PUBLIC RECORD

Dates: 24/05/2021 - 28/05/2021

Medical Practitioner's name:	Dr Devendra Karnal CHINTHAMANI NARAYANASWAMY
GMC reference number:	6084382
Primary medical qualification:	MB BS 1999 Bangalore

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

Summary of outcome

Suspension, 3 months.

Tribunal:

Legally Qualified Chair	Mrs Kim Parsons
Medical Tribunal Member:	Dr Elizabeth Ball
Medical Tribunal Member:	Dr Thomas O'Leary

Tribunal Clerk:	Ms Hollie Middleton

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Ms Vivienne Tanchel, Counsel, instructed by MDDUS
GMC Representative:	Ms Harriet Tighe, Counsel

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held 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 the Facts and Impairment - 26/05/2021

Background

1. Dr Chinthamani Narayanaswamy ('Dr Narayanaswamy') qualified with an MBBS in 1999 from the University of Bangalore in India. Dr Narayanaswamy moved to the UK in 2004 and from 2005 to 2017 he held psychiatric roles in various UK hospitals. Since 2017, Dr Narayanaswamy has worked as a Locum Acting up Consultant in the psychiatry team of the Tees, Esk & Wear Valley NHS Trust Child and Adolescent Mental Health Services. From 2015 to 2019, Dr Narayanaswamy also worked as a Forensic Medical Examiner ('FME') for the Derbyshire Police via an agency, CRG Medical Services ('CRG').

2. The allegation that has led to Dr Narayanaswamy's hearing can be summarised as that between 26 and 27 August 2019, Dr Narayanaswamy drove a motor vehicle to two assignments as an FME and carried out examinations of two suspicious deaths whilst under the influence of alcohol.

3. It is further alleged that on 10 September 2019, Dr Narayanaswamy was convicted of failing to provide a specimen or specimens of breath for analysis without a reasonable excuse. He was sentenced by Southern Derbyshire Magistrates' Court to a fine and a period of disqualification for 12 months for holding or obtaining a licence.

4. Dr Narayanaswamy made a self-referral to the GMC on 27 August 2019 in which he stated that he had been charged for *'drink driving'* and had been asked to attend court on 10 September 2019.

5. At Dr Narayanaswamy's second assignment on the morning of 27 August 2019, the attending officer, PC A stated that, at around 01:00, she saw Dr Narayanaswamy driving and pull up outside the address of the second assignment and that she smelt alcohol when he

walked past her. She stated that Dr Narayanaswamy seemed almost like a probationer and unsure about what he had to do there.

6. Following concerns raised by other police officers also at the second assignment about Dr Narayanaswamy smelling of alcohol, PC B asked Dr Narayanaswamy to provide a roadside breath specimen. Dr Narayanaswamy provided a positive breath specimen at 01:19 at the roadside, which was above the legal limit to drive a car. He was arrested before being taken into police custody.

7. At 01:50, Dr Narayanaswamy failed to provide a breath specimen at the police station after four attempts. PC A stated that each time she could hear air escaping from Dr Narayanaswamy's mouth and he was not making a seal around the breathalyser tube, as he was being directed to do.

8. Dr Narayanaswamy stated that he drank approximately half to three quarters of a bottle of wine with his fast-food takeaway lunch on 26 August 2019 at around 1pm. He said he also purchased the wine from a separate store and drank it over two or so hours whilst watching TV. He said he did not consider how many units of alcohol he had drunk.

9. Following a period of sleep, he said he was woken at around 19;00 by CRG notifying him of the start of his night shift. He was then allocated his first assignment. He said he did not consider that he was in any way unfit or under the influence of alcohol to prohibit him from driving or working as an FME that night. Dr Narayanaswamy said he was staying in a hotel over the bank holiday weekend to carry out his work as an FME. On 26/27 August 2019, his night shift began at 19:00 and was due to end at 07:00. Dr Narayanaswamy stated the reason he was staying at the hotel was to reduce his travel time and because his family were away overseas visiting relatives, so he was not needed at home.

10. Dr Narayanaswamy stated that he "*genuinely tried*" to provide the breath samples at the police station but was unsuccessful in doing so, due to being anxious about the circumstances he found himself in. Also, he recognised a member of the nursing staff in the police station, having worked with her in the past. He stated that he was unaware that he was over the legal drink driving limit and had wrongly assumed that the passage of time from consuming the wine with his lunch to driving the car was sufficient and that he would be safe to drive.

The Outcome of Applications Made during the Facts Stage

11. On 24 May 2021, both parties made applications regarding admissibility of evidence. The Tribunal determined that it was fair for the evidence to be adduced. Its full determination can be found at Annex A.

12. On 24 May 2021, the Tribunal granted Ms Tighe's application to amend schedule 1 of the Allegation, in accordance with Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). This amendment concerned amending the

arrival time in Schedule 1 in relation to the second assignment to correspond with that set out in the evidence. The amendment was not opposed by Ms Tanchel. The Tribunal was satisfied that no injustice would be caused by allowing the amendment to be made.

The Allegation and the Doctor's Response

13. The Allegation made against Dr Narayanaswamy is as follows:

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

1. Between 26 and 27 August 2019, having accepted an assignment as a Force Medical Examiner as set out in Schedule 1, you:

    a. whilst under the influence of alcohol:

        i. drove a motor vehicle to:

            1. assignment 1; **Admitted and found proved**

            2. assignment 2; **Admitted and found proved**

        ii. carried out a medical examination in the case of a suspicious death in respect of:

            1. assignment 1; **Admitted and found proved**

            2. assignment 2; **Admitted and found proved**

    b. arrived late to assignment 2. **Admitted and found proved**

2. On 10 September 2019 at Southern Derbyshire Magistrates' Court you were:

    a convicted of, on 27 August 2019 at St Marys Wharf Police Station in the County of Derbyshire, when suspected of having driven a vehicle and when having been required to provide a specimen or specimens of breath for analysis, failing without reasonable excuse to do so, contrary to section 7(6) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988; **Admitted and found proved**

    b sentenced to:

        i. a fine of £440; **Admitted and found proved**

        ii. disqualification from holding or obtaining a driving licence for 12 months. **Admitted and found proved**

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

a. misconduct in respect of paragraph 1; To be determined

b. conviction in respect of paragraph 2. To be determined

The Admitted Facts

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

15. 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.

