

Dates: 24/02/2020 - 05/03/2020

Medical Practitioner's name: Dr Damian Thomas DUFFY

GMC reference number: 7406614

Primary medical qualification: MB ChB 2013 University of Leeds

Type of case **Outcome on impairment**
New - Misconduct Impaired

Summary of outcome

Suspension, 12 months.
Review hearing directed
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Lindsay Irvine
Lay Tribunal Member:	Mr Colin Sturgeon
Medical Tribunal Member:	Dr Paul Divall

Tribunal Clerk:	Mr Sewa Singh
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Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Richard Partridge, Counsel, instructed by Carson McDowell Solicitors
GMC Representative:	Ms Laura Barbour, Counsel

Attendance of Press / Public

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

Record of Determinations – Medical Practitioners Tribunal

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 - 28/02/2020

Background

1. Dr Duffy qualified as a doctor in 2013 at the University of Leeds. He is currently registered with the GMC.
2. Prior to the index events, Dr Duffy held various positions, including as a Foundation Year 1 (FY1) and Foundation Year 2 (FY2) doctor, across various Trusts in Northern Ireland. At the time of the index events, Dr Duffy worked as a locum specialty doctor in the Acute Care at Home Team (ACHT) at the Western Health and Social Care Trust ('the Trust'), starting on 15 August 2016 and finishing 9 June 2017 when he was dismissed.
3. The first part of the allegation against Dr Duffy is that he submitted timesheets to his locum agency for hours he claimed he had worked, between 6 February 2017 and 9 May 2017, as set out in Schedule 1.
4. The second part of the allegation against Dr Duffy is that he submitted travel-sheets for journeys which he claimed he had made, between 21 October 2016 and 17 February 2017, in connection with his employment, as set out in Schedule 2.
5. The third part of the allegation against Dr Duffy is that he signed timesheets, set out in Schedule 3, purporting that they had been signed by Dr A.
6. It is also alleged that, as a result of his actions, Dr Duffy received payments to which he was not entitled and knew he was not entitled; and that his actions, as described above, were dishonest.
7. These matters were referred to the GMC by the Trust following an internal investigation.

The Allegation and the Doctor's Response

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

Record of Determinations – Medical Practitioners Tribunal

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

1. You submitted:
 - a. timesheets in respect of hours worked as set out in Schedule 1;
Admitted and Found Proved
 - b. travelsheets for journeys travelled in connection with your employment as set out in Schedule 2;
Admitted and Found Proved
 - c. timesheets purporting to have been signed by Dr A as authorisation of hours worked as set out in Schedule 3.
Admitted and Found Proved
2. You knew that:
 - a. you did not:
 - i. work the hours claimed on the dates set out in Schedule 1;
Admitted and Found Proved
 - ii. undertake one or more of the journeys set out in Schedule 2;
To be determined
 - b. the timesheets set out in Schedule 3 had not been signed by Dr A;
Admitted and Found Proved
 - c. you had forged the signature on the timesheets set out in Schedule 3;
Admitted and Found Proved
 - d. the information contained in the documents set out in one or more of Schedules 1, 2 and 3 was untrue.
Admitted and Found Proved in relation to Schedule 1 and Schedule 3 only
To be determined in relation to Schedule 2
3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.
Admitted and Found Proved in relation to paragraph 2a(i), 2b, 2c and 2d (in relation to Schedule 1 and 3)
To be determined in relation to paragraph 2a(ii) and 2d (in relation to Schedule 2)

Record of Determinations – Medical Practitioners Tribunal

4. As a result of your actions as set out at paragraph 1 you received payments to which you knew that you were not entitled.

**Admitted and Found Proved in relation to paragraph 1a and 1c only
To be determined in relation to paragraph 1b**

5. Your conduct as set out at paragraph 4 was dishonest.

**Admitted and Found Proved in relation to paragraph 1a and 1c only
To be determined in relation to paragraph 1b**

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

To be determined

The Outcome of Applications Made during the Facts Stage

9. No applications were made.

The Admitted Facts

10. Through his counsel, Mr Richard Partridge, Dr Duffy admitted the following paragraphs of the Allegation, as set out above, and in accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs as admitted and found proved:

Paragraph 1a, 1b and 1c

Paragraph 2a(i), 2b, 2c and 2d in relation to Schedule 1 and Schedule 3 only

Paragraph 3 in relation to paragraph 2 a(i), 2b, 2c, and 2d in relation to Schedule 1 and 3

Paragraph 4 in relation to paragraph 1a and 1c only

Paragraph 5 in relation to paragraph 1a and 1c only

The Facts to be Determined

11. The Tribunal was required to determine whether the facts alleged, other than as admitted, occurred.

Factual and Documentary Evidence

12. On behalf of the GMC, the Tribunal received evidence in the form of a witness statement and exhibits from:

- Dr A (Dr A), Consultant Geriatrician at the Trust, statement dated 23 January 2019;

Record of Determinations – Medical Practitioners Tribunal

- Dr E, specialty doctor at the Trust, statement dated 21 November 2019;
- Mrs C, retired Head of Secondary Care and Lead Nurse and Head of Older People Services, statement dated 12 February 2019.

13. The Tribunal received oral evidence, via videolink, from Ms G, Medical Secretary at the Trust, and her witness statements dated 24 April 2019, 28 October 2019 and 31 January 2020.

14. The Tribunal found Ms G to be a credible witness. Her evidence was clear, straightforward, well-balanced, factual and helpful. She answered questions put to her without unnecessary elaboration.

15. The Tribunal also received Dr Duffy's undated written statement, and his oral evidence.

16. The Tribunal considered Dr Duffy to be an uncomplicated witness in that his evidence was largely consistent and he answered questions put to him without unnecessarily elaborating and without hesitation. Where necessary, he sought clarification of questions put to him because of the way in which the question had been phrased. However, his inability to remember certain issues and not others at time made him appear, at times, evasive. He also appeared rehearsed in relation to his assertion of genuine belief in response to questions relating to the credibility of his actions.

The Tribunal's Approach

17. 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 Duffy 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. The Tribunal also took into account that the more serious an allegation, the greater the need for cogent evidence.

18. It is alleged that Dr Duffy's actions in relation to paragraph 1 were dishonest by reason of paragraph 2, and that his conduct, as set out at paragraph 4 of the Allegation, was dishonest.

19. The Tribunal adopted the test for determining dishonesty which is set out in the case of *Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent)* [2017] UKSC 67, which states:

- '1. 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

Record of Determinations – Medical Practitioners Tribunal

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.

2. 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.'

20. In relation to evidence of Dr Duffy's character, the Tribunal noted that both counsel in their submissions agreed and accepted that Dr Duffy's admissions were admissible both in relation to his propensity to be dishonest and his credibility as a witness. The Tribunal accepted the Legally Qualified Chair's advice that admissibility of evidence before a Tribunal hearing is governed by the provisions of Rule 34(1) of the Rules of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules') which states:

'34(1) Subject to paragraph (2), the Committee or a Panel 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.'

Given the concessions by both counsel, the Legally Qualified Chair advised that it was open to the Tribunal to consider whether to admit the evidence and it would then be a matter for it as to what weight it should place upon those admissions in considering the outstanding allegations.

21. The Tribunal considered the admissions to dishonesty were relevant to the issues to be determined and no circumstances prevailed or had been raised to render it unfair to admit them. However, the Tribunal resolved to place little or no weight on the admissions. It considered that any probative value from evidence of a predisposition on Dr Duffy's part to be untruthful or dishonest, could be balanced against credibility arising from denials of less serious matters having admitted more serious ones. The Tribunal resolved to examine other cogent evidence in making its determination on the outstanding issues.

The Tribunal's Findings

22. The Tribunal considered each disputed paragraph of the Allegation separately and has evaluated the evidence to make the findings on the facts.

