MPTS Medical Practitioners Tribunal Service

PUBLIC RECORD

Dates: 16/08/2021 - 20/08/2021

Medical Practitioner's name:	Dr Farzana ABID
GMC reference number:	4235192
Primary medical qualification:	MB BS 1985 University of Punjab (Pakistan)

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

No warning

Tribunal:

Legally Qualified Chair	Mr Sean Ell
Lay Tribunal Member:	Mr Geoffrey Brighton
Medical Tribunal Member:	Dr Damian McDermott

Tribunal Clerk:	Miss Evelyn Kramer

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Tom Day, Counsel, instructed by the MDDUS
GMC Representative:	Mr Alan Taylor, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 19/08/2021

1. At the outset of the hearing, the Tribunal briefly went into private session to consider any necessary reasonable adjustments.

Background

2. Dr Abid qualified in 1985 from the University of Punjab and subsequently gained a number of postgraduate qualifications in psychiatry. Dr Abid completed her specialist training in General Adult Psychiatry in March 2001. In April 2001, Dr Abid was appointed as a General Adult Consultant Psychiatrist at the Berkshire Health Care NHS Foundation Trust ('the Trust'). It was in this role she was practising at the time of events.

3. The allegation that has led to Dr Abid's hearing can be summarised as, on three occasions 26 July 2017, 20 February 2018, and 19 February 2019, Dr Abid signed Form CTO7 (Community Treatment Order (CTO) extension form) in which it stated she had examined Patient A prior to the completion of the Forms. It is alleged that on all three occasions Dr Abid, knowing that she had not examined Patient A herself, made statements which she knew to be untrue. It is alleged that Dr Abid's actions in relation to the Form CTO7 were dishonest.

4. A query was raised by Patient A's solicitor as to the validity of the Form CTO7 during a Mental Health Act Managers hearing on 3 April 2019. After the Trust sought legal advice, Patient A was discharged from his CTO on 10 April 2019. The Trust began an investigation into this matter and the wider Trust procedure in relation to CTOs and the relevant

documentation. Following the conclusion of the investigation, Dr Abid referred herself to the GMC on 9 July 2019.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal granted the application made on behalf of the GMC by Mr Taylor, Counsel, pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to amend the Allegation, replacing the word 'completed' with 'signed' in paragraphs 1, 5 and 9. On behalf of Dr Abid, Mr Day, Counsel, confirmed that there was no opposition to the application and that it could be made without any injustice. The Tribunal considered the agreed nature of the application and was satisfied that the amendments to the Allegation could be made without injustice.

The Allegation and the Doctor's Response

6. The Allegation made against Dr Abid is as follows:

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

1. On 26 July 2017 you ~~completed~~ signed Form CTO7, and in that Form you stated that you had examined Patient A on 16 July 2017.
Amended under Rule 17(6)
Admitted and found proved

2. You had not examined Patient A on 16 July 2017.
Admitted and found proved

3. Your statement that you had examined Patient A on 16 July 2017 was:
   a. untrue;
   Admitted and found proved

   b. a statement which you knew to be untrue.
   To be determined

4. Your actions as described at paragraph 1 were dishonest by reason of paragraphs 2 and 3.
To be determined

5. On 20 February 2018 you ~~completed~~ signed Form CTO7, and in that Form you stated that you had examined Patient A on 13 February 2018.

Amended under Rule 17(6)

Admitted and found proved

6. You had not examined Patient A on 13 February 2018.

Admitted and found proved

7. Your statement that you had examined Patient A on 13 February 2018 was:

a. untrue;

Admitted and found proved

b. a statement which you knew to be untrue.

To be determined

8. Your actions as described at paragraph 5 were dishonest by reason of paragraphs 6 and 7.

To be determined

9. On 19 February 2019 you ~~completed~~ signed Form CTO7, and in that Form you stated that you had examined Patient A on 21 January 2019.

Amended under Rule 17(6)

Admitted and found proved

10. You had not examined Patient A on 21 January 2019.

Admitted and found proved

11. Your statement that you had examined Patient A on 21 January 2019 was:

a. untrue;

Admitted and found proved

b. a statement which you knew to be untrue.