Impairment

16. With no facts remaining in dispute, the Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved, Dr Narayanaswamy's fitness to practise is impaired by reason of misconduct and his conviction.

Evidence

17. The Tribunal also 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, Head of Operations (West) at CRG, dated 12 January 2021;
- Ms D, Clinical Lead Nurse for Derbyshire Police through CRG, dated 22 February 2021;
- PC A, Police Constable with Derbyshire Constabulary, dated 28 January 2021; and
- PC B, Police Constable with Derbyshire Constabulary, dated 19 May 2021.

18. Dr Narayanaswamy provided his own witness statement, dated 9 April 2021 and gave oral evidence at the hearing.

19. The Tribunal also received, in support of Dr Narayanaswamy, eight testimonials from colleagues and professionals, all of which it has read.

Documentary Evidence

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

- CRG Medical call log, dated 26 – 27 August 2019;

- Police statement of PC A, dated 27 August 2019;
- Police statement of PC B, dated 27 August 2019;
- Certificate of conviction, Southern Derbyshire Magistrates' Court, dated 4 October 2019 (printed);
- MGDD/A Form, dated 27 August 2019;
- Police Report, dated 1 September 2019;
- Dr Narayanaswamy's written reflections (undated);
- Certificate of completion of drink driving course, dated 22 November 2019; and
- CPD Certificates - probity and ethics dated 3 April 2021 and module on insight dated 6 April 2021.

Submissions

21. On behalf of the GMC, Ms Harriet Tighe, Counsel, submitted that Dr Narayanaswamy's fitness to practise is impaired by reason of his misconduct and his conviction. She told the Tribunal that the facts found proved were serious in that Dr Narayanaswamy was under the influence of alcohol when driving to two work assignments as an FME and performing medical examinations which confirmed the deaths of the deceased at the scene. She submitted that Dr Narayanaswamy's actions had presented a risk to the integrity of those examinations and that members of the public and the profession expect that doctors would not carry out their duties under the influence of alcohol. She stated that Dr Narayanaswamy's actions were a significant departure from Good Medical Practice (2013 Edition) ('GMP') and amounted to serious misconduct, in particular noting paragraphs 1 and 65 of GMP.

22. With regard to impairment, Ms Tighe submitted that in failing to provide a specimen of breath when required to do so, Dr Narayanaswamy's conviction meets the statutory requirement for impairment by reason of conviction. She stated that Dr Narayanaswamy failed to co-operate with the police investigation regarding whether he was over the legal limit to drive a vehicle and by his actions it was not possible to identify the level of intoxication.

23. She stated that Dr Narayanaswamy has expressed remorse for his actions and demonstrated insight into his behaviour through attending courses. She acknowledged that there *'were a number'* of testimonials for the Tribunal to consider which spoke highly of Dr Narayanaswamy's clinical skills and did not outline any concerns about him working under the influence of alcohol. However, she submitted that a finding of impairment is necessary in order to uphold standards of conduct for members of the profession and to maintain public confidence in the profession.

24. On behalf of Dr Narayanaswamy, Ms Vivienne Tanchel, Counsel, submitted that Dr Narayanaswamy admits that his actions amounted to serious misconduct. However, she submitted that Dr Narayanaswamy is not currently impaired either in relation to the public interest or the wider interests of the profession. She reminded the Tribunal that the test for

impairment as outlined in *CHRE v NMC and Grant [2011] EWHC 927 (Admin) ('Grant')* in that current impairment can be found on past matters but it must also be judged on how Dr Narayanaswamy is likely to behave in the future.

25. Ms Tanchel submitted that Dr Narayanaswamy has shown full insight into his failings and had set out the *'peculiar circumstances'* that led to his misconduct and conviction within his evidence. She submitted that he has demonstrated timely remediation through the professional courses he has attended; the completion of the Road Traffic Offenders Act 1988 Course for Drink-Drive Offenders ('Drink-Drive Course'); and his *'extensive reflections'*. She said he had received mentoring through his IOT conditions. She stated that Dr Narayanaswamy accepts that he should have behaved differently and has demonstrated an empathetic understanding of the role he has with a deceased patient and their families. She submitted that a member of the public, fully apprised of the circumstances of this case, would be impressed by Dr Narayanaswamy's remediation and compliance with fundamental tenets of the profession and that the public interest would not be served by a finding of impairment in this case. Ms Tanchel submitted that if the Tribunal was satisfied there was no risk of reoccurrence, there could be no finding of impairment.

Legally Qualified Chair's Advice (LQC)

26. In response to Ms Tanchel's submission the LQC Chair drew the Tribunals attention to paragraphs 73 & 74 in *Grant*, which state:

> *'73 Sales J also referred to the importance of the wider public interest in assessing fitness to practise in Yeong v. GMC [2009] EWHC 1923 (Admin), a case involving a doctor's sexual relationship with a patient. Pointing out that Cohen was concerned with misconduct by a doctor in the form of clinical errors and incompetence, where the question of remedial action taken by the doctor to address his areas of weakness may be highly relevant to the question whether his fitness to practise is currently impaired, Sales J considered that the facts of Yeong merited a different approach. He upheld the submission of counsel for the GMC that:*
>
> *"… Where a FTPP considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence in the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession. In such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in a case where the misconduct consists of clinical errors or incompetence."*
>
> *74 I agree with that analysis and would add this. In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present*

a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'

27. The LQC also referred the Tribunal to the decision of *The Professional Standards Authority for Health and Social Care and the General Medical Council and Mr Andrew Hilton [2019] EWHC 1638 (Admin)* in particular paragraph 80 onwards in relation to the *"Consequences of finding of misconduct"* where reference is also made to *PSA v Nursing & Midwifery Council [2017]CSIH 29* which states at paragraph 27:

'Not every case of misconduct will result in a finding of impairment. An example might be of an isolated error of judgment which is unlikely to recur, and the misconduct is not so serious as to render a finding of impairment plainly necessary. On the other hand, misconduct may be so egregious that, whatever mitigatory factors arise in respect of insight, remediation, unlikelihood of repetition, and the like, any reasonable person would conclude that the registrant should not be allowed to practise on an unrestricted basis, or at all. In such a case, to have been guilty of misconduct of such a nature is itself clear evidence that the practitioner should not be allowed to practise, or to practise unrestricted , and the public interest will point to a finding of impairment, and the imposition of an appropriate sanction.'