Paragraph 2

2. You knew that:

Record of Determinations – Medical Practitioners Tribunal

- a. you did not:
 - ii. undertake one or more of the journeys set out in Schedule 2;
Found Proved (in relation to Schedule 2)
- d. the information contained in the documents set out in one or more of Schedules 1, 2 and 3 was untrue.
Found Proved (in relation to Schedule 2)

23. As paragraph 2d has already been admitted and found proved in relation to Schedules 1 and 3, the Tribunal only needed to consider paragraphs 2a(ii) and 2d in relation to Schedule 2.

24. The Tribunal first considered whether Dr Duffy had actually undertaken the journeys set out in Schedule 2.

25. Ms G told the Tribunal that when Dr Duffy submitted the timesheets and travelsheets, she was asked to cross reference the claim forms against Dr Duffy's medical shift rota. She said that she identified a few discrepancies in that Dr Duffy had over claimed on his timesheets and had forged the signature of another doctor on some of the timesheets.

26. In relation to how she established whether Dr Duffy had undertaken the journeys set out in his travelsheets, Ms G explained that she cross referenced the dates of the journeys against his medical rota to check whether he was at work for the days and times for which he had claimed travel expenses. She said that his travel claims contained journeys for dates which the rota showed he had not worked. In response to a question, Ms G acknowledged that Dr Duffy may have undertaken 'walkabouts' (meaning visits to Altnagelvin Area Hospital to identify patients for whom the service could facilitate discharge) on certain dates. Ms G said, however, that Dr Duffy's medical shift rota showed that he was not working on 17 February 2017 and, therefore, could not have undertaken the journey.

27. The Tribunal noted paragraphs 70 – 72 and 74 of Dr Duffy's witness statement where he stated:

'70. It has since been brought to my attention that I incorrectly claimed for journeys (as set out below) on dates on which I did not work. I accept that I could not have undertaken journeys when I was not working and apologise for my administrative error in this respect.

71. I claimed for a return journey from Waterside Hospital to Inishowen View on 21st October 2016. I accept that I was not working that day and, therefore, could not have undertaken the journey on this date.

Record of Determinations – Medical Practitioners Tribunal

72. *I claimed for a return journey from Waterside Hospital to Benevenagh Drive, Limavady on 23rd January 2017. I accept that I was not working that day and, therefore, could not have undertaken the journey on this date.*

74. *I claimed for a return journey from Waterside Hospital to Altnagelvin Area Hospital on 17th February 2017. I accept that I was not working that day and, therefore, could not have undertaken the journey on this date. I would, however, have taken this journey on a regular (if not daily) basis. It is highly likely that I travelled to Altnagelvin Area Hospital on an occasion in/around 17th February 2017 and, therefore, the mileage claim is genuine albeit that I included the incorrect date on the travel claim form.'*

28. Based on the evidence before it, the Tribunal determined, on the balance of probabilities, that Dr Duffy had not undertaken the journeys set out in Schedule 2.

29. The Tribunal then went on to consider whether Dr Duffy knew that he had not undertaken the journeys set out in Schedule 2 and therefore knew that the information contained in the documents set out in one or more of Schedules 1, 2 and 3 was untrue.

30. The GMC's case is that, at the time of completing the travelsheets, Dr Duffy knew that the information set out in the travelsheets was untrue. The GMC relied upon the detail set out by Dr Duffy in the travelsheets.

31. The Tribunal was provided with three travelsheets dated:

- 5 December 2016 for the journey on 21 October 2016
- 3 March 2017 for the journey on 23 January 2017
- 4 April 2017 for the journey on 17 February 2017

32. In her evidence, Ms G described the way in which the ACHT database worked. The database included information about patients referred to the ACHT, such as the patient's name, address, date of birth, date of referral, admission and discharge, and whether the patient had any health issues. Ms G said that database was generally used by nursing staff and that, although she was not aware that it was accessible by doctors, she accepted that this may be the case.

33. She told the Tribunal that she had conducted a search of the ACHT database and had also undertaken a search of the Hospital's Patient Administrative System (PAS) database by inputting the patient's address. She identified that neither patient from those addresses had had any interaction with the service other than on the dates of the journeys of the claims. However, Dr Duffy was not working on either of those dates.

Record of Determinations – Medical Practitioners Tribunal

34. In his evidence, Dr Duffy explained to the Tribunal his difficult personal financial circumstances. He told the Tribunal that, at the time, his personal and work life was chaotic and disorganised. He told the Tribunal that when he completed the timesheets, he was already late in submitting these. He said that he had entered approximately 165 journeys on travelsheets in three or four sessions over a two week period at the end of March and at the beginning of April 2017. Dr Duffy said that although he did not have his rota to check against, he believed he was able to identify patients he had visited by their surname because he had a good recollection of patients' names and undertook to go through the database to identify those patients. He told the Tribunal that he was confident that he had accurately identified the patients he had visited. Dr Duffy said that he used google maps to work out the distance he would have travelled. Dr Duffy went on to say that in relation to the completion dates on at least two of the travelsheets, he deliberately put incorrect completion dates, i.e. dates earlier than when he had actually completed the travelsheets, because he wanted to give the impression that he was more organised than he actually was. He said that he could not say for certain whether the 4 April 2017 completion date was accurate either.

35. In relation to the travelsheet dated 4 April 2017 for the journey on 17 February 2017, Dr Duffy told the Tribunal that he regularly made journeys to the Altnagelvin Area Hospital and he therefore believed, at the time of completing the form, that he had made the journey.

36. The Tribunal noted that when asked why he had not disclosed that he had forged Dr A's signature on other timesheets at a Trust meeting on 9 June 2017, Dr Duffy explained that it was a high pressured meeting and that he could not remember if he was aware that he had forged other signatures.

37. The Tribunal was provided with a copy of the notes of the meeting which Dr Duffy had on 9 June 2017 with Mrs C, Dr B and Mrs D. The Tribunal noted that in the meeting, Dr Duffy admitted, when asked, that he had forged Dr A's signature on the timesheets for the weeks commencing 1 May 2017 and 8 May 2017. The GMC submitted, and the Tribunal accepted that at the time, Dr Duffy knew that he had also forged Dr A's signature on other timesheets, but he did not disclose this in the meeting despite being advised by Dr B to be '*brutally honest at all stages*'. Whilst the Tribunal accepts that the meeting on 9 June 2017 was a highly pressured meeting, it accepted the GMC contention that Dr Duffy only made admissions to those matters where the 'game was up'.

38. Throughout his written and oral evidence, Dr Duffy maintained that he genuinely believed he had undertaken the journeys, as set out in Schedule 2, at the time of completing the travelsheets. He said in paragraph 69 of his statement:

'At the time of submission, I believed the mileage claims to be genuine. I was not aware that any of the information was incorrect.'

Record of Determinations – Medical Practitioners Tribunal

39. The Tribunal noted Dr Duffy's evidence about how he identified which patients he had visited, and that he did not have his rota available at the time of completing the travelsheets. It accepted that at the time, Dr Duffy's personal and work life may have been chaotic and disorganised. It also took into account that Dr Duffy completed the travelsheets some months after he had commenced employment with the ACHT and that it was, therefore, possible that due to the lapse of time, and in applying the method which he did, Dr Duffy could have made errors in identifying which patients he had visited and/or on which dates.

40. The Tribunal agreed with Mr Partridge's submission that the crucial issue to be determined is Dr Duffy's state of mind as to the genuineness of his belief. It noted Mr Partridge's submission that this cannot be proven by objective elements and his argument that it does not matter how Dr Duffy went about the task, nor how unreasonably he approached it. Mr Partridge submitted that Dr Duffy's approach in life was chaotic in terms of financial management, his working life and there were unusual pressures on him at the time. However, he submitted that this was not being dishonest.

