

PUBLIC RECORD**Dates:** 19/11/2024 - 27/11/2024

Medical Practitioner's name: Dr David COMISKY
GMC reference number: 7133581
Primary medical qualification: MB ChB 2011 University of Aberdeen

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

Summary of outcome

Suspension, 6 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Duncan Toole
Lay Tribunal Member:	Mrs Amanda Webster
Medical Tribunal Member:	Dr John Moriarty
Tribunal Clerk:	Mrs Jennifer Ireland

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Lee Gledhill, Counsel
GMC Representative:	Mr Thomas Coke-Smyth, 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 - 22/11/2024

Background

1. Dr Comisky qualified in 2011 at the University of Aberdeen. After completing his foundation training, Dr Comisky chose to specialise in Psychiatry. Between 16 July 2023 and 12 October 2023, Dr Comisky provided services via updoc, a telehealth platform.
2. On 24 August 2023, Mr A, a coach driver, had an episode of feeling faint whilst at work, resulting in him falling and causing a laceration to his face. After assessment in hospital, Mr A was found to have low blood sugar levels. Mr A confirmed that he had not eaten a proper meal that day.
3. Following advice from Dr B, an occupational health physician, and due to DVLA requirements, Mr A required a letter certifying that he was fit to return to work. On 31 August 2023, Mr A contacted updoc in order to obtain the letter, filling in an online questionnaire with information about the episode, declaring that he had sought medical care from his GP and had undergone an echocardiogram ('ECG') and blood tests. He stated that he had not experienced a loss of consciousness and was '*fully recovered*'.
4. The Allegation that has led to Dr Comisky's hearing can be summarised as follows: Dr Comisky was assigned by updoc to complete the letter, which he did on the same day. It is alleged that Dr Comisky, after reviewing Mr A's questionnaire, failed to obtain an adequate medical history from Mr A as he did not make further enquiries about the episode of feeling faint and falling. It is further alleged that Dr Comisky inappropriately approved and signed the letter confirming Mr A was fit to return to work, when he had not sufficiently assessed Mr A in order to come to that conclusion. The letter did not refer to a possible diagnosis and included the words '*based on my examination*'. It is alleged that these words were inappropriate, as Dr Comisky knew that he had not examined Mr A; and that Dr Comisky was dishonest when he approved and signed the letter with these words included.

5. Mr A provided the letter to his employers, who forwarded it to Dr B. Given the potential risks to the safety of both Mr A and the public, Dr B was concerned about the content of the letter, in particular the lack of detail. Dr B then saw Mr A in person and carried out a physical examination. He concluded that the episode was not indicative of a more serious problem and was satisfied that Mr A was fit to return to his driving occupation.

6. The initial concerns were raised with the GMC on 1 September 2023, by Dr B, due to his concerns after he had reviewed the letter signed by Dr Comisky.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Comisky is as follows:

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

1. On 31 August 2023, following a review of Mr A's online medical questionnaire submitted to updoc, you failed to obtain an adequate medical history from Mr A in that you did not make further enquiries with Mr A about the occasion Mr A felt faint and suffered a fall. **Admitted and found proved.**
2. On 31 August 2023, you approved and signed a letter confirming Mr A was fit to return to work:
 - a. when it was inappropriate to do so because Mr A had not been sufficiently assessed by you to enable you to come to that conclusion; **Admitted and found proved.**
 - b. when the letter:
 - i. inappropriately used the words 'based on my examination'; **Admitted and found proved.**
 - ii. failed to refer to a possible diagnosis. **Admitted and found proved.**
3. You knew that you had not examined Mr A as part of your assessment. **Admitted and found proved.**
4. Your action at paragraph 2bi was dishonest by reason of paragraph 3. **To be determined.**

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

The Admitted Facts

8. At the outset of these proceedings, through his Counsel, Mr Gledhill, Dr Comisky made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

9. In light of Dr Comisky's admissions to parts of the Allegation, the Tribunal is required to determine whether Dr Comisky was dishonest when he approved and signed a letter containing the words '*based on my examination*'.

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:

- Mr C, in relation to updoc; and
- Dr B, Medical Director at XXX.

11. Dr Comisky provided his own witness statements, dated 13 February 2024, 16 September 2024 and 28 October 2024. He also gave oral evidence at the hearing. In addition, the Tribunal received written and oral evidence from the following witnesses on Dr Comisky's behalf:

- Dr D, Consultant Psychiatrist at the Coborn Centre.

Expert Witness Evidence

12. The Tribunal received evidence from Dr E, who provided a written report dated 5 December 2023, and a supplementary report dated 3 June 2024. In his reports, he confirmed that Dr Comisky's actions in respect of the admitted paragraphs of the Allegation were seriously below the standard expected of a reasonably competent telehealth doctor. Dr E's evidence was agreed and he was not called to give oral evidence.

Documentary Evidence

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

- Medical Letter – Fit to Return to Work, approved and signed by Dr Comisky, dated 31 August 2023;
- Medical Letter Questionnaire completed by Mr A, dated 31 August 2023;
- Correspondence between updoc and Dr Comisky, dated 31 August 2023; and
- GMC referral email submitted by Dr B, dated 1 September 2023.

The Tribunal's Approach

14. 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 Comisky 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.

15. The one contested part of the Allegation (paragraph 4) involves alleged dishonesty. The test for dishonesty is drawn from the case of *Ivey v Genting Casinos [2017] UKSC 67*. It is a two-part test.

- (i) *First, the fact-finding tribunal must first ascertain (subjectively) the actual state of the doctor's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence 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.*
- (ii) *Secondly, 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 tribunal 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.*

16. This approach was referenced by the Court of Appeal in *Raychaudhuri v GMC [2018] EWCA Civ 2027* at paragraph 54:

'54. Before Sweeney J and before us it was common ground that the approach to dishonesty in relation to findings made by a MPT should be that set out in Ivey. Under the approach in Ivey, when dishonesty is in question the fact-finding tribunal must first ascertain the actual state of the person's knowledge or belief as to the facts, and then should determine the question of dishonesty by applying the standards of ordinary

decent people. There is no requirement that he should appreciate that what he has done is, by those standards, dishonest.'

17. In the aforementioned case, at paragraph 66, Sales LJ found that the doctor had been deliberately evasive and had knowingly misled another individual, but a finding of dishonesty did not necessarily follow. On the facts of that case this was because the Court found that following:

'[the doctor] had made the entries with the intention of then examining Patient A and confirming or amending them. Although he was deliberately evasive about which entries he had made on the assessment form and knowingly misled [Dr G], that was in context a venial and obviously short term expedient. The fact that the appellant had already given a full and truthful account to [Dr H] and the nurses made it clear that it was not part of a truly dishonest effort to cover up what he had done.'

18. What is important, is to apply the test in *Ivey*, applying it to the specific facts and taking account of the context of the current allegation.

19. The Tribunal was also reminded that Dr Comisky is of good character. Of course, good character cannot by itself provide a defence to the allegations, but it is relevant to the Tribunal's considerations in the following ways;

a) First, Dr Comisky has given evidence and, as with any person of good character, it is a positive feature which supports his credibility. This means it is a factor which the Tribunal will take into account when deciding whether it believes his evidence;

b) Secondly, the fact that he is of good character may make it is less likely that he has acted as is now alleged against him.

