PUBLIC RECORD

Dates: 01/03/2022 - 04/03/2022

Medical Practitioner's name:	Dr Emmanuel OKINE
GMC reference number:	3622801
Primary medical qualification:	Artsexamen 1992 Universiteit van Amsterdam

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

Summary of outcome
12 months suspension

Tribunal:

Legally Qualified Chair	Mr Jetinder Shergill
Lay Tribunal Member:	Miss Susan Hurds
Medical Tribunal Member:	Dr Shazad Amin

Tribunal Clerk:	Ms Fiona Johnston

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Lee Gledhill, Counsel, instructed by the Doctors Defence Service
GMC Representative:	Mr Ian Brook, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts and Impairment - 03/03/2022

Background

1. Dr Okine qualified in 1992 from the University of Amsterdam and gained his General Practitioners ('GP') qualification in 1996. At the time of events Dr Okine was employed as a sole GP Practitioner at Eastmoor Medical Centre ('the practice').

2. Whilst working at the practice, it is alleged that Dr Okine was found to have completed false patient records while working at the practice between 20 November 2017 to 6 February 2018. The practice manager became aware of the concerns and reported the matter to the Clinical Commissioning Group ('CCG') and to the General Medical Council ('GMC') in March 2018. As a result, on 17 April 2018, the CCG and NHS England met and decided what the course of action should be taken regarding the concerns. It was decided that the matter would be passed to the NHS Counter Fraud team to investigate. Dr Okine continued to work with some restrictions in place. Following the investigation, the matter was reported to the police and Dr Okine accepted a police caution on 27 November 2020.

3. The allegation that has led to this hearing can be summarised as Dr Okine's fitness to practise is said to be impaired by reason of his caution.

The Facts

The Allegation and the Doctor's Response

The Allegation made against Dr Okine is as follows:

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

1. On 27 November 2020 you accepted a caution for S2 Fraud Act 2006 – Fraud by False Representation.

And that by reason of the matters set out above your fitness to practise is impaired because of your caution. **Admitted and found proved**

The Admitted Facts

4. At the outset of these proceedings, through his counsel, Dr Okine made admission to paragraph one of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced paragraph one of the Allegation as admitted and found proved.

The offence that led to the caution

5. The Tribunal noted the background to the offence as set out in the investigations report:

- Dr Okine falsified consultation entries while working at the practice between 20 November 2017 to 6 February 2018 in order to improve the practice's Quality and Outcomes Framework ('QOF') performance.

- The practice received quarterly payments throughout the financial year under the QOF. In order for payments to be made QOF points were awarded for specific medical consultations and procedures. The points total led to the practice receiving a financial reward. Dr Emmanuel Okine had updated 34 different medical records with false medical consultations ranging from asthma annual reviews to diabetic reviews with associated medical procedures such as blood pressure readings, body mass calculations or spirometry readings. The QOF codes would be attached to these false medical consultations and the points from these codes would be calculated which led to the practice receiving quarterly payments. In the counter fraud report dated 21 July 2021 the findings into the investigation stated:

'It was evidenced from the audit of patient notes cross-matched against the appointment's diary that between 20 November 2017 and 6 February 2018 the subject had accessed and updated 44 x records (relating to 34 x patients) despite there being no record of the patients attending a GP appointment being found.'

- The investigation report went on to explain that although patients could have been put at risk no actual harm to patients resulted.

Impairment

6. With no facts remaining in dispute, the Tribunal had to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr Okine's fitness to practise is currently impaired by reason of his caution.

Documentary Evidence

7. The Tribunal had regard to the documentary evidence provided by the parties prior to the hearing. This evidence included but was not limited to witness statements, counter fraud investigation report, police caution, complaint form, various email correspondence, testimonials, and Dr Okine's Rule 7 response. The GMC relied on a written warning that had been given to Dr Okine in 2012 as a result of earlier an GMC investigation.

Witness Evidence

8. Dr Okine provided a witness statement and also gave oral evidence at the hearing. In addition, the Tribunal received documentary and heard live evidence from Mr A, former practice manager on Dr Okine's behalf.

Dr Okine's Evidence

9. In his oral evidence Dr Okine told the Tribunal that he was the sole practitioner of the practice for two years and that Mr A was the practice manager at the time. Mr A left the practice, and a new manager Ms B took over. He explained he thought everything was working fine until his accountant tried to get in touch with Ms B in relation to some unpaid invoices and she wasn't forthcoming with any information. Dr Okine explained Ms B was not using the money the practice was getting from the CCG to pay creditors or NHS Properties. He told the Tribunal that he was a single-handed practitioner and he solely concentrated on the patient's care thinking Ms B was looking after the financial side of the practice.