The Relevant Legal Principles

28. The Tribunal reminded itself that, in considering the issue of impairment, including whether the actions amount to misconduct, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

29. In approaching the decision, the Tribunal was mindful of the decision in *Cheatle v GMC [2009] EWHC 645 (Admin),* which recommends adopting a two-stage process when considering whether a doctor's fitness to practise is impaired on the ground of misconduct: first whether the facts found proved amount to misconduct; and, if so, secondly, whether the doctor's fitness to practise is currently impaired as a result.

30. As the Tribunal must make its own determination on Dr Narayanaswamy's misconduct, the Tribunal also had regard to the case of *Roylance v General Medical Council (No.2) [2000]1 AC 311 (UKPC) ('Roylance').* It states:

'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.'

31. The Tribunal followed the guidance set out in *R (Cohen) v GMC [2008] EWHC 581 (Admin)*, and acknowledged it must determine whether Dr Narayanaswamy's fitness to practise is impaired today, taking into account Dr Narayanaswamy's conduct and conviction at the time of the events and any relevant factors such as whether the matters are easily remediable, have been remedied and whether it was highly unlikely that there would be any repetition.

32. The Tribunal had regard to the test for impairment as stated in *Grant:*

> *'Do our findings of fact in respect of the doctor's misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:*
>
> *a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
>
> *b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or*
>
> *c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or*
>
> *d. ...'*

The Tribunal's Determination on Impairment

33. Notwithstanding the need to reach a single decision on impairment, and the close link between the two allegations, the Tribunal considered the misconduct and the conviction separately at the outset of their deliberations, to enable it to weigh the conduct leading to each, the circumstances in which it had arisen, and the steps taken subsequent to it.

34. Throughout its deliberations, the Tribunal had regard to GMP, and in particular paragraphs 1 and 65:

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

Misconduct

35. In determining whether Dr Narayanaswamy's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amount to misconduct.

36. The Tribunal reminded itself of the facts found proved in that Dr Narayanaswamy drove a motor vehicle to two work assignments and carried out medical examinations in the cases of suspicious deaths at those assignments whilst under the influence of alcohol, arriving late to the second assignment.

37. In relation to driving under the influence of alcohol, the Tribunal considered that Dr Narayanaswamy's actions presented a potential risk of harm to road users and amounted to a significant departure from paragraph 1 of GMP in that Dr Narayanaswamy had failed to act in a trustworthy manner and with integrity.

38. With regard to Dr Narayanaswamy performing medical examinations under the influence of alcohol, the Tribunal was mindful of the nature and seriousness of the work that he contributed to with the police in making decisions about whether the death was suspicious and required further investigation. The Tribunal considered that being under the influence of alcohol would have a significant impact on both Dr Narayanaswamy's judgment in relation to his decision making and also the integrity of any subsequent investigation and the potential for justice being afforded to the deceased and their families if they had been victims of crimes. It also considered the potential impact on those in attendance at the assignments, which could have included the deceased's families and that Dr Narayanaswamy would not have known who would have been at the assignments when he set out on both journeys. Further Dr Narayanaswamy had shown himself to be lacking in integrity in front of the police.

39. The Tribunal considered that the first three limbs as set out in *Grant* above, were engaged in this case. In relation to paragraph a. in *Grant* above, the Tribunal concluded that Dr Narayanaswamy's actions had the potential to jeopardise the integrity of the recording of the circumstances of the death, and any police investigation subsequently required into a suspicious death.

40. The Tribunal was of the view that Dr Narayanaswamy's actions amounted to serious departures from the paragraphs of GMP as identified. Applying the authority in *Roylance*, the Tribunal concluded that Dr Narayanaswamy's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct. It considered that driving and performing medical examinations whilst under the influence of alcohol amounted to serious failures to act with integrity and within the law. The Tribunal was therefore satisfied that the facts found proved amounted to serious misconduct.

Conviction

41. The Tribunal considered the circumstances of Dr Narayanaswamy's conviction. Dr Narayanaswamy, was suspected of having driven a vehicle between police assignments with a level of intoxication over the permitted legal limit to drive. That suspicion was supported by a roadside breath test administered at assignment 2. Having been required to provide a specimen of breath for analysis in the police station, to establish his level of intoxication, Dr Narayanaswamy then failed without reasonable excuse to do so. The Tribunal took the view that Dr Narayanaswamy had failed to cooperate with the police and, in doing so, had impeded them from investigating the amount of alcohol that was present in his system.

42. The Tribunal considered that Dr Narayanaswamy's conviction in failing to provide a breath specimen without a reasonable excuse amounted to a serious departure from his obligations under GMP, in particular paragraphs 1 and 65.

Impairment

43. The Tribunal went on to consider whether, by reason of Dr Narayanaswamy's misconduct and conviction, his fitness to practise is impaired.

44. In determining whether Dr Narayanaswamy's fitness to practise is currently impaired, the Tribunal considered whether there was any evidence of insight or remediation on the part of Dr Narayanaswamy and whether there was a likelihood of him repeating his misconduct in the future.

45. With regard to Dr Narayanaswamy's insight into his actions, the Tribunal noted that he has demonstrated a good level of insight into the risks that presented from his behaviour and the impact that the incident has had on him and others, including the police, colleagues, the public and his family. He has put measures in place to avoid a similar situation from occurring in the future, given his decision to abstain from alcohol in the future. He has undertaken mentoring, training and coaching and reflected on his behaviour. The Tribunal did find Dr Narayanaswamy open and remorseful about what he had done wrong.

46. However, the Tribunal considered that Dr Narayanaswamy's insight is still developing into the reasons why he behaved in the way he did on this occasion, in a manner he describes as being out of character. The Tribunal noted and was concerned that, in his oral evidence, Dr Narayanaswamy admitted, as a doctor familiar with breath test procedures, he did not give any consideration to how many units of alcohol he had drunk prior to starting work later that day.

47. The Tribunal had regard to Dr Narayanaswamy's evidence that he had bought a fast-food meal and bought a bottle of wine and taken it back to his hotel at lunch time. Dr Narayanaswamy described his behaviour as *'impulsive" and" stupid'* at the time. However, the Tribunal took the view that in planning to buy a bottle of wine, Dr Narayanaswamy's actions were not impulsive. It was therefore troubled about the reasons as to why his

decision making was so flawed on this particular occasion, giving the obvious importance of his FME role.

