Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 10/12/2018 - 20/12/2018

Medical Practitioner's name: Dr David NZEGBULEM

GMC reference number: 4340881

Primary medical qualification: MB BS 1991 University of Nigeria

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Damian Cooper
Lay Tribunal Member:	Mrs Carol Jackson
Medical Tribunal Member:	Dr Barry Adams-Strump

Tribunal Clerk:	Ms D Montgomery

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	n/a
GMC Representative:	Ms Chloe Hudson, Counsel

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

Overarching Objective

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

Determination on Facts - 18/12/2018

Background

1. Dr Nzegbulem qualified in 1991 and prior to the events which are the subject of the hearing Dr Nzegbulem worked primarily as a General Practitioner. At the time of the first event Dr Nzegbulem was practising as a Locum Specialist Registrar (SpR) in Obstetrics and Gynaecology at the West Hertfordshire Hospitals NHS Trust (the Trust).

2. The allegation that has led to Dr Nzegbulem's hearing can be summarised as concerns that Dr Nzegbulem did not have the appropriate qualifications and/or experience to undertake the role of Locum SpR in Obstetrics and Gynaecology and concerns that he was working outside the limits of his competence in doing so, and particularly when he performed a category 1 caesarean section (where there is a risk to life) on Patient A. Following the procedure, Patient A suffered complications necessitating her transfer to the Intensive Care Unit (ICU) on two occasions and further treatment thereafter.

3. On 19 September 2016, the Medical Director of the Trust wrote to Professor H, the Medical Director and Responsible Officer (RO) of NHS England to advise that Dr Nzegbulem had been referred to the General Medical Council (GMC) as he had been involved in a Serious Incident whilst performing a caesarean section. As a result of the concerns raised, NHS England made a risk assessment based on the information before them and a decision was made to suspend Dr Nzegbulem from the Medical Performers List (MPL) with immediate effect. Dr Nzegbulem was notified of the decision by letter and by email, dated 19 September 2016. He responded the same evening. A meeting with NHS England was subsequently arranged for 26 September 2016.

4. On 20 September 2016, Dr Nzegbulem's suspension was referred to a Performers List Decision Panel (PLDP) for review in line with the National Health Service (NHS) (Performers List) (England) Regulations 2013. The PLDP determined that conditions could be offered to Dr Nzegbulem. However, he remained under suspension until he either agreed to the conditions or provided written or oral representations at a further meeting of the PLDP.

5. It is alleged that Dr Nzegbulem undertook locum GP placements when he was aware that he had been suspended from the Medical Performers List (MPL) and that his actions in doing so were dishonest. It is further alleged that when Dr Nzegbulem later accepted conditional inclusion on the MPL he subsequently breached the conditions. It is alleged that Dr Nzegbulem's actions in doing so were dishonest.

The Outcome of Applications made during the Facts Stage

6. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the GMC (Fitness to Practise) Rules 2004 (the Rules), to proceed with the hearing in Dr Nzegbulem's absence. The Tribunal's full decision is included at Annex A.

7. The Tribunal also granted the GMC's application, made pursuant to Rule 17(6) of the Rules, to amend sub-paragraph 1(a) of the Allegation for the purposes of clarification. Ms Hudson also applied to withdraw sub- paragraphs 1(d), 3(c), 3(d), 3(e), 5(a), 5(c)(ii) and paragraphs 10, 11 and 12 on the basis that the evidence no longer supported those matters. She further requested that the Allegation be renumbered accordingly. The Tribunal's full decision is included at Annex B.

The Allegation

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

> 1. You worked as a Locum Specialist Registrar ('SpR') in Obstetrics and Gynaecology at the West Hertfordshire NHS Trust in November 2015 (the 'Post') when you did not have the appropriate qualifications and/or experience, in that you had:
>
> > ~~a. limited experience in obstetrics and gynaecology obtained between 1993 to 1995 as a Senior House Officer~~;
> >
> > a. limited experience in obstetrics and gynaecology obtained between:
> >
> > > i. in or around 1993 to 1995 as a Senior House Officer; **To be determined as amended**
> > >
> > > ii. on or around 1 January 2015 and 9 November 2015. **To be determined as amended**
> >
> > b. not been recruited into a formal postgraduate training programme in obstetrics and gynaecology either in the United Kingdom or abroad; **To be determined**

c. not passed Part 1 or Part 2 of the MRCOG examination; **To be determined**

~~d. not undertaken any other form of training in obstetrics and gynaecology~~. **Withdrawn**

2. As a consequence of the matters set out in paragraph 1 you knew or ought to have known that you were working outside the limits of your competence when you:

a. undertook the Post knowing that it would involve clinical duties including supervising and managing labour, trials of operative vaginal delivery and caesarean sections without direct supervision; **To be determined**

b. were the responsible resident Obstetrician for the Labour Ward; **To be determined**

c. proceeded with a trial of operative vaginal delivery; **To be determined**

d. proceeded to carry out a category 1 caesarean. **To be determined**

3. On 10 November 2015 you performed a category 1 caesarean (the 'Surgery') on Patient A and you failed to:

a. notify and discuss Patient A's potential Surgery with Dr B prior to the transfer to the operating theatre; **To be determined**

b. ask Dr B to attend the Surgery, or in the alternative, ask Dr C to attend the Surgery; **To be determined**

~~c. give an adequate explanation to Patient A regarding why the Surgery was necessary~~; **Withdrawn**

~~d. obtain required and relevant oral consent from Patient A prior to the Surgery~~; **Withdrawn**

~~e. obtain required and relevant written consent from Patient A prior to the Surgery~~; **Withdrawn**

~~f.~~ c. obtain written consent for the trial of instrumental delivery in theatre and possible emergency surgery thereafter; **To be determined**

~~g.~~ d. recognise the correct anatomy in that you commenced suturing the uterine incision incorrectly; **To be determined**

~~h.~~ e. administer uterotonic medication to reduce Patient A's blood loss. **To be determined**

4. During the Surgery on Patient A you made the uterine incision too low. **To be determined**

5. You failed to adequately record information in Patient A's medical records in that you did not:

~~a. document that you gave Patient A an adequate explanation of why the Surgery was necessary~~; **Withdrawn**

a. make any contemporaneous note of your second attendance in labour; **To be determined as amended**

~~c. document that you had obtained~~:

~~i. written consent~~;

~~ii. oral consent~~. **Withdrawn**

b. document that you had obtained written consent. **To be determined as amended**

6. On the following dates you worked in locum GP placements:

a. 29 September 2016 at Hilltop Medical Practice; **To be determined**

b. 30 September 2016 at Orchard House Surgery. **To be determined**

7. You undertook the work placements referred to in paragraph 6 when you:

a. were suspended from the Medical Performers List; **To be determined**

b. knew you were suspended from the Medical Performers List. **To be determined**

8. On or around 29 September 2016 you accepted conditional inclusion on the Medical Performers List. **To be determined**

9. You breached the conditions referred to in paragraph 8 by:

a. working on or around 17 occasions in posts of less than two weeks duration; **To be determined**

b. working on or around five occasions out of hours; **To be determined**

c. failing to inform your immediate manager at your place of work of the conditions on one or more occasions; **To be determined**

d. working on two or more occasions as a single-handed practitioner; **To be determined**

e. failing to inform your locum agency that you had conditional inclusion on the Medical Performers List. **To be determined**

~~10. On 13 October 2016 the Interim Orders Tribunal ('IOT') of the Medical Practitioners Tribunal Service, imposed an interim order of conditions ('the interim order') on your registration~~. **Withdrawn**

~~11. Between 16 October 2016 and 21 October 2016 you breached condition 2(a) of the interim order in that you failed to notify the GMC that you had accepted posts with~~:

~~a. The Clover Centre~~; **Withdrawn**

~~b. Moredon Medical Centre~~; **Withdrawn**

~~c. The Grange Road Practice~~; **Withdrawn**

~~d. Royal Hospital for Neuro-Disability~~. **Withdrawn**

~~12. Between 20 October 2016 and 21 October 2016 you breached condition 4 of the interim order in that you failed to get the approval of the GMC before starting work in a non-NHS post or setting, with the Royal Hospital for Neuro-Disability~~. **Withdrawn**

~~13. Your actions as set out at paragraphs 6, 7, 9-11 and 12 above were dishonest~~.

