

## PUBLIC RECORD

Dates: 11/03/2024 - 20/03/2024

Medical Practitioner's name: Dr Chain KAI

GMC reference number: 7770318

Primary medical qualification: MBBS 2019 University of Medicine 2 Yangon

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

## Summary of outcome

Suspension, 4 months

## Tribunal:

Legally Qualified Chair	Mr Andrew Clemes
Lay Tribunal Member:	Ms Sally Allbeury
Medical Tribunal Member:	Dr Anita Clay
Tribunal Clerk:	Ms Keely Crabtree

## Attendance and Representation:

Medical Practitioner:	Present, not represented
GMC Representative:	Ms Harriet Tighe, Counsel

## Attendance of Press / Public

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

## Overarching Objective

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

## Determination on Facts - 14/03/2024

### Background

1. Dr Kai qualified in 2019 with a Bachelor of Medicine, and Bachelor of Surgery (MBBS) from the University of Medicine 2, Yangon (Myanmar). Dr Kai worked at North Oakalar Hospital, Yangon from January to December 2019.
2. Dr Kai came to the United Kingdom (UK) and completed The Professional and Linguistic Assessment 2 (PLAB 2) in March 2022. Dr Kai registered with the General Medical Council (GMC) and was granted full registration on 14 April 2022. Subsequently, he started to apply for jobs within the NHS.
3. Dr Kai completed his clinical attachment at the Queen Elizabeth Hospital, Birmingham from May 2022 to June 2022.
4. The allegation that has led to Dr Kai's hearing can be summarised as that between 1 January 2022 and 13 July 2022, Dr Kai submitted a job application form to Barnsley Hospital NHS Foundation Trust, which contained plagiarised information which was untrue. It is also alleged that on 11 July 2022, Dr Kai submitted a CV to NHS Professionals which also contained plagiarised information which was untrue. It is alleged that Dr Kai's actions were dishonest.
5. The initial concerns were raised with the GMC by Ms A, Medical Staffing Manager at Barnsley Hospital Foundation Trust (BHFT).

## The Outcome of Applications Made during the Facts Stage

6. The Tribunal was asked by the GMC to determine a preliminary issue in accordance with rule 17(2)(a) of the General Medical Council (Fitness to Practise Rules) 2004, as amended (the Rules) as to the admissibility of evidence which Dr Kai wished to put before it. The contested evidence consisted of a witness statement, written on behalf of Dr Kai from Dr B. The Tribunal determined to admit the evidence under Rule 34(1) of the Rules as it was fair and relevant to do so. 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(1) of the Rules, to admit into evidence the guidance '*Royal College of Surgeons- A TRAINEE'S GUIDE TO A QUALITY IMPROVEMENT PROJECT Quality Improvement Directorate March 2021*'. Dr Kai did not object to the application. The Tribunal determined to admit the evidence under Rule 34(1) of the Rules as it was fair to do so and the evidence was potentially relevant.

## The Allegation and the Doctor's Response

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

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

1. Between 01 January 2022 and 13 July 2022 you submitted a job application form (the 'Form') to Barnsley Hospital NHS Foundation Trust, in which you:
  - a. wrote that in February 2019 you completed the quality improvement project set out in Schedule 1; **Admitted and found proved**
  - b. answered 'I agree' when asked if you agree that the information in the Form 'is true and complete'. **Admitted and found proved**
2. Your representations at paragraphs 1a and 1b were:
  - a. untrue; **To be determined**
  - b. known by you to be untrue. **To be determined**
3. When submitting the Form, you:

- a. plagiarised the words in Schedule 1 purporting them to be your own;  
**Admitted and found proved**
- b. knew that:
  - i. the Form contained words that you had plagiarised; **Admitted and found proved**
  - ii. you should not use plagiarised words on the Form; **To be determined**
  - iii. if you included the words in Schedule 1 on the Form you were more likely to be offered an interview. **To be determined**
4. Your actions at:
  - a. paragraphs 1a and 1b were dishonest by reason of paragraphs 2a and 2b; **To be determined**
  - b. paragraph 3a were dishonest by reason of paragraphs 3b i - 3b iii. **To be determined**
5. On 11 July 2022 you submitted a curriculum vitae (the 'CV') to NHS Professionals ('NHSP'), in which you stated that you completed the quality improvement project described in Schedule 2. **Admitted and found proved**
6. Your representation described at paragraph 5 was:
  - a. untrue; **To be determined**
  - b. known by you to be untrue. **To be determined**
7. When submitting the CV, you:
  - a. plagiarised the words in Schedule 2 purporting them to be your own;  
**Admitted and found proved**
  - b. knew that:

- i. the CV contained words that you had plagiarised; **Admitted and found proved**
  - ii. you should not use plagiarised words on the CV; **To be determined**
  - iii. if you included the words in Schedule 2 on the CV you were more likely to be offered an interview. **To be determined**
8. Your actions at:
- a. paragraph 5 were dishonest by reason of paragraphs 6a and 6b; **To be determined**
  - b. paragraph 7a were dishonest by reason of paragraphs 7b i - 7b iii. **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**

#### Non-confidential schedule

##### Schedule 1

‘Development of an emergency medicines database to ensure adequate stock levels and only in-date medications are used.’

‘Emergency medicines on the wards are often overlooked since they are not in regular use. I developed a quality improvement project to review emergency medicines such as atropine and adrenaline, and note the stock level and date of expiry within a database. This will be reviewed on a regular basis.’

#### Non-confidential schedule

##### Schedule 2

‘Audit for the availability of Emergency Medicines & maintain a database for them at the medical ward, North Oakala General Hospital.’

‘Emergency medicines on the wards are often overlooked since they are not in regular use. I noticed this on a few occasions and gave feedback to the consultant. Then the ward manager and charge nurse developed a project to check emergency medicines regularly and solved this problem.’

### The Admitted Facts

9. At the outset of these proceedings, Dr Kai 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.

### Witness Evidence

10. 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, Medical Staffing Manger at BHFT;
- Ms C, Medical Director and Responsible Officer for NHS Professionals (NHSP).

11. Dr Kai attended the hearing from Myanmar but was prevented from giving live evidence to the Tribunal due to restrictions imposed by his government. This also prevented the GMC being able to cross-examine Dr Kai. The Tribunal also had regard to guidance from the Foreign Commonwealth and Development Office (FCDO) about witnesses giving evidence from overseas.

12. Dr Kai provided his own witness statement dated 13 October 2023 and also made written and oral submissions at the hearing.

13. The Tribunal also received a witness statement on behalf of Dr Kai from Dr B who is based in Myanmar. Due to the restrictions imposed by the Myanmar government, Dr B was also not able to give live evidence to the Tribunal or be cross-examined by the GMC. Dr B did provide written answers to questions from the GMC.

## Documentary Evidence

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

- Job Description for a post at BHFT;
- Application form submitted by Dr Kai to BHFT;
- Dr M's anonymised application form;
- Referral email to the GMC from Ms A dated August 2022;
- Dr Kai's application to join the NHS Professionals Gateway Access programme ('the Gateway Programme');
- Dr Kai's CV submitted July 2022 to the Gateway Programme;
- Dr Kai's CV submitted May 2022 to the Gateway Programme;
- Declaration form;
- Emails between Gateway Programme team administrator and Human Resources;
- Email from Dr Kai to the Gateway Programme dated 12 August 2022;
- Email exchange with Employment Liaison Adviser dated 15- 16 August 2022;
- Email to Dr Kai from Ms C dated 19 August 2022;
- Dr Kai's Rule 4 comments to the GMC dated 30 August 2022;
- Dr Kai's Rule 7 Comments including Dr E reference dated 29 December 2022
- Dr M's application form: - containing their QIP;
- Character statement from Dr D dated 20 September 2023;
- Emails from the Action Fraud Team;
- Character witness statements on behalf of Dr Kai;
- Dr Kai's MRCP 1 result;
- Dr Kai's ALS course certificate dated August 2022;
- Social media posts;
- Royal College of Surgeons - A TRAINEE'S GUIDE TO A QUALITY IMPROVEMENT PROJECT Quality Improvement Directorate March 2021.

## 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 Kai 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. The Tribunal was referred by the GMC to the case of *Ivey v Genting Casinos (t/a Crockfords)* [2017] UKSC 67, in respect of the test for dishonesty, as follows:

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

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

17. The Tribunal also heard and accepted the legal advice received from the LQC which is a matter of record. The Tribunal noted that Dr Kai was of good character and applied both limbs of the good character direction when considering his evidence.