20. What weight should be given to Dr Comisky's good character, on the facts of this particular case, is a decision for the Tribunal to make. In making that assessment it is entitled to take into account everything it knows about him, including the positive testimonials provided as part of his case.

21. Dr Comisky admitted in oral evidence to having lied in his written Rule 7 response to the GMC case examiners.

22. The Tribunal was advised by the Legally Qualified Chair that a lie, whether made before a MPT hearing or in the course of evidence or both, may be probative of a registrant having acted as alleged in a GMC allegation, but there may be other explanations.

23. Dr Comisky has given an explanation for having advanced a false explanation. It is therefore important that the Tribunal does not wrongly exclude the possibility that Dr Comisky may have lied for reasons other than his own '*guilt*' in respect of the allegation in issue.

24. The Tribunal must weigh up Dr Comisky's evidence and his credibility like any other evidence, on the balance of probabilities, bearing in mind that the burden of proof is on the GMC to prove its case, when considering the remaining paragraph of the Allegation.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 4

26. The Tribunal is required to determine whether Dr Comisky's actions in inappropriately using the words '*based on my examination*' were dishonest. The Tribunal took into account the test set out in *Ivey*, and considered the evidence before it.

27. The Tribunal first considered the facts that were not in dispute.

28. Dr Comisky had begun working for updoc in July 2023. The purpose of the role was to consider requests from patients who required fitness to return to work letters or fitness to fly letters. The role was entirely remote and there was no expectation or ability to see patients in person. It was open to a doctor to contact a patient by email or telephone if they felt that they required more detail before making a decision about the request.

29. When a request is sent to a doctor, the online system generates suggested template wording for a letter, in the event that the doctor considers the patient is fit to return to work (for example). The doctor has the following options upon receipt of the case. They can reject the case if, for example, they consider that the patient should see a medical professional in person or if they do not feel able to issue a letter for any other reason. They can approve the request, which generates a letter signed by the doctor, adopting the exact wording from the

suggested template. Alternatively, they can choose to edit the suggested template wording before the signed letter is generated. This provides an ability to add, delete or edit text from the template.

30. It was accepted that Mr A had used the updoc online service in order to obtain a fit to return to work letter. He had been to see his GP, but had been told that it would take 2 weeks for a letter to be sent to him. On 31 August 2023, Mr A inputted details into the online form, and included confirmation that he had not experienced an episode of loss of consciousness or impaired consciousness.

31. Mr A made a payment of £45.00 for the service and made this payment at 1.40pm. At the same time as the payment was made, an email was sent by updoc to Dr Comisky. The email contained details of Mr A, including that his occupation was driving. It also contained the other information that Mr A had inputted into the online form.

32. It was accepted that after Dr Comisky had received and considered the request, he clicked on the 'approve' button at 2.17pm. He did not make any amendments to the template wording for the letter, which read:

'I have assessed [Mr A's] medical history in regards to his recent health condition and found that he is fit to return to work. Based on my examination, I do not believe that his condition will pose a risk to himself or others in the workplace. I recommend that he returns to work on a gradual basis, with appropriate adjustments made to his duties and working hours as necessary. I will review [Mr A's] condition if his symptoms worsen or new symptoms arise.'

33. In oral evidence, Dr Comisky said that he had seen the letter template on several previous occasions. He explained that, at the time of events, he had been working for updoc for over a month, and that he had been completing up to ten requests per day, with an average of around five per day.

34. It was accepted that the letter used was a template. It was not created by Dr Comisky, and that he did not make any amendments to the wording in the letter before signing it.

35. The Tribunal also took into account that Dr Comisky was aware that the purpose of the letter was to certify Mr A's fitness to return to work, and that he was aware that Mr A's occupation involved driving.

36. The Tribunal considered the various statements submitted by Dr Comisky. The first account of events is submitted in his Rule 7 response, dated 13 February 2024. It is worth noting that when Dr Comisky was sent the Rule 7 Allegation, it was worded slightly differently to the current Allegation, in particular, it was alleged that he ‘wrote’ a letter, which included the words ‘based on my examination’. Dr Comisky responded as follows:

‘...As is written “Based on my examination” what I meant here was “based on my examination of the notes”. This was a typing omission. A really unfortunate omission as now the sentences reads significantly differently. I understand the question being raised with this sentence and I am deeply sorry this being the case. This was an honest mistake and not my intention to mislead. I can fully appreciate that a colleague reading my letter would not be privy that it was from an online forum and therefore could interpret this as misleading.’

37. Dr Comisky next provided a witness statement to the GMC on 16 September 2024. In response to paragraph 4 of the Allegation, he states:

‘...It was unfortunate that I did not amend the ambiguous wording of the pro-forma letter on file, which (I now see was ambiguous and) unintentionally implied that I examined him. It just did not cross my mind that the phrase was ambiguous in a way that could lead to an incorrect interpretation.

...

I was not dishonest. I was not deliberately misleading anyone. It was my carelessness, I now realise, that led to the ambiguous sentence. I accept that the wording could have a misleading effect, when read by someone else. It was not my intention to make it seem like I had examined him.

38. Within the same witness statement, Dr Comisky goes on to say:

‘7. When compiling the letter about patient A, I used a pre-populated template that was provided in the platform, and which already had the words ‘Based on my examination.’ As we only worked remotely, I saw that element of the draft statement through the prism of remote working, and did not see the ambiguity. I was examining documentary evidence and speaking to Mr A. It was never anticipated that I would

physically examine him. I therefore had no reason to lie, to say that I had examined him.

8. In hindsight I am aware the template could have been amended, but this was a complete oversight on my part and I can see how this sentence could be misleading to a reader unfamiliar with the telemedicine service approach. It was not my intention to mislead anyone; in my thoughts it was clear that I meant examination of the notes because it was an online platform where I never saw a patient in person.

Examination

9. ... In response to the allegation of dishonesty, even though I am saying ‘based on my examination’ could be misleading, I had no primary or secondary gain to make it appear that an examination took place. There would have been no expectation for me to do that. I fully recognise with regards to my paperwork that it was clumsy and I did not use the right language in this letter, for which I sincerely apologise.’

39. Dr Comisky also submitted a reflective statement, dated 28 October 2024. Within this statement, he said:

‘This was my first Telehealth job, which I had never done previously. I thought I was doing the right thing. Some template documents were provided to me but I didn’t amend them sufficiently, I now see. I understand the implications of having acted as I did, now I look back on it. I have acknowledged fault, and I have taken steps to make sure that I have reflected and undertaken remediation...

My understanding of Probity was previously limited to such an idea that someone needed to intentionally make false claims or change notes of a patient and act in a dishonest way. I now realise that probity deals with making sure your notes/reports are not misleading and reasonable steps must be taken to make sure no information is not missing and an accurate statement of events is documented.

...

