PUBLIC RECORD

Dates: 02/12/2024 - 16/12/2024

Doctor:	Dr Callum METCALFE
GMC reference number:	7672724
Primary medical qualification:	MB ChB 2019 University of Manchester

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

Summary of outcome

Suspension, 5 months
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Claire Lindley
Lay Tribunal Member:	Ms Sally Allbeury
Registrant Tribunal Member:	Dr Nagarajah Theva

Tribunal Clerk:	Miss Racheal Gill

Attendance and Representation:

Doctor:	Present, represented
Doctor's Representative:	Mr David Morris, Counsel, instructed by Burton Copeland Solicitors
GMC Representative:	Mr Paul Williams, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts and Impairment - 11/12/2024

1. This determination will be handed down in private. However, as this case concerns Dr Metcalfe's misconduct and conviction, a redacted version will be published at the close of the hearing.

Background

2. Dr Metcalfe qualified as a doctor with an MB ChB from the University of Manchester in 2019. At the time of the misconduct related events, he was working as a Trust Grade practitioner at the Accident and Emergency Department at South Tees Hospitals NHS Foundation Trust, ('the Trust'.)

3. After a meeting at the Trust with his line manager (and others) on 21 January 2022, Dr Metcalfe self-reported the misconduct related events to the GMC. Subsequently, in May 2023, during the period of time while the misconduct issues were being investigated, Dr Metcalfe was convicted of a criminal offence. He was referred to the GMC by North Wales Police on 15 June 2023. XXX.

4. The detail of all the alleged events leading to this hearing are summarised below.

Misconduct

5. On 2 January 2022, Dr Metcalfe attended the Tesco Pharmacy ('the pharmacy') in Bangor, where he presented to Ms A, the pharmacist, a controlled drug prescription made

out to Patient B. The prescription was for XXX. Dr Metcalfe made a number of statements to Ms A. He said that he was Patient B, he did not know the prescriber, and that he had got the prescription from the accident and emergency department. He later said that the prescriber was an old friend, and that he had written the prescription because the GP surgery was closed during the holiday period.

6. Later that day, Dr Metcalfe telephoned the pharmacy and spoke to Ms C, a pharmacy dispenser. He stated that his friend had earlier that day attended the pharmacy with a prescription that he (Dr Metcalfe) had written for him. He explained that he was trying to assist his friend because the GP surgeries were closed, and that his friend had been trying to protect him by pretending not to know him.

7. It is alleged that Dr Metcalfe intended to obtain the medication for his own use, that he falsely presented himself as Patient B, and that this conduct, coupled with the explanations he gave at the time and on the telephone, was dishonest.

Conviction

8. On 16 May 2023, the Police reported that Dr Metcalfe was found asleep in his car on a petrol station forecourt at 10:25 pm. He was slumped over the steering wheel, the engine was running, and there was a half empty bottle of whiskey between his legs. Dr Metcalfe was subsequently breathalysed for alcohol, which resulted in a reading of 59mg of alcohol per 100 millilitres of breath. The legal limit is 35mg.

9. As a result of this incident on 21 September 2023, at Caernarfon Magistrates' Court, Dr Metcalfe was convicted of being in charge of a motor vehicle whilst over the alcohol limit, and he was disqualified from driving for 6 months and had his driving record endorsed.

XXX

10. XXX

The Outcome of Applications Made during the Facts Stage

11. At the outset of the hearing, Mr Williams, counsel for the GMC, made an application for witnesses A and C, and Patient B to be granted anonymity, as permitted under Rule 35(4) of the General Medical Council (GMC) (Fitness to Practise Rules) 2004, as amended ('the Rules'). This was not opposed by Dr Metcalfe's counsel. This was granted by the Tribunal.

12. The Tribunal also granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to amend the schedules of the Allegation XXX. This application was not opposed by Mr Morris.

13. The Tribunal also granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to amend paragraph 7 and 8 of the Allegation to add the word 'subsequently' to better reflect the evidence upon which the allegations were based. This application was not opposed by Mr Morris.

The Allegation and the Doctor's Response

14. The Allegation made against Dr Metcalfe is as follows:

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

1. On or around 2 January 2022 you attended the Tesco Pharmacy in Bangor (the 'Tesco Pharmacy') and you:

    a. presented to the pharmacist, Ms A, a prescription made out by you to Patient B (the 'Prescription') for the medication set out in Schedule 1;
    Admitted and found proved

    b. said to Ms A that:

        i. you were Patient B;
        Admitted and found proved

        ii. you did not know the prescriber;
        Admitted and found proved

        iii. the Prescription was from an accident and emergency department;
        Admitted and found proved

        iv. the prescriber was an old friend;
        Admitted and found proved

        v. the prescriber had written the Prescription to try to help you during the holiday period, as the GP surgeries were closed and it was

difficult to get access to a GP or prescriber;
Admitted and found proved

or words to that effect.

2. On or around 2 January 2022, after the events described in paragraph 1, you contacted Ms C, a pharmacy dispenser at Tesco Pharmacy, by telephone and you said that:

    a. you were the prescriber, Dr Metcalfe;
    Admitted and found proved

    b. you wrote the Prescription for your friend ('your Friend');
    Admitted and found proved

    c. you were trying to assist your Friend as the GP surgeries were closed and it was hard to get hold of a doctor during the holiday period;
    Admitted and found proved

    d. the person that attended the Tesco Pharmacy was your Friend; Admitted and found proved

    e. your Friend had tried to protect you by pretending not to know you; or words to that effect. Admitted and found proved

3. You intended to obtain the medication set out in the Prescription for your own use.
Admitted and found proved

4. You knew at the time of your actions as described in:

    a. paragraph 1, that:

        i. you were falsely presenting yourself as being Patient B;
        Admitted and found proved

        ii. the Prescription had not come from an accident and emergency department;
        Admitted and found proved

iii. you were the prescriber;
Admitted and found proved

b. paragraph 2, that you had:

i. not written the Prescription for your Friend;
Admitted and found proved

ii. attended Tesco Pharmacy earlier the same day and falsely presented yourself as Patient B.
Admitted and found proved

5. Your conduct as described in:

a. paragraph 1 was dishonest by reason of paragraphs 3 and 4a; **Admitted and found proved**

b. paragraph 2 was dishonest by reason of paragraphs 3 and 4b. **Admitted and found proved**

6. On 21 September 2023 at Caernarfon Magistrates' Court you:

a. were convicted of being in charge of a motor vehicle - alcohol level above limit; **Admitted and found proved**

b. were disqualified from holding or obtaining a driving licence for 6 months; **Admitted and found proved**

c. had your driving record endorsed. **Admitted and found proved**

7. XXX
Admitted and found proved
Amended under Rule 17(6)

8. XXX
Admitted and found proved
Amended under Rule 17(6)

And that by reason of the matters set out above your fitness to practise is impaired because of your:

a. misconduct in respect of paragraphs 1 -5; **To be determined**

b. conviction in respect of paragraph 6; **To be determined**

c. XXX **To be determined**

The Admitted Facts

15. At the outset of these proceedings, through his counsel, Mr Morris, Dr Metcalfe made admissions to all paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules.

16. In accordance with Rule 17(2)(e) of the Rules, the Tribunal therefore announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Impairment

17. 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 Metcalfe's fitness to practise is impaired by reason of misconduct, conviction and XXX.

Evidence

18. 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 A, locum pharmacist at the Pharmacy, dated 22 September 2022.
- Ms C, pharmacy dispenser at the Pharmacy, dated 20 May 2022 and supplemental witness statement dated 31 May 2023.

19. XXX

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

- Photograph of the prescription handed to the pharmacy,
- Email correspondence from the pharmacy to the Trust,
- Dr Metcalfe's self-referral to the GMC and associated attachments,
- The Trust's referral to the GMC and associated attachments,
- Information from North Wales police regarding the conviction,
- XXX

21. Dr Metcalfe provided a reflective statement dated 25 November 2024 and he also gave oral evidence at the hearing.

22. The Tribunal also received evidence on behalf of Dr Metcalfe. It included a number of character references, XXX and a certificate of completion of an online CPD module on Remediation.

Submissions

On behalf of the GMC

23. Mr Williams pointed out that it was generally admitted by Dr Metcalfe that his current fitness to practise was impaired, but the details, and on what basis, needed consideration. He reminded the Tribunal that impairment was a matter for its own judgment, taking into account the charges, the factual basis and evidence for them, and at the same time looking forward.

24. The Tribunal was reminded by Mr Williams that it should consider whether Dr Metcalfe's fitness to practise is impaired for each separate head- of misconduct, conviction XXX.

