sets out a two-limb test as follows:

> *'74. 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 the actual state of mind as to knowledge or belief as to facts is established, the question whether her 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.'*

Good Character

43. The Tribunal reminded itself that Dr Agoe is of good character. Good character is not of itself a defence to an allegation. However, caselaw establishes that good character can properly be material at the fact-finding stage. It is a matter to take into account in two ways, when considering the likelihood of either behaving in the manner alleged (propensity) and when considering the likelihood of whether she has told the truth contained in each of her witness statements which are before the Tribunal (credibility). It is not determinative. The weight to be attached to 'good character' is a matter for the Tribunal. It sits alongside all the

other evidence on each fact that remains in dispute. The Tribunal is entitled to weigh the specific factors relating to the actual events more decisively than a factor of good character relating to credibility and propensity.

Adverse Inference

44. The LQC advised that an adverse inference is where, because of the absence of certain evidence, a conclusion is reached which is to the detriment of, or unfavourable to, the case of the party which could have provided that evidence. For example, where a doctor chooses not to give evidence in answer to an allegation made against them, an adverse inference may be drawn which would be unfavourable to the doctor's defence.

45. The LQC advised that an adverse inference should not be drawn-

- Unless a prima facie case against the doctor had been established. This means that the GMC has presented sufficient evidence to establish the relevant facts unless it/they are disproved or rebutted: the fact that a doctor or their representative does not accept there is a prima facie case is not a sufficient reason for them not giving evidence.

- The doctor has been given appropriate notice and warning that, if she does not provide relevant evidence, an adverse inference may be drawn. A letter sent to the doctor in advance of the hearing will usually be sufficient. Here an email dated 15 June 2023 was sent to the legal representative of Dr Agoe.

- The Tribunal finds there is no reasonable explanation for the failure to provide relevant evidence. If either no explanation or no reasonable explanation on behalf of the doctors provided, the Tribunal should not speculate as to any possible reasonable explanation.

- There are no other circumstances specific to the case which would make it unfair to draw an adverse inference.

The Tribunal's Analysis of the Evidence and 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.

Paragraph 1 of the Allegation

47. Paragraph 1a of the Allegation alleges that between 1 November 2018 to 6 November 2018, whilst Dr Agoe's previous practice (the Staunton Group Practice) registration with the Care Quality Commission ('CQC') was suspended, she obstructed the transfer of provision of patient services at Morum House Medical Centre (the 'Premises') to an alternative caretaker provider named Federated4Health (the new caretaker practice) who had been nominated by

NHS England to replace the Forest Road Group Practice (the previous caretaker practice), through the various actions alleged at 1.a. i-v.

48. Paragraph 1b of the Allegation alleges that between 1 November 2018 to 6 November 2018, whilst Dr Agoe's previous practice (the Staunton Group Practice) registration with the Care Quality Commission ('CQC') was suspended, she on more than one occasion organised and/or delivered patient services in place of Federated4Health at the Premises.

Paragraph 1.a.i

49. The Tribunal considered whether Dr Agoe informed Ms A, Chief Operating Officer of Federated4Health, that Federated4Health would not be allowed to commence as the new caretakers, or words to that effect, on 1 November 2018.

50. The Tribunal was mindful that it had not received any evidence from Ms A (even though she was on site at the Premises). The only evidence that supports this allegation is evidence from Ms B. Ms B wrote in an email on 1 November 2018 to the Head of NHS England, that *'Dr Agoe & Dr [Y] have continued all day to refuse to allow the new caretakers to operate on site to supervise the staff and the clinics…'*

51. The Tribunal noted Ms Rollings invitation to consider Ms A as being representative of Federated4Health rather than to interpret the allegation as specifically referring to Ms A as an individual.

52. The Tribunal noted the wording of the Allegation and did not accept the submission of GMC as it specifically referred to Ms A as being the person notified. The Tribunal considered that there was insufficient evidence for it to be satisfied that Dr Agoe informed Ms A directly that Federated4Health would not be allowed to commence at the new caretakers.

53. The Tribunal therefore found paragraph 1.a.i of the Allegation not proved.

Paragraph 1.a.ii

54. The Tribunal considered whether Dr Agoe refused to assist in a handover to Federated4Health when requested to do so by representatives of NHS England and/or Federated4Health on 1 November 2018.

55. The Tribunal had regard to Ms B's evidence. In her witness statement she stated that:

> *'…When I arrived at Staunton, Ms A, Mr N and I persuaded Dr Agoe and Dr [Y] to join us in a side room. Dr Agoe and Dr [Y] told us that they would not assist with a handover to Federated4Health… Dr Agoe and Dr [Y] did not explain why they were not cooperating with the handover – they simply refused to share the information…*
>
> *During the course of the morning, I requested to speak with Dr Agoe and Dr [Y]. My requests were made through Dr H, who was Forest's lead GP and who was present to*

assist with the handover. Dr H had built a good relationship with Dr Agoe and Dr [Y] over the previous months while Forest had been the caretaking practice. Dr H asked Dr Agoe and Dr [Y] if they would join me in the room upstairs, however Dr H reported that they had said they did not want to speak with me…

Dr Agoe and Dr [Y] explained that they were being advised by their solicitor. They confirmed that they were now operating under their own GMS contract. Again, neither Dr Agoe nor Dr [Y] went into any detail about why they thought they were now able to do this. They had been complying with the CQC suspension until that point, and it was not clear to me what circumstances had changed that made them think they could now provide primary care services themselves…'

56. This is supported by hearsay evidence from both Dr E and Ms F. In Dr E's witness statement he stated:

'…Ms B attended Staunton on 1 November 2018 to assist with the handover to the new caretaking practice. Ms B reported to NHS England that Dr Agoe and Dr [Y] were refusing to handover to the new caretakers and were themselves providing care to patients…'

And in Ms F's statement she stated:

'…Through Ms B, I understand that Dr Agoe and Dr [Y] were disruptive in terms of implementing the new caretaker practice, for example, that Dr Agoe had told the Practice's regular support staff that business would be conducted as normal…'

57. The Tribunal also noted Mr I's evidence which suggested that Dr Agoe had not been cooperating on 1 November 2018. He stated that:

'I visited the Practice again on 7 November 2018. I was accompanied by my manager, Mr O, and Ms B of NHS England. The partners had changed their approach and appeared to be cooperating with Federated4Health.'

58. The Tribunal considered that the behaviour complained of would also have been consistent with the legal advice Dr Agoe had been given. It noted the email from Mr Ojo on behalf of Taylor Wood Solicitors at 11:27pm on 31 October 2018 to Ms L of Hill Dickinson:

'We reiterated our earlier position and confirmed… that from 01 November 2018, our clients will be providing services from the practice pursuant to their obligations under the GMS Contract. We clarified our position that any attempt to prevent our clients from fulfilling their obligations under the GMS Contract would amount to interfering with the Order of the Court and potentially an attempt at terminating the Contract which the Court had ordered not to be terminated…

Irrespective of whose position is correct (as agreed during the telephone conversation) the position remains that the GMS Contract cannot be terminated. Our clients have now

decided that they are in a position to perform their obligation under the contract and have made arrangements for this to commence on 01 November 2018.

We have always maintained that the appointment of the caretaker whose contract terminated yesterday was an unlawful interference with our clients' ability to perform their contract.

In the circumstance, that our clients have now made arrangements for provision of services and there can be no reasonable justification for your client appointing a caretaker to attend our clients' premises, to see patients who are being seen by our clients. Doing so will be unreasonable.

Further, our clients and their partners are the Leaseholders of the premises and they have been advised not to allow any caretaker to attend the premises.

We therefore reject your proposition that our clients must cooperate with the change of caretaker which we have continuously maintained was an unlawful interference with our client's contract…'

59. The Tribunal noted that there was no evidence before it to suggest that this email was sent without the instruction of Dr Agoe and that Dr Agoe was unaware of the content of this email being sent on her behalf. The Tribunal drew the commonsense inference therefore that the email had been sent upon instruction from Dr Agoe following the receipt of legal advice.

60. In Dr G's evidence she stated:

'On the evening of 31 October 2018, I returned to Staunton and I spoke with Dr [Y], Dr Agoe and one of the practice managers, … , in the waiting room about the fact that Federated4Health would be arriving in the morning to take over. I also informed them that Dr H would be present the following morning.

During that conversation downstairs in the waiting room Dr Agoe explained that they had sought advice from their lawyer and asked me if I could speak on the phone with him. Dr Agoe tried to hand the phone to me but I declined. I remember trying to encourage them to go along with the arrangements put in place by NHSE…'
In her evidence Dr G also stated at this meeting "she was quite excited; she was on the phone (to her lawyer) and she said something like "I think we can fight this"".

61. In Dr Agoe's witness statement she stated:

'On the basis of the lack of clarity, one of our lawyers, Dr M spoke to Dr H on the 01 November 2018, and sought confirmation that Forest Group will continue to provide caretaker services beyond 31 October 2018 either under their APMS or under our GMS Contract whilst the matter of the caretaker arrangement is resolved. I understand that Dr H provided this confirmation and also suggested that as the Caretaker, she cannot abandon the practice whilst the issue of the new caretaker is being resolved. In any event,

neither Dr [Y] nor I was in charge of the practice in the period from 01 November 2018 to 06 November 2018 as alleged or at all as all clinical decisions including meetings were organized and led by Dr H and Dr G, during this period…
No one informed us who or what the arrangement would be after the 31st October 2018 when Forest Road Group's caretaking contract ended. To our surprise, on the 01 November 2018, Ms A and Ms P attended the Practice for what I later understood to be for the purpose of taking over from the Forest Road Group practice as the caretaker. I categorically denied not giving them access to the practice or computer or the systems. This allegation does not even make any sense, access to the system and the general running of the practice was with the Forest Group Practice who were the outgoing Caretaker and from any new caretaker would be taking over…'

62. Having considered all the evidence, the Tribunal preferred the evidence of the GMC witnesses in that they had each given detailed accounts and were doing their level best to assist the Tribunal in answering detailed questions about events that had taken place a considerable time ago. By way of example, Ms B accepted that some of the events were not clear in her mind but relied on the content of her witness statement as being true. From the Tribunal's perspective this was most understandable given the period of time between the events and the date of the hearing. The Tribunal was satisfied that Dr Agoe refused to assist in a handover to Federated4Health when requested to do so by representatives of NHS England and/or Federated4Health between 1 November 2018 and 6 November 2018. It considered that she was acting in accordance with the legal advice she had received and that her actions were obstructive.

63. The Tribunal therefore found paragraph 1.a.ii proved.

Paragraph 1.a. iii

64. The Tribunal considered whether Dr Agoe refused to speak to Ms B, a representative of NHS England, when invited to do so on 1 November 2018.

65. The Tribunal noted Ms B's (Ms B's) evidence as referred to above. To reiterate, she stated that Dr Agoe and Dr Y had:

'told us that they would not assist with a handover to Federated4Health… Dr Agoe and Dr [Y] did not explain why they were not cooperating with the handover – they simply refused to share the information…

During the course of the morning, I requested to speak with Dr Agoe and Dr [Y]. My requests were made through Dr H, who was Forest's lead GP and who was present to assist with the handover. Dr H had built a good relationship with Dr Agoe and Dr [Y] over the previous months while Forest had been the caretaking practice. Dr H asked Dr Agoe and Dr [Y] if they would join me in the room upstairs, however Dr H reported that they had said they did not want to speak with me…'

66. The Tribunal had regard to in Dr H's evidence in her witness statement she stated:

'I was extremely concerned that there was no apparent clinical lead operating in a practice that looks after 14,000 patients and was open as usual. I went to Dr Agoe and Dr [Y] and urged them to talk to NHSE. They both told me that they wouldn't and that they had spoken to their lawyer, Dr M, who had told them not to talk with NHSE.

At some point, Dr [Y] and Dr Agoe agreed to speak with Ms B. Ms B asked Dr [Y] whose CQC registration they believed they were working under. I remember very clearly that Dr [Y] responded 'our own' which took me by surprise…'

67. The Tribunal had regard to Dr Agoe's evidence. In her witness statement she stated:

'On the basis of the lack of clarity, one of our lawyers, Dr M spoke to Dr H on the 01 November 2018, and sought confirmation that Forest Group will continue to provide caretaker services beyond 31 October 2018 either under their APMS or under our GMS Contract whilst the matter of the caretaker arrangement is resolved. I understand that Dr H provided this confirmation and also suggested that as the Caretaker, she cannot abandon the practice whilst the issue of the new caretaker is being resolved. In any event, neither Dr [Y] nor I was in charge of the practice in the period from 01 November 2018 to 06 November 2018 as alleged or at all as all clinical decisions including meetings were organized and led by Dr H and Dr G, during this period…

I was present when Dr H told Dr M that Forest Group would be there until a proper handover is carried out. On the basis of this confirmation, Dr [Y] and I continued to see patients that were already booked for us by the Forest Group.

I was surprised when on 01 November 2018, Mr I arrived at the practice at about 17:30 and told me that he had information that we had been providing services under the registration that was suspended and accordingly he would be seeking to take enforcement action against us. At the same time, he was also telling me "Off the record" that if I allowed NHS England to terminate the GMS Contract, CQC would not take any proposed enforcement action against us. I was surprised by the suggestion from Mr I and the conditions proposed so I immediately called our Solicitors to tell them what Mr I had said…'

68. The Tribunal noted that Dr Agoe failed in her witness statement to respond to the evidence of Ms B in any detail on what occurred on the Premises between 07:00 and 17:30. It also noted that Mr I denied in his evidence that there was any 'Off the record' discussion with Dr Agoe. The Tribunal did not draw an adverse inference from these failings as Dr Agoe had provided witness statements to the Tribunal and in the particular circumstances considered it unfair to draw an adverse inference.

69. The Tribunal accepted the evidence of the GMC witnesses because they had provided significant detail about the events from 1 November 2018 which were consistent with the contemporaneous emails passing between the legal representatives on 31 October 2018. Further, the Tribunal noted that Dr Agoe's witness statement consisted of bare denials and did not condescend to deal with what occurred at the Premises beyond her discussion with

Mr I at 17.30. Accordingly, it was satisfied that during the course of 1 November 2018 Dr Agoe did refuse to speak to Ms B when invited to do so, albeit it accepted that were occasions before and after this refusal when she did speak to her. The Tribunal was satisfied that her refusal to speak to Ms B was intended to, and did obstruct, the transfer of provision of patient services at the Premises to Federated4Health.

70. The Tribunal therefore found paragraph 1.a.iii proved.

Paragraph 1.a.iv

71. The Tribunal considered whether Dr Agoe refused to provide computer codes to allow Federated4Health access to patient information.

72. In Ms B's evidence she stated that:

> *'…We needed Dr Agoe and Dr [Y] to share the access codes to Staunton's computer systems. Without the access codes, it was impossible for Federated4Health to start work. Dr Agoe and Dr [Y] did not explain why they were not cooperating with the handover – they simply refused to share the information…'*

73. The Tribunal also noted that it had been Mr I's understanding that Dr Agoe and Dr Y were refusing to cooperate and share the computer access codes. In his witness statement he stated:

'On 1 November 2018, the CQC was informed of issues regarding the handover by Ms L, a solicitor working on behalf of NHS England. Ms L informed my colleague, Ms Q, that the Practice was refusing to allow Federated4Health to take over and that the partners were providing care services themselves. I understood that the partners were refusing to give the new caretakers the codes that would allow them to access the systems…'

74. Mr I also stated that:

> *'Following the cancellation order, I visited the Practice again on 7 November 2018. I was accompanied by my manager, Mr O, and Ms B of NHS England. The partners had changed their approach and appeared to be cooperating with Federated4Health. In a telephone conversation between Mr O and Dr Agoe, Dr Agoe accepted that the Practice's registration had been cancelled. Dr Agoe had stated that she had shared the access codes to the systems that morning and, now that Ms B was present to facilitate the handover, the handover was able to take place…'*

75. The Tribunal considered that it was reasonable to infer that on 1 November 2018 Dr Agoe had been refusing to share the access codes given the stance of Dr Agoe on 7 November 2018 when she commenced sharing the access codes as outlined by Mr I.

76. The Tribunal noted that Dr G's evidence supported the allegation. In her witness statement, she stated:

'Because I was not at Staunton on 1 November 2018, Dr H later informed me that Federated4Health wasn't being allowed to act as caretakers or clinical leads in the practice and instead they were being made to stay in a meeting room above the practice with no access to the internal clinical system.

I came to Staunton on 2 November 2018 with the intent of carrying out a robust handover as planned. I saw the handover as part of our role as caretakers to ensure that the transition to new caretakers would be as smooth as possible. I also cared about all the progress that had been made at Staunton in the previous six months and I did not want all of that work to fall apart. However, because Federated4Health's legitimacy as the caretakers was being questioned, and because the partners at Staunton, Dr Agoe and Dr [Y], were denying the caretakers from Federated4Health access to the clinical system, Federated4Health were essentially unable to perform the caretaking role effectively.'

77. The Tribunal noted that Dr Agoe's statements do not specifically address this allegation. The Tribunal did not draw an adverse inference from this failing as Dr Agoe had provided witness statements to the Tribunal. In these circumstances the Tribunal considered it would be unfair to draw an adverse inference. However the Tribunal was satisfied that the evidence brought before it by the GMC established from a number of evidential sources that Dr Agoe had refused to provide the computer codes when Federated4Health attended the Premises in order to commence as the new caretaker practice.

78. Having had regard to all the evidence, the Tribunal was satisfied that Dr Agoe refused to provide computer codes to allow Federated4Health access to patient information and that this was obstructive.

79. The Tribunal therefore found paragraph 1.a.iv proved.

Paragraph 1.a.v.1

80. The Tribunal considered whether Dr Agoe refused to permit Federated4Health, its employers or agents to have unfettered access to the Premises for the provision of patient services.

81. The Tribunal noted that Ms B stated in her witness statement that as *'we were not getting anywhere, the representatives from Federated4Health and I decided to move to a room upstairs so that we were out of the way of the main surgery…'*

82. In Dr H's witness statement she stated:

''Dr Agoe told me that the partners from Staunton would not let the doctors from Federated4Health into the building on the advice of Dr M. The GP Chair of Federated4Health, Ms A, informed me by text that she was aware she would not be allowed in the building. She suggested calling me when she arrived so I could greet her. It happened to be raining very hard that day and I said to Dr Agoe that we should

bring her in from the rain and give her a cup of tea. Dr Agoe agreed, and I brought Ms A upstairs to a room where we were joined by Ms B…'

83. In Dr G's witness statement, she stated that:

'Because I was not at Staunton on 1 November 2018, Dr H later informed me that Federated4Health wasn't being allowed to act as caretakers or clinical leads in the practice and instead they were being made to stay in a meeting room above the practice with no access to the internal clinical system…'

84. The Tribunal noted Dr Agoe's evidence. In her witness statement she stated:

'I was surprised when on 01 November 2018, Mr I arrived at the practice at about 17:30 and told me that he had information that we had been providing services under the registration that was suspended and accordingly he would be seeking to take enforcement action against us. At the same time, he was also telling me "Off the record" that if I allowed NHS England to terminate the GMS Contract, CQC would not take any proposed enforcement action against us. I was surprised by the suggestion from Mr I and the conditions proposed so I immediately called our Solicitors to tell them what Mr I had said.

'Throughout the time Mr I was on the premises, I continuously disputed what he was told that we were seeing patients under the registration that was suspended. I informed him that we had not seen patients under that registration since we were suspended in May 2018 and we could not have because he was aware that the Caretakers had been in place since then and more importantly that the Partnership had been dissolved and the registration ought to have been removed from their register having been notified that Dr … and Dr… had left before a decision was made on the application to remove their names as condition of the registration with the consequences that their departure from the Partnership caused a dissolution of the Partnership. Mr I was not prepared to listen to any explanation as he continued to threaten enforcement unless we allowed NHS England to terminate the GMS Contract…'

85. The Tribunal noted that Dr Agoe's witness statement did not specifically deal with this allegation, but it did note that the email sent by her legal representative on 31 October 2018 stated that Dr Agoe would not be granting access to the new caretaker practice. The Tribunal drew a common sense inference that this email was sent on instruction following legal advice and would include actions by Dr Agoe that would prevent Federated4Health from having unfettered access for the provision of patient services.

86. The Tribunal considered that the evidence supports the allegation that Federated4Health were denied unfettered access to the Premises for the provision of patient services as they were kept in a room in the Premises without access to the internal clinical systems. The Tribunal was satisfied that this obstructed the transfer of provision of patient services at the Premises to Federated4Health.