10. Dr Okine said he became aware of the debts that were owed and the pressure became an enormous burden for him. He was also worried by this point in his difficulties in meeting the debts. Dr Okine said he sold some of his assets to recover money and then pay the creditors. After discussions with his creditors some agreed to drawing up payment plans as he did not have the full assets to pay everything off. Dr Okine stated: '*it was not my intention to do these things*.'

11. Dr Okine said that he hasn't worked as a GP since August 2018 and that he did apply for voluntary erasure, but it was not successful. He told the Tribunal he has retired and has no intention of coming back to medicine. He would never take on the responsibly and pressures of being a partner in a practice again and that he has learned his lesson. He said that he was totally ashamed of his dishonest actions, and he placed his patients at risk, affected public confidence greatly and brought the medical profession into disrepute.

Mr A's Evidence

12. Mr A who was the practice manager at the practice prior to Ms B told the Tribunal that Dr Okine had left the financial management entirety to him and that in his experience was not unusual. He explained how the financial situation in the practice had been under pressure for some time and that his prudent management had achieved financial viability. Mr A stated in his oral evidence; '*I like to keep a tight rein on things'.* He added that he was asked by Dr Okine to re-examine the practice finances in 2017. He had made enquires though Ms B and found that considerable depts had been accrued but was unable to explain to the Tribunal how these had arisen. He told the Tribunal that there was a lot of things he did not know as the NHS did not deal directly with him since he was only assisting Dr Okine on a unformal basis. He said he found invoices that had simply been filed and there was a folder with various unpaid invoices in it. The Tribunal found him to be credible witness and accepted his evidence.

Submissions on behalf of the GMC

13. Throughout his submissions, Mr Brook referred the Tribunal to relevant case law and the relevant paragraphs of Good Medical Practice (2013 edition) ('GMP') and stated that the Tribunal should have regard to the overarching objective in considering whether Dr Okine's fitness to practise is currently impaired.

14. Mr Brook submitted that Dr Okine's fitness to practise is currently impaired by virtue of his caution. Dr Okine created 44 false medical records in those of 34 patients and his misconduct was not a one-off incident. Dr Okine's misconduct lasted over two months, so it

was not a momentary lapse under stress or a form of desperation. He submitted that it was calculated dishonesty over a period of several months to obtain money which the practice was not entitled to.

15. He submitted that part of Dr Okine's oral evidence did not stand up to scrutiny. Dr Okine was a partner in the practice but could not tell the Tribunal the global sum for the practice income. Mr Brook said that maybe Dr Okine was focusing on the clinical work, but it was inherently improbable that he would not have known the global sum as a rough figure or a proximation and asserted that it would be the first thing a partner would ask.

16. Mr Brook submitted that Dr Okine was not truthful about the evidence he gave when questioned. His mitigation for what he did was a '*character assassination'* of Ms B, who Dr Okine said was to blame for his financial downfall due to her ineptitude and incompetence. Dr Okine persisted in evidence that Ms B had simply decided to pay the staff and not pay other bills out of the practice income that was coming in. He sought to exonerate himself by blaming the practice manager to obtain the Tribunal's sympathy. He submitted that Dr Okine's written reflections are in many ways a distortion of the reality and a dishonest attempt to place far more blame on Ms B than anything she could possibly perhaps deserve. He asserted that this was an attempt to '*pull the wool over the Tribunal's eyes'.*

17. In respect of the risk of repetition of the behaviour leading to the caution Mr Brook submitted that Dr Okine's written reflections referred to the possibility of having to sell the family home to meet the payments to his creditors. However, in oral evidence Dr Okine now claims he has savings, and he is now comfortable and would not need to return to work in the future. Mr Brook submitted that, this reported change in his financial position has come about after working elsewhere for a short period of time before retiring in 2018, in context of risk there is a chance he could return to work

18. In relation to the 2012 warning, Dr Okine's misconduct started shortly after the warning expired in 2017.

19. He submitted that Dr Okine appeared to demonstrate good insight in his written reflections, but that was distorted and undermined by his oral evidence. He clearly does not have full insight and still has to complete his journey.

20. The only remediation Dr Okine has done is one ethics course completed several years following his fraud, in 2021.

21. Mr Brook submitted that all three limbs of the statutory overarching objective were engaged in this case and would be undermined if a finding of impairment was not made.

22. Mr Brook concluded by submitting that a finding of impairment was required as the risk of repetition cannot be ruled out. He said it was also necessary in order to maintain public confidence in the profession and send a message in relation to the standards the public expects of a doctor.

