

PUBLIC RECORD

Dates: 24/10/2022 - 31/10/2022

Medical Practitioner's name: Dr Bhagya DAHANAYAKE
GMC reference number: 6031192
Primary medical qualification: MB ChB 1999 University of Cape Town

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

Summary of outcome

Suspension, 6 months.
Review hearing directed

Tribunal:

Legally Qualified Chair	Mrs Aaminah Khan
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Neil Smart

Tribunal Clerk:	Miss Jennifer Lane
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr David Pojur, Counsel, instructed by Hempsons Solicitors
GMC Representative:	Ms Georgina Goring, 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 - 26/10/2022

Background

1. Dr Dahanayake qualified in 1999 from the University of Cape Town. She gained GMC registration in 2001. At the time of the events Dr Dahanayake was a trainee GP, employed by St Helens and Knowsley Teaching Hospitals NHS Trust ('the Trust'), a role she had commenced in August 2017. Dr Dahanayake had also been employed as a resident medical officer for Spire Healthcare, based at Spire Bushey Hospital ('the Hospital'), from May 2016 up until October 2018, when she was suspended for clinical concerns.

2. The allegation that has led to Dr Dahanayake's hearing can be summarised as follows: On 1 July 2018, Dr Dahanayake completed a 'Form R' for Health Education England, Thames Valley ('HEE'), which was a form that Trainee GP's must submit as part of their Annual Review of Competence Progression ('ARCP'). When completing the form, which required trainee GPs to declare any additional work that is not part of their training programme, Dr Dahanayake did not include details of her work at the Spire Bushey Hospital. It is alleged that Dr Dahanayake knew she had failed to accurately complete the Form R for HEE and that this gave a false impression that she was not working elsewhere. It is also alleged that her actions in not providing details of her additional work on the Form R were dishonest.

3. On 22 June 2019, Dr Dahanayake completed a further Form R and again failed to include details of her work at the Hospital and further failed to include details of the investigation by the Hospital and her subsequent dismissal from the Hospital on 25 January 2019. It is alleged that Dr Dahanayake knew she had failed to accurately complete the Form R for HEE and that this gave a false impression that she was not working elsewhere and that no investigations had taken place. It is also alleged that her actions in not providing these details of her work were dishonest.

4. On 26 June 2019, the GMC wrote to Dr Dahanayake to inform her that a Fitness to Practise investigation had been opened following concerns being raised by the Hospital. It is alleged that Dr Dahanayake failed to inform HEE and the Trust that an investigation had been opened by the GMC after receiving the letter. It is alleged that she knew her actions gave a false impression that no investigations were ongoing and that this was dishonest.

5. The concerns which are subject of this hearing were raised with the GMC on 30 August 2019 by Ms A, Revalidation and Accreditation Manager at HEE.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the GMC's application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation. The Tribunal's full decision on the application is included at Annex A.

7. The Tribunal granted the GMC's application, made pursuant to Rule 34 of the Rules, for an additional document to be admitted as evidence. The Tribunal's full decision on the application is included at Annex B.

8. The Tribunal granted an application made on behalf of Dr Dahanayake, pursuant to Rule 41 of the Rules, for parts of the hearing relating to XXX be heard in Private. The Tribunal's full decision on the application is included at Annex C.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Dahanayake is as follows:

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

1. Between 16 May 2016 and 23 October 2018, you worked for Spire Bushey Hospital ('the Hospital') as a Resident Medical Officer. **Admitted and found proved.**
2. On 1 July 2018 you:
 - a. completed a Form R, for Health Education England, Thames Valley ('HEE'), and in Part B:

- i. 'Section 2: Whole Scope of Practice', you failed to include details of your work for the Hospital as set out at paragraph 1; **Admitted and found proved.**
 - ii. 'Section 7: Declaration', you falsely confirmed the form was a true and accurate declaration at that point in time; **Admitted and found proved.**
 - b. failed to complete a 'Whole Scope of Practice Declaration' informing HEE of your additional work as set out in paragraph 1. **Admitted and found proved.**
3. You knew:
 - a. you had undertaken additional work as set out at paragraph 1; **Admitted and found proved.**
 - b. you failed to fully and accurately complete the forms as set out at paragraph 2; **Admitted and found proved.**
 - c. you needed to accurately complete the forms as set out at paragraph 2; **Admitted and found proved.**
 - d. your actions at paragraph 2 gave a false impression that you were not working elsewhere. **Admitted and found proved.**
4. Your actions as set out at paragraph 2 were dishonest by reason of paragraph 3. **Admitted and found proved.**
5. On 22 June 2019 you:
 - a. completed a Form R and in Part B:
 - i. 'Section 2: Whole Scope of Practice', you failed to include details of your work for the Hospital as set out at paragraph 1; **Admitted and found proved.**
 - ii. 'Section 5: New declarations since your previous Form R Part B', you failed to include details of:
 1. the investigation by the Hospital; **Admitted and found proved.**
 2. your dismissal from the Hospital on ~~22~~ 25 January 2019; **Amended under Rule 17(6).**
Admitted and found proved.

- iii. 'Section 7: Declaration', you falsely confirmed the form was a true and accurate declaration at that point in time; **Admitted and found proved.**
 - b. failed to complete a 'Whole Scope of Practice Declaration' informing HEE of your additional work as set out in paragraph 1. **Admitted and found proved.**
6. You knew:
- a. you had undertaken additional work as set out at paragraph 1; **Admitted and found proved.**
 - b. been suspended from the Hospital on 23 October 2018 and your employment was terminated on ~~22~~ 25 January 2019; **Amended under Rule 17(6). Admitted and found proved.**
 - c. you failed to fully and accurately complete the forms as set out at paragraph 5; **Admitted and found proved.**
 - d. you needed to accurately complete the forms as set out at paragraph 5; **Admitted and found proved.**
 - e. your actions at paragraph 5 gave a false impression that you were not working elsewhere and/or that no investigations had taken place. **Admitted and found proved.**
7. Your actions as set out at paragraph 5 were dishonest by reason of paragraph 6. **Admitted and found proved.**
8. On 26 June 2019 you were informed of an open investigation by the GMC in relation to your fitness to practise and you failed to inform:
- a. HEE; **To be determined.**
 - b. St Helens and Knowsley Teaching Hospitals NHS Trust. **Admitted and found proved.**
9. You knew:
- a. an investigation had been opened by the GMC; **Admitted and found proved.**

- b. you had been suspended from the Hospital on 23 October 2018 and your employment was terminated on ~~22~~ 25 January 2019; **Amended under Rule 17(6).**

Admitted and found proved.