### **The Tribunal’s Analysis of the Evidence and Findings**

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

#### Paragraphs 2(a) and 2(b)

19. The Tribunal noted that between 1 January 2022 and 13 July 2022 Dr Kai had submitted a job application form to Barnsley Hospital NHS Foundation Trust, in which he wrote that in February 2019 he had completed the quality improvement project (QIP) as set out in Schedule 1. When asked within the form if the information contained was true and complete, Dr Kai had answered that he agreed.

20. The Tribunal considered whether Dr Kai’s representations within the form were untrue and whether he knew them to be untrue.

21. The Tribunal had regard to Dr Kai’s witness statement dated 13 October 2023:



*‘Under extreme stress to secure a job before my visa expired, I made a regrettable decision to include a reference to a QIP that I had not conducted in February 2019 while employed at North Oakalar General Hospital, Yangon, Burma. I acknowledge that I made this choice under duress and in a state of desperation to secure employment. At that time, I did not fully comprehend the gravity of my actions or the potential consequences of plagiarism.’*

22. The Tribunal also had regard to Dr Kai’s written submissions dated March 2024, as follows:

*‘I admit my mistake was to refer to my completing a QIP. I admit I did not complete a QIP as there is no such formal process in Myanmar. I should have made that clear in my application.’*

23. The Tribunal was mindful that Dr Kai had made admissions that he had not completed a QIP as there was no such formal process in Myanmar.

24. The Tribunal had regard to Dr B’s written answers to GMC questions dated 12 March 2024, as follows:

*‘Paragraph 3 of your witness statement you say “our projects were not labelled or documented in the manner of the UK’s QIP’s” and paragraph 4 you say that the efforts were “not formally documented”. How were the projects documented in Myanmar?’*

*In Myanmar, the approach to documenting clinical projects, including improvements and audits, significantly differs from that of the UK. Here, the process was less formal and relied heavily on verbal communication and collaboration during weekly group meetings. These meetings were attended by professors, consultants, and all doctors involved in the project, encompassing a Continuous Medical Education (CME) section, group teaching, and discussion of challenges encountered during hospital rotations. When a problem was identified, it was addressed collectively during these meetings. We would brainstorm solutions and strategies as a group to review the outcomes and further discussions in subsequent meetings. This discussion-based approach fostered collaborative problem-solving but did not translate into formal documentation of the projects or the processes involved.’*

...

*‘Paragraph 4 you say “Dr Kai was instrumental in identifying the irregular use of emergency medicine, leading to wastage due to expiry. He recommended regular checks by nurses, a plan that was adopted and resulted in significant improvements”. How do you know that information? For example, was this something you worked on alongside Dr Kai?’*

*My knowledge of Dr. Kai's instrumental role in identifying and addressing the irregular use of emergency medicine, leading to its wastage, derives from our shared experiences during our rotation in the same group. I was directly involved and present during the discussions where Dr. Kai raised this issue in one of our group meetings.*

*The issue of medication wastage due to expiry was particularly concerning, and Dr. Kai was proactive in bringing it to our attention. During the meeting, concerns were raised by the nursing staff about the difficulties in implementing regular checks for emergency medications due to their sheer workloads and high number of patients. Despite these challenges, the group, influenced by Dr. Kai's recommendation, agreed on a plan to conduct monthly medication checks. This aimed to ensure that medications nearing their expiry date were identified and managed appropriately, either by making other nurses aware to use them promptly or by discarding them if necessary.*

25. The Tribunal noted that a QIP was a formalised structured project. It had regard to A *TRAINEE’S GUIDE TO A QUALITY IMPROVEMENT PROJECT* Quality Improvement Directorate March 2021. This guidance illustrated the nature and extent of a QIP and what such a project involved, including but not limited to: conducting a root cause analysis, taking baseline data, planning interventions, carrying out the interventions, analysing the results and writing up the results of the project.

26. The Tribunal considered that Dr B described the project carried out by Dr Kai in Myanmar as part of a group discussion with professors, consultants and doctors in attendance at weekly group meetings in which Dr Kai had influence, following which improvements were carried out. There was no formal documentation involved and it was a discussion-based collaborative problem-solving exercise.

27. The Tribunal concluded that when comparing what Dr Kai did in regard to projects in Myanmar and that of the description by Dr B, there was a stark contrast in description to that of the guidance of what constituted a QIP. The Tribunal also concluded that there was a substantive difference between the nature of what Dr Kai had said he had done in Myanmar and what he had written in his application form.

28. The Tribunal took into account that Dr Kai had given inconsistent accounts during the investigation and the proceedings. He had initially made multiple admissions – as set out above - that the entries on his application form were untrue and that he had known them to be so. It was only just before the proceedings formally commenced that he asserted that he had carried out a project in Myanmar which was very similar to that set out in his application form. He supported this claim by adducing Dr B's evidence at a late stage. The Tribunal concluded that it could give little weight to the late alteration in Dr Kai's case when it considered the volume and frequency of prior admissions. The late change in the substance of Dr Kai's case undermined his credibility as a witness. In any event, taking his case at its highest the description submitted by Dr B was markedly different to the claim made in Dr Kai's application form to BFHT.

29. The Tribunal was therefore satisfied that the representations made by Dr Kai in his job application form were untrue and that he knew them to be untrue.

30. Accordingly, the Tribunal found paragraph 2(a) and 2(b) of the Allegation determined and found proved.

#### Paragraph 3(b)(ii)

31. The Tribunal considered whether Dr Kai knew that he should not have used plagiarised words on the form.

32. The Tribunal noted Dr Kai's admissions that, when submitting his job application form, he had plagiarised the words as set out in Schedule 1 purporting them to be his own and knew that the form contained words that he had plagiarised.

33. The Tribunal also had regard to Dr Kai's witness statement dated 13 October 2023, as follows:

*‘My actions resulted from a severe lapse in judgment and an attempt to present my application in a more favorable light. I acknowledge that these actions were unethical and unprofessional.*

...

*I deeply regret my actions and the repercussions they had on the application process and the individuals involved. I fully acknowledge that such behavior is unacceptable within the medical profession and contradicts the principles of honesty, integrity, and professionalism to which I am committed.’*

34. The Tribunal was mindful that Dr Kai had made these admissions that plagiarism was unacceptable, unethical and unprofessional. The Tribunal was therefore satisfied that Dr Kai knew that he should not have used plagiarised words on the form.

35. Accordingly, the Tribunal found paragraph 3(b)(ii) of the Allegation determined and found proved.

Paragraph 3(b)(iii)

36. The Tribunal considered if Dr Kai knew that, by including the words as set out in Schedule 1 on the application form to BFHT, he was more likely to be offered an interview.

37. The Tribunal had regard to Dr Kai’s Rule 4 comments to the GMC dated 30 August 2022, as follows:

*‘I was desperate to get a job and a skilled worker visa without having to return to my country.’*

38. The Tribunal had regard to Dr Kai’s witness statement dated 13 October 2023, as follows:

*‘Under extreme stress to secure a job before my visa expired, I made a regrettable decision to include a reference to a QIP that I had not conducted in February 2019 while employed at North Oakalar General Hospital, Yangon, Burma. I acknowledge that I made this choice under duress and in a state of desperation to secure employment. At that time, I did not fully comprehend the gravity of my actions or the*

*potential consequences of plagiarism ... My actions resulted from a severe lapse in judgment and an attempt to present my application in a more favorable light.*

39. The Tribunal considered that each of these statements by Dr Kai amounted to admissions that he had added the plagiarised material to his application form to increase his chances of being offered an interview for the vacancy. He had become frustrated at his lack of success in getting interviews and was conscious that his leave to remain in the UK was soon to end. He decided to add the plagiarised entries as he wanted to be offered interviews which may have led to offers of employment. The Tribunal rejected his written submission that he was not motivated by financial gain.

40. Accordingly, the Tribunal found paragraph 3(b)(iii) of the Allegation determined and found proved.

#### Paragraph 4(a)

41. In considering the test for dishonesty as set out in *Ivey*, Dr Kai has admitted that he had knowingly copied phrases that he had found online and used them in his job application. The Tribunal has determined that when he submitted his application form, Dr Kai knew that he had not completed a QIP as there was no such formal process in Myanmar and that the nature of the project he completed was very different to the claim that he had made in the application form.