87. The Tribunal rejected the suggestion that Federated4Health did not have a legal right of access to Premises as claimed in the email of 31 October 2018 from her legal representatives. It noted Ms B's oral evidence as referred to by Ms Rollings in her submissions:

> *'the caretaker does not have to seek permission from the existing contract holders to sign a licence to occupy with the landlord. The caretaker is a new provider under a new – the temporary contract goes directly to the landlord to seek their permission because they would be the tenant and then the landlord would have to sign an agreement. They don't need to seek the existing contract holder's permission to put a licence to occupy in place..'*

88. Accordingly, the Tribunal found paragraph 1.a.v.1 of the Allegation proved.

Paragraph 1.a.v.2

89. The Tribunal considered whether Dr Agoe refused to permit Federated4Health, its employers or agents to supervise staff and/or operate safe governance systems at the Premises.

90. The Tribunal noted Dr H's evidence. In her witness statement she stated:

> *'I was extremely concerned that there was no apparent clinical lead operating in a practice that looks after 14,000 patients and was open as usual. I went to Dr Agoe and Dr [Y] and urged them to talk to NHSE. They both told me that they wouldn't and that they had spoken to their lawyer, Dr M, who had told them not to talk with NHSE.*
>
> *At some point, Dr [Y] and Dr Agoe agreed to speak with Ms B. Ms B asked Dr [Y] whose CQC registration they believed they were working under. I remember very clearly that Dr [Y] responded 'our own' which took me by surprise.*
>
> *I did not return to Staunton after 1 November 2018. However, I remember that my colleague Dr G did go back to Staunton in the following days to provide some clinical leadership. At this time, Federated4Health was present at Staunton but unable to do their caretaking duties. In effect, there were no official caretakers at Staunton overseeing the clinical care even though they were still suspended by the CQC…'*

91. The Tribunal noted Ms B's evidence. In her witness statement she stated:

> *'On the same morning (1 November 2018), a GP arrived at Staunton called Dr K ('Dr K'). I was informed by Forest staff members that Dr Agoe and Dr [Y] had instructed Dr K to request a handover from the staff on site. Dr Agoe and Dr [Y] intended for Dr K to be listed as safeguarding lead for Staunton.*

When I learned of Dr [K]'s arrival, I spoke with her and she explained that she had been advised by Dr Agoe and Dr [Y]'s solicitor that she would be sub-contracted to work at Staunton and could be appointed as caretaker. I explained to Dr K that Dr Agoe and Dr [Y] had failed to submit a request to NHS England to sub-contract part of their GMS contract. I also explained that NHS England had undertaken a formal expression-of-interest process in order to find a new caretaker, and that Dr K would have needed to participate in the process in order to be considered as a caretaker. Dr K accepted this.'

92. In Dr Agoe's witness statement she stated that:

'On the basis of the lack of clarity, one of our lawyers, Dr M spoke to Dr H on the 01 November 2018, and sought confirmation that Forest Group will continue to provide caretaker services beyond 31 October 2018 either under their APMS or under our GMS Contract whilst the matter of the caretaker arrangement is resolved. I understand that Dr H provided this confirmation and also suggested that as the Caretaker, she cannot abandon the practice whilst the issue of the new caretaker is being resolved. In any event, neither Dr [Y] nor I was in charge of the practice in the period from 01 November 2018 to 06 November 2018 as alleged or at all as all clinical decisions including meetings were organized and led by Dr H and Dr G, during this period.'

93. The Tribunal concluded that Dr Agoe distanced herself from addressing this allegation and failed to deal with the assertion regarding the appointment by her of Dr K as clinical /safeguarding lead. The Tribunal also reminded itself of Mr Ojo's email of 31 October 2023 which it considered supported this allegation as it was consistent with the alleged behaviour of Dr Agoe.

94. The Tribunal therefore found paragraph 1.a.v.2 of the Allegation proved.

Paragraph 1.b

95. The Tribunal considered whether on one or more occasion Dr Agoe organised and/or delivered patient services in place of Federated4Health at the Premises.

96. Given what the Tribunal has found thus far, the Tribunal concluded that it was more likely than not that Dr Agoe did organise/or deliver patient services in place of Federated4Health.

97. The Tribunal considered there to have been a course of conduct adopted by Dr Agoe and Dr Y following the legal advice received and instructions given to their lawyers which was reflected in the email at 11:27pm on 31 October 2018 sent by Taylor Wood.

98. The Tribunal noted Dr Agoe's witness statement stated:

'On the basis of the lack of clarity, one of our lawyers, Dr M spoke to Dr H on the 01 November 2018, and sought confirmation that Forest Group will continue to provide caretaker services beyond 31 October 2018 either under their APMS or under our GMS

Contract whilst the matter of the caretaker arrangement is resolved. I understand that Dr H provided this confirmation and also suggested that as the Caretaker, she cannot abandon the practice whilst the issue of the new caretaker is being resolved. In any event, neither Dr [Y] nor I was in charge of the practice in the period from 01 November 2018 to 06 November 2018 as alleged or at all as all clinical decisions including meetings were organized and led by Dr H and Dr G, during this period…'

99. The Tribunal concluded this to be factually inaccurate. It further concluded that there was not a lack of clarity as Dr Agoe had been notified of the takeover in a meeting with Dr G on 31 October 2018.

100. The Tribunal were firmly of the view that Dr G was doing her level best to assist the Tribunal with events that had taken a most unusual course from 31 October 2018. Far from evidencing any animosity towards Dr Agoe, the Tribunal formed the judgement that she was somewhat sympathetic to the position of Dr Agoe because Dr Agoe was now acting on legal advice and appeared to be uncomfortable in doing so. Dr G explained that they had had a very good working relationship hitherto and she herself wished to preserve the progress that her caretaker practice and the GPs from the Staunton Group Practice had achieved.

101. The Tribunal also noted from the documentary evidence that Dr Agoe had seen 22 patients that day. The Tribunal concluded that although the patients on 1 November 2018 had been arranged to be seen by the Forest Group Practice with Dr Agoe acting as a locum, when the patients were actually seen by Dr Agoe she was acting as if there was a contract for the Staunton Group Practice to provide medical services at the Premises. In fact, the Tribunal concluded that the was no such valid contract in place as was evidenced by the Magistrates Court order on 6 November 2018.

102. The Tribunal therefore found paragraph 1.b proved.

Paragraph 2 of the Allegation

103. Having found proved that on one or more occasion Dr Agoe organised and/or delivered patient services in place of Federated4Health at the Premises, the Tribunal considered whether Dr Agoe knew that it was unlawful to do so.

104. The Tribunal had regard to Mr I's evidence. In his witness statement he stated:

'I urged both doctors to consider what they were doing. I asked them to cooperate with the new caretakers. I urged them to reconsider their actions and reminded them that they were committing an offence by continuing to practise. I urged them to cooperate with NHS England, partly for their own sake, but also to ensure that patients were treated by a service under the supervision of a registered provider, about which the CQC had no concerns...'

105. In his supplemental statement Mr I stated:

'I informed Dr Agoe that I was there because we had received information that she and Dr [Y] were providing care services themselves without the new caretaker practice being in place. Dr Agoe appeared hesitant and did not answer me. During this exchange, Dr Agoe received a telephone call from a solicitor. Dr Agoe answered the phone and placed the solicitor on loudspeaker. I am now aware that the solicitor was Mr Seyi Ojo of Taylor Wood Solicitors.

Mr Ojo was aggressive from the outset. He stated that I had been sent to the Practice by NHS England. When I replied that this wasn't the case and that I was from a different organisation, it seemed to anger Mr Ojo. I was not prepared to be shouted at in this way, so I left the room.

I then telephoned Professor [X] to advise of the situation regarding Mr Ojo, before returning to Dr Agoe's consulting room. Dr Agoe then telephoned Dr [Y] to ask him if he was available to join us. I overheard Dr [Y] state that he was with a patient and that he would join us when he was finished.

I inspected the lists and saw that there were 22 patients on Dr Agoe's list for that day…

I then presented the list of patients for the day to Dr Agoe and asked her if it was accurate. I indicated that if she had been seeing patients that day, it would be in breach of the CQC suspension. Dr Agoe was again reluctant to answer me. Dr Agoe then called her solicitor, who advised Dr Agoe to 'say yes on my advice'…'

106. The Tribunal noted Dr Agoe's evidence. In her witness statement she stated:

'I was surprised when on 01 November 2018, Mr I arrived at the practice at about 17:30 and told me that he had information that we had been providing services under the registration that was suspended and accordingly he would be seeking to take enforcement action against us. At the same time, he was also telling me "Off the record" that if I allowed NHS England to terminate the GMS Contract, CQC would not take any proposed enforcement action against us. I was surprised by the suggestion from Mr I and the conditions proposed so I immediately called our Solicitors to tell them what Mr I had said.

'Throughout the time Mr I was on the premises, I continuously disputed what he was told that we were seeing patients under the registration that was suspended. I informed him that we had not seen patients under that registration since we were suspended in May 2018 and we could not have because he was aware that the Caretakers had been in place since then and more importantly that the Partnership had been dissolved and the registration ought to have been removed from their register having been notified that Dr … and Dr… had left before a decision was made on the application to remove their names as condition of the registration with the consequences that their departure from the Partnership caused a dissolution of the Partnership. Mr I was not prepared to listen to any explanation as he continued to

threaten enforcement unless we allowed NHS England to terminate the GMS Contract…'

107. The Tribunal noted the email from Dr M of Taylor Wood Solicitors on 13 November 2018 in which it was stated:

'…it is patently incorrect and disingenuous to suggest that Dr Agoe and Dr [Y] were providing regulated activities after the Caretaking Contract with Forest Group had expired on 31st October 2018…'.

108. However, the Tribunal considered this to be at material odds with the email Mr Ojo had sent on behalf of Taylor Wood Solicitors on 31 October 2018 at 11:27pm:

'…from 01 November 2018, our clients will be providing services from the practice pursuant to their obligations under the GMS Contract… our clients have now made arrangements for provision of services and there can be no reasonable justification for your client appointing a caretaker to attend our clients' premises, to see patients who are being seen by our clients..'

109. The Tribunal noted that Mr Ojo's email of 31 October 2018 was sent in reply to an email from Ms L of Hill Dickinson Solicitors at 16:17 on 31 October 2018 in which she wrote:

'The change of partnership does not render the original registration invalid. If there was a change is (sic) partnership prior to suspension then it is for the provider to notify the CQC about this. If there is an application for a new registration after the suspension, which includes partners who are part of the suspended registration, then the CQC would need to carefully consider the application and it would be highly unlikely the new application would proceed whilst the suspension was in place.

The CQC will not accept a caretaker who is an unregistered provider and will not accept a caretaker who is part of a suspension due to special measures. The current caretaker is a registered provider with the CQC and had submitted an application for the Staunton Practice. The same course of action will be taken by the new caretaker. The CQC recognises that a caretaker will have a registration but not for the practice in special measures and therefore exercises its discretion for the caretaker to operate the practice whilst the application is being processed, but this is on the basis the caretaker is already a registered provider.

Your clients are currently registered and that registration is suspended. Your clients may be part of a new application but it is clear the suspension will impact on that application and moreover as at todays' date your client is not a registered provider free of suspension.'

110. The Tribunal noted the further email from Mr Ojo on 1 November 12:12:

'…we are informed that Ms B of your Client attended our client's premises this morning and sought confirmation from them under what contract they were seeing patients and in response to which our clients confirmed they were seeing patients under their GMS Contract which subsists. We are instructed that Ms B responded that our client are practicing illegally as they do not have a GMS Contract under which they are able to provide services to patients. She advised our clients that the only contract available for them to provide 252 services was an APMS contract issued to a caretaker. When she was asked to confirm whether by her statement, she implied that the GMS Contract had been terminated she refused to provide the confirmation…'

111. The Tribunal considered that Ms L had advised Dr Agoe's representative that they would be acting unlawfully. It considered it was reasonable to infer that Dr Agoe had provided instructions, taken advice and permitted Taylor Wood to send emails on her behalf on 31 October and 1 November 2018 and therefore was aware that organising and/or delivering patients services on the Premises was unlawful.

112. The Tribunal preferred the evidence of Mr I who also provided oral evidence to the Tribunal. It considered that Dr Agoe did not deal with the specifics of this allegation by not referencing and failing to explain in detail the contents of her own solicitor's email of 31 October 2018.

113. The Tribunal therefore found paragraph 2 of the Allegation proved.

Paragraph 3 of the Allegation

114. The Tribunal considered whether, as a consequence of Dr Agoe's actions as found proved at paragraphs 1.a.ii-v & 1b, she occasioned:-

1. An application to be made by the CQC to a Justice of the Peace at Highbury Corner Magistrates Court on 6 November 2018 pursuant to section 30 Health and Social Care Act 2008 ('the Act'); and
2. A Justice of the Peace on 6 November 2018 to make an Order pursuant to section 30 of the Act in order to protect the public interest in the protection of the health, safety and well-being of patients and the maintenance and promotion of public confidence in the system of regulation.

115. The Tribunal had regard to Ms B's statement in relation to an application made by the CQC for urgent cancellation of the provider registration held by Dr Agoe and Dr Y, dated 4 November 2023:

'NHS England also notified the partners (Dr Belinda Agoe and Dr [Y]) solicitor that NHS England will be commencing the process to select a new caretaker from 1 November 2018 , due to Dr Belinda Agoe and Dr [Y] CQC provider 269 3 registration being suspended for a further six months from 23 October 2018 to 24 April 2019

On 1 and 2 November 2018, Dr Belinda Agoe and Dr [Y] have prevented the new Caretakers (Federated4Health) from operating within the Staunton Group Practice

Dr Belinda Agoe and [Y] on the instruction of their solicitor have notified NHS England that they now are operating under their GMS contract and will proceed to see patients

The basis that Dr Belinda Agoe and Dr [Y] on instruction from their solicitor believe they can now operate under their GMS contract is on the grounds that they believe that, (1) their CQC registration is valid following Dr and Dr leaving the partnership, (2) they have formed a new partnership and (3) they can sub-contract without approval from NHS England too identify their own caretaker

On 1 November 2018, I, Ms B and the new caretaker Federated4Health, attended Staunton Group Practice to enable the new caretaker to commence and complete a full handover from the previous caretaker, Forest Road Group Practice

On 1 November 2018 Dr Belinda Agoe and Dr [Y] put patients safety at risk by arranging and instructing a local GP to act as a caretaker. Patients were put at risk because Dr Belinda Agoe and Dr [Y] did not, (1) submit an application to sub-contract part of their GMS contract and (2) did not carry out the appropriate due diligence checks to ensure the individual GP could deliver the sub-contacting arangements (sic).

On 1 November 2018, I Ms B was informed whilst on site by the existing caretakers, Forest Group Medical Practice, that Dr Belinda Agoe and Dr [Y] had instructed the individual GP to request a handover from staff on site and that they should be listed as the safeguarding lead for the practice...'

116. The Tribunal noted that whilst Dr Agoe in her witness statement commented upon events at the Magistrates Court and at the FTT, she offered no explanation as to whether or not her behaviour had caused an application to be made to the Magistrates Court. The Tribunal noted that she had denied all the allegations contained within paragraph 1 of the Allegation and therefore the Tribunal concluded that she did not accept that she had caused the application to be made by the CQC, even though she had made no specific reference in her witness statements.

117. The Tribunal was satisfied that Dr Agoe's actions as found proved at paragraph 1 of the Allegation did occasion the application by the CQC to the Court.

118. The Tribunal had regard to the Order of Highbury Corner Magistrates Court dated 6 November 2018. It considered conclusive proof that a Justice of the Peace made an Order pursuant to section 30 of the Health and Social Care Act 2008.

119. Accordingly, the Tribunal found paragraphs 3a and 3b proved.

Paragraph 4 of the Allegation

120. The Tribunal considered whether in January 2019, Dr Agoe gave oral evidence to the FTT under oath words, to the effect that she was unaware until 1 November 2018 that there

was to be a handover to Federated4Health as caretaking practice, and that an application to cancel Staunton Group Practice's CQC registration was to be made to the Magistrates Court on 6 November 2018

121. The Tribunal had regard to following passage from the Decision and Reasons from the FTT, dated 4 February 2019.

> *'We [the First Tier Tribunal] noted that Dr Agoe said in her oral evidence that she was unaware that there was to be a handover to Federation4Health until 1 November. This assertion only emerged in the course of cross examination. In our view this is inconsistent with her witness statement which makes clear that she knew that the FGP contract was coming to an end and the intention of the CCG and NHSE was that Federation4Health (the Haringey Federation) would take over as caretaker…*
>
> *Dr Agoe told us that she was not even aware that an application to cancel registration was to be made to the Magistrates Court on 6 November. This is odd given that she was aware that an application was made on her behalf in the High Court to seek an injunction against the CQC restraining any enforcement action. It appears from the Statement of Case provided to the Magistrate that notice had been given. Further, Mr Ojo appeared on her behalf at the hearing at the Magistrates Court (where he also cross-examined Mr I). If what Dr Agoe is saying is reliable he did so without her knowledge or instructions. This seems very improbable…'*

122. Dr Agoe in her witness statement of 11 October 2023 stated as follows: –

> *"As to the issue of the evidence that I gave to the FTT relating to my knowledge or otherwise of the CQC s application to the Magistrates Court on 06 November 2019. Whilst I do not recall the exact question, I was asked under cross examination to which I was responding to as it has been many years now. I also understand that the transcript of the proceedings is not available. To the best of my recollection, I was certainly aware that the CQC made an application or was going to make an application to the Magistrates Court to cancel the Staunton Group registration."*

123. The Tribunal accepted the evidence which was not in dispute and therefore found paragraphs 4a and 4b of the allegations proved.

Paragraph 5 of the Allegation

Paragraph 5.a.i

124. The Tribunal considered whether Dr Agoe knew the evidence she gave to the FTT referred to at paragraph 4a of the Allegation was untrue. It was said that she had provided a witness statement for the purposes of the FTT proceedings in which she acknowledged that Forest Road Group Practice's contract was coming to an end and that Federated4Health would take over as the new caretaker practice.

125. The Tribunal considered whether Dr Agoe was aware that Federated4Health would take over as the new caretaker practice.

126. The Tribunal noted that Dr G forwarded an email to Dr Agoe on 26 October 2018 which advised:

> *'Commissioners require an urgent caretaker to commence from Thursday 1 November 2018 at 8am…'*

127. Accordingly, it considered that Dr Agoe was aware that there was to be a handover in advance although this did not mention that the new caretaker would be Federated4Health.

128. In addition, Dr G had given evidence that she had returned to Staunton Group Practice on the evening of 31 October 2018 immediately following the meeting with NHS England and Federated4Health, with the express purpose of informing Dr Agoe that the new caretakers were Federated4Health.

129. The Tribunal also noted comments made by the FTT:

> *'We considered the potential for misunderstanding on the part of Dr Agoe given that Dr H had said to her that she and Dr G would do what was necessary to facilitate the handover. In our view the overall impact of all the evidence, not least Dr Agoe's written statement, is that she knew in late October that the FGP contact was to end and a new caretaker would come in. The reality is Dr Agoe did not want Federation4Health to take over and somehow thought that this justified her stance. Her stance is, however, extremely difficult to understand because the suspension was in force: in the absence of a caretaker the service could not lawfully operate at all. This plain fact is one that she and Dr [Y] have not acknowledged…'*

130. The Tribunal had regard to Dr Agoe's witness statement to the FTT. In this she stated that:

> *'In the meantime and at the height of our dispute with NHS England, the caretaker's contract was coming to an end on 31 October 2018, our Solicitors wrote to NHS England and proposed that as the Court had determined that our GMC contract is not to be terminated in any circumstance, it would be expedient for the current caretaker or any new caretaker to be appointed to provide services under our GMS Contract rather than the APMS contract which NHS England gave to the caretakers which are not costs effective whilst our new Application to the Respondent for registration as a Provider of Regulated Activities and as a Registered Manager was considered. The application to the Respondent for registration was made on or about 26 October 2018.*
>
> *NHS England disagreed and proceeded to make arrangement with its preferred provider, the Haringey Federation, who had been tipped to take over our practice and which we disagreed should be appointed as the Caretaker at our premises particularly because once they move into our premises, we were and are anxious that their temporary*

contract will be perpetually renewed and even when we have a new CQC approval we would be prevent from returning to perform our GMS Contract which would eventually be terminated…'

131. The Tribunal concluded that the Haringey Federation was a reference to Federated4Health. As such the Tribunal was satisfied that Dr Agoe provided a witness statement for the purposes of the FTT proceedings in which she acknowledged that Forest Road Group Practice's contract was coming to an end and that Federated4Health would take over as the new caretaker practice.