10. Your actions as set out at paragraph 6 were dishonest by reason of paragraph 7. **To be determined**

11. Your actions as set out in paragraph 9 were dishonest. **To be determined**

Factual Witness Evidence

9. The Tribunal received evidence on behalf of the GMC from the following witnesses:

- Dr B, Obstetrician and Gynaecologist Registrar ST6 at the Trust at the time of events, in person
- Ms C, Programme Manager, NHS England, Central Midlands (NHS England), in person
- Dr D, Consultant Obstetrician and Gynaecologist at the Trust, in person
- Ms E, Compliance Manager, Locum Staffing, in person.

10. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Dr F, Consultant Urological Surgeon at the Trust.

Expert Witness Evidence

11. The Tribunal received evidence from the GMC expert witness, Dr G, Consultant in Obstetrics and Gynaecology, who provided an expert report, dated 15 May 2017. Dr G was instructed to comment on the overall care provided by Dr Nzegbulem to Patient A and to assist the Tribunal in understanding the professional standards to be expected of a reasonably competent SpR in Obstetrics and Gynaecology. Dr G was also asked to provide an opinion on whether Dr Nzegbulem met those standards.

12. The Tribunal found Dr G to be a credible and helpful witness and it was satisfied that he had the appropriate experience and qualifications to enable him to provide an opinion on the care provided to Patient A by Dr Nzegbulem. The Tribunal was also satisfied that Dr G was able to provide an opinion on whether Dr Nzegbulem had the appropriate qualifications and/or experience to undertake the role of SpR in Obstetrics and Gynaecology.

Documentary Evidence

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

- factual accounts of Patient A's care from Dr D, Dr F and Dr B
- email correspondence between the GMC and Dr Nzegbulem's locum agency, Locum Staffing
- Dr Nzegbulem's National Performers List application form, dated 1 October 2015
- Dr Nzegbulem's CV, stamped 'Original seen 23 October 2015'
- Practitioner Performance Team Meeting Notes, dated 26 September 2016
- email correspondence between Dr Nzegbulem and NHS England
- Dr Nzegbulem's GP/Out of Hours timesheets, spanning the period 29 September 2016 to 21 October 2016
- email correspondence between NHS England and the GMC
- Patient A's medical records
- Root Cause Analysis Investigation report, undated
- Dr Nzegbulem's written response to the GMC, dated 11 October 2016.

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 Nzegbulem 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 as alleged.

15. The Legally Qualified Chair referred the Tribunal to the Supreme Court judgment in the case of Ivey v Genting Casinos (UK) Limited [2017] UKSC 67, in which Lord Hughes set out the correct test for dishonesty, which is as follows:

> 'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1

17. The Tribunal had regard to Patient A's medical records which show that Dr Nzegbulem signed the retrospective entry in the 'labour documentation' that he made on 10 November 2015 as 'locum Registrar'. Accordingly, it was satisfied that Dr Nzegbulem worked as a Locum SpR.

18. In considering whether Dr Nzegbulem had the appropriate qualifications and/or experience to undertake the role, the Tribunal had regard to Dr Nzegbulem's National Performers List application form which sets out his experience in Obstetrics and Gynaecology, the Practitioner Performance Team Meeting notes, his written response to the GMC and the expert evidence of Dr G.

19. In his Performers List application, Dr Nzegbulem stated that he worked as a Senior House Officer (SHO) in Obstetrics and Gynaecology from the period August 1993 to September 1994. He also stated that he had worked as a SpR in Obstetrics and Gynaecology during the period February to September 2015 and October 2015.

20. In his written response to the GMC, Dr Nzegbulem stated that in January 2015, he explored the option of completing his training in Obstetrics and Gynaecology and discussed his plan with 'various consultants'. He stated that he then put himself forward for SHO jobs in Obstetrics and Gynaecology, despite having achieved Senior SHO status previously.

21. Dr Nzegbulem stated that, as he was keen to work in a busy unit, he accepted a role at the Liverpool Women's Hospital, a unit that had close to 10,000 deliveries a year. He stated that he discussed his plans with the Obstetrics & Gynaecology Clinical Director who advised that, considering his age, a more appropriate route for his training, would be through 'Article 14'. Dr Nzegbulem stated that he was encouraged to get on the Trainees Register and to put himself forward for procedures which would be logged. He stated that after a few weeks in the job he was advised that 'all the midwives and senior doctors' recognised his 'experience and keenness' and believed that he may be suited to the Registrar role that they were considering creating.

22. Dr Nzegbulem informed the GMC that after working several sessions at Liverpool, an opportunity arose for him to do SHO sessions at the Coventry University Hospital. He stated that within two weeks he was advised by the lead consultant that everyone seemed 'really impressed' with his knowledge and skill and were happy for him to step up to the Junior Registrar role. Dr Nzegbulem stated that his role as Junior Registrar involved busy Labour ward on-call shifts with the following duties:

- labour ward management
- antenatal care

- labour care, including caesarean sections and assisted deliveries (Forceps and Ventouse)
- foetal blood sampling.

23. Dr Nzegbulem further stated that he was fortunate to work with 'extremely keen consultants' who were 'very keen to teach/supervise and assess his surgical skills'.

24. Dr Nzegbulem stated that he subsequently took up a position at Peterborough Hospital Obstetric Unit where his surgical skills were assessed over a three week period of busy on-calls with resident consultants. He stated that he was then 'unanimously offered a substantive post as a Trust Registrar' and was due to commence in the post on 1 December 2015.

25. Dr Nzegbulem informed the GMC that although the 'affirmation of his competence' from Peterborough Hospital, together with the feedback from Coventry, had boosted his confidence in his abilities, he was still aware of his limitations. He stated that when his agency contacted him about the locum work at Watford Hospital he emphasised that he would only accept a junior registrar role where there was senior registrar cover. Dr Nzegbulem stated that his agency forwarded his CV to Watford Hospital, although he had not updated his CV with his current experience at that time. He stated that his agency subsequently advised him that Watford Hospital were happy for him to work there as they had received good references for him.

26. Dr G reviewed the documentation submitted by Dr Nzegbulem as evidence of his experience, specifically the various workplace based assessments in the form of Objective Structured Training Assessments which Dr G stated formed part of the overall training log for specialty training in Obstetrics and Gynaecology under the auspices of the Royal College of Obstetricians and Gynaecologists (RCOG). These assessments included 'opening and closing the abdomen, caesarean section and perineal repair'. Dr G stated that Dr Nzegbulem was considered to be competent for those particular cases. However, he noted that some forms were completed by fellow Trainees. Dr G also identified two caesarean section cases with complications and noted that at least one procedure had been described on more than one occasion. Dr G commented that this was a small part of the training and must be viewed in context. He stated that the fact that Dr Nzegbulem was deemed competent in some procedures did not mean that he was competent generally.

27. Dr G noted that Dr Nzegbulem had not undergone a formal postgraduate training programme in Obstetrics and Gynaecology, which would have entailed a formal structured training programme over seven years, including completion of log books, formative and structured assessments and an annual review of clinical practice. He further noted that Dr Nzegbulem had not passed his Part 1 Membership of the RCOG examination, which would be expected of a SpR.

28. Dr G stated that, although Dr Nzegbulem had been employed as a SHO between September 1993 and June 1995, his experience would have been limited. Dr G noted that it was not until 2015, some 20 years later, that Dr Nzegbulem renewed his clinical practice in Obstetrics and Gynaecology. Dr G concluded that Dr Nzegbulem's limited experience in 1993 – 1995 was not sufficient for him to undertake Locum SpR duties in 2015 as he did not have the appropriate speciality experience and/or qualifications.

29. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem worked as a Locum SpR in Obstetrics and Gynaecology when he did not have the appropriate qualifications and/or experience in that: he had limited experience in Obstetrics and Gynaecology; had not been recruited into a formal postgraduate training programme in Obstetrics and Gynaecology, within the UK or abroad: and had not passed Part 1 or Part 2 of the Membership of the RCOG examination. Accordingly it found the entirety of this paragraph of the allegation proved.

Paragraph 2

30. The Tribunal accepted Dr G's evidence that Dr Nzegbulem would have been aware of the duties expected of a SpR when he put himself forward for the post. Dr G stated that in undertaking the post Dr Nzegbulem placed himself in a situation where he was the responsible resident Obstetrician for the Labour ward when he had neither sufficient experience nor the qualifications to do so. Dr G stated that it was totally inappropriate that Dr Nzegbulem had applied for a SpR role in Obstetrics and Gynaecology and totally inappropriate that he had been appointed.

31. It is accepted that Dr Nzegbulem proceeded with a trial of operative vaginal delivery before proceeding to carry out a category 1 caesarean. This is recorded in Patient A's medical records. The Tribunal had regard to the identified risk factors in Patient A's case and it considered that any reasonable doctor with such limited experience, particularly where there had been a 20 year gap in the relevant training, would have known that they were working outside the limits of their competence when they undertook the procedure in these circumstances. The Tribunal was satisfied that the results in Patient A's case also demonstrate that Dr Nzegbulem was working outside the limits of his competence.

32. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem knew or ought to have known that he was working outside the limits of his competence when he undertook the post knowing what it would involve and when he proceeded with a trial of operative vaginal delivery before proceeding to carry out a category 1 caesarean. Accordingly it found the entirety of this paragraph of the allegation proved.

Paragraph 3(a)

33. The Tribunal accepted Dr G's evidence that, faced with a potential difficult caesarean section, Dr Nzegbulem should have discussed this with Dr B, the Senior Registrar present in the unit at the time, and either specifically asked the Senior Registrar to attend or asked the Consultant on call to attend.

34. Dr Nzegbulem accepts that he did not notify and discuss Patient A's potential surgery with Dr B prior to the transfer to the operating theatre. However, he stated that during the handover he had been given the impression that the senior registrar was responsible for covering Gynaecology only and that any concerns should be raised with the on-call consultant.

35. In his witness statement, Dr B confirmed that he was bleeped to attend theatre to assist Dr Nzegbulem but that prior to this, Dr Nzegbulem had not discussed Patient A with him or the proposed management plan. He stated that as Dr Nzegbulem had not informed him of a case being taken to theatre, he was unaware of the procedure and carried on with his commitments as the Registrar on-call for Gynaecology. The Tribunal had regard to Dr B's evidence that, as they were the out of hours team working together, it was not unusual to inform all team members of decisions to transfer patients to theatre as they may be required to cover the labour ward during this time and be accessible to respond to emergencies within the department. The Tribunal found Dr B to be a credible witness who gave cogent and consistent evidence. It did not find it credible that Dr Nzegbulem believed he could not refer to the Senior Registrar who was on site when deciding to proceed with a trial of operative vaginal delivery then proceeding to a category 1 caesarean.

36. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem had failed to notify and discuss Patient A's potential surgery with Dr B prior to the transfer to the operating theatre. Accordingly, it found this sub-paragraph of the allegation proved.

Paragraph 3(b)

37. In his written response to the GMC, Dr Nzegbulem stated that he had telephoned the on-call consultant to advise her about Patient A's condition and his management plan. In her witness statement, Dr D confirmed that it was normal practice for the Registrar to phone the consultant if a patient was being taken to theatre for a caesarean section. However she could not specifically recall if Dr Nzegbulem called her. She stated that if he had called her she would have referred him to the Senior Registrar, Dr B, as this was normal practice. She further stated that she would have attended herself if Dr B had been unavailable or if Dr Nzegbulem had asked her to attend.

38. Having considered all the evidence, the Tribunal accepted Dr B's evidence that he was not asked to attend the surgery until after the surgery had commenced and complications had developed. The Tribunal accepted Dr D's evidence and determined that she was also not asked by Dr Nzegbulem to attend. Accordingly, it found this sub-paragraph of the allegation proved.

Paragraph 3(c)

39. The Tribunal accepted Dr G's evidence that Dr Nzegbulem should have obtained written consent from Patient A and that this was consistent with the GMC's guidance in 'Good medical practice' and guidance issued by the RCOG. Dr G also stated that he could identify no adequate reason for written consent not to have been obtained in this case.

40. The Tribunal had regard to Patient A's medical records in which there is no note of written consent being obtained.

41. In his written response to the GMC, Dr Nzegbulem stated that he was certain that he consented Patient A for a possible category 1 caesarean section. He stated that the consent form, 'which the patient did sign' was not included in the pack he received from the GMC. However, he referred to an entry he made in Patient A's medical records as follows:

> 'patient taken to theatre after consenting for trial of forceps having discussed the case with the on-call consultant'.

42. There is no reference in the medical notes to written consent having been obtained and the Tribunal has seen no evidence of written consent.

43. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem had failed to obtain written consent for the trial of instrumental delivery in theatre and possible emergency surgery after. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 3(d)

44. The Tribunal had regard to Dr G's evidence that Dr Nzegbulem's standard of care was inadequate as he failed to recognise the correct anatomy and commenced suturing the incision incorrectly.

45. In his written response to the GMC, Dr Nzegbulem stated that by the time Dr B arrived, they were still trying to secure haemostasis so formal closure of the uterus had not commenced. Dr Nzegbulem referred to his retrospective entry in which he noted that 'an attempt was made to close the first layer but there was difficulty finding the left edge of the lower segment'. Dr Nzegbulem denied that he had closed

the first layer requiring it to be re-sutured. He stated that he enlisted help directly as he realised the anatomy was ambiguous and that he was running into difficulty.

46. The Tribunal had regard to Dr B's witness statement and factual account in which he recalled that, when he attended the theatre, he could see that there were some issues with Patient A, notably bleeding. Dr B stated that on inspecting the site the repair did not seem sufficient to him. Dr B stated that he took over the procedure which allowed him to get closer to the surgical site. He noted that there were multiple bleeding points, tears to the uterus at the corners of where the initial incision had been made and the repair was inadequate. Dr B also stated that he had to undo some of Dr Nzegbulem's sutures as they were incorrectly placed and left a raw edge of the incision unrepaired and bleeding.

47. The Tribunal has previously stated that he found Dr B to be a credible and consistent witness. It noted that Dr Nzegbulem's account was made retrospectively, after such time as he had been made aware of the complications. Having considered all of the evidence, the Tribunal was satisfied that Dr Nzegbulem had failed to recognise the correct anatomy in that he commenced suturing the uterine incision incorrectly. It was convinced by Dr B's detailed account rather than Dr Nzegbulem's notes which the Tribunal believed were self-serving and inaccurate. Accordingly, it found this sub-paragraph of the allegation proved.

Paragraph 3(e)

48. In his written response to the GMC, Dr Nzegbulem stated that by the time Dr B arrived he had instructed the anaesthetist to administer Syntocinon-Bolus. However, the Tribunal noted that there is no reference to uterotonics in Dr Nzegbulem's entry in Patient A's medical records.

49. The Tribunal had regard to Dr B's witness statement in which he recalled that when he attended theatre he asked the anaesthetist if any uterotonic agents had been administered. He was advised that Dr Nzegbulem had been asked if he wanted anything to be administered but had said no. Dr B's account is supported by his entry in Patient A's medical records which states that he enquired whether uterotonics had been given, was informed that they had not and requested that they be commenced.

50. The Tribunal noted that Dr Nzegbulem's claim to have administered uterotonics was not made until after he was under investigation and he had been informed of the allegation against him.