42. The Tribunal considered the evidence as a whole. Dr Kai stated in his written submissions that:

*'I sincerely apologize for committing such plagiarism and breach of copyright and for all the troubles incurred. Upon further reflection, what I did was horrendously inappropriate, thoughtless, unlawful and unethical, deviating from the professional standards set out by the GMC. I am deeply ashamed of my actions and sincerely remorseful of what I have done. Although it is, under no circumstance, justifiable why I included such fraudulence [sic] in my CV to secure a job, please allow me to outline in what context I carried out such acts.'*

*'I am genuinely sorry for having done such shameful deceit, imposing all the troubles on the GMC, hospitals and myself.'*

*'I fully acknowledge that such behavior is unacceptable within the medical profession and contradicts the principles of honesty, integrity, and professionalism to which I am committed.'*

43. The Tribunal does not accept Dr Kai's explanation in his submissions that he copied phrases from the internet due to his lack of confidence in the English language and that these better expressed his project work and were not a lie. The Tribunal noted that he had satisfied the PLAB requirements, he had completed the other parts of the form clearly and that he had taken part in these proceedings using English confidently and coherently.

44. The Tribunal was satisfied that Dr Kai knew that he was being dishonest when he completed the entries on his application form. He did not believe that the entries were true and in fact knew that they were not. Furthermore, the Tribunal concluded that an ordinary decent member of the public, knowing the context in which Dr Kai completed his application form, would take the view that Dr Kai's actions were dishonest and as such the Tribunal found Paragraph 4(a) of the Allegation determined and found proved.

#### Paragraph 4(b)

45. In considering the test for dishonesty as set out in *Ivey*, the Tribunal noted that Dr Kai has admitted that he knowingly plagiarised the words as set out in Schedule 1 purporting them to be his own in his application form and knew that this form contained words that he had plagiarised. The Tribunal has also determined that Dr Kai knew that if he included the words as set out in Schedule 1 in his application form, he was more likely to be offered an interview. It concluded that Dr Kai knew that this was dishonest.

46. The Tribunal further concluded that an ordinary decent member of the public, knowing the context in which Dr Kai completed his application form, would take the view that Dr Kai's actions were dishonest and as such the Tribunal found Paragraph 4(b) of the Allegation determined and found proved.

#### Paragraphs 6(a) and 6(b)

47. The Tribunal noted that on 11 July 2022, Dr Kai had submitted a CV via the Gateway Programme in which he stated that he had completed the tasks as described in Schedule 2.

48. The Tribunal considered whether Dr Kai's representations were untrue and whether he knew them to be untrue.

49. The Tribunal had regard to Dr Kai's email to the Gateway Programme dated 12 August 2022, as follows:

*'I falsely assumed that the reason I was not able to win job security was due to my CV being lack of such audits/QIPs, and I began to enhance and claim credits on my CV. At the same time, having been trained in an underdeveloped country, I did not have the privilege to participate in such projects. So, I happened to copy it from an online source failing to use my professional judgement. May I sincerely mention that my pure intention was to secure a stable job here and, subsequently, a job visa so that I did not need to return to my country, risking my life.'*

50. The Tribunal also had regard to Dr Kai's Rule 4 comments to the GMC dated 30 August 2022, as follows:

*'Subsequently, I wanted my CV to be good enough to attract a job interview as I hadn't done any audits back home; I copied it from an online source, unaware of committing fraud and plagiarism, a severe issue in the UK. May I sincerely mention that I did it when I was out of my mind, in a low mood and in a state of a desperate situation to get a job.'*

51. The Tribunal was mindful that Dr Kai had made admissions that he had begun to enhance and claim credits on his CV and had copied them from online sources.

52. The Tribunal concluded that when comparing what Dr Kai did in regard to projects in Myanmar as described by himself and Dr B, there was a stark contrast in description. The Tribunal also concluded that there was some difference between the nature of what Dr Kai had said he had done in Myanmar and what he had written in his CV. The Tribunal noted that Dr Kai had given varied accounts about his motivation and intent during the progress of the case.

53. The Tribunal was therefore satisfied that the representations made by Dr Kai in his CV were untrue and that he knew them to be untrue.

54. Accordingly, the Tribunal found paragraph 6(a) and 6(b) of the Allegation determined and found proved.

Paragraph 7(b)(ii)

55. The Tribunal noted Dr Kai's admissions that when submitting his CV, he had plagiarised the words as set out in Schedule 2 purporting them to be his own and knew that the CV contained words that he had plagiarised. The Tribunal considered whether Dr Kai knew that he should not have used plagiarised words on his CV.

56. The Tribunal considered whether Dr Kai knew he should not use plagiarised words on the CV.

57. The Tribunal had regard to Dr Kai's email to the NHS Gateway Programme and Rule 4 comments as set out above.

58. The Tribunal was therefore satisfied that Dr Kai knew that he should not have used plagiarised words on his CV.

59. Accordingly, the Tribunal found paragraph 7(b)(ii) of the Allegation determined and found proved.

Paragraph 7(b)(iii)

60. The Tribunal considered if Dr Kai included the words as set out in Schedule 2 on the CV, he had known that he was more likely to be offered an interview.

61. The Tribunal had regard to Dr Kai's email to the NHS Gateway Programme, Rule 4 comments and his witness statement. It considered that Dr Kai - in those documents – had revealed that he had become concerned that he was not getting interviews and that he had concluded that there was a deficiency in his CV which was contributing to this. This was his motivation for committing plagiarism.

62. Accordingly, the Tribunal found paragraph 7(b)(iii) of the Allegation determined and found proved.

Paragraph 8(a)

63. In considering the test for dishonesty as set out in *Ivey*, Dr Kai has admitted that he had knowingly copied phrases that he had found online and used them in his CV. The Tribunal



has determined that the representations made by Dr Kai in his CV were untrue and that he knew them to be untrue. In his email to the GMC dated 30 August 2022 he had admitted:

*‘... I committed this plagiarism and fraud on my CV ...’*

64. The Tribunal was satisfied that Dr Kai had made a deliberate choice which he knew involved deceit and fraud - as he has himself previously admitted - and that he had known that he was being dishonest.

65. In all the circumstances, the Tribunal concluded that an ordinary decent member of the public, knowing the context in which Dr Kai completed his CV, would take the view that Dr Kai’s actions were dishonest and as such the Tribunal found Paragraph 8(a) of the Allegation determined and found proved.

#### Paragraph 8(b)

66. In considering the test for dishonesty as set out in *Ivey*, Dr Kai has admitted that he knowingly plagiarised the words as set out in Schedule 2 purporting them to be his own in his CV and knew that this CV contained words that he had plagiarised. The Tribunal considered his various admissions in correspondence prior to the hearing as set out above. Dr Kai had made a conscious choice which involved being deceitful and fraudulent in his own words and that he had known that he was being dishonest.

67. The Tribunal concluded that an ordinary decent member of the public, knowing the context in which Dr Kai completed his CV, would take the view that Dr Kai’s actions were dishonest and as such the Tribunal found Paragraph 8(b) of the Allegation determined and found proved.

#### **The Tribunal’s Overall Determination on the Facts**

68. The Tribunal has determined the facts as follows:

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

1. Between 01 January 2022 and 13 July 2022 you submitted a job application form (the ‘Form’) to Barnsley Hospital NHS Foundation Trust, in which you:

- a. wrote that in February 2019 you completed the quality improvement project set out in Schedule 1; **Admitted and found proved**
  - b. answered 'I agree' when asked if you agree that the information in the Form 'is true and complete'. **Admitted and found proved**
2. Your representations at paragraphs 1a and 1b were:
- a. untrue; **Determined and found proved**
  - b. known by you to be untrue. **Determined and found proved**
3. When submitting the Form, you:
- a. plagiarised the words in Schedule 1 purporting them to be your own; **Admitted and found proved**
  - b. knew that:
    - i. the Form contained words that you had plagiarised; **Admitted and found proved**
    - ii. you should not use plagiarised words on the Form; **Determined and found proved**
    - iii. if you included the words in Schedule 1 on the Form you were more likely to be offered an interview. **Determined and found proved**
4. Your actions at:
- a. paragraphs 1a and 1b were dishonest by reason of paragraphs 2a and 2b; **Determined and found proved**
  - b. paragraph 3a were dishonest by reason of paragraphs 3b i - 3b iii. **Determined and found proved**
5. On 11 July 2022 you submitted a curriculum vitae (the 'CV') to NHS Professionals ('NHSP'), in which you stated that you completed the quality improvement project described in Schedule 2. **Admitted and found proved**

6. Your representation described at paragraph 5 was:
  - a. untrue; **Determined and found proved**
  - b. known by you to be untrue. **Determined and found proved**
7. When submitting the CV, you:
  - a. plagiarised the words in Schedule 2 purporting them to be your own; **Admitted and found proved**
  - b. knew that:
    - i. the CV contained words that you had plagiarised; **Admitted and found proved**
    - ii. you should not use plagiarised words on the CV; **Determined and found proved**
    - iii. if you included the words in Schedule 2 on the CV you were more likely to be offered an interview. **Determined and found proved**
8. Your actions at:
  - a. paragraph 5 were dishonest by reason of paragraphs 6a and 6b; **Determined and found proved**
  - b. paragraph 7a were dishonest by reason of paragraphs 7b i - 7b iii. **Determined and found proved**

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

## Non-confidential Schedule

### Schedule 1

‘Development of an emergency medicines database to ensure adequate stock levels and only in-date medications are used.’