Submissions on behalf of Dr Okine

23. Mr Gledhill submitted that Dr Okine's fitness to practise is not currently impaired by reason of the facts admitted and found proved. Mr Gledhill accepted that the Allegation is a serious matter but given the circumstances in this case, a finding of impairment is not necessary.

24. He reminded the Tribunal that Dr Okine accepted a caution which is not a formal criminal conviction. Therefore, the question is, does that caution lead to a finding of impairment?

25. He submitted that on reflection Dr Okine did not take sufficient interest in the finances of the practice. Dr Okine had not realised all the requirements of being a GP in relation to running a practice and had relied on his practice manager to wholly manage the finances. The previous manager had managed the funds well but after he left there appears to have been a lack of funds within the practice to meet all the financial commitments. There were many unpaid invoices, all of which Dr Okine had to pay out of his own pocket. Mr Gledhill submitted that whilst Dr Okine's understanding was that Ms B contributed to the problem, Dr Okine accepts full responsibility for what happened. Dr Okine was seeking to explain the pressure he was under and not to excuse his behaviour.

26. In response to the GMC submission that he only completed one ethics course, he submitted that Dr Okine has retired and does not need to provide evidence of ongoing learning or need to update his knowledge and skills.

27. In relation to the suggestion that the fraudulent entries would have continued but for the interventions of the nurse, he submitted that the Tribunal must be cautious about drawing that inference. He also submitted that there had been no direct harm to any of the patients.

28. He submitted that Dr Okine's previous warning was in 2012 and had expired in 2017, thus should not be given any weight whatsoever in these proceedings. He further submitted that the previous expired warning involved very different type of conduct, not dishonesty, and although regrettable, had been remedied.

29. He submitted that the GMC has questioned Dr Okine's level of knowledge about the practice's financial difficulties, however if one's head of finance did not draw attention to any concerns, one might think all is well. In response to the GMC's submissions, he questioned the relevance the submissions stating Dr Okine was more comfortable financially.

30. In relation to the risk of repetition Mr Gledhill said, it is quite clear that Dr Okine has made his decision not to return. He submitted that Dr Okine would never be involved in management of a practice again, even if he were to return, it is beyond him. He reminded the Tribunal that Dr Okine's misconduct happened over a relatively short period of time in an otherwise unblemished career. His misconduct has not appeared to have been for personal gain and there is no evidence of harm to patients.

31. Mr Gledhill submitted that in oral evidence Dr Okine may have not been as articulate as could have been. He reminded the Tribunal that Dr Okine was in a pressurised environment, and giving answers over video, and that whilst his answers may have '*raised an eyebrow',* that does not undermine his written evidence.

32. Mr Gledhill submitted that a finding of current impairment is not required in every case of caution for an offence of dishonesty. If the Tribunal does not find that Dr Okine's' fitness to practise is currently impaired, it would have the option to issue a formal Warning, which Dr Okine would accept. This would send a strong signal to the profession and members of the public as to the requisite standards of probity for medical practitioners. Mr Gledhill submitted that the risk of repetition was negligible; any public protection concerns had fallen away.

The Tribunal's Approach

33. 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. The Tribunal accepted the LQC's legal advice. He indicated in particular that: "The offending behaviour in this case relates to fraud, and that fraud took place in the context of the doctor's medical practice. The circumstances of this case is closely aligned to 'professional misconduct' but of course the ground of impairment is a 'caution' rather than 'misconduct'. That leaves the tribunal in a somewhat puzzling situation of navigating case law where those cases talk about 'misconduct'. Those cases remain relevant to our consideration because what we are looking at, in part, is the risk of repetition along with the wider public interest." The Tribunal refers to 'misconduct' in this determination in its dictionary definition meaning rather than the statutory ground of impairment.

34. The Tribunal first considered whether the facts found proved are a sufficiently serious departure from the standards of conduct reasonably expected of Dr Okine as a registered medical practitioner. In its deliberations, the Tribunal had regard to the current version of GMP.

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

36. The Tribunal had regard to the case of Meadow v GMC [2007] QB 462 and *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin),* in which Mrs Justice Cox quoted from Dame Janet Smith's Fifth Shipman Report:

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

The Tribunal's Determination on Impairment

37. The Tribunal considered all of the evidence and the circumstances of Dr Okine's caution. It first decided that the 2012 GMC warning issued to Dr Okine relied on by the GMC had expired and related to a different type of misconduct. For those reasons, the Tribunal decided to disregard it. There was no apparent dispute that a caution met the level of seriousness required to call into question current fitness to practice. The Tribunal finds that the matters that gave rise to Dr Okine's caution would undoubtedly be of serious concern to the public; and that the commission of an offence had the ability to undermine trust and confidence in the profession.