- c. your actions at paragraph 8 gave a false impression that no investigations were ongoing. **To be determined.**

10. Your actions as set out at paragraph 8 were dishonest by reason of paragraph 9.
To be determined.

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

The Admitted Facts

10. At the outset of these proceedings, through her counsel, Mr Pojur, Dr Dahanayake made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

11. In light of Dr Dahanayake's response to the Allegation made against her, the Tribunal is required to determine whether Dr Dahanayake failed to inform HEE that the GMC had opened an investigation into her fitness to practise. It is also required to determine whether she knew that her actions in not informing HEE and/or the Trust of the GMC investigation gave a false impression that no investigations were ongoing, and whether her actions in respect of failing to inform HEE and the Trust were dishonest.

Witness Evidence

12. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Ms B, Employee Relations Business Partner at Spire Healthcare, dated 25 February 2022; and
- Ms A, Revalidation and Accreditation Manager at HEE, dated 22 December 2020.

13. Dr Dahanayake provided her own witness statement, dated 26 September 2022 and also gave oral evidence at the hearing.

Documentary Evidence

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

- Dr Dahanayake’s Form R dated 1 July 2018;
- Dr Dahanayake’s Form R dated 22 June 2019;
- The GMC’s letter to Dr Dahanayake dated 26 June 2019;
- Email from Dr C to others, including persons at HEE, dated 18 July 2022;
- Appendix 1: Conditions of joining a Specialty Training Programme; and
- Example of Welcome Letter sent to GP Trainees.

The Tribunal’s Approach

15. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Dahanayake 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.

16. In regard to the allegations of dishonesty, the LQC advised of the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club)* [2017] UKSC 67, which provides:

‘When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held.

When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 8(a)

18. This part of the Allegation related to an alleged failure by Dr Dahanayake to inform HEE that she was being investigated by the GMC. In making its decision, the Tribunal first considered whether there was a requirement for Dr Dahanayake to inform HEE of the GMC's investigation, once she became aware of it.

19. The Tribunal had regard to the letter sent by the GMC to Dr Dahanayake informing her that an investigation had been opened into her fitness to practise, dated 26 June 2019. The letter sets out the investigation process and the next steps that Dr Dahanayake and the GMC need to take. The Tribunal noted that the letter states:

'If you have a contractual requirement to inform your employer of an investigation you should do so as soon as possible'

20. The Tribunal noted that there is no specific requirement within Good Medical Practice ('GMP') to inform an employer or training organisation of a GMC investigation. However, it noted that HEE does make this a requirement of its trainees. The Tribunal has been provided with a copy of an appendix document titled '*Conditions of joining a Specialty Training Programme*', which it took into consideration, particularly the following condition:

'I will inform my Responsible Officer, HEE/NES/the Wales Deanery/NIMDTA and my employer immediately if I am currently under investigation by the police, the GMC/General Dental Council (GDC), the National Clinical Assessment Service or other regulatory body...'

21. Further, in her statement, Ms A, the Revalidation and Accreditation Manager at HEE, stated that:

‘Dr Dahanayake, along with all new GP starters in August 2017, would have been sent the content in the Appendix and requested to sign and return it along with their Form R’

22. Whilst the Tribunal had not been provided with the original of this document signed by Dr Dahanayake, the Tribunal noted from the process outlined by Ms A and the copy welcome letter sent to trainees, that the conditions had to be signed and returned, with other documents, in order for the training number to be issued. The Tribunal was satisfied in the circumstances that there was a requirement upon Dr Dahanayake to inform HEE that she was under investigation by the GMC. Taking this into account, the Tribunal went on to consider whether Dr Dahanayake had failed to inform HEE that she was subject of a GMC investigation.

23. The Tribunal took into account an email sent by Dr C, GP Dean/Head of Community and Primary Care Education, HEE (Thames Valley), dated 18 July 2019, that was sent to a group of individuals including members of the placements where Dr Dahanayake was then working, Dr Dahanayake and other members of HEE (one of which was blind copied in, but one openly copied in). In this email, he states that he has *‘just had a brief conversation with Bhagya; at her request’* and sets out that in the conversation Dr Dahanayake informed him of the GMC investigation. The Tribunal noted that this conversation took place approximately three weeks after Dr Dahanayake was informed of the GMC investigation by the letter dated 26 June 2019.

24. The Tribunal had regard to the advice of the GMC to Dr Dahanayake in that letter, which was to inform her employer *‘as soon as possible’*. Further, within the Form R, one of which had been completed by Dr Dahanayake on 22 June 2019, shortly before the GMC letter, the requirement was for HEE to be notified *‘immediately’* if there were any changes in the information provided. In her oral evidence, Dr Dahanayake explained that she knew she had to inform HEE about the GMC investigation but at first could not think of who to tell. Although Dr Dahanayake had prior contact with Dr Morris, the Associate Dean at the Deanery, she said that she had had a difficult relationship with Dr Morris in the past, and for that reason she felt unable to approach him.

