Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 16/03/2020 – 17/03/2020
22/06/2020
07/09/2020 – 09/09/2020

Medical Practitioner's name:	Dr Fiachra McLAUGHLIN
GMC reference number:	7461498
Primary medical qualification:	MB ChB 2014 University of Leicester
Type of case New - Misconduct	**Outcome on impairment** Impaired

Summary of outcome
Suspension, 4 months.

Tribunal:

Legally Qualified Chair:	Miss Megan Larrinaga
Medical Tribunal Member:	Dr Keith Dunnett
Medical Tribunal Member:	Dr Noel Bevan

Tribunal Clerk:	Ms Lauren Duffy 16 – 17 March 2020 and 22 June 2020 Ms Jeanette Close 7 – 9 September 2020

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Alan Jenkins, Counsel, instructed by Carson-McDowall
GMC Representative:	Ms Kathryn Johnson, 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 and Impairment - 22/06/2020

1. This determination contains references to XXX and will be read in private. As this case concerns Dr McLaughlin's misconduct, a redacted version will be published at the close of the hearing.

Background

2. Dr McLaughlin qualified as a doctor in 2014 from the University of Leicester. Between August 2014 and August 2016, Dr McLaughlin was employed as a Foundation Year 1 doctor at the Belfast Health and Social Care Trust. Between August 2016 and July 2017, Dr McLaughlin was employed as a Foundation Year 2 doctor at the Western Health and Social Care Trust. Dr McLaughlin commenced his General Practitioner ('GP') training in July 2017. At the time of the alleged events, Dr McLaughlin was working at Letterkenny University Hospital and also working some weekend shifts as a Locum doctor at Craigavon Area Hospital ('the Hospital'). The Hospital was part of Southern Health and Social Care Trust ('the Trust').

3. It is alleged that, on 17 September 2018, Dr McLaughlin submitted retrospective claims for payment, via the HSC Locum website, for work at the Hospital which he had not undertaken. It is also alleged that Dr McLaughlin's statements to the Medical Locum Team, at the Trust in relation to the work for which the claims were submitted, were untrue. It is further alleged that Dr McLaughlin's actions in submitting the claim and his communications with the Trust in relation to that claim were dishonest.

4. Following an investigation by the Trust, Dr D, a Case Manager for the Trust wrote to Dr McLaughlin on 24 January 2019, indicating that a referral would be made to the General Medical Council ('GMC'). On 28 January 2019, Dr McLaughlin self-referred to the GMC via email. On 1 February 2019, the Trust made its referral to the GMC.

The Allegation and the Doctor's Response

5. The Allegation made against Dr McLaughlin is as follows:

1. On 17 September 2018, you manually submitted retrospective claims for payment via the HSC Locum website ('the Claims') for shifts completed at Craigavon Area Hospital ('the Hospital') on:

    a. 15 September 2018; **Admitted and found proved**

    b. 16 September 2018. **Admitted and found proved**

2. The information you entered in the Claims was untrue, as you did not work at the Hospital on the dates set out in paragraphs 1 a. and 1 b. **Admitted and found proved**

3. You knew you had not worked at the Hospital on the dates as set out in paragraphs 1 a. and 1 b. **Admitted and found proved**

4. Your action as set out in paragraph 1 was dishonest by reason of paragraphs 2 and 3. **Admitted and found proved**

5. On one or more occasion between 17 September 2018 and 20 September 2018, you communicated with Ms A and Ms B of the Southern Health and Social Care Trust ('the Medical Locum Team') and you asserted:

    a. within emails that during the shifts referenced in paragraph 1 you had:

        i. worked from 8:30am to 9:45pm; **Admitted and found proved**

        ii. stayed on for the handover; **Admitted and found proved**

    b. verbally words to the effect that during the shifts referenced in paragraph 1 you:

        i. "did not report to any consultant"; **Admitted and found proved**

        ii. "floated about the Hospital and covered Medical Outliers, AMU and 2 North"; **Admitted and found proved**

        iii. "did not stay for the handover and just left"; **Admitted and found proved**

        iv. "could not recall the names of any patients but may have some notes at home". **Admitted and found proved**

6. Your communications with the Medical Locum Team as set out at paragraph 5 included information that was untrue. **Admitted and found**

proved

7. You knew that your email and verbal communications with the Medical Locum Team as set out at paragraph 5 included information that was untrue. **Admitted and found proved**

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

The Admitted Facts

6. At the outset of these proceedings, through his counsel, Mr Jenkins, Dr McLaughlin made admissions to all paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced all paragraphs of the Allegation as admitted and found proved.

