PUBLIC RECORD

Dates: 29/01/2024 - 12/02/2024

Medical Practitioner's name:	Dr Enson THOMAS
GMC reference number:	4764867
Primary medical qualification:	MB BS 1989 Calicut University

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

Summary of outcome

Suspension, 2 months

Tribunal:

Legally Qualified Chair	Mr Paul Moulder
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Dr Matthew O'Meara

Tribunal Clerk:	Miss Hinna Safdar

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Christopher Mellor, Counsel, instructed by Medical Protection Society
GMC Representative:	Ms Georgina Goring, 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 - 07/02/2024

Background

1. Dr Thomas qualified in 1989 from The University of Calicut, Kerala in India. Dr Thomas is a Consultant Respiratory and General Physician and has been a consultant for almost 21 years.

2. Dr Thomas was, at the relevant times, the Clinical Lead for the Respiratory Department at Bedford Hospital NHS Trust ('the Trust'), which merged with Luton and Dunstable Hospital NHS Foundation Trust in 2020 to form Bedfordshire Hospitals NHS Foundation Trust.

3. Dr Thomas also practised at the following private hospitals: The Manor Hospital (Bedford), The Saxon Clinic (Milton Keynes), Three Shires Hospital (Northampton) and The Phoenix Group of Hospitals (9 Harley Street, London).

4. Dr Thomas is a Health and Safety Executive (HSE) Appointed Doctor, responsible for conducting asbestos medicals on a private basis. The medicals are mandatory for individuals working with asbestos, requiring recertification every two to three years.

5. At the time of the Allegation brought by the General Medical Council ("GMC"), Dr Thomas worked full-time at the Trust, following a job plan, which included allowing time for his private work to be done.

6. During the COVID-19 pandemic, Dr Thomas had been appointed as the Trust's COVID-19 Lead and Principal Investigator for the COVID-19 'Recovery Trial,' and his work schedule included on-call duties and extended working hours to support the Trust during the crisis.

7. The Allegation that has led to Dr Thomas' hearing can be summarised as between 10 January and 10 December 2020 at the Chest Clinic (the 'Clinic') at Bedford Hospital, Dr Thomas undertook private work during his contracted NHS sessions within his job plan, without seeking agreement from the Hospital. It is also alleged that, between November 2019 and May 2021 at the Clinic, Dr Thomas used NHS stationery to support his private work without seeking agreement from the Hospital and without paying for that stationery. It is further alleged that Dr Thomas's actions were dishonest, both in relation to the private patient consultations and the use of NHS stationery, in either case without having sought permission.

The Outcome of Applications Made during the Facts Stage

8. The Tribunal granted the General Medical Council's ('GMC') application, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation at various stages of the hearing. Firstly, the amendments were to correct the paragraphs in accordance with the GMC's evidence, in particular, the GMC applied to remove the allegation relating to 'resources' where it appeared as it was confirmed by Ms Goring that the case was limited to the use of NHS stationery, which included stamps. Latterly, an application was made to remove dates from the Schedules which relied on the evidence of a witness who had been unresponsive and failed to attend the hearing. The Tribunal decided to allow the amendments

9. Further applications were made by the GMC to amend the wording of several paragraphs of the Allegation and to strike out other appointments from the Schedules following evidence given during the hearing. The Tribunal was satisfied that this could be done without injustice.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Thomas is as follows:

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

1. Between ~~10~~ 17 January 2020 and 10 December 2020 at the Chest Clinic at Bedford Hospital ('the Clinic'), you: Amended under Rule 17(6)
   a. undertook private work during your contracted NHS sessions, in that you:

i. consulted with private patients at the Clinic on the dates set out in Schedule 1;

ii. carried out dictation pertaining to your private patients on the dates and times set out in Schedule 2;

b. knew that, **except in emergencies,** you should not conduct private work during your contracted NHS sessions; **Amended under Rule 17(6)**
Admitted and found proved

c. failed to seek agreement from the General Manager and/or Clinical Director for Respiratory Services at the Bedfordshire Hospitals NHS Foundation Trust ('the Trust') to carry out the work set out at paragraphs 1(a)(i) and 1(a)(ii) above;

d. pressurised Ms A, a member of the secretarial staff, into prioritising your private work over NHS work.

2. Between November 2019 and May 2021 at the Clinic, you:

a. used NHS stationery ~~and resources~~ to support your private work; **Amended under Rule 17(6)**

b. failed to:

i. seek agreement from the General Manager and/or Clinical Director for Respiratory Services at the Trust to use NHS stationery ~~and resources~~; **Amended under Rule 17(6)**
Admitted and found proved

ii. record the NHS stationery ~~and resources~~ used for your private work; **Amended under Rule 17(6)**
Admitted and found proved

iii. ensure payment was made for the NHS stationery ~~and resources~~ you used for your private work; **Amended under Rule 17(6)**
Admitted and found proved

c. knew that you should not have been using NHS stationery ~~and resources~~ to support your private work. **Amended under Rule 17(6)**
Admitted and found proved

3. Your actions as described at paragraph:

a. 1(a)(i) and 1)(a)(ii) were dishonest by reason of paragraphs 1(b) and 1(c);

b. 2(a) were dishonest by reason of paragraphs 2(b) and 2(c).

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

Schedules

The above Allegation is in relation to the following Schedules:
Schedule 1

Date	Number of private patients
~~10 January 2020~~	~~1~~ Withdrawn under Rule 17(6)
17 January 2020	~~3~~ 1 Amended under Rule 17(6) Admitted and found proved
18 February 2020	1 Admitted and found proved
24 February 2020	1 Admitted and found proved
~~25 February 2020~~	~~1~~ Withdrawn under Rule 17(6)
3 March 2020	1 Admitted and found proved
4 March 2020	1 Admitted and found proved
12 March 2020	~~2~~ 1 Amended under Rule 17(6) Admitted and found proved
3 April 2020	2 Admitted and found proved
~~9 April 2020~~	~~1~~ Withdrawn under Rule 17(6)
15 April 2020	2 To be determined
16 April 2020	1 Admitted and found proved
22 April 2020	2 To be determined

23 April 2020	1 Admitted and found proved
24 April 2020	~~2~~ 1 Amended under Rule 17(6) To be determined
~~11 May 2020~~	~~3~~ Withdrawn under Rule 17(6)
12 May 2020	1 Admitted and found proved
13 May 2020	3 To be determined
14 May 2020	2 To be determined
~~15 May 2020~~	~~1~~ Withdrawn under Rule 17(6)
18 May 2020	1 Admitted and found proved
21 May 2020	1 Admitted and found proved
1 June 2020	2 Admitted and found proved
~~5 June 2020~~	~~1~~ Withdrawn under Rule 17(6)
8 June 2020	~~3~~ 2 Amended under Rule 17(6) Admitted and found proved
10 June 2020	~~3~~ 1 Amended under Rule 17(6) Admitted and found proved
11 June 2020	~~3~~ 1 Amended under Rule 17(6) To be determined
~~12 June 2020~~	~~2~~ Withdrawn under Rule 17(6)
16 June 2020	1 Admitted and found proved
~~18 June 2020~~	~~1~~

	Withdrawn under Rule 17(6)
19 June 2020	1 Admitted and found proved
24 June 2020	1 To be determined
26 June 2020	~~2~~ 1 Amended under Rule 17(6) Admitted and found proved
~~29 June 2020~~	~~1~~ Withdrawn under Rule 17(6)
30 June 2020	1 Admitted and found proved
1 July 2020	2 Admitted and found proved
3 July 2020	~~4~~ 2 Amended under Rule 17(6) Admitted and found proved
~~13 July 2020~~	~~1~~ Withdrawn under Rule 17(6)
14 July 2020	~~5~~ 2 Amended under Rule 17(6) Admitted and found proved
~~15 July 2020~~	~~1~~ Withdrawn under Rule 17(6)
~~20 July 2020~~	~~1~~ Withdrawn under Rule 17(6)
~~24 July 2020~~	~~2~~ Withdrawn under Rule 17(6)
~~27 July 2020~~	~~1~~ Withdrawn under Rule 17(6)
29 July 2020	1 Admitted and found proved
~~31 July 2020~~	~~1~~ Withdrawn under Rule 17(6)
~~3~~ ~~4~~ ~~August 2020~~ Amended under Rule 17(6)	~~1~~ Withdrawn under Rule 17(6)
~~10 August 2020~~	~~1~~

	Withdrawn under Rule 17(6)
19 August 2020	1 Admitted and found proved
11 September 2020	1 Admitted and found proved
22 October 2020	1 Admitted and found proved
10 December 2020	1 Admitted and found proved