25. The Tribunal took into consideration that one view of the evidence is that Dr Dahanayake failed to inform HEE as required, as she did not notify them promptly on receiving notice of the GMC investigation. However, the Tribunal also took into account the fact Dr Dahanayake contacted Dr C of her own volition, within three weeks of receiving notification from the GMC (taking into account time for Dr Dahanayake's receipt of the letter). It also determined that Dr C, as GP Dean/Head of Community and Primary Care Education, Thames Valley at HEE, was an appropriate person for Dr Dahanayake to inform regarding the GMC investigation. The Tribunal further noted that Dr C when he sent his email dated 18 July 2019, following his conversation with Dr Dahanayake, copied in another person at HEE, which Dr Dahanayake was aware of, as she was also copied into that email. The Tribunal was satisfied that in the circumstances this was sufficient notification to HEE by Dr Dahanayake of the fact that she was under investigation by the GMC.

26. The Tribunal formed the view that while Dr Dahanayake did not inform HEE straight away upon receiving the GMC letter, she did act within a timeframe at the upper end of what could be considered reasonable, bearing in mind time to receive and digest the letter, work out an appropriate person to speak to, and then making contact with that person. The Tribunal were of the opinion that her disclosure should have been swifter but on balance were satisfied in the circumstances that she did inform HEE.

27. Accordingly, the Tribunal found paragraph 8(a) of the Allegation not proved.

Paragraph 9(c)

28. The Tribunal next went on to consider whether Dr Dahanayake knew that not informing the Trust that employed her of the GMC investigation, which Dr Dahanayake had accepted she had not done, gave a false impression that no investigations were ongoing.

29. In her evidence, Dr Dahanayake accepted that, with the benefit of hindsight, she should have informed both HEE and the Trust of the investigation. The Tribunal also noted that in a document exhibited by Dr Dahanayake, which she was provided with when starting her training, it stated,

'During your training you will be employed by either the hospital or the practice you are working in, not the Deanery/HETV.'

30. The Tribunal has already found that she did inform HEE of the investigation by contacting Dr C and Dr Dahanayake has admitted that she did not inform the Trust. However, she stated that this was due to oversight on her part, not an attempt to mislead the Trust into believing no investigation was ongoing. In her witness statement dated 26 September 2022, Dr Dahanayake states:

'I did not understand at that time that I had any separate duty to advise Health Education England, or St Helens and Knowsley Teaching Hospitals NHS Trust who had no involvement with my training at that moment other than paying trainees' salaries. I accept I incorrectly assumed that I had taken the necessary step of informing the Deanery by informing Dr [C] and that he would then inform anyone else who needed to be made aware.'

31. The Tribunal were of the opinion that Dr Dahanayake ought to have known to inform the Trust, as she had been informed that they were her employer, and the onus was on her to ensure all relevant parties were informed. However, the Tribunal accepted the evidence of Dr Dahanayake that she was not at that time aware of the need to separately inform the Trust. The Tribunal accepted that having informed Dr C, who then informed a group of others, that had Dr Dahanayake believed that she needed to also inform the Trust, she would have done so. The Tribunal considered that having accepted this position, it cannot find that she knew that her actions gave a false impression that there was no ongoing investigation.

32. Accordingly, the Tribunal found paragraph 9(c) of the Allegation not proved.

Paragraph 10

33. The Tribunal then went on to consider whether Dr Dahanayake was dishonest when she failed to inform the Trust of the GMC investigation, when she knew that there was an open investigation and that she had been dismissed from the Hospital.

34. The Tribunal were of the view that Dr Dahanayake did not, at the time of events, appreciate the need to separately let the Trust know about the GMC investigation, nor that she had been dismissed from her role at the Hospital, as she considered that it was only the Deanery that needed to be notified. The Tribunal was of the view, as set out above, that had

Dr Dahanayake appreciated that she ought to notify the Trust, given that she had notified Dr C, she would have done so.

35. Further, the Tribunal was mindful that Dr Dahanayake had admitted dishonesty in relation to omitting relevant information from the Form R's, which she accepted in part was due to a concern at that time that she may lose her training position. However, in relation to this part of the Allegation, at this stage, having already informed the Deanery of the GMC investigation, the Tribunal considered that there was no motive for Dr Dahanayake to cover up these matters from the Trust, as she had brought them to light to the Deanery and she was aware that Dr C was informing others. Therefore, the Tribunal cannot find that Dr Dahanayake was dishonest in her failure to inform the Trust of the GMC investigation.

36. Accordingly, the Tribunal found paragraph 10 of the Allegation not proved.

The Tribunal's Overall Determination on the Facts

37. The Tribunal has determined the facts as follows:

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

1. Between 16 May 2016 and 23 October 2018, you worked for Spire Bushey Hospital ('the Hospital') as a Resident Medical Officer. **Admitted and found proved.**
2. On 1 July 2018 you:
 - a. completed a Form R, for Health Education England, Thames Valley ('HEE'), and in Part B:
 - i. 'Section 2: Whole Scope of Practice', you failed to include details of your work for the Hospital as set out at paragraph 1; **Admitted and found proved.**
 - ii. 'Section 7: Declaration', you falsely confirmed the form was a true and accurate declaration at that point in time; **Admitted and found proved.**
 - b. failed to complete a 'Whole Scope of Practice Declaration' informing HEE of your additional work as set out in paragraph 1. **Admitted and found proved.**

3. You knew:
 - a. you had undertaken additional work as set out at paragraph 1; **Admitted and found proved.**
 - b. you failed to fully and accurately complete the forms as set out at paragraph 2; **Admitted and found proved.**
 - c. you needed to accurately complete the forms as set out at paragraph 2; **Admitted and found proved.**
 - d. your actions at paragraph 2 gave a false impression that you were not working elsewhere. **Admitted and found proved.**