Impairment

7. In light of the full admissions made by Dr McLaughlin, the Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts found proved, Dr McLaughlin's fitness to practise is impaired by reason of his misconduct.

Evidence

Factual Witness Evidence

8. The Tribunal had regard to evidence provided by the parties. The GMC relied on statements from the following witnesses who were not called to give oral evidence:

- Ms A, Medical HR Officer at the Trust, dated 20 September 2019;
- Ms B, Medical Locum Team Manager at the Trust, dated 8 October 2019; and
- Dr C, Clinical Director for Medicine at the Craigavon Hospital, dated 14 September 2019.

Documentary Evidence

9. The Tribunal had regard to documentary evidence provided by the GMC. This evidence included, but was not limited to:

- Email correspondence between Ms A and Dr McLaughlin;
- Email correspondence between Ms B and Dr McLaughlin;
- Email correspondence between Ms B and Dr C;

- Dr McLaughlin's self-referral email to the GMC, dated 28 January 2019; and
- A letter from Dr D to Dr McLaughlin, dated 24 January 2019;

10. On behalf of Dr McLaughlin, a bundle of documents was adduced which included:

- Dr McLaughlin's witness statement, dated 16 March 2020;
- Dr McLaughlin's CV;
- Letter of apology from Dr McLaughlin to Dr D dated 10 June 2019;
- Letter of apology from Dr McLaughlin to Ms A dated 10 June 2019;
- Letter of apology from Dr McLaughlin to Ms B dated 10 June 2019;
- Letter of apology from Dr McLaughlin to Dr C dated 15 June 2019;
- Various reflective statements, including monthly reflections from July 2019 – March 2020;
- Dr McLaughlin's Personal Development Plan, dated June 2019;
- Various Course Certificates including, Clinic for Boundaries Course for Maintaining Professional Ethics, dated 13 – 15 May 2019;
- Evidence of Dr McLaughlin's Continuing Professional Development ('CPD');
- Dr McLaughlin's appraisals, dated from 18 December 2017 to 20 November 2019; and
- XXX

11. Dr McLaughlin also gave oral evidence at the impairment stage of the hearing.

12. In his witness statement and again in his oral evidence, Dr McLaughlin admitted not working the shifts for which he then tried to claim payment. Dr McLaughlin stated that, at the time, he did not keep a diary of his professional commitments and forgot that he had booked to work these shifts. He also admitted that the claims made were exaggerated i.e. he claimed payment for working from 8:30am to 9:45pm when the booked shifts were from 9:00am to 9:00pm. Dr McLaughlin stated that he was under financial pressure having taken on a loan to assist with the purchase of a car, had completed the purchase of a property and was saving for his forthcoming wedding.

13. Dr McLaughlin also admitted that he was untruthful when asked by Ms A to confirm the start times of his shift on 17 September 2018 and in the telephone call on the same date. Dr McLaughlin stated that in the email and discussions he, *'understood that my actions were wrong at the time. Due to the correspondence/discussions with Ms A, I was concerned that they were aware that I had submitted the claims for payment fraudulently. I did not want to get into trouble…'*

14. The Tribunal noted that, following the email and telephone call with Ms A on 17 September 2018, Dr McLaughlin sent an email to an inbox which was not being monitored in which he said:

> *'Hey, I submitted two claims for 15/09/2018 and 16/09/2018 but made an error on entering them. Could you cancel these please? Many thanks, Fiachra McLaughlin'*

Dr McLaughlin referred Ms B to this email on 20 September both in an email and a telephone call.

15. Dr McLaughlin accepted that the contents of the email and his telephone call with Ms B were only partially truthful as he did not tell Ms B that he had not worked the shifts, only that he had entered incorrect information. Dr McLaughlin stated that he XXX panicked and deeply regrets not being fully honest on multiple occasions.

16. Dr McLaughlin also accepted that the details in his self-referral to the GMC were not accurate. Dr McLaughlin in his witness statement and in his oral evidence admitted that the claims were false and fraudulent. He stated that he was ashamed and in such a state of panic XXX that his judgement was clouded, and he went into *'almost a self-protectionist and self-defensive role where he was trying to limit the damage that was actually done'*. He admitted that he had made a foolish mistake and should have come clean, told the truth and been honest.