25. Mr Williams addressed the Tribunal about the conviction firstly. He asked it to consider the overarching objective, in particular to promote proper standards of behaviour and protect the reputation of the medical profession. He accepted that the conviction was not the most serious in a scale of offences but said that all convictions are serious in their own way. He reminded the Tribunal that Dr Metcalfe conceded in his oral evidence that the public would expect a doctor to act in a certain way, and that this conviction undermined confidence in the medical profession. He pointed out that one function of a tribunal is to uphold standards and protect the reputation of the profession, and that this Tribunal could do that by finding that Dr Metcalfe is impaired by reason of the conviction. He accepted that the conviction could be remediated over the passage of time, but that this stage had not yet been reached.

26. Mr Williams addressed the Tribunal in relation to misconduct XXX and pointed out that Dr Metcalfe acknowledges that he acted dishonestly.

27. Mr Williams accepted that there was evidence that Dr Metcalfe had begun to develop insight, but he said that it was nascent and needs considerable development. He referred to

the fact that Dr Metcalfe has apologised and reflected, but that he was just '*scratching at the surface'* of an analysis of his behaviour XXX. He confirmed to the Tribunal that Dr Metcalfe had engaged with the investigatory process, which is to his credit, but submitted that he was at the start of his insight journey. He said that Dr Metcalfe was struggling to articulate issues about insight and remediation during his oral evidence, which shows that he has not, as yet, explored the concepts in his own mind.

28. Mr Williams reminded the Tribunal of the two-stage process when considering the misconduct, and that the misconduct must be serious. He said that Dr Metcalfe's actions demonstrated significant dishonesty, and that he had lied to get what he wanted. He chose to deceive a professional colleague in presenting a false prescription and then carrying out a '*pantomime'* of pretending to be the patient it was written out to. This dishonesty was compounded by a follow up telephone call when he told further lies to a different professional colleague. He said Dr Metcalfe's actions were not inadvertent, but that he had made clear choices, albeit in the context of XXX.

29. As a consequence of this dishonesty, Mr Williams submitted that Dr Metcalfe had breached the guidance set out in Good Medical Practice (GMP) and referred the Tribunal to two paragraphs (81 and 48) which relate to professionalism and honesty, and respecting colleagues.

30. XXX. Mr Williams submitted that Dr Metcalfe had made active choices, which went to his character.

31. Mr Williams pointed out that dishonesty is difficult to remediate but accepted that Dr Metcalfe had started the remediation process in good faith. He submitted that the misconduct was not remediated, and he asked the Tribunal to find that Dr Metcalfe was impaired because of his acts of dishonesty.

32. XXX. He said that, in effect, this means that Dr Metcalfe is not presently fit to return to unrestricted practice. XXX. He pointed out that it states that Dr Metcalfe has XXX, which brings with it a risk of repetition of behaviour.

<u>On behalf of Dr Metcalfe</u>

33. Mr Morris started by confirming XXX. He acknowledged that Dr Metcalfe's fitness to practise was impaired XXX but submitted that it was not impaired in relation to the misconduct allegation and the conviction.

34. Mr Morris stated that Dr Metcalfe accepts that the conduct, which involved dishonesty, was sufficient to constitute misconduct, and that the conviction for being drunk in charge of a motor vehicle crossed the threshold required for it to be considered at the impairment stage. He accepted that both were serious, but they should be considered in their context and that there is range of seriousness.

35. Mr Morris pointed out that the dishonest conduct was described in the self-referral that Dr Metcalfe had made to the GMC. He had been taking prescribed XXX from Great Ayton Health Centre in Middlesborough, and travelled to Wales without his medication, and could not get a replacement. This became an acute issue on 2 January 2022, XXX while assisting XXX with some building work. XXX. He confirmed that the prescription that Dr Metcalfe had written out was appropriate and matched the prescription that he had been given by the health centre.

36. On behalf of Dr Metcalfe, Mr Morris accepted that the conduct was aggravated by the fact that it involved dishonesty. He submitted however, that it was an amateur attempt to get XXX, and that there was a high likelihood that he would be detected. The pharmacists had noticed a number of errors with the prescription, and the later telephone call made the presentation of the prescription even more unusual. Mr Morris said that the incident took place because of Dr Metcalfe's desperation and fear, but that it lacked sophistication, and was bound to fail. It was an isolated incident, which Dr Metcalfe has never done before or since. In terms of the criminal conviction, Dr Morris said that, although serious, in the wide spectrum of offending, this was not the most serious. He was not driving, was not at work, and did not jeopardise patient safety.

37. Turning to impairment, Mr Morris conceded that there is a presumption that dishonesty results in impairment, but that there is guidance that states that can be rebutted if there is no risk to patients, public confidence, or proper professional standards. He submitted that this conduct was at the lower end of seriousness of dishonesty. It was an isolated incident, and Dr Metcalfe made an immediate admission to the hospital that he was working in at the time. He did not pose a significant risk to patients and the hospital trust had said that there was not a patient safety issue.

38. Mr Morris pointed out that XXX. XXX said that the risk to patients was not nil, but that Dr Metcalfe was thoughtful and careful in relation to their care, and that there was no evidence that his work as a doctor might be affected.

39. Mr Morris stated that Dr Metcalfe did not accept the GMC assertion that he was just '*scratching the surface*' in terms of insight. In contrast, he said that Dr Metcalfe's Reflective

Statement showed that he recognises that there is a trust issue, and he had shown depth, genuineness and honesty about the offending, both in his Statement and before the Tribunal. He said that Dr Metcalfe had tried to get the medication because XXX. He accepted that Dr Metcalfe could have gone to an Accident and Emergency Department but explained that he wanted the drugs immediately. He said that Dr Metcalfe accepts that what he was doing was wrong, XXX. The crudeness of the prescription shows that there was no pre planning on Dr Metcalfe's part, and the phone call was made through fear of the recognition of what he had done.

40. XXX. At the time, he was out of work, thought his career was over, and had difficulties in his personal life. He pointed to the oral evidence given to the Tribunal, where Dr Metcalfe had recognised that patients might be less likely to go to a doctor for medical help because of the breach of trust, and that this could harm patients. He also set out the steps that Dr Metcalfe had said that he was now taking, set out in the Reflective Statement, namely, a range of activities to address XXX, his return to work, XXX. He confirmed that Dr Metcalfe was committed to continuing this work for his own wellbeing, and for the trust of the public and to uphold professional standards.

41. In terms of a strategy going forward, Mr Morris stated that Dr Metcalfe was committed to ongoing transparency, XXX, and complying with any GMC conditions. He said that he would have already attended an Ethics course but could not do so because of lack of funding due to his unemployment at the time. He said that if Dr Metcalfe struggled to articulate when giving evidence to the Tribunal it was an issue with form not substance.

42. Mr Morris submitted that there was evidence that he was restoring trust and referred the Tribunal to the testimonial statements. He quoted from Dr F's statement dated 27 November 2024, who had been Dr Metcalfe's supervising consultant in Antrim Area hospital, and Dr G's statement dated 30 November 2024, Dr Metcalfe's educational and clinical supervisor at the GP surgery in Wales. He pointed out, for example, that there was evidence from them that Dr Metcalfe had been open and honest, learned from past mistakes, had good insight, and high professionalism. There were no issues with his clinical work.

43. In summary, Mr Morris stated that Dr Metcalfe's insight was not superficial, but that it was *'deep and genuine.'* He said that Dr Metcalfe had given a multi-faceted strategy XXX, which involved cooperation, XXX and support. He submitted that there was sufficient insight and remediation to ensure that the dishonest conduct and the conviction were unlikely to be repeated. He also stated that, in the circumstances, the conduct and the conviction did not require a finding of impairment for reasons of public policy.

The Relevant Legal Principles

44. The Legally Qualified Chair ('LQC') gave the Tribunal legal advice, which is summarised below.

45. The Tribunal is reminded that there is no burden or standard of proof to adopt at this stage and that the decision as to impairment is a matter for the Tribunal's judgment alone.

46. So far as the conduct is concerned, the Tribunal is reminded that there are 2 parts to the impairment stage of the process. Firstly, the Tribunal must decide whether the facts as admitted amount to misconduct, and then whether the finding of that misconduct leads to a finding of current impairment.

47. 'Misconduct' has no statutory definition. It is a matter for the judgment and experience of the tribunal. However, in the case of *Roylance v GMC [No 2] [2000] 1 AC 311* it was said that 'misconduct' should be 'serious misconduct' before the Tribunal should move to consider fitness to practise. The word 'serious' should be given its ordinary meaning. This case stated that misconduct is:

> *'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.'*

48. In the case of *Nandi v GMC [2004] EWHC*, Collins J said that misconduct is conduct which would be regarded as 'deplorable' by fellow practitioners.