51. Having considered all the evidence, the Tribunal found Dr B's account to be clear and reliable. It was therefore satisfied that Dr Nzegbulem had failed to administer uterotonic medication to reduce Patient A's blood loss. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 4

52. The Tribunal had regard to Dr G's expert report in which he stated that the evidence indicates that Dr Nzegbulem made his uterine incision too low. The Tribunal also had regard to Dr B's factual statement in which he reported that on attending Patient A, 'inspection of the uterus demonstrated a low incision' and his diagram and annotations in the medical notes, which indicated that the incision was made low down on the uterus. Dr Nzegbulem, in his written response to the GMC commented that Dr D had advised him to 'make your incision a couple of CM higher next time', which suggested that it had been too low.

53. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem had made the uterine incision too low. Accordingly it found this paragraph of the allegation proved.

Paragraph 5(a)

54. The Tribunal accepted Dr G's evidence that Dr Nzegbulem had failed to make any contemporaneous note of his second attendance in labour and that he had been unable to identify any adequate reason for that not having been done.

55. In his written response to the GMC, Dr Nzegbulem stated that he believed that he was writing chronological notes as he went along, as was his normal practice. However, he stated that 'I regret and apologise if the Trust insist this could not be found'. The Tribunal noted that the Root Cause Analysis Report found that it was the midwife who documented Dr Nzegbulem's findings at the obstetric review, prior to going to theatre, and that Dr Nzegbulem included his findings in his retrospective record of the delivery.

56. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem had failed to adequately record information in Patient A's medical records in that he did not make any contemporaneous note of his second attendance in labour. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 5(b)

57. The Tribunal accepted Dr G's evidence that Dr Nzegbulem had failed to document that he had obtained written consent.

58. In his written response to the GMC, Dr Nzegbulem stated that he was certain that he had obtained written consent from Patient A, as she had signed a consent form. However, he acknowledged that the consent form had not been included in the pack he had received from the GMC. Dr Nzegbulem relied on the retrospective entry he made in Patient A's medical records as evidence that he had taken consent, which is as follows:

'patient taken to theatre after consenting for trial of forceps having discussed the case with the on-call consultant'.

59. Dr Nzegbulem stated that he hoped that this entry would indicate that consent was not overlooked negligently. The Tribunal noted that the only reference made by Dr Nzegbulem in relation to consent was made retrospectively and did not refer to him having obtained written consent. In addition, no copy of the written consent has been found in the medical records.

60. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem failed to document that he had obtained written consent. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 6

61. The Tribunal had regard to the evidence of Ms E, and in particular, the documentation provided to the GMC which listed all the bookings her agency had made with Dr Nzegbulem. This included placements on 29 September 2016 and 30 September 2016 at the Hilltop Medical Practice and Orchard House Surgery respectively. The Tribunal noted that Dr Nzegbulem does not dispute working on these dates.

62. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem worked in locum GP placements on the specified dates. Accordingly it found the entirety of this paragraph of the allegation proved.

Paragraph 7(a) and 7(b) in relation to 6(a)

63. Dr Nzegbulem attended a Practitioners Performance Meeting with NHS England on 26 September 2016. The notes of the meeting record that Dr Nzegbulem was taken through the conditions that had been proposed by the PLDP on 20 September 2016. Dr Nzegbulem stated that he understood the conditions but was not prepared to accept them at that point as 'he felt that he had done nothing wrong' and had evidence that would corroborate that he was qualified to undertake caesarean sections. Dr Nzegbulem was advised that, as he had not accepted the conditions, his suspension would remain in place. He was informed that he had 28 days to submit written representations to NHS England and to confirm whether he would like the opportunity to make oral representations before a further meeting of the PLDP was convened.

64. On 28 September 2016, Dr Nzegbulem emailed Ms C to advise that he was considering accepting the conditions, primarily so as 'not to disappoint staff and patients'. On 29 September 2016, Ms C responded and confirmed that Dr Nzegbulem had the full 28 day notice period, in which he could either accept the conditions as

proposed and waive his right to the notice period, or he could provide written or oral representations at a further meeting of the PLDP. In a subsequent email sent the same day, timed at 13.37, Ms C advised Dr Nzegbulem that if he wished to accept the proposed conditions then she would need him to confirm in writing that he wished to be included in the MPL subject to the conditions and that he would undertake to comply with them. Dr Nzegbulem responded by email, timed at 15.17, and attached a letter confirming his acceptance of the conditions imposed by the PLDP. In her oral evidence to the Tribunal Ms C confirmed that the conditions took effect from 30 September 2016 when she confirmed receipt of Dr Nzegbulem's acceptance.

65. Having considered all of the evidence, the Tribunal accepted that, as a matter of fact, Dr Nzegbulem worked in a locum GP placement on 29 September 2016 when he was suspended from the MPL. Accordingly, it found sub-paragraph 7(a) proved in relation to sub-paragraph 6(a). However, the Tribunal was also satisfied that having accepted the PLDP conditions, Dr Nzegbulem genuinely believed that he was no longer suspended from the MPL. Having considered all the evidence, the Tribunal was not satisfied that the GMC had discharged its burden of proving, on the balance of probabilities, that Dr Nzegbulem knew that he was suspended from the MPL on 29 September 2016. Accordingly it found sub-paragraph 7(b) not proved in relation to sub-paragraph 6(a).

Paragraph 7(a) and 7(b) in relation to 6(b)

66. The Tribunal had regard to Ms C's evidence, that Dr Nzegbulem's suspension from the MPL ended on 30 September 2016 when she confirmed receipt of Dr Nzegbulem's acceptance of the PLDP conditions.

67. Having considered all of the evidence, the Tribunal was not satisfied that the GMC had discharged its burden of proving, on the balance of probabilities, that Dr Nzegbulem was suspended from the MPL on 30 September 2016. Accordingly it found sub-paragraph 7(a) and 7(b) not proved in relation to sub-paragraph 6(b).

Paragraph 8

68. The Tribunal had regard to Dr Nzegbulem's email and attached letter, dated 29 September 2016, accepting conditional inclusion on the MPL. Accordingly it found this paragraph of the allegation proved. The conditions accepted by Dr Nzegbulem were as follows:

> 1. You must attend a meeting with your Responsible Officer or his deputy prior to resuming any post in General Practice;

2. You must provide NHS Englan with details all [sic] of the general practices in which you have worked in the past two years, and allow NHS England to seek references or reports from these practices;

3. You must provide NHS England with your full contact details including home address and telephone number, within seven working days of these conditions becoming effective;

4. You must not perform any minor surgery;

5. You must not work:

   a. as a locum in a post of less than two weeks duration;

   b. in out-of-hours;

   c. in any single-handed practice;

6. You must notify NHS England:

   a. of your current employer(s) and place(s) of work;

   b. of any new post you accept, before starting it;

   c. if any formal disciplinary proceedings against you are started by your employer and/or contracting body within seven calendar days of being formally notified of such proceedings;

7. You will complete a medical appraisal with your NHSE allocated appraiser and to the standard required by NHSE, within six months of these conditions becoming effective;

8. You must inform the following persons of the above conditions listed above:

   a. your employer and/or contracting body;

   b. your responsible officer (or their nominated deputy);

   c. your immediate line manager at your place of work, at least one working day before starting work (for current and new posts including locum posts);

   d. any prospective employer and/or contracting body, at the time of application;

e. any locum agency or out-of-hours service you are registered with;

f. your medical indemnity provider.

Paragraph 9(a)

69. The Tribunal had regard to the documentation provided by Ms E which confirmed that Dr Nzegbulem worked on 17 occasions in posts of less than two weeks duration.

70. Having considered the evidence, the Tribunal was satisfied that Dr Nzegbulem breached condition 5(a) of his NHS England conditions. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 9(b)

71. The Tribunal had regard to the letter from Ms C to Dr Nzegbulem, dated 11 November 2016, which defined out-of-hours as 'not between 8.00am and 6.30pm Monday to Friday'. Whilst out-of-hours is not otherwise officially defined, the Tribunal accepted Ms C's definition as reasonable. The Tribunal had regard to the table setting out Dr Nzegbulem's working pattern which shows that on 6 occasions he worked until at least 8.00pm during October 2016.