17. Dr McLaughlin gave evidence as to the steps he has taken to ensure that the circumstances which led to his admitted dishonest conduct do not recur. He stated that he has improved his organisation skills including attending a number of courses. For example, he now takes a more structured approach to his work, planning what is needed and planning his travel arrangements in advance. This has greatly assisted him in feeling more on top of his workload and his work/life balance. Dr McLaughlin also stated that he has not missed a shift since September 2018 due to disorganisation.

18. Dr McLaughlin also stated that he now undertakes regular financial planning exercises and budgets accordingly. He stated that he is now careful to only spend what he can afford. He has also reflected on his impulsive, defensive and self-protectionist traits. He has committed to being open, honest, accountable and responsible. He now fully analyses uncomfortable situations to learn from them.

19. Dr McLaughlin acknowledged that his actions were not those of any professional person and that his actions fell short of what is expected of a doctor. He also stated that he did not *'demonstrate good time management, reliability or professionalism'* and he apologised to all those involved for his behaviour. In his witness statement, he stated:

> *'I am also sorry for any adverse impact that my actions may have had on the reputation of the medical profession. I understand that the public would be outraged by my actions as I went against the core ethics of being a doctor. For this, I am deeply sorry.'*

Submissions

20. On behalf of the GMC, Ms Johnson, submitted that Dr McLaughlin's fitness to practise is impaired by reason of his misconduct. She reminded the Tribunal of the two-stage process to be adopted. Firstly, whether the facts found proved amount to misconduct and secondly, whether Dr McLaughlin's fitness to practise is currently impaired by reason of his misconduct.

21. Ms Johnson submitted that the behaviour admitted by Dr McLaughlin amounted to serious misconduct. She reminded the Tribunal that Dr Mclaughlin made a fraudulent claim in relation to shifts that he had not worked and submitted that this conduct had breached his position of trust as a doctor. Ms Johnson submitted that a reasonably informed member of the public would be 'outraged' at his conduct. Further, she stated that Dr McLaughlin had breached a fundamental tenet of the medical profession, that a doctor must act with honesty and integrity. She submitted that fellow practitioners would find his conduct deplorable.

22. Turning to the issue of current impairment, Ms Johnson reminded the Tribunal of Dr McLaughlin's letters of apology, dated June 2019. She stated that, in these letters, Dr McLaughlin did not specifically apologise for having made a fraudulent claim and she submitted that this behaviour demonstrated a lack of insight. Whilst she acknowledged that Dr McLaughlin has since begun to remediate and demonstrate some insight into his dishonesty, she stated that the turning point appeared to be some 9 months after the fraudulent claim was made. She reminded the Tribunal that Dr McLaughlin had maintained his dishonesty at the time he self-referred to the GMC and stated that his failure to accept responsibility immediately should be carefully considered by the Tribunal.

23. Ms Johnson submitted that, given the serious nature of the conduct in this case, a finding of impairment is necessary to protect the public, to maintain appropriate standards of behaviour and to maintain public confidence in the profession.

24. On behalf of Dr McLaughlin, Mr Jenkins stated that it is a matter for the Tribunal to decide whether Dr McLaughlin's fitness to practise is currently impaired. Mr Jenkins stated that it may be said that, if a finding of impaired fitness to practise was not made, the Tribunal would not be following the overarching objective. In response to Ms Johnson's submissions, he reminded the Tribunal that there has been no allegation of dishonesty in relation to Dr McLaughlin's self-referral to the GMC.

25. Mr Jenkins submitted that Dr McLaughlin clearly felt that he was under financial pressure at the time of submitting the fraudulent claim. Mr Jenkins reminded the Tribunal of XXX Whilst Dr McLaughlin does not seek to excuse his behaviour, Mr Jenkins referred to this as an explanation for Dr McLaughlin's dishonest conduct.

26. Mr Jenkins submitted that Dr McLaughlin had 9 months of reflection, including a 3-day ethics course in order to remediate his dishonest conduct. Further, he referred the Tribunal to the positive testimonials provided on behalf of Dr McLaughlin and stated that these indicate that this incident was out of character. He submitted that, whilst Dr McLaughlin's insight might not yet be complete, he has travelled some way on the journey of reflection, started to develop insight and has made efforts to begin to remediate his dishonesty.

The Relevant Legal Principles

27. The Tribunal had regard to the advice given by the Legally Qualified Chair as a matter of record.

28. The Tribunal was mindful of the overarching objective of the GMC set out in section 1 of the Medical Act 1983 (as amended) which requires the Tribunal to:

a. Protect, promote and maintain the health, safety and well-being of the public,

b. Promote and maintain public confidence in the medical profession, and

c. Promote and maintain proper professional standards and conduct for members of that profession.