4. Your actions as set out at paragraph 2 were dishonest by reason of paragraph 3. **Admitted and found proved.**

5. On 22 June 2019 you:
 - a. completed a Form R and in Part B:
 - i. 'Section 2: Whole Scope of Practice', you failed to include details of your work for the Hospital as set out at paragraph 1; **Admitted and found proved.**
 - ii. 'Section 5: New declarations since your previous Form R Part B', you failed to include details of:
 1. the investigation by the Hospital; **Admitted and found proved.**
 2. your dismissal from the Hospital on ~~22~~ 25 January 2019; **Amended under Rule 17(6). Admitted and found proved.**
 - iii. 'Section 7: Declaration', you falsely confirmed the form was a true and accurate declaration at that point in time; **Admitted and found proved.**
 - b. failed to complete a 'Whole Scope of Practice Declaration' informing HEE of your additional work as set out in paragraph 1. **Admitted and found proved.**

6. You knew:
 - a. you had undertaken additional work as set out at paragraph 1; **Admitted and found proved.**

- b. been suspended from the Hospital on 23 October 2018 and your employment was terminated on ~~22~~ 25 January 2019; **Amended under Rule 17(6).**
Admitted and found proved.
 - c. you failed to fully and accurately complete the forms as set out at paragraph 5; **Admitted and found proved.**
 - d. you needed to accurately complete the forms as set out at paragraph 5; **Admitted and found proved.**
 - e. your actions at paragraph 5 gave a false impression that you were not working elsewhere and/or that no investigations had taken place.
Admitted and found proved.
7. Your actions as set out at paragraph 5 were dishonest by reason of paragraph 6.
Admitted and found proved.
8. On 26 June 2019 you were informed of an open investigation by the GMC in relation to your fitness to practise and you failed to inform:
 - a. HEE; **Not proved.**
 - b. St Helens and Knowsley Teaching Hospitals NHS Trust. **Admitted and found proved.**
9. You knew:
 - a. an investigation had been opened by the GMC; **Admitted and found proved.**
 - b. you had been suspended from the Hospital on 23 October 2018 and your employment was terminated on ~~22~~ 25 January 2019; **Amended under Rule 17(6).**
Admitted and found proved.
 - c. your actions at paragraph 8 gave a false impression that no investigations were ongoing. **Not proved.**
10. Your actions as set out at paragraph 8 were dishonest by reason of paragraph 9.
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 - 28/10/2022

38. 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 Dahanayake's fitness to practise is impaired by reason of misconduct.

The Evidence

39. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

40. The GMC provided the Tribunal with a witness statement from Dr D, Responsible Officer at HEE (Thames Valley), dated 17 August 2022.

41. Dr Dahanayake provided a copy of her Personal Development Plan ('PDP') for 2023/24, and a reflective document dated 13 October 2022. She also gave further oral evidence at this stage of the hearing.

Dr Dahanayake's evidence

42. Dr Dahanayake, in evidence, told the Tribunal that she now took extra care when filling in forms to ensure she had completed them correctly. She said that she understood the importance of providing the correct information in forms and the effect this could have on people's lives, such as when completing a DVLA form on behalf of a patient. However, she also acknowledged that her actions took the decision away from HEE.

43. XXX

44. Dr Dahanayake stated that her response to aggressive or dominant situations at work had changed, and now when faced with those situations, she takes a step back and allows them to vent that frustration, let them settle down, before continuing. She stated where possible she would also get an additional person to come and help her with the situation. Dr Dahanayake said that she now had ways of dealing with such issues, including meditation,

taking a walk, or talking with colleagues. She explained that she now had greater support in the workplace and a GP buddy that she could talk to. She stated that she had shared with her current colleagues that she was subject to GMC proceedings and that they had all been supportive.

45. Dr Dahanayake stated that she had improved her communication skills by roleplay during her GP training, and that she was now also using these skills XXX. Dr Dahanayake said that she has '*become stronger*' since the events and that it was unlikely that this would happen again.

Submissions

On behalf of the GMC

46. On behalf of the GMC, Ms Goring submitted Dr Dahanayake's actions amounted to serious misconduct and that her fitness to practise is currently impaired. Throughout her submissions, Ms Goring referred the Tribunal to the relevant authorities on determining misconduct and impairment as well as to paragraphs 65, 66 and 76 of Good Medical Practice ('GMP').

47. Ms Goring submitted that Dr Dahanayake has clearly breached the principles set out in GMP, the standards which medical professionals are required to adhere to. She submitted that Dr Dahanayake's behaviour can properly be described as serious misconduct for a number of reasons: honesty and integrity are a cornerstone of the medical profession; Dr Dahanayake's dishonest conduct persisted for more than twelve months; there was active dishonesty on two separate, distinct occasions; the dishonest behaviour took place in Dr Dahanayake's professional life; and Dr Dahanayake significantly benefited from not disclosing her dismissal from the Hospital as it could have placed her training position at risk had she told the Trust and HEE.

48. Ms Goring submitted that by not declaring her additional work, Dr Dahanayake had placed her patients at an unwarranted risk of harm, as she had not allowed appropriate checks to be made to ensure she was working within her level of competency. Further, by not disclosing that she had been dismissed following a clinical incident, Dr Dahanayake's practice had been allowed to go unchecked, which also increased the risk to patient safety. Ms Goring submitted that it was not for Dr Dahanayake to make her own assessment of whether she

was fit to continue to practise and that this should have been escalated to the relevant people within the Deanery for a decision to be made about further safeguards or training.

49. Ms Goring submitted that this was a case involving dishonesty, which was generally considered more difficult to remediate. She submitted that the Tribunal should bear this in mind, along with its assessment of Dr Dahanayake's level of insight and remediation. She submitted that the Tribunal may find it useful to consider to what extent Dr Dahanayake's communication to her current employers has improved, and her attitude to the Allegation, which Ms Goring acknowledged had been admitted from the outset of the hearing.

50. Ms Goring submitted that a finding of impairment was required 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.

On behalf of Dr Dahanayake

51. On behalf of Dr Dahanayake, Mr Pojur submitted that the Tribunal could conclude that there was no current impairment in this case. He submitted that, while there had been a suggestion of long-term benefit and active dishonesty, these were two distinct omissions for different reasons that fell on the low end of the spectrum of dishonesty.