49. If, having decided that there is misconduct as defined, then the Tribunal should go onto consider whether Dr Metcalfe is impaired due to misconduct, the conviction for a criminal offence XXX.

50. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance provided by Dame Janet Smith in the *Fifth Shipman Report*, as adopted by the High Court in *CHRE v NMC & Grant (2011) EWHC 927 (Admin)* ('Grant'). Dame Smith sets out some features that are likely to be present when impairment is found. These are where a doctor has in the past or is liable in the future to

> *a. act so as to put a patient or patients at unwarranted risk of harm.*

b. bring the medical profession into disrepute.

c. breach one of the fundamental tenets of the medical profession; and/or

d. have acted dishonestly and or is liable to do so in the future.

51. The Tribunal must determine whether Dr Metcalfe's fitness to practise is impaired as of today, taking into account his past actions, and any relevant factors such as whether the matters are remediable, have been remedied, and any likelihood of repetition. The Tribunal was informed that it should take into account Dr Metcalfe's hitherto good character when making a determination on impairment.

52. The Tribunal is reminded that the misconduct part of the Allegation relates to dishonesty. In the case of *GMC v Nwachuku 2017 EWHC 2085 Admin* it was confirmed that it is unusual for matters involving dishonesty not to result in impairment, especially so where the dishonesty is serious. It decided that the Tribunal in that case had placed too much weight on the doctor's Reflective Statement in concluding that the misconduct, namely the question of honesty, was remediable. Also, in the case of *Nkomo v GMC 2019 EWHC 2625 admin* this position was reaffirmed, and it was also stated that dishonesty is generally held to be difficult to remediate. This is because, unlike with clinical errors, where further practice and/or teaching would likely show a practitioner the correct method of practice, the nature of dishonest behaviour goes more to the practitioner's character than learning. Clinical and personal mitigation therefore hold less weight in such cases. The Tribunal must note, however, that each case is decided on its facts. The Tribunal should look at the circumstances of the case, the need to uphold public confidence, and what has been done to remediate actions and address XXX.

53. If the Tribunal has found that the misconduct is serious, even if XXX there is a strong link between the misconduct and XXX, the Tribunal must nevertheless address the misconduct to ensure that public confidence is maintained.

54. So far as the conviction is concerned, the Tribunal is advised that the sentence imposed by a criminal court is not necessarily a reliable guide for the Tribunal in its task of maintaining public confidence in the profession. It should make its own decision about that. The function of a criminal court in is quite different, because this Tribunal is considering the impairment of a doctor, bearing in mind the overarching objective in the Medical Act. Again, even if it is accepted that there is a causal link between XXX, and the commission of the offence, the Tribunal must address the conviction to ensure that public confidence is maintained.

55. XXX

56. XXX

57. The Tribunal must also determine whether the need to uphold professional standards and maintain public confidence would be undermined if a finding of impairment were not found. The case of *Grant* makes it clear that protecting the public and upholding proper standards and public confidence in the profession is a fundamental consideration. As well as considering the features set out in *Grant,* the Tribunal was informed that it must also consider the overarching objective and determine whether the need to uphold professional standards and maintain public confidence would be undermined if a finding of impairment were not found. The Tribunal was asked to note the principle in the case of *Yeong v GMC [2009] EWHC 1923 Admin,* that:

> '*There will be occasions where impairment of fitness to practice must be found as a matter of public policy to uphold public confidence in the profession where to make no such finding would have an adverse impact on public confidence in the profession*.'

The Tribunal's Determination on Impairment

58. The Tribunal considered the details of the Allegation that Dr Metcalfe had admitted, and all the written and oral evidence it had received. It considered the submissions made by both parties and the LQC advice.

59. The Tribunal considered firstly whether the facts outlined in paragraphs 1-5 of the Allegation amount to misconduct.

60. The Tribunal noted that Dr Metcalfe had gone to the pharmacy with a prescription for XXX that he had written out for a Patient B. He presented himself as Patient B and gave various inconsistent explanations when questioned about the prescription. He later rang the pharmacy and said that Patient B was his friend and that he (Dr Metcalfe) had written out the prescription for him because the GP surgery was closed.

61. The Tribunal noted that Dr Metcalfe has admitted that he was presenting himself as Patient B, that he wanted the medication for his own use, and that he was, therefore, being dishonest at the time.

62. Dr Metcalfe has maintained a broadly consistent explanation for his actions throughout the GMC investigation and Tribunal hearing. He said that he wanted the

medication because he had travelled to North Wales to see XX and had forgotten his XXX, which is prescribed to him for XXX. In his GMC referral form, Dr Metcalfe states;

> *'On the morning of 02/01/22, I assisted* [XXX] *in building a large wooden door.* [XXX] *On the afternoon of 02/01/22, I visited a nearby Tesco pharmacy, intending to purchase* [XXX]. *In a poorly conceived, rash decision, I wrote a prescription for* [XXX] *as per the prescription on my NHS app.'*

63. The Tribunal noted that the misconduct involved dishonesty, and that acts of dishonesty are by their nature serious. The Tribunal decided that trying to deceive the pharmacist in this way both by attending in person and then telephoning them later, was unacceptable behaviour and went to Dr Metcalfe's honesty and integrity. The Tribunal noted that the conduct took place in Dr Metcalfe's private life, but that he had used his knowledge and position as a doctor to try to obtain the medication and deceive a fellow professional into dispensing prescribed medicine. It also noted that the conduct was exacerbated by the making of a telephone call later that day, adding to the deception and involving another member of staff at the pharmacy.

64. The Tribunal considered the guidance set out in GMP. The Tribunal used the 2013 guidance, because that was in place when the events occurred, (and therefore the paragraph numbers differ from those by Mr Williams who used the 2024 version.) Taking into Dr Metcalfe's admissions, and the available evidence, it concluded that the following paragraphs that related to honesty and integrity had been breached:

> *'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*
>
> *65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *66 You must always be honest about your experience, qualifications and current role.*
>
> *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.'*

65. The Tribunal also decided that treating professional colleagues in the way that Dr Metcalfe did was not appropriate and determined that paragraph 36 of GMP was also engaged. It states;

'36 You must treat colleagues fairly and with respect.'

66. The Tribunal therefore determined that Dr Metcalfe's behaviour fell so far short of the standards of conduct reasonably expected of a doctor so as to amount to serious misconduct. It decided that such dishonest conduct could be considered '*deplorable'* by fellow members of the medical profession, and that Dr Metcalfe had not maintained proper professional standards for members of the profession. XXX.

67. In summary, the Tribunal concluded that limbs *(b), (c)* and *(d)* of the guidance set out in *Grant* that Dr Metcalfe's conduct described in paragraphs 1-5 of the Allegation amounts to serious misconduct. It decided that there had been a risk to Dr Metcalfe personally, but there had been no risk to patient safety. It decided his actions could bring the medical profession into disrepute. He had acted dishonestly and therefore breached one of the fundamental tenets of the medical profession.

68. Having decided that the conduct outlined in paragraphs 1-5 of the Allegation amounts to misconduct as defined, the Tribunal then went onto to consider whether Dr Metcalfe's current fitness to practise is impaired by reason of that misconduct, but also due to the conviction XXX.

69. The Tribunal accepted that the conduct and conviction matters were interlinked with and stemmed from XXX that Dr Metcalfe was experiencing and therefore considered XXX and noted that much of the insight and remediation steps that Dr Metcalfe has taken to address XXX, will also go some way to address the misconduct and conviction.

70. The Tribunal considered in turn the insight Dr Metcalfe has shown, and whether the conduct, conviction, XXX were remediable, had been remedied, and whether there was any likelihood of repetition.

XXX

71. XXX

72. XXX

73. XXX

74. XXX

75. XXX

76. The Tribunal noted that Dr Metcalfe had cooperated XXX. He accepts that he is unfit to return to unrestricted practice.

77. XXX

78. XXX. In the Reflective Statement, Dr Metcalfe said;

> *'In hindsight, I can see clearly how* [XXX] *were influencing my actions. At the time, I struggled to separate my personal needs from my professional responsibilities, leading me to make choices that were ultimately harmful. I now realise that by prioritising my personal struggles over my professional responsibilities, I betrayed the principles that underpin the public's faith in the medical profession. This experience has taught me that the trust and confidence of patients and the public must always be safeguarded, even in times of personal difficulty.'*

79. XXX. In his Reflective Statement, he said;

> '[XXX] *I acknowledge* [XXX] *could have called into question my ability to make safe and ethical decisions for my patients. This is a failing that I regret deeply, and I have worked to ensure that my actions going forward align with the high standards expected of doctors.'*

80. XXX

81. XXX

82. XXX

83. XXX

84. XXX

85. XXX

86. XXX

87. XXX

88. XXX

89. XXX

90. XXX

91. XXX

92. XXX

93. XXX

94. Dr Metcalfe told the Tribunal that he has a multi-faceted strategy to help him XXX. The Tribunal noted the character references from friends and family and accepted that he has a good support network.