Schedule 2

Date of Dictation	Time of Dictation
~~10 January 2020~~	~~14:53 hrs~~ Withdrawn under Rule 17(6)
~~4 March 2020~~	~~15:20hrs~~ Withdrawn under Rule 17(6)
15 April 2020	14:44hrs Admitted and found proved
16 April 2020	14:30hrs Admitted and found proved
~~11 May 2020~~	~~13:54hrs~~ Withdrawn under Rule 17(6)
~~11 May 2020~~	~~15:42hrs~~ Withdrawn under Rule 17(6)
~~11 May 2020~~	~~16:22hrs~~ Withdrawn under Rule 17(6)
~~11 May 2020~~	~~16:51hrs~~ Withdrawn under Rule 17(6)
12 May 2020	10:40hrs To be determined
13 May 2020	14:53hrs Admitted and found proved
13 May 2020	14:56hrs Admitted and found proved
14 May 2020	14:15hrs Admitted and found proved
~~15 May 2020~~	~~14:58hrs~~ Withdrawn under Rule 17(6)
18 May 2020	16:08hrs Admitted and found proved
18 May 2020	16:11hrs Admitted and found proved
~~5 June 2020~~	~~10:47hrs~~ Withdrawn under Rule 17(6)
8 June 2020	16:42hrs Admitted and found proved
8 June 2020	16:44hrs Admitted and found proved
8 June 2020	16:46hrs Admitted and found proved
8 June 2020	16:55hrs Admitted and found proved
10 June 2020	14:27hrs Admitted and found proved
10 June 2020	14:28hrs Admitted and found proved
10 June 2020	14:31hrs Admitted and found proved
~~11 June 2020~~	~~12:57hrs~~ Withdrawn under Rule 17(6)

~~18 June 2020~~	~~14:37hrs~~ Withdrawn under Rule 17(6)
~~27 July 2020~~	~~16:53hrs~~ Withdrawn under Rule 17(6)
~~10 August 2020~~	~~11:25hrs~~ Withdrawn under Rule 17(6)
~~22 October 2020~~	~~14:21hrs~~ Withdrawn under Rule 17(6)
~~10 December 2020~~	1~~3:37hrs~~ Withdrawn under Rule 17(6)

The Admitted Facts

11. At the outset of these proceedings, through his counsel Mr Mellor, Dr Thomas made admissions to most of the paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules').

12. Following amendment of the Allegation, Mr Mellor, on behalf of Dr Thomas, identified to the Tribunal which of the paragraphs of the Allegation Dr Thomas admitted and which of the paragraphs he made partial admissions to, in that he admitted some of the dates and/or times in question but either he did not admit or he denied others.

13. The Legally Qualified Chair ('LQC') announced, in accordance with Rule 17(2)(e) of the Rules, that those paragraphs of the Allegation where the doctor had made a full admission of a factual particular were found proved, by virtue of the admission. The LQC also stated that where Dr Thomas made a partial admission the Tribunal would take into account that admission at any relevant later stage.

The Facts to be Determined

14. The Tribunal went on to determine the outstanding facts in the Allegation, which had not been admitted. It bore in mind that the burden of proving the facts lay on the GMC. Dr Thomas did not bear any burden of proving he was innocent of any of the alleged misconduct. The Tribunal was mindful that the disputed facts had to be proved on the balance of probabilities and that Dr Thomas did not have a burden of proof.

Witness Evidence

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

- Ms A, Respiratory Medical Secretary in the Chest Clinic at Bedford Hospital ('the Clinic'), via video link;

- Ms C, a Senior Services Manager at the Clinic, in person;
- Ms B, a General Manager at the Clinic, via video link

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

- Ms D, a Freelance Organisational Development Consultant and Business Psychologist, a contractor for the Clinic.

17. Dr Thomas provided his own witness statement, dated 5 January 2024, which included his detailed responses to the paragraphs of the Allegation and the Schedules. He also gave oral evidence at the hearing.

Documentary Evidence

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

- Bedford Hospital NHS Trust Private Patients Policy, dated July 2014;
- Department of Health 'A Code of Conduct for Private Practice', dated January 2004;
- Dr Thomas' Job Plan, date 13 November 2019;
- Photocopies of Dr Thomas' redacted handwritten private diary, which formed part of the Trust's investigation, dated April – July 2020;
- Copy of entries made by Dr Thomas in his electronic work diary, dated March – December 2020;
- Investigation Report of Ms D, date not specified;
- Summary notes of Trust meetings, various dates;
- Copies of text messages between Dr Thomas and Ms A, dated 21 February 2020 - August 2020;
- Bank statement confirming purchase of stationery, dated May 2018;
- An email from Costco evidencing the purchase of stamps, dated 15 May 2019;
- Bank statement evidencing purchase of stamps, dated 4 September 2019.

The Tribunal's Approach

19. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Thomas does not

need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

20. The Tribunal accepted the advice of the LQC which included but was not limited to advice on the burden and standard of proof, the wording of the Allegation and the proper approach to assessment of the evidence, in accordance with *Dutta v GMC [2020] EWHC 1974 (Admin),* and *Byrne v GMC [2021] EWHC 2237 (Admin).*

21. The LQC also advised the Tribunal that it was entitled to draw reasonable inferences and conclusions, where appropriate, from the parts of the evidence which it accepted.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1(a)(i)

23. The Tribunal considered the evidence relating to the outstanding dates in Schedule 1 (i.e. those appointments which Dr Thomas had not admitted) on which it had been alleged that Dr Thomas had consulted with private patients, during his allocated NHS hours.

24. The Tribunal noted that the GMC's case on these appointments relied on the exhibited copy of Dr Thomas' own paper diary which, according to the evidence, he had used to note his appointments in the 'COVID-19 pandemic' period. The Tribunal considered that it was not in issue that the diary held information about appointments Dr Thomas had carried out. The copy of the diary which had been provided had been heavily redacted to remove most of the personal information, bar some initials and times. Ms Goring informed the Tribunal that this was the only copy available to the parties.

25. The Tribunal first took as an example the entry in relation to 15 April 2020, which is a disputed date from Schedule 1. The Tribunal compared the entry made by Dr Thomas in his handwritten diary with the entry in the electronic diary. Dr Thomas admitted that one of these was for a private patient, however he was unable to say to whom the second entry related and suggested it may have referred to his treatment of a member of NHS staff.

26. Dr Thomas told the Tribunal that he bought the diary to keep track of his private patients. He explained that he was seeing also NHS staff during the COVID-19 pandemic as

otherwise, if not treated, they would be unable to come to work. He took to recording these appointments in the same handwritten diary as his private patients. Dr Thomas also explained that he was able to say that this was not a patient from whom he was performing an asbestos medical as he kept a separate list for them.

27. In relation to 15 April 2020, in his witness statement, Dr Thomas stated *"Based on my handwritten diary, I admit that I saw two patients on this date; and, given that I recognise the patient initials documented in the entry at 14.00 hours in my electronic diary, I admit that one of those was a private patient. However, I am unable to confirm whether the second patient was a private patient or a member of staff (and can only be sure that neither were asbestos medical patients)."*

28. The Tribunal noted GMC counsel's submissions that the handwritten diary was indicative that all the entries related to private patients. The Tribunal did not accept the submission that an inference could be drawn purely from the structure of the diary and its use for recording private patient appointments as it accepted that some of the patients were likely to be members of staff who were NHS patients.

29. Dr Thomas gave evidence that he had seen both private patients and members of staff during the relevant period in the Allegation. Dr Thomas had admitted where he could tell from the initials which were still visible that the appointment was for a private patient.

30. The Tribunal considered that it had not been the GMC's case that Dr Thomas had not consulted members of staff during the relevant period. Moreover, the Tribunal bore in mind that this was the 'COVID-19' pandemic period and it was likely that Dr Thomas would have seen members of staff face-to-face. The GMC's only submission on this Allegation was that the structure of the diary indicated that the names written were private patients. However, the Tribunal considered that this was not a reasonable inference.

31. The Tribunal considered that it was just as likely that Dr Thomas would write in the names of anyone he was consulting face-to-face during the day. It took into account that Dr Thomas had been candid about those he accepted had been private patients. The Tribunal determined that the GMC had not satisfied it on the balance of probabilities that those entries in the diary which Dr Thomas said could be members of NHS staff were in fact private patients.

32. The Tribunal applied the same reasoning to the remaining disputed dates. On the balance of probabilities, the Tribunal was not persuaded that evidence had been sufficiently adduced by the GMC to demonstrate in each case that the disputed patients had been a private patient and not members of staff.

33. The Tribunal concluded that the same applied to all the disputed appointments and therefore it found Paragraph 1(a)(i) of the Allegation not proved in respect of the disputed appointments in Schedule 1.

34. In those instances where Dr Thomas had admitted that the diary entries related to his consulting with private patients, having taken into account the evidence of the diary and the admission, the Tribunal found those dates proved.

35. The Tribunal found Paragraph 1(a)(i) of the Allegation proved in part.

Paragraph 1(a)(ii)

36. The Tribunal noted that the sole disputed date and time of dictation in Schedule 2, following amendment of the Allegation, was 12 May 2020 at 10:40hrs. The Tribunal took into account the evidence of Ms D, who by agreement of the parties had not attended, but whose witness statement and investigation report were received in evidence. Ms D's unchallenged evidence indicated that the Trust's Bighand dictation system recorded only the time when the Dictaphone was 'docked' in the system.

37. The Tribunal took into account Ms A's evidence that she had observed Dr Thomas dictating about private patients, and that she had received some notifications on her computer when the Dictaphone had been docked and the dictation was available. However, she had not been aware that he had two dictation machines and her evidence as to witnessing dictation did not specifically relate to this alleged date and time.