72. Having considered the evidence, the Tribunal was satisfied that Dr Nzegbulem breached condition 5(b) of his NHS England conditions. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 9(c)

73. The Tribunal had regard to the emails, dated 25 October 2016, from the DMC Crystal Palace Road and Jai Medical Centre confirming that Dr Nzegbulem had not informed them of his conditions when he worked at those practices in 2016.

74. Having considered the evidence, the Tribunal was satisfied that Dr Nzegbulem breached condition 5(c) of his NHS England conditions. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 9(d)

75. Although the Tribunal has seen Ms C's communications alleging a breach of condition of 5(c) of the PLDP conditions, it has not been provided with any documentary evidence establishing which of the practices that Dr Nzegbulem worked at were single-handed. The Tribunal noted that in his written response to NHS

England, dated 2 November 2016, Dr Nzegbulem asserted that it was sometimes not easy to tell when a practice was single-handed, particularly in large health centres.

76. Having considered the evidence, the Tribunal was not satisfied that the GMC had discharged its burden of proving, on the balance of probabilities, that Dr Nzegbulem had worked on two or more occasions as a single-handed practitioner. Accordingly it found this sub-paragraph of the allegation not proved.

Paragraph 9(e)

77. The Tribunal had regard to the Ms E's witness statement in which she reported that the GMC had sent the Performers List conditions to her by email on 26 October 2016. Ms E stated that she thought that this was the first time they had been made aware of them. Ms E also confirmed this in her oral evidence. The Tribunal found Ms E to be a credible and reliable witness who was happy to confirm what was in her knowledge but also frank in admitting what she was unable to comment on.

78. Having considered the evidence, the Tribunal was satisfied that Dr Nzegbulem breached condition 8(e) of his NHS England conditions. Accordingly it found this sub-paragraph of the allegation proved.

Paragraph 10

79. The Tribunal has previously found that Dr Nzegbulem believed that his suspension from the MPL expired when he accepted conditional inclusion. The Tribunal was satisfied that this belief was genuinely held and an ordinary decent person would not find his conduct was dishonest. Accordingly, it found this paragraph of the allegation not proved.

Paragraph 11

80. The Tribunal had regard to Dr Nzegbulem's email to Ms C, dated 2 November 2016, in which he acknowledged that he had breached the conditions imposed on his practice by the PLDP. However, he denied that this was 'deliberate' or 'pre-meditated'. Dr Nzegbulem stated that he had had 'an open and honest chat' with his locum agency and made it clear that he was not to be booked in single-handed practices, out-of-hours, or posts lasting less than two weeks. Dr Nzegbulem stated that he relied on his agency to ensure that this was adhered to. He stated that most of his sessions were ongoing bookings, which would be one or two sessions spread out over several weeks, and he was not aware that this did not fit within the definition of the conditions.

81. Dr Nzegbulem reminded Ms C that he had been invited by the GMC to attend an Interim Orders Tribunal (IOT) a few days after he had accepted the PLDP

conditions, the outcome of which was conditions on his registration. He noted that he had previously commented to Ms C that the GMC conditions did not appear to restrict his general practice in the same way as the PLDP conditions. Dr Nzegbulem stated that his understanding was that, in referring the matter to the GMC, NHS England was seeking guidance from the Regulator on more appropriate conditions. He stated that his honest impression was that the IOT conditions superseded his NHS England conditions. Dr Nzegbulem asserted that the two varying sets of conditions had put him in a 'double jeopardy' situation which left room for misunderstanding and misinterpretation.

82. The Tribunal did not find it credible that Dr Nzegbulem did not understand that both the PLDP and GMC conditions were applicable to his medical practice. The Tribunal noted that on 26 September 2016, Dr Nzegbulem had been taken through the conditions that had been proposed by the PLDP and had confirmed that he had understood them but was not prepared to accept them as he felt that he had done nothing wrong. The Tribunal noted that by his own admission, he pointed out to Ms C in a telephone call that the GMC conditions did not appear to restrict his general practice in the same way that the PLDP conditions did. This indicates that Dr Nzegbulem was aware that the conditions were distinct. Although Dr Nzegbulem attempted to put the onus for his compliance with his conditions on his agency, the Tribunal was satisfied by Ms E's evidence that if they had been made aware of the conditions they would have contacted the practices at which Dr Nzegbulem worked. Ms E also stated that they would have stopped booking Dr Nzegbulem until it had been established which practices could accommodate his conditions. In any event, the Tribunal was satisfied that it was Dr Nzegbulem's responsibility to ensure his compliance with the conditions.

83. Having considered all the evidence, the Tribunal was satisfied that Dr Nzegbulem was aware that he was breaching his PLDP conditions and that by the standards of ordinary people, his conduct was dishonest. Accordingly, it found this paragraph of the allegation proved.

The Tribunal's Overall Determination on the Facts

84. The Tribunal has determined the facts as follows:

> 1. You worked as a Locum Specialist Registrar ('SpR') in Obstetrics and Gynaecology at the West Hertfordshire NHS Trust in November 2015 (the 'Post') when you did not have the appropriate qualifications and/or experience, in that you had:
>
> > ~~a. limited experience in obstetrics and gynaecology obtained between 1993 to 1995 as a Senior House Officer~~;

a. limited experience in obstetrics and gynaecology obtained between:

i. in or around 1993 to 1995 as a Senior House Officer; **Determined and found proved as amended**

ii. on or around 1 January 2015 and 9 November 2015. **Determined and found proved as amended**

b. not been recruited into a formal postgraduate training programme in obstetrics and gynaecology either in the United Kingdom or abroad; **Determined and found proved**

c. not passed Part 1 or Part 2 of the MRCOG examination; **Determined and found proved**

~~d. not undertaken any other form of training in obstetrics and gynaecology~~. **Withdrawn**

2. As a consequence of the matters set out in paragraph 1 you knew or ought to have known that you were working outside the limits of your competence when you:

a. undertook the Post knowing that it would involve clinical duties including supervising and managing labour, trials of operative vaginal delivery and caesarean sections without direct supervision; **Determined and found proved**

b. were the responsible resident Obstetrician for the Labour Ward; **Determined and found proved**

c. proceeded with a trial of operative vaginal delivery; **Determined and found proved**

d. proceeded to carry out a category 1 caesarean. **Determined and found proved**

3. On 10 November 2015 you performed a category 1 caesarean (the 'Surgery') on Patient A and you failed to:

a. notify and discuss Patient A's potential Surgery with Dr B prior to the transfer to the operating theatre; **Determined and found proved**

b. ask Dr B to attend the Surgery, or in the alternative, ask Dr C to attend the Surgery; **Determined and found proved**

~~c. give an adequate explanation to Patient A regarding why the Surgery was necessary~~; **Withdrawn**

~~d. obtain required and relevant oral consent from Patient A prior to the Surgery~~; **Withdrawn**

~~e. obtain required and relevant written consent from Patient A prior to the Surgery~~; **Withdrawn**

~~f.~~ c. obtain written consent for the trial of instrumental delivery in theatre and possible emergency surgery thereafter; **Determined and found proved**

~~g.~~ d. recognise the correct anatomy in that you commenced suturing the uterine incision incorrectly; **Determined and found proved**

~~h.~~ e. administer uterotonic medication to reduce Patient A's blood loss. **Determined and found proved**

4. During the Surgery on Patient A you made the uterine incision too low. **Determined and found proved**

5. You failed to adequately record information in Patient A's medical records in that you did not:

~~a. document that you gave Patient A an adequate explanation of why the Surgery was necessary~~; **Withdrawn**

a. make any contemporaneous note of your second attendance in labour; **Determined and found proved as amended**

~~c. document that you had obtained~~:

~~i. written consent~~;

~~ii. oral consent~~. **Withdrawn**

b. document that you had obtained written consent. **Determined and found proved as amended**