41. The Tribunal noted that by his own admission, Dr Duffy told the Tribunal that he deliberately put the incorrect dates for the completion of at least two travelsheets. As stated above, he had filled in and dated the forms in three or four sessions in late March or early April, together with approximately 160 other claimed journeys. It noted his reason for doing so but the Tribunal found this motive unconvincing given the overwhelming evidence of poor organisation from the submission of a large number of very late claims. By his own admission, the completion dates on the forms were deliberate lies, calculated to deceive the recipient. The Tribunal considered that such deceit and manipulation of the truth on this aspect of the forms effectively countered the picture that Dr Duffy had sought to draw in respect of other entries on the same forms, of innocent mistakes arising from an administrative chaos and poor organisation. The Tribunal was also concerned about Dr Duffy's inconsistent evidence under questioning in relation to whether he had referred to his medical shift rota when completing the travelsheets.

42. The Tribunal also noted that Dr Duffy had entered precise journey timings on the travelsheets as required by the form but found it was not credible that he could have recalled that from memory, thereby indicating further preparedness to fabricate.

43. The Tribunal determined, on the balance of probabilities that the state of Dr Duffy's mind is demonstrated by his clear preparedness to knowingly tell untruths on the forms in order to mislead others. It considers that these calculated acts undermine Dr Duffy's credibility in relation to his assertion of innocent mistakes.

Record of Determinations – Medical Practitioners Tribunal

44. For the reasons stated earlier, the Tribunal have not felt it necessary to take into account his admissions of dishonesty to support a propensity to be dishonest or in relation to his credibility. Equally, however, it could not give Dr Duffy credit for good character which might have countered the likelihood of his repeated dishonesty. In addition, it considered his failure to be open and transparent at the June 2017 meeting, mentioned above, when first confronted with aspects of his wrongdoing, undermined his claim to genuine belief in relation to the outstanding allegations and considered it consistent with a propensity to dishonesty.

45. The Tribunal appreciates and sympathises with Dr Duffy's personal difficulties. Notwithstanding that, and in taking all of the evidence into account, the Tribunal concluded that, on the balance of probabilities, it is more likely than not that Dr Duffy knew that he had not undertaken the journeys when he was completing the travelsheets and knew that the information contained in the documents set out in Schedule 2 was untrue. It therefore found paragraphs 2a(ii) and 2d of the Allegation, in relation to Schedule 2, proved.

Paragraph 3

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

Found Proved (in relation to paragraphs 2a(ii) and 2d) in relation to Schedule 2

46. As paragraph 3 has already been admitted and found proved in relation to paragraph 2a(i), 2b, 2c, and 2d (in relation to Schedule 1 and 3), the Tribunal only needed to consider this paragraph in relation to paragraph 2a(ii) and 2d (in relation to Schedule 2).

47. Having found paragraphs 2a(ii) and 2d of the Allegation proved, the Tribunal considered that ordinary decent people would consider such actions dishonest and therefore found paragraph 3 of the Allegation proved in respect of paragraphs 2a(ii) and 2d also.

Paragraph 4

4. As a result of your actions as set out at paragraph 1 you received payments to which you knew that you were not entitled.

Found Not Proved (in relation to paragraph 1b)

48. As paragraph 4 has already been admitted and found proved in relation to paragraph 1a and 1c, the Tribunal only needed to consider this paragraph in relation to paragraph 1b.

Record of Determinations – Medical Practitioners Tribunal

49. The Tribunal noted that in paragraph 26 of her statement dated 24 April 2019, Ms G, in relation to the travelsheets, stated: *'I note however, that as Dr Duffy was under investigation, The Trust did not authorise payment for any travel claims submitted by Dr Duffy.'*

50. In the notes of the meeting on 9 June 2017, it states *'Mrs C explained to Dr DD that she had checked his travel claims submitted from last August against his timesheets and had noticed discrepancies with same. As a result the travel claims have not yet been submitted for payment.'*

51. In his witness statement at paragraph 75, Dr Duffy stated *'I have not been paid for the mileage claims submitted for the period June 2016 to March 2017. I did not submit any mileage claims for March 2017 to June 2017.'*

52. The GMC in its opening and closing submissions confirmed this was the case. Based on the evidence before it, the Tribunal determined that Dr Duffy did not receive payments to which he knew he was not entitled in relation to Schedule 2. It therefore found paragraph 4 of the Allegation, in relation to paragraph 1b, not proved.

Paragraph 5

5. Your conduct as set out at paragraph 4 was dishonest.

Found Not Proved (in relation to paragraph 1b)

53. As paragraph 5 has already been admitted and found proved in relation to paragraph 1a and 1c, the Tribunal only needed to consider this paragraph in relation to paragraph 1b.

54. Having found paragraph 4 in relation to paragraph 1b, not proved, the Tribunal found paragraph 5, in relation to paragraph 4, of the Allegation, not proved also.

The Tribunal's Overall Determination on the Facts

55. The Tribunal has determined the facts as follows:

1. You submitted:

- a. timesheets in respect of hours worked as set out in Schedule 1;
Admitted and Found Proved
- b. travelsheets for journeys travelled in connection with your employment as set out in Schedule 2;
Admitted and Found Proved

Record of Determinations – Medical Practitioners Tribunal

- c. timesheets purporting to have been signed by Dr A as authorisation of hours worked as set out in Schedule 3.

Admitted and Found Proved

2. You knew that:
- a. you did not:
- i. work the hours claimed on the dates set out in Schedule 1;
Admitted and Found Proved
- ii. undertake one or more of the journeys set out in Schedule 2;
Found Proved in relation to Schedule 2
- b. the timesheets set out in Schedule 3 had not been signed by Dr A;
Admitted and Found Proved
- c. you had forged the signature on the timesheets set out in Schedule 3;
Admitted and Found Proved
- d. the information contained in the documents set out in one or more of Schedules 1, 2 and 3 was untrue.
Admitted and Found Proved in relation to Schedule 1 and Schedule 3 only
Found Proved in relation to Schedule 2
3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.
Admitted and Found Proved in relation to paragraph 2a(i), 2b, 2c and 2d (in relation to Schedule 1 and 3)
Found Proved in relation to paragraph 2a(ii) and 2d (in relation to Schedule 2)
4. As a result of your actions as set out at paragraph 1 you received payments to which you knew that you were not entitled.
Admitted and Found Proved in relation to paragraph 1a and 1c only
Found Not Proved in relation to paragraph 1b
5. Your conduct as set out at paragraph 4 was dishonest.
Admitted and Found Proved in relation to paragraph 1a and 1c only
Found Not Proved in relation to paragraph 1b

Record of Determinations – Medical Practitioners Tribunal

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

To be determined

Determination on Impairment - 02/03/2020

1. 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, Dr Duffy's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all of the oral and documentary evidence received during the facts stage of the hearing. Prior to hearing submissions in relation to impairment, on behalf of Dr Duffy, the Tribunal received two documents (marked as exhibits D2 and D3 respectively):

- D2 - Dr Duffy's statement relating to stage 2 of the proceedings. This included his personal reflections and his Personal Development Plan (PDP);
- D3 – A Defence Bundle which included Dr Duffy's Curriculum Vitae (CV); testimonials from his clinical colleagues; Appraisals for 2017, 2018 and 2019; certificates of courses attended by Dr Duffy as his Continuing Professional Development (CPD) and Training; Colleague and Patient Feedback Forms; and letters of apology from Dr Duffy to his colleagues at the Trust.