132. The Tribunal determined that Dr Agoe knew her evidence referred to at Paragraph 4 a, was untrue, in the sense that Dr Agoe knew that it was false because it was incorrect.

133. The Tribunal therefore found paragraph 5.a.i of the Allegation proved.

Paragraph 5.a.ii

134. The Tribunal considered whether Dr Agoe knew the evidence she gave to the FTT referred to at paragraph 4a of the Allegation, was untrue, in that she had instructed solicitors to object to the handover to Federated4Health prior to 1 November 2018.

135. Given the Tribunal's earlier findings that Dr Agoe knew there was to be a handover prior to 1 November 2018, and that she instructed her solicitors to object to it prior to this date. The Tribunal was satisfied that the oral evidence to the FTT, referred to at paragraph 4a of the Allegation, was known by Dr Agoe to be untrue, in the sense that it was false because it was incorrect.

136. The Tribunal therefore found paragraph 5.a.ii proved.

Paragraph 5b

137. The Tribunal considered whether Dr Agoe knew her evidence referred to at paragraph 4b of the Allegation was untrue in view of her having instructed a solicitor to appear at the Magistrates Court on her behalf.

138. The Tribunal drew the inference that Dr Agoe had instructed a solicitor to appear at the Magistrates Court on her behalf as he cross examined witnesses at the hearing. It therefore considered that it was more likely than not that she knew that her comments to the FTT were untrue as she would have been unaware that an application to cancel Staunton Group Practice's CQC registration was to be made to the Magistrates Court on 6 November 2018.

139. The Tribunal therefore found paragraph 5b proved.

Paragraph 6 of the Allegation

140. The Tribunal considered whether Dr Agoe's actions at paragraph 4 were dishonest by reason of paragraph 5b.

141. The Tribunal had regard to Dr Agoe's second statement. In this she stated:

> *'…I was informed by my solicitors that the CQC application had been listed for a hearing before the Magistrates on 06 November 2019. Again, whilst I do not recall the question I was asked at the FTT hearing during cross examination which led the judge to make the comment she did, it was not to the effect that I was not aware of the application to the magistrates court. My recollection of the day was that I was asked so many questions which to me were presented in confusing ways.'*

142. The Tribunal considered Dr Agoe's state of mind at the time. It accepted that there was some confusion and uncertainty. It also considered that there was no apparent motivation for her to be dishonest. It considered that while she knowingly told untruths in the sense of the statements being false and incorrect, she did not deliberately seek to be dishonest and would not be considered dishonest by the objective standards of ordinary decent people.

143. The Tribunal therefore found paragraph 6 not proved.

The Tribunal's Overall Determination on the Facts

144. The Tribunal has determined the facts as follows:

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

1. Between 1 November 2018 to 6 November 2018, whilst your previous practice's (the Staunton Group Practice) registration with the Care Quality Commission ('CQC') was suspended, you:

    a. obstructed the transfer of provision of patient services at Morum House Medical Centre (the 'Premises') to an alternative caretaker provider named Federated4Health (the new caretaker practice) who had been nominated by NHS England to replace the Forest Road Group Practice (the previous caretaker practice) in that you:

        i. informed Ms A, Chief Operating Officer of Federated4Health, that Federated4Health would not be allowed to commence as the new caretakers, or words to that effect, on 1 November 2018; **Not proved**

        ii. refused to assist in a handover to Federated4Health when requested to do so by representatives of NHS England and/or Federated4Health on 1 November 2018; **Determined and found proved**

iii. refused to speak to Ms B, a representative of NHS England, when invited to do so on 1 November 2018; **Determined and found proved**

iv. refused to provide computer codes to allow Federated4Health access to patient information; **Determined and found proved**

v. refused to permit Federated4Health, its employees or agents to:

1. have unfettered access to the Premises for the provision of patient services; **Determined and found proved**

2. supervise staff and/or operate safe governance systems at the Premises; **Determined and found proved**

b. on more than one occasion organised and/or delivered patient services in place of Federated4Health at the Premises. **Determined and found proved**

2. You organised and/or delivered patient services as described at paragraph 1b when you knew it was unlawful to do so. **Determined and found proved**

3. As a consequence of your actions at paragraphs 1 you occasioned:

a. an application to be made by the CQC to a Justice of the Peace at Highbury Corner Magistrates Court on 6 November 2018 pursuant to section 30 Health and Social Care Act 2008 ('the Act'); **Determined and found proved**

b. a Justice of the Peace on 6 November 2018 to make an Order pursuant to section 30 of the Act in order to protect the public interest in the protection of the health, safety and well-being of patients and the maintenance and promotion of public confidence in the system of regulation. **Determined and found proved**

4. In January 2019 you gave oral evidence to the First Tier Tribunal ('FTT') under oath words to the effect that you were unaware:

a. until 1 November 2018 that there was to be a handover to Federated4Health as caretaking practice; **Determined and found proved**

b. an application to cancel Staunton Group Practice's CQC registration was to be made to the Magistrates Court on 6 November 2018. **Determined and found proved**

5. You knew your evidence referred to:

a. at paragraph 4a to be untrue in that you:

i. had provided a witness statement for the purposes of the FTT proceedings in which you acknowledge that Forest Road Group

Practice's contract was coming to an end and that Federated4Health would take over as the new caretaker practice; **Determined and found proved**

ii. had instructed solicitors to object to the handover to Federated4Health prior to 1 November 2018; **Determined and found proved**

b. at paragraph 4b to be untrue in that you had instructed a solicitor to appear at the Magistrates Court on your behalf. **Determined and found proved**

6. Your actions at paragraph 4 were dishonest by reason of paragraph 5. **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 - 10/11/2023

145. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Agoe's fitness to practise is impaired by reason of misconduct.

The Evidence

146. 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 on behalf of Dr Agoe at this stage. This consisted of a reflective statement made by Dr Agoe in May 2020, two clinical supervision reports from Dr R, enclosed in a letter dated 26 April 2020, and a Workplace Base Assessment Report from Dr S dated 16 March 2020, and various Continuing Professional Development ('CPD') certificates from 2019 and 2020 in including in relation to 'Conflict Resolution' and 'Leadership and Management Skills'.

Summary of Submissions

147. Both parties provided written submissions and also made oral submissions to the Tribunal.

GMC Submissions

148. On behalf of the GMC, Ms Rollings submitted that the facts found proved amount to serious misconduct and that Dr Agoe's fitness to practise was at the time of events impaired and remains impaired today.

149. Ms Rollings submitted that there was a serious failure to meet the standards required of doctors and that this carries a presumption of impaired fitness to practise.

150. Ms Rollings invited the Tribunal to have regard to the contents of "Good medical practice" (GMP)(2013 edition). She submitted that the following paragraphs were engaged:

> *22 You must take part in systems of quality assurance and quality improvement to promote patient safety. This includes:*
>
> > *a taking part in regular reviews and audits of your work and that of your team, responding constructively to the outcomes, taking steps to address any problems and carrying out further training where necessary*
> >
> > *b regularly reflecting on your standards of practice and the care you provide*
>
> *23 To help keep patients safe you must:*
>
> > *e respond to requests from organisations monitoring public health.*

Ms Rollings submitted that the organisations in paragraph 23e of the GMP include the CQC and NHS England and those requests include allowing the second caretaking practice, Federated4Health, to take over in a smooth and efficient manner.

> *Working collaboratively with colleagues*
>
> *35 You must work collaboratively with colleagues, respecting their skills and contributions.*
>
> *36 You must treat colleagues fairly and with respect.*

Ms Rollings submitted that such collaboration and treatment of colleagues does not include being obstructive and not allowing their colleagues at the caretaking practice to commence providing their services.

> *Act with honesty and integrity*
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.*
>
> > *a You must take reasonable steps to check the information is correct.*
> >
> > *b You must not deliberately leave out relevant information.*

151. Ms Rollings reminded the Tribunal of the Overarching Objective as set out in Section 1 of the Medical Act 1983 ("the Overarching Objective") which is to:

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

152. Ms Rollings submitted that all three limbs of the overarching objective are engaged. She submitted that Dr Agoe's conduct placed patients at risk during her obstruction of the handover process. In particular, that Dr Agoe should have been enabling the caretaking practice to begin to promote patient safety at the Premises. She submitted that the failure to do this does not promote and maintain public confidence in the medical profession and does not promote and maintain proper professional standards and conduct. She further submitted that providing patient care when it was unlawful to do so and when Dr Agoe *knew* it was unlawful also engages all three limbs of the Overarching Objective.

153. Ms Rollings submitted that Dr Agoe has demonstrated a serious and persistent lack of insight. She observed that Dr Agoe chose not to give evidence to the Tribunal, providing no real explanation as to why she had not done so. She submitted that no reason or explanation has been provided as to why Dr Agoe behaved in an obstructive manner towards the handover to the new caretaker Federated4Health on 1 November 2018.

154. Ms Rollings submitted that the most serious misconduct is in relation to Dr Agoe providing patient care on 1 November 2018 when she knew it was unlawful to do so. She stressed that Dr Agoe had been warned by Mr I who had tried in vain to tell her and Dr Y to "consider" what they were doing and "cooperate" with the new caretakers.

155. Ms Rollings submitted that Dr Agoe has a clear lack of insight into her wrongdoing and that there has been no attempt at remediation. She submitted that Dr Agoe had been arrogant in ignoring the rules in relation to CQC Registration, and does not appear to have understood the seriousness of what has been found proven in relation to patient safety.

156. Ms Rollings submitted that the sustained misconduct has been compounded by what appears to be a persistent lack of insight. She stressed that it was an unusual case because it centres on legal advice by Taylor Wood Solicitors which 'snowballed'. She submitted that despite this all arising from the advice in relation to the CQC registration, it shows poor judgment and integrity on the part of Dr Agoe.

<u>Submissions on behalf of Dr Agoe</u>

157. Mr Ojo submitted that Dr Agoe's fitness to practise is not impaired.

158. Mr Ojo addressed the Tribunal in relation to the relevant law to be considered at this stage in relation to misconduct and impairment.

159. Mr Ojo reminded the Tribunal that the fact that Dr Agoe contested the allegations does not automatically lead to a finding of lack of insight.

160. Mr Ojo referred the Tribunal to its determination on the facts which he submitted made it clear that Dr Agoe was taking legal advice. He echoed the GMC's supposition that this is a circumstantial case where the findings against the doctors hinged on an email written by their legal representatives who were acting in the best interest of their clients in a litigation against a commissioner who was determined to take their means of livelihood unlawfully.

161. Mr Ojo submitted that there was no problem with the Caretaker arrangement with the Forest Group and the doctors cooperated fully with the handover and worked collaboratively with the Forest Group. He submitted that but for NHS England "playing politics" by deliberately not informing the doctors the identity of the new caretakers and making proper arrangements, the confusions on 01 November 2023 would not have happened.

162. Mr Ojo submitted that the Solicitors (sic) letters written on behalf of the doctors must be viewed as litigation correspondence in the context of the High Court litigation and NHS Contract Dispute resolution between NHS England and the doctors. The correspondences (sic) were not sent to NHS England directly, but to its Solicitors. A Solicitor has the duty to take steps and act in the best interest of his or her client and as he or she deems fit, especially in this case, when NHS England's Caretaking arrangement was putting the doctors at the risk of bankruptcy.

163. In regard to the allegation of not assisting the handover, Mr Ojo submitted that it could not be said that Dr Agoe's fitness to practise is impaired. He submitted that the handover was between Forest Group and Federated4Health, and there was no legal obligation on Dr Agoe to assist in the handover, which he submitted was prohibited by the Health and Social Act 2008 following the CQC suspension and would have been a criminal offence.

164. Mr Ojo submitted that the Tribunal appears to have misapprehended that:

a. NHS England did not inform the doctors that there was to be a handover to Federated4health on 31 October 2018.
b. There was a meeting between NHS England and Forest Group on 31 October 2018 to which the doctors were not invited.
c. Dr H's evidence in response to what role Dr Agoe and Dr Y had to play in the handover. She responded that "…that would have been them discussing with Federated4health whether Federated4health were going to continue to employ them".
d. The Tribunal found that there was a meeting between Dr Agoe and Dr G on 31 October 2018, when in fact the evidence before the Tribunal is that Dr Agoe does not and did not work on Wednesdays which is at variance with Dr G's evidence. He submitted that it was improbable that Dr G had a conversation with Dr Agoe who was not even there on the day.

165. Mr Ojo submitted that the access codes were available at all times and with the Forest Group, and the doctors had already handed over the running of the practice to the Forest Group. Even in response to the Chair's questions on this matter, it was clear that no request for codes were made of Dr Agoe and Dr Y and none of the witnesses confirmed they requested the codes from Dr Agoe and/or Dr Y. There were doctors at the practice seeing patients on the date including Dr C and Dr B. He submitted that Dr H was at the practice on the day from 7am in the morning and had the codes from the day before.

166. The Tribunal was reminded that had it not been that patients were already booked for the doctors by the Forest Group Caretakers some weeks earlier, just like any other locum on the day, there would have been no need for the doctors to be present in the building on the day. Furthermore, Mr I of the CQC said when he visited the site on 7th November 2018, the doctors were already cooperating with the handover, and their attitudes had changed.

167. Mr Ojo submitted that in reaching any conclusion on impairment, the Tribunal has to look at all the circumstances of the case. The dispute in relation to the contract termination is a material factor, and the lawyers have a duty to protect the doctors' livelihood, and their Article 1 Protocol 1 rights. The fact that NHSE did not actively engage the doctors to participate in the handover and was only corresponding with them through lawyers, was a material inhibitory factor in constructive engagement.

168. The Tribunal would have to consider the doctors' state of mind amidst all the legal wrangles which they faced, and the threat to their contract and livelihood. The facts found proved were inferences drawn from the actions of the doctors' lawyers, which have been imputed to be their instructions. Whilst this might be a reasonable conclusion to draw, it not improbable that they were not. The Tribunal is therefore invited to "thread carefully"(sic) before reaching a conclusion of impairment on those grounds.

169. The doctors' past actions in relation to the CQC suspension when it first happened might assist the Tribunal.

> *"a. The doctors got a license for Forest Group to run the service for 6months from the landlord.*
> *b. The doctors allowed Forest Group to use the practice names to procure locum services in their names. Unfortunately, neither NHSE nor Forest Group paid for those services resulting in legal action for debt recovery being brought against the doctors.*
> *c. The doctors worked collaboratively with Forest Group to remedy deficiencies identified by CQC, when the partners who caused the problem abandoned the practice.*
> *e.(sic) The doctors have never had any complaints both in relation to patients' care and following the IOT suspension have worked in many practices, with good recommendation with the effect (sic) that the High Court changed the suspension to conditions.*
> *f.(sic) The doctors have complied with all the conditions imposed on them by the IOT and the high court.*

g.(sic) The event complained about was 5years ago, and the only event or complaint in a long career, no other complaint has been brought to the attention of the GMC since the event of November 2018."

170. Mr Ojo noted the test set out by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC & Grant (2011) EWHC 927* and submitted that the fitness to practise of the doctors could not be said to be impaired.

The Relevant Legal Principles

171. 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.

172. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first, whether the facts as found proved amounted to misconduct, and that the misconduct was serious and then, whether the finding of that misconduct which was serious, could lead to a finding of impairment.

173. The LQC advised that in the case of *Roylance v General Medical Council (No.2) [2000] 1 AC 311:*

> *"'Misconduct' is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances."*

174. In the case of *R (Remedy UK Ltd) vs The GMC [2010] EWHC 1245 (Admin)* it was held that conduct can properly be described as linked to the practice of medicine, even though it involves the exercise of administrative or managerial functions, where they are part of the day to day practice of a professional doctor.

175. The Tribunal should have regard to the GMP and the Overarching Objective.

176. The Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in the case of *CHRE v NMC and P Grant* [2011] EWHC 927 (Admin). In particular, that one or more of the following features are likely to be present when a doctor's fitness to practise is found to be impaired in that he/she:

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

b. *Has in the past or is liable in the future to bring the medical profession into disrepute; and/or*

c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future

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

The Tribunal's Determination on Impairment

Misconduct

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

179. The Tribunal reminded itself of its findings of fact in relation to Dr Agoe which can essentially be divided into two sets. The first, at paragraphs 1 – 3 of the Allegation relating to the obstruction of the handover to the new caretakers, and the second, at paragraphs 4 – 5 of the Allegation relating to her evidence at FTT.

180. The Tribunal considered whether paragraph 1.a.ii of the Allegation amounted to misconduct. It found that Dr Agoe obstructed the transfer of provision of patient services to Federated4Healh by refusing to assist in the handover when requested to do so. It considered that this could have posed a risk to patients in that Dr Agoe was seeking to operate regulated activities under a suspended CQC registration, without a caretaker practice to supervise their activities. The suspension could only be terminated if it was successfully challenged at a tribunal. This Tribunal noted that it was within Dr Agoe's rights to challenge the suspension of the registration by using the appropriate due process. The Tribunal concluded however that her actions from 1 November 2018 did not use the appropriate due process but sought to undermine, by obstructing the handover in order to install herself and Dr Y as being de facto in charge at the Premises.

181. The Tribunal concluded that these actions fell so far short of the standard to be expected so as to amount to misconduct.

182. The Tribunal considered whether paragraph 1.a.iii of the Allegation amounted to misconduct. It found that Dr Agoe obstructed the transfer of provision of patient services by refusing to speak to Ms B, a representative of NHS England. The Tribunal considered that this action in and of itself did not amount to misconduct. The Tribunal took into account that Dr Agoe had spoken to Ms B both before and after the refusal to speak to her in reaching this conclusion.

183. The Tribunal considered whether paragraph 1.a.iv amounted to misconduct. It found that Dr Agoe obstructed the transfer of provision of patients services by refusing to provide

computer codes to allow Federated4Health access to patient information. Given that the new caretaker practice Federated4Health did not have access to clinical notes, the Tribunal considered that there was a potential risk to patients as set out in paragraph 36 above. The Tribunal was satisfied that Dr Agoe's conduct fell so far short of the standards expected so as to amount to misconduct because she was seeking to act under her own GMS contract by obstructing the transfer of provision of patient services.

184. The Tribunal considered whether paragraph 1.a.v.1 amounted to misconduct. It found that Dr Agoe obstructed the transfer of provision of patient services by refusing to permit Federated4Health, its employees or agents to have unfettered access to the Premises for the provision of patient services. The Tribunal considered that there was a potential risk to patient safety as set out in paragraph 36 above by Dr Agoe's actions in refusing to permit unfettered access to Federated4Health for the provision of patient services. The Tribunal concluded that Dr Agoe's conduct fell so far short of the standards expected so as to amount to misconduct.

185. The Tribunal considered whether paragraph 1.a.v.2 amounted to misconduct. It found that Dr Agoe obstructed the transfer of provision of patient services by refusing to permit Federated4Health, its employees or agents to supervise staff and/or operate safe governance systems at the Premises. Again, the Tribunal considered that there was a risk to patient safety (see paragraph 36) arising from Dr Agoe's actions. It concluded that Dr Agoe's conduct fell so far short of the standards expected so as to amount to misconduct.

186. The Tribunal considered whether paragraph 1.b of the Allegation amounted to misconduct. It found that Dr Agoe on more than one occasion organised and/or delivered patient services in place of Federated4Health. It considered that this could have posed a risk to patients as set out in paragraph 36 above. It concluded that Dr Agoe's conduct fell so far short of the standards expected so as to amount to misconduct.