95. The Tribunal considered the testimonials made by colleagues and supervisors and noted that Dr Metcalfe had been open and honest with them. For example, Dr G, who is Dr Metcalfe's educational and clinical supervisor at Bronmeiron GP surgery, stated that:

> *'Throughout his placement, Dr Callum Metcalfe has been open and honest about his GMC conditions and the circumstances surrounding them. I have found him determined to learn from past mistakes and committed to upholding the standards expected of a doctor. He demonstrates good insight into the personal factors that may affect his fitness to practice* [XXX].'

96. In similar vein, the Tribunal noted the testimonial from Dr F, which states;

> *'Callum was very open with me about his GMC conditions and what had led up to them. We had a frank conversation on the processes that we would follow to ensure that he would be closely supervised on the one hand but on the other the encouragement he would have to work hard so as to have a very good reference to augment future applications to specialty training.'*

97. XXX

98. The Tribunal acknowledged the support systems that Dr Metcalfe has in place, XXX. The Tribunal encouraged a structured support system XXX.

99. XXX

100. XXX

101. XXX. The Tribunal noted that the testimonial evidence showed that those working with Dr Metcalfe have no concerns about his clinical performance, and his treatment of patients. They were all positive in that regard. XXX.

102. XXX

103. XXX

104. XXX

Misconduct

105. The Tribunal noted the case law in relation to dishonesty, and recognised that it is difficult to remediate, because it goes to a doctor's character, rather than clinical performance. It determined however, that it was not impossible to do so, especially when the conduct was linked to XXX.

106. The Tribunal considered the level of insight that Dr Metcalfe had into the misconduct. It accepted that Dr Metcalfe had self-reported the misconduct matters to the GMC. He had subsequently cooperated during the GMC investigation and admitted the misconduct on the first day of the Tribunal hearing and had given evidence at the hearing. The Tribunal determined that this goes to Dr Metcalfe's credit and shows a level of insight generally.

107. However, notwithstanding his self-report, and cooperation, the Tribunal noted that Dr Metcalfe had not actually reported the misconduct straight away. The pharmacy had informed the hospital that someone had presented a suspicious prescription, and, after a meeting with his supervisor and others on 21 January 2023, it was agreed that Dr Metcalfe would report the incident to the GMC. The Tribunal was not satisfied that the self-reporting was timely. It also noted that reporting the matter to the GMC appeared to be a group

decision, rather than a personal one, arising out of the meeting. It concluded that this delay in reporting demonstrated a lack of insight at the time of the incident.

108. The Tribunal accepted the explanation that Dr Metcalfe gave to the GMC about how the misconduct had come about. It noted that throughout the investigation and tribunal process, Dr Metcalfe has given a broadly similar account. He explained that he had been prescribed XXX by his GP surgery for XXX. He said that he had travelled to Wales to visit XXX over Christmas and New Year and had left the medication behind. He said that he was XXX when he tried to assist XXX with some DIY XXX. He had therefore handwritten a prescription in the name of a colleague, copying the prescription that he had been prescribed from his GP. Dr Metcalfe said on the self-referral form;

> *'In a moment of desperation and due to poor knowledge of self-prescribing guidelines, I foolishly wrote the prescription in another's name. I believed that prescribing for a close friend was allowed where self-prescribing was prohibited. On reflection, I see how irresponsible and damaging this decision was. I understand this brings my integrity into question and will be completely open and honest in any investigations as a consequence of my actions.'*

109. The Tribunal noted that Dr Metcalfe in his appraisal document describes the background to the misconduct, and states that he was going through a difficult personal time, as well as XXX. Again, Dr Metcalfe described the misconduct as coming from a lack of knowledge and experience of prescribing guidelines and described it '*this rash error in judgement'* and a '*moment of folly.'*

110. In his Reflective Statement, the Tribunal noted that Dr Metcalfe had addressed the misconduct allegation and said;

> *'As far as the ``pharmacy incident'' is concerned, I accept that I acted dishonestly. The background and my full admissions are set out in my submissions to the Case Examiners…*
>
> *I now recognise how this dishonest behaviour will cause patients and the public to question whether I can be trusted as their doctor. The knowledge that my actions will damage the reputation of the medical profession weighs heavily on me. I am deeply sorry for the wider implications of my behaviour, as the trust that the public places in doctors is critical to the integrity of our profession'…*

> *'I am very sorry for all my misconduct and the damage it has caused. I now understand that my actions not only had personal repercussions but would also undermine the trust patients place in doctors, which is the cornerstone of effective medical practice. This may cause patients to fail to seek medical advice when they should do so.'*

111. The Tribunal was concerned that when Dr Metcalfe reported the matter, and in his appraisal in February 2023, he did not demonstrate that he understood that the misconduct involved serious dishonesty. He did not recognise the impact his conduct could have on the public's trust in the profession, nor that he had not upheld the professional standards expected of him. Instead, the conduct was described by him as an '*error of judgment*' and '*a moment of folly*.'

112. The Tribunal noted that Dr Metcalfe has not apologised to the two witnesses from the pharmacy for the difficult position that he put them in, nor recognised that his attempt to deceive professional colleagues is serious. The Tribunal considered that Dr Metcalfe's explanation for his conduct showed a lack of accountability. The Tribunal was of the view that his lack of accountability was impacted by his level of insight into his misconduct.

113. The Tribunal noted that, in his oral evidence to the Tribunal, in response to questions from the GMC, Dr Metcalfe acknowledged that he knew at the time that what he was doing was wrong, but that he had done it anyway, out of desperation.

114. The Tribunal acknowledged that Dr Metcalfe was XXX at the time of his dishonest behaviour, and this may have affected his judgment. However, the Tribunal determined that Dr Metcalfe did not demonstrate that he has a deep understanding of the seriousness of the dishonesty and has not addressed how he will remediate it. The Tribunal decided, therefore, that Dr Metcalfe had demonstrated only partial insight into the misconduct matters.

115. The Tribunal considered that XXX brings with it a risk of repetition of similar behaviours to those demonstrated in the misconduct. This is especially so, due to the limited insight that the Tribunal has seen. In order to remediate the misconduct, the only evidence produced to the Tribunal was a 1.5-hour online CPD course on Remediation in January 2023. There is no documentary evidence of any CPD work carried out since then. The Tribunal was concerned that Dr Metcalfe has not proactively sought to further address the misconduct adequately.

116. In applying Dr Metcalfe's misconduct against the test as set out in *Grant,* the Tribunal was satisfied that limbs *(b), (c)* and *(d)* of the test were engaged. Dr Metcalfe's misconduct had brought the medical profession into disrepute and breached a fundamental tenet of the

profession. Dr Metcalfe has admitted to acting dishonestly in attempting to conceal his actions. Because of Dr Metcalfe's XXX there remains a risk that such conduct could be repeated in future.

117. The Tribunal considered Dr Metcalfe's misconduct within the context of the overarching objective. It was aware that the misconduct stemmed from XXX. Nevertheless, it decided that Dr Metcalfe's misconduct had undermined confidence in the medical profession, and that he had failed to maintain the proper standards expected of him, as set out in GMP.

118. The Tribunal also concluded that public confidence in the profession would be seriously undermined if a finding of impaired fitness to practise were not made in relation to the misconduct. It involved serious dishonesty.

119. The Tribunal concluded that a finding of impairment for misconduct is required to maintain both public confidence in the medical profession, and proper professional standards and conduct for members of that profession. The Tribunal also decided that a finding of impaired fitness to practise was required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

Conviction

120. The Tribunal considered the conviction outlined in paragraph 6 of the Allegation. It reminded itself that Dr Metcalfe had been convicted of being in charge of a motor vehicle while over the prescribed alcohol limit, in May 2023, and, on 21 September 2023, he was disqualified from driving as a result, with his driving licence being endorsed.

121. The Tribunal noted that Dr Metcalfe's breath test resulted in a reading of 59mg of alcohol in 100ml of breath, with the limit being 35mg. It took into account that Dr Metcalfe had been found by a police officer slumped and asleep at the wheel of his car, with a bottle of whiskey between his legs.