‘Emergency medicines on the wards are often overlooked since they are not in regular use. I developed a quality improvement project to review emergency medicines such as atropine and adrenaline, and note the stock level and date of expiry within a database. This will be reviewed on a regular basis.’

## Non-confidential Schedule

### Schedule 2

‘Audit for the availability of Emergency Medicines & maintain a database for them at the medical ward, North Oakala General Hospital.’

‘Emergency medicines on the wards are often overlooked since they are not in regular use. I noticed this on a few occasions and gave feedback to the consultant. Then the ward manager and charge nurse developed a project to check emergency medicines regularly and solved this problem.’

## Determination on Impairment - 18/03/2024

69. 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 Kai’s fitness to practise is impaired by reason of misconduct.

## The Evidence

70. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral submissions and documentary. Neither party filed any additional evidence at this stage.

71. Dr Kai gave oral submissions at the hearing.

72. The Tribunal had also received in support of Dr Kai testimonials from two of his colleagues (Dr D and Dr E) and a personal reference from Mr F, all of which it has read. It also took into account the parts of Dr B's evidence which spoke about Dr Kai's character.

## Submissions

### On behalf of the GMC

73. On behalf of the GMC, Ms Tighe submitted that Dr Kai's fitness to practise was impaired by reason of his misconduct.

74. Ms Tighe referred the Tribunal to the case of *GMC v Dr Nwachuku* [2017] EWHC 2085 (Admin), in particular paragraphs 45 to 50:

*45. Dishonesty encompasses a very wide range of different facts and circumstances. Any instance of it is likely to impair a professional person's fitness to practise: R (Hassan) v General Optical Council [2013] EWHC 1887 per Leggatt J at paragraph [39].*

*46. Dishonesty constitutes a breach of a fundamental tenet of the profession of medicine: PSA v GMC & Igwilo [2016] EWHC 524. A finding of dishonesty lies at the top end in the spectrum of gravity of misconduct: Patel v GMC Privy Council Appeal No.48 of 2002.*

*47. A finding of impairment does not necessarily follow upon a finding of dishonesty. If misconduct is established, the tribunal must consider as a separate and discrete exercise whether the practitioner's fitness to practise has been impaired: PSA v GMC and Uppal [2015] EWHC 1304 at paragraph [27].*

*48. However, it will be an unusual case where dishonesty is not found to impair fitness to practise: PSA v Health and Care Professions Council & Ghaffar [2014] EWHC 2723 per Carr J at paragraphs [45] and [46].*

*49. The attitude of a practitioner to the allegations made and any admissions of responsibility for the misconduct will be taken into account as relevant factors in determining whether or not fitness to practise has been impaired: Nicholas-Pillai v GMC [2009] EWHC 1048 per Mitting J at paragraph [18].*

*50. The overarching concern is the public interest in protecting the public and maintaining confidence in the practitioner and medical profession when considering whether the misconduct in question impairs fitness to practise: Yeong v GMC [2009] EWHC 1923 per Sales J at paragraphs [50] and [51]'*

75. In relation to misconduct, Ms Tighe reminded the Tribunal of Tribunal the case of *Roylance v General Medical Council (No.2)* [2000] 1 A.C. 311, which provides:

*'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a [medical] practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word professional which links the misconduct to the profession [of medicine]. Secondly, the misconduct is qualified by the word serious. It is not any professional misconduct, which would qualify. The professional misconduct must be serious.'*

76. Ms Tighe noted that a new edition of *Good medical practice* had been published in February 2024. She stated that the 2013 guidance was relevant at the time of the events in question and submitted that Dr Kai's actions marked a significant departure from principles set out in *Good medical practice* (2013) ('GMP'), the following paragraphs being engaged:

**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.*

**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.*

77. Ms Tighe also referred the Tribunal to the *Sanctions Guidance* (November 2020 edition) ('the SG') and the specific section that deals with dishonesty:

**124** *Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg 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 serious and/or persistent dishonesty.*

**125** *Examples of dishonesty in professional practice could include:*

*a – c ...*

*d inaccurate or misleading information on a CV*

*e ...*

78. Ms Tighe submitted that Dr Kai's actions amounted to misconduct which was serious. Dr Kai had been found to have been dishonest in that he plagiarised online content regarding a QIP project, pretending to have experience/having completed a QIP project when he had not, in attempt to gain employment. The departures from the principles of GMP as well as the engagement of the above sections of the SG supported the contention that Dr Kai's misconduct was serious.

79. Ms Tighe reminded the Tribunal of the factors to consider when considering the question of impairment as set out by Dame Janet Smith in the *Fifth Shipman Report* and adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin:

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

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

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

Ms Tighe submitted that in this case, factors b, c and d were engaged.

80. Ms Tighe referred the Tribunal to the case of *Cohen v GMC [2008] EWHC 581 (Admin)* and submitted that the Tribunal, when considering impairment, must take into account Dr Kai's conduct at the time of the events and whether the '*conduct which led to the charge is easily remediable; that, second, it has been remedied; and, third, that it is highly unlikely to be repeated*'.

81. Ms Tighe submitted that Dr Kai appeared to make admissions both within his response to NHS Gateways that he copied audits/QIP's from an online source and used them within his CV, as well as in the letter to the GMC. Dr Kai had also accepted that he had attempted to present his application in a more favourable light. However, Dr Kai then attempted to distance himself from those admissions within his written submissions of 5 March 2024, his denial of some of the paragraphs in the Allegation and within his oral submissions at Stage one.

82. Ms Tighe argued that the consequence of this shift was that Dr Kai did not accept he knew what he was doing was wrong at the time he made the application, i.e. that he denied that the information he had included was untrue and further denied that he knew that he should not plagiarise it. Ms Tighe submitted that Dr Kai also did not accept the motivations behind his misconduct (to strengthen his prospects at obtaining a job interview). The Tribunal had rejected Dr Kai's assertion that his actions were not financially motivated.

83. Ms Tighe submitted that these denials had a negative impact on Dr Kai's insight into his misconduct. Dr Kai had first accepted that he knew he should not plagiarise but had changed his account. This demonstrated that he was someone with limited insight. The aspects around dishonesty had not been admitted and it followed that Dr Kai did not have insight into the reasons behind his misconduct, what steps he would need to put in place to



prevent reoccurrence and what impact his misconduct could have upon the public's trust and confidence in the medical profession.

84. Ms Tighe told the Tribunal that, in relation to remorse, until Dr Kai accepted and developed greater insight into his misconduct he could not be truly remorseful.

85. Ms Tighe then turned to the question of remediation and submitted that dishonesty is difficult to remediate. She acknowledged that Dr Kai had completed a one-hour Probity and Ethics course on 10 August 2022. However, this amounted only to limited remediation.

86. Ms Tighe submitted that in light of the absence of full insight, remorse and remediation, there remained a risk of repetition of the misconduct.

87. Ms Tighe reminded the Tribunal of the statutory overarching objective: 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 the profession.

88. Ms Tighe submitted that a reasonable and well-informed member of the public would expect a finding of impairment to be made in this case. Moreover, a finding of impairment was required in this case to reaffirm to the public and doctors the standard of conduct expected of them. Dr Kai's misconduct was so serious that public confidence in the profession would be undermined if a finding of impaired fitness to practise were not made. Therefore, a finding of impairment was necessary in this case to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for members of the medical profession.