38. Furthermore, Ms A's Supplementary witness statement and oral evidence contradicted her first witness statement. She resiled from her position that she had directly witnessed Dr Thomas dictating for private patients in NHS time. Instead, she told the Tribunal that she had inferred this from the time he had docked his Dictaphone and the times he had seen her in person, having explained he had dictated his letters. The Tribunal found this account inconsistent.

39. The Tribunal referred to the Summary Notes of Ms D's meeting with Dr Thomas on behalf of the Trust, in which she said *"We do think they are the private patients but for no matter of concern. That does not indicate that you're doing any work at that time. It's literally that you've docked it so that your secretary can pick up the letters."*

40. The Tribunal took into account Dr Thomas' evidence that he would dock his Dictaphone on days following those on which he had carried out a dictation on a previous evening in relation to a private consultation, including telephone consultations.

41. The Tribunal referred to Dr Thomas' witness statement, in which he said *'As stated in my response to Schedule 1, based on the entry in my electronic diary I admit that I saw a private patient at 12pm on this date. However, I would not have been carrying out any dictation in relation to that patient at 10.40am, prior to that consultation.'*

42. The Tribunal took into account the GMC's submission that the paper diary showed initials (the rest of the name having been redacted) which did not appear to match the initials of the patient Dr Thomas saw at 12.00pm. However, it also noted that there was no time at all shown in the handwritten diary beside the entry and no other entry in the handwritten diary for the patient seen at 12.00pm.

43. The GMC's evidence only demonstrated the time that the Dictaphone had been docked to the system. Dr Thomas had admitted other occasions when he had dictated in NHS time. The handwritten diary was unclear as to time on the date in question and if there was more than one name showing.

44. The Tribunal concluded that there was insufficient evidence to determine that the actual dictation had occurred at the specified time as opposed to the Dictaphone merely having been docked. In all the circumstances, the Tribunal was not satisfied that the GMC had proved its case on the balance of probabilities.

45. In those instances where Dr Thomas had admitted that he had carried out dictation for private patients, on the basis that these had been admitted, the Tribunal found the dates in Schedule 2 proved.

46. The Tribunal found Paragraph 1(a)(ii) of the Allegation proved in part.

<u>Paragraph 1(b)</u>

47. Having heard the GMC's evidence on the facts, the Tribunal considered of its own volition, having heard from the parties, whether it should amend Paragraph 1(b) of the Allegation, so that it read:

> *"knew that,* ***except in emergencies,*** *you should not conduct private work during your contracted NHS sessions;"*

48. Ms Goring submitted that the GMC considered the amendment unnecessary. Mr Mellor submitted that it was not unfair to the doctor to amend the paragraph. The Tribunal considered that the GMC's evidence showed that the relevant hospital policies and the Department of Health's Codes of Conduct allowed for the treatment of private patients in emergency situations. It considered that the amendment could be made without injustice and therefore made the amendment.

49. Following the amendment of Paragraph 1(b) of the Allegation, Dr Thomas admitted the paragraph as amended and it was announced as proved by admission.

50. The Tribunal found Paragraph 1b of the Allegation (as amended) proved.

Paragraph 1(c)

51. At the start of the hearing, Mr Mellor, on behalf of Dr Thomas, admitted Paragraph 1(c) of the Allegation.

52. Following the Tribunal's findings in relation to Paragraphs 1(a)(i) and 1(a)(ii) of the Allegation, it followed that it could accept Dr Thomas admission of paragraph 1(c), because Dr Thomas admitted that he had failed to seek agreement from the appropriate persons as set out in Paragraph 1(c) of the Allegation in respect of the specific dates as now found proved by the Tribunal.

53. The Tribunal found Paragraph 1(c) of the Allegation proved, as it related to its findings in respect of Paragraphs 1(a)(i) and 1(a)(ii) of the Allegation.

Paragraph 1(d)

54. The Tribunal accepted the legal advice that the meaning of Paragraph 1(d) of the Allegation was a matter for its own determination. The Tribunal considered that the common sense meaning of an allegation that Dr Thomas had: *"pressurised Ms A, a member of the secretarial staff,* ***into*** *prioritising your private work over NHS work"* (bold added) was an

allegation that Dr Thomas had actively put pressure on Ms A to prioritise his private work over NHS work.

55. The Tribunal first considered Ms A's evidence, which it found was affected by a number of matters which in turn had an effect on how much reliance the Tribunal placed upon her account.

56. The Tribunal noted that in oral evidence, Ms A accepted that she had continued to work for Dr Thomas significantly beyond the end date set out in her witness statement. This was important because the date of termination in her witness statement coincided with the date around concerns being raised by the Trust with Dr Thomas, but it appeared that Ms A continued to work with him thereafter. Further, in her witness statement, Ms A had suggested that Dr Thomas *"did make it a point that I do not discuss* ***doing*** *his private work with others…"* (bold added). In oral evidence, Ms A told the Tribunal that Dr Thomas had merely asked Ms A not to discuss confidential information about those patients, which the Tribunal considered to be very different to what the witness statement appeared to imply.

57. As to her payment for private work, Ms A's evidence as to the number of hours worked was contradicted by the text messages sent which showed a fewer number of hours and therefore undermined her credibility. The fact that the payment had been less than Ms A had suggested in her statement supported a case that she had been less busy than she had asserted. Ms A suggested that there had been an initial agreement for Dr Thomas to pay her £400 per month, which later increased to £450 (she agreed around June 2020), but in evidence she accepted that text messages showed her asking to be paid £300 in July 2020.

58. Further, the Tribunal took into account that Ms A's evidence as to the amount of work that she was undertaking for Dr Thomas was contradicted by the contemporaneous documentary evidence relating to hours worked. Ms A was also contradictory in her evidence about how soon Dr Thomas expected the letters for his private patients to be completed.

59. In her witness statement, Ms A stated that, in relation to private work, she had *"interacted with [Dr Thomas] on a daily basis on the hour every hour"* which the Tribunal took to be relevant to the question of being pressured. However, in oral evidence, Ms A accepted that this level of interaction could not have been correct. She told the Tribunal that her reference to 'every hour' had been made *"tongue in cheek"*, which the Tribunal found to be concerning in that this evidence had been included in a formal witness statement.

60. On the question of whether Ms A had been working under pressure, Ms A told the Tribunal that she had started supporting the private practice of two other consultants, although their private practices were much smaller and the workload was less.

61. Ms A told the Tribunal in her oral evidence that, on initially commencing work for Dr Thomas, she had felt under pressure, as she had to learn the terminology of a new speciality. She stated that, once the COVID-19 pandemic commenced, as the lockdown took effect and *"they cancelled all clinical activity"*. She stated that she had asked her line manager for extra NHS work as there was very little work for her to do in her office.

62. The Tribunal considered that Ms A's account as to the reduction in workload after March 2020 accorded with Dr Thomas' evidence. He stated in his witness statement *"…my agreement with Ms A was that she would complete my private work before or after her Trust working day. However, during the first peak of the pandemic NHS clinics were significantly reduced, and there was much less secretarial work to be done, and I did, during that time, notice Ms A doing private work (transcribing private letters) during NHS hours. However, because there was little NHS secretarial work to do, I have to confess that I did not think it was a problem at that time. In any event, I did not pressurise Ms A to prioritise such private work over NHS work…"*.

63. The Tribunal did not accept GMC counsel's submission that Ms A had *"no axe to grind"* in the concerns relating to Dr Thomas, as she was involved as the secretary typing Dr Thomas' private letters in NHS hours. Ms A said in her witness statement that *"Around eight months in, in February 2020, [Ms C], the Senior Operations Manager, asked me if I was doing private work on NHS time, and I said yes. She said I was not to do so, and I asked Dr Thomas to stop asking me to help. He disregarded this, saying that all secretaries were doing the same, and to make sure that the NHS work didn't suffer as a result. His exact words were 'as long as you do your NHS work, it won't be a problem.'"*

64. The Tribunal concluded that Ms A had been caught up in the concerns being investigated by the Trust at the time, and it noted that she had also spoken about complaints which had arisen in relation to herself originating from the other secretary who had been working for Dr Thomas. It therefore considered that Ms A might have a reason to attempt to exculpate herself from criticism for having typed private letters during her NHS hours.

65. The Tribunal took into account that Ms A's own evidence was that Dr Thomas had spoken to her in terms that Ms A had said "*to make sure that the NHS work didn't suffer as a*

result. His exact words were 'as long as you do your NHS work, it won't be a problem." It also took account of Ms C's concession in giving her evidence that she had not spoken to Dr Thomas about this and that she had not raised any issue with Dr Thomas concerning Ms A feeling pressurised.

66. In his witness statement, Dr Thomas stated: "*For completeness, whilst I was aware of the complaint referred to above, at no point did Ms A (or anyone else) raise any issue with me suggesting that I had been inappropriately asking her, and (consequently) that I should stop asking her, to undertake/help with private work on NHS time. I was also entirely unaware that, and do not understand why, Ms A thought that her private work affected her ability to do her NHS work. In any event, save referred to above (e.g. in an emergency), I did not ask her to undertake private work in NHS hours."*

67. The Tribunal considered that, bearing in mind that it could not place great weight on the evidence of Ms A, and taking into account Ms A's own statement that Dr Thomas had expressly told her to ensure her NHS work was done, together with the evidence of the reduction in work over the COVID-19 pandemic, and the lack of complaint by Ms C, it was not satisfied that Dr Thomas had pressurised Ms A *into* prioritising his private work over the NHS work. The Tribunal considered that there was insufficient reliable evidence that Dr Thomas did anything to pressurise Ms A into treating his private work as her priority over the NHS work.