...I used the template from the company to issue the letter and it stated “After examining the patient”, which could be misleading. This careless over-sight by myself was not one of acting dishonestly. Even though it was not my intention to mislead anyone that I did in fact examine the patient, I fell short of the expected standards

from Good Medical Practice about taking proper precautions and efforts to make sure that my notes are accurate and true.

...

In relation to the actual letter and the mis-leading statement. I should have taken more care and read over it making changes were appropriate and then I would have realised from the beginning that this statement was misleading as I was working on an online forum and not examining anyone. Thus I could have alerted the management that maybe this template needed amending and to remove this statement altogether. But ultimately it was my responsibility to ensure all my notes were accurate.

...

I did not take due care and ensuring that the letter sent to the patient was accurate and not misleading. I should have amended the template to erase the sentence “Based on my examination” then it would not have been ambiguous to the reader that I meant examining the patient. I could have used another appropriate sentence like after looking at the document sent by the patient.’

40. In oral evidence, Dr Comisky said that he used the template in ‘good faith’ and that he did not intend to mislead anyone. In cross-examination, he explained that he received £5.00 for every case where he sent out a signed letter (either before or after making amendments to the template). He accepted that the platform was a quick alternative if a patient, for example, could not get a GP appointment. He stated that he had rejected cases, albeit not a lot of cases. He went on to say that when he considered the case, he had not rushed. He said that he had probably spent less than 37 minutes dealing with the case, estimating around 30 minutes.

41. Dr Comisky accepted that the word ‘examination’ had a particular meaning. He also accepted that the phrase ‘based on my examination’ was not ambiguous. It was put to him in cross-examination that ‘there was no ambiguity in your mind at the time, because you knew perfectly well what it meant’. Dr Comisky accepted this. The Tribunal noted that this acceptance in his oral evidence, conflicted with his primary case, namely that he did not ‘amend the ambiguous wording’.

42. The Tribunal also noted Dr Comisky's admission in response to Tribunal questions, where he accepted that he had not been truthful in his Rule 7 response or earlier in oral evidence. In his Rule 7 response, he stated that the words '*based on my examination*' were a '*typing omission*'. In answer to questions in cross-examination, Dr Comisky said '*I was just trying to do my best...I was not trying to mislead anyone*'.

43. When asked again by the Tribunal why he had used the words '*typing omission*' in the Rule 7 response, he accepted that he knew that was not correct when he wrote it. When asked why he had lied, Dr Comisky told the Tribunal that he was '*scared*', and he had thought it might '*exonerate*' him if he put forward a '*plausible*' explanation. He also stated that he did not mean to lie.

44. The Tribunal bore in mind Dr Comisky's previous good character. It was also necessary to take into account that Dr Comisky had not been truthful on two occasions, both prior to the hearing (in a formal response to allegations) and during the proceedings when answering questions from Mr Coke-Smyth, on behalf of the GMC, about that formal response. The Tribunal then went on to consider the evidence before it, in particular, the contemporaneous documents and the evidence provided by Dr Comisky about what was his genuinely held belief at the time of the alleged incident.

45. The Tribunal noted that Dr Comisky has, throughout the course of the investigation, maintained that he was aware of the content of the letter and that he had not '*intended*' to be dishonest. He accepted that the letter was '*misleading*'. He also maintained that he had taken time to read and consider the information submitted by Mr A before signing off the letter.

46. The Tribunal was satisfied that Dr Comisky had read the letter template and was aware of the wording used.

47. When considering Dr Comisky's accounts, the Tribunal noted that there were variances over time. Of the phrase '*based on my examination*', he had initially stated in his Rule 7 response that it was a '*typing omission*'. His witness statement asserts that he considered the wording to be '*ambiguous*'. He then accepted in oral evidence that he knew at the time that the wording was not ambiguous. The Tribunal found it difficult to ascertain his genuinely held belief at the time, as it considered that his accounts lacked consistency.

48. Looking at the evidence in its totality and considering the first limb of the test set out in *Ivey*, the Tribunal determined that Dr Comisky’s genuinely held belief was as follows. He was an experienced doctor who was aware of the content of the letter template, he knew the word ‘*examination*’ had a particular meaning, and in the context they were used, he knew at the time that the words ‘*based on my examination*’ were not ambiguous. The Tribunal accepted that there were elements of a lack of care and attention in Dr Comisky’s actions and that his primary intention in writing this letter was to fulfil the requirements of the request, for a modest fee, with a quick turnaround. However, in doing so, Dr Comisky knew that he was approving a document implying that he had examined Mr A when he had not done so.

49. Applying the standards of ordinary, decent people, Dr Comisky was an experienced doctor who knew the purpose of the letter, the contents of the template and the meaning of the words used. In agreeing to approve and sign the letter with the wording included, the Tribunal determined that his actions were dishonest by the standards of ordinary, decent people.

50. Accordingly, the Tribunal found paragraph 4 of the Allegation proved.

The Tribunal’s Overall Determination on the Facts

51. The Tribunal has determined the facts as follows:

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

1. On 31 August 2023, following a review of Mr A’s online medical questionnaire submitted to updoc, you failed to obtain an adequate medical history from Mr A in that you did not make further enquiries with Mr A about the occasion Mr A felt faint and suffered a fall. **Admitted and found proved.**
2. On 31 August 2023, you approved and signed a letter confirming Mr A was fit to return to work:
 - a. when it was inappropriate to do so because Mr A had not been sufficiently assessed by you to enable you to come to that conclusion; **Admitted and found proved.**
 - b. when the letter:

- i. inappropriately used the words ‘based on my examination’;
Admitted and found proved.
 - ii. failed to refer to a possible diagnosis. **Admitted and found proved.**
3. You knew that you had not examined Mr A as part of your assessment.
Admitted and found proved.
4. Your action at paragraph 2bi was dishonest by reason of paragraph 3.
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.**

Determination on Impairment - 25/11/2024

52. 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 Comisky’s fitness to practise is impaired by reason of misconduct.

The Evidence

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

54. On behalf of Dr Comisky, the Tribunal was provided with a copy of his most recent appraisal, dated 18 December 2023.

55. The Tribunal also took into account the testimonials received in support of Dr Comisky which were provided at the facts stage, all of which it has read.

Submissions

56. On behalf of the GMC, Mr Coke-Smyth submitted Dr Comisky’s fitness to practise should be found impaired by reason of his misconduct. He referred the Tribunal to relevant paragraphs of Good Medical Practice (2013) (‘GMP’) and to caselaw on impairment throughout his submissions.

57. Mr Coke-Smyth submitted that all paragraphs of the Allegation meet the threshold for misconduct. In relation to paragraphs 1 and 2 of the Allegation, he stated this was based on the unchallenged evidence of the GMC expert, Dr E, which stated that those actions fell seriously below the standard expected.

58. In respect of paragraphs 3 and 4, Mr Coke-Smyth submitted that this was a matter for the Tribunal, assessing Dr Comisky's conduct against the standards contained in GMP. He submitted that this conduct also fell seriously below the relevant standards and was sufficiently serious to amount to misconduct, particularly in view of the importance of honesty and integrity.