#### Dr Kai

89. Representing himself, Dr Kai submitted that he fully recognised the gravity of his actions and would openly discuss the steps he had taken to ensure such misconduct was never repeated.

90. In relation to demonstrating insight, Dr Kai submitted that, in reflecting upon his actions, he had come to understand the deeper implications of his decision to enhance his CV and his use of plagiarised content. He realised now that - beyond just misleading potential employers - his actions undermined the trust and integrity that are the foundation of the

medical profession. Dr Kai told the Tribunal that when he chose convenience over honesty, he not only compromised his own integrity but also potentially endangered the reputation of the institutions he had applied to and the broader professional community. This reflection had been an essential moment in his professional life, leading him to deeply question and re-evaluate his “*ethical compass*”.

91. Dr Kai stated that he wished to express his sincere and profound regret for his actions, to those he had misled, to his peers and to the profession he deeply respected. He accepted that his actions were inexcusable and fully accepted the seriousness of the consequences. Dr Kai submitted that his remorse has been a catalyst for genuine change in his professional conduct and personal ethics. He conceded that understanding the impact of his actions had been a difficult, but necessary, journey towards becoming a more honest and responsible individual.

92. Dr Kai then addressed the remediation he had undertaken to correct his past actions and prevent future recurrence. He told the Tribunal he had taken several steps, including completion of a thorough course dedicated to professional ethics and integrity. This course, although it lasted for just one hour, was intensive and covered critical aspects of honesty in professional documentation, decision-making, and conduct. Dr Kai submitted that the insights he had gained had been transformative, equipping him with robust tools and frameworks that he now applied when faced with ethical dilemmas. He now had a deeper understanding of the process of remediation: what it involves, its significance, and how to demonstrate it.

93. Dr Kai submitted that one of the most valuable lessons he had learned was that, when facing mistakes, he should acknowledge them with courage and learn from them to avoid future mistakes. In line with this learning, he had taken the difficult but necessary step of admitting the truth about his CV to both the GMC and the hospital that had made him the job offer. Dr Kai was acutely aware that such an admission could, and indeed did, result in the withdrawal of his offer of employment. Yet, this was a crucial moment in his professional journey. It was an act that reflected not only his commitment to honesty but also his dedication to the process of self-improvement and alignment with the ethical standards of the medical profession. Dr Kai submitted it was with this same spirit of transparency and integrity that he approached the Tribunal today.

94. Dr Kai told the Tribunal that he had sought the guidance of Dr G, a respected figure in his community, who emphasised the importance of learning from this mistake. Under her

mentorship, Dr Kai had gained invaluable insights into maintaining ethical standards in all professional activities.

95. Dr Kai submitted that he had committed to a routine of self-reflection and peer review, thus ensuring his actions were in alignment with professional standards. This included being transparent about these proceedings with his peers and those he mentored, sharing the lessons he had learned to foster a culture of honesty and accountability. Dr Kai further submitted that he had started sharing his experiences and the importance of ethical behavior with colleagues and newcomers to the profession, hoping to prevent similar mistakes and promote a culture of integrity.

96. Dr Kai told the Tribunal that he was someone of good character, committed to learning from his mistakes, as supported by the character witnesses provided in evidence. He requested the Tribunal and GMC's advice on additional steps he could take towards professional and ethical growth.

97. Dr Kai pledged to uphold the standards of honesty, integrity, and professionalism expected by the GMC and the medical profession as a whole. He submitted that he was dedicated to continuous personal and professional growth, ensuring that his future conduct will be exemplary of the trust and responsibilities bestowed upon him as a medical practitioner.

98. In summary, Dr Kai submitted that, whilst he cannot change his past actions, he was fully committed to a future defined by honesty and integrity. He told the Tribunal that his mistakes have been a source of profound learning and personal growth and asked the Tribunal to consider the steps he has taken towards remediation.

### **The Relevant Legal Principles**

99. 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.

100. In approaching the decision, the Tribunal should be 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 that finding of misconduct could lead to a finding of impairment.

101. The word “*serious*” does not appear in the Medical Act 1983 as amended, nevertheless, for the purpose of fitness to practice proceedings, “misconduct” is often defined as 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 practitioner in the particular circumstances.

102. The Tribunal must determine whether Dr Kai’s fitness to practice is impaired today, taking into account his conduct at the time of the events, whether the matters are remediable, whether they have been remedied and the likelihood of repetition. The Tribunal must determine whether he has demonstrated insight, and if so, to what extent.

103. The Tribunal must also determine whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of current impairment were not made.

104. The LQC referred the Tribunal to the factors to consider when considering the question of impairment as set out by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as endorsed by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 297 Admin.

105. The Tribunal should consider any paragraphs of GMP it believes are applicable.

106. The LQC reminded the Tribunal of the case of *Sawati v General Medical Council* [2022] EWHC 283 (Admin) which states that doctors are properly and fairly entitled to defend themselves. When considering whether it is fair to use a doctor’s ‘rejected defence’ when considering insight and/or to aggravate any sanction imposed on them, a Tribunal may find it helpful to consider:

- how far state of mind or dishonesty was a primary rather than second-order allegation to begin with;
- what, if anything, the doctor was positively denying other than their own dishonesty or state of knowledge;
- how far ‘lack of insight’ is evidenced by anything other than the rejected defence; and
- the nature and quality of the defence, identifying clearly any respect in which it was itself a deception, a lie or a counter-allegation of others’ dishonesty.

107. The Tribunal has been provided with a number of recent testimonials and other documents relating to Dr Kai's clinical practice. It will be a matter for the Tribunal to decide the weight to be attached to these documents when determining impairment. They are likely to be of relevance in assessing remediation and the likelihood of any repetition of the conduct found proved.

108. The LQC reminded the Tribunal that if it were to find misconduct but no current impairment of Dr Kai's fitness to practise then it should invite further submissions from the parties as to whether or not the case should be concluded with a warning.

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

#### Misconduct

109. In determining whether Dr Kai's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct. Misconduct can be found in circumstances where there have been serious departures from expected standards of conduct and behaviour, which can be identified by reference to GMP.

110. The Tribunal considered that under no circumstances was plagiarism acceptable. Dr Kai had applied for a job and, by submitting a CV that included plagiarised material, had been deceitful regarding his skills and experience. The Tribunal acknowledged that Dr Kai had copied the phrases to enhance his chances of getting an interview and there had been no other financial gain. However, by misrepresenting his level of experience on his application form and CV, Dr Kai was potentially depriving someone else better qualified of the role.

111. The Tribunal determined that, as a result of his dishonest behaviour, Dr Kai had breached paragraphs 1, 65 and 71 of GMP to the extent that he had attempted to pass off parts of the CVs of others as his own experience. With regard to the highlighted paragraphs of the SG, the Tribunal concluded that both paragraphs 124 and 125(d) applied and were fully engaged.

112. The Tribunal concluded, therefore, that Dr Kai's misconduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

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

114. The Tribunal determined that Dr Kai had breached fundamental tenets of the medical profession, identifying three paragraphs of GMP that he had departed from. As a result, Dr Kai had brought the profession into disrepute.

115. The Tribunal considered Dr Kai's subsequent insight into his actions and took into account that he had thereafter acted appropriately. He had immediately notified Gateway, even though he knew he would lose his offer of employment, and he also withdrew all his other job applications.

116. The Tribunal had regard to the fact that Dr Kai was young and inexperienced, and under severe personal and political stress in Myanmar. The Tribunal took into account Dr Kai's submissions at this stage that he now accepted his dishonesty. The Tribunal considered that as this process was progressing, so too was Dr Kai's insight into his actions and the consequences of those actions. While Dr Kai's insight was only at a developing stage, it was gaining momentum rapidly.

117. The Tribunal took into account that while, on the whole, dishonesty is difficult to remediate, dishonesty also covers a wide spectrum. The Tribunal looked at Dr Kai's actions within the context of his unusual circumstances. Although dishonest, it was a specific act of plagiarism that Dr Kai indicated would be viewed less seriously in Myanmar compared to the UK. The Tribunal also took into account that Dr Kai stood up to the consequence of what he did and this made his dishonesty remediable.