68. The Tribunal therefore find Paragraph 1(d) of the Allegation not proved.

Paragraph 2(a)

69. The Tribunal took into account that Dr Thomas admitted having used NHS stationery, which included stamps, and the dispute lay in the exact dates between which this had taken place.

70. The GMC's case relied on Ms A's evidence. She said in her witness statement, *"Dr Thomas would use NHS stationery resources for his private medical practice all the time… This included paper, envelopes, and stamps. I had seen in previous posts that consultants would have an agreement with the Trust so I thought they must have a similar agreement.*
I couldn't believe what I was witnessing but the general response was that he was the clinical lead, had been doing it for years, and had been reported and nothing had been done. I remember thinking to myself 'what can I do, ask him what arrangement he has with the Trust?! I didn't raise this as a concern with him, as I felt awkward in that if he were to say he

had no agreement, then I would have to act on that. Someone had also pointed out to me that I did not specifically know that he did not have an arrangement; it could have been the case that he did, and I did not know about it. I did not raise my concerns around the use of stationery through any formal routes or processes."

71. In oral evidence, Ms A did not agree that this only related to a period after April 2020 after she started working for Dr Thomas.

72. In his witness statement, Dr Thomas said:

> *"As Ms A was sending all, or at least the vast majority of, correspondence electronically there was no need to buy stamps or stationery regularly. However, on 15 May 2019, just before/around the time Ms A started doing my private patient work, I purchased 60 stamps for any private patient letters that were to be sent by post (and I attach evidence that I have now obtained from Costco, confirming the purchase of those stamps, as well as of a further 60 stamps purchased subsequently in April 2021 after the allegations were made,; and my relevant bank statement…). I then bought a further £110 worth of stamps on 4 September 2019, and again I attach my relevant bank statement ... As regards paper and envelopes, there was still such stationary left over from the purchases I had made previously."*

73. Dr Thomas admitted having told Ms A to use the NHS postal system, but only at the earliest in April 2020. He stated:

> *"However, there was an occasion during the pandemic when Ms A asked me for some stamps for one or two private patient letters, saying that the stamps had run out; and, being caught up in the busyness of the pandemic, I regretfully advised her to put the letter(s) in the NHS post and I did not reimburse the Trust. Whilst that was the only occasion I had expressly told her to do such a thing, and I did not intend any subsequent such letters to be put in the NHS post, I did not make that clear to Ms A. Therefore, whilst I do not know how many such private patient letters were subsequently sent through the NHS post (or whether NHS stationary, in terms of paper and envelopes, was used), I am entirely responsible for any such subsequent inappropriate use of NHS resources; for which I sincerely apologise (albeit I subsequently understood from the Trust that the amounts were relatively negligible).*
>
> *I admit the allegation as it relates to NHS stamps/postage and, possibly, other stationary, in terms of paper and envelopes; but, save for using my NHS office for*

private consultations during NHS hours as set out above, I deny that I used any other NHS resources to support my private work without, appropriately, paying for them, … if that is being alleged...I do not accept that I was inappropriately using NHS stationary and resources for the entire period referred to …"

74. The Tribunal considered that it was difficult to put weight on Ms A's evidence based on the inconsistencies between her written and oral evidence as well as the discrepancies from the contemporaneous documentation. Ms C affirmed that Ms A only brought this issue to her attention in 2021, which was inconsistent with Dr Thomas having done this pre-pandemic (before April 2020).

75. The Tribunal bore in mind that Dr Thomas admitted having used NHS stationery without permission but asserted that it occurred following an interaction with Ms A during the pandemic (from April 2020 onwards), where she requested stamps for private patient letters, as her remaining supplies had depleted. The Tribunal preferred Dr Thomas' account, supported by the documentary evidence, that he had purchased a smart phone for Ms A so that, at her suggestion, more letters could be sent electronically. This would have resulted in a reduction in the number of letters being sent by post and extended the life of any stationery he had procured for use in his private practice. Additionally, Dr Thomas had asked one of the other secretaries to do his typing for him in the early stages of Ms A working as his private secretary.

76. The Tribunal had sight of Dr Thomas' evidence of purchases, including that he had purchased £110 worth of stamps in September 2019. The Tribunal accepted the submission on behalf of Dr Thomas from his counsel, Mr Mellor, that each stamp cost approximately 61 pence, which meant that Dr Thomas would have purchased approximately 200 stamps. If Dr Thomas used 5 stamps per week, this would have lasted him around 40 weeks, which would be until approximately June 2020. This appeared to the Tribunal to be consistent with Dr Thomas' evidence and his admission in that it indicated that the stamps purchased would have been likely to have lasted until the time Ms A approached him, around the middle of 2020.

77. The Tribunal took into account that Dr Thomas had provided evidence to it which supported that he had purchased 2500 sheets of paper in March 2018. However, Dr Thomas also gave evidence that he had put the paper on the tray where the single printer was kept. He also said that the printer was used by the other secretaries and that the paper would have

been intermingled with paper used for NHS letters. The paper was placed prior to Ms A starting in the office and she may well have had no knowledge of this.

78. Ms Goring submitted that, based on the evidence of Ms A as to the rate at which she was typing letters, the paper would have been quickly used up. However, the Tribunal had difficulty in accepting Ms A's evidence for the reasons set out above.

79. When it came to the number of typed letters to be sent out by post, the Tribunal did not accept Ms A's evidence that he saw on average 21 patients per week. She accepted as a concession that it was more variable than this. given the move to electronic means, the variability in the number of patients seen and the reduction caused by the pandemic, the Tribunal concluded that this was likely to be a gross overestimate.

80. The Tribunal considered that, for the reasons given above, it placed little weight on the evidence of Ms A as to the period in which the NHS stationery had been used. However, it had Dr Thomas's admission as to having directed Ms A to use NHS stationery from April 2020, which accorded with the other evidence as to the stamps.

81. The Tribunal concluded that the presented evidence supported Dr Thomas' admissions that the misuse of NHS stationary only occurred during the pandemic.

82. The Tribunal considered that under Rule 17(6) it was able to amend the Allegation to reflect the dates as admitted by Dr Thomas. It determined to do so, and to amend the paragraph as follows:

> 1. Between ~~November 2019~~ April 2020 and May 2021 at the Clinic, you:
> Amended under Rule 17(6)
>
> a. used NHS stationery ~~and resources~~ to support your private work;
> Amended under Rule 17(6)

83. The Tribunal considered that this amendment could be made without injustice and it accorded with the Tribunal's assessment of the evidence. The Tribunal found the amended Paragraph 2(a) of the Allegation proved.

Paragraphs 2(b) and 2(c)

84. Dr Thomas had admitted Paragraphs 2(b)(i), 2(b)(ii), 2(b)(iii) and 2(c), to the extent that he admitted the use of NHS stationery in Paragraph 2(a). Since the Tribunal had

amended Paragraph 2, it followed that it accepted his admission in relation to Paragraphs 2(b)(i), 2(b)(ii), 2(b)(iii) and 2(c) of the Allegation.

85. The Tribunal found Paragraphs 2(b)(i), 2(b)(ii), 2(b)(iii) and 2(c) of the Allegation proved by Dr Thomas's admissions.

Paragraphs 3(a) and 3(b)

86. Dr Thomas had admitted Paragraphs 3(a) and 3(b) of the Allegation, to the extent that he had been dishonest regarding those dates in the Schedule that he had admitted.

Paragraph 3(a)

87. The Tribunal had amended paragraph 2(a) and this now accorded with Dr Thomas's admissions. Accordingly, the Tribunal was able to accept Dr Thomas's admission in relation to paragraph 3(a).

88. The Tribunal considered Dr Thomas's witness statement, in which he stated that: *"I entirely accept that I should not have been conducting such asbestos medicals during my contracted NHS time, whether during the lunch period or at other times, and I sincerely apologise for my actions in that regard.* Although he stated that it had not occurred to him that *"I was doing anything wrong or dishonest"*, he also stated that *"I accept that I knew that I should not conduct private work during my contracted NHS sessions".*

89. In light of the Tribunal's finding that paragraph 1(a)(i) was proved in respect of those dates in Schedule 1 which Dr Thomas had admitted, it considered that his admission now aligned with the Tribunal's findings and paragraph 3(a) was therefore proved by virtue of Dr Thomas's admission.

90. In addition, the Tribunal considered Dr Thomas's state of mind at the time of the events and concluded that it was as he had stated in his witness statement. Dr Thomas had been aware that what he was doing in seeing 'asbestos patients' in NHS time was not permitted and knew that he had not sought appropriate permission. The Tribunal determined that ordinary, decent people would regard this as dishonest.