38. The Tribunal considered that Dr Okine's caution arose from his admission to committing a criminal offence, namely fraud. Fraud is a breach of a fundamental tenet of the profession, particularly when it relates to professional practice. Being honest and trustworthy and acting with integrity are at the heart of medical professionalism. The Tribunal also determined that the altering of patient records, which underpinned the attempted claim for monies, had the potential to put patients at risk. The Tribunal puts the matter no higher than 'potential risk' because it notes the conclusions of the expert evidence provided for the NHS investigations process, that had not identified any actual patient safety issues.

39. The Tribunal reminded itself of the standards required of doctors by reference to Good medical practice (GMP). In particular paragraphs 1, 65,68, 71 and 77.

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.*

68 *You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate*

71 *You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.*

a *You must take reasonable steps to check the information is correct.*
b *You must not deliberately leave out relevant information.*

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

40. The Tribunal considered that the circumstances that led to Dr Okine's caution constituted a serious departure from the principles set out in GMP and breached fundamental tenets of the profession.

41. The Tribunal considered the extent to which Dr Okine has remediated from the events leading to his caution. The Tribunal noted that Dr Okine has acknowledged that his caution affects the wider public interest and has apologised for the negative impact his caution had on the reputation of the profession and public confidence in it. In Dr Okines's apology letter dated 6 October 2021 he explained:

> *'I write this letter as an apology, predominantly to my patients but also to NHS England and the CCG for my behaviour and actions that led me to bring the medical profession in to disrepute.*
> *…*
> *I fully accept my dishonesty, I have been served with a police caution, which is rightful due to the circumstances I placed myself under. I have reflected long and hard not only has this affected me but also my family. I have undertaken an ethics and probity course and continue to reflect upon these values and my actions'.*

42. The Tribunal accepted that Dr Okine 's expressions of remorse and shame in his subsequent reflective statements were genuine and noted that he has repeatedly acknowledged that what he did was wrong and has accepted full responsibility for his actions. Whilst he did not confess of his own volition, he readily admitted what he had done when he was confronted. The Tribunal considered that Dr Okine has demonstrated sufficient insight into his actions and clearly understands that his conduct was wrong. Dr Okine has demonstrated that he now understands the seriousness of his conduct and the impact on the public and profession. The Tribunal was not persuaded by the GMC submissions minimising the doctor's efforts at remediation or casting him as being untruthful with the Tribunal. The Tribunal considered that in his oral evidence Dr Okine gave a sufficiently clear and cogent account of the significant financial mismanagement that occurred in the practice which set the backdrop to him seeking to remedy the practice's financial issues. The Tribunal accepted that it was those circumstances that led to him acting in the way that he did, by way of an explanation rather than trying to absolve himself of blame.

43. The Tribunal also had regard to the fact that Dr Okine has complied and engaged with the counter fraud and GMC investigation. It also noted Dr Okine made immediate admissions to his wrongdoing. Dr Okine has been open and honest about the investigation to his previous employers. The Tribunal bore in mind that Dr Okine has no previous criminal convictions or relevant regulatory findings.

44. The Tribunal considered that Dr Okine has clearly made substantial efforts to remediate his behaviour and undertaken sufficient remediation, including attending a course on probity and ethics. He also remedied the practice's financial status which had arisen from financial mismanagement, to the tune of over £275,000. Dr Okine has also provided personal reflections on his actions and the courses he has undertaken.

45. It noted the positive testimonials including the character reference from Dr Okine's previous practice manager Mr A, dated 9 December 2021, which states:

> *'I must make clear that this is totally out of character for Emmanuel, and I am aware that he is full of remorse and at a loss to explain his lapse in judgment. I can only surmise that such a lapse was brought about by the severe pressures, both financial and clinical that he was under at the time.'*

46. Given the evidence in regard to insight and remediation, the Tribunal concluded that Dr Okine is unlikely to repeat the same actions that led to his caution, or otherwise act in a dishonest manner again. The Tribunal was further reassured by Dr Okine's evidence that given his age and that he has been retired since 2018, he had no intention of returning to practice. The Tribunal accepted Dr Okine's assurances that he has no intention or interest in returning to work, and is sufficiently financially *'comfortable'*. The Tribunal concluded that there was sufficient insight and remediation, and therefore a low risk of repetition. In those circumstances, to make a finding of current impairment based on future risk was not required.