118. The Tribunal found that Dr Kai had not yet taken the appropriate steps to remediate. However, this was not because he did not want to but that he did not know what to do. He had asked a medical defence union, which advised him of the bare minimum that he could do to remediate. The Tribunal took into account the Probity & Ethics course Dr Kai had completed and acknowledged that he had done this immediately after he understood that the matter had been referred to the GMC. However, the Tribunal was not satisfied that a one-hour course was sufficient to address the dishonest behaviour and, despite telling the

Tribunal of other steps he had taken to remediate, Dr Kai was unable to present any supporting evidence of this.

119. The Tribunal also took into account that Dr Kai could have ‘washed his hands’ of this issue and written off the UK as a place to work but he had persevered, gained an understanding of what had brought him before his regulator, and taken responsibility. He had sought GMC guidance on how he could remediate and how he could do better. In the circumstances, the Tribunal concluded there was not more that Dr Kai could have done at the time.

120. The Tribunal noted that Dr Kai has worked with the GMC to progress this case and had said at the beginning of his submissions that he was “*here to openly discuss steps...*”. The Tribunal concluded that Dr Kai was trying to right his wrongdoing and needed to be steered in the right direction.

121. The Tribunal had regard to the testimonials that spoke highly of Dr Kai, the authors being fully aware of the charges Dr Kai was facing. Dr Kai was also a ‘Samaritan’ and the Tribunal considered him to be an otherwise decent person.

122. The Tribunal took into account Dr Kai’s multiple heartfelt apologies and accepted his remorse as genuine. However, the Tribunal bore in mind that following his expressions of remorse in his written statement in October 2023, Dr Kai had denied the gravest allegations and, therefore, there was still a risk of repetition.

123. The Tribunal considered that Dr Kai had shown a knowledge of the consequences of his behaviour and the Tribunal concluded that this, along with his developing insight and capacity and willingness to remediate, was enough to satisfy it that the risk of repeating this behaviour was relatively low.

124. The Tribunal then looked at the factors as set out in *Grant*, in the test for impairment and took into account the fact that Dr Kai had committed plagiarism. It found that Dr Kai had brought the profession into disrepute, that he had breached fundamental tenets of the profession, he had been dishonest on two separate applications and there was still a risk of repetition of that dishonest behaviour. Therefore, factors b, c and d of *Grant* were engaged. The Tribunal was in no doubt that public confidence in the medical profession and the ability to uphold proper standards for that profession would be adversely affected if it were not to make a finding of impairment in this case.

125. The Tribunal has therefore determined that Dr Kai's fitness to practise is impaired by reason of his misconduct.

#### Determination on Sanction - 20/03/2024

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

#### The Evidence

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

#### Submissions

128. In her written submissions on behalf of the GMC, Ms Tighe referred the Tribunal to relevant paragraphs in the 'Sanctions Guidance' (SG). In summary, Ms Tighe submitted that the appropriate and proportionate sanction in this case is a period of suspension.

129. Ms Tighe submitted that the following were mitigating features of this case:

- Dr Kai has no previous finding of impairment;
- The lapse of time since the incident(s);
- The stage of Dr Kai's UK medical career;
- Dr Kai's demonstration of timely insight during the investigation and the hearing.

130. In terms of aggravating features, Ms Tighe referred the Tribunal to paragraphs 56(a), 124 and 125 of the SG:

*'56 Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):*

*a. issues relating to probity – i.e. being honest and trustworthy and acting with integrity...*



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 serious and/or persistent dishonesty.*

125 *Examples of dishonesty in professional practice could include:*

*a defrauding an employer*

*b falsifying or improperly amending patient records*

*c submitting or providing false references*

*d inaccurate or misleading information on a CV*

*e failing to take reasonable steps to make sure that statements made in formal documents are accurate.’*

131. Ms Tighe submitted that there are no exceptional circumstances in this case which would justify taking no action and the public interest would not be met by taking no further action. Ms Tighe stated that, given the seriousness of Dr Kai’s misconduct, the imposition of undertakings would also not properly mark the seriousness of his misconduct.

132. Ms Tighe submitted that conditions are not appropriate. She stated that this was not a case involving Dr Kai’s health or his performance. Further, she submitted that conditions would not be proportionate given the serious nature of Dr Kai’s misconduct. Ms Tighe reminded the Tribunal of its stage two findings:

*‘• The Tribunal considered that under no circumstances was plagiarism acceptable. Dr Kai had applied for a job and, by submitting a CV that included plagiarised material, had been deceitful regarding his skills and experience.*

*• By misrepresenting his level of experience on his application form and CV, Dr Kai was potentially depriving someone else better qualified of the role.*

*• The Tribunal determined that Dr Kai had breached fundamental tenets of the medical profession.’*

133. In relation to suspension, Ms Tighe referred the Tribunal to paragraphs 91, 92, 97 (a), (e), (f) and (g) of the SG which she stated were all engaged and relevant factors for the Tribunal to consider.

134. Ms Tighe submitted that Dr Kai's misconduct amounts to a serious breach of GMP, in particular paragraphs 1, 65 and 71. However, it was not contended by the GMC that Dr Kai's misconduct was fundamentally incompatible with continued registration. Ms Tighe accepted that Dr Kai has engaged with the GMC investigation/fitness to practise hearing and there was no evidence that remediation would be unsuccessful in this case.

135. In terms of the seriousness of the findings, Ms Tighe submitted that the extent to which Dr Kai departed from the principles of GMP and the extent to which his actions would have affected public confidence in the medical profession required a period of suspension at the upper end of the range. Furthermore, she submitted that such a suspension would provide Dr Kai with sufficient time to remediate.

136. Ms Tighe submitted that a sanction of erasure would not be appropriate or proportionate in this case. She submitted that Dr Kai does not present a risk to patient safety and that a sanction of suspension would be sufficient to maintain public confidence in the profession.

137. Ms Tighe submitted that a review hearing was necessary in this case in order for Dr Kai to demonstrate - and for a reviewing Tribunal to be satisfied - that he had developed further insight into his misconduct and had taken appropriate steps to remediate. At such a hearing the risk of repetition could be reassessed.

138. In his written and oral submissions, Dr Kai acknowledged the Tribunal's findings that his actions breached fundamental tenets of the medical profession and brought it into disrepute. Dr Kai stated that he understood the gravity of his departure from paragraphs of GMP and the impact such actions have on public trust and the integrity of the profession.

139. Dr Kai stated that his insight into the consequences of his actions had significantly developed since the commencement of this process. He said that he appreciated the Tribunal recognising his developing insight and his efforts to act appropriately following his realisation of the nature of his misconduct. Dr Kai stated that he was committed to continuing this course of growth and understanding.

140. Dr Kai stated that, after acknowledging the Tribunal's observations on the adequacy of his previous remediation efforts, he was committed to taking further, substantial actions to ensure that his professional conduct remained exemplary, such as Enhanced Ethical Training, Expanded Mentorship and Reflective Practice, Intensified Community Engagement and Systematic Collection of Remediation Evidence.

#### Enhanced Ethical Training

141. Dr Kai stated that to build upon the foundation laid by the initial Probity & Ethics course he had attended, he had identified an advanced ethics and probity course that offered five hours of in-depth training on ethical decision-making and integrity within medical practice. Dr Kai said that this course was structured to provide actionable strategies for ethical dilemmas specifically relevant to the misconduct identified by the Tribunal.

142. Dr Kai stated that given the financial constraints he was currently facing due to the civil unrest in Lauk Kai and the modest income from his impending employment, he was exploring avenues to secure the £499 required for this critical educational investment. Dr Kai asked for guidance on this from the Tribunal as to whether this extended training would sufficiently address the Tribunal's concerns.

#### Expanded Mentorship and Reflective Practice

143. Dr Kai stated that he had actively sought and secured mentorship from an esteemed senior professional within his community. He stated that this expanded network of guidance would enrich his understanding of ethical standards in practice, offering diverse perspectives that he intended to integrate into his daily professional life.

#### Intensified Community Engagement

144. Dr Kai stated that it was his plan to deepen his participation in initiatives aimed at fostering a culture of honesty and integrity within the profession. He would do this by sharing his journey and the lessons he had learned with doctors who were junior to him. Dr Kai stated that he aspired to influence positively the collective approach to ethical practice, especially among those just beginning their medical careers in the UK.

#### Systematic Collection of Remediation Evidence

145. Dr Kai stated that, in anticipation of the Tribunal's requirement for proof of his remediation efforts, he would methodically gather all relevant documentation. This would include certificates of courses he would have completed, detailed records of mentorship activities, and expressions of recognition from community initiatives. Dr Kai said that this documentation would serve as evidence of his ongoing commitment to ethical excellence and professional development.