Submissions

On behalf of the GMC

3. Ms Laura Barbour, Counsel, told the Tribunal that she had been informed by Mr Partridge that Dr Duffy does not actively contest that his fitness to practise is impaired. She referred the Tribunal to its determination on the facts and highlighted some of the matters which the Tribunal found proved, including that Dr Duffy's actions, in relation to the matters set out in Schedule 2 (of the Allegation), were dishonest. Ms Barbour submitted that Dr Duffy's actions were significant departures from Good Medical Practice ('GMP') (2013 version) and she referred the Tribunal to paragraphs 1, 65, 71(a) and (b) and 77 of GMP, which she said were engaged in this case. Ms Barbour reminded the Tribunal that when considering Dr Duffy's current fitness to practice, the Tribunal was entitled to take into account the way in which he had acted in the past.

4. She then referred the Tribunal to relevant authorities and submitted that it would be unusual to find a doctor's fitness to practise is not impaired in a case involving dishonesty. Ms Barbour submitted that Dr Duffy's dishonest actions, as set out in Schedule 2, and which the Tribunal found proved, are compounded by his dishonest

Record of Determinations – Medical Practitioners Tribunal

actions in relation to those matters which he had admitted, set out in Schedule 1 and Schedule 3. She submitted that Dr Duffy's conduct was so egregious that his fitness to practise must be impaired.

5. Ms Barbour submitted that the Tribunal needed to have regard to impact of Dr Duffy's conduct in relation to maintaining public confidence in the medical profession and maintaining high professional standards. She said that the Tribunal should ask itself whether Dr Duffy had demonstrated insight into his actions and whether there was a risk of repetition. Ms Barbour said that dishonesty is not easily remediable.

6. She acknowledged that Dr Duffy had made admissions at the outset of these proceedings, in respect of those matters relating to Schedule 1 and 3. She referred the Tribunal to exhibit D3 and said that Dr Duffy had only, as recently as January 2020, apologised to his former colleagues for his behaviour despite these matters having occurred some two years ago. Ms Barbour submitted that this demonstrated that Dr Duffy's insight was only just developing. Whilst Ms Barbour acknowledged the testimonials attesting to Dr Duffy's good clinical work and his character, she submitted that the authors of those testimonials were not aware of the full facts of this case.

7. Ms Barbour invited the Tribunal to find Dr Duffy's fitness to practise is currently impaired.

On behalf of Dr Duffy

8. Mr Partridge did not contest that Dr Duffy's fitness to practise is impaired nor did he submit that his actions did not amount to serious misconduct. He referred the Tribunal to exhibits D2 and D3, and drew particular attention to the testimonial of Dr F, Consultant in Acute Medicine and Nephrology, who has worked with Dr Duffy for almost two and a half years and was fully aware of the matters to which Dr Duffy had admitted.

9. Mr Partridge made no submissions in relation to Dr Duffy's fitness to practise.

The Tribunal's Approach

10. The Tribunal reminded itself that at this stage of the proceedings there is no burden or standard of proof and, notwithstanding any concessions by Dr Duffy's legal representative, the decision on impairment is a matter for the Tribunal's judgement alone.

11. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted. First whether the facts as found proved amounted to misconduct which was serious professional misconduct, and then second whether that misconduct led to a finding of current impairment.

Record of Determinations – Medical Practitioners Tribunal

12. The Tribunal has already given a detailed determination in relation to the outstanding matters in Dr Duffy's case. It has taken those matters into account in its deliberations. It has also taken into account the submissions made by Ms Barbour and Mr Partridge.

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

14. Throughout its deliberations, the Tribunal has been mindful of its responsibility to uphold the overarching objective as set out in the Medical Act 1983 (as amended). That objective is the protection of the public and involves the pursuit of the following:

- a. to protect, promote and maintain the health, safety and wellbeing of the public
- b. to maintain public confidence in the profession
- c. to promote and maintain proper professional standards and conduct for members of the profession

The Tribunal's Decision

Misconduct

15. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of Dr Duffy as a registered medical practitioner to amount to misconduct. In its deliberations, the Tribunal had regard to the current version of GMP (March 2013). It also noted that Misconduct is not defined by statute but it has been said to be serious professional misconduct or conduct which a fellow professional would regard as deplorable.

16. The Tribunal had regard to paragraphs 1, 65, 71(a) and (b) and 77 of GMP. These state:

'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.

Record of Determinations – Medical Practitioners Tribunal

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 *You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals.'*

17. The Tribunal was mindful that Dr Duffy, at the outset, admitted submitting timesheets for hours worked when he knew that he had not worked those hours; forged Dr A's signature, as authorisation for the hours worked; and that his actions were dishonest in relation to Schedule 1 and 3.

18. At the meeting on 9 June 2017, when Dr Duffy had an opportunity to be open and transparent about the fact that he had completed other timesheets, by forging Dr A's signature of Dr A, he did not do so.

19. At the facts stage, the Tribunal found, based on the evidence of Ms G, and by Dr Duffy's own admission, that he had not undertaken the journeys set out in Schedule 2; he knew he had not undertaken the journeys when he completed the travelsheets; and he knew that the information contained in the documents was untrue. Further, Dr Duffy told the Tribunal that he had deliberately put the incorrect completion dates on at least two of the travelsheets, and the Tribunal determined that in doing so, his actions were calculated and intended to deceive the recipient. The Tribunal also found that by entering precise journey timings on the travelsheets, for which he said he was relying entirely on his own recall, he demonstrated a preparedness to further fabricate the truth.

20. Dr Duffy's employer was entitled to place trust in him to submit legitimate and accurate timesheets and travelsheets, however, Dr Duffy betrayed that trust. Whilst the Tribunal notes that Dr Duffy was not paid for the journeys he had claimed in Schedule 2, he did receive payment for the for hours he had dishonestly claimed in Schedule 1 and 3. Dr Duffy behaved dishonestly for his own personal gain and he stole money from the public purse. Dr Duffy's dishonest actions, which extended over a period of some four months, were persistent and repeated, and involved the falsification of hours worked and travel claims and forging a colleague's signature.

21. Having regard to the judgement in the case of *Nwachuku v General Medical Council (Professional Standards Authority for Health and Social Care, interested party) [2017] EWHC 2085 (Admin)* and the relevant authorities cited therein, the Tribunal considered that that Dr Duffy's dishonest

Record of Determinations – Medical Practitioners Tribunal

actions breached fundamental tenets of GMP, as set out above, and that *'a finding of dishonesty lies at the top end in the spectrum of gravity of misconduct.'* It determined that an ordinary and decent member of the public, and fellow professionals, aware of the facts, would consider Dr Duffy's actions deplorable.

22. In all the circumstances, the Tribunal determined that Dr Duffy's actions fell far short of the standards of conduct reasonably to be expected of a doctor. The Tribunal concluded that Dr Duffy's actions amounted to serious professional misconduct.

Impairment by reason of misconduct

23. The Tribunal, having found that the facts found proved amounted to serious professional misconduct, went on to consider whether Dr Duffy's fitness to practise is currently impaired by reason of his misconduct.

24. The Tribunal had regard to paragraph 76 of the judgment in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)*, in which Mrs Justice Cox provided a helpful approach to the determination of impairment:

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

25. The Tribunal considered whether Dr Duffy's misconduct was capable of being remediated, has been remediated, and whether it was likely to be repeated. In so doing, it considered whether there was evidence of Dr Duffy's insight into his misconduct and any steps taken by him to remediate it. However, the Tribunal is mindful that dishonesty is not easily remediable.

26. The Tribunal took into account that doctors occupy a position of privilege and trust. They are expected to act in a manner which maintains public confidence in them and in the medical profession and to uphold proper standards of conduct. Dr Duffy's conduct was dishonest. The Tribunal determined that Dr Duffy's conduct brought the medical profession into disrepute and breached fundamental tenets of the medical profession.