47. However, this case relates to a caution and the Tribunal went on to consider whether a finding of impairment was necessary in order to uphold the overarching objective. The caution and circumstances leading to it, have led to the profession being brought into disrepute.

48. The Tribunal decided that, given the nature of the admitted allegation, a finding of current impairment was required 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. The Tribunal considered that confidence in the profession would be undermined if a finding of impairment were not made in all the circumstances; and that a warning was insufficient.

49. Accordingly, the Tribunal determined that a finding of impairment by reason of Dr Okine's caution was required to uphold public confidence and maintain and uphold standards in the medical profession.

Determination on Sanction - 04/03/2022

50. Having determined that Dr Okine 's fitness to practise is impaired by reason of his caution, 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

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

Submissions

52. On behalf of the GMC, Mr Brook submitted that the appropriate sanction in this case is that of erasure, referring the Tribunal to relevant case law and the GMC Sanctions Guidance 2020 ('Sanctions Guidance').

53. Mr Brook submitted that considering the seriousness of Dr Okine's dishonesty, his behaviour is fundamentally incompatible with continued registration. His conduct constituted dishonesty meriting a police caution. Dr Okine falsified and amended patient records and the public would be shocked if the Tribunal drew back from imposing erasure in this case.

54. He submitted that the defence have suggested that there is no risk of repeating his behaviour, Dr Okine has learned lessons and he is no longer practising. It is also suggested that his misconduct only occurred due to specific set of circumstances relating to his financial position at the time. However, it is the GMC's role is to protect the public and if he were to restore there is no guarantee that his misconduct would not be repeated.

55. He submitted that there have been many doctors who are faced with financial pressures, but they do not resort to perpetrating frauds on the public finances and committing a criminal offence. He said whilst not a criminal conviction, accepted a caution is an admission to having committed the relevant criminal offence. He further submitted that Dr Okine's dishonesty was persistent and covered up.

56. Mr Brook submitted that in the interest of proportionality, erasure was the only appropriate sanction in this case.

57. On behalf of Dr Okine, Mr Gledhill submitted that against the background of all of the information that it would be manifestly excessive and disproportionate to erase Dr Okine.

58. Mr Gledhill submitted Dr Okine was a very competent and able General Practitioner. He further submitted it has been identified that Dr Okine was unable to manage and did not pay attention to the practise's finances and as a consequence, he took the steps to falsify information.

59. He submitted that there was no actual financial loss to the NHS and the amount claimed was of low value. Dr Okine's misconduct was an isolated event over a period of time in an otherwise unblemished career. Dr Okine has expressed his regrets and apology. He submitted that because of his failures a position arose where he was personally out of pocket. Dr Okine has acknowledged that he is not a manager, and he recognises the pressures that come with financial management of a business.

60. He submitted that whether or not Dr Okine would intend to return to practise, the Tribunal has heard that he is now retired and there is evidence to support that, he has not worked in the past three years. Dr Okine has said he would like to take administrative erasure.

61. Mr Gledhill submitted that in light of its findings that Dr Okine has demonstrated insight, remediation and a low risk of repetition, if the Tribunal consider it necessary in the public interest to impose any sanction, the appropriate and proportionate action would be suspension. He went on to submit that a period of suspension of no greater than 6 months, and around 2 months, would be proportionate and adequately send out a signal to the doctor, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. He submitted that erasure would be grossly disproportionate in all the circumstances of this case.

The Tribunal's Determination on Sanction

Mitigating and Aggravating Factors

Mitigating Factors

62. The Tribunal had regard to the following mitigating factors present in Dr Okine's case:

- He has remediated and gained sufficient insight and is not impaired on these grounds (see paragraph 42 onwards of the impairment determination);
- He made full admissions and apologised for his misconduct from the outset, and showed genuine remorse throughout;
- He has cooperated with the NHS Counter Fraud and GMC investigation;

- Prior to these events Dr Okine had a longstanding career with no previous probity issues;
- Dr Okine was naive and inexperienced in running a sole practice and dealing with financial matters (which were relevant circumstances around the issue of his offending);
- He faced a significant amount of workplace, personal and financial stressors as a result of suddenly becoming a sole practitioner, compounded by the retirement of the previous practice manager on whom he relied;
- The value of what might have been obtained by the attempted fraud was relatively low; and
- The testimonial evidence led the Tribunal to conclude Dr Okine's actions were wholly out of character and only arose because of the very unusual circumstances in which he found himself.