187. The Tribunal considered whether paragraph 2 of the Allegation amounted to misconduct. It found that Dr Agoe had organised and/or delivered patient services in place of Federated4Health when she knew it was unlawful to do so. The Tribunal noted that at no stage had Dr Agoe been advised by the CQC that what she was doing was lawful in seeking to provide patient services under her own GMS contract. In fact, the contrary was the case. Dr Agoe's solicitors had been advised as to the legal position. The Tribunal further noted that Dr Agoe had properly cooperated with the Forest group practice when they were the caretaker practice. The Tribunal concluded that nothing had changed so far as Dr Agoe was concerned, in that the CQC registration remained suspended and therefore she could not offer patient services other than as a locum doctor under a caretaker practice. The Tribunal noted that it had not heard any evidence from Dr Agoe as to why she considered herself to be acting lawfully other than her assertion to say that she was acting as a locum under a caretaker practice from 1 November 2018. The Tribunal had found this not to be the case. The Tribunal had concluded that the email from Hill Dickinson 31 October 2018 at 16:17 to Dr Agoe's solicitors clearly setting out the position and in the absence of any evidence to the contrary, had inferred that such information had been passed on to Dr Agoe because her solicitors then wrote in response at 11:27 PM to indicate *"details of the doctors who will be providing*

services at the premises under the contract as arranged by our clients and their partners today and tomorrow and the sessions they would be covering." There was no evidence before this Tribunal either from Dr Agoe's lawyers (who continue to act for her) or Dr Agoe to offer any explanation as to why and under what circumstances the email had been sent to Hill Dickinson late on the 31 October 2018 and it was not for the Tribunal to speculate as to what evidence there may or may not have been on this point.

188. Accordingly, the Tribunal concluded that to organise and/or deliver patient services in place of Federated4Health when Dr Agoe knew it was unlawful to do so amounted to misconduct as it obstructed the lawful provision of patient services at the Premises.

189. The Tribunal considered paragraph 3 of the Allegation. It found that Dr Agoe's actions as found proved at paragraph 1 of the Allegation occasioned an application to be made by the CQC to a Justice of the Peace at Highbury Corner Magistrates Court on 6 November 2018, and for the Justice of the Peace to make an Order pursuant to section 30 of the Act. The Tribunal considered that paragraph 3 was a factual consequence of Dr Agoe's actions which amounted to misconduct.

190. The Tribunal reminded itself of the email which Dr G forwarded to Dr Agoe at 11:22 on 26 October 2018 which stated that *'further to the previous email, please be advised that Federations may apply*'. The previous email which had been forwarded by Dr G had stated that *'Commissioners require an urgent caretaker to commence from Thursday 1 November 2018 at 8am…'*.

191. The Tribunal considered paragraph 4 and 5 of the Allegation. It found that in January 2019 Dr Agoe gave oral evidence to the FTT under oath; words to the effect that she was unaware until 1 November 2018 that there was to be a handover to Federated4Health as caretaking practice, and that an application to cancel Staunton Group Practice's CQC registration was to be made to the Magistrates Court on 6 November 2018.

192. The Tribunal found that Dr Agoe knew her evidence was untrue by reason of the witness statement she had provided for the purposes of the FTT, her instructions to her solicitor to object to the handover, and her having instructed her solicitor to appear at the Magistrates Court on her behalf.

193. Whilst the Tribunal found her actions to be untrue, it did not find that Dr Agoe was dishonest. However, it considered that her actions fell so far short of the standards expected of a medical practitioner to provide clear and accurate evidence to the FTT so as to amount to misconduct.

194. The Tribunal considered that Dr Agoe's actions at paragraphs 1 a.ii, 1 a.iv, 1a v.1-2 of the Allegation breached the following paragraph of GMP:

Working collaboratively with colleagues

35 You must work collaboratively with colleagues, respecting their skills and contributions

195. The Tribunal considered that Dr Agoe's actions at paragraph 1b of the Allegation breached paragraph 36 of GMP:

36 You must treat colleagues fairly and with respect.

196. The Tribunal considered that Dr Agoe's actions at paragraph 2 of the Allegation breached paragraph 65 of GMP:

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

197. The Tribunal considered that Dr Agoe's actions at paragraph 5 of the Allegation breached paragraph 72a and b of GMP:

Openness and legal or disciplinary proceedings

72 You must be honest and trustworthy when giving evidence to courts or tribunals. You must make sure that any evidence you give or documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.

Impairment

198. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Agoe's fitness to practise is currently impaired.

199. The Tribunal considered that the misconduct was remediable. It looked for evidence of insight and remediation and considered whether there was a risk of Dr Agoe repeating her misconduct in the future.

200. The Tribunal considered that there was a notable lack of evidence in regard to meaningful insight and remediation.

201. The Tribunal had regard to Dr Agoe's witness statement, dated 27 March 2023. In this she stated that:

'I have never had any problems with the GMC before, and I stayed behind to correct the deficiencies identified by CQC which were collective responsibility. I have attended courses on practice management, and all the places I worked for attested to my

competence. I now have a better understanding of CQC and compliance with the regulation.

I have reflected on the unfortunate chains of events, especially my love for the patients and the practice, and maybe I should have abandoned the practice, jump the ship like Dr... and Dr… At the time I genuinely believed the practice had a future and with the right group of doctors, the practice would return to its old glory. I understand that the practice has changed hands so many times since our removal, and the patients are served by locums and changing providers. I would like to put this experience behind me, as I have suffered tremendously from the events and suffered reputational damage.'

202. The Tribunal had regard to Dr Agoe's reflective statement provided at this stage of proceedings. It noted however that it was written in or around May 2020.

'… I have been reflecting on the different issues and journey to this date and I continue to do this daily so as to fully understand the issues and allegations and to ensure I learn from the different perspectives, the effects this had on the delivery of the GMS contract, the confusion and misunderstanding surrounding the subsequent care taking arrangements by NHSE and its effect and impact on both sides. At all levels I have taken stock and reflected.

At all levels, I have taken stock and reflected.

On that Monday afternoon when I received the email announcing the suspension of my GMC registration, I was distraught, and extremely anxious about the implications not only on my career and the impact this will have on my family but also felt that I have let my patients and profession down. I felt extremely guilty and ashamed but quickly had to seek remedial action.

I had to start thinking deeply about the events leading to where I found myself and most importantly reflect on these and implement any changes within my remit and ensure that the learning outcomes from these events are employed successfully by me…'

203. The Tribunal considered that there was some evidence of emerging insight at that stage. However, there was no further evidence before the Tribunal that Dr Agoe had continued to gain further insight and remediate her misconduct. It noted that the last CPD certificate was dated 27 April 2020. Moreover, the CPD undertaken did not seem wholly targeted at the concerns in this case and they were not accompanied by any reflections by Dr Agoe on learning undertaken and how she will apply her learning in the future.

204. The Tribunal was not satisfied that Dr Agoe has meaningful and/or objective insight into her misconduct and how such conduct undermines patient safety, public confidence in the profession and proper professional standards.

205. The Tribunal considered that limbs a – c of the Dame Janet Smith test are engaged. It considered that Dr Agoe:

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

b. Has in the past or is liable in the future to bring the medical profession into disrepute; and/or

c. Has in the past breached or is liable to breach in the future one of the fundamental tenets of the medical profession…

206. Given the lack of insight and remediation, the Tribunal could not be satisfied that it was highly unlikely Dr Agoe would repeat her misconduct if such similar circumstances arose in the future.

207. The Tribunal determined that Dr Agoe's fitness to practise is impaired by reason of misconduct. It determined that a finding of impairment was necessary to uphold all three limbs of the overarching objective.

Determination on Sanction - 08/03/2024

208. Having determined that Dr Agoe'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.

209. Dr Agoe was not present at this stage of the proceedings. Mr Ojo informed the Tribunal that this was due to a family matter. There was no application to adjourn the matter or information to suggest she wished to give evidence at this stage. Accordingly, it was considered fair and appropriate to consider the question of sanction.

The Evidence

210. The Tribunal had regard to all the evidence received during the earlier stages of the hearing, both oral and documentary, where relevant to reaching a decision on sanction. It received no further evidence at this stage.

Submissions

211. Both parties provided detailed written submissions in advance of the hearing which they adopted before the Tribunal.

GMC submissions

212. On behalf of the GMC, Ms Rollings submitted that the appropriate sanction was one of suspension.

213. Ms Rollings took the Tribunal through the provisions of the Sanctions Guidance (2020 version)('SG'). She highlighted paragraph 12 of the SG which provides that:

> *"12 Doctors are expected to be familiar with and follow the guidance. They must use their judgement in applying the principles to the various situations they will face as doctors…serious or persistent failure to follow the guidance which poses a risk to patients and/or the public or undermines confidence in doctors will put a doctor's registration at risk."*

214. Ms Rollings submitted that it cannot be disputed that Dr Agoe should have been familiar with GMP and its provisions in relation to patient safety and upholding the public's confidence in the medical profession.

215. Ms Rollings also referred to the overarching objective as outlined at paragraph 14 of the SG:

> *'14 The main reason for imposing sanctions is to protect the public. This is the statutory overarching objective, which includes to:*
> *(a) protect and promote the health, safety and wellbeing of the public*
> *(b) promote and maintain public confidence in the medical profession*
> *(c) promote and maintain proper professional standards and conduct for the members of the profession.'*

216. Ms Rollings submitted that the Tribunal must consider the aggravating and mitigating factors against the central aim of sanctions. She reminded the Tribunal that it is less able to take mitigating factors into account when the concern is about patient safety, or of a serious nature, than if the concern is about public confidence in the profession.

217. Ms Rollings referred the Tribunal to the various examples of mitigating factors outlined in the SG. She then referred the Tribunal to the aggravating features outlined, and submitted that the following was relevant:

> *'52 A doctor is likely to lack insight if they:*
>
> *(a) refuse to apologise or accept their mistakes*
> *(b) promise to remediate, but fail to take appropriate steps, or only do so when prompted immediately before or during the hearing*
> *(c) do not demonstrate the timely development of insight..'*

218. Ms Rollings submitted that Dr Agoe did not make any formal admissions at the hearing, or provide any oral evidence or an explanation or reason as to why she did not give oral evidence. Ms Rollings submitted that this failure to address the full extent of the conduct

and behaviour and to explain and discuss what happened, raises serious issues as to the extent of the doctor's insight into her behaviour.

219. Ms Rollings submitted that the Tribunal should have regard to the persistence and seriousness of the misconduct and the lack of insight and the complete absence of remediation. She submitted that on the face of the evidence, the doctor has not attempted remediation because she does not think that she has done anything wrong. Ms Rollings drew the Tribunal's attention to paragraph 56 of its determination on impairment in relation to Dr Agoe where it said: '*The Tribunal considered that there was a notable lack of evidence in regard to meaningful insight and remediation.'*

220. Ms Rollings submitted that in the absence of any remediation and any meaningful insight, it has not been demonstrated that there would not be a risk to patient safety in the future, should the doctor be placed in a similar position in the long-term future.

221. Ms Rollings submitted that, in regard to insight, there has been no substantive explanation from the doctor which fully explains why the events of 31 October 2018 took place and she apologises for what occurred subsequently. Furthermore, at various points they have raised meritless arguments in relation to what they say is unfair treatment by the GMC. Ms Rollings submitted that this is a further aggravating feature of the case.

222. Ms Rollings submitted that the conduct cannot be dismissed as an isolated and historic impairment of judgement caused by the incorrect advice of their legal representatives, as there were several opportunities for the doctor to listen to the advice of other individuals involved, such as Dr G. She submitted that various people tried to help the doctors and guide them but they chose to ignore that advice and place reliance upon legal advice as evidenced by the emails that were sent on Dr Agoe's behalf by the solicitors that she had instructed.

223. Ms Rollings referred the Tribunal to paragraph 55a-b of the SG which refers to aggravating factors that are likely to lead the tribunal to consider taking more serious action:

> *55 Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:*
>
> *a) a failure to raise concerns…*
>
> *b) a failure to work collaboratively with colleagues…*

224. Ms Rollings submitted that the conduct on 31 October 2018 amounts to a failure to work collaboratively with colleagues and a failure to raise concerns surrounding the safe running of the GP Practice which placed patients at risk. She submitted that the doctor has not sought to express regret for those events or apologise to the people involved.

225. Ms Rollings submitted that the Tribunal might not be convinced that the doctor has taken any steps to remediate, nor demonstrated a willingness to remediate the serious misconduct.

226. Ms Rollings invited in her written submission, that the Tribunal should consider the paragraphs of the SG which advise when suspension might be appropriate. She submitted that paragraphs 91 and 92 of the SG were relevant, and also invited the Tribunal to consider paragraph 97 of the SG which provides a list of various factors which being present would indicate suspension may be appropriate.

227. In summary, Ms Rollings submitted that suspension was the appropriate sanction and necessary to maintain public confidence in the profession. She submitted that there has been a serious breach of GMP and that there are several aggravating features such as no insight, an early apology or remediation. She submitted that there is not a significant risk of repeating the behaviour and noted that the doctor is no longer part of a GP Partnership. However, she submitted that there is no evidence that Dr Agoe has acquired the necessary insight into her misconduct and remedied it.

228. Ms Rollings submitted that a period of 12 months suspension was appropriate. She submitted that during such a period there would be no risk posed to the wider public and it would allow a period of reflection and remediation for the doctor to gain meaningful insight.

Submissions on behalf of Dr Agoe

229. On behalf of Dr Agoe, Mr Ojo reiterated the Tribunal's findings in relation to facts and impairment. He submitted that the Tribunal made various observations on the facts which informed its findings on impairment which, he submitted, were at times, inconsistent.

230. Mr Ojo submitted that it was surprising that the Tribunal had considered that the doctor's insight was not fully developed given they had reflected extensively in their appraisal on the experience. He submitted that it was possible the Tribunal did not have opportunity to consider the appraisals document, moreover, he submitted that the concept of an insight not fully developed was a misapprehension of the concept of insight. He submitted that either someone has insight or not, and that the lessons learnt from gaining insight are lifelong and continuous.

231. Mr Ojo outlined the approach the Tribunal must follow at this stage. He reminded the Tribunal of the reason for imposing sanctions; which is to protect the public as encapsulated in the three limbs of the overarching objective. He also reiterated the principle of proportionality and that sanctions are not imposed to punish or discipline doctors.

232. Mr Ojo submitted that a failure to follow GMP does not automatically mean action needs to be taken. He submitted that the doctor was not unsafe to work and has considerable skills which should be exercised for the benefit of the patient population and the wider public interest. He submitted that this was recognised by the High Court judge who revoked the interim conditions imposed on their registration.

233. Mr Ojo referred the Tribunal to the original Indicative Sanctions Guidance (2005) which at paragraph 57, included *'All human beings make mistakes, doctors are no different.'*

He submitted that it was unfortunate that this paragraph had been excised from the latest version of the SG.

234. Mr Ojo outlined that the following amounted to mitigating factors:

a) The fact that the doctor has no previous disciplinary history with the GMC.

b) The doctor has not only shown insight and developing insight but has also taken appropriate steps including attendance at courses and training to improve their knowledge and to ensure the incidents are not repeated.

c) The doctor complied in full with the terms of the interim order of suspension and conditions imposed on their registration during the course of the investigation.

d) The doctor has expressed considerable contrition in their evidence provided to the Tribunal.

e) There is no identifiable impact upon patients in relation to the proven administrative misconducts.

235. Mr Ojo submitted that it was acknowledged that it was unlikely to be a case where the Tribunal would consider taking no action. However, he submitted that suspension would be disproportionate and not in the interests of the public. He submitted that even though the doctor's fitness to practise has been found to be impaired by reason of misconduct, it is low level misconduct which is not supported by the evidence.

236. Mr Ojo submitted that the evidence against the doctor is circumstantial and that the GMC suggestion that the doctor should not have followed the advice of their lawyer was extraordinary. He submitted that when the former Prime Minister Boris Johnson prorogued Parliament, and the Supreme Court ruled the action unlawful, Boris Johnson said that he was following legal advice. Mr Ojo submitted that no one said Boris Johnson should resign, instead, what was demanded was for him to provide evidence of the legal advice. Mr Ojo submitted that the GMC claims that the doctor should have ignored the legal advice and followed the advice of Dr G. He submitted that the GMC was not privy to the advice given or instructions. He submitted that this was a desperate attempt by the GMC to support a weak case and an attempt to hoodwink the Tribunal.

237. Mr Ojo submitted that the doctor does not present a risk to patient safety and a member of the public would not consider that suspension was required to maintain public confidence in the profession. He submitted that there is no suggestion of a blatant disregard of safeguards to protect members of the public.

238. Mr Ojo submitted that suspension would not only be disproportionate, but it would not be in the public interest. He noted that suspension can have a deterrent effect but submitted that this had already been achieved by the IOT. He explained that the doctor was suspended by the IOT but that this was varied to conditions at the first review as it was considered that continuing the suspension would be disproportionate. He submitted that a sanction of suspension now, more than four years after the original order of suspension, would be disproportionate, and in a sense, a double jeopardy for them to be suspended by the MPTS.

239. Mr Ojo submitted that this was a case where conditions would be a proportionate and sensible response as it would enable the doctor to work for the benefit of their patient population. He submitted that the High Court had already dealt with the proportionality of suspension and came to the conclusion that it was not in the best interest of the public.

240. Mr Ojo submitted that conditions could be used to send a message that the conduct was unacceptable. He suggested a condition including that the doctor engages in a mentorship programme and/or personal development plan to provide a report afterwards to expressly highlight her learning.

241. In conclusion, Mr Ojo submitted that in all the circumstances and notwithstanding the Tribunal's findings in relation to impairment and the suggestion that the doctor's insight was still developing, the imposition of conditions for a short period is the correct outcome.

The Relevant Legal Principles

242. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement.

243. The Tribunal considered the case of Dr Agoe separately to that of Dr Y.

244. The Tribunal had to bear in mind that Dr Agoe's misconduct included a finding of being untruthful to the FTT which the Tribunal found to amount to misconduct. This was in addition to the other findings the Tribunal had made that involved both Dr Agoe and Dr Y.

245. The Tribunal should take into account any aggravating and mitigating features and weigh them up accordingly, considering these in conjunction with the statutory overarching objective.

246. The Tribunal should consider the least restrictive sanction first before moving on to consider the other available sanctions in ascending order of severity.

247. The Tribunal must bear in mind that the main reason for imposing a sanction is to protect the public and its purpose is not to punish, although it may have a punitive effect. The Tribunal should consider proportionality, by weighing the public interest against the interests of the doctor, but bear in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor.

248. The Tribunal gave careful consideration to the SG in use from 5 February 2024.

The Tribunal's Determination on Sanction

249. Before considering what, if any, action to take in respect of Dr Agoe's registration, the Tribunal considered any aggravating and mitigating factors in her case.

Aggravating Factors

250. The Tribunal identified the follow aggravating factors.

251. Through her actions in obstructing the transfer of provision of patients' services to Federated4Health, Dr Agoe put her own personal interests above the interests of patients. Dr Agoe attempted to prevent an orderly transfer to Federated4health in order to reassert her control of the provisions of patient services. This was despite the fact that she knew she could only act as a locum doctor under another entity's contract for the provision of patient services. The Tribunal noted that she was obviously aware of this given that she had properly complied with this state of affairs between May and October 2018 whilst working with Forest Group practice following its intervention.

252. Dr Agoe failed to listen to other governance bodies and doctors when they told her that what she was doing was wrong. She failed to accept and act on the advice of the CQC, NHS England and the Forest Group practice.

253. Dr Agoe has failed to address why she did not follow the principles set out in GMP, when she was untruthful whilst giving evidence to the FTT.

254. Dr Agoe has not demonstrated meaningful insight and remediation and the Tribunal carefully considered this aspect of her case. It noted the following comments in her witness statement, dated 27 March 2023:

> *'…I believe that the referral to the GMC was a direct response to the position we took in the litigations against NHS England and the CQC to secure our livelihood and to prevent NHS England from terminating our GMS contract which it had confirmed time and again to be its preferred option whatever it takes. I therefore believe that the referral is not one of genuine believe in protecting patients or integrity of the profession but a collateral action to punish us for showing the courage to stand up to the CQC and NHS England…*
>
> *…I believe the GMC has acted unfairly and discriminatory in this matter. Firstly, they brought us to the MPTS and the IOT on the basis that we were working whilst our CQC registration was suspended, but did not charge Dr xxx and D xxx, who are both white European colleagues and were also working at the same time. When this was raised at the High Court, the GMC…. the Court that the GMC investigated Dr xxx but that the*

case against him was concluded at the triage stage, and no charge was brought against him…

I have worked in many places following our suspension and conditions put on my practice. I have never had any problems with the GMC before, and I stayed behind to correct the deficiencies identified by CQC which were collective responsibility. I have attended courses on practice management, and all the places I worked for attested to my competence. I now have a better understanding of CQC and compliance with the regulation.