122. The Tribunal accepted that there was a causal link between Dr Metcalfe's conviction, and XXX. It also acknowledged the stress that the GMC investigation was causing him. However, the Tribunal considered that a conviction for being in charge of a motor vehicle while over the prescribed limit was a serious matter, especially in the circumstances described by the police, and while under investigation by the GMC for the earlier misconduct matter. It indicated poor decision making on Dr Metcalfe's part. It decided that Dr Metcalfe's action breached GMP, which states at paragraph *'65 'You must make sure that your conduct justifies*

your patients' trust in you and the public's trust in the profession.' The Tribunal decided that the conviction met the threshold for consideration of impairment.

123. The Tribunal decided that it was possible for Dr Metcalfe to remediate the behaviour which resulted in a criminal conviction. Again, due to the fact that the conviction involved being in charge of a motor vehicle while over the prescribed limit, the Tribunal noted that this behaviour was likely to be linked to XXX.

124. The Tribunal went on to consider whether Dr Metcalfe had demonstrated insight into the conviction. It noted that Dr Metcalfe had pleading guilty in the magistrates' court and had accepted responsibility for his conduct during the GMC investigation. He explained in his Reflective Statement that:

> *'During the period surrounding the "drunk in charge" incident, I was experiencing significant personal and professional challenges.* [XXX] *On the day of the incident, I had received updates regarding my case following a conference call with my solicitor and barrister, which left me feeling distressed.* [XXX] *I accept that having alcohol in my car and drinking there was a serious error in judgment, and I deeply regret my actions.'*

125. The Tribunal noted that Dr Metcalfe had given different accounts XXX as to how this offence came about. The Tribunal was concerned about these differences and determined that Dr Metcalfe did not have a full understanding of the offence and the circumstances that led to it.

126. The Tribunal noted that, when questioned by the GMC, Dr Metcalfe had to be prompted before he articulated that he understood that he had a responsibility to uphold trust in the profession. The Tribunal determined that Dr Metcalfe had not demonstrated that he has a deep understanding of the impact that a criminal conviction has on the standing of the medical profession and has not addressed how he will remediate it.

127. The Tribunal decided that Dr Metcalfe had demonstrated partial insight into the conviction and its seriousness. It noted that the remediation steps he has taken to address XXX equally applied to his conviction. It noted that there is some way to go before XXX is fully remediated.

128. When applying *Grant,* the Tribunal was satisfied that limbs *(b),* and *(c)* were engaged. Dr Metcalfe's conviction had brought the medical profession into disrepute and breached a fundamental tenet of the profession.

129. The Tribunal considered Dr Metcalfe's conviction within the context of the overarching objective. It decided that Dr Metcalfe's conviction had undermined confidence in the medical profession, and that he had failed to maintain the proper standards expected of him, as set out in GMP. It determined that a finding of impairment was required.

130. The Tribunal was also of the view public confidence in the profession would be seriously undermined if a finding of impaired fitness to practise were not made in relation to the conviction. The Tribunal decided therefore that a finding of impaired fitness to practise was also required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

Summary

131. The Tribunal concluded therefore that Dr Metcalfe's fitness to practise is currently impaired by reason of his misconduct, conviction XXX.

Determination on Sanction - 16/12/2024

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

133. This determination will be handed down in private. However, as this case concerns Dr Metcalfe's misconduct and conviction, a redacted version will be published at the close of the hearing.

The Evidence

134. The Tribunal has taken into account evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

135.The Tribunal also received Dr Metcalfe's CV during the sanction stage.

Submissions

On behalf of the GMC

136. Mr Williams advised the Tribunal that the decision as to sanction was a matter for its own independent judgment, bearing in mind the overarching objective. He submitted that an order of suspension was necessary, with a review, and an Immediate Order too.

137. Mr Williams addressed the Tribunal in two parts. He firstly went through the salient points as identified by the Tribunal in its impairment Determination, and then pointed out the sections of the Sanctions Guidance that were relevant to Dr Metcalfe's case.

138. Mr Williams firstly referred to the Determination and quoted a number of parts of it that relate to Dr Metcalfe's misconduct. He said that the Tribunal had found that the acts of dishonesty were by their nature serious, and that deceiving the pharmacists in the way that he did went to his honesty and integrity. He submitted that probity goes to the heart of the medical profession. He said that although the misconduct matter took place as part of Dr Metcalfe's private life, the Tribunal had noted that he had used his knowledge and skills as a doctor in writing out the prescription and when ringing the pharmacy.

139. Mr Williams reminded the Tribunal that it had found that a number of parts of GMP that related to honesty and integrity were engaged, namely paragraphs 1, 65, 66, and 72. He asked the Tribunal to consider these again at the sanction stage, as they relate to the central premise of probity. He also referenced paragraph 36, which relates to the treatment of colleagues and submitted that Dr Metcalfe's actions were highly disrespectful toward the professional colleagues at the pharmacy.

140. Mr Williams pointed out that the Tribunal had expressed concern about Dr Metcalfe's insight into his dishonesty. Dr Metcalfe had called the incident, '*an error of judgment'* and a *'moment of folly.',* and this showed an element of minimisation. He had not apologised, had not recognised the seriousness of his actions, and showed a lack of accountability. Mr Williams said that the Tribunal had noted that Dr Metcalfe accepted in his oral evidence that he knew what he was doing was wrong but did it anyway. He reminded the Tribunal of its concern that Dr Metcalfe had only carried out 1.5 hour CPD course on Remediation, and that he had shown limited or partial insight.

141. Mr Williams stated that the Tribunal had found that Dr Metcalfe's misconduct brought the medical profession into disrepute, was dishonest, and he had breached a fundamental tenet of the medical profession.

142. XXX. Mr Williams conceded that, XXX, but the misconduct and conviction needed to be considered.

143. Mr Williams noted that it had been accepted that Dr Metcalfe had cooperated with the GMC investigation, and that he is fit to practise but only with conditions. He referred the Tribunal to the Reflective Statement, XXX.

144. XXX

145. Mr Williams agreed that the testimonials show that there are positive aspects in Dr Metcalfe's case, but reminded the Tribunal that it had decided that XXX.

146. Mr Williams reminded the Tribunal that it had found that the risk to patients was '*not nil,''* and so far as XXX is concerned, it had caused him to act in a way such that he had brought the medical profession into disrepute, had acted dishonestly, and that he had breached a fundamental tenet of the profession. XXX.

147. When considering the conviction for being in charge of a motor vehicle while over the prescribed alcohol limit, Mr Williams pointed out that the Tribunal had decided that Dr Metcalfe had broken the trust that the public holds in the profession and had therefore breached paragraph 65 of GMP. He referred to the differing accounts that Dr Metcalfe had given XXX, and the fact that he had to be prompted by questions in the hearing before he demonstrated any insight into the offence.

148. Summarising the position in relation to the impairment Determination, Mr Williams said that there were common themes emerging. He said that Dr Metcalfe had demonstrated only partial insight, and that although he had started to engage to address his issues, there were elements of minimisation, there had been no apology, and there was a risk of repetition.

149. Mr Williams submitted that each limb of impairment needed to be considered, and that this was not just about Dr Metcalfe's personal journey. He said that there was a duty to declare and uphold proper professional standards and maintain public confidence. He submitted that XXX, and Dr Metcalfe always had a choice as to his actions.

150. Mr Williams then took the Tribunal to the relevant sections of the Sanctions Guidance. He reminded the Tribunal that its role was to maintain professional standards as set out in GMP, and that it was not to punish Dr Metcalfe a second time, so far as the

conviction is concerned. He submitted that it should consider areas such as the level of insight demonstrated by Dr Metcalfe and whether he had shown regret and apologised.

151. Mr Williams pointed to paragraphs 120 -128 of the Guidance, which relate to dishonesty, and how seriously it should be taken. He said that making a false statement (such as the prescription) as set out at paragraph 124 was, for example, particularly serious. He accepted that the dishonesty was not persistent and confirmed that the GMC was not suggesting that erasure was necessary in this case. Mr Williams went through the sections of the Guidance (paragraph 91- 102) that relate to an order of suspension. He said that suspension has a deterrent effect and could be used to send out a signal to Dr Metcalfe and the profession and public generally. He said that conditions are not appropriate as they do not reflect the gravity of the misconduct, and that Dr Metcalfe had made some bad choices. Looking at some of the factors pointing toward suspension, he reminded the Tribunal that Dr Metcalfe had acknowledged fault and shown some insight, was taking steps to mitigate his actions, and that the misconduct and conviction were unlikely to be repeated. There had been a serious departure from GMP.

152. Mr Williams informed the Tribunal that the length of any suspension was a matter for its own judgment, but that it needed to make sure that Dr Metcalfe had sufficient time to demonstrate full insight and remediate his actions. He advised the Tribunal that they should consider directing a review.