52. Mr Pojur submitted that in respect of the first omission, Dr Dahanayake had not given the appropriate attention or understanding when completing the form, against a XXX, and having overburdened herself with study and exams. The second omission was made out of fear and had a limited effect as she came clean to Dr C shortly after. He further submitted that Dr Dahanayake took proactive steps to inform Dr C, and there was no benefit to her trying to cover up what she had done. He reminded the Tribunal that there was a distinct lack of support in Dr Dahanayake's workplace, XXX, which contributed to her actions. Mr Pojur submitted that there was no risk of patients coming to harm because of these omissions in paperwork. He submitted that this was an overstretching of the facts that was not borne out.

53. Mr Pojur submitted that Dr Dahanayake accepts that her actions fell short of standards, but that her actions did not amount to serious professional misconduct. In respect of public confidence, he reminded the Tribunal that Dr Dahanayake took steps to come clean, remediate and also made admissions to dishonesty before this Tribunal. He submitted that this demonstrates sufficient insight to draw a distinction between her dishonesty at the time

of the omissions and where she is at now. He submitted that there is no likelihood of repetition in the future.

54. Mr Pojur submitted that while Dr Dahanayake had been dishonest, it was limited, and was mitigated by the circumstances she was in. Dr Dahanayake has demonstrated proper remediation, by the courses she has been on, which have been invaluable to her, and she has learned from this experience. He submitted that Dr Dahanayake has taken steps to ensure a proper support network and to ensure a safety net has been put in place to provide her with the support she did not have at the time of events. For all of those reasons, he submitted that impairment should not be found.

The Relevant Legal Principles

55. 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.

56. 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.

57. The Tribunal must determine whether Dr Dahanayake's fitness to practise is impaired today, taking into account her 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.

58. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

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

The Tribunal's Determination on Impairment

Misconduct

59. In determining whether Dr Dahanayake's fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to misconduct.

60. The Tribunal had regard to paragraphs 65, 66, 68, 71(b) and 76, of GMP, which provide:

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

66 *You must always be honest about your experience, qualifications and current role.*

...

68 *You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.*

...

71 *You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.*

...

b *You must not deliberately leave out relevant information.*

...

76 *If you are suspended by an organisation from a medical post, or have restrictions placed on your practice, you must, without delay, inform any other organisations you carry out medical work for and any patients you see independently.'*

61. The Tribunal was satisfied that deliberately omitting relevant information from the Form R on two occasions was misconduct. Whilst dishonesty can occur in a variety of ways, in the Tribunal's view, Dr Dahanayake's misconduct was serious. In reaching this conclusion the Tribunal noted that she dishonestly completed two Form R's, 12 months apart, and it was only when informed by letter that the GMC had opened an investigation that she admitted to her employers that she had not been honest on those forms. The Tribunal noted that Dr Dahanayake admitted to her dishonesty before this Tribunal.

62. Furthermore, the Tribunal considered that Dr Dahanayake allowed the dishonesty to continue for more than a year, between completing the first Form R and the second. The Tribunal was satisfied that the completion of the first form is not as serious when considered in isolation and could be explained as having not been given sufficient attention which led to Dr Dahanayake filling them in incorrectly. However, by the time Dr Dahanayake completed the second Form R, she had been dismissed from the role following an investigation, there was now something to actively conceal, which made her actions more serious. The Tribunal noted that in her written statement Dr Dahanayake states:

'I completed the Form R for the GP training scheme dated 22 June 2019 knowing that I would have to tell the Deanery about the investigation conducted by Spire at some time, but not feeling able to do so at that time- I knew that I needed to declare Spire at this stage due to the investigation that had taken place, in regard to section 5 of the Form R.'

63. It was clear to the Tribunal that Dr Dahanayake was aware at the time of completing the second Form R that she needed to disclose her work at the Hospital and her dismissal from that role. She acknowledged that she ought to have included the information and this was a wilful omission.

64. Additionally, the Tribunal were of the view that Dr Dahanayake has a pattern of minimising the information she is portraying where it may have serious consequences. The Tribunal has acknowledged that Dr Dahanayake informed Dr C of her own volition, three weeks after she was notified of the GMC investigation. However, at this point she knew that HEE and the Trust would be informed by the GMC.

65. The Tribunal were of the view that Dr Dahanayake seemed to have been prompted out of fear, and not out of a duty to make things right. Further, the Tribunal opined that while Dr Dahanayake might not have had an obligation under GMP, she did have a professional obligation to ensure that the information she had provided was true to the best of her knowledge. The Tribunal's view was that this dishonesty was made more serious by the fact it took place in a professional capacity.

66. Taking all of those factors into consideration, the Tribunal concluded that Dr Dahanayake's actions amounted to misconduct which was serious ('serious misconduct').

Impairment by reason of Misconduct

67. Having found that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a result of that misconduct, Dr Dahanayake's fitness to practise is currently impaired.

68. The Tribunal considered whether Dr Dahanayake's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. In so doing, it considered whether there was evidence of Dr Dahanayake's insight into her misconduct and any steps she has taken to remediate it.

69. The Tribunal was mindful that dishonesty is difficult to remediate but not impossible. There is no evidence before the Tribunal that there are currently any concerns about Dr Dahanayake's clinical practice. It also looked for evidence of insight, remediation and the

likelihood of repetition and balanced those against the three limbs of the statutory overarching objective, namely:

- protect and promote the health, safety and wellbeing of the public;
- promote and maintain public confidence in the medical profession; and
- promote and maintain proper professional standards and conduct for the members of the profession.

70. In considering the issue of insight, the Tribunal was of the view that Dr Dahanayake had shown limited insight. The Tribunal was of the opinion that Dr Dahanayake still lacks insight into the impact her dishonesty has had, or could have had, on patients, her colleagues and the profession.