To be determined

12. Your actions as described at paragraph 9 were dishonest by reason of paragraphs 10 and 11.

To be determined

The Admitted Facts

7. At the outset of these proceedings, Mr Day on behalf of Dr Abid made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

8. In light of Dr Abid's response to the Allegation made against her, the Tribunal is required to determine the paragraphs and sub-paragraphs remaining.

Factual Witness Evidence

9. The Tribunal received oral evidence on behalf of the GMC from Dr A, Medical Director and Responsible Officer (RO) at the Trust. His witness statement was dated 1 October 2020.

10. Both parties agreed Dr A's evidence and asked whether the Tribunal was likely to have questions for Dr A. The Tribunal determined that it had some questions for Dr A, so he was called to give evidence on behalf of the GMC.

11. Dr Abid provided her own witness statement, dated 22 July 2021 and also gave oral evidence at the hearing.

Documentary Evidence

12. The Tribunal had regard to the documentary evidence provided by the parties.

The Tribunal's Approach

13. 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 Abid 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.

14. In respect of the allegations that Dr Abid acted dishonestly, the Tribunal applied the test laid down by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67 *('Ivey'*), namely that the Tribunal should first ascertain subjectively the actual state of Dr Abid's knowledge or belief as to the facts. Whether the belief is reasonable may be a matter of evidence, but reasonableness is not an additional requirement when considering whether the belief was genuinely held. The Tribunal should then ascertain whether her conduct was dishonest applying the objective standards of ordinary decent people.

The Tribunal's Analysis of the Evidence and Findings

15. Before making its determinations, the Tribunal considered the relevant context of Dr Abid's clinical relationship with Patient A. In particular, it noted that Patient A came under the care of Dr Abid and her team in 2001. In 2008, following the breakdown of their therapeutic relationship, Patient A did not want to see Dr Abid. Dr Abid stated that following Patient A's decision, she asked her then Speciality and Associate Specialist (SAS) to take over Patient A's care under her supervision. Over the course of Patient A's treatment at the Trust, he was seen by two SAS clinicians, both of whom were experienced psychiatrists who were approved under Section 12 of the Mental Health Act 1983 ('MHA') and were able to carry out work under the MHA independently.

16. Patient A was admitted as an inpatient under Section 3 of the MHA in 2016, subsequently he was discharged under a CTO on 2 March 2017. Dr Abid was Patient A's Responsible Clinician (RC) following Patient A's discharge from hospital. In his witness statement, Dr A explained that *'where a patient is subject to a Community Treatment Order ('CTO') the duty of the RC is to examine the patient within the two months before the CTO expires, to determine whether the patient continues to meet the criteria for community treatment. In determining whether the criteria are met, the RC has a specific duty to consider what risk there would be of a deterioration of the patient's condition if the patient were to continue to be treated in the community, rather than being detained in a hospital…*'.

17. At the time of signing each form set out in the Allegation, Patient A was being treated by Dr C, Dr Abid's SAS, with her supervision. On each occasion, Dr Abid signed the forms once Dr C had conducted a mental health examination for Patient A.

18. Dr Abid has admitted that on 26 July 2017 (Patient A examined on 16 July 2017), 20 February 2018 (Patient A examined on 13 February 2018) and 19 February 2019 (Patient A examined on 21 January 2019), she signed Form CTO7 and stated that she had examined Patient A. She has admitted that she had not examined Patient A herself on the relevant dates. She now recognised that the CTO7 Forms were misleading as they gave the impression that she had seen Patient A herself which was untrue.

19. Having considered the relevant background and admissions, the Tribunal went on to determine each outstanding paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

Sub-paragraph 3b

20. The Tribunal first had to determine whether on 26 July 2017, having signed the Form CTO7 and stated that she examined Patient A on 16 July 2017, when this was untrue, Dr Abid knew that statement to be untrue.