29. 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.

30. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted. Firstly, whether the facts as found proved amounted to misconduct. Secondly, whether the finding of that misconduct could lead to a finding of impairment.

31. The Tribunal must determine whether Dr McLaughlin's fitness to practise is impaired today, taking into account Dr McLaughlin's 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.

32. In considering the dishonesty in this case, the Tribunal had regard to relevant case law. It noted that, as set out in the case of *PSA v GMC and Uppal [2015] EWHC 1304*

(Admin), a finding of impairment does not necessarily follow a finding of dishonesty. It also noted that in the case of *Yeong v GMC [2009] EWHC 1923 (Admin),* the court held in cases of proven dishonesty, the balance can be expected to fall down on the side of maintaining public confidence and making a finding of impairment.

Misconduct

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

34. The Tribunal has found that Dr McLaughlin submitted a fraudulent claim with the deliberate intention of obtaining remuneration for work that he had not undertaken. Further, the Tribunal noted that Dr McLaughlin kept up this lie and sought to downplay the seriousness of the dishonesty for a period of several months which culminated in Dr McLaughlin continuing to lie to his regulator at the point of his self-referral to the GMC.

35. The Tribunal considered the paragraphs of Good Medical Practice ('GMP') (2013 edition), which set out the standards that a doctor must continue to meet throughout their professional career. It noted that the following paragraphs of GMP were engaged:

> '1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues […] are honest and trustworthy, and act with integrity and within the law.
>
> 65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.
>
> 68 You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.
>
> 71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.
>
> a. You must take reasonable steps to check the information is correct.
>
> b. You must not deliberately leave out relevant information.

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

36. The Tribunal considered Dr McLaughlin's dishonest conduct in knowingly submitting the fraudulent claim in an attempt to seek payment for work that he had not done, breached a fundamental tenet of the medical profession. The Tribunal noted that, while the Allegation relates to a single act of dishonesty, the subsequent behaviour was carried out over a number of months and it was not until the hearing that Dr McLaughlin fully accepted and admitted his dishonest conduct.

37. The Tribunal was of the view that Dr McLaughlin's behaviour would be considered deplorable by his fellow practitioners. The Tribunal concluded that his dishonest conduct did fall far short of the standards of conduct reasonably expected of a doctor and amounted to misconduct which was serious.

Impairment

38. The Tribunal, having determined that the facts admitted and found proved amounted to serious misconduct, went on to consider whether, as a result of that misconduct, Dr McLaughlin's fitness to practise is currently impaired.

39. The Tribunal considered the factors as set out by Dame Janet Smith in her Fifth Shipman Report and cited by Cox J in *CHRE v NMC and Grant (2011) EWHC 927 (Admin).* In particular, the Tribunal considered whether its findings of fact showed that Dr McLaughlin's fitness to practise is impaired in the sense that he:

'…

b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

40. In determining whether a finding of current impairment of fitness to practise is necessary, the Tribunal considered whether the misconduct could be remedied while noting that matters of dishonesty are difficult to remediate. It looked for evidence of insight, remediation and the likelihood of repetition and balanced those against the three limbs of the statutory overarching objective.

41. The Tribunal acknowledged Dr McLaughlin's full admissions, his apologies, acceptance that his behaviour fell short of that expected of a doctor and that he had fully engaged with these regulatory proceedings. It found Dr McLaughlin to be an

open and honest witness, who provided clear answers to all of the questions put to him. In his oral evidence, he stated that he was ashamed of what he had done. The Tribunal also acknowledged the letters of apology that Dr McLaughlin sent to the people involved in the incident and his extensive monthly reflections including as recently as March 2020. The Tribunal accepted that his apologies were genuine and that he was remorseful for his behaviour. Further, the Tribunal found that Dr McLaughlin understood the impact that his actions could have had on patient safety and public confidence in the profession. The Tribunal determined that Dr McLaughlin's insight was developing well.

42. The Tribunal had regard to the positive testimonials provided on behalf of Dr McLaughlin. It noted that his colleagues who provided the testimonials did so with knowledge of the Allegation made against him. The Tribunal took the view that it is clear that Dr McLaughlin is a highly regarded doctor and that this incident was out of character.

43. The Tribunal went on to consider the issue of remediation. It accepted that it is difficult to demonstrate remediation following a finding of dishonesty. It noted that Dr McLaughlin completed a Clinic for Boundaries Course for Maintaining Professional Ethics Course on 13 – 15 May 2019. The Tribunal was satisfied that Dr McLaughlin had undertaken other relevant courses and was impressed with the extensive CPD material that had been adduced on his behalf.