153. In summary, Mr Williams submitted that an order of suspension was the only way to uphold the fundamental principles of the medical profession, to declare and uphold the standards expected of the profession and protect its reputation.

<u>On behalf of Dr Metcalfe</u>

154. Mr Morris reminded the Tribunal that it found that Dr Metcalfe's misconduct and conviction were interlinked with and stemmed XXX he was experiencing at the time. He turned to the Tribunal's impairment determination and submitted that it found not merely an association between XXX and his misconduct, but it had found a causal link. Therefore, he submitted that much of the insight and remediation that Dr Metcalfe has taken to address XXX also go some way to address the misconduct and conviction.

155. Mr Morris understood the Tribunal's concerns that Dr Metcalfe was continuing to XXX.

156. Mr Morris submitted to the Tribunal that Dr Metcalfe had taken extensive steps to remediate and had a multi-faceted approach in place, involving support systems, XXX.

157. Mr Morris submitted the following mitigating factors in this case. He submitted that in relation to the ‘pharmacy incident’, it was an isolated prescription which was clinically appropriate and matched the prescriptions that Dr Metcalfe had previously received from his GP, therefore it posed no risk of harm to any patient or to himself. Mr Morris submitted that the dishonesty is mitigated by the fact that this was of a very amateurish nature which was bound to be detected. Mr Morris submitted that in relation to the motor conviction, it was of course a serious offence, but no custodial sentence was imposed, and no one was harmed.

158. Mr Morris submitted that insight and remediation is very much a developing process over time which in some cases, starts with absolute denial. However, he submitted that Dr Metcalfe has always accepted the concerns made against him. He reminded the Tribunal of Dr Metcalfe’s Reflective Statement, and quoted from it;

> *‘Reflecting on the past three years, I am struck by how profoundly this investigation has changed my life. What began as an incident of poor judgment—a moment of desperation leading to self-prescription and an attempt to obtain medication under another name—has evolved into a journey of self-discovery, resilience, and growth. I now understand that my actions not only breached the trust placed in me as a doctor but also have undermined confidence in the medical profession as a whole.*
>
> *In hindsight, I can see clearly how my* [XXX] *were influencing my actions. At the time, I struggled to separate my personal needs from my professional responsibilities, leading me to make choices that were ultimately harmful. I now realise that by prioritising my personal struggles over my professional responsibilities, I betrayed the principles that underpin the public’s faith in the medical profession. This experience has taught me that the trust and confidence of patients and the public must always be safeguarded, even in times of personal difficulty.*
>
> *…*
>
> *I am very sorry for all my misconduct and the damage it has caused. I now understand that my actions not only had personal repercussions but would also undermine the trust patients place in doctors, which is the cornerstone of effective medical practice. This may cause patients to fail to seek medical advice when they should do so’.*

159. Mr Morris submitted that Dr Metcalfe has developed his insight during the process of the investigation and has been open and honest. He submitted Dr Metcalfe’s Reflective Statement was a genuine and reliable example of insight, XXX. He reminded the Tribunal that

XXX considered Dr Metcalfe to be a thoughtful and careful doctor. He said that with hindsight, Dr Metcalfe is very sorry and has expressed remorse for his actions, as evidenced by the oral evidence he gave to the Tribunal.

160. While dishonesty was difficult to remediate, Mr Morris submitted that Dr Metcalfe is of previous good character and the dishonesty in this case was an isolated incident. He also submitted that Dr Metcalfe's behaviours were not at the higher end of seriousness for dishonesty or criminal behaviour and there has been no repetition of such behaviours since, He also reminded the Tribunal of the number of testimonial witnesses that attest to Dr Metcalfe's good character and integrity.

161. Mr Morris described the sanctions that a tribunal can impose, ranging from a warning, through to erasure. He submitted that in the context of this case, conditions would be the appropriate and proportionate method of discharging the Tribunal's duty to ensure public safety, public confidence and proper standards are upheld. He submitted that Dr Metcalfe has been under conditions restricting his present practice and he has not breached those conditions. He submitted that there would be no risk to patient safety if Dr Metcalfe were allowed to continue to practise with conditions. He submitted that Dr Metcalfe can continue with his remediation during the course of further conditions imposed.

162. Mr Morris pointed the Tribunal to the relevant paragraphs relating to convictions in the Sanctions Guidance. He accepted that conditions are more appropriate in for example, health cases, but submitted that does not need to be the case. He invited the Tribunal to consider the case of *McMillan v GMC 1993 UKPC21,* in which conditions were imposed upon that doctor's practise which barred him from private practice. During an appeal, Lord Justice Gough stated that conditions can be used for misconduct cases, where appropriate, and they can also signal the disapproval of the regulator to the doctor and the medical profession.

163. Mr Morris pointed out the positive testimonials that had been put forward on Dr Metcalfe's behalf, especially those from Antrim hospital and the GP surgery in Bangor. He said that XXX, Dr H had said that she understood that he had acted dishonestly, but he is not dishonest.

164. Mr Morris summarised by stating that Dr Metcalfe had made admissions, the misconduct was not at the most serious end of the spectrum, and he had demonstrated insight and remediation albeit the Tribunal had found it as yet incomplete. He stated that an appropriate sanction was to impose conditions on Dr Metcalfe's registration.

165. In answer, to questions from the Tribunal, Mr Morris disclosed the conditions that Dr Metcalfe is presently working under, and suggested that they may still be suitable, and also that the Tribunal could consider the Conditions Bank.

166. Mr Morris addressed the Tribunal in relation to suspension and erasure and went through the checklist at paragraph 97 of the Sanctions Guidance. He submitted that there was no risk to patient safety, and that the steps taken to remediate XXX would go some way to remediate the misconduct and conviction. He said that Dr Metcalfe has been open and honest and had accepted his wrongdoing and the choices he made. He submitted that erasure was not a proportionate response, and that if considering suspension, then the maximum time of 12 months was not necessary in the circumstances of Dr Metcalfe's case.

The Relevant Legal Principles

167. The LQC gave advice to the Tribunal about the approach it should take at this stage of the hearing, which is summarised below.

168. The Tribunal was reminded that it had found that Dr Metcalfe's fitness to practise is currently impaired due to misconduct, XXX and a criminal conviction. The Tribunal was informed that it is required to impose a single sanction in respect of its findings.

169. The Tribunal was reminded that the decision as to the appropriate sanction, if any, is a matter for the tribunal's own judgement, which must be made independently.

170. The Tribunal was informed that it must have regard to the Sanctions Guidance dated 5 February 2024, which, although not statutory, gives it an authoritative steer. It was reminded that all sanctions were open to it. It was asked to consider the aggravating and mitigating factors, and consider the least restrictive sanction first, and then move on, if needs be, to consider the other available options in ascending severity.

171. The Tribunal was asked to bear in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest. The Tribunal was asked to be mindful that this is a balancing exercise - weighing up what is in the public interest, as against the interest of Dr Metcalfe. Any sanction must be appropriate and proportionate. In the case of *Bolton v Law Society [1994] 1 WLR 512* it was made clear that the reputation of the profession as a whole is more important than the fortunes of any individual member, even if the consequences may be deeply unfortunate for them.

172. So far as the misconduct is concerned, the Tribunal's attention was drawn to the case of *Nkomo v GMC [2019] EWHC 2625 (Admin)* where at paragraph 35 it states that the starting point is that dishonesty by a doctor is almost always extremely serious, and that findings of dishonesty lie at the top end of the spectrum of gravity of misconduct. Mr Morris drew the Tribunal's attention to the case of *McMillan v GMC 1993 UKPC2.* The LQC confirmed that, taking this case into account, conditions on a doctor's licence can be used in misconduct cases and can be used by a Tribunal to register its disapproval of that misconduct.

173. However, the Tribunal was told that there is no default rule. The nature and extent of dishonesty may be variable and must be evaluated on a case-by-case basis. The circumstances of each case must be carefully considered by a tribunal, and it should look to see if there is, for example, compelling insight, or evidence that the behaviour is out of character. It should decide if the reputation of the medical profession is affected.

174. XXX. Even if there is a strong link between the misconduct and XXX, the Tribunal must nevertheless address the misconduct to ensure that public confidence is maintained.

175. The Tribunal is also aware that Dr Metcalfe has been convicted of an offence of being in charge of a motor vehicle while over the prescribed alcohol limit. The Tribunal is advised that the sentence imposed by a criminal court is not necessarily a reliable guide to the gravity of the offending in terms of maintaining public confidence in the profession, and it should make its own decision about that. The function of a criminal court in sentencing is quite different, because this Tribunal is considering the overarching objective in the Medical Act.

176. The Tribunal was reminded again, that its function is to uphold the overarching objective set out in section 1 of the Medical Act 1983.