48. In relation to Dr Narayanaswamy's insight regarding his actions in failing to provide a breath specimen, the Tribunal noted in evidence that he stated that he had *'genuinely tried'.* This was inconsistent with what PC A said in her evidence. The Tribunal noted, importantly, that Dr Narayanaswamy had accepted before the court that he had no reasonable excuse for not providing the specimen and pleaded guilty to the offence. The Tribunal had some concerns that Dr Narayanaswamy has not demonstrated full insight into the significance of his behaviour at the police station, in that he failed to cooperate with the police which hampered their investigation into whether he was driving with a level of alcohol in his system over the legal limit. The Tribunal therefore concluded that Dr Narayanaswamy has developing insight into his actions on the 26 and 27 August 2019.

49. The Tribunal took the view that Dr Narayanaswamy was open in his oral evidence. It was mindful that Dr Narayanaswamy had provided self-reflection and acknowledged that abstaining from or reducing his alcohol intake had a positive impact on his studies, commenting that in the past alcohol had led him to do *'wrong things'*. The Tribunal acknowledged that Dr Narayanaswamy had reported the incident to the GMC at the earliest opportunity and continued to immerse himself in studying and working throughout the pandemic. Dr Narayanaswamy had attended a professional ethics course and the Drink-Drive Course which reduced his driving disqualification by 13 weeks. The Tribunal noted Dr Narayanaswamy positive testimonial evidence, which showed him to be a good and competent doctor, with no concerns about his health, honesty or probity and showed he was a well-respected member of the multi-disciplinary teams within which he works. The Tribunal therefore concluded that Dr Narayanaswamy has demonstrated remediation for his actions.

50. When considering the likelihood of repetition, the Tribunal had regard to Dr Narayanaswamy's evidence that he had complied with the conditions imposed on his registration for 18 months, discussed the matter with supervisors that were working with him and XXX Furthermore, the Tribunal noted that Dr Narayanaswamy was no longer working as an FME and driving to assignments, as his conviction meant that he was no longer considered suitable for this role. In all the circumstances, the Tribunal therefore found that the risk of Dr Narayanaswamy repeating his actions is low.

51. Notwithstanding this, the Tribunal concluded that Dr Narayanaswamy's actions nevertheless amounted to a breach of fundamental tenets of the medical profession. His actions had brought the profession into disrepute and had put patients at unwarranted risk of harm. As a result of him working as a doctor whilst intoxicated and his conviction, he failed to act within the law and to maintain the public's trust and confidence in the medical profession and uphold proper professional standards.

52. The Tribunal therefore determined that a finding of impairment arising from the serious misconduct and his conviction is necessary in this case in order 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. In the Tribunal's judgment, the need to uphold proper professional standards and public confidence in the medical profession would be undermined if a finding of impairment were not made in the circumstances of this case.

Conclusion on Impairment

53. In the circumstances of this case, in the Tribunal's judgment Dr Narayanaswamy's fitness to practise is impaired by reason of his conviction and his misconduct.

Determination on Sanction - 28/05/2021

1. Having determined that Dr Narayanaswamy's fitness to practise is impaired by reason of misconduct and conviction, 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 evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

3. The Tribunal received further evidence on behalf of Dr Narayanaswamy which included email correspondence from:

- Dr E, Consultant Child and Adolescent Learning Disability Psychiatrist, dated 26 May 2021; and
- Dr F, Consultant Child and Adolescent Psychiatrist, dated 26 May 2021.

This evidence outlined the impact of Dr Narayanaswamy being absent from his current role as a Locum Acting up Consultant in the psychiatry team of the Tees, Esk & Wear Valley NHS Trust Child and Adolescent Mental Health Services ('the Trust CAMHS')

Submissions

On behalf the of the GMC

4. Ms Tighe submitted the appropriate sanction in Dr Narayanaswamy's case was one of suspension. She reminded the Tribunal that in considering the appropriate sanction, the reputation of the profession as a whole is more important than the individual interests of the doctor. In outlining the mitigating features of the case, she acknowledged that Dr Narayanaswamy had provided evidence of insight and remediation and had kept up to date with his clinical knowledge and skills. She told the Tribunal that Dr Narayanaswamy had no fitness to practise history and referred to the lapse of time that had occurred since the incident. She submitted that there were no aggravating features in this case.

5. Ms Tighe told the Tribunal that, with the absence of any exceptional circumstances in the case, it would be entirely inappropriate for the Tribunal to take no action. She submitted that conditions are likely to be appropriate and workable in cases where re-training is an appropriate way of addressing the findings, which is not relevant in this case. She submitted that suspension is the appropriate and proportionate sanction as it holds a deterrent effect and sends out a signal to the doctor and the profession as to behaviour which is unbefitting of a registered doctor.

6. In relation to the additional documentary evidence adduced at this stage of proceedings, she stated that the Tribunal should exercise caution when considering the weight to be given to the impact on the Trust CAMHS if Dr Narayanaswamy were to be suspended. It cannot be the position that he can avoid an appropriate and proportionate sanction because he would be missed from his current role. She submitted that, although Dr Narayanaswamy's conduct was not fundamentally incompatible with continued registration, it was serious enough that action needed to be taken on his registration.

7. On being asked by the LQC for submissions on whether the Tribunal ought properly to consider the scarcity of specialist resources in the context of appropriate sanction, when balancing public interest considerations, Ms Tighe submitted that the case law (referred to below) all concerned whether or not to permanently deprive a professional from their profession. She submitted that proportionality should be considered in relation to other sanctions, but that the authorities concentrated on the most serious sanction and could thereby be distinguished from the submissions relating to sanction in this case.

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

8. Ms Tanchel, Counsel, invited the Tribunal to consider that the appropriate sanction was no further action due to the exceptional circumstances which are present in this case. She reminded the Tribunal of its findings made at the impairment stage, which were made on the basis of promoting and maintaining public confidence in the medical profession and promoting and maintaining proper professional standards of conduct and that it had found evidence that Dr Narayanaswamy was a good and competent clinician whose likelihood of repetition of his behaviour was low. She invited the Tribunal to have regard to the impact on the Trust CAMHS users and to note the unchallenged evidence that the impact on those users would be disproportionate when considering the public interest. She stated that the exceptional circumstances are those which would create pressure on the Trust CAMHS due to the difficulty of recruiting to the role which Dr Narayanaswamy was currently fulfilling. She also stated that any sanction that prevented Dr Narayanaswamy from working would have a detrimental impact on his family as he was the sole 'breadwinner'.