91. With regard to seeing other private patients, Dr Thomas had stated that he was aware of the Trust's 'Private Patient Policy' (July 2014) and its general principles. He said that he considered that the circumstances of the pandemic had been exceptional. However, in his

witness statement he also accepted that he had not given proper consideration to what he was doing.

92. Dr Thomas said that he had only had one discussion with Ms C and Ms B concerning the matter of seeing private patients, from which he felt that he had 'tacit' agreement. However, despite both these witnesses having accepted in evidence that they had not *expressly* told Dr Thomas not to see private patients in his NHS time, this conversation on his own evidence occurred only in late August/early September 2020. The Tribunal found that the conclusion of a 'tacit' agreement was not a reasonable one on the evidence it had heard.

93. The Tribunal considered that the public was entitled to expect that a doctor would be aware of the need to follow the relevant policy and/or obtain the appropriate, necessary agreement. It concluded that Dr Thomas had been aware that none of this applied and it considered that ordinary, decent people would regard this conduct as dishonest.

Paragraph 3(b)

94. The Tribunal noted Dr Thomas's admission of dishonesty, as alleged in Paragraph 3(b) of the Allegation in relation to Paragraph 2(a). For similar reasons as above, in that the Tribunal had amended Paragraph 2(a) of the Allegation and this now accorded with Dr Thomas's admissions.

95. The Tribunal considered that the public was entitled to expect that a doctor in his position should be aware of the Trust policy and the need to seek agreement to use NHS stationery. It did not consider that the busy state of the department could ever provide an excuse for dishonesty. The Tribunal considered that Dr Thomas was aware of the lack of authority at the time, and it concluded that ordinary, decent people would regard his conduct as dishonest.

96. The Tribunal found Paragraphs 3(a) and 3(b) of the Allegation proved.

The Tribunal's Overall Determination on the Facts

97. The Tribunal has determined the facts as follows:

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

1. Between ~~10~~ 17 January 2020 and 10 December 2020 at the Chest Clinic at Bedford Hospital ('the Clinic'), you: Amended under Rule 17(6)
   a. undertook private work during your contracted NHS sessions, in that you:
      i. consulted with private patients at the Clinic on the dates set out in Schedule 1;
      ii. carried out dictation pertaining to your private patients on the dates and times set out in Schedule 2;
   b. knew that, except in emergencies, you should not conduct private work during your contracted NHS sessions; Amended under Rule 17(6)
      Admitted and found proved
   c. failed to seek agreement from the General Manager and/or Clinical Director for Respiratory Services at the Bedfordshire Hospitals NHS Foundation Trust ('the Trust') to carry out the work set out at paragraphs 1(a)(i) and 1(a)(ii) above;
      Admitted and found proved
   d. pressurised Ms A, a member of the secretarial staff, into prioritising your private work over NHS work.
      Determined and found not proved

2. Between ~~November 2019~~ April 2020 and May 2021 at the Clinic, you:
   Amended under Rule 17(6)
   a. used NHS stationery ~~and resources~~ to support your private work;
      Amended under Rule 17(6)
      Determined and found proved
   b. failed to:
      i. seek agreement from the General Manager and/or Clinical Director for Respiratory Services at the Trust to use NHS stationery ~~and resources~~; Amended under Rule 17(6)
      Admitted and found proved
      ii. record the NHS stationery ~~and resources~~ used for your private work; Amended under Rule 17(6)
      Admitted and found proved

iii. ensure payment was made for the NHS stationery ~~and resources~~ you used for your private work; **Amended under Rule 17(6)**
Admitted and found proved

c. knew that you should not have been using NHS stationery ~~and resources~~ to support your private work. **Amended under Rule 17(6)**
Admitted and found proved

3. Your actions as described at paragraph:

a. 1(a)(i) and 1)(a)(ii) were dishonest by reason of paragraphs 1(b) and 1(c); **Admitted and found proved**

b. 2(a) were dishonest by reason of paragraphs 2(b) and 2(c). **Admitted and found proved**

c.

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

Schedules

The above Allegation is in relation to the following Schedules:
Schedule 1

Date	Number of private patients
~~10 January 2020~~	~~1~~ **Amended under Rule 17(6)** **Withdrawn**
17 January 2020	~~3~~ 1 **Amended under Rule 17(6)** 2- **Withdrawn** 1- **Admitted and found proved**
18 February 2020	1 **Admitted and found proved**
24 February 2020	1 **Admitted and found proved**
~~25 February 2020~~	~~1~~ **Amended under Rule 17(6)** **Withdrawn**

3 March 2020	1 Admitted and found proved
4 March 2020	1 Admitted and found proved
12 March 2020	~~2~~ 1 Amended under Rule 17(6) 1-Withdrawn 1 - Admitted and found proved
3 April 2020	2 Admitted and found proved
~~9 April 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
15 April 2020	1- Admitted and found proved 1 - Determined and found not proved
16 April 2020	1 Admitted and found proved
22 April 2020	2 Determined and found not proved
23 April 2020	1 Admitted and found proved
24 April 2020	~~2~~ 1 Amended under Rule 17(6) 1 - Withdrawn 1- Determined and found not proved
~~11 May 2020~~	~~3~~ Amended under Rule 17(6) Withdrawn
12 May 2020	1 Admitted and found proved
13 May 2020	3 2 – Admitted and found proved 1 - Determined and found not proved
14 May 2020	2 1- Admitted and found proved 1 - Determined and found not proved
~~15 May 2020~~	~~1~~

	Amended under Rule 17(6) Withdrawn
18 May 2020	1 Admitted and found proved
21 May 2020	1 Admitted and found proved
1 June 2020	2 Admitted and found proved
~~5 June 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
8 June 2020	~~3~~ 2 Amended under Rule 17(6) 1 - Withdrawn 2 - Admitted and found proved
10 June 2020	~~3~~ 1 Amended under Rule 17(6) 2- Withdrawn 1- Admitted and found proved
11 June 2020	~~3~~ 1 Amended under Rule 17(6) 2- Withdrawn 1- Determined and found not proved
~~12 June 2020~~	~~2~~ Amended under Rule 17(6) Withdrawn
16 June 2020	1 Admitted and found proved
~~18 June 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
19 June 2020	1 Admitted and found proved
24 June 2020	1 Determined and found not proved
26 June 2020	~~2~~ 1 Amended under Rule 17(6)

	1 - Withdrawn 1 - Admitted and found proved
~~29 June 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
30 June 2020	1 Admitted and found proved
1 July 2020	2 Admitted and found proved
3 July 2020	~~4~~ 2 Amended under Rule 17(6) 2 - Withdrawn 2 - Admitted and found proved
~~13 July 2020~~	~~1~~ Withdrawn
14 July 2020	~~5~~ 2 Amended under Rule 17(6) 3 - Withdrawn 2 - Admitted and found proved
~~15 July 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
~~20 July 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
~~24 July 2020~~	~~2~~ Amended under Rule 17(6) Withdrawn
~~27 July 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
29 July 2020	1 Admitted and found proved
~~31 July 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
~~3~~ 4 ~~August 2020~~	~~1~~

Amended under Rule 17(6)	Amended under Rule 17(6) Withdrawn
~~10 August 2020~~	~~1~~ Amended under Rule 17(6) Withdrawn
19 August 2020	1 Admitted and found proved
11 September 2020	1 Admitted and found proved
22 October 2020	1 Admitted and found proved
10 December 2020	1 Admitted and found proved

Schedule 2

Date of Dictation	Time of Dictation
~~10 January 2020~~	~~14:53 hrs~~ Amended under Rule 17(6) Withdrawn
~~4 March 2020~~	~~15:20hrs~~ Amended under Rule 17(6) Withdrawn
15 April 2020	14:44hrs Admitted and found proved
16 April 2020	14:30hrs Admitted and found proved
~~11 May 2020~~	~~13:54hrs~~ Amended under Rule 17(6) Withdrawn
~~11 May 2020~~	~~15:42hrs~~ Amended under Rule 17(6) Withdrawn
~~11 May 2020~~	~~16:22hrs~~ Amended under Rule 17(6) Withdrawn
~~11 May 2020~~	~~16:51hrs~~ Amended under Rule 17(6) Withdrawn
12 May 2020	10:40hrs Determined and found not proved
13 May 2020	14:53hrs Admitted and found proved
13 May 2020	14:56hrs Admitted and found proved
14 May 2020	14:15hrs Admitted and found proved
~~15 May 2020~~	~~14:58hrs~~ Amended under Rule 17(6) Withdrawn

18 May 2020	16:08hrs **Admitted and found proved**
18 May 2020	16:11hrs **Admitted and found proved**
~~5 June 2020~~	~~10:47hrs~~ **Amended under Rule 17(6) Withdrawn**
8 June 2020	16:42hrs **Admitted and found proved**
8 June 2020	16:44hrs **Admitted and found proved**
8 June 2020	16:46hrs **Admitted and found proved**
8 June 2020	16:55hrs **Admitted and found proved**
10 June 2020	14:27hrs **Admitted and found proved**
10 June 2020	14:28hrs **Admitted and found proved**
10 June 2020	14:31hrs **Admitted and found proved**
~~11 June 2020~~	~~12:57hrs~~ **Amended under Rule 17(6) Withdrawn**
~~18 June 2020~~	~~14:37hrs~~ **Amended under Rule 17(6) Withdrawn**
~~27 July 2020~~	~~16:53hrs~~ **Amended under Rule 17(6) Withdrawn**
~~10 August 2020~~	~~11:25hrs~~ **Amended under Rule 17(6) Withdrawn**
~~22 October 2020~~	~~14:21hrs~~ **Amended under Rule 17(6) Withdrawn**
~~10 December 2020~~	~~13:37hrs~~ **Amended under Rule 17(6) Withdrawn**

Determination on Impairment - 09/02/2024

98. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved as set out before, Dr Thomas' fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

99. The Tribunal granted an application on Dr Thomas' behalf by his representative made pursuant to Rule 34(13) and (14) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to call witnesses to give evidence via video link. GMC counsel had no objections to the application. The Tribunal considered that it was in the interests of

justice, as the witnesses had relevant evidence to provide and they were both working clinicians.