59. Mr Coke-Smyth submitted that impairment was a matter for the Tribunal. In considering whether Dr Comisky's fitness to practise was currently impaired, the Tribunal should take into consideration insight, remediation, risk of repetition and the overarching objective. In respect of clinical matters in paragraphs 1 and 2, the Tribunal has been provided with evidence of Dr Comisky's efforts at insight and remediation. He submitted that it was a matter for the Tribunal as to whether this is sufficient to demonstrate that fitness to practise is not currently impaired.

60. However, in relation to paragraphs 3 and 4 of the Allegation, Mr Coke-Smyth submitted that there is currently insufficient evidence of insight. He submitted that Dr Comisky's Rule 7 response to the Case Examiners was a lie and inappropriate, and that he then provided a further dishonest response in cross examination, which suggests that there is further work to be done to provide sufficient assurance that his dishonesty will not be repeated. Mr Coke-Smyth submitted that Dr Comisky has yet to fully appreciate his dishonest actions.

61. Mr Coke-Smyth submitted that there is a risk of repetition in this case. He stated that dishonesty is harder to remediate, and there is currently insufficient evidence that this dishonesty has been fully remediated. He submitted that Dr Comisky has not shown an understanding that dishonesty occurs when something is said which is known not to be true and which is known to be misleading. He submitted that the Tribunal can properly conclude that Dr Comisky currently lacks insight and there remains a risk of repetition.

62. Mr Coke-Smyth submitted that Dr Comisky's actions had risked potential harm to the public and Mr A. Further, the public and employers must be able to trust the reliability and accuracy of a letter confirming someone's fitness to drive or to work. He submitted that

where the reputation of the profession has been damaged, a finding of impairment is necessary to repair that damage. It does that by making plain the unacceptability of the underlying misconduct and by publicly communicating this to both the public and the profession. Without such a finding, he submitted that the confidence of the public and patients would be undermined.

63. On behalf of Dr Comisky, Mr Gledhill submitted that Dr Comisky is a very capable and competent clinician in the workplace, who took on the role of telemedicine without fully appreciating what was required of him.

64. Mr Gledhill stated that Dr Comisky has acknowledged fault, and accepted the criticisms of Dr E, the GMC expert. He submitted that Dr Comisky has embraced change within his practice such that the Tribunal can be confident that the risk of repetition is negligible. Mr Gledhill submitted that Dr Comisky has spoken with colleagues about what occurred, has reflected and has worked hard to commit those reflections to paper for the Tribunal to demonstrate his learning.

65. Mr Gledhill stated that Dr Comisky wished to assure the Tribunal that he would not be taking up a role again in the future, for which he is not suitable or trained. He stated that Dr Comisky works in psychiatry and that will be his focus in his current and future roles. Mr Gledhill directed the Tribunal to Dr Comisky's most recent appraisal which holds him in high regard, as well as the character statements, Continual Professional Development ('CPD') certificates, and his detailed reflective statement.

66. Mr Gledhill submitted that Dr Comisky accepted that paragraphs 3 and 4 of the Allegation amounted to serious misconduct. Whilst he accepted that Dr Comisky's actions in paragraphs 1 and 2 could also amount to serious misconduct, he submitted that there is no current impairment in relation to those matters, given his remediation and insight.

67. In relation to dishonesty, Mr Gledhill submitted that Dr Comisky accepts the GMC submissions that there is current impairment. He submitted that Dr Comisky's insight into his dishonesty is an evolving position. He stated that Doctor Comisky has, at times, not been able to articulate matters. The Tribunal has acknowledged in its factual findings the difficulty in understanding his position in respect of the events. He stated that Dr Comisky is somebody who has clearly struggled to explain himself and he will obviously need to do a better job moving forward, in relation to any remediation that is needed to be undertaken. Mr Gledhill

acknowledged that Dr Comisky has some way to go to demonstrate full fitness to practise. However, he did at this stage wish to apologise to the GMC and to the Tribunal.

The Relevant Legal Principles

68. 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.

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

70. The Tribunal must determine whether Dr Comisky'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 whether the matters are remediable, have been remedied and any likelihood of repetition.

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

- a. *'Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. *Has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or*
- c. *Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
- d. *Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

72. This case involves a rejected defence in respect of an allegation of dishonesty. The High Court in the case of *Sawati v GMC [2022] EWHC 283 (Admin)* considered how a Tribunal should approach such a rejected defence and said the following:

‘109. In short, before a Tribunal can be sure of making fair use of a rejected defence to aggravate sanctions imposed on a doctor, it needs to remind itself of Lord Hoffmann’s starting place that doctors are properly and fairly entitled to defend themselves, and may then find it helpful to think about four things: (i) how far state of mind or dishonesty was a primary rather than second-order allegation to begin with (noting the dangers of charging traps) – or not an allegation at all, (ii) what if anything the doctor was positively denying other than their own dishonesty or state of knowledge; (iii) how far ‘lack of insight’ is evidenced by anything other than the rejected defence and (iv) 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.

110. These are all evaluative matters. Tribunals need to make up their own minds about them, and their relevance and weight, on the facts they have found. But they do need to direct their minds to the tension of principles which is engaged, and check they are being fair to both the doctor and the public. They need to think about what they are doing before they use a doctor’s defence against them, to bring the analysis back down to its simplest essence.’

The Tribunal’s Determination on Impairment

73. In determining whether Dr Comisky’s fitness to practise is impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to serious misconduct.

Misconduct

Paragraph 1 of the Allegation

74. The Tribunal first considered whether Dr Comisky’s admitted failure to obtain an adequate medical history from Mr A amounted to serious misconduct. In doing so it had regard to the expert medical report of Dr E, dated 5 December 2023, which provides:

‘In my opinion, in order to make an adequate assessment Dr Comisky needed to ask further questions about the feeling faint and subsequent fall. [Mr A] declared that he had not lost consciousness but had fallen and bruised himself. Dr Comisky needed to ask further questions regarding this, not just taking [Mr A]’s word for this. [Mr A] said

a low blood sugar caused him to feel faint; was he a diabetic or had a reason for his low blood sugar been ascertained? Had he really not lost consciousness when he had fallen and sustained bruising? Why was he asking for this letter to say he was fit to return to work when the usual process would be to ask his GP for a “fit note”? Was his GP happy with him returning to work as a professional driver? What sort of driving did he do? The health requirements, for example for coach driving, lorry driving, and taxi driving are more stringent than ordinary driving.

...

...Dr Comisky’s medical history taking was inadequate and seriously below the standard expected of a reasonably competent telehealth doctor. I say seriously below because [Mr A] was a driver and Dr Comisky needed to ensure that there was no medical reason why he could not drive safely. This put [Mr A] at risk of an accident and also members of the public at risk from him were he to have a “medical incident”.

75. The Tribunal considered GMP, in particular paragraph 15(a) which states:

‘15 *You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*

a *adequately assess the patient’s conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient’*

76. The Tribunal accepted the unchallenged opinion of Dr E that Dr Comisky’s failure to obtain an adequate medical history from Mr A fell seriously below the standard expected of a reasonably competent practitioner. The Tribunal agreed that there was a risk of potential harm to Mr A and to members of the public, given Mr A’s occupation involved driving, which Dr Comisky accepted that he was aware of. The Tribunal concluded that, in failing to ask further questions and seek further information regarding Mr A, Dr Comisky had not adequately assessed the circumstances. This represented a departure from paragraph 15(a) of GMP.