44. In considering remediation, the Tribunal carefully considered the risk of repetition. It noted from the evidence before it that Dr McLaughlin was going through a difficult period, XXX which may have affected his thinking and decision making. In his oral evidence to the Tribunal, Dr McLaughlin described his financial pressures, XXX. The Tribunal acknowledged that Dr McLaughlin offered this as an explanation for his dishonesty rather than an excuse. Dr McLaughlin told the Tribunal that he has now put measures in place to ensure that his conduct is not repeated, including budgeting with his wife to ensure that they are not living beyond their means. The Tribunal was satisfied that Dr McLaughlin has taken appropriate action to ensure his misconduct is not repeated.

45. The Tribunal was satisfied that, given the level of insight demonstrated, the attempts at remediation undertaken and the testimonials it has seen, the risk of repetition of Dr McLaughlin's behaviour was low and that he did not pose a risk to patient safety.

46. However, in considering whether Dr McLaughlin's fitness to practise is currently impaired, the Tribunal balanced the level of Dr McLaughlin's insight and the low risk of repetition against the public interest and the overarching objective. When considering the public interest, the Tribunal noted that, whilst Dr McLaughlin's dishonesty related to a single incident, the dishonesty persisted for a period of several months. The Tribunal was satisfied that a member of the public, knowing the

facts, would be concerned to learn of a doctor acting in this way. The Tribunal, in light of its findings of serious misconduct, was satisfied that the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for members of the profession would be undermined if a finding of impairment were not made in this case.

47. Accordingly, the Tribunal determined that Dr McLaughlin's fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 09/09/2020

1. This determination contains references to XXX and will be read in private. As this case concerns Dr McLaughlin's misconduct, a redacted version will be published at the close of the hearing.

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

The Evidence

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

4. Dr McLaughlin did not give further oral evidence at this stage of the hearing. However, the Tribunal received further written evidence on his behalf including:

- Reflective statements dated April 2020 – August 2020;
- Certificates of Completion for the following BMJ courses:
    - The Art of Effective Feedback dated 30th March 2020;
    - Communication Skills dated 30th March 2020;
    - Building professional relationships dated 30th March 2020;
    - Developing an Effective Personal Development Plan dated 23rd April 2020.

Submissions

5. On behalf of the GMC, Ms Johnson submitted that the main reason for imposing sanctions is to protect the public. She reminded the Tribunal of the statutory overarching objective, which includes to:

a. protect and promote the health, safety and well-being of the public

b. promote and maintain public confidence in the medical profession
c. promote and maintain proper professional standards and conduct for members of the profession

6. Ms Johnson stated that any sanction imposed must be appropriate and proportionate and that the reputation of the profession as a whole is more important than the interests of any individual doctor. She stated that the appropriate order in this case was one of erasure.

7. Ms Johnson reminded the Tribunal of its determination on impairment and that it had found that Dr McLaughlin had breached several aspects of GMP, including paragraphs 1, 65, 68, 71 and 77. She referred the Tribunal to the relevant paragraphs of the Sanctions Guidance (November 2019) (SG).

8. Ms Johnson stated that the matters which are the subject of Dr McLaughlin's misconduct date back to September 2018. She reminded the Tribunal that it was only at his MPT hearing in March 2020 that Dr McLaughlin fully accepted and admitted his dishonest conduct.

9. Ms Johnson submitted that it is important for insight and remediation to be demonstrated in a timely manner and at an early stage. She stated that despite the steps taken by Dr McLaughlin to remediate his conduct by his attendance on courses and continued CPD, he had persisted in lying to the Trust for several months. She submitted he failed to be frank when making his referral to the GMC and only self referred when he was notified by the Trust that it would be making a referral.

10. Ms Johnson submitted there was some mitigation on the doctor's behalf including XXX and positive testimonials. She however stated that any mitigation in respect of financial pressure was of limited value as the doctor, in cross examination, had admitted he could afford to meet his outgoings and was not behind with any loan or any other payments.

11. Ms Johnson submitted that an aggravating factor in this case included a failure by Dr McLaughlin to demonstrate the timely development of his insight and in light of this consideration should be given to taking more serious action.

12. Ms Johnson invited the Tribunal to consider each sanction in ascending order starting with the least restrictive. She submitted that it would be inappropriate to take no action as there were no exceptional circumstances in this case and that this was not a case where undertakings had been agreed.