Aggravating Factors

63. The Tribunal balanced the above mitigating factors with any aggravating factors. The Tribunal decided that by falsifying patient records with different 'read codes' had two important consequences. First, it had the potential to cause patient harm, though the Tribunal had no direct evidence of the level of any potential harm for reasons set out in the impairment determination. Secondly, it undermined the trust and confidence both the public and NHS authorities should have in doctors. The Tribunal took those factors into account in assessing the seriousness of the events leading to the caution.

Approach

64. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken into account the Sanctions Guidance (SG) and the statutory overarching objective.

65. The Tribunal bore in mind that the main reason for imposing sanctions is to protect the public and that sanctions are not imposed to punish or discipline doctors, though they may have a punitive effect. The Tribunal has taken a proportionate approach, by balancing Dr Okine 's interests with the public interest.

66. The Tribunal has also borne in mind that in deciding what sanction, if any, to impose, it should consider all the sanctions available, starting with the least restrictive and then consider each sanction in ascending order.

67. The Tribunal has already set out its decisions on the facts and impairment and it took those determinations into account during its deliberations on sanction, starting with whether to take no further action.

No action

68. The Tribunal determined that whilst there were significant matters of mitigation in the case, these did not amount to 'exceptional circumstances' which could justify it taking no action. It considered that to take no action would not properly reflect the gravity of the events leading to Dr Okine being cautioned.

Conditions

69. The Tribunal then considered whether imposing an order of conditions on Dr Okine's registration would be appropriate. It bore in mind that any conditions imposed should be appropriate, proportionate, workable and measurable. The Tribunal had regard to paragraph 82 of the SG.

> *82 Conditions are likely to be workable where:*
>
> *a the doctor has insight*
> *b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*
> *c the tribunal is satisfied the doctor will comply with them*
> *d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised*

70. The rationale set out in the Tribunal's determination on impairment is to deal with issues of public confidence and mark proper professional standards. The Tribunal decided it would be unusual to impose conditions in a dishonesty case, and particularly one where the impairment was only found on wider public interest issues. It decided conditions would not sufficiently mark the gravity of the events leading to Dr Okine being cautioned. An order of conditions would not strike a fair balance between Dr Okine's interests, and the wider public interest. It would not adequately meet the overarching objective in a proportionate way. Furthermore, the Tribunal concluded that a period of conditional registration would not be appropriate because Dr Okine is now retired. All of those factors made an order of conditions inappropriate.

71. In all the circumstances, the Tribunal concluded that imposing conditions on Dr Okine's registration would not be sufficient to maintain public confidence in the medical profession or uphold proper professional standards for members of the profession.

Suspension

72. The Tribunal then went on to consider whether a period of suspension would be the appropriate sanction in the circumstances of this case. In doing so, it was mindful of paragraphs 91, 92 and 93 of the Sanctions Guidance, which state:

> ***91*** *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> ***92*** *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (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.*

73. The Tribunal noted that the Sanctions Guidance indicates that suspension 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 and where action must be taken to maintain public confidence in the profession, both of which are necessary purposes of a sanction in this case.

25. Whilst this is a 'caution' case, the Tribunal decided that the context in which the dishonesty arose was an important factor to weigh in the balance. It noted paragraph 124 of the SG:

'124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.'

74. In considering whether to impose a period of suspension, the Tribunal had regard to paragraphs 97a, e, f and g of the SG.

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

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

….

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

f. No evidence of repetition of similar behaviour since incident.

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

75. The Tribunal accepted that suspension does have a deterrent effect and would send a sufficiently robust signal to the profession, and the public about transgressing proper standards of professional behaviour. The Tribunal was satisfied all of paragraph 97 of SG cited above applied to Dr Okine's case. The Tribunal has already set out detailed consideration of the steps Dr Okine has taken in relation to insight and remediation, such that there is a low risk of repetition. It concluded this misconduct arose in very unusual circumstances and was relatively 'isolated' (see below); and there has not been any repetition of dishonest behaviour. All of that supports a conclusion that there is not a significant risk of repeating the behaviour, indeed that is unlikely. As such paragraphs 97 e), f) and g) are met.