146. Dr Kai stated that, through these continued and expanded efforts, he aimed to not only remediate past missteps but also to solidify his dedication to the highest ethical standards of the profession. Dr Kai said that he was eager to demonstrate this commitment through tangible actions and the positive impact of his professional conduct moving forward.

#### Addressing the Risk of Repetition

147. Dr Kai stated that he had taken the Tribunal's concerns regarding the risk of repetition seriously. He said that, through his sustained remediation efforts, he had worked diligently to eliminate this risk. Dr Kai stated that his commitment to ethical practice was unwavering, and that he had implemented safeguards in his professional conduct to prevent future lapses in his judgment.

#### Testimonials and Character Witness

148. Dr Kai stated that he was grateful for the testimonials provided on his behalf and which he believed reflected his character and dedication to the medical profession. Dr Kai said that these testimonials were from colleagues who were fully aware of the charges against him. He said that they attested to his genuine remorse, ethical conduct in practice, and contributions to the community.

#### Conclusion

149. Dr Kai invited the Tribunal to impose a period of conditions on his registration to monitor and support his continued professional development and ethical conduct. He stated that a sanction of conditions would be more constructive to him than a sanction of suspension. Dr Kai suggested that these conditions could include regular reporting on his continued education in ethics, mentorship activities, and community service.

150. Dr Kai stated that he was sincerely grateful for the learning opportunity this process had offered him and was fully committed to upholding the high standards expected of him

within the medical profession. Dr Kai invited the Tribunal to reconsider the sanction of suspension suggested by the GMC in favour of conditions that would allow him to continue serving the community and demonstrate his unwavering commitment to ethical practice.

### The Tribunal's Determination on Sanction

151. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In reaching its decision, the Tribunal has taken GMP and the SG into account and has, at all times, borne in mind the overarching objective.

152. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Kai's interests with the public interest.

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

#### Mitigating Factors

154. The Tribunal considered the following to be mitigating factors in this case:

- There have been no previous adverse findings against Dr Kai as a medical practitioner and the Tribunal is satisfied that his dishonesty has not been repeated in the two years since the index events;
- This was an isolated incident of dishonest conduct and was not persistent or covered up;
- Dr Kai had acted appropriately after his misconduct by immediately notifying Gateway and the BFHT and also withdrawing all his other job applications;
- Dr Kai is otherwise a person of good character;
- Dr Kai has readily engaged with the GMC investigation and the regulatory process;
- Dr Kai has taken steps to reflect on his misconduct and shown a willingness to remediate it as well as developing insight in the process; therefore, any future risk of repetition of his misconduct was relatively low;
- Dr Kai has expressed remorse and apologised for his behaviour;
- Dr Kai has provided testimonials which attest to his good character;

- Dr Kai was a young and inexperienced doctor and the index events occurred early in his career;
- Dr Kai was under severe personal stress to stay in the UK due to the political circumstances in his home country of Myanmar relating to the civil war there;
- The likely pressure that Dr Kai had felt from the personal and financial sacrifices his family had made to secure his move to the UK.

### Aggravating Factors

155. The Tribunal considered it an aggravating factor which affected the insight of Dr Kai that he had given inconsistent accounts during the investigation and the proceedings. He had initially made multiple admissions that the entries on his application form were untrue and that he had known them to be so. It was only just before the proceedings formally commenced that he asserted that he had carried out a project in Myanmar which was very similar to that set out in his application form. This late change in the substance of Dr Kai's case indicated to the Tribunal that his insight was not fully developed.

156. The Tribunal has taken these factors into account in considering the appropriate sanction under the SG. It considered each sanction in ascending order of severity, starting with the least restrictive.

### **No action**

157. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that given its findings there are no exceptional circumstances in this case and that it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

### **Conditions**

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

33. In the light of its findings, the Tribunal determined that it would not be possible to formulate a set of appropriate or workable conditions which could adequately address Dr Kai's misconduct, namely his dishonesty. In any event, the Tribunal concluded that a period of conditional registration would not be a sufficient, appropriate, or proportionate sanction to satisfy the public interest.

### **Suspension**

159. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Kai's registration. Such a sanction would prevent Dr Kai from practising in the UK but would not impact on his continuing ability to practise in Myanmar.

160. The Tribunal considered the SG in relation to suspension including paragraphs 91 and 92, which state:

*'91. Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

*'92. Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (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).'*

161. The Tribunal recognised that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Kai, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. It also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to maintain public confidence in the profession, but which falls short of being fundamentally incompatible with continued registration.

162. The Tribunal also had regard to paragraph 97 of the SG which sets out some of the circumstances in which suspension may be the appropriate sanction. The Tribunal considered 97 a, e, f and g to be engaged in this case:

*'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 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.*

*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.*

163. The Tribunal was in no doubt that Dr Kai's misconduct was sufficiently serious that action is required to maintain public confidence in the medical profession and to assert proper professional standards. The Tribunal considered that a message must be sent to the medical profession and the public that this behaviour was unacceptable in order to uphold professional standards and public confidence.

164. However, the Tribunal was satisfied that Dr Kai has readily and fully engaged in the regulatory process and that he has taken responsibility for his actions. Further, it was satisfied that Dr Kai's apologies and expressions of remorse are genuine and reflect not just his regret for having acted as he did, but also his determination not to let the profession down again. In addition, Dr Kai has demonstrated some limited but developing insight into his misconduct and has already undertaken limited remediation, although the Tribunal



considered that further work was required. The Tribunal was satisfied that, in time, Dr Kai can develop fuller insight. There has been no known repetition of Dr Kai's misconduct, and the Tribunal was satisfied that the extent of Dr Kai's current insight means any future repetition was relatively low.

165. In the Tribunal's assessment of Dr Kai's dishonesty, it was of the view that it was towards the lower end of the scale of seriousness. It took into account that this was an isolated one-off incident and was not persistent or covered up. Dr Kai had addressed his misconduct immediately when he realised what he had done wrong and notified Gateway and withdrew all his other job applications on that system immediately. Dr Kai also informed BFHT in the knowledge that this may result in his job offer being withdrawn as indeed it was.

166. In these circumstances, the Tribunal determined that a sanction of erasure would not be proportionate and that a period of suspension was the appropriate and proportionate sanction to fulfil the overarching objective. It considered that a period of suspension would balance Dr Kai's interests with the need to send a clear message that his behaviour was unacceptable for a member of the medical profession.

167. The Tribunal therefore determined that Dr Kai's registration should be suspended for a period of 4 months. The Tribunal was satisfied that a suspension of Dr Kai's registration for this period will send a clear message to Dr Kai, the profession, and the wider public that dishonesty inevitably amounts to behaviour unbecoming a registered medical practitioner and will always be taken seriously. It will also give Dr Kai time to further remediate, gain full insight.

168. The Tribunal determined to direct a review of Dr Kai's case. A review hearing will convene shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Kai to demonstrate how far he has remediated and developed full insight and that he is fit to return to unrestricted practise.

169. Dr Kai had identified an advanced ethics and probity course that offered five hours of in-depth training on ethical decision-making and integrity within medical practice at a cost of £499. The Tribunal concluded that Dr Kai had finally grasped the unacceptability of plagiarism and, bearing in mind his financial constraints, the electricity issues and regular failures in internet connection in Myanmar, the course would not be practical and would be of limited benefit to Dr Kai. Instead, the Tribunal considered that the directions in the following paragraph would benefit him and help the Tribunal who came to review this sanction.

170. The Tribunal therefore considered that it may assist the reviewing Tribunal if:

- Dr Kai has fortnightly meetings with his mentor Dr H focussing on discussions which they should have on probity and ethics in his working environment;
- Dr Kai provides a report from his mentor Dr H confirming these meetings and their content and Dr Kai's progress in understanding and demonstrating probity and ethics;
- Dr Kai considers relevant literature on probity and ethics within the medical profession with a particular emphasis on plagiarism and evidences any reading of and reflection on such material;
- Dr Kai continues with his community engagement with junior doctors in which he shares the benefit of his experience in the UK and the importance of avoiding plagiarism and acting with integrity and probity;
- Dr Kai provides a reflective statement to include his understanding of his actions and the impact his actions had on the medical profession, colleagues, patients and the public's confidence in the profession.