Record of Determinations – Medical Practitioners Tribunal

27. The Tribunal noted that Dr Duffy has continued to practise medicine for some two and half years without any further concerns. There is no evidence before the Tribunal that there are any concerns about Dr Duffy's clinical practice; the evidence before the Tribunal is that Dr Duffy is a good doctor who is well regarded and liked by his colleagues and patients. There is no evidence that Dr Duffy has ever behaved in this way prior to these events, nor has the Tribunal been provided with any evidence that he has repeated his conduct since the matters before this Tribunal. The Tribunal took into account the Patient and Colleague Feedback Forms and the testimonials from his current colleagues. These provided positive evidence that Dr Duffy is a competent doctor and there are no issues regarding his clinical skills.

28. In relation to his insight, the Tribunal took into account Dr Duffy's admissions at the outset of these proceedings. In his written and oral evidence, Dr Duffy said that it was important to be honest all of the time and at the very least was the mainstay of professionalism.

29. The Tribunal had regard to Dr Duffy's reflective statement in which he accepted that his actions were dishonest. It noted certificates provided by Dr Duffy for courses he has undertaken, organised by the British Medical Journal (BMJ), to address the concerns. The Tribunal also noted that the courses had all been undertaken during January 2020.

30. The Tribunal also had regard to Dr Duffy's Appraisals dated 7 September 2017 and 15 October 2018 where it noted that there is some reference to his dismissal and ongoing investigations but little detail and no reflection. The first mention of the GMC investigation is in Dr Duffy's Appraisal dated 6 November 2019. The Tribunal noted the Appraiser stated:

'we talked about the need to demonstrate insight into the reasons for the referral which he fully accepted.'

31. In his reflective statement, Dr Duffy spoke of the measures and strategies, and of the support networks, he has now put in place to help him to manage his personal and financial circumstances. These include speaking with his colleagues on a periodic basis to discuss any difficulties he may have and speaking to his family and friends. However, the Tribunal took into account that these measures are being implemented some two and a half years after the events.

32. Dr Duffy also stated in his reflective statement:

'My journey of remediation should have started in 2017.' and *'soon after the event I minimised my actions by trying to tell myself I was being naive, thus demonstrating a lack of insight.'*

Record of Determinations – Medical Practitioners Tribunal

33. The Tribunal had regard to the letters which Dr Duffy sent to his former colleagues, including Dr A and Mrs C, apologising for his actions and the distress his actions had brought upon them. However, again, the Tribunal noted that these apologies were only made in January 2020.

34. Whilst the Tribunal sympathises with and acknowledges that, at the time of the events, Dr Duffy had difficult personal and financial circumstances, which may have led to him behaving in the way he did, this does not excuse the fact that he acted dishonestly and has only begun to take steps to address the concerns.

35. The Tribunal acknowledges that Dr Duffy now recognises the seriousness of his actions and that he has taken steps to remediate. This includes undertaking CPD courses and training relating to ethics and probity and he has apologised to his former colleagues for his dishonest behaviour. The Tribunal accepts that Dr Duffy has embarked upon a journey of remediation, which by his own admission, has only just begun. However, the Tribunal considers that the steps taken by Dr Duffy, to date, to address the concerns are not comprehensive and have been trialled over a limited period of time.

36. Whilst the Tribunal accepts that Dr Duffy has demonstrated some evidence of insight into his dishonest behaviour, this is limited and without depth. There is modest evidence that he fully understands how his actions had the potential to adversely affect the reputation of the profession, or to damage public confidence in the medical profession. The Tribunal took into account that even before these proceedings, in relation to Schedule 2, Dr Duffy continued to maintain that his actions were not dishonest. In the Tribunal's view, Dr Duffy's insight is only developing and, at best, embryonic.

37. For the reasons set out above, the Tribunal cannot exclude, at the present time, that there is a risk of Dr Duffy repeating his misconduct.

38. The Tribunal reminded itself of the fundamental principles, as set out in GMP, in respect of doctors acting with honesty and integrity. The Tribunal determined that Dr Duffy's conduct would be considered unacceptable, unprofessional and deplorable by members of the profession and the public alike. It considered that his behaviour had brought the medical profession into disrepute and had breached a fundamental tenet of the profession. The Tribunal considered that the public would expect there to be a finding of impairment in a case where the doctor had engaged in this type of behaviour.

39. In all the circumstances, the Tribunal concluded that a finding of impaired fitness to practise was required in order to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct for members of the profession.

Record of Determinations – Medical Practitioners Tribunal

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

Determination on Sanction - 05/03/2020

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

Evidence

2. Dr Duffy gave oral evidence. He referred the Tribunal to his Personal Development Plan (PDP) and explained how, why and when he developed it. He said that at the time of these events, his life was disorganised and a 'real nightmare'. He told the Tribunal that he realised he needed to change the mechanics behind his dishonest actions. He said that he therefore decided, following his dismissal from the Trust, to put in place a number of measures to help him to manage his daily life. He indicated that that he had set up an 'app' on his mobile device in which he organised his daily tasks in priority order. He said that as he completed each task, he ticked a box to indicate that he had completed it. Dr Duffy said that, in addition to this, he used a diary to manage tasks or to remind him of specific tasks/events. Added to this, he said that he had a 'white board' on the kitchen wall on which significant events or tasks were marked. Dr Duffy said these measures helped him to manage his daily stresses and difficulties.

3. He told the Tribunal that, initially, he was in denial about the significance of what he had done and felt ashamed of it. He said that he *'buried his head in the sand'*. Dr Duffy said, however, that in the last six months, he had spoken to his best friend about the allegations against him and had admitted to being dishonest.

4. In relation to his Appraisals, Dr Duffy said that he first discussed these matters with Dr B in 2017, when he worked at the Trust. Dr Duffy said that Dr B advised him to seek XXX professional help. Dr Duffy said, however, that he did not seek this help and instead, focused on ensuring that his family was in a better place, and on his financial situation. Dr Duffy said that in his Appraisals for 2018 and 2019, he was open and honest about these matters including that he had acted dishonestly. He said that shortly after the GMC referral in October 2018, he was beginning to realise the significance of what he had done.

5. He told the Tribunal that his personal family circumstances had now improved and he had put in place measures to cope with any stressful situations, with the help and support of his and his wife's immediate and extended family.

Record of Determinations – Medical Practitioners Tribunal

6. Dr Duffy told the Tribunal that he has spent a lot of time thinking about what he had done and that he now had a better understanding of his wrongdoing. He said that he now fully understood the seriousness of his conduct but he appreciated that evidence of his insight had come late. In relation to his statement of reflection on his dishonesty, Dr Duffy said that he wrote this towards the end of January 2020 because he wanted to express how he felt about the events of 2017.

7. Under cross examination in relation to his reflection statement, Dr Duffy told the Tribunal that he accepted that his behaviour was not a one-off act of dishonesty; he had not reflected properly particularly in respect of paragraph 71 of GMP; and that he appreciated one of the requirements of GMP is to ensure that doctors take all reasonable steps to ensure the information they enter in forms is accurate. He accepted that, at the time of the events, his actions were completely wrong and he had made a wrong judgement, but added that he felt like he was in a 'hellish place' at the time and could not see that what he was doing was wrong. Dr Duffy went on to say that his morality had been compromised and the basis of a doctor's work is to operate with morality and the dynamics and values of it but accepted that morality should not be influenced or changed by significant events. Dr Duffy said that he had informed his family and his employer about the findings of this Tribunal at the facts stage.

8. Dr Duffy, further, explained that his wife had now set up a successful business which was doing well. He said that he did not foresee any problems which might affect its continued success. However, he said that should anything affect that, there were mechanisms in place to help to address them. Dr Duffy went on to say that when he first forged Dr A's signature, he felt bad about it at the time and knew it was completely wrong. He said, however, that he balanced this against why he was doing what he was doing namely XXX.