71. The Tribunal noted that Dr Dahanayake has undertaken some remedial activities, which were relevant to the matters before this Tribunal, particularly her recent attendance on a probity and ethics course. It also took into account the reflective statement that Dr Dahanayake has provided to the Tribunal, setting out the things she has learned from this course. However, the Tribunal were not satisfied that Dr Dahanayake has fully understood and applied the learning to her particular circumstances. Further, the Tribunal were of the view that Dr Dahanayake has not yet fully appreciated the impact of her dishonesty on the profession.

72. The Tribunal were also provided a copy of Dr Dahanayake's PDP for 2023/24. It noted that Dr Dahanayake aims to complete three diplomas in this time. While academic learning is important, the Tribunal was concerned that Dr Dahanayake has only focused on academic achievement and not on developing the interpersonal skills which would help to address the issues which gave rise to her dishonest behaviour.

73. The Tribunal also took into consideration XXX, which may have contributed to Dr Dahanayake's actions and led to her dishonest behaviour. In her oral evidence, Dr Dahanayake said that she had '*become stronger*' since the events and had plans in place to prevent repetition. However, Dr Dahanayake was unable to explain how she had changed, nor could she tell the Tribunal exactly what mechanisms she had put in place to prevent her from behaving dishonestly again in the future. Further, it was apparent from her oral

evidence that Dr Dahanayake has only just started to address the issues XXX. She told the Tribunal that she had only recently realised the seriousness of the Allegation following legal advice.

74. The Tribunal next considered the risk of repetition. The Tribunal was satisfied that Dr Dahanayake would not fill in forms incorrectly again in the future, as she had focused upon this aspect. However, in relation to general probity, it could not be satisfied that Dr Dahanayake yet has appropriate mechanisms in place to prevent her from behaving in a similar manner in the future. This, coupled with her limited insight, meant the Tribunal was unable to conclude that the risk of repetition was low.

75. In considering the test set out by Dame Janet Smith and adopted in *Grant*, the Tribunal concluded that all four limbs of the test were engaged. The Tribunal considered that Dr Dahanayake's actions in failing to inform her training programme that she had been carrying out additional work outside her training, and her subsequent dismissal from that role following clinical concerns, prevented a proper risk assessment from being conducted, and therefore put patients at risk of harm. While there is no evidence of any actual harm, the Tribunal concluded that the exposure to the risk of harm was unwarranted. The Tribunal also concluded that Dr Dahanayake's conduct brought the medical profession into disrepute and that she breached a fundamental tenet of the profession. The Tribunal also noted that Dr Dahanayake has admitted to acting dishonestly.

76. In considering whether Dr Dahanayake's fitness to practise is currently impaired, the Tribunal balanced her limited insight and the assessed risk of repetition against the overarching objective.

77. The Tribunal further considered that Dr Dahanayake's dishonesty would damage public confidence in the profession if a finding of impairment were not made. The Tribunal was satisfied that a member of the public in full knowledge of the facts of the case would be concerned about a doctor acting in the way Dr Dahanayake did. The Tribunal was also of the view that given its findings of fact and serious misconduct, a finding of impairment of fitness to practise was necessary to promote and maintain proper standards of conduct for the medical profession.

78. The Tribunal has therefore determined that Dr Dahanayake’s fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 31/10/2022

79. Having determined that Dr Dahanayake’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.

Submissions

On behalf of the GMC

80. On behalf of the GMC, Ms Goring submitted that the appropriate sanction was one of suspension. She referred the Tribunal to the Sanctions Guidance (2020) (‘the SG’) and the Tribunal’s own findings at the previous stages of the hearing.

81. Ms Goring accepted that Dr Dahanayake had no previous fitness to practise history, but she stated that Dr Dahanayake’s actions were not an isolated incident as she had allowed the dishonesty to continue for more than a year. Further, Ms Goring submitted that the Tribunal has found that Dr Dahanayake had limited insight into her misconduct and that there has been a pattern of minimising behaviour.

82. Ms Goring submitted that taking no action would not be appropriate as there were no exceptional circumstances in this case. She submitted that this was not an appropriate case for imposing conditions on Dr Dahanayake’s registration, the usual purpose of which is to address identified shortcomings in a doctor’s practice and to remedy those deficiencies. As the misconduct in Dr Dahanayake’s case was dishonesty, no conditions could be formulated that would be appropriate or workable.

83. Ms Goring submitted that a period of suspension would be the appropriate sanction to mark the seriousness of Dr Dahanayake’s actions. This would meet the need to maintain public confidence in the profession and act as a deterrent for other members of the profession. She made no submission as to the length of any suspension.

On behalf of Dr Dahanayake

84. On behalf of Dr Dahanayake, Mr Pojur acknowledged the seriousness of Dr Dahanayake's actions, and submitted that the Tribunal must find a balance between the public interest and the interest of Dr Dahanayake. He reminded the Tribunal that it should consider all available sanctions that might be appropriate in this case, starting from the least serious and impose the least restrictive that was appropriate.

85. Mr Pojur submitted that the level and impact of the dishonesty in this case was at the low end of the spectrum. He submitted that Dr Dahanayake has shown some insight and has taken steps to remediate but accepted that more insight was needed. He reminded that Tribunal of Dr Dahanayake's XXX and submitted that Dr Dahanayake has undertaken significant work on both a professional and XXX in order to improve.

86. Mr Pojur submitted that while he did not seek to dissuade the Tribunal from imposing conditions, he accepted that there was limited array of conditions that could realistically be imposed in this case. He submitted that in that case a very short suspension of a few weeks may be the most appropriate sanction. Mr Pojur reminded the Tribunal that the purpose of sanction is not to punish, although a sanction may have a punitive effect, and submitted that a long suspension would have too harsh an effect on Dr Dahanayake. He submitted that a short suspension would allow sufficient time for Dr Dahanayake to continue to remediate and would bring home the seriousness of her actions.

The Relevant Legal Principles

87. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own independent judgment. In reaching its decision on sanction, the Tribunal had regard to the SG. It bore in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although any sanction imposed may have a punitive effect.