13. Ms Johnson stated that an order of conditions would not be appropriate as it was not possible to formulate conditions to address the type of misconduct in this case.

14. Ms Johnson stated that an order of suspension is appropriate in a case where a doctor's misconduct was serious, but which fell short of being fundamentally incompatible with continued registration. She also stated that such an order may be appropriate where there is an acknowledgement of fault, the doctor has insight into his behaviour and the Tribunal was satisfied that there was no risk of repetition. She submitted that the misconduct in this case was so serious that it was fundamentally incompatible with continued registration and that erasure from the medical register was the only means of protecting the public.

15. Ms Johnson referred the Tribunal to paragraphs 109 of the SG, which identifies factors indicating erasure may be appropriate. Ms Johnson submitted that several of the factors applied including:

> *'a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*
>
> *d Abuse of position/trust…*
>
> *h Dishonesty, especially where persistent and/or covered up...'*

16. Ms Johnson referred to paragraph 124 of the SG which states that misconduct relating to dishonesty may not result in direct harm to patients but dishonesty relating to matters outside the doctor's clinical responsibility such as providing false statements or making fraudulent claims for money were particularly serious. She directed the Tribunal to paragraph 125 and 128 of the SG which state:

> *'125 Examples of dishonesty in professional practice could include:*
>
> *a defrauding an employer*
>
> *128 Dishonesty, if persistent and/or covered up, is likely to result in erasure...'*

Ms Johnson submitted that clinical competence cannot mitigate serious or persistent dishonesty.

17. Ms Johnson stated that the public expects a doctor to face up to and accept their errors especially when a matter is being investigated by their regulator. She stated that Dr McLaughlin had failed to be open and frank in his referral and that public confidence in the profession had been adversely affected as a result. She submitted that this was an aggravating feature of this case.

18. Ms Johnson further submitted that Dr McLaughlin, in making a false claim for shifts he had not carried out, abused the trust placed in him by his employer. She stated that while the sums were not large, the misconduct was aggravated by the

fact he had persisted in the dishonesty. Ms Johnson also stated that even when he had time to consider what he had done he claimed that it was a genuine error. He downplayed his misconduct when referring the matter to the GMC and exaggerated his mother's health problems to bolster his explanation.

19. Ms Johnson stated that only an order of erasure would protect the public in this case by maintaining confidence in the profession and ensuring proper standards of conduct and behaviour are maintained.

20. On behalf of Dr McLaughlin, Mr Jenkins submitted that a well informed member of the public may think that to erase a doctor in a case such as this would be *"extraordinarily harsh".* He stated that Dr McLaughlin was a young and useful doctor who had made a foolish but serious error due to XXX panic but that did not mean that his career should end because of it. Mr Jenkins submitted that it was important to look at someone's reactions after they had done something stupid. Mr Jenkins stated that Dr McLaughlin had learnt from what had happened, had apologised and reflected deeply. He stated that to erase such a doctor and deprive the public of his services would be excessive.

21. Mr Jenkins reminded the Tribunal of the steps Dr McLaughlin had taken to remediate his misconduct, the courses he had attended, his personal reflections which he had continued and his apologies to all concerned. Mr Jenkins stated that the Tribunal had already accepted that Dr McLaughlin's insight was developing well and he had achieved a good deal of remediation. Therefore, this was not a doctor who needed lots of time to remediate and develop insight.

22. Mr Jenkins stated that Dr McLaughlin had taken steps to ensure that his finances were organised so that that he did not find himself in a similar situation in the future. He submitted that taking into account all of the factors in Dr McLaughlin's case, it was open to the Tribunal to conclude this case by taking no action. He stated that he did not strongly urge the Tribunal to take this course but that it was an available option. Mr Jenkins referred the Tribunal to paragraphs 68 to 70 of the SG in determining whether taking no action was appropriate.

23. Mr Jenkins stated that if the Tribunal determined that it was not appropriate to conclude the proceedings by taking no action then it should next consider an order of suspension. He accepted that neither an order of conditions nor undertakings would be appropriate and no undertakings had been offered.

24. Mr Jenkins reminded the Tribunal that this was a single isolated incident in an otherwise good career and that the testimonials of Dr McLaughlin's colleagues clearly showed that he is held in high regard by them. Mr Jenkins also submitted that there had been no actual gain by Dr McLaughlin but he accepted that the doctor had sought to make a financial gain. He further stated that there was no question of patient harm and that Dr McLaughlin has insight and has remediated his conduct.