76. The issue of whether the misconduct was 'fundamentally incompatible with continued registration' as set out at paragraph 97 a) in the SG was a thornier issue. The Tribunal was under no doubt that doctors falsifying patient records in an attempt to obtain money from the NHS authorities is a serious matter. Actions of this kind are likely to be fundamentally incompatible with continued registration. The Tribunal noted relevant parts of paragraph 109 of the SG:

> *'109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*
>
> > *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…*
> >
> > *…*
> >
> > *d Abuse of position…*
> >
> > *…*
> >
> > *h Dishonesty, especially where persistent…'*

77. Those subparagraphs were on the face of it met as a result of Dr Okine's dishonest actions.

The Tribunal also noted paragraph 128 of the SG:

> *'128 Dishonesty, if persistent and/or covered up, is likely to result in erasure (see further guidance at paragraph 120–128).'*

78. This case is firmly within the territory of being 'fundamentally incompatible with continued registration' which would indicate to the Tribunal that an order of erasure 'is likely to result'. However, the specific circumstances in this case are important to weigh in the proportionality balance.

79. The Tribunal was satisfied the '*persistent'* nature of the dishonesty in this case occurred on numerous occasions over a few months. It was the same sort of dishonesty on

each occasion. The dishonesty did not become more 'serious' other than the increased number of instances of it. It involved 34 patient records, and 44 entries. When viewed in the context of an otherwise honest doctor with a long career, it was dishonest conduct which could fairly be characterised as relatively *'isolated'*. It was isolated misconduct in both its nature and the time period. When set against Dr Okine's previous good standing and long career, the Tribunal considered it was an aberration, indeed the testimonial evidence supported this dishonest behaviour as being '*totally out of character.'*

80. The attempt to obtain extra money would have amounted to £3,480.95. It is not a '*low*' sum of money, but in the context of how the dishonesty arose and the sums that would normally be paid to the practice, it could fairly be characterised as '*relatively low'* The Tribunal noted that the NHS Counter Fraud draft report of 21 July 2021 describes ' *the relevantly low value in this attempt only case.'* The funds were not paid over but had they have been, the Tribunal accepted that they were intended to keep the practice afloat rather than direct personal gain. The Tribunal noted the findings of the investigations report:

> "*The subject admitted knowing their actions were wrong, but nevertheless considered necessary to ensure the practice remained financially viable. The subject provided a full and frank admission that they had accessed and falsified patient records to make a financial gain, contrary to Section 2 Fraud Act 2006. They apologised for their actions and demonstrated contrition within the prepared statement."*

81. The Tribunal noted that Dr Okine cooperated with the NHS Counter Fraud and GMC investigation. He made full admissions from the outset and apologised for his misconduct on various occasions. Those matters along with the evidence put before the Tribunal about insight and remediation, led the Tribunal to conclude Dr Okine was genuinely remorseful and had sufficient insight. His dishonesty, whilst occurring on a number of occasions was an aberration from his usual good character. That aberration arose because of the very unusual set of circumstances Dr Okine found himself in at the practice.

82. Those unusual circumstances included that Dr Okine had unexpectedly become a sole practitioner when the senior partner left. Dr Okine had been unable to find another partner to join the practice. Dr Okine had never previously been responsible for practice finances or been a manager. The Tribunal heard evidence that it was not unusual for a doctor to concentrate on patient care rather than finance and administration. To that extent, Mr A's evidence that he kept a '*tight rein'* on the finances whilst he was practice manager was a key to the practice's survival. The Tribunal heard how the practice's finances had always been tight but that Mr A's budgeting meant things 'ticked over' and the accounts remained solvent. When Mr A retired there were problems finding a suitable replacement for a number of months which meant he stayed on longer than planned. Ms B was interviewed and

considered suitable for the post, and there was a detailed handover with Mr A. Despite Mr A indicating a willingness to assist if Ms B needed his help, she did not take up that offer. The Tribunal accepted that Mr A left the practice in a solvent state albeit with tight finances.

83. A year later he was asked to help Dr Okine stabilise the practice's finances as the finances had become perilous. The debts included significant sums owed for rent, although it transpires this was partly due to a significant rent increase being backdated. However, there were significant sums owed to locum agencies and other creditors, such that suppliers refused to transact with the practice until debts were paid. It was somewhat unclear when Dr Okine became aware of the financial problems. The Tribunal accepted he was probably oblivious to much of it for some time as staff salaries continued to be paid. The Tribunal accepted he was relying on Mr A's replacement in the same way as he had been relying on Mr A's '*tight rein'*. That is why Dr Okine's naivety and inexperience as being a manager was relevant.

84. In the Tribunal's assessment, Dr Okine was out of his depth as a sole practitioner. The Tribunal accepted this situation likely led to significant stress, as the practice was insolvent. Dr Okine was convinced that monies had not been billed for by Ms B such there were outstanding sums owed to the practice. That was in part supported by Mr A's evidence that despite his best efforts he still could not get to the bottom of all that had gone on. In the Tribunal's assessment, in that intervening year since Mr A's departure, there had been significant financial mismanagement. That is the proper context that the dishonest behaviour arose. Dr Okine considered it was appropriate to try and recoup money he thought was owed to the practice for QOF by falsifying patient records in order to trigger the payments being made by the NHS. That was obviously wholly wrong, but the Tribunal accepts it was '*reactive fraud'* inasmuch as Dr Okine was reacting to the significantly challenging circumstances, he found himself and the practice in.