77. In summary, the Tribunal determined that Dr Comisky's failing as set out at paragraph 1 of the Allegation was serious misconduct. His actions had fallen short of what would be expected of a competent telehealth doctor.

Paragraph 2 of the Allegation

78. The Tribunal next considered whether Dr Comisky's admitted actions in respect of the letter he signed, containing inappropriate and misleading statements, amounted to serious misconduct. In doing so it had regard to the unchallenged expert report of Dr E which provides:

'...in my opinion Dr Comisky did not adequately assess [Mr A] by not obtaining an adequate history and provided a letter claiming to have examined [Mr A] when he did not do so.

In my opinion, given that he had an inadequate history available and claimed an examination which had not taken place, Dr Comisky's writing of a letter in support of [Mr A]'s return to work as a professional driver was seriously below the standard expected of a reasonably competent telehealth doctor because of the risks posed not only to [Mr A] but also the wider public.

... In not ensuring that he had an adequate medical history and just referring to a "health condition" Dr Comisky's medical letter was misleading. In my opinion, in not referring to a possible diagnosis and simply using "health condition" in his letter Dr Comisky's actions fell seriously below the standard expected of a reasonably competent telehealth doctor...

...I say seriously below because [Mr A] was a driver and Dr Comisky needed to ensure that there was no medical reason why he could not drive safely. This put [Mr A] at risk of an accident and also members of the public at risk from him were he to have a "medical incident".

... if others accepted that an examination had taken place there was a risk that [Mr A] would be allowed to drive a coach whilst medically unfit.

...given that he had an inadequate history available and claimed an examination which had not taken place Dr Comisky's writing of a letter in support of [Mr A]'s return to work as a professional driver was seriously below the standard expected of a

reasonably competent telehealth doctor because of the risks posed not only to [Mr A] but also the wider public.'

79. The Tribunal noted that Dr Comisky had made admissions to approving and signing a formal letter when it was inappropriate to do so. This was because he had not sufficiently assessed Mr A so as to come to the conclusion that he was fit to return to work. Secondly, because the letter contained the words '*based on my examination*', which were inappropriate as no examination had taken place.

80. The Tribunal considered GMP, in particular paragraph 15(b), which states:

'15 *You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*

a ...

b *promptly provide or arrange suitable advice, investigations or treatment where necessary*

c ...'

81. Dr Comisky had provided formal advice to Mr A and his employer, confirming that Mr A was fit to return to work. However, this advice was given without obtaining an adequate history and without either assessing Mr A or asking Mr A for further detail on a telephone call, for example. In approving the words '*based on my examination*', Dr Comisky had provided a clear impression to anyone reading the letter, that Mr A had been physically examined. Given Mr A's occupation as a driver, this put Mr A and the public at risk of harm.

82. The Tribunal determined that Dr Comisky's failing as set out at paragraph 2 of the Allegation was serious misconduct.

Paragraphs 3 and 4 of the Allegation

83. The Tribunal next considered misconduct in relation to paragraphs 3 and 4 of the Allegation. Namely, that Dr Comisky knew that he had not examined Mr A and that to approve and sign a letter containing those words, was dishonest.

84. The Tribunal first had regard to the expert report of Dr E. Dr E could not of course provide expert evidence on the issue of dishonesty. However, in respect of the misleading words *'based on my examination'*, he said:

'Dr Comisky's claim that he had examined [Mr A] was misleading and seriously below the standard expected of a reasonably competent telehealth doctor. I say seriously below because if others accepted that an examination had taken place there was a risk that [Mr A] would be allowed to drive a coach whilst medically unfit.'

85. The Tribunal also had regard to GMP, including paragraphs 65 and 71 which state:

'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.'*

86. The Tribunal noted that acts of dishonesty are serious by their nature. Dr Comisky approved misleading words in a formal medical letter, which he then signed and sent to Mr A to be provided to his employers. The Tribunal has found his actions to be dishonest, for the reasons set out at the facts stage. This was a clear departure from paragraphs 65 and 71 of GMP, as he had not been honest when approving and signing the letter and therefore his conduct did not justify the trust that patients and the public put in the profession.

87. The Tribunal therefore determined that Dr Comisky's actions at paragraphs 3 and 4 of the Allegation amounted to serious misconduct.

Impairment by reason of misconduct

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

89. The Tribunal considered whether Dr Comisky's conduct was capable of being remedied, has been remediated, and any likelihood of repetition. In so doing, the Tribunal considered the available evidence in respect of insight and remediation.

90. Throughout its deliberations, the Tribunal had regard to all the three limbs of the statutory overarching objective, namely to:

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

Paragraphs 1 and 2

91. The Tribunal first considered impairment in relation to paragraphs 1 and 2 of the Allegation. These have been referred to by both parties as the '*clinical failings*'. The Tribunal considered that the misconduct in respect of these paragraphs was capable of being remedied. It considered evidence of insight, remediation and the likelihood of repetition and balanced those against the three limbs of the statutory overarching objective.

92. In his response to the Rule 7 allegations on 13 February 2024, Dr Comisky said:

'I have given this matter a great deal of thought and reflection. I understand it is very serious given the occupation of being a bus driver and the potential unintended consequences with this type of work. I deeply regret and appreciate these consequences, god forbid could have been quite significant. The process of this investigation and the concerns about the assessment in question has highlighted and emphasised the importance of working within the scope of my experience and how my practice can be improved through regular CPD and supervisions.'

93. In his witness statement dated 16 September 2024, Dr Comisky repeated similar reflections to those above and apologised for his '*sub-optimal*' performance.

94. Dr Comisky has since provided a detailed reflective statement dated 28 October 2024, in which he sets out how he could have acted differently, and how he intends to act in the future:

'I should have asked him more detailed questions related to the syncope, including relevant past medical history. I should not have taken the short introduction written by the patient as gospel that he now feels better and can return to work. I should have obtained a more detailed history and requested the results of the blood tests and ECG, only after having all of this information could I have concluded with a list of differential diagnoses' and ultimately a more thorough approach to determine it if was safe or not to issue the fitness to return to work letter. This more systemic approach and risk assessment is always optimal when dealing with all cases. However, it may have been safer, on reflection, to have advised him to make an appointment with his GP/Occupational Health Doctor for a review/physical examination given his responsibility as a bus driver and the safety of his passengers.

...

Another important lesson learned is that if I feel the tools provided are not adequate enough to do the job then I need to have the strength to challenge it, raise the issue with management. Ultimately if I feel patient safety is being compromised and appropriate action is not taken by management then I need to walk away from that job. If I was ever faced with a similar problem like this in the future, I would make sure to have all the relevant information before making a decision and as a minimum with online working, have a telephone conversation to make the history taking more seamless.'

95. The reflective statement also includes detailed summaries of conversations that Dr Comisky has had with his consultant peers about his conduct. He explains how he has sought their views about what he could have done differently, in order to fully explore and learn from his failings. He concludes the reflective statement with a repeated apology for the potential harm he could have caused to the patient and the public.