The Evidence

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

- Dr Thomas provided a further bundle for this stage, including details of relevant courses undertaken, the doctor's reflections on the courses and a number of character testimonials
- A 'Development and Restoration Plan'
- Evidence from the following witnesses on Dr Thomas' behalf:

    - Mrs E, a Specialist Nurse and the deputy Team Leader at Bedford Hospital, via video link;
    - Dr F, a Consultant Physician with special interest in Respiratory Medicine at Bedford Hospitals NHS Foundation Trust, via video link.

Submissions

101. On behalf of the GMC, Ms Goring reminded the Tribunal of the definition of misconduct as a term of general effect encompassing acts or omissions falling short of what is deemed proper in the circumstances, in *Roylance v GMC*. Ms Goring urged the Tribunal to consider the guidelines outlined in Good Medical Practice (2013, as amended) ('GMP'), specifically Paragraphs 1 and 65.

102. Ms Goring submitted that Dr Thomas' case involved sustained dishonesty in a professional setting which had been repeated on more than 30 occasions. She submitted that the Tribunal should find this constituted serious professional misconduct. Ms Goring referred to Dame Janet Smith's guidance in the fifth Shipman report, and outlined four key questions the Tribunal should consider when evaluating impairment.

103. Firstly, Ms Goring submitted that there were no issues in regard to patient safety. Ms Goring submitted that the persistent and sustained nature of the dishonesty, along with its impact on the NHS, undermined public trust in the profession, the second factor for meeting the test of impairment. Ms Goring further submitted that Dr Thomas had breached a

requirement to act with honesty and integrity, which were fundamental tenets of the profession. The fourth factor in the test was the question of dishonesty itself, and Ms Goring emphasised the significance of dishonesty in this case.

104. Ms Goring submitted that there was some evidence of remediation and insight displayed by Dr Thomas, however she said, the Tribunal should consider the reasons Dr Thomas gave for certain actions, such as seeing private patients during the first COVID-19 lockdown, whereas there was evidence of him having seen some private patients earlier than this. Despite acknowledging the remediation evidence, Ms Goring contended that, given the severity of the dishonesty and its impact on public trust, any remediation and insight should carry limited weight.

105. Ms Goring concluded that a finding of both misconduct and impairment is necessary to address the public interest and maintain public confidence in the medical profession.

106. On behalf of Dr Thomas, Mr Mellor submitted that Dr Thomas entirely accepted that his actions, namely the paragraphs of the Allegation that he had admitted from the start and which have been found proved, amounted to serious misconduct.

107. Mr Mellor made no positive submission regarding impairment, acknowledging that the Tribunal may find his fitness to practice impaired based on his past behaviour. However, he highlighted three points the Tribunal should consider when making its impairment decision.

108. Firstly, Mr Mellor submitted that a finding of current impairment can be reasonably based on sufficiently egregious past conduct. Secondly, Dr Thomas fully accepted the fundamental tenet of integrity borne by the medical profession, emphasising Dr Thomas' commitment to upholding professional standards and public confidence. Thirdly, Mr Mellor submitted the current evidence of insight and remediation pointed to Dr Thomas' clear understanding of the seriousness of his misconduct and his efforts to address and remediate it.

109. Mr Mellor submitted that the Tribunal should take Dr Thomas' admissions, reflections, and apologies as evidence of his insight. He pointed to the Development and Restoration Plan provided by Dr Thomas, including Dr Thomas' attendance at relevant courses, and the continued mentorship as outlined in his plan, as a demonstration of his efforts to remediate. Mr Mellor cited testimonials from colleagues attesting to Dr Thomas'

character and integrity, and submitted that Dr Thomas' admitted dishonesty can be consequently found as being out of character.

110. Mr Mellor contended that there was clear evidence of Dr Thomas' remediation and insight, and highlighted his previously unblemished career, and the lack of any subsequent concerns. He submitted that the Tribunal can be entirely reassured that the misconduct will not recur, and it can find that there is no impairment of Dr Thomas' fitness to practice going forward.

The Relevant Legal Principles

111. 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.

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

113. The Tribunal must determine whether Dr Thomas' fitness to practise is impaired today, taking into account Dr Thomas' 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. It must also consider whether, regardless of any risk of repetition, maintaining public confidence in the profession required it to make a finding of impairment.

114. The LQC advised the Tribunal of the two-stage process to be adopted when considering the issue of impairment. The LQC also drew the Tribunal's attention to *Cohen v GMC (2008) EWHC 581* in which the Court stated that it is highly relevant in determining if fitness to practise is impaired to consider:

- whether the practitioner's misconduct is easily remediable;
- whether the misconduct has been remedied; and
- whether the misconduct is likely to be repeated.

115. The LQC also referred the Tribunal to the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin) ('Grant') and the court's reference to *Yeong v GMC* [2008] EWHC 1923 (Admin), in which the court stated 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. "

116. The LQC also referred the Tribunal to the test of impairment in Grant, taken from the fifth 'Shipman' report, namely, whether the Tribunal's findings of fact as to the misconduct indicate impaired fitness to practise in the sense that the doctor:

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

117. The Tribunal reminded itself of the statutory overarching objective which is 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.

The Tribunal's Determination on Impairment

Misconduct

118. The Tribunal began by considering if Dr Thomas' actions amounted to misconduct and did so with reference to the relevant sections of GMP, which sets out the standards that a doctor must continue to meet throughout their professional career. The Tribunal considered the following paragraphs to be relevant:

> *"**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."*

119. The Tribunal considered that it was clear from the evidence before it that Dr Thomas had departed from GMP, by the conduct admitted and found proved, in regard to both the paragraphs above.

120. The Tribunal considered whether the departures from GMP were serious. As set out in paragraph 65 of GMP, use of the words '*you must*' denotes an overriding duty or principle.

121. The Tribunal considered Dr Thomas' admitted dishonesty in three separate regards. Firstly, he had continued to see 'asbestos medical' patients in the period of January 2020 to December 2020, continuing the practice of his predecessor in seeing these patients during his lunch breaks. It considered that this was an act of dishonesty born out of omission rather than commission in the sense that he had not followed Trust policy. Instead, he had 'gone along with' the custom and practice of his predecessor and other colleagues. In failing to seek permission, Dr Thomas had not adhered to the Trust policy. However, he also accepted that this was an incorrect and dishonest practice. The Tribunal considered that Dr Thomas had responsibility to consider adherence to policy and the need to seek permission.

122. The Tribunal acknowledged the circumstances in which Dr Thomas began seeing 11 private patients in his NHS time. This had started only after the COVID-19 pandemic lockdown had commenced and his private clinics had closed. Nevertheless, the doctor rightly accepted that his conduct had been dishonest. He had been aware of the relevant policies but had failed to seek permission for seeing these private patients during his allotted NHS hours.

123. Further, Dr Thomas, albeit when Ms A approached him without notice, had instructed her to put his private letters through the NHS postal system, again without permission. The Tribunal considered that he had failed to give proper consideration to the appropriateness and honesty of doing so, in the circumstances that this was for the benefit of his private practice.

124. The Tribunal considered that Dr Thomas' actions were dishonest and undermined the need for doctors to act with honesty and integrity. The Tribunal considered that being able to trust doctors is fundamental to both other doctors within the medical profession and the public's confidence in the profession.

125. The Tribunal noted that Dr Thomas had at an early stage, in the proceedings conceded that his dishonesty had amounted to misconduct, as submitted on his behalf. He had made early admissions at the outset of this hearing. Dr Thomas had accepted in his witness statement and reflection that his actions had constituted a breach of a fundamental tenet of being a doctor, namely being honest and trustworthy.

126. In light of the above, the Tribunal considered that other members of the profession would find Dr Thomas' actions to be a serious departure from the principles set out in GMP. The Tribunal found that Dr Thomas' actions brought the profession into disrepute and undermined public trust and confidence in the profession and had breached a fundamental tenet of the profession.

127. Therefore, the Tribunal concluded that Dr Thomas' conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct, in the case of each of its findings as to: the asbestos medicals; consulting the other private patients during his NHS time; and his use of NHS stationery.

Impairment

128. The Tribunal having found that the facts found proved amounted to misconduct, which was serious, went on to consider whether, as a result of that misconduct, Dr Thomas' fitness to practise is currently impaired.

129. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal looked for evidence of remediation and insight, and the likelihood of repetition, bearing in mind at all times the need to uphold the three limbs of the overarching statutory objective.

130. The Tribunal had regard to Dr Thomas' reflective statements, the numerous training certificates and many positive testimonials from colleagues. The Tribunal considered all of the evidence before it regarding the steps Dr Thomas had taken towards remediation, to demonstrate insight, and to minimise the risk of repeating his behaviour.

131. The Tribunal bore in mind that, in Dr Thomas' evidence, he told the Tribunal that he was part of a church, and had attended and reflected on a number of courses he had undertaken. The Tribunal had sight of his comprehensive Development and Restoration Plan and meaningful reflective pieces, and was satisfied that Dr Thomas has demonstrated a thorough understanding of the gravity of his behaviour, taken ownership of his actions, and accepted that his conduct fell seriously below the standards expected of him. The Tribunal considered in terms of his remediation, Dr Thomas had undertaken a considerable amount of reflection and insight. In addition, the Tribunal accepted the several testimonials from persons who knew him well, that spoke to their high regard of Dr Thomas, both in his clinical skills, attitude and his otherwise good character. Specifically, they commented that this actions were out of character and the Tribunal accepted this.

132. The Tribunal considered it significant that Dr Thomas had admitted dishonesty, had apologised and had conceded that his behaviour amounted to serious misconduct . In relation to the targeted courses taken to remediate his shortcomings, he provided detailed reflections upon each course, exploring what he has learnt. The Tribunal noted that there were no incidents of a similar nature before, nor have there been any since. The Tribunal concluded that Dr Thomas had shown insight into his misconduct and did not consider that the dishonesty was a deep-seated attitudinal problem or a sustained character trait.

133. The Tribunal took into account the submission that dishonesty is 'difficult to remediate'. However, the Tribunal considered that, notwithstanding that there had been more than one occasion on which Dr Thomas had seen private patients, this had been a case of an otherwise good and competent doctor who had fallen into error, and continued without giving proper regard to what was required in the circumstances. Therefore, in this case, the Tribunal considered that the conduct was capable of remediation, and it was right to consider the remediation undertaken.

134. Taking all of the above into account, the Tribunal concluded that there was very little else it could expect to be produced from him to demonstrate his further development of insight or remediation. The Tribunal found that the level of remediation was appropriate and commensurate.

135. The Tribunal was therefore satisfied that Dr Thomas' insight, remorse and remediation are such that the risk of him repeating the misconduct was very low and he was highly unlikely to repeat the past misconduct.

136. The Tribunal then turned to consider the three limbs of the overarching objective namely:

- 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.

137. The Tribunal has a duty to maintain the public's confidence in the profession and to declare and uphold proper standards of conduct and behaviour. Doctors occupy a position of privilege and trust in society and are expected to act with integrity. The public and the profession is entitled to expect that doctors will be honest and trustworthy at all times. Dr Thomas' dishonesty took place during his professional work and took place over a significant period of 11 months and risked causing a loss to the NHS.

138. Whilst it is accepted that Dr Thomas has worked hard to remediate and has achieved a great deal in terms of his insight and remediation, the Tribunal finds that the second and third limb of the overarching objective are engaged and would be undermined if the Tribunal did not make a finding of impairment in this case to reflect the seriousness of the misconduct. The Tribunal considered that it needed to make a finding of impairment in order to maintain public confidence in the profession and to uphold professional standards on the basis that Dr Thomas had seriously breached fundamental tenets of the profession in the past, and had acted dishonestly.

139. Accordingly, the Tribunal has determined that Dr Thomas' fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 12/02/2024

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

Submissions

141. On behalf of the GMC, Ms Goring referred the Tribunal to some relevant paragraphs of the Sanctions Guidance (November 2020)('SG').

142. Ms Goring acknowledged the Tribunal's findings at the impairment stage including that the misconduct was unlikely to be repeated, attributing it to the demonstrated insight and remediation efforts by Dr Thomas.

143. Ms Goring emphasised the importance of proportionality, urging the Tribunal to weigh the interests of the public against those of the doctor. Ms Goring submitted that to take no action is only appropriate in exceptional circumstances, and contending that there were none present in this case. Further, she submitted that the imposition of conditions on Dr Thomas' registration would not be appropriate, asserting that no workable conditions could address the dishonest behaviour or satisfy the public interest. She submitted that that this type of misconduct cannot be remedied through supervision or retraining.

144. Ms Goring submitted that suspension would be the most appropriate sanction. She stated that suspension has a deterrent effect and can signal behaviour unbefitting a registered doctor. Ms Goring submitted that suspension is appropriate for serious misconduct that falls short of being fundamentally incompatible with continued registration.

145. Ms Goring submitted that there had been serious breaches of paragraphs 1 and 65 of Good Medical Practice ('GMP'), while acknowledging the absence of evidence of repetition. She highlighted the serious nature of dishonesty due to its potential to undermine public trust in the medical profession. Ms Goring submitted that the only appropriate, proportionate, and workable sanction is a period of suspension to uphold proper standards and maintain public trust and confidence in the medical profession.

146. On behalf of Dr Thomas, Mr Mellor outlined three preliminary key points. Firstly, he set out that Dr Thomas acknowledged that his actions breached fundamental tenets of the profession. He also submitted that Dr Thomas' behaviour damaged the medical profession's reputation and eroded public trust. Second, Mr Mellor submitted that Dr Thomas recognised the severity of his dishonesty in professional practice, and acknowledged its gravity. Thirdly, Mr Mellor submitted that Dr Thomas understands the importance of upholding public confidence and maintaining professional standards.

147. Despite the seriousness of Dr Thomas' misconduct, Mr Mellor argued that there were significant mitigating factors. He referred to the SG, specifically paragraph 25:

"25 The following are examples of mitigating factors.

a Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it. This could include the doctor admitting facts relating to the case, apologising to the patient (see paragraphs 42–44), making efforts to prevent behaviour recurring, or correcting deficiencies in performance or knowledge of English.

b Evidence that the doctor is adhering to important principles of good practice (ie keeping up to date, working within their area of competence), and of the doctor's character and previous history. This could include evidence that the doctor has not previously been found to have impaired fitness to practise by a tribunal, a previous MPTS panel or by the GMC's previous panels or committees.

c Circumstances leading up to any incidents that raise concern – eg inexperience (see paragraphs 27–30) or a lack of training and supervision at work

d Personal and professional matters, such as work-related stress.

e Lapse of time since an incident occurred."

148. Mr Mellor emphasised Dr Thomas's demonstrated insight, remorse, and commitment to remediation. He also referred to the Tribunal's own determination on impairment, in which it had highlighted Dr Thomas' comprehensive Development and Restoration Plan. Mr Mellor also referenced Dr Thomas' prior good character, and testimonials affirming his clinical skills and character. He reminded the Tribunal of its acknowledgment that the testimonials had indicated that his actions were out of character for Dr Thomas.

149. Mr Mellor submitted that the circumstances leading to the misconduct such as work-related stress, the COVID-19 pandemic, and professional matters could be considered by the Tribunal to be further mitigation. He contended that, despite admitting dishonesty, Dr Thomas's case falls on the less severe end of the dishonesty spectrum. Further, Mr Mellor submitted that the Tribunal had already found Dr Thomas to have shown insight, expressed his remorse, and the Tribunal had found that it was highly unlikely that Dr Thomas would repeat his misconduct. Mr Mellor reminded the Tribunal that its finding of impairment had

not been based around a risk of repetition, but expressly the need to maintain public confidence in the profession.

150. Mr Mellor highlighted character witnesses who attested to Dr Thomas' availability and commitment to patient care during the COVID-19 pandemic, even during annual leave. Additionally, Mr Mellor drew attention to a letter endorsed by the Chief Medical Officers and the Medical Director/Head of Education for the GMC, supporting doctors during the COVID-19 pandemic. Mr Mellor submitted that the challenging circumstances should be considered as a mitigating factor, especially in relation to 'non-asbestos medical' private patients and the use of NHS stationery. Mr Mellor submitted that Dr Thomas did not use the pandemic as an excuse for his actions but suggested that the misconduct should be considered in the context of the COVID-19 pandemic.

151. Mr Mellor acknowledged that suspension may be warranted but submitted that this should be for a relatively short period, referring to the factors in paragraph 102 of the SG. He asserted that a short suspension would be proportionate, taking into account the absence of patient safety concerns and Dr Thomas' significant remediation efforts, together with the lapse of time since the incidents occurred, emphasising that there have been no similar incidents before or after the index events. He added that a lengthy suspension would be disproportionate given Dr Thomas' remorse, the mitigating factors, lack of ongoing concerns, and Dr Thomas' commitment to remediation. Mr Mellor also informed the Tribunal of the nature of the financial repercussions for Dr Thomas and his family from any suspension. He also submitted that there was a potential for impact on the treatment of current, long-standing patients of Dr Thomas. Mr Mellor submitted that there is a public interest in having an experienced and caring physician available for private practice. Mr Mellor stressed that erasure would be disproportionate and inappropriate given the mitigating factors recognised by the Tribunal.