9. Ms Tanchel stated that if the Tribunal was not persuaded that no further action was the appropriate conclusion to this case, she submitted that a workable condition could be formulated for Dr Narayanaswamy to remain working at the Trust CAMHS. She reminded the Tribunal of the mitigating factors in this case that Dr Narayanaswamy accepts that he should

not have behaved in the way that he did, has remediated his failings and apologised to everyone involved for his conduct. She invited it to consider that he was *'a long way down the path'* of insight, which was evidenced by the open and honest answers that he gave to the Tribunal. She therefore submitted that, if the Tribunal were to conclude that suspension was the appropriate sanction, it should be for a short period to ensure that it was proportionate to the circumstances of this case.

10. The LQC asked Ms Tanchel whether she was aware of any legal authorities supporting her submission that the Tribunal ought properly to consider the scarcity of specialist resources in the context of appropriate sanction, when balancing public interest considerations. After considering the authorities referred to by the LQC (see below) and the case of *Giele v GMC [2005] EWHC 2143 (Admin)* Ms Tanchel submitted that although the authorities related to erasure, the principle to be derived from them was to ensure proportionality in all circumstances. She submitted that other professionals, namely Dr E and Dr F, had made it plain that the public interest would suffer if Dr Narayanaswamy was unable to contribute to the Trust CAMHS clinical services.

LQC's advice

11. The LQC drew the Tribunal's attention to the case of *Greg Wallace and Secretary of State for Education [2017] EWHC 109 (Admin)* a case involving a teacher and the correct test for proportionality. The LQC informed the Tribunal that the disciplinary scheme that applied to teachers in this case was different, in that there were only two sanctions available; a permanent prohibition order or a refusal to make such an order, but where the decision was not to make a permanent prohibition order it still had to be published, including details of any findings of misconduct. She referred the Tribunal to Mr Justice Holgate's conclusions at paragraph 87 of that decision and his conclusion that the direction given by the legal adviser did not go far enough, that direction being:

> *"The adviser specifically told the PCP that they should consider first the possibility of imposing the least serious sanction so as to ensure that the determination arrived at would be proportionate. He also advised that the panel should weigh the broader public interest, including the arguments in favour of retaining Mr Wallace as a teacher".*

Mr Justice Holgate went on to say that the case law showed that the *'least intrusive means'* test may be appropriate in certain contexts, and not in others, but that the only authority supplied by the Appellant in response to the Courts' question was the case of *Giele,* which did not assist in this particular case. The '*least intrusive means'* being whether a less intrusive measure could have been used without unacceptably compromising the achievement of relevant objectives.

12. The LQC stated that in her view the cases, including *Bijl v General Medical Council [2001] UKPC 42* and *Giele* referred to were relevant when considering 'proportionality', even though they related to cases where the sanction being considered was one of erasure.

The Relevant Legal Principles

13. The decision as to the appropriate sanction to impose, if any, in this case is a matter for this Tribunal exercising its own independent judgment. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (November 2020) ('the SG'). It has borne in mind that the purpose of sanctions is not to be punitive, but to protect patients and the wider public interest, although they may have a punitive effect.

14. The Tribunal had regard to the case of *Giele v General Medical Council [2005] EWHS 2143 (Admin)* and its role to balance the interests of existing and potential patients in having access to a competent clinician against the wider public interest in the maintenance of confidence in the profession and the upholding of proper professional standards of conduct and confidence in the system of professionally led regulation.

15. The Tribunal had regard to the authority in *Bijl* that there was no need to sacrifice the career of *"an otherwise competent and useful doctor who presents no danger to the public in order to satisfy a demand for blame or punishment".*

16. The Tribunal also had regard to the principles set out in *Bolton v Law Society [1994] 1 WLR 512 "that the reputation of the profession is more important the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price".*

17. Throughout its deliberations, the Tribunal therefore has applied the principle of proportionality, balancing Dr Narayanaswamy's interests with the public interest. The public interest includes, amongst other things, the protection of patients, the promotion of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour.

The Tribunal's Determination on Sanction

18. The Tribunal has already given a detailed determination on facts and impairment and it has taken those matters into account during its deliberations on sanction.

19. The Tribunal considered the aggravating and mitigating factors in this case.

Aggravating Factors

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

- Whilst XXX, he was under the influence of alcohol and committed a criminal offence whilst on duty as an FME; and
- Dr Narayanaswamy's failure to cooperate with the police inquiry into the level of alcohol in his system.

Mitigating Factors

21. The Tribunal considered the following to be mitigating factors:

- Dr Narayanaswamy has demonstrated a level of insight into the risks that presented from his behaviour and the impact that the incident has had on him and others;
- Dr Narayanaswamy has provided evidence of remediation;
- Dr Narayanaswamy has no fitness to practise history;
- The lapse of time that has occurred since the incident and that Dr Narayanaswamy has complied with the conditions imposed on him; and
- Dr Narayanaswamy has kept up to date with his medical knowledge and skills.

No action

22. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Narayanaswamy's case, the Tribunal first considered whether to conclude the case by taking no action.

23. The Tribunal noted Ms Tanchel's submission that the exceptional circumstances in this case related to the lack of resources in Dr Narayanaswamy's current workplace, the Trust CAMHS. It was further mindful of the evidence received from his colleagues which explained that there was a *'national shortage'* within Dr Narayanaswamy's speciality and how much he is therefore needed for the Trust CAMHS to function effectively. The Tribunal noted that the proposed exceptional circumstances did not relate to the Allegation in this case but Dr Narayanaswamy's current workplace circumstances. It balanced the requirement to ensure the minimum level of restriction against reaching an unsatisfactory conclusion in relation to the overriding objective.

24. The Tribunal considered that the circumstances in Dr Narayanaswamy's workplace are sadly not uncommon, special or unusual and were therefore not exceptional. It found no exceptional circumstances capable of justifying taking no action against Dr Narayanaswamy's registration. Further it found that the view of an informed and reasonable member of the public, fully appraised of all of the circumstances, would be that taking no action would not be a proportionate outcome to maintain public confidence in the profession and to uphold proper professional standards. The Tribunal determined that, in view of the serious nature of the Tribunal's findings on impairment, it would be neither sufficient, proportionate nor in the public interest to conclude this case by taking no action.