9. In relation to questions put to him by the Tribunal, Dr Duffy said that he had recently contacted his former employer with a view to setting up an arrangement for him to pay back the monies he had claimed for hours worked, as set out in Schedule 1 and Schedule 3. He was awaiting a response from the Human Resources Section. He said he could not do this earlier given his financial situation.

10. In relation to his discussions with Dr F, Dr Duffy said that these had only begun in January 2020, and that he had met with Dr F on three occasions. He added that it was his intention that these discussions with Dr F would continue for the foreseeable future.

Submissions on behalf of the GMC

11. Ms Barbour submitted that the appropriate sanction was one of erasure. She reminded the Tribunal that in exercising its judgment on the appropriate sanction it must start with the least restrictive.

Record of Determinations – Medical Practitioners Tribunal

12. Ms Barbour reminded the Tribunal that Dr Duffy did not begin to make admissions of any wrongdoing until as late as July 2019 when he received notice that the matter was to be referred to a Medical Practitioners Tribunal. She said that the Tribunal should give careful consideration and due weight to the testimonials provided by Dr Duffy's current colleagues because their understanding of Dr Duffy's character and behaviour being impeccable did not accord with the evidence before, and the findings of, the Tribunal.

13. She referred the Tribunal to its determinations on the facts and impairment and highlighted those sections which she said indicated why it was not appropriate to take no action or impose conditions. She took the Tribunal through the Sanctions Guidance (SG) and highlighted paragraphs which she submitted were engaged in this case, including paragraphs 55(d) and 56(a). She identified the mitigating and aggravating features in this case and submitted that the latter included his late insight into his misconduct, the delay in apologising to his former colleagues, and his denial of wrongdoing in relation to Schedule 2 before these proceedings. In relation to why suspension was not the appropriate sanction, Ms Barbour reminded the Tribunal of its finding that it could not exclude the risk of repetition. She submitted that the steps which Dr Duffy has taken to remediate his misconduct were not genuine. Ms Barbour drew the Tribunal's attention to paragraphs 97 (a), (e), (f) and (g) of the SG which she said were engaged. She submitted that a sanction of suspension would not address the seriousness of Dr Duffy's misconduct.

14. Ms Barbour said that Dr Duffy accepts that integrity and honesty are fundamental aspects of the medical profession and yet he behaved in the way he did. She submitted that Dr Duffy was perhaps overly optimistic that he has put in place adequate measures to help address any similar difficulties in the future.

15. Ms Barbour then referred the Tribunal to paragraphs 108 and 109 of the SG relating to erasure and said that sub-paragraphs 109 (a), (b), (d), (h) and (j) were engaged in this case. She said that Dr Duffy's misconduct was a serious departure from the principles of GMP; his misconduct was persistent and repeated; was an abuse of position and trust; and was dishonest. She reminded the Tribunal that Dr Duffy had several opportunities to give a straightforward account, and despite having had almost two and a half years to accept what happened, he maintained his denial as to wrongdoing in relation to Schedule 2. Further, his persistent lack of insight into what he did and the impact of his actions on the medical profession and on the public confidence was reflected throughout his evidence.

16. Ms Barbour submitted Dr Duffy's misconduct was fundamentally incompatible with his continued registration on the Medical Register and invited the Tribunal to erase Dr Duffy's name from the medical register.

Record of Determinations – Medical Practitioners Tribunal

Submissions on behalf of Dr Duffy

17. In relation to the sequencing of Dr Duffy's insight, Mr Partridge informed the Tribunal that Dr Duffy received the GMC letter advising him about its investigation in October 2018 and this was followed by a Rule 4 letter in November 2018, a Rule 7 letter in May 2019 and a Rule 8 letter in July 2019.

18. Mr Partridge submitted that the Tribunal needed to undertake a balancing exercise and consider the important features in this case and decide if a lesser sanction than erasure would suffice. Mr Partridge submitted that fundamentally the question for the Tribunal is about Dr Duffy's character.

19. He said that it is apparent that Dr Duffy realises the seriousness of his dishonest behaviour. Mr Partridge said that Dr Duffy is aware that the Tribunal will be balancing whether, based on the evidence, the appropriate sanction was suspension or erasure. He said that the Tribunal should approach this question by considering whether Dr Duffy's character is fundamentally incompatible with his continued registration on the medical register. His contention was that Dr Duffy's misconduct was out of character.

20. Mr Partridge reminded the Tribunal that Dr Duffy had made admissions at the outset of these proceedings. He submitted that Dr Duffy's misconduct, although persistent, did not take place over a long period of time and occurred at a time when he was a junior doctor, and was experiencing difficult personal circumstances. He said that Dr Duffy's reflection statement was authentic and in it, Dr Duffy *'poured his heart out'*. However, Mr Partridge accepted that that is no excuse to act dishonestly. He submitted that at the June 2017 meeting, Dr Duffy accepted, when first challenged, that he had been foolish to forge Dr A's signature. He reminded the Tribunal of Dr Duffy's evidence that he felt bad about forging Dr A's signature and submitted that this was a doctor who did not fully understand that what he was doing was wrong.

21. He submitted that the Tribunal should not assume that Dr Duffy lacked insight into the seriousness of his misconduct just because he did not make admissions to the matters relating to Schedule 2, and reminded the Tribunal that Dr Duffy had made admissions to very significant allegations, in relation to Schedules 1 and 3 and accepted how the Tribunal reached its decision in relation to Schedule 2. Mr Partridge said that the Tribunal has had the opportunity to observe Dr Duffy on two separate occasions when he has given oral evidence. He said, given that it is difficult for anyone to give evidence before a Tribunal, it may be difficult for the Tribunal to fully understand and get a 'flavour' of Dr Duffy's character. Mr Partridge submitted, however, that the testimonials from Dr Duffy's colleagues and his patients assisted the Tribunal because they have a better understanding of Dr Duffy's character as a doctor, and that they consider him to be courteous, reliable, trustworthy and consistent in his professional commitment. Mr Partridge reminded the Tribunal that all of the professional referees were aware of the allegations against Dr Duffy when

Record of Determinations – Medical Practitioners Tribunal

they wrote their testimonials and, even after the Tribunal's findings of fact, all the professionals (except one who could not be contacted) confirmed they still stood by their testimonials.

22. Mr Partridge referred the Tribunal to Dr Duffy's Appraisal documents and reminded it that Dr Duffy was open and honest about these matters with his appraisers. He said that it was important to take all the circumstances into account when deciding the appropriate sanction because Dr Duffy had something to offer to the public.

23. In relation to insight, Mr Partridge said that it is clear Dr Duffy has had a difficult journey but the Tribunal should not confuse the evidence relating to his insight and whether or not Dr Duffy truly understood what he had done wrong. He submitted that Dr Duffy has shown positive evidence of insight into his misconduct. In this regard, he referred the Tribunal to page 2 of Dr Duffy's statement of reflection on his dishonesty.

24. Mr Partridge submitted that the misconduct in 2017 could not happen again as Dr Duffy has put in place strategies to manage any difficult circumstances and he referred the Tribunal to Dr Duffy's PDP which was developed about two years ago. He reminded the Tribunal that Dr Duffy has continued to practise for some two and a half years in an 'exemplary fashion', and there has been no repetition of his misconduct. He submitted that as Dr Duffy has got older, he has got wiser, in contrast to his naivety at the time.

25. He submitted that when undertaking the balancing exercise, the Tribunal needed to take into account that this was a young man who had gone through a dreadful state and behaved badly, but has now reached a level of awareness as to how and why he got there and why he will never go back to that state of events. He reminded the Tribunal that Dr Duffy has apologised to his former colleagues, Mr Partridge submitted that Dr Duffy has something valuable to give back to the profession and the public would want that.