The Tribunal's Determination on Sanction

177. The Tribunal considered the LQC advice, and the submissions from both parties. It reminded itself of the detail of the Allegation, and noted that Dr Metcalfe has been found impaired by reason of misconduct, conviction XXX. It noted that Dr Metcalfe had submitted a CV to the Tribunal for its consideration at this stage, which it took into account.

178. The Tribunal first identified what it considered to be the mitigating and aggravating factors in this case. It was mindful that it needed to consider and balance any such factors against the central aim of sanctions, which is to uphold the overarching objective.

Aggravating Factors

179. The Tribunal considered paragraphs 50-59 of the Sanctions Guidance which sets out some of the aggravating factors that are likely to lead a Tribunal to consider more serious action. It firstly considered the circumstances surrounding the events.

180. So far as the misconduct was concerned, the Tribunal noted that it related to an act of dishonesty. Dr Metcalfe had written out a prescription to a fictitious patient and had presented it at the pharmacy. He had given different, dishonest explanations to the pharmacist, and this was exacerbated by further dishonesty when he made the telephone call later that day. He deceived professional colleagues and used his skills and knowledge as a doctor in order to do so. He had breached GMP. The Tribunal accepted that this misconduct stemmed from XXX, but nonetheless noted that Dr Metcalfe knew that what he was doing was wrong at the time.

181. The Tribunal recognised that dishonesty is very serious and can undermine public confidence in the profession. In its decision making, it took into account the paragraphs of the Sanctions Guidance under the heading of '*considering dishonesty*', in particular paragraphs 120 and 124, which read;

> *'120. Good medical practice states that registered doctors must be honest and trustworthy and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession.*

And

> *'124. Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (e.g. providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate'*

182. The Tribunal also noted that Dr Metcalfe had also treated the pharmacy colleagues with disrespect, resulting in a further breach of GMP.

183. The Tribunal considered the circumstances surrounding Dr Metcalfe's conviction for being in charge of a motor vehicle while over the prescribed alcohol limit. It noted that he

had been found at the wheel of a car, asleep, with a half empty bottle of whiskey in between his legs. The Tribunal found at the impairment stage that the conviction undermined public confidence in the profession and failed to uphold proper professional standards.

184. XXX

185. The Tribunal then went on to consider insight. At the impairment stage, the Tribunal found that there was only partial insight for the misconduct, conviction XXX, and therefore concluded that this was an aggravating feature in Dr Metcalfe's case.

186. In terms of the misconduct, the Tribunal was concerned about the initial minimisation by Dr Metcalfe of his actions, with an improved understanding only being submitted in his Reflective Statement dated 25 November 2024, shortly before the start of the hearing. The Tribunal noted that Dr Metcalfe had not apologised to the pharmacists. He reported the matter to the GMC only after the pharmacy had alerted the Trust and he had attended a meeting with his supervisor. The Tribunal was not satisfied that Dr Metcalfe has full insight and decided that there was little evidence to demonstrate that he had remediated the dishonesty.

187. XXX

188. The Tribunal accepted that Dr Metcalfe's conviction stemmed from XXX but considered that Dr Metcalfe did not fully appreciate the seriousness and circumstances of the offence, which was committed during the GMC investigation for the misconduct.

Mitigating Factors

189. The Tribunal then went on to consider the mitigating factors in this case and noted that it needed to balance any mitigating factors against the central aim of sanctions, which is to uphold the overarching objective.

190. So far as the misconduct is concerned, the Tribunal accepted that the events took place over a short period of time and that the prescription matched the one that had been properly prescribed by his GP in Middlesbrough. There had been no repetition of dishonesty.

191. So far as the conviction is concerned, the Tribunal accepted that Dr Metcalfe had not been driving the car, and that a custodial sentence had not been imposed on him.

192. The Tribunal considered paragraphs 24-49 of the Sanctions Guidance which sets out some of the mitigating factors that the Tribunal may consider. It took account of paragraph 25(a), and paragraph 31 which state;

> '*Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it. This could include the doctor admitting the facts relating to the case, apologising to the patient, making efforts to prevent behaviour recurring….'*

And

> *'Remediation of the concerns*
>
> *Remediation is where a doctor addresses concerns about their knowledge, skills, conduct or behaviour. Remediation can take a number of forms, including coaching, mentoring, training, and rehabilitation (this list is not exhaustive), and, where fully successful, will make impairment unlikely.'*

193. The Tribunal noted that Dr Metcalfe had pleaded guilty to the criminal offence, and that he had cooperated with the GMC investigation, XXX. He admitted the entirety of the Allegation at the outset of the hearing, which the Tribunal decided was to his credit. He had self-reported the misconduct to the GMC and had been honest on the submission form, accepting that what he had done was wrong. The Tribunal decided that this all demonstrated insight, which represents the start of a remediation journey.

194. The Tribunal noted that Dr Metcalfe XXX and recognised that he was not fit to practise without restriction. It also took into account the comments he had made on his appraisal form, and his Reflection Statement which showed that he was developing insight.

195. In terms of remediation, the Tribunal noted that Dr Metcalfe had put in place a support network and XXX to start to remediate XXX and had plans for the future to continue to do so. The Tribunal decided that Dr Metcalfe was engaging with this process and working on his insight, remediation XXX.

196. The Tribunal also took account of paragraph 25(b), which states;

> *'Evidence that the doctor is adhering to important principles of good practice (ie keeping up to date, working within their area of competence), and of the doctor's character and previous history…'*

197. The Tribunal accepted that Dr Metcalfe was adhering to the principles of good practice in his present workplace. It noted that he is presently on a GP training scheme, and able to work and keep his clinical skills up to date. The Tribunal took into account that he has been working without incident, and also that before these events, he was of good character.

198. The Tribunal also took account of paragraph 25(d), which states that personal matters can be a mitigatory factor. XXX. The Tribunal also recognised that the GMC investigation was causing further stress, and that the criminal offence was committed during its course.

199. The Tribunal considered the positive testimonial evidence it had received on Dr Metcalfe's behalf. It noted that there is evidence that Dr Metcalfe is open and honest with those working with him, and they speak positively about his clinical skills, ability to work in a team, and professionalism. Examples from his testimonials are;

> *'Callum was very open with me about his GMC conditions and what had led up to them. We had a frank conversation on the processes that we would follow to ensure that he would be closely supervised on the one hand but on the other the encouragement he would have to work hard so as to have a very good reference to augment future applications to specialty training.'*
>
> *'I know Callum from my position as course lead at the Postgraduate GP Training scheme, since he started his training in the Summer of 2024. Callum attends the sessions on time with high punctuality and engagement. He is very motivated and an asset to the group. He is well integrated in the group and on track with his training. His work ethos is high, and he is working hard.'*
>
> *'Despite the personal stress caused by his upcoming tribunal, Dr Callum Metcalfe has maintained high levels of professionalism and has ensured that this has not impacted his clinical work. His honesty, self-awareness, and reflection on his circumstances are commendable and indicate his determination to rebuild trust. I have consulted with the other GPs in the practice, and there are no concerns regarding Dr Callum Metcalfe's professionalism, behaviour, or clinical knowledge. He is regarded as a capable and conscientious GP registrar who is progressing at the expect rate for this stage of training.'*

200. The Tribunal also accepted and took into account Dr Metcalfe's personal character references from, for example, XXX, which demonstrates the support network that he has, and their commitment to him.

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

No action

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

203. The Tribunal was satisfied that there were no exceptional circumstances in Dr Metcalfe's case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the public interest and would not mark the seriousness of Dr Metcalfe's misconduct or conviction.

Undertakings

204. Undertakings were not submitted by either the GMC or on behalf of Dr Metcalfe.

Conditions

205. The Tribunal next considered whether it would be appropriate to impose conditions on Dr Metcalfe's registration. It took into account the submissions made by Mr Morris on Dr Metcalfe's behalf and considered this matter carefully. The Tribunal was made aware of the conditions that are presently in place on Dr Metcalfe's practice XXX.

206. The Tribunal bore in mind paragraphs 79-90 which sets out when a tribunal may impose conditions on a doctor's registration. It specifically noted paragraph 81 which states;

> *'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.'

207. The Tribunal noted from the above that imposing conditions for cases involving misconduct and conviction is not the norm but accepted that it can be done if appropriate to do so, and that it can send out a message of disapproval to the profession from the regulator.

208. The Tribunal noted that conditions may be workable where a doctor has insight into their misconduct, is likely to comply with conditions, and where a doctor is likely to respond positively to remediation or retraining. The Tribunal accepted that Dr Metcalfe has been complying with conditions presently imposed on him, and that he has shown a willingness to remediate and has future plans in place.