96. In considering the issue of insight into his clinical failings, the Tribunal was of the view that Dr Comisky has demonstrated extensive insight. It considered that Dr Comisky has shown considerable and genuine remorse, in apologies which have been repeated on a

number of occasions both before and during the hearing. He has explored the reasons for his misconduct and has reflected deeply on what he should have done differently.

97. In his reflective statement, Dr Comisky explains that if he felt that the tools provided were not adequate to perform his role, he would walk away from the job if he felt patient safety was being compromised. The Tribunal considered this to be an honest reflection in respect of his feelings about the updoc platform. The Tribunal was equally concerned about the appropriateness of a template letter being generated by an online service, using the words *'based on my examination'* and going on to offer an opinion on risk. It was clear that there could never be a physical examination via this platform and therefore the legitimacy of the template provided to doctors was highly questionable. Nevertheless, Dr Comisky could have amended the template or could have raised concerns with management, and he had appropriately reflected upon that.

98. The Tribunal noted that Dr Comisky has taken extensive action to remediate his misconduct. It took into account the relevant, targeted CPD, including courses on Record Keeping and Probity and Ethics. Dr Comisky has also made considerable efforts to seek out mentoring from colleagues, as well as from the BMA and other support groups. The Tribunal considered Dr Comisky's reflection on these interactions to be detailed and impressive.

99. It was clear he accepted the criticisms of Dr E, and of senior colleagues he has spoken to about his misconduct. In the Tribunal's view, a properly informed impartial observer would consider this level of remediation to be significant.

100. The Tribunal next considered the risk of repetition. The Tribunal bore in mind its assessment of Dr Comisky's insight, and the remediation he has undertaken. The Tribunal accepted Dr Comisky's assurances that in the future he would restrict himself to the areas of practice where he is familiar, experienced and competent, a theme which he referred to consistently throughout his remediation and appraisal. Further, it was clear to the Tribunal that Dr Comisky understands that his input to the updoc platform was inappropriate and inadequate. The Tribunal was therefore of the view that the risk of repetition in respect of these actions was extremely low.

101. The Tribunal considered that Dr Comisky has acknowledged the serious nature of his actions and has taken significant steps to both apologise and remediate. Given Dr Comisky's level of insight and remediation, alongside the extremely low risk of repetition, the Tribunal

concluded that a finding of serious misconduct was sufficient and proportionate to meet the wider public interest and overarching objective.

102. The Tribunal has therefore determined that Dr Comisky's fitness to practise is not currently impaired in relation to his actions at paragraphs 1 and 2 of the Allegation.

Paragraphs 3 and 4

103. The Tribunal considered impairment in relation to paragraphs 3 and 4 of the Allegation. It noted that dishonesty is difficult to remediate, but the misconduct in this case was capable of remediation. It considered evidence of insight, remediation and the likelihood of repetition and balanced those against the three limbs of the statutory overarching objective.

104. In considering the issue of insight and remediation, the Tribunal considered Dr Comisky's reflective statement. Within the document, he reflects on several occasions about the importance of probity. He states:

'I am fully aware of the seriousness of my misconduct and its impact not only on the patient, but to the medical profession and the regulator itself. The patient may not only have lost trust in me as his doctor but the profession as a whole and in turn may prevent him from visiting his doctor in the future to discuss future issues. I am not ignorant to the fact that my misconduct has brought the medical profession into disrepute and for this I feel a real sense of shame and embarrassment. And ultimately damaged the role of the GMC, as my actions fell below the standards expected of me. And thus understand the position and decision to investigate my actions in a tribunal setting. I should not have allowed fear of losing my licence coupled with the financial burden of potentially losing my livelihood overwhelm my judgement and not upholding the professional and ethical standards expected of me. I do acknowledge that at the time I was working outside the scope of my experience and yes, lack of knowledge and experience were the contributing factors, but it was not due to a lack of compassion. I consider myself an empathic person and I do not want what happened to be misconstrued as lack of caring for my patients. Doctors are held in high regard with honesty and integrity being central to the profession, I lost sight of these traits when I reflect on this case as a whole.'

105. The Tribunal took into account that Dr Comisky accepts that his actions have brought the profession into disrepute.

106. It was necessary to bear in mind that Dr Comisky had not initially been truthful when preparing his Rule 7 allegation response in February 2024. He had also initially maintained in cross-examination that he was *'doing his best'* in this document and was not trying to mislead anyone. He later accepted in answer to Tribunal questions that he knew the Rule 7 response was not accurate when he wrote it. In his reflective document, Dr Comisky states on more than one occasion that if there were other investigations, he would be *'transparent and open'* from the outset. It appeared that this reflection may have been aimed at his initial Rule 7 response. Whilst this is positive, it must be treated with some caution, as Dr Comisky did not consistently abide by this principle in answering questions in cross-examination.

107. The Tribunal was therefore of the view that Dr Comisky had shown some insight, but that this was clearly an evolving position in light of the Tribunal's findings. The primary focus of Dr Comisky's remediation was his clinical failings. His insight and remediation in respect of paragraphs 3 and 4 was focussed mainly on his actions being misleading, rather than *'intentionally'* dishonest.

108. Dr Comisky does show some insight in his reflective document in relation to probity. However, this was limited and lacked a focus on honesty and integrity. The Tribunal did take into account that Dr Comisky has promptly accepted the findings of the Tribunal in relation to dishonesty and apologised to the GMC and the Tribunal.

109. For those reasons, the Tribunal was of the view that a risk of repetition remains. The Tribunal was of the view that if Dr Comisky further develops his insight, the risk of repetition may further reduce.

110. In applying Dr Comisky's conduct against the test as set out in *Grant*, the Tribunal was satisfied that all limbs of the test were engaged. His behaviour put Mr A and the public at unwarranted risk of harm as there was a risk that Mr A could have had a further medical episode. His conduct brought the medical profession into disrepute and breached a fundamental tenet of the profession. Dr Comisky has also been found to have acted dishonestly in approving and signing the letter which contained misleading statements.

111. The Tribunal considered and had regard to the statutory overarching objective. It was satisfied that Dr Comisky's conduct had the potential to damage public confidence in the medical profession and undermine proper professional standards and conduct for the members of the profession. Dr Comisky's dishonest actions had the potential to cause serious

harm to members of the public. It considered that a member of the public in full knowledge of the facts of the case would be concerned about a doctor acting in the way Dr Comisky did. The Tribunal was also of the view that given the dishonesty in this case, public confidence in the profession would be seriously undermined if a finding of impaired fitness to practise were not made.

112. The Tribunal also considered that a finding of impaired fitness to practise was required to declare and uphold proper standards of behaviour and to maintain public confidence in the profession.

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

Determination on Sanction - 27/11/2024

114. Having determined that Dr Comisky'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.

The Evidence

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

116. The Tribunal received further evidence on behalf of Dr Comisky including:

- Witness statement and oral evidence from Dr F, Consultant Psychiatrist and Dr Comisky's supervisor; and
- Dr Comisky's Curriculum Vitae ('CV').