Conditions

25. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Narayanaswamy's registration. It has borne in mind that any conditions imposed would need to be appropriate, proportionate, workable and measurable.

26. The Tribunal noted that Dr Narayanaswamy's registration is currently subject to conditions and that he has complied with them. The Tribunal had regard to paragraph 22 of the SG and noted that it should not give undue weight to compliance with an interim order of conditions because the Tribunal imposing that interim order makes no findings of fact and the test for imposing an interim order is entirely different.

27. The Tribunal took the view that to impose a period of conditional registration, including the the condition put forward by Ms Tanchel, that Dr Narayanaswamy cannot move from the Trust CAMHS, would not satisfy the public interest considerations in this case. It concluded that imposing conditions on Dr Narayanaswamy's registration would not be sufficient to protect the public interest or maintain proper professional standards.

28. Further, the Tribunal considered that conditions would not send the appropriate message to Dr Narayanaswamy, the profession or the public about what is regarded as behaviour unbefitting a registered doctor. The Tribunal therefore determined that imposing conditions on Dr Narayanaswamy's registration would not be appropriate or proportionate here.

Suspension

29. The Tribunal then went on to consider whether suspending Dr Narayanaswamy's registration would be appropriate and proportionate.

30. The Tribunal carefully considered the background findings in this case, its previous determination on the facts and impairment, and the submissions advanced by the parties. The Tribunal balanced the public interest with Narayanaswamy's interests.

31. The Tribunal had regard to the following paragraphs of the SG:

> *" 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*
>
> 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"*

32. The Tribunal further identified the following factors as set out in paragraph 97 of the SG as relevant in Narayanaswamy's case, indicating suspension may be appropriate where there is:

> *"**a** A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*
>
> ***e** No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
>
> ***f** No evidence of repetition of similar behaviour since incident.*
>
> ***g** The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour."*

33. The Tribunal had regard to the mitigation in this case and its findings that Dr Narayanaswamy has demonstrated a *'good level of insight'* into the risks that presented from his behaviour and the impact that the incident has had on him and others. It concluded that the risk of Dr Narayanaswamy repeating his actions is low. On the basis of the mitigating features identified, the Tribunal determined that despite the serious breaches of GMP, the circumstances of this case fall short of being fundamentally incompatible with continued registration.

34. However, the Tribunal determined that the circumstances of this case are sufficiently serious that a period of suspension is an appropriate and necessary outcome to address the public interest considerations in this case. It considered that a reasonable member of the public, fully appraised of all the facts and Dr Narayanaswamy's personal circumstances, would consider it inappropriate and disproportionate for a sanction other than suspension to be imposed in this case.

35. The Tribunal had regard to its finding that Dr Narayanaswamy's insight is *'still developing'* in relation to the reasons why he behaved in the way he did during the events in question. It took the view that Dr Narayanaswamy had by his actions shown a flagrant disregard for the importance of the role of an FME, noting that he will be unable to perform that role in the future due to his conviction, thereby reflecting the seriousness of the matter in the eyes of those employing him to provide FME services. It considered that, although the patients he attended were deceased, they were vulnerable in the sense that they did not have a voice or anyone else able to speak for them at the scene in relation to confirming the circumstances of death, reflecting upon the potential risks that this posed to justice. The Tribunal further noted that Dr Narayanaswamy failed to co-operate with the police investigation into the level of alcohol in his system and as a result this will never be known.

Further, that this lack of co-operation amounted to a criminal offence, which occurred whilst he was on duty as an FME and this led to a criminal conviction.

36. The Tribunal was mindful that the period of suspension must reflect the need to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for the members of the medical profession. The suspension must send out a signal to the doctor, the profession and the public about what is regarded as behaviour unbefitting a registered doctor. On the other hand, the Tribunal also took into account the mitigation identified in this case and noted the impact that a suspension will have on Dr Narayanaswamy.

37. The Tribunal also acknowledged the evidence which demonstrated Dr Narayanaswamy is a very competent doctor and that his absence from his role within the Trust CAMHS would pose a *'significant difficulty'* in the service ensuring continuity of care to its patients. The Tribunal had regard to Dr E's evidence in which he stated that the Trust CAMHS:

> *'…is a busy service with demand often exceeding clinical capacity. From a Psychiatrist perspective the team should have 2 whole time equivalents and currently only has 1.55 whole time equivalents so are running at a deficit. Dr Narayanaswamy is 1 whole time equivalent and carries a disproportionate proportion of the medical caseload.'*

38. Taking all matters into consideration, the Tribunal determined that a period of three months suspension is necessary and proportionate, balancing the interests of Dr Narayanaswamy's current and future patients, and his own personal circumstances, against the need to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of the profession.

39. In the circumstances of this particular case the Tribunal concluded that at the end of this relatively short period of suspension there would be no value in a review hearing. There are no patient safety concerns in this case. Dr Narayanaswamy appreciates the gravity of his conviction and misconduct and he has maintained his skills and knowledge, and patients will not be placed at risk by his resumption of practice at the end of the period of suspension as his skills and knowledge will not deteriorate during this period of suspension.

Determination on Immediate Order - 28/05/2021

1. Having determined to impose a period of suspension on Dr Narayanaswamy's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Narayanaswamy's registration should be subject to an immediate order.

Submissions

2. On behalf of the GMC, Ms Tighe submitted that an immediate order is necessary in this case. She acknowledged that the Tribunal had found that there were no risks to patient safety in this case, but she submitted that an immediate order is appropriate in order to protect public confidence in the profession. She drew the Tribunal's attention to the relevant paragraphs in the Sanctions Guidance (November 2020) ('the SG'). In relation to the staffing issues which would be presented to Dr Narayanaswamy's workplace ('the Trust CAMHS') in the event that an immediate order is imposed, she submitted that arrangements should have been made for the continuity of care of his patients.

3. On behalf of Dr Narayanaswamy, Ms Tanchel submitted that an immediate order is not necessary in this case as the public interest has been served by the substantive sanction of suspension. She drew the Tribunal's attention to Dr E's evidence in which he had requested time to arrange cover in the event that Dr Narayanaswamy was suspended as he was the only psychiatrist available for the Trust CAMHS next week. She submitted that this is a *'very good example'* of a case where an immediate order is wrong in principle having regard to the statutory test. She submitted that an immediate order should only be imposed where public safety is of concern, which is not relevant to this case. Otherwise when the public interest considerations can only be satisfied by an immediate order, which again is not the case here.