The Relevant Legal Principles

152. The Legally-Qualified Chair ('LQC') advised the Tribunal that it had to determine what, if any sanction to impose following its finding of impairment. The Tribunal had to be proportionate in imposing impairment with the level of impairment found and balance the doctor's interests with the public interest. He advised that dishonesty is regarded as very serious for professionals, but that the Tribunal had to weigh the gravity of the misconduct. It had to follow the SG.

The Tribunal's Approach

153. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. The Tribunal has given careful consideration to all evidence adduced in this case, both oral and documentary, when reaching a decision on sanction.

154. The Tribunal reminded itself that the GMC's overarching objective is the protection of the public. The overarching objective includes: to protect and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

155. In reaching its decision, the Tribunal has given careful consideration to the principles within the SG. A doctor's misconduct has an inevitable impact on the reputation of the profession and the public's confidence in it. Sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.

156. The Tribunal has borne in mind that in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive and then consider each sanction in ascending order. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor.

The Tribunal's Determination on Sanction

157. In reaching its decision as to the appropriate sanction, the Tribunal considered the aggravating and mitigating factors in this case.

158. The Tribunal considered that the aggravating factor in this case was that Dr Thomas' dishonesty had occurred in a professional capacity, in the exercise of his clinical practice.

159. In respect of mitigation, the Tribunal considered that Dr Thomas had demonstrated in his oral evidence, reflections, Development and Restoration Plan and witness statement fully developed insight into his past misconduct. The Tribunal had comprehensively set out its findings into Dr Thomas' remediation in its determination on impairment . The Tribunal considered that Dr Thomas understood the gravity of his dishonesty and had taken comprehensive steps to remediate. Dr Thomas accepted the seriousness of his actions and had cooperated with the regulatory process, acknowledging that his dishonesty had

amounted to misconduct. The Tribunal considered that this demonstrated further insight into the professional standards expected and the public interest in maintaining these professional standards.

160. The Tribunal considered Dr Thomas' working circumstances, and the significant pressures from the COVID-19 pandemic. In the years since the misconduct occurred, there have been no further incidents, and prior to the matters with which the case was concerned, Dr Thomas had an unblemished record.

161. The Tribunal took into account the positive testimonial evidence and noted that it was clear that Dr Thomas was well-respected, competent and experienced. The written testimonials, backed by the oral evidence of two of the writers, had spoken of the valuable and dedicated service that Dr Thomas had carried out during the COVID-19 pandemic, and the extensive additional hours he had been prepared to commit to the Trust.

162. The Tribunal bore in mind the mitigating factors throughout its deliberations on what the appropriate and proportionate sanction to impose would be, if any. The Tribunal considered each sanction in ascending order starting with the least restrictive.

No action

163. The Tribunal first considered whether to conclude the case by taking no action. It accepted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that the circumstances were not so exceptional as to warrant taking no action. The Tribunal determined that given its finding of dishonesty, it would not be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

164. The Tribunal next considered whether to impose conditions on Dr Thomas' registration. The Tribunal noted that the SG stated that in many cases the purpose of conditions is to help the doctor deal with health issues or remedy any deficiencies in practice or where there is evidence of shortcomings in specific areas of practice or knowledge of English. None of these factors applied in this case.

165. The Tribunal acknowledged that in the circumstances of the Tribunal's findings in this case, there were no workable conditions which could be applied. It was of the view that it would not be possible for conditions to be formulated that are appropriate to address Dr

Thomas' past dishonesty, particularly in light of the remediation he has already undertaken. Nor did the Tribunal consider that conditions were a sufficient sanction to mark the seriousness of the case. The Tribunal therefore did not consider the imposition of conditions was a proportionate and appropriate sanction in this case.

Suspension

166. The Tribunal went on to consider whether a period of suspension would be appropriate. The Tribunal considered the relevant paragraphs of SG, in particular paragraphs 91, 92, 93, and 97:

> *"91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> *92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*
>
> *93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.*
>
> *97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
> *a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*
> *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."

167. The Tribunal reminded itself of its findings into the dishonest misconduct. It had decided that the misconduct in relation to the 'asbestos medical' patients had been a matter of Dr Thomas' omission, in the sense that he had continued a practice engaged in by his predecessor but had not sought to ask for appropriate authorisation. The misconduct in relation to seeing private patients in his NHS time was more serious, but the Tribunal considered that there was some mitigation in the circumstances of the pandemic and balanced the misconduct with the evidence that Dr Thomas had been spending a large amount of time in being available to the NHS during the pandemic. The Tribunal had difficulty in accepting a submission, therefore, that there had been a loss to the NHS in terms of Dr Thomas' time. The Tribunal considered that the circumstances of the pandemic had led to some blurring of appropriate boundaries. The Tribunal considered the loss to the NHS of stationery. The evidence did not support that there had been a considerable amount lost and Dr Thomas had stated his understanding had been that no large loss had been identified. In all the circumstances, the Tribunal concluded that the misconduct, though serious, was not at the higher end of dishonest misconduct.

168. The Tribunal noted that suspension of Dr Thomas' registration will send out a signal to the profession and to the public concerning how it viewed his past misconduct. The Tribunal's finding of impairment had identified a need to maintain public confidence in the profession and to declare and uphold professional standards. The Tribunal noted that, as set out in the paragraphs of the SG set out above, these aims could be met by suspension of Dr Thomas' registration.

169. The Tribunal also noted that the SG stated that a period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration. The SG went on to state that 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.

170. The Tribunal took into account that Dr Thomas had acknowledged his dishonesty in his witness statement and at the start of the hearing. The Tribunal's own findings had gone no further than the facts admitted by Dr Thomas. The Tribunal also took into account that there were no patient safety concerns in this case. The Tribunal reminded itself of the positive testimonial evidence which spoke to Dr Thomas' integrity as a doctor and as a good

clinician. Furthermore, he has had a previously unblemished career without any fitness to practise concerns.

171. The Tribunal was therefore of the view that Dr Thomas' dishonest misconduct had been outside of his normal character. The Tribunal, as set out above, had determined that the risk of Dr Thomas repeating his past misconduct is low, setting out in terms that it was 'highly unlikely' to recur.

172. The Tribunal noted that Dr Thomas' misconduct had amounted to serious breaches of GMP, but agreed with the submissions made by both Counsel that it was not conduct that was fundamentally incompatible with continued registration. Having taken into account Dr Thomas' admissions, his apologies, the evidence of his previous good character, his remediation and its assessment that repetition was highly unlikely, the Tribunal concluded that the past misconduct was not fundamentally incompatible with continued registration.

173. The Tribunal was satisfied, weighing all the factors, including the interests of Dr Thomas against the need to meet the overarching objective, that a period of suspension was the appropriate and proportionate response in this case. The Tribunal determined that erasure would be a disproportionate response.

Length of Suspension

174. Having determined to impose a period of suspension on Dr Thomas' registration, the Tribunal went on to consider the length of the period of suspension.

175. Having considered the relevant parts of the SG the Tribunal determined to suspend Dr Thomas' registration from the medical register for a period of 2 months. It was satisfied that a period of suspension was necessary to mark the seriousness of Dr Thomas' misconduct by upholding the overarching objective to maintain public confidence in the profession and by upholding proper professional standards. The Tribunal considered that a longer period of suspension would be disproportionate given the circumstances surrounding the occurrence of the misconduct, the passage of time, and that it was unlikely that Dr Thomas would repeat his misconduct.

Review hearing

176. The Tribunal then considered whether to order a review hearing. It had regard to SG where it states that no doctor should be allowed to resume unrestricted practice following a period of suspension unless the Tribunal considers that they are safe to do so. The SG states that in some cases it may be self-evident that following a short suspension there will be no value in a review hearing but that in most cases the Tribunal will need to be reassured that the doctor is fit to resume practice.

177. The Tribunal was satisfied that, however, in this case a review hearing was not necessary given that it determined that there had been full remediation, there were no patient safety concerns, the low risk of repetition of misconduct, and the length of the suspension. It determined that a review hearing would serve no purpose and the public interest has been met by the suspension.

Determination on Immediate Order - 12/02/2024

178. Having determined to suspend Dr Thomas' registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

179. On behalf of the GMC, Ms Goring submitted that the GMC did not invite the Tribunal to make an immediate order, given that there were no patient safety concerns.

180. On behalf of Dr Thomas, Mr Mellor submitted that patient safety was not an issue in this case. He referred the Tribunal to paragraphs 172, 173 and 178 of the SG:

"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.

…

178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect."

181. Mr Mellor submitted that an immediate order was not necessary, and it would be inappropriate to impose an immediate order in this case.

The Tribunal's Determination

182. The Tribunal took account of the guidance, the submissions of both parties and the specific basis upon which the Tribunal reached its determination on sanction.

183. The Tribunal determined that the substantive order properly marks the seriousness of Dr Thomas' misconduct. It determined that suspending him for two months upholds the overarching objective in maintaining public confidence in the profession and maintaining proper professional standards. It considered that in the absence of any concerns about patient safety, an immediate order would not be necessary in this case.

184. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Thomas' registration.

185. This means that Dr Thomas' registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Thomas does lodge an appeal, he will remain free to practise unrestricted until the outcome of the appeal is known.

186. There is no interim order in place.

187. That concludes the case.