The Tribunal considered that the areas outlined above are more likely to be of more benefit to Dr Kai and a reviewing Tribunal than attendance on a remote Continuous Professional Development (CPD) course. However, Dr Kai may also provide any other information that he considers will support his case in showing that his fitness to practise is no longer impaired.

#### **Determination on Immediate Order - 20/03/2024**

171. Having determined to suspend Dr Kai's registration for a period of 4 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Kai's registration should be subject to an immediate order.

#### **Submissions**

172. On behalf of the GMC, Ms Tighe submitted that an immediate order is not necessary in this case to protect members of the public or otherwise in the public interest. She referred the Tribunal to the relevant paragraphs of the SG (172 to 178) dealing with immediate orders. Ms Tighe stated that there was no interim order in place.

173. Dr Kai stated that the suspension could start immediately.

### The Tribunal's Determination

174. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the best interests of the practitioner. It has also considered the guidance given in paragraphs 172, 173, and 178 of the SG relating to immediate orders:

*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.*

175. The Tribunal had regard to its previous determinations and the submissions made by Ms Tighe and Dr Kai.

176. The Tribunal determined that it is not necessary to impose an immediate order to 'protect members of the public', 'in the public interest', or 'in the best interests of the doctor'.

It was not of the view that immediate action needed to be taken to protect public confidence in the medical profession, particularly given that there was a low risk of repetition. The Tribunal was conscious of the seriousness of the misconduct but determined that this was adequately addressed by the substantive suspension.

177. In all the circumstances, the Tribunal determined not to impose an immediate order of suspension on Dr Kai's registration.

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

179. Case concluded

**ANNEX A – 14/03/2024**

**Application to exclude evidence**

180. At the start of this hearing, the Tribunal was asked by the GMC to determine a preliminary issue (in accordance with rule 17(2)(a) of the Fitness to Practise Rules 2004) as to the admissibility of evidence which Dr Kai wished to put before it.

181. The contested evidence consisted of a witness statement, on behalf of Dr Kai from Dr B.

182. On behalf of the GMC, Ms Tighe submitted that the GMC objected to the admission of Dr B's witness statement.

183. Ms Tighe stated that on 6 March 2024 Dr Kai provided the GMC with a number of documents. Within these documents was a witness statement purporting to be from Dr B. She stated that the statement was 44 paragraphs long and was signed at the bottom. However, there was no declaration of truth included.

184. Ms Tighe stated that Dr Kai had previously provided references and character references to the GMC which were included within the bundles for the Tribunal to consider. However, prior to this date, Dr Kai had not indicated that he sought to rely on defence witnesses.

185. Ms Tighe stated that in terms of the nature of the statement, Dr B contends to have worked alongside Dr Kai while working as an intern at the North Oakala General Hospital and provides brief details of the projects carried out by Dr Kai during that internship. However, Dr B suggests that these projects were not formally documented.

186. Ms Tighe stated that with regard to the MPTS case management directions and chronology, Dr Kai was notified within the Rule 34 letter that he must provide the GMC with a list of witness statements whose evidence he sought to rely upon during the hearing. Ms Tighe stated that Dr Kai was asked to provide any witness statements by 22 January 2024.

187. Ms Tighe stated that Dr Kai responded to the Rule 34 letter on 9 January 2024 by email to confirm that he had received the letter with those timescales.

188. Ms Tighe reminded the Tribunal of Rule 34 (1) of the Rules, which provides:

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

189. Ms Tighe stated that the GMC accepted that the witness statement could be relevant in determining the issues at stage one. However, it would not be fair to admit this evidence for the following reasons.

190. Firstly, Dr B was not a witness who had been agreed by the GMC. Ms Tighe stated that, had the GMC been alerted to Dr B's status as a witness, the GMC would have sought to have contacted them. Further, she stated that at this stage the GMC would seek to cross examine Dr B and clearly, the GMC were not in a position to challenge that evidence because of the refusal of the Myanmar government to allow its citizens to give evidence from Myanmar in proceedings abroad.

191. Ms Tighe submitted that the evidence of Dr B was hearsay. She argued that it had been Dr Kai's presumption that he could rely upon the witness statement and not take further steps to have Dr B attend virtually to give evidence. She stated that there has not been any further information provided about Dr B. She therefore submitted that there was not a good and cogent reason for the non-attendance of Dr B.

192. Secondly, Ms Tighe stated that it was unclear how the evidence of Dr B had been secured. She stated that it again appeared that it would have been in a discussion between Dr Kai and Dr B about the position that Dr Kai finds himself in. Ms Tighe submitted that this calls into question the reliability of Dr B's evidence. Further, she submitted that this goes to the question of fairness, the second part of the test under Rule 34(14) admissibility.

193. Finally, Ms Tighe stated that there was no other effective method of testing the evidence, other than through cross examination. That could not happen for the reason stated above. Therefore, in all of the circumstances, it would be unfair to admit the evidence.

194. Dr Kai stated that he could not recall the exact timeframes and believed he had first asked Dr B for the witness statement at the end of 2023/beginning of 2024. At the time he had been working in Myanmar where there had been civil unrest and he had had to evacuate the area. Dr Kai stated that during the evacuation he lost all internet connection. He stated that when he got his internet connection back, he had tried to reply to the email to the GMC, however, he then had to evacuate to a different place and his internet connection was lost again. Dr Kai said that this was why he could not respond and collect the evidence to submit to the GMC in time.

195. Dr Kai stated that he had contacted Dr B in March and within two days they had provided him with the evidence of the witness statement. Dr Kai said that he had asked for the statement before this time, but this had been the first time he had been able to contact Dr B since the civil unrest and internet connection issues. Dr Kai said he was unsure when Dr B had written it or when it was signed.

196. Dr Kai confirmed that Dr B lives in Myanmar and has never worked in the UK.

197. Dr Kai stated that he could ask Dr B to provide written answers to any questions the GMC may have regarding the witness statement.

198. Ms Tighe made the additional observation that had the evidence been provided earlier, Dr B could have been given the opportunity to provide further written evidence and could have answered questions that the GMC had. This to a certain extent could have overcome the difficulties of not being able to cross examine Dr B.

### **The Tribunal's Decision**

199. The Tribunal noted the advice of the Foreign, Commonwealth & Development Office (FCDO), that the Government of Myanmar object to residents of Myanmar voluntarily giving evidence by video link to Tribunal proceedings in the United Kingdom (UK). Therefore, as Dr B lives in Myanmar, any GMC cross examination would have to be in written form.

200. The Tribunal determined that it would like to get more information from both parties before it made its decision on the admissibility of Dr B's witness statement.

201. The Tribunal therefore gave the GMC time to prepare written questions to be sent to Dr B by Dr Kai.

202. On receipt of the written answers provided by Dr B, Ms Tighe stated that the GMC no longer opposed the admissibility of Dr B's witness statement and the written answers to the GMC's questions. She stated that submissions as to the weight that should be applied to the two documents could be made in due course.

203. The Tribunal determined to allow the application. It considered that the witness statement was likely to be relevant to the matters which it had to determine. The Tribunal was mindful that Dr Kai is self-represented and was facing serious allegations.

204. The Tribunal accepted Dr Kai's explanation and found that a contributing factor for the delay in him sending the evidence to the GMC by the due date was civil unrest in Myanmar, meaning he had to evacuate twice, leaving him with no access to the internet.

205. The Tribunal was conscious that Dr Kai producing the witness statement late could cause prejudice to the GMC. However, it concluded that this had now been balanced by the GMC having had the opportunity to send written questions to Dr B and having received a reply.

206. The Tribunal determined that it would make its own decision as to the reliability of the Dr B's witness statement and the weight to place upon it.

207. Accordingly, the Tribunal determined to admit the evidence under Rule 34(1) of the Rules as it was of the view that it would be fair and relevant to do so.



Non-confidential schedule

Schedule 1

‘Development of an emergency medicines database to ensure adequate stock levels and only in-date medications are used.’

‘Emergency medicines on the wards are often overlooked since they are not in regular use. I developed a quality improvement project to review emergency medicines such as atropine and adrenaline, and note the stock level and date of expiry within a database. This will be reviewed on a regular basis.’

Non-confidential schedule

Schedule 2

‘Audit for the availability of Emergency Medicines & maintain a database for them at the medical ward, North Oakala General Hospital.’

‘Emergency medicines on the wards are often overlooked since they are not in regular use. I noticed this on a few occasions and gave feedback to the consultant. Then the ward manager and charge nurse developed a project to check emergency medicines regularly and solved this problem.’