85. The Tribunal concluded that Dr Okine did not set out with the intention of committing fraud to obtain QOF payments, but rather that his fraudulent actions were somewhat pathetic and misguided attempt to remedy the serious financial problems the practice was under. This does not excuse his actions, for which he has taken full responsibility, but places them in their proper context.

86. Since those events that led to the caution, Dr Okine has remediated to the extent the Tribunal decided he was not impaired on grounds of future risk of repeating the misconduct. He has shown sufficient insight and remorse to persuade the Tribunal his behaviour was an aberration from his usual good character. The situation he found himself in was a very unusual set of circumstances. The Tribunal concluded that substantial weight should be placed in the balance when considering what is proportionate in all of the circumstances.

87. The Tribunal determined that a weighty sanction was required to have a deterrent effect and to remediate the adverse impact on public confidence. The Tribunal considered that Dr Okine's misconduct was unacceptable, but the public interest and maintenance of professional standards could be achieved by a period of lengthy suspension rather than erasure. The Tribunal was satisfied that whilst the offending was firmly in erasure territory and had some aggravating features, there was sufficient mitigation to tip the scales against making an order of erasure. The Tribunal considered that erasure would be disproportionate in all of the circumstances.

88. Therefore, the Tribunal was satisfied that a sanction of suspension would properly reflect the gravity of Dr Okine's misconduct and send out a clear message to Dr Okine, the profession and the wider public that such offending behaviour leading to a police caution is unbefitting of a registered medical practitioner.

Duration of Suspension

89. The Tribunal went on to consider the length of suspension, taking into account paragraphs 99 and 100 of SG in that regard:

> ***99*** *The length of the suspension may be up to 12 months and is a matter for the tribunal's discretion, depending on the seriousness of the particular case.*
>
> ***100*** *The following factors will be relevant when determining the length of suspension:*
>
> > *a the risk to patient safety/public protection*
> > *b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)*
> > *c ensuring the doctor has adequate time to remediate.'*

90. The Tribunal determined that the upholding of proper standards and of maintaining public confidence in the profession would be achieved by a maximum period of suspension. The mitigating factors have already been weighed in the balance and the Tribunal was not satisfied they could be relied upon to further reduce the period of suspension. Dr Okine has come perilously close to being erased. That is the unwavering signal that the Tribunal sends out to the profession as regards this sort of misconduct. The reduction of a 12-month period of suspension based on mitigation factors would render the totality of the sanction disproportionate. That is because it would not strike a fair balance between the doctor's interests and those matters set out in the overarching objective.

91. Accordingly, the Tribunal concluded that the maximum period of suspension of 12 months was the appropriate and proportionate sanction in this case.

Review

92. The finding of impairment was only on the grounds of the wider public interest. That will be satiated at the expiry of the 12 months suspension. Dr Okine has demonstrated good insight and remediation; he was a safe doctor and is now retired. The Tribunal considered that there was no useful or practical purpose in directing a review in this case, hence no review hearing is directed.

Determination on Immediate Order - 04/03/2022

93. Having determined that Dr Okine's registration should be subject to an order of suspension for a period of 12 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Okine's registration should be subject to an immediate order.

94. The Tribunal has borne in mind the test to be applied with regard to imposing an immediate order; it may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor.

Submissions

95. Mr Brook, on behalf of the GMC, submitted that the GMC did not seek an immediate order.

96. On behalf of Dr Okine, Mr Gledhill agreed with the submissions of Mr Brook that an immediate order was not necessary in this case. He submitted that Dr Okine would be applying for voluntary erasure.

Tribunal's decision

5. The Tribunal has taken account of the relevant paragraphs of the *SG* in relation to when it is appropriate to impose an immediate order. Paragraphs 172 and 173 of the *SG* states:

> 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.'*

97. The Tribunal has determined that, in view of its findings in its determination on sanction, it is not necessary, for the protection of members of the public, to uphold and maintain professional standards, and in the public interest, to make an order suspending Dr Okine's registration immediately.

98. This means that Dr Okine'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 Okine does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

99. That concludes the case.

Confirmed
Date 04 March 2022 Mr Jetinder Shergill, Chair