21. The Tribunal considered the wording and layout of the Form CTO7. On the first page of the Form CTO7 states *'Parts 1 and 3 of this form are to be completed by the responsible clinician'*, in Part 1 below various contact information, it states *'I examined the patient on'* and has a box to insert that date. Then follows a section on the RC's clinical opinion as to why the CTO extension is required. At the end of that section, there is a confirmation statement and a box for a signature, below which it says *'Responsible clinician'* and a box for the date it was signed. The Tribunal accepted that the wording of the form was not ambiguous or unclear.

22. Having reviewed the Form CTO7, the Tribunal went onto consider the other evidence before it as to Dr Abid's state of knowledge at the time she signed the Form CTO7 on 26 July 2017.

23. Dr A's evidence was agreed between the parties and his witness statement mainly detailed the process that was followed once Patient A's solicitor queried the validity of the Form CTO7 on 3 April 2019.

24. In the Investigation Report, Dr A set out his findings in relation to Dr Abid's actions following the breakdown of her therapeutic relationship with Patient A and her decision to remain as RC while Dr C continued to see Patient A. He wrote:

> *Dr FA seemed to get agreement from the multidisciplinary team including the patient's care coordinator and AMHP that this approach was in the best interest of the patient; the AMHP countersigned the CTO review forms signed by Dr FA. There is no documentation in the patient's clinical notes which could evidence these discussions. Dr FA immediately acknowledged her error of judgement and commented that there was no one in the MHA Office anymore that she could ask for advice in such matters.*

25. In his oral evidence, Dr A explained that doctors were not lawyers and that the role of the MHA Office was to provide doctors with advice about the MHA. He had not checked with the MHA Office what discussions if any had taken place between them and Dr Abid as that was not the focus of his investigation.

26. The Tribunal considered Dr Abid's evidence. In her witness statement, Dr Abid explained that at the time of these events, she had concluded that, in her clinical judgement *'that whilst Patient A refused to see me, it would be in his best interests to still keep him under my care to prevent a very serious risk of relapse as he had a good rapport and strong relationship with Dr C and with his Care Coordinator in the CMHT* [Community Mental Health Team]*, a decision also supported by his parents. I understood this all to be permissible under the CTO. I considered that transfer of his care would disrupt his improvement and could potentially be extremely detrimental to his mental health'*. This was consistent with her oral evidence.

27. She stated:

> *At that time, my understanding was that I was still permitted to sign the CTO Form without physically seeing him as long as I was able to make a fully informed assessment about the nature and degree of his mental illness and progress. In other words, I could still be the patient's RC and sign the relevant forms whilst the face-to-face consultation was undertaken by my SAS under my supervision…*
>
> *Patient A was an exceptional case where someone under a CTO refused to see me; indeed this is the only time it has happened in my career. Dr C would see him face-to-face and then report back to me. Following our discussion, he would complete the CTO Form which I would then sign after ensuring I had spoken to Patient A's Care Coordinator, discussed his case in our CHMH meetings and reviewed the relevant medical records. I was confident that the best course of action on each occasion was*

for Patient A's CTO to remain in place. I signed Patient A's CTO7 Part 1 on 26 July 2017, 20 February 2018, and 19 February 2019.

28. The Tribunal noted Dr Abid's level of experience and seniority and was of the view that Dr Abid should have known and understood the requirements of an RC and the associated paperwork she was responsible for completing. The Tribunal however noted that just because Dr Abid should know something, it did not follow that she did.

29. Dr Abid was consistent in her evidence that she believed that remaining as Patient A's RC and signing the Form CTO7, despite not examining him in person, was permissible. From the moment it was raised with her that it was not permissible, her explanation for her actions has always been the same. She said that she had a number of discussions with the MHA Office about this and they had accepted that in Patient A's case, it was appropriate for Dr C to continue seeing Patient A, and for Dr Abid to supervise, remain as RC and sign the relevant CTO paperwork as required. The Tribunal accepted that it was clear to all relevant clinicians and those involved in Patient A's care, that Dr Abid was his RC, but was not conducting the face-to-face examinations or treatment herself.