I have reflected on the unfortunate chains of events, especially my love for the patients and the practice, and maybe I should have abandoned the practice, jump the ship like Dr... and Dr... . At the time I genuinely believed the practice had a future and with the right group of doctors, the practice would return to its old glory. I understand that the practice has changed hands so many times since our removal, and the patients are served by locums and changing providers. I would like to put this experience behind me, as I have suffered tremendously from the events and suffered reputational damage…'

255. The Tribunal also had regard to Dr Agoe's appraisal form of 2018-2019. The Tribunal noted various CPD undertaken but considered that there was nothing in the appraisal demonstrating any insight regarding the specific regulatory concerns in this case which arose after the appraisal. Further, Dr Agoe had not submitted any additional evidence other than that contained in her witness statement to present to the Tribunal. There were no other documents before the Tribunal to demonstrate insight and remediation since the regulatory proceedings had formally commenced against Dr Agoe.

256. Accordingly, the Tribunal considered that there was a lack of evidence of insight and remediation and this was an aggravating feature in this case.

Mitigating Factors

257. The Tribunal then considered the mitigating factors in this case:

- There is no evidence of any previous fitness to practise concerns before or since the misconduct occurred.
- Whilst the Tribunal identified a potential risk of harm to patients, there is no evidence of any patients being harmed as a result of her actions.
- The lapse of time since the incident occurred; it occurred over five years ago and there has not been any evidence of any repetition or further misconduct.

No action

258. The Tribunal first considered whether to conclude the case by taking no action. It bore in mind that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. It considered that there were no

exceptional circumstances. The Tribunal determined that it would be inappropriate to take no action given its findings and that to do so would fail to uphold the overarching objective.

Conditions

259. The Tribunal next considered whether to impose conditions on Dr Agoe's registration. It bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable.

260. The Tribunal had regard to the relevant paragraphs of the SG relating to conditions. Paragraph 81 and 82 of the SG advises that:

> *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.*

261. The Tribunal considered that this was not a case where conditions would be appropriate. Dr Agoe has demonstrated no meaningful insight since the regulatory concerns were brought to her attention. The Tribunal judged the regulatory concerns as attitudinal rather than performance or practice based. Therefore, given the nature of the misconduct found, the Tribunal determined that conditions would be wholly inappropriate and would not satisfy the public interest or uphold or maintain public confidence in the profession. Moreover, it considered that there are no conditions that could formulated which would address the misconduct, and given the lack of insight, there would be no guarantee that conditions would be workable.

Suspension

262. The Tribunal went on to consider whether it would be appropriate and proportionate to suspend Dr Agoe's registration.

263. The Tribunal had regard to paragraphs 91 and 92 of the SG.

> *'91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> *92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession)…'*

264. The Tribunal was satisfied that suspension was the appropriate sanction and that this would properly mark the misconduct found and was the least restrictive and proportionate sanction in order to maintain and uphold public confidence and proper professional standards of conduct. It considered that Dr Agoe's misconduct is not fundamentally incompatible with continued registration, and therefore it did not consider the sanction of erasure.

265. The Tribunal noted Mr Ojo's submission that suspension would be disproportionate given that Dr Agoe had previously been suspended by the IOT and then subsequently revoked. However, it attached little weight to that, given the different functions of the interim orders tribunal and this Tribunal.

266. The Tribunal carefully considered the length of the period of suspension. In so doing it bore in mind the risk to the public, the seriousness of its findings and need to ensure the doctor has adequate time to remediate.

267. The Tribunal had regard to the categories outlined in the SG at paragraph 100 and the supporting Table below that is relevant to the length of suspension, and paid particular attention to the seriousness of its findings and the subsequent steps taken.

268. The Tribunal determined that a suspension of three months was sufficient to mark the nature and the seriousness of the misconduct and impairment which the Tribunal had found against Dr Agoe.

Review

269. The Tribunal considered whether to direct a review hearing. It bore in mind the guidance at paragraph 164 of the SG which advises that:

> *'..in most cases where a period of suspension is imposed… the tribunal will need to be reassured that the doctor is fit to resume practice – either unrestricted or with conditions or further conditions. A review hearing is therefore likely to be necessary, so that the tribunal can consider whether the doctor has shown all of the following (by producing objective evidence):*
>
> *a) they fully appreciate the gravity of the offence*
>
> *b) they have not reoffended*
>
> *c) they have maintained their skills and knowledge*
>
> *…'*

270. The Tribunal determined that a review was necessary. It considered that there was no evidence before it that Dr Agoe fully appreciates the gravity of her misconduct. It considered that the period of three months suspension would not only sufficiently mark the misconduct but provide time for Dr Agoe to reflect on its findings.

271. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Agoe to demonstrate that she fully appreciates the gravity of the misconduct and has gained insight and remediated. It therefore may assist the reviewing Tribunal if Dr Agoe provides a reflective statement, evidence of having kept her medical knowledge and skills up to date, and up to date references and testimonials. Dr Agoe will also be able to provide any other information that she considers will assist.

Determination on Immediate Order - 08/03/2024

272. Having determined that Dr Agoe's registration be suspended for a period of three months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Agoe's registration should be subject to an immediate order.

Submissions

273. On behalf of the GMC, Ms Rollings did not make an application for an immediate order, and she invited the Tribunal to revoke the interim order of conditions currently in place.

274. On behalf of Dr Agoe, Mr Ojo submitted that it was a matter for the Tribunal.

The Tribunal's Determination

275. The Tribunal had regard to the relevant paragraphs of the SG relating to immediate orders.

276. The Tribunal bore in mind that it 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.

277. The Tribunal considered that an immediate order was not necessary to protect members of the public. It further considered that an immediate order was not necessary in the public interest which is served by the finding of impairment and substantive sanction of suspension imposed. The Tribunal also determined that an immediate order was not in the best interests of Dr Agoe. Accordingly, it determined not to impose an immediate order.

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

279. The interim order is hereby revoked.

280. That concludes the case.

ANNEX A – 04/07/2023

Preliminary submission of no case to answer

281. At the outset of the hearing, Mr Ojo, on behalf of Dr Y and Dr Agoe, made an application to submit that there was insufficient evidence provided by the GMC for the Tribunal to continue with some paragraphs of the Allegation.

Submissions on behalf of Dr Y and Dr Agoe

282. Mr Ojo drew the Tribunal's attention to the allegations pursued by the GMC against both doctors which at paragraphs 1.a.(i-v) the Allegation read as follows:

> *2. Between 1 November 2018 and 6 November 2018, whilst your previous practice's (the Staunton Group Practice) registration with the Care Quality Commission ('CQC') was suspended, you:*
>
> *a. obstructed the transfer of provision of patient services at Morum House Medical Centre (the 'Premises') to an alternative caretaker provider named Federated4Health (the new caretaker practice) who had been nominated by NHS England to replace the Forest Road Group Practice (the previous caretaker practice) in that you:*
>
> *1. informed Ms A, Chief Operating Officer at Federated4Health, that Federated4Health would not be allowed to commence as the new caretakers, or words to that effect, on 1 November 2018;*
>
> *2. refused to assist in a handover to Federated4Health when requested to do so by representatives of NHS England and/or Federated4Health on 1 November 2018;*
>
> *3. refused to speak to Ms B, a representative of NHS England, when invited to do so on 1 November 2018;*
>
> *4. refused to provide computer codes to allow Federated4Health access to patient information;*
>
> *5. refused to permit Federated4Health, its employees or agents to:*
>
> *i. have unfettered access to the Premises for the provision of patient services;*
>
> ii. *supervise staff and/or operate safe governance systems at the Premises;*

283. Mr Ojo submitted that the wording of the Allegation being the same for both doctors is such that it suggests that both Dr Y and Dr Agoe made the statement alleged at 1.a.i. to Ms A, at the same time on 1 November 2018. He stated that it was improbable that both doctors made the same statement at the same time.

284. Mr Ojo submitted that it was not fair for the GMC to gamble on the possibility of the Tribunal finding evidence that one doctor made this statement and not the other. He submitted that it was surprising that Ms A had not provided a witness statement, nor was she being called to give evidence before this Tribunal. Mr Ojo submitted that the Tribunal may find that the GMC will rely on hearsay evidence of other witnesses to prove these allegations.

285. Mr Ojo invited the Tribunal to make a determination at this preliminary stage that there is insufficient evidence before it on which it could make a finding in respect of paragraph 1.a.i of the Allegation.

286. Mr Ojo drew the Tribunal's attention to paragraphs 1.a.(ii-v). He submitted that none of the witness statements provided by the GMC set out what legal rights or duties there are to establish that the doctors are in any way obliged to assist the new caretaker practice (Federated4Health) or provide any information. He submitted that it would be unfair to subject the doctors to a lengthy MPT hearing when no legal basis for the Allegation had been established, specifically where any legal obligations arise.

287. Mr Ojo submitted that the GMC rely on *Good medical practice* ('GMP')in this case. However, he stated that this was a 'dire clutch at straws' and that if GMP is relied on, then specific paragraphs should be clearly set out in the Allegation.

288. Mr Ojo submitted that aside from the lack of evidence of any legal rights or duties upon the doctors, the witness statements clearly showed that the handover was between Forest Road Group Practice (the previous caretaker) and Federated4Health (the new caretaker). He submitted that nobody had established how Dr Y or Dr Agoe fitted into that handover process, and that it was improbable that the Tribunal would make a finding that the doctors had anything at all to do with the handover.

289. Mr Ojo drew the Tribunal's attention to paragraph 3 of the Allegation:

> *3. As a consequence of your actions at paragraph 1 you occasioned:*

a. an application to be made by the Care Quality Commission to a Justice of the Peace at Highbury Corner Magistrates Court on 6 November 2018 pursuant to section 30 Health and Social Care Act 2008 ('the Act');

b. a Justice of Peace on 6 November 2018 to make an Order pursuant to section 30 of the Act in order to protect the public interest in the protection of the health, safety and well-being of patients and the maintenance and promotion of public confidence in the system of regulation.

290. Mr Ojo submitted that as paragraph 3 is predicated on a finding at paragraph 1, it follows that if there is insufficient evidence to prove paragraph 1 then this must also fall away. Mr Ojo invited the Tribunal to make the same determination.

Submissions on behalf of the GMC

291. Ms Rollings noted that Mr Ojo had raised these matters previously at a case management meeting. She informed the Tribunal that a Rule 28 decision had already been made which determined that the Allegation should be put before an MPT Tribunal for it to consider. Ms Rollings submitted that this application seemed to be a request to reconsider the decision that the case manager has already made.

292. Ms Rollings submitted that Mr Ojo has not produced any new evidence to support making a different decision to that of the case manager and that the case should be opened to the Tribunal. She reminded the Tribunal that Mr Ojo would be able to make a submission of no case to answer at the conclusion of the GMC's case.

293. In response to a question by the Tribunal, Ms Rollings confirmed that Ms A is the Chief Operating Officer of Federated4Health and as such should be considered a named 'letter head' representing the company. She confirmed that Ms A is not being called as a witness.

294. In response to Ms Rollings submission, Mr Ojo stated that this matter should be dealt with now. He submitted that it was not fair to waste the time of his clients or the Tribunal in pursuing allegations where no evidence had been produced. He stated that Ms Rollings had simply suggested that the Tribunal 'carry on', and not made a case that there was evidence to support the allegations detailed above. He invited the Tribunal to make a determination at this stage.

Legal Advice

295. The Legally Qualified Chair ('LQC') reminded the Tribunal that it has not yet heard any evidence in this case and that it may be considered premature to make a finding at this stage that there is no case to answer. He reminded the Tribunal that, as set out by Ms Rollings, a submission of no case to answer may be made by Mr Ojo at the closing of the GMC's case.

296. The LQC noted that Ms Rollings now confirmed that in relation to paragraph 1.a.i. of the Allegation, it should not be literally interpreted as meaning that the doctors informed Ms A as an individual, but more as the named head of Federated4Health. The LQC advised the Tribunal to be mindful of this during the hearing as it is important that it is clear to all, what is actually being alleged.

The Tribunal's Decision

297. The Tribunal had regard to the submissions made by the parties with regard to paragraphs 1.a.(i-v) and 3 of the Allegation.

298. The Tribunal was mindful that the case has not yet been opened by the GMC and also that it has not heard any evidence at this stage. The Tribunal has read the bundles of witness statements and seen the documentary evidence; however, this had not yet been subjected to any cross-examination or to questions from the Tribunal.

299. The Tribunal was of the view that in order to be fair to both parties, it should hear the evidence in full. It considered that to make an assessment on lack of evidence at this stage would be premature. In any case, it noted that Mr Ojo will have an opportunity at the end of the GMC's case, in keeping with the normal procedure as set out at Rule 17, to make submissions of no case to answer.

300. The Tribunal therefore determined to refuse Mr Ojo's submission of no case to answer in respect of paragraphs 1.a.(i-v) and 3 at this stage.

ANNEX B – 07/07/2023

Application under Rule 34(1) to admit evidence

301. On day five of the hearing Ms Rollings made an application on behalf of the GMC, pursuant to Rule 34(1) of the Fitness to Practise Rules (2004) as amended ('the Rules') to admit further evidence.

302. Ms Rollings submitted that Dr G, a witness for the GMC in this hearing, had recently discovered an email that she sent to Dr Agoe, dated 26 October 2018. Ms Rollings explained that the email was forwarding an email sent by a Contract Manager at NHS England on 25 October 2023.

303. Ms Rollings submitted that the email is an extremely important piece of evidence as it is able to demonstrate the date on which Dr Agoe was made aware that the existing caretaking contract was coming to an end.

304. Mr Ojo, on behalf of Dr Y and Dr Agoe, submitted that there was no objection to this email being admitted as evidence. He noted that, in fact, the email from the NHS Contract Manager was already included in the defence bundle exhibits.

305. Ms Rollings confirmed that the email referred to in the defence bundle by Mr Ojo was the email subsequently forwarded by Dr G to Dr Agoe. She invited the Tribunal to admit the further document into evidence as proof of the date on which it was forwarded.

The Relevant Legal Principles

306. The Tribunal had regard to the principles of fairness and relevance, in accordance with Rule 34(1) of the Rules, which states:

> *'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

Tribunal decision

307. The Tribunal noted that both parties were in agreement for the email to be admitted as further evidence. It also noted that the contents of the original email from the NHS Contract Manager were already available to it in the defence bundle exhibits. This new email, sent by Dr G to Dr Agoe on 26 October 2018, served merely as evidence that the contents had been forwarded to Dr Agoe.

308. The Tribunal was of the view that information demonstrating that the email was sent to Dr Agoe is relevant to this hearing and that it was fair for it to be admitted into evidence at this stage.

309. The Tribunal therefore granted Ms Rollings' application.

ANNEX C – 18/07/2023

Application under Rule 17(2)(g)

310. Following the closing of the GMC's case, Mr Ojo, on behalf of Dr Agoe, made an application under Rule 17(2)(g) of the Rules which states:

> '*17(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—*
> *…*
> *(g) 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;'*

311. Mr Ojo on had prepared a written submission (8 Pages) of no case to answer in relation to the specific allegations 1 – 3 and made additional oral submissions in relation to allegation 4 (a) (which were not referenced in his written submission). He developed his written submissions orally before the Tribunal.

312. Additionally, Mr Ojo made another oral submission (not contained within his written submission) that there was no case to answer in respect of all allegations because the matters that had been referred to the Tribunal by the GMC were motivated by the doctors' race and there was therefore discrimination against them, because similar allegations to those in allegations 1 to 3 had not been pursued against other doctors within the Practice.

313. Mr Ojo later refined that argument to say that it was Dr C who had not been made the subject of the referral, despite being a registered manager under the CQC registration for 1 November – 6 November 2018.

314. The Tribunal chair asked Mr Ojo to reflect on his position as it appeared that he was making a submission with regard to abuse of process in relation to allegations pertaining to racial motivation and discrimination, rather than a submission of no case to answer.

315. Having reflected on the matter, Mr Ojo submitted that it was also an abuse of process but his submissions relating to race and discrimination should also be treated as a submission of no case to answer in the alternative.

Submissions on behalf of Dr Agoe

<u>Paragraph 1(a)(i) – Informed Ms A, Chief Operating Officer of Federated4Health, that Federated4Health would not be allowed to commence as the new caretakers, or words to that effect, on 1 November 2018.</u>

316. Mr Ojo drew the Tribunal's attention to the fact that Ms A has not provided a witness statement, nor has she been asked to attend this hearing to give evidence. He submitted that the only evidence adduced by the GMC in support of this allegation came from Ms B, who made a bare assertion that Ms A had told her over the telephone that "Federated4Health would not be allowed to commence as the new caretakers".

317. Mr Ojo submitted that Ms B was not a credible witness. He submitted that it could not be right for the Tribunal to find this allegation proved, based on the evidence of a witness who could not recall what she was told in any detail.

318. Mr Ojo invited the Tribunal to conclude that the GMC had not provided sufficient evidence to prove its case to the required standard.

Paragraph 1(a)(ii) – Refused to assist in a handover to federated4health when requested to do so by representatives of NHS England and/or Federated4Health on 1 November 2018.

319. Mr Ojo submitted that this paragraph of the Allegation suggests that a request was made to Dr Agoe and Dr Y to assist with a handover to Federated4Health. He submitted that, leaving aside whether or not there was any obligation on the doctors to assist, the evidence showed that they were not aware who the new caretakers would be even up until 30 October 2018. This was demonstrated in an email from Ms B to Dr G and Dr H, dated 30 October 2018, where she advised them not to disclose to Dr Agoe or Dr Y the identity of the new caretakers.

320. Mr Ojo submitted that none of the witnesses were able to say if any direct request was made to Dr Agoe or Dr Y to assist with the handover to Federated4Health. He submitted that all of the evidence pointed to the fact that Dr Agoe and Dr Y did not know the identity of the new caretakers until 1 November 2018.

321. Mr Ojo invited the Tribunal to conclude that the GMC had not provided a single piece of evidence and that this paragraph could therefore not be proven.

Paragraph 1(a)(iii) – Refused to speak to Ms B, a representative of NHS England, when invited to do so on 01 November 2018.

322. Mr Ojo submitted that the only evidence relevant to this paragraph of the Allegation was that of Ms B, whose evidence to the Tribunal was that she did not speak to Dr Agoe or Dr Y on 1 November 2018. He further submitted that no legal basis had been provided to demonstrate that either doctor had any obligation to speak to Ms B.

Paragraph 1(a)(iv) – Refused to provide Computer codes to allow Federated4Health access to patient information

323. Mr Ojo reminded the Tribunal that all of the witnesses were asked about this particular matter. He Submitted that neither Ms F nor Dr E were able to confirm who requested the computer codes or to whom the request was made.

324. Mr Ojo submitted that in her evidence, Ms B maintained that Dr Agoe and Dr Y were in charge and should have provided access codes. However, she confirmed that she did not personally request the codes from them and was unable to recall who did. Similarly, she maintained that the Practice Manager was working under instruction of Dr Agoe and Dr Y, and as such she did not ask her for the codes either.

325. Mr Ojo submitted that Dr G's evidence was that access codes are normally provided by the Practice Manager, but could not provide any further information since she was not present at the Practice on 1 November 2018.

326. Mr Ojo submitted that Dr H's evidence was also that access codes are normally provided by the Practice Manager. She confirmed that she did not request the codes from Dr Agoe or Dr Y and was not aware that anyone else present had, as she could not imagine why they would be required to.

327. Mr Ojo submitted that there is a lack of evidence for this allegation to be proved.

Paragraph 1(a)(v)(1) – Refused to permit Federated4Health, its employees or agents to have unfettered access to the premises for the provision of patient services.

328. Mr Ojo submitted that the GMC must show that Federated4Health have a legal right of access to the premises.

329. Mr Ojo submitted that in her evidence, Ms B accepted that Federated4Health needed a licence to occupy or the landlord's consent to have any legal right of access to the property. However, she was unable to produce evidence of any such licence or consent.

330. Mr Ojo submitted that Dr H's evidence was that when Ms A arrived at the surgery, the door had not yet been unlocked and that when she attended and met Ms A, a joint decision was made with Dr Agoe to allow Ms A into the building. Mr Ojo submitted that this allegation could therefore not be made out.

Paragraph1(a)(v)(2) – Refused to permit Federated4Health, its employees or agents to supervise staff and/or operate safe governance system at the premises.

331. Mr Ojo submitted that no evidence had been adduced to show what right Federated4Health had to unfettered access to the Practice premises. Furthermore, he submitted that there was no evidence that Dr Agoe physically or otherwise refused to permit Federated4Health to supervise staff.

332. Mr Ojo submitted that the evidence was that as of 31 October 2018, the previous caretaker, Forest Group Practice, had total control of the staff and management of the Practice.