6. On the following dates you worked in locum GP placements:

a. 29 September 2016 at Hilltop Medical Practice; **Determined and found proved**

b. 30 September 2016 at Orchard House Surgery. **Determined and found proved**

7. You undertook the work placements referred to in paragraph 6 when you:

a. were suspended from the Medical Performers List; **Determined and found proved in relation to 6(a) / Not proved in relation to 6(b)**

b. knew you were suspended from the Medical Performers List. **Not proved**

8. On or around 29 September 2016 you accepted conditional inclusion on the Medical Performers List. **Determined and found proved**

9. You breached the conditions referred to in paragraph 8 by:

a. working on or around 17 occasions in posts of less than two weeks duration; **Determined and found proved**

b. working on or around five occasions out of hours; **Determined and found proved**

c. failing to inform your immediate manager at your place of work of the conditions on one or more occasions; **Determined and found proved**

d. working on two or more occasions as a single-handed practitioner; **Not proved**

e. failing to inform your locum agency that you had conditional inclusion on the Medical Performers List. **Determined and found proved**

~~10. On 13 October 2016 the Interim Orders Tribunal ('IOT') of the Medical Practitioners Tribunal Service, imposed an interim order of conditions ('the interim order') on your registration~~. **Withdrawn**

~~11. Between 16 October 2016 and 21 October 2016 you breached condition 2(a) of the interim order in that you failed to notify the GMC that you had accepted posts with~~:

~~a.~~ ~~The Clover Centre~~; **Withdrawn**

~~b.~~ ~~Moredon Medical Centre~~; **Withdrawn**

~~c.~~ ~~The Grange Road Practice~~; **Withdrawn**

~~d.~~ ~~Royal Hospital for Neuro-Disability~~. **Withdrawn**

~~12. Between 20 October 2016 and 21 October 2016 you breached condition 4 of the interim order in that you failed to get the approval of the GMC before starting work in a non-NHS post or setting, with the Royal Hospital for Neuro-Disability~~. **Withdrawn**

~~13. Your actions as set out at paragraphs 6, 7, 9-11 and 12 above were dishonest~~.

10. Your actions as set out at paragraph 6 were dishonest by reason of paragraph 7. **Not proved as amended**

11. Your actions as set out in paragraph 9 were dishonest. **Determined and found proved**

Determination on Impairment - 19/12/2018

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 as set out before, Dr Nzegbulem's fitness to practise is impaired by reason of misconduct.

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. The Tribunal has received no further evidence at this stage of proceedings.

Submissions

3. On behalf of the GMC, Ms Hudson submitted that the facts in this case amount to misconduct and that Dr Nzegbulem's fitness to practise is impaired as a result. Ms Hudson stated that Dr Nzegbulem's misconduct can be categorised as follows:

- the clinical failings in respect of his care of Patient A when he was working outside the limits of his competence
- his dishonesty.

4. Ms Hudson submitted Dr Nzegbulem's misconduct is both individually and cumulatively serious. She referred the Tribunal to the GMC's guidance, Good medical practice (2013) (GMP) and, in particular, paragraphs 1, 7, 8, 14, 15, 16(d), 18, 65 and 66 which 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.
>
> 7. You must be competent in all aspects of your work, including management, research and teaching.
>
> 8. You must keep your professional knowledge and skills up to date.
>
> 14. You must recognise and work within the limits of your competence.
>
> 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
>
> b. promptly provide or arrange suitable advice, investigations or treatment where necessary
>
> c. refer a patient to another practitioner when this serves the patient's needs.
>
> 16. In providing clinical care you must:
>
> d. consult colleagues where appropriate.
>
> 18. You must make good use of the resources available to you.
>
> 65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.
>
> 66. You must always be honest about your experience, qualifications and current role.'

5. In respect of Dr Nzegbulem's clinical failings, Ms Hudson referred the Tribunal to the conclusions of the GMC expert, Dr G that, in placing himself in a situation where he was the responsible resident Obstetrician for the Labour Ward when he had neither the experience nor qualifications to do so, Dr Nzegbulem placed the wellbeing of mothers and babies at risk. Dr G concluded that Dr Nzegbulem's failings were seriously below the standard expected of a reasonably competent registrar in Obstetrics and Gynaecology.

6. In respect of Dr Nzegbulem's dishonesty, Ms Hudson submitted that it was persistent and repeated and breached a fundamental tenet of the profession. She submitted that fellow members of the profession would find it deplorable that Dr Nzegbulem had knowingly breached conditions imposed on his practice.

7. Ms Hudson submitted that Dr Nzegbulem has no insight into his actions and the consequences of them for his patients. In respect of the clinical issues, Ms Hudson stated that, although Dr Nzegbulem has apologised for his treatment of Patient A, there is no evidence that he has reflected properly on his mistakes. In respect of his dishonesty, Ms Hudson stated that, in seeking to blame his locum agency, Dr Nzegbulem has failed to take responsibility for his failings. Ms Hudson submitted that public confidence would be undermined if a finding of impairment was not made in this case.

The Relevant Legal Principles

8. 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.

9. The Tribunal had regard to the definition of misconduct, as set out in the case of Roylance v General Medical Council (No.2) [2000] 1 AC 311 (UKPC), which is as follows:

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

10. 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 and then whether the finding of serious misconduct could lead to a finding of impairment.

11. The Tribunal must determine whether Dr Nzegbulem's fitness to practise is impaired today, taking into account Dr Nzegbulem's 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 any likelihood of repetition.

The Tribunal's Determination on Impairment

12. The Tribunal first considered whether the facts as found proved amounted to misconduct. In doing so, it had regard to paragraphs 1, 7, 8, 14, 15, 16(d), 18, 65 and 66 of GMP, as referred to by Ms Hudson above. It also had regard to paragraph 76, which states:

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

13. In respect of Dr Nzegbulem's care of Patient A, the Tribunal has found that Dr Nzegbulem worked as a Locum SpR in Obstetrics and Gynaecology when he did not have the appropriate experience. It has also found that he knew that he was working outside the limits of his competence when he took the Post and proceeded to carry out a category 1 caesarean section. In doing so Dr Nzegbulem showed a disregard for patient safety and put the life of Patient A and her baby at risk. The Tribunal determined that Dr Nzegbulem put his own interests before those of the patients who would be under his care when undertaking the SpR role. The Tribunal acknowledged that the primary responsibility for working within his level of competence lay with Dr Nzegbulem. However, it had serious concerns about the fact that he had been appointed to the Post by the Trust given his lack of experience.

14. In respect of dishonesty, the Tribunal has found that Dr Nzegbulem worked in breach of conditions imposed on his practice by NHS England for the protection of patients. The Tribunal considered that Dr Nzegbulem had a number of opportunities to reconsider his decision to act in breach of his conditions but chose not to. The Tribunal was satisfied that Dr Nzegbulem had shown a reckless disregard for the systems designed to protect patients and maintain public confidence in the profession and that he had undermined the ability of NHS England to discharge its regulatory function in relation to the Medical Performers List.

15. The Tribunal was satisfied that Dr Nzegbulem's conduct, which was directly related to his professional practice, was serious and clearly breached the principles set out in GMP as referred to above.

16. Having considered the evidence, the Tribunal determined that Dr Nzegbulem's conduct, both individually and cumulatively, fell so far short of the standards to be expected of a registered medical practitioner as to amount to misconduct which was serious.

Impairment

17. Having found that the facts found proved amounted to misconduct, as set out above, the Tribunal went on to consider whether, as a result of that misconduct, Dr Nzegbulem's fitness to practise is currently impaired.

18. The Tribunal considered that the clinical failings in this case could be remediable. However, there is no evidence before the Tribunal that Dr Nzegbulem has undertaken any remediation in relation to his Obstetrics and Gynaecology practice. The Tribunal noted that Dr Nzegbulem had made a decision to return to General Practice.