88. Throughout its deliberations, the Tribunal applied the principle of proportionality, balancing Dr Dahanayake's interests against the public interest. It had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession. The Tribunal noted there were no patient safety concerns.

89. The Tribunal had regard to its findings of impairment as well as the submissions made on behalf of the GMC and Dr Dahanayake.

The Tribunal's Determination on Sanction

90. The Tribunal first identified what it considered to be the mitigating and aggravating factors in this case.

91. The Tribunal identified the following aggravating factors:

- This was not an isolated incident. Dr Dahanayake allowed her dishonesty to continue for more than a year and then chose to repeat her dishonest omissions on the second Form R;
- The Tribunal has found that Dr Dahanayake has a pattern of minimising behaviour; and
- Dr Dahanayake has limited insight into her misconduct.

92. The Tribunal identified the following mitigating factors:

- Dr Dahanayake has no previous fitness to practise findings;
- Dr Dahanayake has started to develop insight;
- There has been a lapse of time since events; and
- Dr Dahanayake has expressed regret for her actions.

93. The Tribunal balanced these factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

94. The Tribunal first considered whether to conclude the case by taking no action. It noted that to take no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

95. The Tribunal was satisfied that there were no exceptional circumstances in Dr Dahanayake's case which could justify it taking no action. It determined that, given the

seriousness of Dr Dahanayake’s dishonest behaviour, and the Tribunal’s findings in respect of impairment, to take no action would not be sufficient, proportionate nor in the public interest.

Conditions

96. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Dahanayake’s registration. It had regard to paragraphs 81 and 85 of the SG, which state:

‘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.

...

85 *Conditions should be appropriate, proportionate, workable and measurable.’*

97. The Tribunal noted that the case did not fit within paragraph 81, as a type of case where conditions may be most appropriate. The Tribunal was of the view that, given the purpose of conditions, it would be unusual to impose conditions in a dishonesty case and where impairment was found to maintain public confidence in the profession and uphold proper professional standards.

98. The Tribunal considered that no conditions could be formulated which would be appropriate, workable or measurable. Further, the Tribunal determined that the imposition of conditions would not be sufficient to mark the seriousness of Dr Dahanayake’s actions or address the Tribunal’s findings of impairment. The rationale set out in the Tribunal’s determination on impairment is to deal with issues of public confidence and uphold proper

professional standards. An order of conditions would not strike a fair balance between Dr Dahanayake's interests and the wider public interest. It would not adequately meet the overarching objective in a proportionate way. All of those factors made an order of conditions inappropriate.

Suspension

99. The Tribunal then went on to consider whether a period of suspension would adequately maintain public confidence in the profession and uphold proper standards for its members. In considering whether to impose a period of suspension on Dr Dahanayake's registration, the Tribunal had regard to paragraphs 91, 92, 93 and 97(a), (e), (f) and (g) of the SG which provides:

'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. ...

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 (i.e. for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.

...

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

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

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

100. The Tribunal considered the submissions made by the GMC and on behalf of Dr Dahanayake, and the totality of the evidence and findings made by the Tribunal. The Tribunal considered that the nature of Dr Dahanayake’s dishonest behaviour, in addition to her limited insight and remediation, was serious but on the spectrum of similar cases was neither at the top or bottom end. The Tribunal noted that Dr Dahanayake has now realised the seriousness of her dishonest behaviour and has demonstrated a willingness to remediate. Dr Dahanayake has very recently attended a course on probity and has begun to consider its relevance to her practise. As this further develops the Tribunal was of the view that the risk of repetition would be reduced.

101. The Tribunal was satisfied this case fell squarely within the ambit of paragraphs 91 to 93 of the SG as set out above. It was also satisfied that the matters listed above from paragraph 97 of the SG also apply in this case, such that suspension is the appropriate and proportionate response.

102. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction balancing Dr Dahanayake’s interests against those of the public. The Tribunal took into account the impact that this sanction may have upon Dr Dahanayake. However, in all the circumstances the Tribunal concluded that her interests are outweighed by the need to maintain public confidence in the profession and declare and

uphold proper standards of conduct and behaviour. Overall, the Tribunal decided that this case was not one where the misconduct is *'fundamentally incompatible with continued registration'* and therefore it considered that erasure would not be appropriate or proportionate.

103. The Tribunal determined therefore that an order of suspension was required in this case. It then went on to determine the length of the suspension.

Length of Suspension

104. In determining the length of the suspension, the Tribunal had regard to paragraphs 99 to 102 of SG and the table following paragraph 102.

105. The Tribunal has set out its rationale for imposing a suspension in the wider public interest in order to maintain confidence in the profession and mark proper professional standards.

106. The Tribunal considered the aggravating factors in this case and acknowledged that this was a serious departure from the principles set out in GMP. Dr Dahanayake sustained her dishonesty for more than a year, and it was only when the GMC sent a letter notifying her of an open investigation that she admitted to her dishonesty, albeit not as swiftly as the Tribunal would have expected.

107. The Tribunal went on to consider the mitigating features of the case and their effect on the period of suspension. The Tribunal was satisfied that the likelihood of Dr Dahanayake filling in a form incorrectly again in the future is low, and in relation to probity more widely, that she has started to develop insight into her actions, albeit this is currently limited. Further she has expressed regret and remorse for how she behaved and, at the outset of the hearing, admitted to the Allegation before this Tribunal. The Tribunal was mindful that when considering the appropriate length of suspension, it ought to be for a sufficient period for Dr Dahanayake to develop her insight and remediate further.

108. The Tribunal was satisfied that these factors are relevant in assessing the length of the suspension, and that a reasonably informed member of the public or profession would be satisfied there had been a proportionate response to Dr Dahanayake's dishonest behaviour.

109. Taking all of these elements into account, the Tribunal was satisfied that imposing a period of six months suspension was appropriate and necessary to allow Dr Dahanayake time to reflect on her actions, gain sufficient insight into the effects of her dishonesty and to take further steps to remediate. Further, six months suspension would mark the gravity of the misconduct elements of the case. In the Tribunal’s view this would be sufficient to satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, so as to maintain proper professional standards.