Paragraph 1(b) – On more than one occasion organised and/or delivered patients services in place of Federated4Health at the Premises

333. Mr Ojo reminded the Tribunal of the evidence given by Dr H; that the rotas for 1 November 2018 were prepared by the Forest Group Practice around one week prior. He submitted that her evidence was that Dr Agoe was on the rota as a locum, and that it would have been impossible for Dr Agoe to have organised or delivered patient services since she recognised that their CQC registration was suspended.

334. Mr Ojo submitted that under cross-examination, Mr I of the CQC was asked whether he had asked the other two locums (in addition to Dr Agoe and Dr Y) who had arranged their services. Mr I confirmed he did not and that he had assumed Dr Agoe and Dr Y were arranging services under their suspended registration.

335. Mr Ojo submitted that no evidence had been adduced to show that the other two locums working on 1 November 2018 were employed by Dr Agoe and Dr Y.

336. Mr Ojo submitted that the only evidence provided to the Tribunal is the rota for 1 November 2018 and that there was no evidence that Dr Agoe worked on more than one occasion, as is alleged.

337. Mr Ojo invited the Tribunal to find that Dr H's evidence was credible and to accept her evidence that Dr Agoe was working as a locum, arranged in advance by Forest Group Practice.

Paragraph 2- You organised and/or delivered patient services as described at Paragraph 1b when you knew it was unlawful to do so

338. Mr Ojo submitted that this paragraph of the allegation is similar to the previous at 1(b) other than that it alleges that Dr Agoe provided services knowing that it was unlawful to do so.

339. Mr Ojo submitted that Dr H categorically denied that Dr Agoe organised or delivered services in the way described.

Paragraph 3 - As a consequence of your actions at paragraphs 1 you occasioned: (a) an application to be made by the CQC to a Justice of the Peace at Highbury Corner Magistrates Court on 6 November 2018 pursuant to section 30 Health and Social Care Act 2008 ('the Act'); and (b) a Justice of the Peace on 6 November 2018 to make an Order pursuant to section 30 of the Act in order to protect the public interest in the protection of the health,

safety and well-being of patients and the maintenance and promotion of public confidence in the system of regulation.

340. Mr Ojo submitted that this paragraph of the Allegation stands or falls with the allegations contained at paragraph 1.

Paragraph 4 - In January 2019 you gave oral evidence to the First Tier Tribunal ('FTT') under oath words to the effect that you were unaware: (a) until 1 November 2018 that there was to be a handover to Federated4Health as caretaking practice

341. Mr Ojo submitted that the overwhelming evidence before the Tribunal is that Dr Agoe was unaware that Federated4Health was the new caretaker until they arrived at the Practice on 1 November 2018. He submitted that this was supported by the evidence of the email from Ms B to Dr G and Dr H on 30 October 2018 in which she asks them not to disclose the identity of the new caretaker to Dr Agoe or Dr Y.

342. Mr Ojo noted that Dr G gave evidence to say that she went to the Practice on the evening of 31 October 2018 and told Dr Agoe that Federated4Health were taking over as caretaker. However, Mr Ojo submitted that Dr G was not a credible witness and was reluctant and evasive in giving her evidence. Mr Ojo further submitted that Dr Agoe was not even at the Practice on that day as she did not work Wednesdays.

Summary

343. Mr Ojo submitted that the burden of proof is with the GMC and that it has failed to discharge that burden in relation to the paragraphs of the Allegation above. Mr Ojo drew the Tribunal's attention to the case of *Re H (Minors) [1996] AC 563* which states at paragraph 74:

> "W*hen assessing the probabilities the court will bear in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence that the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence".*

344. Mr Ojo submitted that the failure to provide evidence from Ms A in relation to paragraph 1(a)(i) is fatal to the GMC case. He submitted that most of the allegations faced by Dr Agoe are based on hearsay evidence of reports from Ms A.

345. Mr Ojo submitted that none of the witnesses could confirm who made any request to Dr Agoe or when any such requests were made.

346. Mr Ojo submitted that the GMC has failed to prove its case in respect of the above and invited the Tribunal to find that as such, Dr Agoe should not have to answer to those allegations.

Submissions on behalf of the GMC

347. Ms Rollings provided full written submissions to the Tribunal which she adopted as the GMC response to the application made on behalf of Dr Agoe.

348. Ms Rollings reminded the Tribunal that at this stage it was not determining whether it accepts all of the GMC's evidence but whether if it did accept that it could be satisfied to the required standard, i.e. is the GMC's evidence 'sufficient' to require an explanation.

349. Ms Rollings drew the Tribunal's attention to the case of *R v Salisbury [2005] EWCA Crim 3107*, which states at paragraph 30:

> *'In a case such as this it is necessary to stand back, as the (trial) judge did, and form a view as to the overall picture at the end of the Crown's case. The impression the judge said he had formed was that the defence submissions had raised questions of fact for the jury to decide, but the Crown had established a case to answer. We agree with this assessment. It was not necessary at the close of the Crown case for the judge to consider whether the evidence so far disclosed was such that there was only one inference the jury could properly draw from it. Whether there is only one inference is for the jury and not the judge to decide – see Jamieson [2003] EWCA Crim 3755 at paras.46-49. In our judgment there was sufficient evidence from which such an inference could have been drawn, it could not be described as either tenuous, discredited or at all weak, and the judge was right to rule as he did'.*

350. Ms Rollings submitted that, at this stage, the Tribunal is to fulfil the role of the judge, which is not to substitute the threshold test at 'half time' for a final view, after hearing all the evidence, of whether it finds a charge proved to the required standard.

351. Ms Rollings drew the Tribunal's attention to the case of *DPP v Selena Varlack, [Appeal No 23 of 2007 from the Court of Appeal of BVI] 2008*, which stated at paragraph 21:

> *'The basic rule in deciding on a submission of no case at the end of the evidence adduced by the prosecution is that the judge should not withdraw the case if a reasonable jury, properly directed, could on that evidence find the charge in question proved beyond reasonable doubt [Balance of probability].*

The canonical statement of the law, as quoted above is to be found in the judgment of Lord Lane CJ in R v Galbraith [1981] 1 WLR 1039, 1042. That decision concerned the weight which could properly be attached to testimony relied upon by the Crown as implicating the defendant, but the underlying principle, that the assessment of the strength of the evidence should be left to the jury rather than being undertaken by the judge, at [sic] is equally applicable in cases such as the present, concerned with the drawing of inferences.'

352. Ms Rollings submitted that this is a circumstantial case. The GMC relies on a series of facts as occurred within the Chronology of the case and the inferences that they will submit in due course point to the conclusion that the Doctors are guilty of the charges.

353. Ms Rollings drew the Tribunal's attention to the case of *R v Jabber [2006] EWCA Crim 2694*, which states at paragraph 21:

'The correct approach is to ask whether a reasonable jury, properly directed, would be entitled to draw an adverse inference. To draw an adverse inference from a combination of factual circumstances necessarily does involve the rejection of all realistic possibilities consistent with innocence. But that is not the same as saying that anyone considering those circumstances would be bound to reach the same conclusion. That is not an appropriate test for a judge to apply on the submission of no case. The correct test is the conventional test of what a reasonable jury would be entitled to conclude.'

354. Ms Rollings submitted that the Tribunal should not fall into the trap of eliding factual issues with issues of poor memory, or into prejudging issues at this stage.

Paragraph 1(a)(i) – Informed Ms A, Chief Operating Officer of Federated4Health, that Federated4Health would not be allowed to commence as the new caretakers, or words to that effect, on 1 November 2018.

355. Ms Rollings submitted that it was incorrect to say that the only evidence in support of this allegation is that given by Ms B. She submitted that Ms A, as Chief Operating Officer of Federated4Health, simply represents the company within these proceedings.

356. Ms Rollings noted Dr H's statement at paragraph 18 where she stated that Dr Agoe informed her that *'the partners from Staunton would not let the doctors from Federated4Health into the building on the advice of Dr M.'* Ms Rollings submitted that not letting Federated4Health into the building also prohibits them from commencing as the new caretakers.

357. Ms Rollings noted Ms B's statement at paragraph 11 where she stated that, *'[Ms A] reported that Dr Agoe and Dr [Y] had stated they would not be allowing Federated4Health to*

commence as new caretakers.' Ms Rollings submitted that the GMC should be permitted to cross-examine Dr Agoe and Dr Y on this evidence and that striking it out at this stage would be premature.

Paragraph 1(a)(ii) – Refused to assist in a handover to federated4health when requested to do so by representatives of NHS England and/or Federated4Health on 1 November 2018.

358. Ms Rollings disagreed with Mr Ojo's submission that the 'overwhelming evidence given by the GMC's witnesses to the tribunal was that none of them could point to a single person who requested Dr Agoe and Dr Y's assistance with the handover.'

359. Ms Rollings submitted that:

a. Ms F's evidence asserts that through Ms B, she had been informed that 'Dr Agoe and Dr Y were disruptive in terms of implementing the new caretaking practice…';
b. This is corroborated by Dr E in his witness statement;
c. Ms B's witness statement confirms this;
d. There is further factual evidence, namely an email from Mr Ojo dated 31 October 2018 wherein he states, *'We therefore reject your proposition that our clients must cooperate with the change of caretaker which we have continuously maintained was an unlawful interference with our client's contract.'*

360. Ms Rollings submitted that it is noteworthy that Mr Ojo now seeks to strike out this allegation when, in his own words, in his own email to NHS England's solicitor, he established that his clients refused to assist in the handover to Federated4Health.

Paragraph 1(a)(iii) – Refused to speak to Ms B, a representative of NHS England, when invited to do so on 1 November 2018.

361. Ms Rollings invited the Tribunal to rely upon the written evidence of Ms B in relation to the paragraph of the Allegation. She submitted that Ms B was clear in evidence that her witness statement was correct but that since she drafted her statement, she simply could not recall conversations from almost 5 years ago.

Paragraph 1(a)(iv) – Refused to provide Computer codes to allow Federated4Health access to patient information

362. Ms Rollings submitted that there are several references to this matter in the witness statements and the documentary evidence. She submitted that Ms B, Dr E and Mr I all stated that they understood that Dr Agoe and Dr Y refused to provide the information.

363. Ms Rollings submitted that the evidence given by Dr G and Dr H was clear; the Practice Manager was working under the instruction of Dr Agoe and Dr Y, who remained their employer. She submitted that it was unlikely that the Practice Manager would have provided access codes against their employer's wishes.

364. Ms Rollings submitted that the First Tier Tribunal found that Dr Agoe did not provide the codes to enable access to the clinical system. However, she accepted that this judgment is non-binding on this Tribunal.

Allegation 1(a)(v) - (1) Refused to permit Federated4Health, its employees or agents to have unfettered access to the premises for the provision of patient services, and (2) Refused to permit Federated4Health, its employees or agents to supervise staff and/or operate safe governance system at the premises.

365. Ms Rollings submitted that Mr Ojo is incorrect in stating that the GMC need to show that Federated4Health had a legal right of unfettered access to the premises. She submitted that Ms B's evidence was clear that it would be for the landlord to refuse entry rather than Dr Agoe or Dr Y.

366. Ms Rollings submitted that on the evidence, there was a refusal to permit Federated4Health to have access to prevent them from supervising staff and operating safe governance systems.

Paragraph 1(b) – On more than one occasion organised and/or delivered patients services in place of Federated4Health at the Premises

367. Ms Rollings submitted that this allegation was well established within the evidence and drew the Tribunal's attention to the relevant documents, in particular the clinic lists for 1 November 2018.

368. Ms Rollings submitted that Dr Agoe was delivering patient care on the relevant dates.

369. Ms Rollings noted the submission by Mr Ojo in relation to the 'technical point' that Dr H and Dr G produced the rota in advance of the handover. She submitted that on 2 November 2018, in the absence of the handover to Federated4Health, the organisation and delivery of patient care fell to Dr Agoe and Dr Y.

Paragraph 2- You organised and/or delivered patient services as described at Paragraph 1b when you knew it was unlawful to do so

370. Ms Rollings submitted that there is a plethora of contemporaneous evidence dealing with this matter. She submitted that, in addition to the documentary evidence, the witness evidence of Ms B, Dr G, Dr H and Mr I was that when they attended the Practice on the relevant dates, both Dr Agoe and Dr Y were in the clinic.

371. Ms Rollings drew the Tribunal's attention to the email sent by Ms L, solicitor for NHS England, on 31 October 2018, asking Mr Ojo to remind his clients that they must cooperate with the change of caretaker.

Paragraph 4 - In January 2019 you gave oral evidence to the First Tier Tribunal ('FTT') under oath words to the effect that you were unaware: (a) until 1 November 2018 that there was to be a handover to Federated4Health as caretaking practice.

372. Ms Rollings submitted that the Tribunal will be greatly assisted by the Judgment of the First Tier Tribunal that Dr Agoe, under oath, testified that she was unaware there was to be a handover and an application to cancel the Practice's registration was to be made at the Magistrates Court. She submitted that the Tribunal should allow Dr Agoe's evidence to be tested in cross-examination, in order to determine whether she had been dishonest.

Summary

373. Ms Rollings submitted that the GMC repeats and adopts its submissions in relation to the application made to stay the proceedings because of an alleged abuse of process.

374. Ms Rollings submitted that the Tribunal should dismiss the application of no case to answer.

Legal Advice

375. The Legally Qualified Chair (LQC) provided advice on the approach that the Tribunal must take in considering Mr Ojo's application. He stated that there were two limbs to be considered in the test set out in *Regina v Galbraith [1981] 2 All ER 1060* as follows:

> '*(1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.*
>
> *(2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.*
>
> > *(a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.*
> >
> > *(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability, or other*

matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury.'

376. The LQC noted that the test in *Galbraith* had been adapted for application in regulatory proceedings such as these. He drew the Tribunal's attention to the case of *R (on the application of Dr Alan Tutin) v General Medical Council [2009] EWHC 553 (Admin)* which states:

'a. in applying the principles set out in the cases of Galbraith and Shippey [*R v Shippey [1988] Crim LR 767.], consider each allegation still in dispute separately.*

b. consider

i. Whether there is any evidence before the Panel upon which it can find that matter proved. If there is no evidence of any particular fact, then it must conclude that there is no case to answer.

ii. Whether there is some evidence, but of such an unsatisfactory character that the Panel, properly directed as to the burden and standard of proof, could not find the matter proved? If so, the Panel must allow the submission of no case.

iii. Whether there is some evidence, the relative strength or weakness of which is dependent upon the Panel's view of the reliability of a witness? In such circumstances the Panel should consider the issue of the strength and weakness of the evidence at this stage. Only where the Panel finds that the witness' evidence is reliable in respect of the allegation in question and considers that the allegation is capable of being proved to the requisite standard should the Panel allow that allegation to remain to be considered at the conclusion of the evidence.'

377. The LQC stated that the Tribunal should have regard to the case of *Sharaf v GMC [2013] EWHC 3332* which states:

'*36. Mr Sutton helpfully addressed me on the issues arising in the cross-application of the principles laid down in R v Galbraith (supra) in the regulatory setting. The panel of course acts as both judge and jury. It is significant for present purposes also to remember that the standard of proof in this context is the civil, not the criminal, standard of proof (see Rule 34(12) of the Rules).*

…

38. Having referred to Galbraith (supra), as applied and commented on in Tutin (supra), I accept Mr Sutton's submissions that it is important to bear in mind that

"sufficiency" of evidence is the wording of the rule. The wording of the rule is paramount. As the legal assessor put it, was the evidence so tenuous that it became unsatisfactory and unsafe to prove the allegations?'

378. The LQC advised that this line of authority had been recently applied by the courts to disciplinary proceedings (*Solicitors Regulation Authority v Sheikh [2020] EWHC 3062 (Admin) at [9]-[10]*). Davis LJ held that the key question at the half-time stage is whether, on *one possible view of the evidence* , there is evidence upon which *a* reasonable tribunal, *not all* reasonable tribunals, could find the matter proved when making the final adjudication. If the answer is yes, then there is a case to answer.

379. The Tribunal must consider the case of each doctor separately.

Tribunal's Determination

380. The Tribunal considered the evidence before it in so far as that specifically related to the paragraphs of the Allegation forming the basis of this application. It also had regard to the submissions made by both parties.

Paragraph 1(a)(i)

381. The Tribunal had regard to the evidence provided in support of this allegation. It noted that in her statement, Ms B said she was contacted by Ms A on the morning of 1 November 2018 and that *'[Ms A] reported that Dr Agoe and Dr [Y] had stated they would not be allowing Federated4Health to commence as new caretakers.'*

382. The Tribunal had regard to the email sent by Mr Ojo to the NHS England solicitors at 11:27pm on 31 October 2018 in which he stated, *'Further, our clients and their partners are the Leaseholders of the premises and they have been advised not to allow any caretaker to attend the premises.'*

383. The Tribunal also noted that in her witness statement at paragraph 18, Dr H stated, 'Dr Agoe told me that the partners from Staunton would not let the doctors from Federated4Health into the building on the advice of Dr M.'

384. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 1(a)(ii)

385. The Tribunal noted the submissions made by the parties. Mr Ojo submitted that the wording of the allegation suggests that a request was made to Dr Agoe and Dr Y to assist with the handover, and none of the witnesses were able to say if any such request was made. Ms

Rollings, on the other hand, submitted that the evidence given by Ms F, Ms B and Dr E, and the email sent by Mr Ojo (to NHS England solicitors) were all relevant to this matter.

386. The Tribunal had regard to paragraph 22 of the witness statement provided by Mr I, in which he stated that following the cancellation of the CQC registration he visited the Practice on 7 November 2018 and 'The partners had changed their approach and appeared to be cooperating with Federated4Health…' and that 'Dr Agoe had stated that she had shared the access codes to the systems that morning and, now that Ms B was present to facilitate the handover, the handover was able to take place.'

387. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 1(a)(iii)

388. The Tribunal noted that in her witness statement at paragraph 19, Dr H stated that, 'I went to Dr Agoe and Dr Y and urged them to talk to NHSE. They both told me that they wouldn't and that they had spoken to their lawyer, Dr M, who had told them not to talk with NHSE.'

389. The Tribunal noted that Ms B, in her statement, confirmed that she made requests to speak to the doctors through Dr H.

390. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 1(a)(iv)

391. The Tribunal noted that several of the witnesses gave evidence in relation to this matter in their statements and were cross-examined on it thoroughly by Mr Ojo.

392. The Tribunal also noted that in his statement (quoted above), Mr I stated that Dr Agoe provided computer access codes once the Magistrates Court had cancelled the CQC registration.

393. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 1(a)(v)(1 and 2)

394. The Tribunal had regard to the evidence it had heard so far. It noted that the accounts provided by Ms B and Dr H, who were present on 1 November 2018, was that Ms A from Federated4Health and Ms B were left in an upstairs meeting room, not spoken to by Dr Agoe or Dr Y and not provided with computer access codes with which they could assume responsibility for the patient services.

395. The Tribunal noted that the email from Mr Ojo dated 31 October 2018 was also relevant to these matters.

396. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 1(b)

397. The Tribunal reminded itself that it has seen evidence of patient lists for 1 November 2018 which show that Dr Agoe was seeing patients. It noted the submission made by Mr Ojo that there was no evidence that patients were seen by Dr Agoe on any day besides the 1 November 2018. However, the Tribunal noted that his email of 31 October stated that Dr Agoe was due to have clinics on Thursday (1 November 2018) and Friday (2 November 2018).

398. The Tribunal noted Mr Ojo's submission that Dr Agoe was working as a locum, as arranged in advance by Forest Group Practice. However, the Tribunal noted that in his email on 31 October, Mr Ojo stated *'We reiterated our earlier position and confirmed to Mr T that from 01 November 2018, our clients will be providing services from the practice pursuant to their obligations under the GMS Contract.'* It was open to a Tribunal to conclude at the Facts stage that both doctors acted on the advice contained in that email.

399. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 2

400. The Tribunal considered that the crux of this paragraph is whether Dr Agoe knew that organising/delivering services as described at 1(b) was unlawful.

401. The Tribunal noted that in his statement at paragraph 19, Mr I stated that when he met with Dr Agoe and Dr Y on 1 November 2018, *'I urged both doctors to consider what they were doing. I asked them to cooperate with the new caretakers. I urged them to reconsider their actions and reminded them that they were committing an offence by continuing to practise.'*

402. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Paragraph 3(a and b)

403. The Tribunal noted the submission by Mr Ojo that this paragraph of the Allegation would stand or fall, depending on the Tribunal's determination in relation to paragraph 1. The Tribunal agreed with this approach and noted that Mr I's statement was clear that the CQC's actions in seeking cancellation of the registration at the Magistrates Court, resulted from the doctors' actions, as alleged at paragraphs 1-2 of the Allegation. The Tribunal therefore determined that this paragraph should remain to be considered once all of the evidence has been heard.