26. Mr Partridge submitted that the loss of professional status would be devastating for Dr Duffy and submitted that it would be disproportionate to erase Dr Duffy from the medical register. He submitted that completion of insight could be demonstrated by way of a review hearing. Mr Partridge submitted that a significant period of suspension would be appropriate and proportionate with any concerns being dealt with at a review hearing.

The Tribunal's Approach

27. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal, exercising its own judgement. In so doing, it has given consideration to

Record of Determinations – Medical Practitioners Tribunal

its findings of fact, misconduct and impaired fitness to practise and the submissions made by Ms Barbour and Mr Partridge.

28. Throughout its deliberations the Tribunal bore in mind that the purpose of a sanction is not to be punitive, but to protect the public interest. The public interest includes protecting the health, safety and wellbeing of the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. In making its decision, the Tribunal also had regard to the principle of proportionality, and it considered Dr Duffy's interests as well as those of the public. It also considered and balanced the mitigating and aggravating factors in this case. The Tribunal considered each sanction in ascending order starting with the least restrictive.

29. The Tribunal considered the following mitigating and aggravating factors were relevant:

Aggravating

- Dr Duffy's denial in relation to the matters relating to Schedule 2;
- Dr Duffy's late apologies to his former colleagues;
- His lack of initial insight into his misconduct;
- His forgery of a senior colleague's signature;
- His dishonesty was persistent and multiple;
- At the meeting on 9 June 2017, Dr Duffy was not fully open and honest when he had an opportunity to be so;
- His delayed steps to remediate starting only a month before these proceedings began;
- The impact of his actions and the prolonged stress caused to his former colleagues by his late admissions;
- His dishonesty was for his personal gain.

Mitigating

- The Tribunal's earlier finding that Dr Duffy has partial insight, albeit embryonic, in that he had made admissions to the more serious allegations;
- He has been open and honest about these matters in his appraisals with his current employers, since some eighteen months ago;
- He has apologised to his former colleagues, albeit late in the day;
- He has offered to repay the monies which he received dishonestly, albeit again late in the day;
- Dr Duffy has no previous adverse history with the GMC;
- He has continued to practise and has, therefore, maintained his medical knowledge and skills up to date;
- There is no evidence that he has repeated his misconduct;

Record of Determinations – Medical Practitioners Tribunal

- At the time of the events, he was going through very difficult personal and financial circumstances, including XXX. The Tribunal noted from Dr Duffy's evidence that his circumstances are much improved; this is not disputed;
- The very powerful and positive testimonials from his colleagues and patients attesting to his good clinical skills and character; these demonstrating that he is highly regarded and well liked by his colleagues and patients;
- He is up to date with his Continuing Professional Development (CPD).

The Tribunal's Decision

No action

30. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Duffy's case, the Tribunal first considered whether to take no action. The Tribunal considered, amongst others, paragraphs 68 - 70 of the SG which highlights that taking no action following a finding of impaired fitness to practise may be appropriate in exceptional circumstances.

31. The Tribunal determined there were no exceptional circumstances in this case. Therefore, taking no action would not be appropriate, proportionate nor in the public interest given the seriousness of the misconduct.

Conditions

32. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Duffy's registration. It had regard to paragraph 85 of the SG, which states:

'85 Conditions should be appropriate, proportionate, workable and measurable.'

33. The Tribunal has already determined that Dr Duffy's insight in relation to his misconduct has only just begun and is embryonic. It has also found that it could not exclude the risk of Dr Duffy repeating his misconduct. The matters before the Tribunal relate to his dishonest behaviour.

34. The Tribunal determined that conditions on Dr Duffy's registration would be inappropriate in a case where there has been a finding of dishonesty. It would not be possible to formulate conditions that would adequately address Dr Duffy's dishonest conduct.

Suspension

35. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Duffy's registration.

Record of Determinations – Medical Practitioners Tribunal

The Tribunal took into account paragraphs 91, 92, 93, and 97(a), (e), (f) and (g) of the SG, 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 unbecoming a registered doctor. ...

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

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

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

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

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

f No evidence of repetition of similar behaviour since incident.

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

36. The Tribunal appreciated that dishonesty is always serious, but particularly where persistent. It also took into account that dishonesty is not easily remediable. The Tribunal had regard to the SG, which suggests that such conduct would normally be incompatible with continued registration and would justify the sanction of erasure.

37. However, the Tribunal took particular cognisance of Dr Duffy’s admissions, at the outset of these proceedings, to the more serious allegations in this case. While

Record of Determinations – Medical Practitioners Tribunal

Dr Duffy's dishonest actions were persistent and multiple, they occurred over a relatively short period of time (some four months). The Tribunal noted that Dr Duffy has undertaken some steps to remediate his misconduct, albeit late in the day. The steps he has undertaken are set out in the Tribunal's determination on Impairment. These include his apologies to his former colleagues, an offer to repay the monies which he received dishonestly, and some training related to ethics and probity. It noted that he has no previous adverse history with the GMC, being of previous good character. Furthermore, the Tribunal also took into account, and accepted to a degree, that Dr Duffy's dishonest actions were influenced by his difficult personal and financial circumstances at that time, including XXX.

38. The Tribunal has received a body of powerful testimonial evidence from Dr Duffy's colleagues and patients that speaks of Dr Duffy as a highly regarded, well liked and a competent doctor. The Tribunal took account of the provisions of paragraph 124 of the SG which states '*Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.*' However, albeit not a case concerning dishonesty, the Tribunal also noted the comments of the Judge in the case of ***Giele v General Medical Council [2005] EWHC 2143 (Admin)*** that the views of patients and colleagues maintained in the knowledge of the misconduct found '*is a matter which can carry some weight*'. The Tribunal therefore considered these testimonials in the context of Dr Duffy's character and not his clinical skills. It noted, in particular, the comments of Dr F, who stated:

'At all times I have found Damian to be courteous, respectful of patients and trustworthy in both protecting patients and their data, as well as being reliable in following through the results of investigations and tests he has ordered. He conducts himself with an exemplary attitude of hard work and is both a valuable and necessary member of the team here in Antrim. He brings specialist skills and knowledge from his time working in Altnagelvin Hospital on a 'Hospital at Home' model.'

39. The Tribunal accepted to a degree Mr Partridge's submission that Dr Duffy's behaviour had been influenced by his young age and naivety even if these did not excuse it. In contrast to that naivety, it noted the comment of Dr H in his testimonial who stated:

'Communication was one of his strengths and he was a reliable team player who never shirked his responsibility. I can recollect numerous occasions during which Dr Duffy dealt with extremely sensitive and difficult cases with maturity and empathy...'

40. The Tribunal took into account that in the face of his difficult personal and financial circumstances, Dr Duffy continued to practise without any further concerns. By his own admission, Dr Duffy said that when these matters first came to light, he buried his head in the sand and hoped that this matter would go away. The Tribunal

Record of Determinations – Medical Practitioners Tribunal

heard that Dr Duffy has put in place measures to address his difficult personal and financial circumstances and it accepted that the situation is very much improved. He now has a good support network to help, should any similar family situations arise in the future. The Tribunal considered that appropriate credit should be given for this. Furthermore, there is no evidence before the Tribunal that Dr Duffy behaved in this way prior to these events or that he has repeated his misconduct in the two and a half years since.

41. The Tribunal balanced all of the mitigating factors identified above, against the aggravating factors. It was satisfied that Dr Duffy has begun a process of remediation and developing insight. The Tribunal was of the view that although it had determined that it could not, at this stage, exclude the risk of Dr Duffy repeating his misconduct, given his developing insight, openness with friends, family and colleagues, and that he has put in place measures to help him to cope with his difficult personal family circumstances, it considered that the risk of repetition is low. This was further evidenced by the fact that he has continued to practise without any further concerns.