The Tribunal's Determination

4. The Tribunal had careful regard to the submissions made by parties and to the SG. It found the following paragraphs relevant:

> *"172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*
>
> *173 An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession."*

5. The Tribunal carefully balanced the interests of Dr Narayanaswamy against those of the public. It found that there were no patient safety issues present, Dr Narayanaswamy otherwise had an unblemished career and had been working in compliance with the conditions imposed on his registration for the last 18 months following the Allegation.

6. The Tribunal noted its determination to impose an order of suspension and considered that this is a serious matter which in terms of proportionality was required to maintain public confidence in the medical profession and to uphold proper professional standards and conduct for members of the medical profession. It balanced this against the wider public interest and whether it was necessary to impose an immediate order today.

7. The Tribunal also had regard to paragraphs 174 and 175 of the SG:

> *'174 Doctors and their representatives sometimes argue that no immediate order should be made as the doctor needs time to make arrangements for the care of their patients before the substantive order for suspension or erasure takes effect.*
>
> *175 In considering this argument, the tribunal will need to bear in mind that any doctor whose case is considered by a medical practitioners tribunal will have been aware of the date of the hearing for some time and consequently of the risk of an order being imposed. The doctor will therefore have had time to make arrangements for the care of patients before the hearing, should the need arise.'*

8. The Tribunal placed limited weight on the staffing issues raised by the Trust CAMHS as it noted, in particular, that it appears to have allowed other psychiatrists in that team to take annual leave next week. Although it acknowledged the difficulties stated by the Trust CAMHS to fill vacant roles, it concluded that it is in control of annual leave arrangements for its staff.

9. The Tribunal acknowledged its discretion in determining whether to impose an immediate order of suspension on Dr Narayanaswamy's registration. Taking all matters into consideration, it concluded that it was not necessary in the public interest to impose an immediate order in this case. It considered that the substantive sanction of suspension of itself is sufficient to mark the seriousness of the matter and to send out a signal to the doctor, the profession and the public about what is regarded as behaviour unbefitting of a registered doctor.

10. This means that Dr Narayanaswamy's registration will be suspended 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If Dr Narayanaswamy does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

11. The interim order currently imposed on Dr Narayanaswamy's registration is revoked.

12. That concludes this case.

Confirmed
Date 28 May 2021 Mrs Kim Parsons, Chair

ANNEX A – 24/05/2021

Applications regarding admissibility of evidence

Dr Chinthamani Narayanaswamy's Roadside Breath Test

1. On behalf of Dr Chinthamani Narayanaswamy ('Dr Narayanaswamy') Ms Tanchel, Counsel made an application pursuant to Rule 34(1) of the General Medical Council ('GMC') ('Fitness to Practise') Rules 2004 (as amended) ('the Rules') to oppose including evidence of Dr Narayanaswamy's Roadside breath test.

2. The Tribunal received written and oral submissions from both parties, setting out the basis for Dr Narayanaswamy's application and the GMC's response respectively.

Submissions

3. On behalf of Dr Narayanaswamy, Ms Tanchel submitted that roadside breath tests are not relied upon in court and that this must arise out of either a concern regarding the reliability of the same or alternatively the fairness of the roadside breath sampling procedure. She submitted that the reading of the roadside breathalyser should not be before the Tribunal as it is unfair to rely on such a reading which would not be relied upon for a prosecution. She conceded that Rule 34 is permissive in that it gives the Tribunal a discretion to admit evidence which may be inadmissible in criminal proceedings, however, in the circumstances of this case it would not be fair to do so.

4. On behalf of the GMC, Ms Tighe submitted that the road- side breath test reading should be admitted as evidence before the Tribunal as it is relevant to paragraph 1 of the Allegation. She stated that the GMC's case is that Dr Narayanaswamy was under the influence of alcohol and that the GMC does not seek to prove that the he was over the legal limit to drive a motor vehicle. The purpose of adducing the roadside reading is to show that at the point the doctor arrived at assignment two and performed a medical examination he was under the influence of alcohol. She further submitted this is a regulatory hearing and as a result this Tribunal are not bound by the rules of admissibility in criminal hearings.

The Tribunal's Decision

5. The Tribunal took account of Rules 34(1) of the Rules which provide as follows:

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

6. The Tribunal considered whether the roadside breath test was fair and relevant to admit in light of the issues in this case. Having carefully considered the parties' submissions,

the Tribunal was of the view that the roadside breath test was relevant, not to assess whether Dr Narayanaswamy had exceeded the legal limit in relation to an offence of driving with excess alcohol (which involved a mandatory two-step process), but to demonstrate whether he had alcohol in his system whist working as a doctor and driving to assignments – as set out in paragraph 1 of the Allegation. Further it was relevant and fair to show why Dr Narayanaswamy was arrested and taken to the police station and asked to provide a further specimen of breath for analysis – as per paragraph 2 of the Allegation. The Tribunal concluded that it was fair to include the roadside breath test as evidence.

7. The Tribunal therefore determined to reject Ms Tanchel's application to exclude the Dr Narayanaswamy's roadside breath test from the evidence.

The "smells of alcohol" comment

8. On behalf of Dr Narayanaswamy, Ms Tanchel, Counsel made an application pursuant to Rule 34(1) of the General Medical Council ('GMC') ('Fitness to Practise') Rules 2004 (as amended) ('the Rules') to oppose including evidence of the comment recorded by PC G on the MG DD/A form that Dr Narayanaswamy *"smells of alcohol"* when he was asked to provide a sample of breath at the police station.

9. The Tribunal received written and oral submissions from both parties, setting out the basis for Dr Narayanaswamy's application and the GMC's response respectively.

Submissions

10. On behalf of Dr Narayanaswamy, Ms Tanchel submitted that the comment made by PC G is hearsay evidence and that no statement from him has been served. She invited the tribunal to consider the rules of natural justice require that prejudicial hearsay evidence can only be relied upon if it is relevant, fair and in the interests of justice, citing the case of *Ogbonna v NMC[2010] EWCA Civ 1216*.