25. Mr Jenkins submitted that Dr McLaughlin bitterly regrets what he did, was highly unlikely to repeat his dishonest conduct, had learnt from his mistakes and had taken steps to ensure the conduct would not be repeated. He stated that a short period of suspension would demonstrate to the public and the profession that conduct of this sort was not acceptable and would fulfil the purpose of the overarching objective. He invited the Tribunal to have regard to the SG when considering the length of suspension and submitted that a lengthy period of suspension was not required.

26. Mr Jenkins stated that he disagreed with Ms Johnson's submissions that Dr McLaughlin's conduct was fundamentally incompatible with continued registration. He also disagreed with Ms Johnson's submission that this was a case where the conduct was irremediable. Mr Jenkins submitted that erasure would be excessive and quite wrong in the circumstances.

27. He stated that, as Dr McLaughlin has shown full insight and has remediated his misconduct, there was no requirement for a review of Dr McLaughlin's case at the end of a period of suspension as there are no matters for a reviewing Tribunal to consider.

The Tribunal's Approach

28. The Tribunal first identified what it considered to be the aggravating and mitigating factors of this case.

Aggravating factors

- He sought to gain financially by his dishonest conduct;
- His attempt to make a claim for payment for shifts he had not done was a deliberate act;
- His behaviour had the potential to put patients at risk of harm by not turning up for his shift;
- He was not open and transparent after the matters came to light up to and including his referral to the GMC;
- He abused his position of trust with his employers;
- He sought to take advantage of the good working relationships he had with Ms A and Ms B.

Mitigating factors

- Dr McLaughlin's further reflections between March 2020 and August 2020 demonstrate that he has now developed full insight into his misconduct;
- Dr McLaughlin has taken convincing and appropriate steps to prevent the misconduct recurring;

- He fully admitted the Allegation at the outset of this hearing and has apologised;
- He has kept his medical knowledge up to date;
- At the time of the dishonest conduct Dr McLaughlin was XXX
- Dr McLaughlin is in the early stages of his career;
- He has received positive testimonials from colleagues, which were made in full knowledge of the Allegation made against him;
- The Testimonials speak of Dr McLaughlin's remorse at his dishonest conduct;
- The matters which gave rise to the Allegation occurred two years ago and no further concerns have been raised;
- Dr McLaughlin's reflections began early in June 2019 and have been maintained, including during the period of this hearing;
- Dr McLaughlin's reflections are appropriate;
- He is of previous good character.

The Tribunal's Determination on Sanction

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

30. Throughout its deliberations, the Tribunal applied the principle of proportionality balancing Dr McLaughlin's interests with the public interest. It has taken account of the overarching objective, which includes the protection of the public, the maintenance of public confidence in the profession, and the promoting and maintaining of proper professional standards and conduct for members of the profession.

31. In reaching its decision, the Tribunal has taken account of the SG. It has borne in mind that the purpose of a sanction is not to be punitive, but to protect patients and the wider public interest, although it accepts any sanction may have a punitive effect.

32. The Tribunal has given consideration to its findings of misconduct and impaired fitness to practise as well as the submissions made by Ms Johnson on behalf of the GMC, and Mr Jenkins on behalf of Dr McLaughlin.

No action

33. The Tribunal first considered whether it should conclude this case by taking no action. It took into account its findings that Dr McLaughlin had now developed full insight and had remediated his conduct such that it considered there was an extremely low risk of repetition. The Tribunal was satisfied that Dr McLaughlin had done all that he could be expected to do to demonstrate his insight and remediation.

34. The Tribunal did not consider that Dr McLaughlin's levels of insight and remediation on their own were sufficient to justify no action being taken. The Tribunal did not consider there were any exceptional circumstances, and further it did not consider that taking no action would be sufficient to meet the overarching objective. Therefore the Tribunal determined that it would be inappropriate to conclude this case by taking no action.

Conditions

35. The Tribunal next considered whether it would be appropriate to impose conditions on Dr McLaughlin's registration. It noted the submissions from both parties that conditions were not appropriate in this case.

36. The Tribunal determined that no measurable or workable conditions could be formulated in this case. Further, the Tribunal considered that conditions would not address the seriousness of the misconduct found.

Suspension

37. In giving weight to the aggravating and mitigating factors previously identified, the Tribunal was satisfied that action must be taken to mark the seriousness of the misconduct and to maintain public confidence in the profession. The Tribunal considered whether it should impose a period of suspension on Dr McLaughlin's registration. The Tribunal had regard to paragraphs 91, 92, 93 and 97a, e, f and g of the SG:

> *'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
>
> *92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (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 (see paragraphs 24–49).