30. The Tribunal was of the view that Dr Abid's evidence was in places unclear, for example, in her oral evidence, she could not recall at what point the Form CTO7 was introduced. The Tribunal, however did not consider this undermined Dr Abid's credibility. It took into account both the passage of time and whether or not Dr Abid could be expected to be clear on when specific forms were introduced.

31. Mr Taylor in his submissions pointed the Tribunal to the initial Rule 7 response submitted on behalf of Dr Abid. The Rule 7 response was prepared by Dr Abid's representatives and appears to suggest that Dr Abid wrote the examination dates on the Form CTO7 herself. Mr Taylor submitted that this demonstrated that Dr Abid must have known that the information being entered onto the Form was untruthful. In her witness statement Dr Abid made clear that the Rule 7 response was potentially misleading in that Dr C had filled out and completed the Form CTO7, and she had signed and dated the form once she had checked the opinion section. The potential inconsistency in the evidence was not put to Dr Abid in cross-examination. Having considered what Dr Abid said in her witness statement, the Tribunal accepted that there was not an inconsistency in her evidence, but that she had sought to correct information provided by her representatives. The Tribunal was of the view that this did not undermine her credibility.

32. The Tribunal took into account Dr Abid's Fixed Penalty Notice and the GMC warning she subsequently accepted. Within the terms of the Fixed Penalty Notice, having paid the fixed fee, Dr Abid had not admitted guilt and she has no record of a criminal conviction. The Tribunal therefore concluded that neither the Fixed Penalty Notice nor the GMC warning undermined Dr Abid's credibility as a witness. Further, the Tribunal concluded that such a history did not suggest any propensity for dishonesty.

33. The Tribunal also had regard to the positive testimonial provided in support of Dr Abid.

34. Taking all of the above into account, the Tribunal considered whether Dr Abid knew that she was making an untrue statement in relation to the Form CTO7.

35. The Tribunal was of the view that it was more likely than not, that following the breakdown of the therapeutic relationship with Patient A, she had sought advice from the MHA Office about being Patient A's RC. As Dr A had stated in oral evidence, the MHA Office exists because psychiatrists, other doctors and mental health practitioners cannot be expected to understand the legal framework of the MHA as well as lawyers do. There was no evidence provided by the GMC to suggest that Dr Abid had not contacted the MHA Office and received confirmation that the approach she was taking in relation to Patient A's treatment was permissible in the circumstances.

36. The Tribunal also had regard to letters sent both to Patient A's General Practitioner (GP), and to Dr C, dated 6 March 2017 by the MHA Office, naming Dr C as Patient A's Community RC. Dr A was surprised by the content of these letters given that Dr C could not have been Patient A's RC. He noted that this must have been an administrative error and that there had been issues with the MHA Office that the Trust has now hopefully resolved.

37. The Tribunal also had regard to the Investigation Report prepared by Dr A in which he had identified at least one other occasion where an RC in the Trust had an SAS complete and then sign the Form CTO7. Both doctors involved were interviewed and maintained that *'when the Consultant had enquired with the MHA Office (whether the Associate Specialist could sign the CTO forms on his behalf), he was informed this was acceptable practice which then led to him advising the Associate Specialist to sign the CTO forms. The MHA Office do not recollect or have documentation of this having happened, although they agree that the forms in question were not adequately checked (which is one of the administrative functions of the*

Office)'. The Tribunal accepted that it was plausible Dr Abid had been given incorrect advice by the MHA Office.

38. The Tribunal noted that the GMC did not need provide a motive for any alleged dishonest behaviour. However, it took into account that Dr Abid had nothing to gain by signing the Form CTO7 without examining Patient A herself. She had at no time sought to hide from others involved in Patient A's care that she was not examining him herself, and had not had a face-to-face appointment with him since 2008. Dr C's clinical notes were available on the system confirming that it was he, and not Dr Abid who had seen the patient. The Tribunal accepted that others involved in Patient A's care were aware of the arrangement.

39. The Tribunal found that Dr Abid had been consistent in her evidence about her understanding. It accepted her evidence that she continued as Patient A's RC on the basis that it had been confirmed as permissible by the MHA Office and was known to all those involved in Patient A's care. It accepted that Dr Abid had signed the Form CTO7 on that same basis. She believed that she could sign the CTO7 on 26 July 2017, having not examined Patient A herself, because she had confirmation and agreement that it was appropriate for Dr C to examine Patient A in person instead and for her to remain as RC.