42. It determined that whilst removing a dishonest doctor from the register would certainly serve to uphold public confidence in the profession and to promote and maintain standards for that profession, it was mindful that the public interest also includes having the services of able doctors.

43. Ms Barbour, in her submissions, submitted that paragraphs 55(d) and 56(a) were engaged in this case. These state:

'55 Aggravating factors that are likely to lead the tribunal to consider taking more serious action include:

d abuse of professional position, particularly where this involves:

- i vulnerable patients*
- ii predatory behaviour*

56 Tribunals are also likely to take more serious action where certain conduct arises in a doctor's personal life, such as:

a issues relating to probity – ie being honest and trustworthy and acting with integrity'

44. The Tribunal did not concur with her submission on this. Whilst it was true that Dr Duffy had let down his employer and colleagues through his misconduct, the Tribunal considered it had not involved any abuse of his professional position in relation to patients. In relation to probity, the Tribunal was of the view that Dr Duffy's misconduct occurred in the workplace and not in his personal life.

Record of Determinations – Medical Practitioners Tribunal

45. As indicated earlier, the Tribunal considered, in light of the seriousness with which it viewed Dr Duffy's misconduct, whether erasure would be the appropriate sanction having regard to paragraphs 107 – 109, in particular 109(a), (b), (d), (h) and (j) of the SG. However, it determined that erasure was not the proportionate response; taking into account all the mitigating factors, it considered Dr Duffy's misconduct, whilst serious, was not fundamentally incompatible with continued registration. Furthermore, the Tribunal noted that Dr Duffy was open and honest in his appraisal (dated 15 October 2018) at his current workplace, signed off by Dr J; and with his employer, Direct Medics (dated 6 November 2019). In this last appraisal the appraiser stated:

'Dr Duffy is currently subject to ongoing investigation involving the GMC Dr Duffy discussed in full the reasons for the investigation. He was honest and open during the appraisal.'

46. In considering the length of the suspension, the Tribunal had regard to paragraph 100 of the SG:

'100 The following factors will be relevant when determining the length of suspension:

...

b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)

c ensuring the doctor has adequate time to remediate.'

47. The Tribunal determined that a suspension order of the maximum period of twelve months would be the appropriate and sufficient sanction to address the impaired fitness to practise found in Dr Duffy's case in view of its findings on the seriousness and nature of his misconduct. The Tribunal determined that a period of twelve months was the necessary and appropriate period to strike the right balance between Dr Duffy's interests and those of the public. The Tribunal determined that a period of twelve months would allow Dr Duffy to further develop insight into his misconduct and to be able to show evidence of that insight and show additional reflection on his dishonest conduct.

Review

48. A Tribunal will convene to review Dr Duffy's case shortly before the end of the period of suspension. At the future review hearing, the Tribunal may be assisted by receiving the following:

- Evidence that Dr Duffy has kept his medical knowledge and skills up to date;

Record of Determinations – Medical Practitioners Tribunal

- Evidence of personal reflection on his dishonest actions and further insight developed, for example, in the form of a diary/log, CPD and through further probity and ethics training;
- Reports from Dr Duffy as to the current state of his strategies in managing his personal and financial circumstances;
- Any other information that Dr Duffy considers might assist the Tribunal reviewing his case, such as a statement from a mentor or senior colleague including discussion and consideration of their perspective on his remediation and insight.

49. The Tribunal wished to emphasise that the onus will be on Dr Duffy to make his case to the review Tribunal and he should understand that the reviewing Tribunal will have the full range of sanctions available to it, up to and including erasure.

Determination on Immediate Order - 05/03/2020

1. Having determined that Dr Duffy's registration should be suspended, the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order to suspend his registration.
2. The Tribunal has borne in mind the test to be applied with regard to imposing an immediate order; it may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor.

Submissions on behalf of the GMC

3. Ms Barbour submitted that an immediate order was necessary to maintain public confidence in the profession and maintain professional standards. Ms Barbour reminded the Tribunal that it had determined that Dr Duffy had further work to do in order to demonstrate full insight and remediation. Ms Barbour acknowledged that Dr Duffy's employer would be deprived of Dr Duffy's services but submitted that both Dr Duffy and his employer were aware of these proceedings and the date of this hearing for some time. Further, Ms Barbour said that a member of the public would be shocked if no immediate order was imposed.

4. Ms Barbour informed the Tribunal that there is no interim order to revoke.

Submissions on behalf of Dr Duffy

5. Mr Partridge reminded the Tribunal that the primary purpose of an immediate order is to protect the public. He referred to the three limbs of the Overarching Objective and said that the only limb engaged is to maintain public confidence in the medical profession. He referred the Tribunal to its decision that a twelve months

Record of Determinations – Medical Practitioners Tribunal

suspension was a sufficient period in this case, and that by imposing an immediate order it would essentially add a further month to that period. Mr Partridge said that a member of public would be surprised that an immediate order had been imposed. He added that Dr Duffy's employer would also need to make arrangements for the care of Dr Duffy's patients if he were not allowed to return to work in the event of an immediate order.

Tribunal's decision

6. The Tribunal has taken account of the relevant paragraphs of the SG in relation to when it is appropriate to impose an immediate order. Paragraph 172 of the SG states:

"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..."

7. The Tribunal had regard to paragraphs 174, 175 and 176 of the SG and noted the submissions made by both counsel. It appreciated that there are no concerns about Dr Duffy's clinical practice and the Tribunal had regard to the argument advanced by Mr Partridge that, if an immediate order were to be imposed, Dr Duffy's employer would have to make arrangements for the care of Dr Duffy's patients. However, the Tribunal accepted Ms Barbour's argument that Dr Duffy's employer had been aware of these proceedings and the date of this hearing, and, therefore, adequate arrangements would or should have been made.

8. The Tribunal determined, therefore, that given the seriousness with which it viewed Dr Duffy's misconduct, and given its findings on impairment and sanction, it is necessary, to maintain public confidence and to uphold and maintain professional standards in the medical profession, to make an order suspending Dr Duffy's registration immediately.

9. The substantive decision of suspension, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr Duffy, unless he lodges an appeal in the interim. If Dr Duffy lodges an appeal, the immediate order for suspension will remain in force until such time as the outcome of any appeal is determined.

10. There is no interim order to revoke.

11. That concludes the case.

Confirmed

Date 05 March 2020

Mr Lindsay Irvine, Chair

Record of Determinations – Medical Practitioners Tribunal

Schedule 1

Date	Timesheet dated	Hours claimed	Hours worked	Submitted to
6 February 2017	14 February 2017	9:00 to 17:00	10:00 to 17:00	Waterside Hospital, Londonderry ('the Hospital')
13 February 2017	22 February 2017	9:00 to 17:00	None	the Hospital
11 April 2017	14 April 2017	13:00 to 20:00	None	the Hospital
8 May 2017	17 May 2017	9:00 to 17:00	11:30 to 17:00	Direct Medics Healthcare & Recruitment ('the Agency')
9 May 2017	17 May 2017	13:00 to 20:00	None	the Agency

Schedule 2

Date of Journey	Travelsheet dated	Miles claimed	Miles travelled	Submitted to
21 October 2016	5 December 2016	14.4 miles	0 miles	the Hospital
23 January 2017	3 March 2017	29.4 miles	0 miles	the Hospital
17 February 2017	4 April 2017	6 miles	0 miles	the Hospital

**Record of Determinations –
Medical Practitioners Tribunal**

Schedule 3

Timesheet dated	Week commencing	Submitted to
18 January 2017	9 January 2017	the Hospital
1 February 2017	23 January 2017	the Hospital
14 March 2017	6 March 2017	the Hospital
27 March 2017	20 March 2017	the Hospital
17 May 2017	1 May 2017	the Agency
17 May 2017	8 May 2017	the Agency