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

'a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.
…
e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.'

f No evidence of repetition of similar behaviour since incident.

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

38. The Tribunal was satisfied that this incident occurred early in Dr McLaughlin's career and that there had been no repetition of similar behaviour since. It considered that in light of Dr McLaughlin's insight and remediation he poses an extremely low risk of repeating this behaviour.

39. The Tribunal reminded itself that Dr McLaughlin had taken significant steps to ensure his dishonest conduct is not repeated including improving his organisational skills and the management of his financial affairs. He has also attended numerous courses and continued his personal reflections including during the period of this hearing.

40. The Tribunal is satisfied that this is a doctor who has fully reflected and remediated his misconduct. It accepted that the public would be deprived of the services of a competent doctor during the period of suspension. This was balanced against the public interest in marking the seriousness of the misconduct, maintaining public confidence in the profession and upholding standards.

41. The Tribunal considered that imposing a period of suspension on Dr McLaughlin's registration was both appropriate and proportionate and would address the seriousness of the misconduct, maintain public confidence and uphold standards.

42. The Tribunal next considered the appropriate length of time for the suspension and had regard to paragraph 100 of the SG:

> *'100 The following factors will be relevant when determining the length of suspension:*
>
> > *a the risk to patient safety/public protection*
> > *b the seriousness of the findings and any mitigating or aggravating factors (as set out in paragraphs 24–60)*
> > *c ensuring the doctor has adequate time to remediate.'*

43. The Tribunal determined to impose a period of suspension for four months on Dr McLaughlin's registration. It considered that a period of suspension of any greater length would be disproportionate in light of Dr McLaughlin's insight, remediation and low risk of repetition. The Tribunal determined that suspension for a period of four months would be sufficient to send a signal to Dr McLaughlin, the wider profession and the public about conduct which is regarded as unbefitting of a registered doctor.

Erasure

44. The Tribunal carefully considered Ms Johnson's submission that erasure was the only appropriate sanction in this case. Having balanced all the factors in this case, including the aggravating and mitigating factors, Dr McLaughlin's insight, the remedial steps taken and the low risk of repetition the Tribunal considered that erasure would be disproportionate in the circumstances. The Tribunal considered that a member of the public in possession of all of the facts would not consider Dr McLaughlin's conduct to be fundamentally incompatible with continued registration.

45. The Tribunal also considered that to erase Dr McLaughlin's name from the medical register would deprive the public of an otherwise good doctor who, early in his career, had made a *'foolish choice'*.

46. The Tribunal did not consider Dr McLaughlin's behaviour to be fundamentally incompatible with continued registration and it accepted the submission made by Mr Jenkins that erasure in this case would be *'extraordinarily harsh'.*

Review

47. The Tribunal is not directing a review in Dr McLaughlin's case. It is satisfied that Dr McLaughlin has full insight into his misconduct. Further, in light of Dr McLaughlin's attendance on various courses between March 2019 and April 2020 the Tribunal is satisfied that Dr McLaughlin will use the period of suspension to keep his medical knowledge up to date. It therefore did not consider that a review was necessary in this case.

Determination on Immediate Order - 09/09/2020

1. Having determined that Dr McLaughlin's registration should be suspended, the Tribunal has considered, in accordance with Section 38 of the Medial Act 1983 as amended, whether to impose an immediate order to suspend his registration.

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

Submissions

3. Ms Johnson submitted that this was a matter for the Tribunal to determine and referred to paragraphs 172, 175 and 178 of the SG. Ms Johnson stated that the GMC was neutral on the issue of an immediate order.

4. Mr Jenkins reminded the Tribunal of paragraph 43 of its determination on sanction and stated that the overarching objective had been met by imposing a suspension for a period of four months. He stated that imposing an immediate order would add another month to Dr McLaughlin's substantive suspension and was not necessary in this case.

The Tribunal's Determination

5. In reaching its decision the Tribunal referred to paragraph 172 of the SG, which states:

> *"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…"*

6. Having taken the submissions into account and considered the test to be applied, the Tribunal has determined that an immediate order is not necessary for the protection of the public or otherwise in the public interest.

7. The substantive decision of suspension, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr McLaughlin, unless he lodges an appeal in the interim. If Dr Mclaughlin does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

8. That concludes this case.

Confirmed
Date 09 September 2020 Miss Megan Larrinaga, Chair