Paragraph 4(a)

404. The Tribunal noted the evidence given by Dr G, which was that she visited the Practice on the evening of 31 October 2018 and informed Dr Agoe that Federated4Health would be coming in the morning to take over as caretakers. Dr H also stated that this occurred.

405. Applying the test set out in *Galbraith*, the Tribunal took the view that the evidence in relation to this paragraph of the Allegation was not so weak or tenuous as to render it impossible for a Tribunal, properly directed, to find the allegation proved. It would be for the Tribunal in due course to make the appropriate assessment of the evidence.

Summary

406. The Tribunal considered that the evidence before it in relation to each of the paragraphs of the Allegation, as set out above, was sufficient that it should be taken forward for careful consideration at the facts stage of these proceedings. It therefore determined to refuse the application made on behalf of Dr Agoe in respect of paragraphs 1, 2, 3 and 4(a) of the Allegation.

ANNEX D – XXX

ANNEX E – 18/07/2023

Application for a stay of proceedings due to abuse of process

407. This determination will be handed down in private since it contains information relating to the doctors' Interim Orders and GMC decisions relating to other doctors who are

not the subject of this hearing. However, a redacted version will be published at the conclusion of the hearing.

408. At the conclusion of the GMC's case, Mr Ojo, on behalf of Dr Agoe and Dr Y, had prepared a written submission of no case to answer in relation to the specific allegations 1 – 3 for both doctors, and made additional oral submissions in relation to allegation 4(a) (which were not referenced in his written submission) for Dr Agoe. He developed his written submissions orally before the Tribunal.

409. Additionally, Mr Ojo made another oral submission (not contained within his written submission) that there was no case to answer in respect of all allegations because the matters that had been referred to the Tribunal by the GMC were motivated by the doctors' race and there was therefore discrimination against them because allegations had not been pursued against other doctors within the Practice.

410. Mr Ojo later refined that argument to say that it was Dr C who had not been made the subject of the referral, despite being a registered manager under the CQC registration for 1 November – 6 November 2018.

411. The Tribunal chair asked Mr Ojo to reflect on his position as it would appear he was making a submission with regard to abuse of process in relation to allegations pertaining to racial motivation and discrimination, rather than the submission of no case to answer.

412. Having reflected on the matter, Mr Ojo submitted that it was also an abuse of process but his submissions relating to race and discrimination should also be treated as a submission of no case to answer in the alternative.

413. In the light of the submissions made, the Tribunal decided to allow the GMC to prepare written submissions in response to both the submission of abuse of process and the submission of no case to answer.

414. Having seen the GMC's written submission in response to the submission of abuse of process, Mr Ojo provided the Tribunal with further written submissions on the matter.

415. The Tribunal during the course of submissions were referred to the following additional documents:

- Dr B Rule 4 decision - 15 April 2021
- Dr C Rule 4 decision - 17 July 2019
- Dr C Rule 12 decision on Rule 4 decision – 1 April 2021
- Sealed order of Mr Justice Eyre, Dr Agoe and Dr Y vs GMC - 10 October 2022
- GMC v Dr Agoe and Dr Y approved judgment - 12 August 2020
- Letter from GMC to Dr Agoe - IOT 7 August 2019
- Letter from Taylor Wood solicitors to GMC - 19 August 2020
- Letter from GMC to Taylor Wood solicitors - 4 September 2020

416. Mr Ojo indicated that he had no objection to the disclosure to the Tribunal of any information referring to any interim orders made against either Dr Agoe or Dr Y for the purposes of making effective submissions on their behalf.

Submissions on behalf of Dr Agoe and Dr Y

417. Mr Ojo submitted that the referral of Dr Ago and Dr Y by the GMC to this MPT hearing was motivated by discrimination on the grounds of race and accordingly it was conduct that offended the principles and provisions contained in the Equality Act 2010.

418. Mr Ojo submitted that the rule of law and administration of justice would be greatly undermined by the conduct of the GMC such that continuing with the case would offend the Tribunal's sense of propriety and justice.

419. Mr Ojo drew the Tribunal's attention to a letter sent by the GMC to Dr Agoe on 7 August 2019, enclosing a Case Examiner's decision to refer Dr Agoe to an Interim Orders Tribunal (IOT). Mr Ojo submitted that the charges faced by both doctors today have been refined several times to fit those upon which the GMC is confident it could secure a conviction.

420. Mr Ojo submitted that the GMC suggested that the referral was made against the background about concerns of patient safety highlighted in the CQC inspection report which led to the suspension of the practice's CQC registration. However, he submitted that both

CQC witnesses called by the GMC, Mr I and Mr J, confirmed that the suspension applied to the four doctors who were partners at the practice as of 8 May 2018 including Dr C.

421. Mr Ojo submitted that Mr J's evidence was that any regulatory or enforcement action faced by any one of the registered individuals, should also apply to the others, even if they are no longer part of the partnership, provided that the registration which bears their names subsists and had not been cancelled at the date of the alleged contravention.

422. Mr Ojo submitted that the evidence before the Tribunal is that Dr Agoe, Dr Y and Dr C all worked at the Practice on 1 November 2018. He submitted that the GMC maintains that Dr Agoe and Dr Y were not working as locums on this date as there was no caretaker in place, but that it has failed to explain how Dr C was able to work in such circumstances.

423. Mr Ojo, having seen the GMC written submissions, noted that the GMC decided to close the enquiries into the other two doctors working at the Practice on 1 November 2018 (Dr C and Dr D), taking no further action at the triage stage.

424. Mr Ojo submitted that a serious question must be asked whether the GMC carried out any investigation into Dr C at all, other than a perfunctory exercise. Mr Ojo submitted that Dr C was working at the Practice on 1 November 2018 and questioned how it was that Dr C was not facing the same allegations as set out at paragraphs 1(b) and 2 of the Allegation against Dr Agoe and Dr Y.

425. Mr Ojo submitted that the Rule 4 and Rule 12 decisions which have been disclosed by the GMC, did not explain how the Case Examiner concluded that Dr C had showed insight and should not be referred to the MPTS.

426. Mr Ojo submitted that the Rule 4 decision not to refer Dr C seemed to be based on the fact that he had not challenged the CQC findings or decision. Mr Ojo submitted that this suggests that the real issue against Dr Agoe and Dr Y is the fact that they challenged the CQC rather than those in paragraphs 1(b) and 2 of the Allegation.

427. Mr Ojo submitted that this demonstrates the GMC's abuse of its regulatory powers and processes. He submitted that it is inconceivable that a doctor will face an almost total destruction of his livelihood for exercising his statutory rights in a democratic society.

428. Mr Ojo submitted that at a Hight Court hearing convened to extend the IOT imposed, the GMC wrongly submitted that it had seen the rota from 1 November 2018 for the first time just before that hearing. The GMC corrected its position and apologised for its error and submission before the court. Mr Ojo drew the Tribunal's attention to the judgment of HHJ Davies where it was observed:

> *'I have considered with some care the submission made by Mr Ojo that it is wrong for the General Medical Council to complain that the fitness to practice [sic] of these two doctors is impaired, in circumstances where they have not proceeded against at least one of the other four general practitioners who was in partnership at the time. It is said on behalf of the two doctors that he also, it appears, may have worked on 1st November 2018 at a time when, according to the GMC, none of them should have been working and were, at least arguably, uninsured. That is something about which I cannot express any view on the evidence before me. If it was the case that there was not a proper basis for distinguishing between the position of the relevant general practitioners, that might be something which would be relevant if this matter goes to a full hearing in due course. I accept that any concern of any discrimination on grounds of race or otherwise in that respect would be a serious matter. However, on the evidence before me I am not in a position to, nor should I, make any determination either way on that point. It has to be investigated further, if and in s [sic] far as relevant'.*

429. Mr Ojo also drew the Tribunal's attention to comments made by Mr Justice Eyre in the reasons given for declining the doctors' application for Judicial Review:

> '*The essence of the Claimants' case is that the decision of the case examiners recommending referral and the First Defendant's approval thereof were influenced by the Claimants' ethnicity. The Claimants say that but for this factor their conduct would not have been referred to the MPT. That would be the position if the Claimants' conduct was not such as to merit an adverse finding by that Tribunal. If that is the case that will constitute a ground of defence in the proceedings before the Tribunal and on appeal therefrom. If the Claimants' conduct is properly found by the Tribunal to be worthy of sanction, then it cannot credibly be said that the referral was vitiated by reason of reference to the Claimants' ethnicity. It follows that to the extent that the*

Claimants are correct to say that the decision to refer their cases to the MPT was flawed they have an adequate alternative remedy and that relief by way of judicial review or otherwise from the Court is not appropriate'.

430. Mr Ojo submitted that the GMC has failed to provide any justification for the difference in treatment of Dr Agoe and Dr Y, and Dr C. He submitted that in the absence of any cogent justification, the Tribunal has to conclude that the reason for the difference was race. He referred the Tribunal to Section 132(2) of the Equality Act 2010 which states:

'*if there are facts from which the Court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.'*

431. Mr Ojo submitted that Dr Agoe and Dr Y were required to establish facts from which the Tribunal could conclude in the absence of an adequate explanation that there has been prima facie case of discrimination by the alleged discriminator. He submitted that this position was endorsed in the case of *Madarassy v Nomura International Plc [2007] IRLR 246* where the Court held at [56] that:

'*the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal "could conclude" that, on the balance of probabilities the Respondent had committed an unlawful act of discrimination…*

"could……conclude" in section 63A(2) must mean that "a reasonable tribunal could properly conclude" from all the evidence before it. This would include evidence adduced by the complainant in support of the allegation of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment.'

432. Mr Ojo submitted that in the case of *Denman v Commission for Equality and Human Rights [2010] EWCA Civ 1279*, Sedley LJ observed in [19] that:

'*…the more which is needed to create a claim requiring an answer need not be a great deal. In some instances, it will be furnished by non-response, or an evasive or*

untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred…'

433. Mr Ojo submitted that in this case, 'the more' is provided by the fact that to date, the GMC has not provided a response for the difference in the treatment of the doctors. He submitted that it was open to the Tribunal to infer race discrimination from the facts and circumstances of this case.

434. Mr Ojo drew the Tribunal's attention to the case of *King v The Great Britain China Centre [1991] EWCA Civ 16*, where Neill LJ stated:

'*Though there will be some cases where, for example, the non-selection of the applicant for a post or for promotion is clearly not on racial grounds, a finding of discrimination and a finding of a difference in race will often point to the possibility of racial discrimination. In such circumstances, the tribunal will look to the employer for an explanation. If no explanation is then put forward or if the tribunal considers the explanation to be inadequate or unsatisfactory it will be legitimate for the tribunal to infer that the discrimination was on racial grounds. This is not a matter of law but, as May LJ put it Noone, "almost common sense".*

…It is unnecessary and unhelpful to introduce the concept of a shifting evidential burden of proof. At the conclusion of all the evidence the tribunal should make findings as to the primary facts and draw such inferences as they consider proper from those facts. They should then reach a conclusion on the balance of probabilities, bearing in mind both the difficulties which face a person who complains of unlawful discrimination and the fact that it is for the complainant to prove his or her case'.

435. Mr Ojo submitted that the GMC's actions amount to a serious abuse of process such that the only reasonable explanation points to discrimination on the grounds of race, not least because the decision to refer Dr Agoe and Dr Y to the IOT was made after the decision not to pursue any investigation against Dr C.

Submissions on behalf of the GMC

436. On behalf of the GMC, Ms Rollings reminded the Tribunal of the background chronology to this case.

437. Ms Rollings submitted that as part of the GMC's internal triage process, consideration was also given to whether the referral from NHS England gave rise to any fitness to practise concerns in respect of two other Partners at the Practice – Drs C and D. Fitness to practise concerns were not identified and as such the enquiries were closed in respect of Dr C and Dr D(decision dated 17 July 2019). In light of the serious concerns identified in relation to Dr Y and Dr Agoe, the GMC Case Examiners determined (on 30 July 2019) to refer Drs Y and Agoe to an Interim Orders Tribunal (IOT). At separate IOT hearings on 16 August 2019 interim restrictions were imposed on each doctor.

438. Ms Rollings submitted that the GMC applied to the High Court to extend the Interim Orders. Those applications were determined by HHJ Davies on 12 August 2020. It was argued on behalf of Dr Agoe and Dr Y at that hearing that it was wrong for the GMC to pursue fitness to practise investigations against them when it had not proceeded against at least one of the other four general practitioners in the Partnership at the time. Concerns of discrimination were also raised at that hearing. HHJ Davies was satisfied that it was necessary for both public protection and patient protection and in the public interest for the interim order to be extended.

439. Ms Rollings submitted that the Assistant Registrar wrote to Dr Y and Dr Agoe on 2 and 5 October 2020 (respectively) pursuant to Rule 7 to inform them of the allegations, provide documents and invite a response ("the Rule 7 letters"). Taylor Wood Solicitors replied to the Rule 7 letters on 16 November 2020 ("Rule 7 response letters"), defending the Doctors, denying wrongdoing and dishonesty and alleged breach of duty under section 53(2)(c) of the Equality Act (a qualifications body must not discriminate when conferring relevant qualifications). The Rule 7 response letters included the observation that there were four members of the Partnership (Dr Y, Dr Agoe, Dr C, and Dr D) up to 31 July 2018 and asked for confirmation that Dr C had not been subject to any interim order, and asked why the GMC did not consider that he posed any risk to the public.

440. Ms Rollings submitted that the GMC was made aware that Dr C and Dr D were Partners at the Practice until 1 June 2018 and 1 July 2018 when they were removed as signatories to the GMS contract and resigned from the Partnership.

441. Ms Rollings submitted that the GMC's position in relation to Dr C and Dr D is explained in a GMC pre-action protocol response letter (which had not been disclosed in full to the Tribunal) to the solicitors of Doctors Agoe and Y as follows:

> *'As you will appreciate, the GMC is required to handle personal information with the utmost care. To that extent, information about individual registrants is not generally disclosed to other doctors. Given the way your clients' prospective legal challenge is framed, it is necessary to provide the following information:*
>
> > *a. The conduct of Dr [D] and Dr [C] was considered by an Assistant Registrar on 17 July 2019 (decisions attached). It was noted that both doctors retired from the Practice when the CQC suspended the Practice's registration, suggesting that they "reflected on the CQC and the level of care [they] were able to offer. [They] did not challenge the CQC decision which would suggest an element of insight into their findings*
> >
> > *b. As such, no specific concerns having been identified, s35C(2) of the Medical Act 1983 was not engaged and a formal investigation was not required.*
> >
> > *c. That was consistent with the approach taken towards Drs [Y] and Agoe whereby allegations were not advanced in relation to the period pre-1 November 2018". 22. In relation to Dr [C], as a result of the rota for 1 November 2018, the Rule 4 closure decision (17 July 2019) was subject to consideration pursuant to Rule 12 of the 2004 Rules in a decision dated 1 April 2021 and a copy of this decision is exhibited at "SC4". On 9 April 2021 the Claimants were informed that a decision had been made by an Assistant Register that the grounds were not met for a review of the Rule 4 decision not to open an investigation into Dr [C]. The Assistant Registrar determined that there are no grounds under Rule 12 for a review of the closure decision.'*

442. Ms Rollings submitted that Mr Ojo did not indicate in his oral submissions that any new evidence had come to light addressing the aforementioned issues.

443. Ms Rollings submitted that information about Dr C's or Dr D's race was not available to the decision maker at the Rule 4 or Rule 12 stages.

444. Ms Rollings submitted that it was not clear from Mr Ojo's oral submissions whether or not direct or indirect discrimination is alleged. However, she submitted that the GMC denies direct or indirect discrimination against Dr Agoe and Dr Y.

445. Ms Rollings drew the Tribunal's attention to relevant case law which may assist in defining abuse of process. She submitted that the burden of proof is on the defence to establish an abuse of process on the balance of probabilities. It is incumbent on the doctors to demonstrate that they cannot have a fair trial. They must set out in detail why there would be a serious prejudice to them, if the trial continued. If a fair hearing is possible, a stay must not be granted.

446. Ms Rollings submitted that the jurisdiction for the court to stop proceedings as an abuse of process arises where either:

a) It would be impossible to try the Defendant fairly (first limb).

b) The prosecuting authority has acted unconscionably so that a continued prosecution would offend the court's sense of justice or propriety and bring the criminal justice system into disrepute (second limb).

447. Ms Rollings submitted that the jurisdiction to stay proceedings as an abuse of process is an exceptional one, it "... is, effectively, a measure of last resort. It caters for and only for those cases which cannot be accommodated with all their imperfections within the trial process"(*DPP v Fell* [2013] EWHC 562 (Admin) at [15]).

448. Ms Rollings submitted that where the system itself can cure the impropriety or unfairness, then the court should use that system to allow the trial to proceed (*Council for the Regulation of Health Care Professionals v. General Medical Council and Saluja* [2006] EWHC 2784; [2007] 2 All ER 905, at [79]).

449. In conclusion, Ms Rollings submitted that the GMC strongly denies the suggestion that the referrals of Dr Agoe and Dr Y to the MPTS hearing were tainted by race and discrimination.

450. Ms Rollings submitted that this is not the first time that Mr Ojo has raised a similar complaint. Taylor Wood Solicitors previously submitted a Part 8 claim which alleged that the GMC had failed to comply with their duties under the Equality Act. That application was refused, and the Order dated 10 October 2022 set out that the claim against the GMC had no real prospect of success. Taylor Wood Solicitors were afforded an appeal route in relation to the Court Order pursuant to CPR 54.12. Ms Rollings submitted that that forum would have been the appropriate place to air this argument and that this attempt during these proceedings represents a second bite of the cherry.

451. Ms Rollings submitted that the issues relating to Dr C working at the Practice on 1 November 2018 have already been explored. She submitted that there is no evidence to suggest that Dr C knew about the issues regarding the caretaking handover which would indicate a fitness to practice concern.

452. Ms Rollings submitted that in the case of both Drs Y and Agoe, case examiners decision centred on the events surrounding 1 to 6 November 2018 and the refusal by them to allow Federated4Health to take control and act as caretaker.

453. Ms Rollings submitted that in all of the circumstances and considering the high bar for the Defence's application, the GMC invites the Tribunal to dismiss Mr Ojo's application in respect of abuse of process.

Relevant Legal Principles

454. The Legally Qualified Chair ('LQC') gave advice to the Tribunal as to the approach it should take in considering the application made by Mr Ojo, for a stay of proceedings due to abuse of process.

455. The LQC reminded the Tribunal that Mr Ojo had referred it to the terms of a High Court order which was a refusal to permit a judicial review of the GMC's decision to refer matters to a fitness to practise tribunal. Mr Ojo outlined the terms of that order which included reference by the court that arguments regarding the referrals being motivated by race and/or discrimination should be dealt with by the Tribunal.

456. The LQC advised that whilst the Tribunal has seen the terms of that High Court Order, this Tribunal was dealing with submissions of an abuse of process and/or no case to answer by the doctors on the basis that the referral to the Tribunal was motivated by reason of their race and was discriminatory.

457. The LQC advised that there are two main types of case where there would be an abuse of process. The first one is where it will be impossible to give Dr Agoe and Dr Y a fair hearing, for example where there has been a significant delay in bringing proceedings and documents have been lost or destroyed and the witnesses have little or no memory of what occurred. The second category of case will be where it is said that the GMC has acted unconscionably so that a continued prosecution would offend the Tribunal's sense of justice or propriety and bring the regulatory justice system into disrepute. Dealing with a sense of justice and propriety, the Tribunal is concerned in protecting the integrity of the regulatory system. Here, a stay will be granted where the Tribunal concludes that, in all the circumstances, a hearing will offend the Tribunal's sense of justice and propriety.

458. The LQC advised that Mr Ojo's submission is based on the second category of case is where it offends the Tribunal's sense of justice and propriety to be able to hear the case, concerning Dr Agoe and Dr Y in the particular circumstances of the case, because in short it is said that the motivation for bringing these allegations to an MPT hearing is because of the doctors' race and that they have been subject to discrimination as a consequence.

459. The LQC advised that the burden of proof is on the doctors to establish an abuse of process on the balance of probabilities. If a fair hearing is possible, a stay must not be granted.