19. The Tribunal had regard to Dr Nzegbulem's written response to the GMC, dated 11 October 2016, in which he stated that he had reflected deeply on the events of 10 November 2015. However, his reflections in relation to the care that he provided to Patient A appear to be limited to a conditional apology and to expressing his feeling of relief that she had not suffered a worse outcome than she already had. Dr Nzegbulem then goes on to describe the impact of events on him, specifically how he felt his 'recent surge in confidence following a good run of uneventful caesarean sections and good feedback severely knocked'. Dr Nzegbulem also appears to attribute his failings to the fact that a consultant was not available on site. This is despite the fact that he did not avail himself of the support that was accessible to him. The Tribunal considered Dr Nzegbulem's reflections to be contrived and self-serving and demonstrative of his lack of insight.

20. In relation to Dr Nzegbulem's dishonesty, the Tribunal was mindful that dishonesty may be difficult to remediate. However, there is no evidence before the Tribunal that Dr Nzegbulem has undertaken any remediation or reflection. Dr Nzegbulem has denied that he had been dishonest and attempted to deflect responsibility for his failure to comply with conditions to his locum agency. The Tribunal was satisfied that this was also demonstrative of a lack of insight on Dr Nzegbulem's part. Given its finding that Dr Nzegbulem lacks insight into both his clinical failings and his dishonesty, the Tribunal cannot be satisfied that there is not a likelihood of repetition.

21. The Tribunal has borne in mind the statutory overarching objective which is to protect the public. This includes: to protect and promote the health, safety and wellbeing of the public; to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal determined that all three limbs were

engaged in this case. Given the risk to patients from Dr Nzegbulem undertaking the Locum SpR role and his dishonesty, the Tribunal was convinced that public confidence in the profession would be undermined if a finding of impairment was not made in this case.

22. Having considered all the circumstances, the Tribunal has determined that Dr Nzegbulem's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 20/12/2018

1. Having determined that Dr Nzegbulem'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

2. The Tribunal has taken into account all the evidence received earlier in the hearing where relevant to reaching a decision on sanction.

Submissions

3. On behalf of the GMC, Ms Hudson submitted that the appropriate sanction in this case is one of erasure. She referred the Tribunal to the Sanctions guidance (February 2018) (SG), and in particular paragraphs 108, 109, 120 and 128 which state:

> '108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.
>
> 109 Any of the following factors being present may indicate erasure is appropriate…
>
> a A particularly serious departure from the principles set out in *Good medical practice* where the behaviour is fundamentally incompatible with being a doctor.
>
> b A deliberate or reckless disregard for the principles set out in *Good medical practice* and/or patient safety.

c Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients…

d Abuse of position/trust…

e …

f …

g …

h Dishonesty, especially where persistent and/or covered up…

i Putting their own interests before those of their patients…

j Persistent lack of insight into the seriousness of their actions or the consequences.

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

128 Dishonesty, if persistent and/or covered up, is likely to result in erasure…'

4. Ms Hudson submitted that Dr Nzegbulem's conduct is fundamentally incompatible with being a doctor. She submitted that Dr Nzegbulem did not, and does not, appear to have an understanding of the problem, despite having the benefit of an extended period in which he could have reflected and remediated. Ms Hudson stated that the repeated nature of Dr Nzegbulem's dishonesty is an aggravating factor in this case.

5. Ms Hudson submitted that it would be inappropriate to take no action given the lack of exceptional circumstances in this case. Ms Hudson further submitted that conditions would not be appropriate or workable given the Tribunal's finding that Dr Nzegbulem had previously breached conditions imposed on his practice. Finally, Ms Hudson submitted that suspension would not be appropriate given Dr Nzegbulem's multiple breaches of the principles set out in *Good medical practice,* his lack of remediation and the Tribunal's concern that there may be a risk of repetition.

The Tribunal's Determination on Sanction

6. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgement. In reaching its decision, the Tribunal has

taken account of the SG. It has borne in mind that although sanctions are not imposed to punish or discipline doctors, they may have a punitive effect.

7. Throughout its deliberations, the Tribunal has had regard to the principle of proportionality and has weighed the interests of the public with Dr Nzegbulem's interests.

8. The Tribunal considered whether there were any mitigating or aggravating factors in Dr Nzegbulem's case. The Tribunal noted that Dr Nzegbulem had made a semblance of an apology in respect of his treatment of Patient A but beyond that the Tribunal has identified no mitigating factors in this case.

9. The Tribunal considered the following to be aggravating factors:

- the fact that Dr Nzegbulem knowingly took on a post for which he was not qualified, thereby exposing everyone under his care to risk
- the fact that Dr Nzegbulem chose to proceed with a category 1 caesarean section on Patient A despite not having the appropriate experience, thereby putting the life of Patient A and her child at risk
- the fact that Dr Nzegbulem did not make use of the resources available to him by consulting with more senior colleagues
- the fact that Dr Nzegbulem's dishonesty was repeated.

10. The Tribunal considered each sanction in ascending order of seriousness, starting with the least restrictive.

No action

11. The Tribunal first considered whether it would be sufficient to conclude Dr Nzegbulem's case with no action. The Tribunal was satisfied that there were no exceptional circumstances in Dr Nzegbulem's case that would justify taking no action.

Conditions

12. The Tribunal then considered whether it would be sufficient to impose conditions on Dr Nzegbulem's registration. It has borne in mind that any conditions imposed should be appropriate, proportionate, workable and measurable.

13. The Tribunal concluded that it would not be possible to formulate workable conditions in a case where it has found that a doctor had previously breached conditions imposed on his practice and where it has identified that a doctor lacks insight. The Tribunal also considered that, given the seriousness of its findings in respect of Dr Nzegbulem, particularly the patient safety concerns, conditional registration would neither be appropriate nor proportionate.

Suspension

14. The Tribunal next considered whether it would be sufficient to suspend Dr Nzegbulem's registration. The SG, at paragraphs 91, 92, 93 and 97, states:

> '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…
>
> 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.
>
> b In cases involving deficient performance where there is a risk to patient safety if the doctor's registration is not suspended and where the doctor demonstrates potential for remediation or retraining.
>
> c …
>
> d …

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.'

15. The Tribunal accepted that suspension is a serious sanction that 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. However, before determining that a sanction of suspension is appropriate, the Tribunal should be satisfied that Dr Nzegbulem has acknowledged fault and that the behaviour or incident is unlikely to be repeated. The Tribunal would also wish to be satisfied that Dr Nzegbulem has insight and the potential to remediate.

16. The Tribunal has already stated that it considered Dr Nzegbulem's reflections to be contrived and self-serving and it has previously concluded that he lacks insight into both his clinical failings and his dishonesty. It was not satisfied that the criteria set out in the SG in relation to suspension are met.

Erasure

17. The Tribunal had regard to paragraph 109 of the SG, to which it was referred, and noted that multiple factors are engaged.

18. The Tribunal has found that Dr Nzegbulem breached a significant number of principles of *Good medical practice* across the key domains of 'Knowledge, skills and performance' and 'Maintaining Trust'. It was satisfied that Dr Nzegbulem's misconduct demonstrated a particularly serious departure from the principles set out in *Good medical practice* and demonstrated a reckless disregard for those principles and for patient safety. The Tribunal found it inconceivable that a doctor who lacked the relevant and up to date experience would choose to take a position as the on-call doctor for a labour ward and then perform a category 1 caesarean section in any event, but Dr Nzegbulem's actions were exacerbated by his decision not to avail himself of the support of the more senior colleagues available to him. Dr Nzegbulem not only caused such serious harm to Patient A through his actions that she suffered significant and ongoing problems but he left the remaining patients on the Labour Ward without their responsible Obstetrician.

19. In respect of Dr Nzegbulem's dishonesty, the Tribunal took into account that fact that it was repeated and also had potential implications for patient safety. It considered that Dr Nzegbulem's decision to breach the conditions imposed on his practice demonstrated his propensity to put his own interests before those of

patients. The Tribunal has already stated that there was no evidence that Dr Nzegbulem had undertaken any remediation or reflection in respect of his dishonesty. The Tribunal considered that Dr Nzegbulem has shown a persistent lack of insight into the seriousness of his actions or the consequences and it concluded that he presented an ongoing risk to patients.