40. Therefore, the Tribunal determined that, at the time she signed the Form CTO7, Dr Abid did not know that in signing the form, she was making a statement that was untrue.

41. The Tribunal found sub-paragraph 3b of the Allegation not proved.

Paragraph 4

42. The Tribunal went on to consider whether Dr Abid acted dishonestly when she signed the Form CTO7, dated 26 July 2017, and made an untrue statement that she had examined Patient A when she had not.

43. In applying the first limb of *Ivey*, the Tribunal considered Dr Abid's subjective state of knowledge and belief. It has already found that while the statement was untrue, Dr Abid did not know that she was not permitted to sign the Form CTO7 as Patient A's RC when she had not examined him herself. The Tribunal concluded that Dr Abid's belief that she could, in the circumstances, continue to sign the Form CTO7, though mistaken, was genuinely held.

44. The Tribunal then applied the second limb of *Ivey*. When Dr Abid signed the Form CTO7 she genuinely believed she was acting both in the best interests of Patient A, and in line with advice she had received from the MHA Office (who provide guidance to psychiatrists and other mental health practitioners to ensure their compliance with the MHA). She believed she could continue to sign the Form CTO7 without examining Patient A herself on that basis. In those circumstances, the Tribunal concluded that, by the standards of ordinary decent people, Dr Abid would not be considered to have acted dishonestly.

45. Accordingly, the Tribunal found paragraph 4 of the Allegation not proved.

Sub-paragraph 7b

46. The Tribunal considered whether on 20 February 2018, having signed the Form CTO7 and stated that she examined Patient A on 13 February 2018, when this was untrue, Dr Abid knew that statement to be untrue.

47. The Tribunal concluded that there was no difference in the evidence for each Form CTO7 Dr Abid had completed. Dr Abid's own explanations were the same for all three forms which the Tribunal accepted, and her understanding of the situation and the permissibility of her actions only changed after 3 April 2019.

48. Therefore, the Tribunal determined that, for the same reasons as set out in relation to sub-paragraph 3b, sub-paragraph 7b of the Allegation was not proved.

Paragraph 8

49. The Tribunal determined that, for the same reasons as set out in relation to paragraph 4, paragraph 8 of the Allegation was not proved.

Sub-paragraph 11b

50. The Tribunal considered whether on 19 February 2019, having signed the Form CTO7 and stated that she examined Patient A on 21 January 2019, when this was untrue, Dr Abid knew that statement to be untrue.

51. The Tribunal concluded that there was no difference in the evidence for each Form CTO7 Dr Abid had completed. Dr Abid's own explanations were the same for all three forms

which the Tribunal accepted, and her understanding of the situation and the permissibility of her actions only changed after 3 April 2019.

52. Therefore, the Tribunal determined that, for the same reasons as set out in relation to sub-paragraph 3b, sub-paragraph 11b of the Allegation was not proved.

Paragraph 12

53. The Tribunal determined that, for the same reasons as set out in relation to paragraph 4, paragraph 12 of the Allegation was not proved.

The Tribunal's Overall Determination on the Facts

54. The Tribunal has determined the facts as follows:

1. On 26 July 2017 you ~~completed~~ signed Form CTO7, and in that Form you stated that you had examined Patient A on 16 July 2017.
Amended under Rule 17(6)
Admitted and found proved

2. You had not examined Patient A on 16 July 2017.
Admitted and found proved

3. Your statement that you had examined Patient A on 16 July 2017 was:
   a. untrue;
   Admitted and found proved

   b. a statement which you knew to be untrue.
   Not proved

4. Your actions as described at paragraph 1 were dishonest by reason of paragraphs 2 and 3.
Not proved

5. On 20 February 2018 you ~~completed~~ signed Form CTO7, and in that Form you stated that you had examined Patient A on 13 February 2018.
Amended under Rule 17(6)
Admitted and found proved

6. You had not examined Patient A on 13 February 2018.

Admitted and found proved

7. Your statement that you had examined Patient A on 13 February 2018 was:

a. untrue;

Admitted and found proved

b. a statement which you knew to be untrue.