110. Accordingly, the Tribunal determined to suspend Dr Dahanayake’s registration for a period of six months.

Review

111. The Tribunal determined to direct a review of Dr Dahanayake’s case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought either by Dr Dahanayake or the GMC.

112. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Dahanayake to demonstrate how she has developed insight, remediated and reflected on her misconduct. It therefore may assist the reviewing Tribunal if Dr Dahanayake is able to provide:

- A detailed written reflection on her misconduct, particularly showing how she has applied her academic learning regarding probity to the circumstances of her case;
- Evidence of her attendance on courses or eLearning modules, particularly targeted around probity and communication;
- Evidence that she has maintained her medical skills and knowledge; and
- Any other information that she considers will assist the reviewing tribunal.

Determination on Immediate Order - 31/10/2022

113. Having determined that Dr Dahanayake’s registration should be subject to an order of suspension for a period of six months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether her registration should be subject to an immediate order.

Submissions

114. On behalf of the GMC, Ms Goring submitted that the GMC do not seek an immediate order but that it is a matter for the Tribunal. She referred the Tribunal to the relevant sections of the SG. She submitted that there is no interim order, and that there were no restrictions currently in place on Dr Dahanayake's practise.

115. On behalf of Dr Dahanayake, Mr Pojur submitted that an immediate order is not necessary. This would allow Dr Dahanayake time to get practicalities in order and make arrangements with her employer.

The Tribunal's Determination

116. In reaching its decision, the Tribunal considered the relevant paragraphs of the SG and exercised its own independent judgement. In particular, it took account of paragraphs 172, 173 and 178, which state:

***172** The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

***173** An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

...

***178** Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive*

direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.'

117. The Tribunal determined that, as there were no clinical concerns in this case, and bearing in mind its assessment on the risk to patient safety, in its view an immediate order was not necessary to protect members of the public or otherwise in the public or Dr Dahanayake's interests.

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

119. There was no interim order to revoke.

120. That concludes the case.

ANNEX A – 26/10/2022

17(6) Application

121. At the outset of proceedings, Ms Goring, on behalf of the GMC, made an application to amend paragraphs 5(a)(ii)(2), 6(b) and 9(b) of the Allegation under Rule 17(6) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004 ('the Rules').

Submissions

On behalf of the GMC

122. Ms Goring submitted that the GMC were seeking to amend the date in paragraphs 5(a)(ii)(2), 6(b) and 9(b) of the Allegation from '22 January 2019' to read '25 January 2019'.

123. Ms Goring noted that the error had occurred as a letter that had been sent to Dr Dahanayake from Spire Healthcare referred to a disciplinary hearing held on 22 January 2019, but on closer examination the letter goes on to clearly state that Dr Dahanayake's dismissal is with immediate effect from 25 January 2019. She submitted that it was right that the Allegation accurately reflects the evidence before the Tribunal. Ms Goring submitted that the amendment could be done without injustice to Dr Dahanayake as it would accurately reflect the written evidence, and Dr Dahanayake's own evidence that she was not told she was dismissed at the meeting.

On behalf of Dr Dahanayake

124. Mr Pojur, on behalf of Dr Dahanayake, did not object to the amendments being proposed by the GMC.

The Tribunal's decision

125. The Tribunal considered Rule 17(6) of the Rules which states:

'Where, at any time, it appears to the Medical Practitioners Tribunal that—

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

(b) the amendment can be made without injustice,

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

126. The Tribunal took into account the letter from Spire Bushey Hospital, dated 25 January 2019, which states:

'Your dismissal is effective immediately and your final day of employment is therefore 25th January 2019.'

127. It is clear to the Tribunal that the proposed amendment would ensure that the Allegation was an accurate reflection of the evidence before it. Further, the Tribunal noted that it was not in dispute that 25 January 2019 was the correct dismissal date and the application was not opposed. In the circumstances, the Tribunal was of the view that the date should be amended and to grant the amendment would cause no injustice to Dr Dahanayake.

128. Accordingly, the Tribunal granted the application to amend the dates paragraphs 5(a)(ii)(2), 6(b) and 9(b) of the Allegation to read '25 January 2019'.

ANNEX B – 26/10/2022

Rule 34 Application

129. At the outset of the hearing, Ms Goring, on behalf of the GMC, made an application pursuant to Rule 34 of the Rules, for an additional letter to be admitted as part of the GMC's case.

130. The letter, dated 26 June 2019, was sent by the GMC to Dr Dahanayake, and explains that an investigation into her fitness to practise has been opened.

Submissions

On behalf of the GMC

131. Ms Goring submitted that the document is both relevant and fair and establishes the date on which the GMC communicated to Dr Dahanayake that an investigation had been opened. She submitted that the document had been sent to Dr Dahanayake previously and its admission would cause no prejudice to the case.

On behalf of Dr Dahanayake

132. Mr Pojur, on behalf of Dr Dahanayake, did not object to the document being admitted.

The Tribunal's decision

133. The Tribunal noted that they had a wide discretion under Rule 34(1) to admit any evidence they consider fair and relevant to the case before it. The Tribunal first considered the issue of the relevance of the letter. It noted that the letter goes directly to the Allegation, as it provides clarification of the date the GMC informed Dr Dahanayake that an investigation into her fitness to practise had been opened. The Tribunal therefore accepted that the document is relevant to the case before it.

134. The Tribunal next considered the issue of fairness in admitting the letter. It noted that the letter helped to establish the timeline of events and was therefore a key piece of evidence. It carefully considered fairness to both parties and in particular noted that the application was not opposed and determined that it would be fair to both parties if the letter was to be admitted.

135. Therefore the Tribunal concluded that the letter is relevant, and that it would be fair to admit it into evidence and granted Ms Goring's application.

ANNEX C – 26/10/2022

Application for parts of the hearing to be heard in private

XXX