Submissions

117. On behalf of the GMC, Mr Coke-Smyth submitted that the appropriate sanction was one of suspension with a review. He referred the Tribunal to the Sanctions Guidance (2020) ('the SG') and the Tribunal's own findings at the previous stages of the hearing.

118. Mr Coke-Smyth submitted that the Tribunal should take into account the mitigating and aggravating factors of the case. He reminded the Tribunal that Dr Comisky is of previous good character and has no previous findings against him. He submitted that the Tribunal has

accepted his remediation of the clinical failings and the efforts which he has made to address these. Further, he stated that there is evidence that Dr Comisky has sought advice and guidance from colleagues and has been provided with positive testimonials detailing his current practice including evidence that he is a valued member of the team. Mr Coke-Smyth also reminded the Tribunal that Dr Comisky has expressed remorse and apologised.

119. In terms of aggravating factors, Mr Coke-Smyth submitted that Dr Comisky is currently lacking full insight in respect of the proven dishonesty in this case. He stated that Dr Comisky's insight is clearly evolving and there remains more to be done particularly in appreciating conduct which may be objectively dishonest whether or not it is '*intentionally*' so. Further, he submitted that Dr Comisky's remediation has yet to focus sufficiently on honesty and integrity. Mr Coke-Smyth also reminded the Tribunal to consider Dr Comisky's Rule 7 response and the answers to questions in cross examination on this, in which he gave answers which were untrue and not '*transparent and open*'.

120. Mr Coke-Smyth submitted that this case involves a proven allegation of dishonesty in a clinical context. He submitted that dishonesty is always serious because it can undermine the public's trust in the medical profession. That is particularly relevant in this case, as the letter was outwardly facing and provided an offer of assurance to others that Mr A was fit to drive and had been examined, when he had not been. He stated that this type of letter, where it involved dishonesty, is likely to be of broader public concern.

121. Mr Coke-Smyth submitted that suspension is the most appropriate sanction in this case because it has a deterrent effect and can be used to send out a signal to Dr Comisky, the profession and public about what is regarded as behaviour unbecoming a registered doctor. In light of the dishonesty and its findings on impairment, Mr Coke-Smyth submitted that the Tribunal may consider the misconduct to be so serious that action must be taken to protect and maintain public confidence in the profession.

122. Mr Coke-Smyth submitted that Dr Comisky's actions, while serious, fall short of being fundamentally incompatible with continued registration, and as such erasure would not be an appropriate or proportionate sanction.

123. On behalf of Dr Comisky, Mr Gledhill submitted that Dr Comisky is a man of previous good character. He reminded the Tribunal of the evidence of the two witnesses, Dr D and Dr F, who gave evidence about his character in the workplace. He stated that both of them find

him to be an able member of the team, who functions well, is liked and who is able to fulfil the obligations and requirements of his current role more than adequately.

124. Mr Gledhill submitted that the findings of the Tribunal have obviously given Dr Comisky a lot to go and think about. He reminded the Tribunal that Dr Comisky immediately apologised to the Tribunal for his conduct, which he did not have to do. He stated that this shows that Dr Comisky is somebody who would wish to make amends when things have gone wrong.

125. Mr Gledhill submitted the findings of fact are something Dr Comisky clearly needs to digest and consider, so that he can identify the remediation that he needs to undertake so that he can develop and demonstrate full insight. He submitted that a period of suspension would enable that further journey to take place, which can then be tested at a review hearing.

126. Mr Gledhill submitted that it was quite clear that Dr Comisky is able to engage in remediation, as he has already done in relation to the clinical matters. He acknowledged that there is developing insight in respect of dishonesty and that Dr Comisky recognises that he has some way to go.

127. Mr Gledhill stated that the public interest runs two ways. Firstly, in the direction of removing doctors from practice whose conduct is incompatible with continued registration. Secondly, in keeping a good doctor, who is capable and competent and who in the future can prove themselves to be able to return to practice and deliver an important service to the community. Dr Comisky's expertise is much needed, as there are limited numbers of psychiatrists available, and they tend to have large workloads.

128. Mr Gledhill submitted that it would be a step too far to erase Dr Comisky from the register because of the very promising changes that can be made, and he will make. He stated that Dr Comisky wishes to speak further with professional colleagues about what has happened and engage fully with remediation. He reminded the Tribunal of the activities that Dr Comisky has already completed, including a Probity and Ethics course, although he recognises that there is still a way to go in terms of insight and remediation. He submitted that Dr Comisky understands his obligations to be an honest doctor but moving forward needs to demonstrate that when he is 'scared', it does not have an impact on his ability to function.

129. Mr Gledhill submitted that telemedicine seems to be an area in which Dr Comisky was out of his depth in hindsight and he has recognised that he must not take up a role in the future that he is not suited to. He directed the Tribunal to Dr Comisky's CV which shows experience in psychiatry, which will be his focus moving forward. He stated that Dr Comisky is unlikely to ever repeat his misconduct again and that the risk of repetition is negligible.

130. Mr Gledhill submitted that Dr Comisky very much wants to retain his registration. He is somebody who is keen to remain in medicine not only because it is his income but because he is passionate about it and wants to make a difference in the workplace. He likes his client group, and he enjoys supporting them and helping them get well. Mr Gledhill stated that psychiatric illness can be a permanent feature in some people's lives, so to have a friendly face and a supportive doctor who is a constant can be very helpful to clients.

131. In relation to the length of suspension, Mr Gledhill invited the Tribunal to consider a period of no greater than six months. He submitted that this would be sufficient to allow Dr Comisky to gain insight and undertake further remediation. He submitted that this will inevitably have a financial impact on Dr Comisky and his family, as he is the principal source of income. He stated that the longer the suspension is the greater that impact would be.

The Relevant Legal Principles

132. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, was a matter for it alone, exercising its own judgment. In reaching its decision on sanction, the Tribunal had regard to the SG.

133. The Tribunal bore in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it noted that any sanction imposed may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive.

134. Throughout its deliberations, the Tribunal had regard to the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promotion and maintenance of proper professional standards and conduct for members of the profession. It applied the principle of proportionality, balancing Dr Comisky's interests with the public interest.

The Tribunal's Determination on Sanction

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

Aggravating factors

136. The Tribunal first considered the aggravating factors in this case.

137. Dr Comisky had approved and signed a letter confirming that Mr A was fit to return to work. The letter included the words '*based on my examination*', which would have led anyone reading the letter to believe that Mr A had been physically examined. The Tribunal considered it to be an aggravating factor that Dr Comisky's dishonest actions, in a clinical context, had put both Mr A and the wider public at risk of harm.

138. Dr Comisky had included information in his response to the Rule 7 allegations, which was untrue. Similarly, he failed to be open and honest in his responses to questions in cross-examination. The Tribunal considered this to be an aggravating factor.

Mitigating Factors

139. The Tribunal then went on to consider the mitigating factors in this case.

140. The Tribunal acknowledged that Dr Comisky has no previous fitness to practise history and is of previous good character. The Tribunal also took into account Dr Comisky's prompt acceptance of the findings made by the Tribunal at the facts stage. Dr Comisky had apologised both prior to the proceedings in written statements, and through his Counsel during the hearing.