20. The Tribunal had regard to the overarching objective and the need to protect the public. Taking all of the circumstances into account, the Tribunal determined that Dr Nzegbulem's misconduct is fundamentally incompatible with continued registration. It has therefore concluded that the only appropriate and proportionate sanction in this case is one of erasure.

21. Accordingly, the Tribunal directs that Dr Nzegbulem's name be erased from the Medical Register.

Determination on Immediate Order - 20/12/2018

1. Having determined to erase Dr Nzegbulem's name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Nzegbulem's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Hudson submitted that an immediate order of suspension is necessary given the patient safety concerns in this case and the fact that Dr Nzegbulem has shown a blatant disregard for restrictions on his registration.

The Tribunal's Determination

3. The Tribunal has concluded that, given the seriousness of the concerns in this case and the patient safety issues, it would not be appropriate for Dr Nzegbulem's registration to be unrestricted during the appeal period. The Tribunal determined that it is therefore necessary, for the protection of members of the public and in the public interest, to impose an immediate order of suspension on Dr Nzegbulem's registration.

4. This means that Dr Nzegbulem's registration will be suspended when written notice of this decision has been served upon him. The substantive direction for erasure, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Nzegbulem, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

5. The interim order currently imposed on Dr Nzegbulem's registration will be revoked when the immediate order takes effect.

6. That concludes this case.

Confirmed
Date 20 December 2018 Mr Damian Cooper, Chair

ANNEX A – 10/12/2018

Service and proceeding in absence

1. Dr Nzegbulem is neither present nor represented at this hearing.

2. The Tribunal has considered Ms Hudson's submission, on behalf of the General Medical Council (GMC), that notification has been properly served upon Dr Nzegbulem.

3. Ms Hudson provided the Tribunal with a copy of a Service bundle which included a copy of the GMC Notice of Allegation (NOA), sent to Dr Nzegbulem by email on 26 October 2018 and by letter, dated 29 October 2018. The letter was sent by Special Delivery to his registered address. The Tribunal has been provided with a copy of a Royal Mail Track and Trace receipt which confirms that it was not possible to deliver the NOA as 'there didn't seem to be anyone in'.

4. Ms Hudson also provided the Tribunal with a copy of the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing (NOH), dated 8 November 2018, sent to Dr Nzegbulem's registered address by Special Delivery and sent by email. A Royal Mail Track and Trace receipt confirms that this letter was 'Returned to Sender' as acceptance was refused.

5. Having considered the information in relation to service, the Tribunal was satisfied that Notice of this hearing had been served on Dr Nzegbulem in accordance with Rule 15 and Rule 40 of the GMC (Fitness to Practise) Rules 2004 (the Rules), and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended.

6. Ms Hudson invited the Tribunal to proceed in the absence of Dr Nzegbulem pursuant to Rule 31.

7. Ms Hudson provided the Tribunal with a copy of a recent email from Dr Nzegbulem to the GMC, dated 21 November 2018, in which he requested a postponement of the hearing XXX.

8. Dr Nzegbulem's application for a postponement was submitted to the MPTS Case Manager along with comments from the GMC. In an email dated 22 November 2018, the GMC objected to a postponement of the hearing XXX.

9. The GMC also noted that efforts had been made by the GMC and the MPTS to delay the hearing previously XXX. It further advised that it had been informed by NHS England that Dr Nzegbulem continued to be paid by the NHS and was likely to continue receiving payments until his case was heard.

10. The application was refused by the MPTS Case Manager but Dr Nzegbulem was informed that it would be open to him to make a further application to the Tribunal at the outset of the hearing. Dr Nzegbulem applied for a judicial review of the Case Manager's decision but his application was refused by the Court. The Court noted that it remained open to Dr Nzegbulem to submit a further application to the Tribunal addressing the concerns raised in the Case Manager decision to refuse his application.

11. Ms Hudson submitted that Dr Nzegbulem had had ample opportunity to address the issues identified by the GMC in its objection email, dated 22 November 2018, but had not done so. She submitted that the hearing should proceed in Dr Nzegbulem's absence balancing his interests with those of the public.

12. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

13. XXX.

14. The Tribunal noted that it has received no request for an adjournment from Dr Nzegbulem to enable him to attend on a later date despite him being advised on two occasions in advance of this hearing that the option was open to him. XXX. The Tribunal therefore has no satisfactory evidence before it to enable it to assess if an adjournment would result in Dr Nzegbulem's attendance at a hearing in the future. In the circumstances, the Tribunal was satisfied that Dr Nzegbulem had voluntarily absented himself from these proceedings.

15. Having considered all the information before it, the Tribunal was satisfied that Dr Nzegbulem's voluntary absence, the seriousness of the issues raised in this case, and the fact that Dr Nzegbulem continues to receive payments from the NHS pending the outcome of this case, meant that it was appropriate to proceed.

16. In accordance with Rule 31, the Tribunal determined to proceed in Dr Nzegbulem's absence. The Tribunal will ensure to test the GMC's case in Dr Nzegbulem's absence.

ANNEX B – 10/12/2018

Application under Rule 17(6)

1. At the outset of the hearing, Ms Hudson, Counsel on behalf of the GMC made an application for the Tribunal to use its power, under Rule 17(6), to make amendments to the allegation as follows.

2. Ms Hudson applied to amend sub-paragraph 1(a)(i) and 1(a)(ii) so that it reads as follows:

> '1. You worked as a Locum Specialist Registrar ('SpR') in Obstetrics and Gynaecology at the West Hertfordshire NHS Trust in November 2015 (the 'Post') when you did not have the appropriate qualifications and/or experience, in that you had:
>
> a. limited experience in obstetrics and gynaecology obtained between:
>
> i. in or around 1993 to 1995 as a Senior House Officer;
>
> ii. on or around 1 January 2015 and 9 November 2015.'

3. In respect of sub-paragraph 1(a)(i), Ms Hudson submitted that allowing the addition of the words 'in or around' accurately reflects the Curriculum Vitae (CV) provided by Dr Nzegbulem and gives the broadest possible base to the time when he obtained his experience/training in Obstetrics and Gynaecology.

4. In respect of sub-paragraph 1(a)(ii), Ms Hudson stated that Dr Nzegbulem had provided a CV which included experience in January 2015 (no specific date given) until the date of Patient A's surgery (10 November 2015). Ms Hudson submitted that the proposed addition of the dates gives the broadest possible base to Dr Nzegbulem's experience/training in Obstetrics and Gynaecology.

5. Ms Hudson also applied to amend sub-paragraph 5(b) so that it reads as follows:

> '5. You failed to adequately record information in Patient A's medical records in that you did not:
>
> b. make any contemporaneous note of your second attendance in labour.'

6. Ms Hudson submitted that the addition of the word 'contemporaneous' clarifies exactly when it is alleged by the GMC that the note ought to have been

made in Patient A's medical records, in line with the conclusions of Dr G in his expert report which was disclosed to Dr Nzegbulem on 8 June 2017. Ms Hudson stated that the addition of the word contemporaneous would allow the Tribunal to differentiate the emergency situation where retrospective notes are acceptable and the situation the GMC say Dr Nzegbulem faced on 10 November 2015.

7. Finally, Ms Hudson applied to withdraw sub-paragraphs 1(d), 3(c), 3(d), 3(e), 5(a), 5(c)(ii) and paragraphs 10, 11 and 12, on the basis that the GMC no longer had the evidence to support these matters. Ms Hudson also invited the Tribunal to renumber the allegation as appropriate.

8. Rule 17(6) states:

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

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

(b) the amendment can be made without injustice,

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

9. The Tribunal was satisfied that the proposed amendments are matters of minor clarification and do not change the scope of the case against Dr Nzegbulem. In addition, it noted that the withdrawal of specific paragraphs and sub-paragraphs of the allegation are to his benefit. Accordingly, the Tribunal was satisfied that the amendments could be made without injustice and it determined to accede to the application.