Not proved

8. Your actions as described at paragraph 5 were dishonest by reason of paragraphs 6 and 7.

Not proved

9. On 19 February 2019 you ~~completed~~ signed Form CTO7, and in that Form you stated that you had examined Patient A on 21 January 2019.

Amended under Rule 17(6)

Admitted and found proved

10. You had not examined Patient A on 21 January 2019.

Admitted and found proved

11. Your statement that you had examined Patient A on 21 January 2019 was:

a. untrue;

Admitted and found proved

b. a statement which you knew to be untrue.

Not proved

12. Your actions as described at paragraph 9 were dishonest by reason of paragraphs 10 and 11.

Not proved

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

To be determined

Determination on Impairment - 20/08/2021

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

The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence in the form of an additional statement from Dr A, RO at the Trust, provided by the GMC, and a reflective statement from Dr Abid and a bundle of evidence including 360 Feedback Reports and Continuing Professional Development certificates (CPD).

Submissions

3. On behalf of the GMC, Mr Taylor submitted that the GMC is neutral on the matter of impairment. He reminded the Tribunal to take account of the over-arching objective throughout its deliberations on impairment. He referred to the importance of the CTO7 Forms, and the consequence of Dr Abid's actions in Patient A's CTO becoming invalid. He also reminded the Tribunal of Dr Abid's acceptance that her actions in signing the CTO7 Forms were misleading. Mr Taylor suggested that paragraphs 65 and 71 of Good Medical Practice (2013) (GMP) were engaged in this case:

> '*65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.*
>
> > *a You must take reasonable steps to check the information is correct.*

b You must not deliberately leave out relevant information.'

4. Mr Taylor submitted that it was a matter for the Tribunal alone to consider whether Dr Abid's fitness to practise is impaired.

5. On behalf of Dr Abid, Mr Day told the Tribunal that Dr Abid accepted and agreed with the entirety of its determination on facts. He submitted that though there were admitted failings, there was significant mitigation in this case to allow the Tribunal to conclude that a finding of serious professional misconduct was not required. Mr Day referred to relevant case law throughout his submissions and reminded the Tribunal that it could only consider misconduct and impairment based on the facts found proved in relation to the CTO7 Forms. It was Mr Day's contention that the Tribunal could only consider the direct consequences of Dr Abid having signed the CTO7 Forms incorrectly. He submitted that clinically, it was right for Patient A to be under a CTO and that no harm came to Patient A as a result of Dr Abid's failings in relation to the CTO7 Forms.

6. Mr Day stated that he was not seeking to minimise the importance of filling in forms correctly. He submitted that a finding of misconduct is significant in itself. Mr Day reminded the Tribunal of its own findings and stated that any references to 'honesty' in paragraphs 65 or 71 of GMP did not apply in this case. However, he did accept that the latter sentence of paragraph 71, '*You must make sure that any documents you write or sign are not false or misleading'* was engaged. Mr Day suggested that, in taking a holistic view of Dr Abid's actions and their context, this was a case where her failure was understandable, if not excusable. He submitted that her actions amounted to a mistake, rather than deplorable conduct. As such, he invited the Tribunal to conclude it did not amount to serious professional misconduct.

7. If the Tribunal did conclude that the facts found proved amounted to serious professional misconduct, Mr Day submitted that Dr Abid has demonstrated complete insight, genuine remorse and reflection, comprehensive remediation and has taken practical steps to change her practice to demonstrate that she has learned from her error. He submitted that any risk of repetition is vanishingly low and was further reduced by the impact of these proceedings on Dr Abid. Mr Day referred the Tribunal to specific testimonials and letters of thanks from patients. He informed the Tribunal that Dr Abid has been practising without incident since the issue with the CTO7 Forms was raised. He submitted that public confidence in the profession would be in no way undermined by Dr Abid being found to be not impaired.