460. There is no difference between the principles that emerge from the ECtHR and those that emerge from the common law (Gibson v General Medical Council [2004 EWHC 2781 (Admin), at [19, 26]). The Tribunal's focus must be on the fairness of the hearing.

461. Abuse of process has been defined as something so unfair and wrong with the prosecution that the court should not allow the prosecutor to proceed with what is, in all other respects, a perfectly supportable case (Hui v Queen, The [1992] 1 AC 34). The concept of a fair trial applies equally to the GMC as it does to the doctors (DPP v Meaking [2006] EWHC 1067 (QB))

462. The tribunal should have regard to all the documents that have been placed before it, including documents that were provided during the course of the hearing.

463. The LQC drew the Tribunal's attention to the judgments already made in relation to this case. In his reasons for refusing a judicial review, Eyre J said

> *'The essence of the Claimants' case is that the decision of the case examiners recommending referral and the First Defendant's approval thereof were influenced by the Claimants' ethnicity. The Claimants say that but for this factor their conduct would not have been referred to the MPT. That would be the position if the Claimants' conduct was not such as to merit an adverse finding by that Tribunal. If that is the case that will constitute a ground of defence in the proceedings before the Tribunal and on appeal therefrom. If the Claimants' conduct is properly found by the Tribunal to be worthy of sanction, then it cannot credibly be said that the referral was vitiated by reason of reference to the Claimants' ethnicity. It follows that to the extent that the Claimants are correct to say that the decision to refer their cases to the MPT was flawed they have an adequate alternative remedy and that relief by way of judicial review or otherwise from the Court is not appropriate'.*

464. At the High Court, when considering the doctors' challenge to an application by the GMC to extend their Interim Orders, HHJ Davies, (initially in relation to Dr C), said

> *'on behalf of the two doctors that he also, it appears, may have worked on 1st November 2018 at a time when, according to the GMC, none of them should have been working and were, at least arguably, uninsured. That is something about which I cannot express any view on the evidence before me. If it was the case that there was not a proper basis for distinguishing between the position of the relevant general practitioners, that might be something which would be relevant if this matter goes to a full hearing in due course. I accept that any concern of any discrimination on grounds of race or otherwise in that respect would be a serious matter. However, on the evidence before me I am not in a position to, nor should I, make any determination either way on that point. It has to be investigated further, if and in so far as relevant. In any event, what is clear is that the allegations made against these doctors, which on*

the face of it could not also be made against the other doctor, would by themselves, in my view, provide a sufficient basis for the conclusions which I reach.'

465. The LQC advised that it is open to the Tribunal to infer race discrimination from the facts and circumstances of this case and the Tribunal is invited to make the inference not least on the observation of the two High Court Judges who had invited careful investigation and scrutiny of this allegation.

The Tribunal's Decision

466. The Tribunal had regard to all of the evidence provided to it so far in this case, and to the submissions made by both parties in relation to abuse of process.

467. The Tribunal noted that the main focus of the doctors' submission of abuse of process is that Dr C, who was also working at the Practice on 1 November 2018, has not been subject to any investigation by the GMC or referral to the MPTS.

468. The Tribunal noted that the GMC have disclosed the Rule 4 and Rule 12 decisions, made by the GMC in relation to Dr C. The Tribunal accept that the GMC were not aware of the race of Dr C at the Rule 4 or Rule 12 stages. That submission was not challenged by Mr Ojo on behalf of the Dr Agoe and Dr Y. As a consequence, the Tribunal concluded that on the balance of probabilities there had not been discrimination on grounds of race in referring the matters to this Tribunal. On the evidence before it at this stage, the Tribunal was unaware of the race of Dr C. On the assumption that Dr C is of a different race to that of Dr Agoe or Dr Y, the Tribunal could not conclude on the balance of probabilities that there was discrimination on grounds of race by the GMC and as a result there was no abuse of process, as the GMC were not aware of the race of Dr C.

469. The Tribunal concluded that Dr C appeared to be in a different position to Dr Agoe and Dr Y, since he was not seeking to challenge, through legal representatives, the CQC decision or the appointment of Federated4Health as the new caretaking practice.

470. The Tribunal noted the email sent by Mr Ojo on 31 October 2018 to the solicitors representing NHS England. Acting on behalf of Dr Agoe and Dr Y, Mr Ojo stated:

'We reiterated our earlier position and confirmed to Mr T that from 01 November 2018, our clients will be providing services from the practice pursuant to their obligations under the GMS Contract. We clarified our position that any attempt to prevent our clients from fulfilling their obligations under the GMS Contract would amount to interfering with the Order of the Court and potentially an attempt at terminating the Contract which the Court had ordered not to be terminated…

…Our clients have now decided that they are in a position to perform their obligation under the contract and have made arrangements for this to commence on 01 November 2018…

…Further, our clients and their partners are the Leaseholders of the premises and they have been advised not to allow any caretaker to attend the premises.'

471. The Tribunal noted that Taylor Wood Solicitors were acting on behalf of Dr Agoe and Dr Y. There was no evidence to suggest that they had been instructed by or were representing Dr C. The Tribunal was of the view that this constituted a material distinction between Dr C, and Dr Agoe and Dr Y. There was no evidence to suggest that Dr C, at any time, expressed the intention to provide or arrange patient services under the Staunton Group Practice GMS contract, whilst knowing that it was unlawful to do so due to the CQC registration remaining suspended.

472. The Tribunal considered that it had no evidence before it to indicate Dr C had knowledge of the alleged contractual circumstances in which he was working on 1 November 2018, nor was there any indication of his continued physical presence in the Practice's premises after this date.

473. The Tribunal had regard to the GMC's Rule 4 and Rule 12 decisions in relation to Dr C. It considered that the GMC had provided transparent rationale for the decisions taken not to pursue fitness to practise matters in relation to him. It noted in particular, the unchallenged submission, made by Ms Rollings, that the decision makers did not have access to information regarding any of the doctors' ethnicity when making their decisions.

474. The Tribunal considered the submission by Mr Ojo that Dr C remained the registered manager at the Practice, although it noted that no evidence had been produced confirming

this. However, the Tribunal was of the view that if Dr C was still the named manager, it was of little importance as the CQC registration remained suspended, and there was no evidence that he was seeking to challenge this or the handover to Federated4Health as caretakers.

475. In summary, the Tribunal was of the view that the GMC had provided clear and cogent reasons for the decisions taken not to pursue any fitness to practise matters against Dr C. It also considered the situation with Dr C to be very different to that of Dr Agoe and Dr Y. Dr Agoe and Dr Y, through their solicitors, informed NHS England that they would not allow any caretaker to attend the Practice premises and that they intended to provide services under their GMS contract. The Tribunal took the view that this significant difference was sufficient to explain the GMC's decisions.

476. The Tribunal found no evidence that the decision to refer Dr Agoe and Dr Y to the MPTS was based on their race. It concluded therefore that the GMC had not discriminated against either Dr Agoe or Dr Y and therefore decided that there was no abuse of process in bringing these allegations before the Tribunal.

477. The Tribunal determined to refuse Mr Ojo's application, on behalf of Dr Agoe and Dr Y, for a stay of proceedings.

ANNEX F – 20/07/2023

Application to adjourn the hearing in accordance with Rule 29(2)

478. On 19 July 2023, the Tribunal granted an adjournment until 20 July 2023 to allow Mr Ojo, on behalf of Dr Agoe and Dr Y, to submit a judicial review claim form to the High Court regarding the Tribunal's refusal to stay these proceedings for abuse of process (Annex E).

479. Ms Rollings, on behalf of the GMC, had not opposed the application to adjourn until 20 July 2023.

480. On the morning of 20 July 2023, Mr Ojo provided the Tribunal with a copy of a judicial review claim form, dated 19 July 2023 and a letter from HM Courts and Tribunal Service, dated 19 July 2023. This confirmed that a claim form had been issued in the High Court for judicial review of the Tribunal's refusal to stay these proceedings for abuse of process. Mr Ojo then proceeded to make an application for the hearing to be adjourned for a period of at least three months to allow the judicial review process to take place, if permission was granted to present the case.

Mr Ojo's submissions on behalf of the Doctors

481. Mr Ojo submitted that full grounds to support the claim for judicial review is currently being prepared by leading Counsel, who was only instructed two days ago. He submitted that they do not have the full transcript of the evidence given by the witnesses and that this has only been requested this morning. He submitted that he would request that the High Court considers the matter urgently. In the circumstances, he invited the Tribunal to adjourn the hearing for at least three months to allow the judicial review process to take place before the Tribunal reconvenes.

Ms Rollings submissions on behalf of the GMC

482. Ms Rollings clarified that the GMC's agreement to adjourn the hearing on 19 July 2023 was not an agreement to adjourn the hearing indefinitely; but to provide the legal representatives of Dr Agoe and Dr Y opportunity to submit a judicial review claim and evidence that to the GMC. She submitted that the GMC resists the application to adjourn the hearing at this stage and she invited the Tribunal to continue with the proceedings. She submitted that if an application to adjourn is granted, the GMC will seek costs.

483. Ms Rollings referred the Tribunal to the relevant caselaw. She submitted that the case of *Mahfouz v GMC [2004] EWCA Civ 233* (*'Mahfouz'*) held that judicial review applications should be a last resort and that it is preferable for parties to wait until the final determination and then use the statutory appeal procedure rather than judicially reviewing at this stage and adjourning proceedings. Ms Rollings further referred the Tribunal to the comments in the case of Squier v the GMC [2015] EWHC 299 (Admin) (*'Squier'*), namely that:

> *'a general principle but not an exclusive rule that proceedings to challenge decisions of a tribunal should await the conclusion of the hearing and should be made by way of statutory appeal. After all, judicial review is a remedy of last resort. A tribunal should not find its case management decisions, its interlocutory rulings and other procedural decisions challenged until the effect of any adverse decision of that sort is made manifest through the final decision. Proceedings of the sort here are potentially wasteful and very disruptive to the integrity of tribunal proceedings..'*

484. Ms Rollings submitted that an adjournment was not appropriate at this stage and that the hearing should proceed.

485. Mr Ojo was provided with time to read the cases of *Mahfouz* and *Squier.* He submitted that the facts in the *Mahfouz* and *Squier* cases are different from the facts in this case. He submitted that justice and the appearance of justice being done require an opportunity for this matter to be raised before a High Court judge.

Legal Advice

486. The LQC advised that in R. (on the application of Squier) v General Medical Council [2015] EWHC 299 (Admin) the court said:

"19. Mahfouz v GMC [2004] EWCA Civ 233 provides guidance on bringing judicial review proceedings at this stage of an FTPP hearing, rather than by way of a statutory appeal at their conclusion. A stay had been ordered in that case. The Claimant referred to the drawbacks of waiting for the prejudicial effect of a finding of serious misconduct to be overturned in a second set of proceedings, if the panel had erred in its appreciation of the prejudicial evidence and the need for an adjournment. At paragraph 44, Carnwath LJ said that he could see force in those points:

> *"There can be no inflexible rule. However I agree with Mr Englehart [for the GMC] that in general it is preferable for proceedings to be allowed to take their course and a challenge to their validity to be taken by way of appeal. Consideration must also be given to the difficulty of organising such proceedings in a complex case and the potential inconvenience to witness [sic] who may have had to make special arrangements to attend the hearing, and may be reluctant to repeat the experience."*

20. There is, in my judgment, a general principle but not an exclusive rule that proceedings to challenge decisions of a tribunal should await the conclusion of the hearing and should be made by way of statutory appeal. After all, judicial review is a remedy of last resort. A tribunal should not find its case management decisions, its interlocutory rulings and other procedural decisions challenged until the effect of any adverse decision of that sort is made manifest through the final decision. Proceedings of the sort here are potentially wasteful and very disruptive to the integrity of tribunal proceedings. They have the potential to put this court in the position of running the procedures of tribunals with no benefit to the integrity of the tribunal or of the reviewing or appellate judicial process."

Tribunal decision

487. The Tribunal considered the caselaw to be clear in outlining the general principle that challenging decisions of a tribunal should made at the conclusion of the hearing and should be made by way of statutory appeal.

488. The Tribunal noted that the application to stay these proceedings for abuse of process was made on the 8th day of the hearing and at the conclusion of the presentation by the GMC of its evidence in support of the allegations.

489. The Tribunal concluded that judicial review is a remedy of last resort and that it was more appropriate to allow Dr Agoe and Dr Y to challenge the effect of any adverse decision following a final decision of this Tribunal.

490. The Tribunal did not consider there to be any exceptional circumstances in this case to justify adjourning the hearing and departing from the general principle outlined in the caselaw, because of the particular circumstances arising in this case and in particular the

timing of the abuse of process submission. The Tribunal considered the public interest to weigh firmly in favour of proceeding with this hearing.

491. The Tribunal was mindful of the limited time left in the current listing to conclude this hearing and that it would likely adjourn part-heard in any event. However, it considered that it was not appropriate to adjourn the hearing for the reasons requested by Mr Ojo and to do so would not be fair nor in the interests of justice.

ANNEX G – 21/07/2023

Application to adjourn the hearing in accordance with Rule 29(2)

492. On 20 July 2023, the Tribunal refused an application made by Mr Ojo to adjourn the hearing for at least three months to allow a judicial review process to take place if permission were granted (Annex F).

493. The Tribunal's determination at Annex F mentioned that the hearing would adjourn part-heard in any event due to the limited time left in the current listing. The LQC invited parties to consider overnight whether it was appropriate to continue the hearing and to hear the evidence from the Doctors.

494. On 21 July 2023, Ms Rollings, on behalf of the GMC, opposed discussing timetabling at this juncture and submitted that the Tribunal should proceed to hear evidence from both doctors concurrently. She submitted that transcripts will be obtained in due course and therefore memories can be refreshed ahead of the reconvening hearing. She submitted that the hearing should press on and that in the interests of proportionality, time should not be wasted and today and Monday could be used to hear evidence.

495. Mr Ojo made a second application to adjourn the hearing. He submitted he had considered the Tribunal's determinations in regard to no case to answer and abuse of process and noted that a common feature of these decisions was the email and letter from him of 31 October 2018. He told the Tribunal that it was appropriate for him to seek legal advice as to whether he would be serving the doctors' best interests by continuing to represent them at this hearing. He told the Tribunal that Dr Agoe and Dr Y would be seeking independent legal advice in relation to their present position. He submitted that it would not be fair to continue the hearing as the doctors could be put at a disadvantage.

Tribunal decision

496. The Tribunal determined that it was appropriate to adjourn the hearing for the reasons outlined by Mr Ojo.

497. The hearing will reconvene for 10 days from 30 October – 10 November 2023.

498. The Tribunal considered it necessary to make the following direction:

By no later than 4pm on 2 October 2023:

- Either party should advise the MPTS as to the outcome of the judicial review
- Dr Agoe and Dr Y or their legal representatives should advise the MPTS as to the position regarding legal representation for the hearing reconvening on 30 October 2023
- Dr Agoe should provide a supplemental witness statement regarding paragraphs 4 – 6 of the Allegation.

ANNEX H – 30/10/2023

Application for a stay of proceedings due to abuse of process

499. Both parties provided written submissions and also made oral submissions in relation to the application.

Submissions on behalf of Dr Y and Dr Agoe

500. On behalf of Dr Y and Dr Agoe, Mr Ojo made an application for a stay of proceedings on the basis of an abuse of process, namely on the ground that the conduct of the GMC and its reasons for referring the doctors and/or prosecuting them before the MPTS is conduct that offends the Tribunal's sense of propriety and justice.

501. Mr Ojo noted the Tribunal's reasoning at Annex E in relation to refusing a stay of proceedings on separate grounds that the referral of the doctors to the GMC was motivated by race discrimination. This application had been dismissed previously.

502. In relation to Dr C who was not referred to the MPTS, Mr Ojo observed that the case examiners wrote that Dr C '*did not challenge the CQC decision which would suggest an element of insight into their findings*". Mr Ojo's fresh application to stay proceedings was on the basis that the doctors were improperly referred by the GMC to the MPTS for exercising their right to appeal to the CQC.

503. Mr Ojo submitted that Dr Agoe's and Dr Y's challenge to the CQC was a statutory right. He submitted that the investigation of the doctors, via the MPTS, by the GMC is an unlawful interference with their human rights and which amounts to an unlawful act under section 6 of the Human Rights Act 1988.

504. In his written submissions, Mr Ojo submitted that:

> *'…it is quite staggering that the GMC considered it appropriate to commence an investigation into the doctors for reasons of the doctors exercising their statutory right of appeal. This is in effect akin to the GMC commencing an investigation into any*

doctor who dares challenge the decision of the MPTS by exercising the statutory right of appeal either under section 40 or 40A of the Medical Act 1983.
The doctors submit that the decision and the reasons given by the GMC for referring and investigating them, is unlawful, outwith the powers of the GMC under s. 35C of the Act and contrary to its public law duties to act rationally, for proper purposes and taking all relevant considerations into account.

The reasoning appears to be that a doctor who exercise the statutory right of appeal against the proposed cancellation of the CQC registration fails to show "insight into regulation" and runs the risk of fitness to practise sanctions. This is an astonishing position for the GMC to adopt, and one which – if upheld – would have a chilling effect on the ability of any doctor to exercise any statutory right and effectively renders those appeal provisions redundant.'

Submissions on behalf of the GMC

505. Ms Rollings, Counsel, on behalf of the GMC, submitted that the application should be refused.

506. Ms Rollings submitted that the GMC strongly denies the suggestion that the "only explanation" for the difference in treatment between Doctors Y and Agoe and Dr C, was that Doctors Y and Agoe exercised their statutory right of appeal.

507. Ms Rollings submitted that Mr Ojo had the opportunity at the previous hearing to put this 'alternative' ground to the Tribunal in his first application to stay proceedings. She submitted that this second application is another attempt to add further delay and is without merit.

508. Ms Rollings additionally submitted that the Tribunal should pay close regard to the detailed allegations that each doctor faces as they deal with conduct that suggests going beyond lawfully challenging a CQC decision.

Legal advice

509. The LQC advised that in terms of abuse of process, there are two main types of cases which would be an abuse of process. The first is where it is impossible to give either or both of the doctors a fair hearing, for example, where there has been a significant delay in bringing proceedings and documents have been lost or destroyed, and witnesses have little or no memory of what occurred. The second is where it is said that the GMC has acted unconscionably so that continued prosecution would offend the Tribunal's sense of justice or propriety and bring the regulatory justice system into disrepute. It is the second basis on which this application is made.

510. The LQC summarised that Mr Ojo contends that the doctors conduct in appealing the CQC cannot amount to misconduct because, in essence, both doctors have been simply exercising their rights of appeal under section 33 with the Health and Social Care Act 2008.

511. The LQC reminded the Tribunal to look at the specific Allegation the doctors face. He advised that the Tribunal has a discretionary power and must ensure there is a fair hearing according to the law, and that it must be fair to the doctors as well as the GMC.

The Tribunal's decision

512. The Tribunal carefully considered the submissions made by parties, both written and oral.

513. The Tribunal reminded itself that it was not making findings of fact at this stage but considering whether there had been an abuse of process.

514. The Tribunal was not satisfied that the Doctors were referred for merely challenging the CQC. It bore in mind that the allegations go beyond challenging the CQC but allege 'obstruction to a new caretaker provider nominated by NHS England,' which may have put patients at risk. The Tribunal therefore considered that it was fair for the hearing to proceed and for these matters to be considered.

515. Accordingly, the Tribunal refused the application to stay proceedings.

ANNEX I – 2/11/2023

Application to admit hearsay evidence

516. Mr Ojo, on behalf of Dr Y and Dr Agoe, made an application , in accordance with Rule 34(1) of the Rules, to admit into evidence the witness statements of Dr Y, Dr Agoe and Dr K.

517. Ms Rollings, on behalf of the GMC, did not oppose the application. However, she submitted that as the doctors had not given evidence, their statements were essentially hearsay and should be given limited weight by the Tribunal.

The Tribunal's decision

518. The Tribunal had regard to the principles of fairness and relevance, in accordance with Rule 34(1) of the Rules, which states:

> *'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'*

519. The Tribunal considered that the statements were relevant to this hearing and that it was fair to admit them into evidence.

520. The Tribunal therefore granted Mr Ojo's application and admitted into evidence Dr Agoe's statements dated 27 March 2023 and 11 October 2023, Dr Y's statement dated 14 April 2023 and Dr K's statement dated 19 April 2023.