11. Ms Tighe, Counsel on behalf of the GMC, submitted that the observation on the MGDD/A form should be admitted as evidence before the Tribunal as it is relevant to determining paragraph 1 of the Allegation. She accepted that the comment made is hearsay evidence. She submitted that given the circumstances in which the statement was recorded, it would be fair for it to be admitted and it was relevant. She submitted that it was not the sole or decisive evidence in relation to proving the charge. Nor was it the sole or decisive evidence relating to the doctor smelling of alcohol that day.

Tribunal's Decision

12. The Tribunal had regard to the questions of fairness and relevance in accordance with Rule 34(1) of the Rules and had regard to the interests of justice. It again considered the written and oral submissions provided by both parties.

13. The Tribunal accepted the parties' submissions that the comment made was hearsay evidence as the police officer who recorded it has not been put forward to give evidence in these proceedings. It had regard to the guidance provided on admissibility of hearsay evidence as provided in the case of *Thorneycroft v NMC [2014] EWHC 1565(Admin):*

> *"In my judgment it was essential in the context of the present case for the Panel to take the following matters into account:*
>
> *a) Whether the statements were the sole or decisive evidence in support of the charges*
>
> *b) The nature and the extent of the challenge to the contents of the statements*
>
> *c) Whether there was any suggestion that the witness had reasons to fabricate their allegations*
>
> *d) The seriousness of the charge taking into account the impact which adverse findings might have on the Appellant's career*
>
> *e) Whether there was a good reason for the non-attendance of the witness."*

14. The Tribunal noted Ms Tanchel's submission that the MGDD/A had not been properly evidenced by an accompanying statement, but that she had accepted the permissive basis of Rule 34(1) when it came to the Tribunal considering the admissibility of evidence. The Tribunal noted that the comment about Dr Narayanaswamy's demeanour was made at the time that the breath test at the police station was being conducted. It noted that there was other evidence describing Dr Narayanaswamy's demeanour in the MGDD/A that was also hearsay, and had not been challenged, such as he was "*quiet*". Further that the MGDD/A provided details of Dr Narayanaswamy's responses to questions answered as part of that second breathalyser process, which had also not been challenged.

15. The Tribunal further noted that PC A's witness statement provided evidence of Dr Narayanaswamy's actions at the police station and of his demeanour prior to arrest, this included reference to her smelling what she believed to be alcohol coming from Dr Narayanaswamy. The Tribunal further noted Dr Narayanaswamy's stated conviction in relation to paragraph 2 of the Allegation – failing without reasonable excuse to provide a specimen of breath at the police station, provided evidence to substantiate paragraph 2 of the Allegation.

16. The Tribunal noted Ms Tanchel's submission that she was unable to cross-examine PC G to determine whether he was mistaken as to his observation that Dr Narayanaswamy smelt of alcohol or whether he could have been provided with that information by a third party. Ms Tanchel was clear however, that she was not submitting that PC G had fabricated this

evidence. The Tribunal considered the MGDD/A to be relevant, and that it was fair for the contents of it to be admitted in full. It noted that PC G's observation was not the sole or decisive evidence in support of either paragraph 1 or 2 of the Allegation given the other available evidence.

17. Even in the absence of PC G to cross-examine, the Tribunal did not consider that admitting this comment into evidence would have an impact in terms of fairness, such that it should be excluded.

18. The Tribunal therefore determined to reject Ms Tanchel's application to exclude the comment made by PC G.

Application to admit evidence from PC B

19. On behalf of the GMC, Ms Tighe, Counsel made an application pursuant to Rule 34(1) of the General Medical Council ('GMC') ('Fitness to Practise') Rules 2004 (as amended) ('the Rules') to admit PC B's written statement and exhibit GC/1, a police statement dated 27 August 2019, as evidence before the Tribunal.

20. The Tribunal received written and oral submissions from the GMC, setting out the basis for its application and oral submissions in response from Ms Tanchel on behalf of Dr Narayanaswamy.

Submissions

21. On behalf of the GMC, Ms Tighe stated that PC B was at the second scene prior to Dr Narayanaswamy's arrival at assignment two and that he observed Dr Narayanaswamy arrive at the scene, he approached the doctor, and as a result of concerns, he performed the roadside breath test.

22. Ms Tighe stated that within PC B's GMC statement, a sole paragraph deals with the incident itself and that PC B provides two observations within that paragraph, which were not included within his police statement. She submitted that the GMC would be content for those observations to be redacted. She further submitted that it is fair to admit this evidence as Dr Narayanaswamy had sight of Exhibit GC/1 at the end of January 2021.

23. On behalf of Dr Narayanaswamy, Ms Tanchel submitted that it would be unfair and *'in the face of directions'* for the statement from PC B to be admitted as evidence at this stage. She stated that an email from the GMC's solicitor on 10 May 2021 stated that the statement had been taken out of the bundle but did not indicate that additional evidence was being sought and obtained. She accepted however, that in the email exchange between solicitors the GMC did refer to PC B's evidence being removed *"for now"*.

The Tribunal's decision

24. The Tribunal had regard to the questions of fairness and relevance in accordance with Rule 34(1) of the Rules. It also considered the submissions provided by both parties.

25. The Tribunal noted PC B's police statement was made the day after the event and that PC B observed Dr Narayanaswamy arrive at the scene of assignment two and was the officer who performed the roadside breath test. The Tribunal therefore determined that the evidence from PC B was relevant to the issues that it has to determine in this case.

26. The Tribunal next considered whether it was fair to admit the evidence of PC B. It was mindful that Dr Narayanaswamy had sight of exhibit GC/1 and this was evident as he had commented on it within his written statement. The Tribunal therefore considered that Dr Narayanaswamy was not prejudiced in terms of fairness as he had been given advance notice of what Exhibit GC/1 contains. The Tribunal therefore concluded to admit PC B's evidence, omitting the two new observations made within his written GMC statement that were not included in his police statement.

27. The Tribunal determined to grant the GMC's application to admit PC B's written statement, with the appropriate redactions, and exhibit GC/1 as evidence.

SCHEDULE 1

Schedule 1 – FME Assignments, 26 and 27 August 2019

Assignment	Job location	Call time	Arrival time
1	Morley Lane, Little Eaton	20:40	22:40
2	Repton Road, Swadlincote	23:15	~~01:47~~ 01:00 Amended under rule 17(6)