Mr Day invited the Tribunal to conclude that this was not a case of serious professional misconduct, nor was it a case where a finding of impairment was required.

The Relevant Legal Principles

8. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

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

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

The Tribunal's Determination on Impairment

Misconduct

11. First, the Tribunal considered whether the facts admitted and found proved amounted to misconduct. It had regard to the paragraphs of GMP it had been referred to and accepted that in this case, paragraph 71 of GMP (set out above) was engaged to the extent that it refers to '*You must make sure that any documents you write or sign are not false or misleading'*. Dr Abid accepted that the CTO7 Forms could be misleading, as they suggested that she had examined Patient A herself when she had not. However, it was also mindful that in relation to 71a, Dr Abid had ensured that the information was accurate, based on her ongoing discussions and supervision of Dr C's treatment of Patient A, and her review of the relevant opinion section of the CTO7 Forms.

12. The Tribunal went on to consider whether any other paragraphs of GMP were engaged in Dr Abid's case. In particular, it considered paragraphs 12 and 19 of GMP:

'12 You must keep up to date with, and follow, the law, our guidance and other regulations relevant to your work.

19 Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.'

13. The Tribunal considered these paragraphs of GMP to be relevant because the CTO7 Forms, were important documents with legal implications and serious consequences for the safety of patients and the wider public. In signing the CTO7 Forms, Dr Abid had given the misleading impression that she had seen Patient A herself, which was untrue. As a result of this, all the CTO7 Forms were invalid and Patient A was therefore discharged from the CTO that was clinically required.

14. Dr Abid was a senior Consultant Psychiatrist, and as RC had a number of responsibilities guided by the MHA. She should have understood the requirements of the CTO7 Forms and the possible impact and consequences of them containing a misleading statement; that she had examined Patient A herself when she had not. The Tribunal was of the view that Dr Abid should have been up to date on the various requirements of the RC role. Dr Abid has accepted herself and told the Tribunal in her oral evidence about the refresher training she has undertaken.

15. The Tribunal considered that Dr Abid's actions had breached a number of paragraphs of GMP, and that her actions, in signing the CTO7 Forms and stating that she had examined Patient A herself, would be a concern to the wider profession. In the circumstances, it concluded that her actions did amount to misconduct.

16. The Tribunal went on to determine whether that was misconduct was serious. It considered the context of Dr Abid's actions and the relevant mitigation.

17. The Tribunal found that Dr Abid, in signing the CTO7 Forms, had acted under the mistaken belief that her actions were permissible. Dr Abid had made all others involved in Patient A's treatment aware of this arrangement. As Dr C's supervisor, she had also kept herself updated on Patient A's care and progress, and had oversight over the clinical decisions made. Further, the arrangement had benefitted Patient A's care, he had a good therapeutic relationship with Dr C and was responding well to treatment under the CTO. Dr Abid believed her approach was permissible because it had been discussed with the MHA

Office, who she reasonably considered to be an authority on complex MHA matters. That the MHA Office appeared not to have confirmed that Dr Abid could not remain as Patient A's RC, was not her fault. While Dr Abid had made an untrue statement, she had not done so knowingly.

18. While the Tribunal accepted that a doctor making an untrue statement was concerning, Dr Abid's actions were based on a mistaken belief and the Tribunal considered this significant mitigation. Therefore, the Tribunal concluded that in balancing the breaches of GMP and Dr Abid's actions against the mitigation in this case, her misconduct fell short of being serious.

19. The Tribunal has concluded that Dr Abid's conduct did not fall so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct which was serious. The Tribunal has therefore determined that Dr Abid's fitness to practise is not impaired.

Determination on Warning - 20/08/2021

1. As the Tribunal determined that Dr Abid's fitness to practise was not impaired it considered whether in accordance with s.35D(3) of the 1983 Act, a warning was required.

Submissions

2. On behalf of the GMC, Mr Taylor submitted that it would be appropriate and proportionate to impose a warning in this case. Throughout his submissions, he referred to relevant paragraphs of the Guidance on Warnings (2021) ('the Guidance'). Mr Taylor submitted that given Dr Abid's seniority and level of experience, her breaches of GMP were significant enough to warrant a formal response. He therefore invited the Tribunal to issue a warning on Dr Abid's registration.