209. XXX

210. The Tribunal noted that any conditions imposed should be appropriate, proportionate, workable and measurable. It considered with care the conditions that might be imposed. It decided that some conditions would be appropriate and could assist Dr Metcalfe XXX, making the risk to patients and the wider public low.

211. However, the Tribunal decided that an order of conditions would not be able to address Dr Metcalfe's dishonesty. It could not be satisfied that any conditions would be workable. It decided that conditions to remediate dishonesty and a conviction were not appropriate and their outcome difficult to measure.

212. The Tribunal decided in any event, that conditions were not a proportionate response in this case. It determined that they would not reflect the seriousness of Dr Metcalfe's misconduct and conviction and would be insufficient to maintain public confidence in the profession and promote and maintain proper standards of conduct.

213. The Tribunal considered that conditions would not sufficiently address the issues of the case. It concluded that imposing conditions on Dr Metcalfe's registration would not be appropriate, proportionate, nor would it uphold the overarching objective.

Suspension

214. The Tribunal then went on to consider whether suspending Dr Metcalfe's registration would be an appropriate and proportionate sanction. It considered whether suspension would adequately protect the public, maintain public confidence in the profession and uphold proper standards for its members.

215. The Tribunal took into account paragraphs 91-98 of the Sanctions Guidance. It recognised that suspension has a deterrent effect and could be used to send out a signal to Dr Metcalfe, the profession and the public about what is regarded as behaviour unbefitting a registered doctor.

216. The Tribunal accepted that Dr Metcalfe had acknowledged fault. He admitted the entirety of the Allegation at the first opportunity and appeared open and honest when he gave evidence to the Tribunal at the impairment stage. It noted that Dr Metcalfe has made some steps to mitigate his actions, especially where XXX is concerned. It acknowledged that with appropriate support for XXX, and working under restrictions, the risk to the patients and public is low.

217. The Tribunal had regard to paragraph 97(a)-(g) which set out some factors which, if present, would indicate that suspension may be appropriate. The Tribunal considered the following factors to be relevant to Dr Metcalfe's case;

> *97 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, e.g. because of previous unsuccessful attempts or a doctor's unwillingness to engage.*

218. The Tribunal found at the impairment stage that Dr Metcalfe had breached a number of the paragraphs of GMP, relating to both misconduct and conviction. It determined that

those breaches were serious enough to warrant a suspension, and that no lesser sanction would suffice. It noted that the misconduct involved dishonesty.

219. However, the Tribunal was satisfied that there was evidence before it to show that Dr Metcalfe has started a process of remediation and there was no reason for the Tribunal to conclude that the further remediation that he has planned would be unsuccessful.

220. The Tribunal determined, however, that Dr Metcalfe's misconduct and conviction were serious and that XXX did not justify his actions. The Tribunal was satisfied that this conduct, especially the dishonesty, would be regarded as '*deplorable*' by fellow practitioners and would undermine public confidence in the profession.

221. Taking all of these factors into account, the Tribunal considered whether the most serious sanction of erasure was the more appropriate and proportionate in this case. When considering the circumstances of Dr Metcalfe's case, the Tribunal decided that his misconduct and conviction are not '*fundamentally incompatible with continued registration*' at this time. They stemmed from XXX, which Dr Metcalfe is now addressing. It decided that that erasure would not be appropriate or proportionate, nor would it be in the public interest. The testimonials demonstrate that Dr Metcalfe is otherwise a competent doctor, who cares for his patients.

222. The Tribunal is aware that Dr Metcalfe is presently working as a trainee GP, and the testimonials show that he has the full support of his colleagues. There have been no incidents of concern while he has been working under XXX conditions. The Tribunal recognised that a period of suspension may affect Dr Metcalfe's GP Trainee Scheme, and this is deeply unfortunate for him. However, the Tribunal must balance the interests of the profession against the interests of an individual doctor and is under a duty to uphold the overarching objective, one of its limbs being to maintain public confidence in the medical profession. The Tribunal therefore determined that a period of suspension would be an appropriate and proportionate sanction when considering Dr Metcalfe's interests alongside the public interest.

223. The Tribunal bore in mind the overarching objective. Having taken into account XXX, it accepted that, if Dr Metcalfe were practising under conditions relating to XXX, the risk to the public would be low. The Tribunal concluded however, that a period of suspension was

necessary to promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for members of that profession.

Length of Suspension

224. In determining the length of the suspension, the Tribunal had regard to paragraphs 99-102 of the Sanctions Guidance and the table following paragraph 102. The Tribunal reminded itself that the length of the suspension is a matter for the Tribunal's discretion, depending on the seriousness of the case.

225. The Tribunal took particular account of paragraph 100 of the Sanctions Guidance which sets out relevant factors to be considered when determining the length of suspension:

> *a) the risk to patient safety/public protection*
> *b) the seriousness of the findings and any mitigating or aggravating factors*
> *c) ensuring the doctor has adequate time to remediate*

226. The Tribunal considered the aggravating and mitigating factors in this case as set out above and acknowledged that Dr Metcalfe's actions represented a serious departure from the principles set out in GMP. It acknowledged that the seriousness of the findings and public confidence were the main concerns, and not patient and public protection.

227. The Tribunal wanted to make sure that Dr Metcalfe has adequate time to develop his insight, and further remediate, and it noted that he has plans in place to start to do that in January/ February 2025. It had found that Dr Metcalfe was at the start of his insight and remediation journey.

228. The Tribunal considered that Dr Metcalfe's actions were serious but not so serious to warrant a suspension length at the upper end.

229. Taking all the circumstances into account, the Tribunal therefore determined that imposing a period of five months' suspension was appropriate and proportionate. In the Tribunal's view this period of time would satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that both the misconduct and a conviction of this nature is unacceptable. The Tribunal decided that a reasonable and well-informed member of the public or the profession would be satisfied that this was a

proportionate response to Dr Metcalfe's behaviour. The Tribunal also decided that such a period was necessary in order to promote and maintain proper professional standards.

230. The Tribunal decided that this period of time would give Dr Metcalfe the time that he needs to develop his insight and remediation and continue his work on XXX. It considered that the period should be long enough to allow Dr Metcalfe to engage XXX. It should also be long enough for Dr Metcalfe to return to a review hearing and demonstrate how he has developed full insight into misconduct, conviction and XXX.

231. Accordingly, the Tribunal determined to suspend Dr Metcalfe's registration for a period of five months.

232. The Tribunal determined to direct a review of Dr Metcalfe's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that, although the GMC may wish to consider what, if any, actions it wants to take, at the review hearing the onus will be on Dr Metcalfe to demonstrate the progress that he is making in relation to XXX, and what remediation steps he has taken. The Tribunal is mindful that Dr Metcalfe may not be able to fund all the remediation steps that he would like, and so it emphasises that the below are recommendations only. It may assist the reviewing Tribunal if Dr Metcalfe provides:

- XXX
- XXX
- XXX
- A further reflective statement detailing what he has learnt and how he has developed his insight,
- Evidence that he has kept his knowledge and skills up to date,
- XXX
- Any recent testimonial(s) from paid and/or unpaid work,
- Any CPD Courses that has attended to address the misconduct, and also to keep his clinical skills up to date, and
- Anything else Dr Metcalfe believes will assist the Tribunal in assessing whether he is fit to return to unrestricted practice.

Determination on Immediate Order - 16/12/2024

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

Submissions

On behalf of the GMC

234. Mr Williams submitted that it was necessary to impose an immediate order. He drew the Tribunal's attention to paragraphs 172 and 178 of the Sanctions Guidance (February 2024). He submitted that an immediate order was necessary in the public interest primarily but also to protect the members of the public and in the best interests of the doctor. He informed the Tribunal that the interim order must be revoked.

On behalf of Dr Metcalfe

235. Mr Morris submitted that Dr Metcalfe has understood the Tribunal's reasoning why it would be inappropriate for him to be allowed to practise unrestricted. He did not oppose the GMC's submission that an immediate order was necessary. He accepted that the interim order must now be revoked.

The Tribunal's Determination

236. The Tribunal was mindful that an immediate order is with in its discretion, and if one were to be made it needed to meet the overarching objective.

237. The Tribunal considered the relevant paragraphs of the Sanctions Guidance which deal with immediate orders, in particular paragraph 172, 173 and 178 which states:

> *'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.'

238. The Tribunal determined that an immediate order was necessary to protect public confidence in the profession and is otherwise in the public interest. It also determined that an immediate order was in Dr Metcalfe's best interest. It bore in mind that Dr Metcalfe accepted that he should not practise unrestricted XXX.

239. This means that Dr Metcalfe's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

240. The interim order is hereby revoked.

XXX

XXX