141. The Tribunal had read and heard positive testimonial evidence about Dr Comisky. In particular, the Tribunal had regard to the testimonial evidence of both Dr D and Dr F, who gave oral evidence in respect of Dr Comisky's current work. From their own experience of Dr Comisky, both had no concerns about his honesty and integrity.

142. The Tribunal considered the circumstances leading up to the incident to be a mitigating factor. The Tribunal took into account that the template letter using the words '*based on my examination*', was generated by the online platform, in circumstances when there was no prospect of any physical examination. Dr Comisky's primary intention in writing the letter was to fulfil the requirements of a patient request, for a modest fee, with a quick

turnaround. Whilst this did not excuse Dr Comisky’s dishonesty, it did consider it to be relevant background.

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

No action

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

145. The Tribunal was satisfied that there were no exceptional circumstances in Dr Comisky’s case which could justify it taking no action. Further the Tribunal considered that concluding the case by taking no action would be insufficient to protect the public interest and would not mark the seriousness of Dr Comisky’s dishonest conduct.

Conditions

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

‘81 *Conditions might be most appropriate in cases:*

a involving the doctor’s health

b involving issues around the doctor’s performance

c willing to respond positively to retraining, with evidence that they are committed to keeping their knowledge and skills up to date throughout their working life, improving the quality of their work and promoting patient safety

...

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

147. The Tribunal noted that the case did not fit within the examples in paragraph 81, as a type of case where conditions may be most appropriate.

148. The Tribunal considered that no conditions could be formulated which would be appropriate, workable or measurable. Further, the Tribunal determined that the imposition of conditions would not be sufficient to mark the seriousness of Dr Comisky's actions or to address the Tribunal's findings of impairment.

149. The Tribunal concluded that an order of conditions would not be appropriate to maintain public confidence in the profession, and to promote and maintain proper professional standards and conduct for members of the profession.

Suspension

150. The Tribunal then went on to consider whether a period of suspension would adequately protect the public, maintain public confidence in the profession and uphold proper standards for its members. In considering whether to impose a period of suspension on Dr Comisky's registration, the Tribunal had regard to paragraphs 91, 92 and 93 of the SG which provide:

- '91** *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
- 92** *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*
- 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 (see paragraphs 24–49)’

151. The Tribunal also considered the guidance at paragraphs 97(a), (e) and (g), which it considered to be of particular relevance 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 departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.*

...

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

...

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

152. The Tribunal had regard to its findings at impairment stage, namely that Dr Comisky’s dishonest conduct was a serious departure from GMP and that his actions had breached a fundamental tenet of the profession. The Tribunal also took into account that Dr Comisky had failed to be open, honest and transparent in his response to the Rule 7 allegation and also in response to cross-examination questions during the hearing.

153. The Tribunal considered that while his misconduct was serious, it was remediable. Dr Comisky had already taken some steps to remediate. This has involved seeking support and testing his own thinking with his consultant colleagues in order to gain insight. He had also completed a number of targeted CPD courses, including one involving probity and ethics.

Whilst the Tribunal was of the view that Dr Comisky had not yet gained full insight or remediated his dishonesty, the steps he has taken to date demonstrate that he is willing to engage and to seek support and guidance from those around him. Given the developing nature of his insight, the Tribunal considered that there remained a risk of Dr Comisky repeating his dishonesty. The Tribunal did not believe that this risk was significant, due to his remediation and reflections to date. This included an extremely detailed reflective statement prepared in October 2024, which was prepared after attending relevant CPD courses. However, the Tribunal did consider that there was more work required to evidence how Dr Comisky will maintain his integrity even in highly stressful situations.

154. The Tribunal had regard to the factors it has identified as aggravating and mitigating and its assessment of the scale of the misconduct. Overall, the Tribunal decided that this case was not one where Dr Comisky's misconduct was fundamentally incompatible with continued registration. Therefore, it considered that erasure would not be appropriate or proportionate, nor would it be in the public interest.

155. In light of the above, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction when considering Dr Comisky's interests alongside the public interest. The Tribunal took into account the impact that this sanction may have upon Dr Comisky. However, in all the circumstances the Tribunal concluded that his interests are outweighed by the need to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour.

Length of Suspension

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

157. The Tribunal considered the aggravating factors in this case and acknowledged that this was a serious departure from the principles set out in GMP, and that Dr Comisky had not been open, honest and transparent with the GMC in his Rule 7 response or in answers to cross-examination.

158. The Tribunal also had regard to the mitigating factors of the case in considering the length of the suspension, including Dr Comisky's apology and previous good character.

159. Taking all these elements into account, the Tribunal was satisfied that imposing a period of six months' suspension was appropriate and proportionate. This reflected the fact

that the allegation involved a single incident of dishonesty, that was aggravated by the subsequent lack of candour in response to particular elements of the GMC investigation and the Tribunal process. In the Tribunal's view, a six-month suspension was sufficient to satisfy the need to promote and maintain public confidence and to send out a clear message to the profession that this type of conduct is unacceptable, in order to maintain proper professional standards.

160. This period of suspension will also give Dr Comisky sufficient time to further develop his insight in relation to the dishonesty finding and to continue to take action to remediate. The Tribunal was satisfied that a reasonable and well-informed member of the public or the profession would be satisfied that this was a proportionate response to Dr Comisky's dishonest conduct.

161. Accordingly, the Tribunal determined to suspend Dr Comisky's registration for a period of six months.

Review

162. The Tribunal determined to direct a review of Dr Comisky'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 Comisky to demonstrate how he has developed insight, taken further steps to remediate and reflected on his dishonest conduct. It therefore may assist the reviewing Tribunal if Dr Comisky provides:

- Evidence of any courses and other activities he has undertaken in order to demonstrate remediation of his dishonesty;
- Evidence that he has gained insight, such as reflections on the findings of the Tribunal;
- Evidence that he has kept his knowledge and skills up to date, including any CPD; and
- Any other information that he considers will assist.

Determination on Immediate Order - 27/11/2024

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

Submissions

164. On behalf of the GMC, Mr Coke-Smyth submitted that there is no application for an immediate order.

165. On behalf of Dr Comisky, Mr Gledhill submitted that an immediate order is not necessary in this case. He stated that Dr Comisky has worked throughout the investigation as a very able doctor. He reminded the Tribunal of the evidence of the witnesses, including Dr Comisky's current employer, that he is a very able practitioner. Mr Gledhill confirmed that there is no interim order currently in place.

The Tribunal's Determination

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

'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. ...

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.'

167. The Tribunal took into account that Dr Comisky had continued working in a clinical setting throughout the investigation process. It also noted that the dishonesty arose whilst working in an area unfamiliar to him, and that he was now working in his chosen specialty as a psychiatrist. The Tribunal therefore determined that an immediate order was not necessary to protect members of the public.

168. The Tribunal was also not satisfied that an order was necessary to protect public confidence in the profession, or that it was otherwise in the public interest or Dr Comisky's best interests.

169. This means that Dr Comisky's registration will be suspended 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 Comisky does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

170. There is no interim order to revoke.

171. That concludes this case.