3. On behalf of Dr Abid, Mr Day submitted that, in light of the Tribunal's findings, Dr Abid's level of insight, remorse and remediation, and with the risk of repetition being so low, a warning would neither be appropriate nor proportionate. He submitted that Dr Abid's actions had not been found to fall *'just below'* the threshold for impairment, there was not a finding of serious professional misconduct. Mr Day referred the Tribunal to the mitigation in this case and to the steps Dr Abid has taken since she was made aware of her mistake. He invited the Tribunal not to issue a warning.

The Tribunal's Determination on Warning

4. The Tribunal was mindful of the Guidance and of the relevant paragraphs of the Sanctions Guidance (2020) relating to whether to issue a warning throughout its deliberations. It also bore in mind the over-arching objective. In particular, the need to maintain public confidence in the profession and declare and uphold proper professional standards.

5. The Tribunal had regard to paragraph 13 of the Guidance:

> *'13 Although warnings do not restrict a doctor's practice, they should nonetheless be viewed as a serious response, appropriate for those concerns that fall just below the threshold for a finding of impaired fitness to practise.'*

6. The Tribunal had regard to its previous findings. It had found that Dr Abid, as an experienced and senior Consultant Psychiatrist, should have understood the requirements of the CTO7 Forms. CTO7 Forms are important, and have legal implications under the MHA, and can serve to protect patients and the wider public. In signing the CTO7 Forms, having not examined Patient A herself, Dr Abid made an untrue statement which led to the invalidation of the forms. The Tribunal found that this did amount to a breach of GMP. However, the Tribunal concluded that Dr Abid's actions in signing the CTO7 Forms as she did, was based on a mistaken belief that she was permitted to do so, in the specific circumstances of Patient A's case, and the breach was therefore not serious.

7. The Tribunal acknowledged that there is a public interest in MHA paperwork, including CTO7 Forms, being completed correctly and truthfully. It is important that the public can have faith that such paperwork is completed accurately. The Tribunal noted however, that in Dr Abid's case there was significant mitigation as to why this had not happened.

8. The Tribunal considered paragraph 32 of the Guidance:

> *'32 If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:*
>
> *a the level of insight into the failings*
> *b a genuine expression of regret/apology*

c previous good history
d whether the incident was isolated or whether there has been any repetition
e any indicators as to the likelihood of the concerns being repeated
f any rehabilitative/corrective steps taken
g relevant and appropriate references and testimonials'

9. The Tribunal concluded that Dr Abid has insight into her failings, and at an early stage expressed genuine remorse for her actions. She set out her reflection in detail and provided supportive testimonials. The Tribunal was of the view that, though Dr Abid had signed three CTO7 Forms that contained an untrue statement, her mistaken belief was the same on each occasion. Further, it was reassured that a full audit of her practice had been undertaken and that Patient A's case remained the only case where concerns had been raised. There had been no similar repetition since. Dr Abid has completed relevant Continuing Professional Development (CPD) and has taken practical steps to ensure that her actions will not be repeated. The Tribunal was therefore satisfied that the risk of repetition in this case was highly unlikely.

10. The Tribunal considered whether a warning was required to maintain public confidence and declare and uphold proper professional standards. In light of the above, the Tribunal considered that Dr Abid herself is now fully aware of the importance of her role as an RC and the need to keep to up-to-date with the requirements of that role. The Tribunal concluded that to issue a warning to remind Dr Abid of those requirements was not necessary, given the steps she has taken herself. The Tribunal was satisfied that, in all the circumstances, that a further formal response to mark Dr Abid's conduct was not required. A fully informed member of the public would be reassured by Dr Abid's own actions since she was made aware of her error in April 2019. Therefore, the Tribunal determined that it would not be appropriate or proportionate to issue a warning on Dr Abid's registration.

11. There is no IOT to revoke.

12. That concludes this case.

Confirmed
Date 20 August 2021 Mr Sean Ell, Chair