

## PUBLIC RECORD

Dates: 14/10/2024 - 23/10/2024

Medical Practitioner's name: Dr Graham Evangele Eli Michael HOLMES

GMC reference number: 2215639

Primary medical qualification: MB BS 1974 University of London

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

## Summary of outcome

Erasure

Immediate order imposed

## Tribunal:

Legally Qualified Chair	Miss Annie Hockaday
Lay Tribunal Member:	Mr Tim Skelton
Medical Tribunal Member:	Dr Nagarajah Theva

Tribunal Clerk:	Miss Ciara Fogarty
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## Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Adam Lodge, 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 - 21/10/2024

#### Background

1. Dr Holmes qualified in 1974 and prior to the events which are the subject of the hearing he practiced as a Consultant. At the time of the alleged events, which span August 2019 to March 2021, Dr Holmes practised as a locum Consultant at various hospitals. The Allegation involves four hospitals:

- Gosport War Memorial Hospital (Southern Health NHS Foundation Trust) ('the Gosport Hospital');
- Royal Bournemouth Hospital (University Hospitals Dorset NHS Foundation Trust) ('the Bournemouth Hospital');
- Royal Albert Edward Infirmary (Wigan, Wrightington and Leigh NHS Foundation Trust) ('the Wigan Hospital'); and
- Wirral University Teaching Hospital NHS Foundation Trust ('the Wirral Hospital').

2. The allegation of misconduct by Dr Holmes that has led to this hearing can be summarised as follows:

- On or around 21 August 2019, at the Gosport Hospital, Dr Holmes spoke words in the presence of Patient A which constituted harassment related to a disability as defined in section 26(1) of the Equality Act 2010;
- On more than one occasion in 2019, whilst at work at the Gosport Hospital, Dr Holmes exposed himself and urinated in a clinical sink;
- On more than one occasion in September and October 2020, Dr Holmes failed to follow Covid-19 infection control protocols at the Bournemouth Hospital and then at the Wigan Hospital;
- From 4 February 2021, Dr Holmes knowingly failed to comply with the interim order for conditions imposed on his registration by an Interim Orders Tribunal ('IOT') on 4 February 2021, in that he worked at the Wirral Hospital without being closely supervised and failed to make the notifications required by the order to the GMC, his Responsible Officer and others. Further allegations are made in relation to his email

dated 18 February 2021; his completion of a Work Details Form for the GMC on 1 March 2021 and his words during a conversation on 15 March 2021. It is alleged that these three actions were dishonest and a deliberate attempt to conceal his breach of the IOT conditions.

3. The Tribunal understands that some initial concerns were raised with the GMC by the Bournemouth Hospital in late 2020, the GMC received a referral form from Dr O in his capacity as Responsible Officer for RM Medics Ltd in December 2020, and the GMC began its investigation in December 2020.

### The Outcome of Applications Made during the Facts Stage

4. The Tribunal granted an application made by Mr Adam Lodge, Counsel on behalf of the GMC, pursuant to Rule 31 of the GMC's (Fitness to Practise) Rules 2004, as amended ('the Rules') to proceed with the hearing in the absence of Dr Holmes. The Tribunal's full decision on the application is included at Annex A.

5. The Tribunal granted the GMC's application to amend paragraph 7 of the Allegation under Rule 17(6) of the Rules. The amendment was limited to changing the name of the locum agency referred to from 'National Locums' to 'Locum Reach'. The Tribunal's full decision on the application is included at Annex B.

### The Allegation and the Doctor's Response

6. The Allegation made against Dr Holmes, to which Dr Holmes has not made admissions, is as follows:

1. On or around 21 August 2019 you said, in the presence of Patient A, that she required a CT Scan, "to see if she had a brain" or words to that effect. **To be determined**
2. Your actions as set out at paragraph 1 constituted harassment related to a disability as defined in Section 26(1) of the Equality Act 2010, in that you engaged in unwanted conduct related to a disability which had the purpose or effect of violating the dignity of Patient A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Patient A. **To be determined**
3. On one or more occasions between 22 August 2019 and 26 September 2019, whilst working at Southern Health NHS Foundation Trust, you:

- a. exposed your penis in a work environment; ***To be determined***
  - b. urinated in a clinical sink on a ward. ***To be determined***
4. On one or more occasions between September and October 2020, whilst working at University Hospitals Dorset NHS Foundation Trust, you failed to follow infection control protocols in that you failed to:
- a. wear your face mask in its correct position; ***To be determined***
  - b. ensure your face mask remained in its correct position. ***To be determined***
5. On 30 October 2020 you attended work at Wigan, Wrightington and Leigh NHS Foundation Trust, whilst showing symptoms of Covid19 in that you had a:
- a. constant cough; ***To be determined***
  - b. temperature of 39 degrees celsius. ***To be determined***
6. On one or more occasions between October and November 2020, whilst working at Wigan, Wrightington and Leigh NHS Foundation Trust, you failed to follow infection control protocols in that you failed to:
- a. wear a face mask; ***To be determined***
  - b. when wearing a face mask:
    - i. wear your face mask in its correct position; ***To be determined***
    - ii. ensure your face mask remained in its correct position. ***To be determined***
7. You knowingly failed to comply with the interim order of conditions imposed on your registration on 4 February 2021, in that whilst working for ~~National Locums~~ Locum Reach at Wirral University Teaching Hospital NHS Foundation Trust between 21 January and 15 March 2021, you:
- a. failed to personally ensure that:
    - i. the GMC was notified of the details of your current post within seven calendar days; ***To be determined***
    - ii. your Responsible Officer and the Responsible Officer of your place(s) of work and any prospective place of work (at the time of application) and any locum agency or out-of-hours service you were registered with were notified of the conditions; ***To be determined***
  - b. worked without being closely supervised in all of your posts by a clinical supervisor appointed by your Responsible Officer and did not stop work until

the Responsible Officer had appointed your clinical supervisor and approved your supervision arrangements. ***To be determined***

8. On 18 February 2021 you sent an email to ACI Doctors who were acting on behalf of your Responsible Officer, stating that you would “consider work when I see fit to resume”. ***To be determined***
9. On 1 March 2021 you completed a Work Details Form (‘WDF’) and you:
  - a. failed to include your locum position as set out paragraph 7; ***To be determined***
  - b. signed the declaration stating “I have provided the GMC with accurate details of my current and previous work as required. I can confirm that I have provided these details to the GMC truthfully and in good faith.” ***To be determined***
10. You knew:
  - a. you were working in a locum position as set out at paragraph 7; ***To be determined***
  - b. the email you sent at paragraph 8 was false as it implied you were not working at the time when you were working in the post described at paragraph 7; ***To be determined***
  - c. you were required to disclose all medical work undertaken in the last six months on the ‘WDF’; ***To be determined***
  - d. that the declaration you signed at paragraph 9b was false. ***To be determined***
11. Your actions as set out at paragraph:
  - a. 8 were dishonest by reasons of paragraphs 10a-b; ***To be determined***
  - b. 9a were dishonest by reason of 10a and 10c; ***To be determined***
  - c. 9b were dishonest by reason of paragraphs 10a, c and d. ***To be determined***
12. On 15 March 2021, you told Dr B that you “didn’t believe your IOT conditions applied to your current post” or words that effect. ***To be determined***
13. Your actions as set out at paragraph 12 were dishonest as you knew your IOT conditions applied to your current post as you were:
  - a. in attendance at the hearing in which they were imposed; ***To be determined***
  - b. served with a copy of your conditions after the hearing. ***To be determined***
14. Your actions as set out in paragraphs 8, 9 and 12 were a deliberate attempt to conceal your breach of IOT conditions. ***To be determined***

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

### Witness Evidence

7. The Tribunal received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Mr C, GMC Investigations Officer
- Ms D, Community Nursing Sister at the Gosport Hospital
- Ms E, Staff Nurse at the Gosport Hospital
- Ms F, Deputy Sister at the Bournemouth Hospital
- Dr G, F1 junior doctor at the Bournemouth Hospital
- Mr H, Interim Directorate Manager for Emergency Acute Medicine at the Bournemouth Hospital
- Mr I, Antimicrobial Specialist Clinical Pharmacist at the Wigan Hospital
- Ms J, Nurse and Ward Manager at the Wigan Hospital
- Dr K, F3 locum junior doctor at the Wigan Hospital
- Dr L, Consultant Microbiologist at the Wigan Hospital
- Dr B, Consultant Physician, at the Wirral Hospital
- Professor M, Responsible Officer for various locum agencies

8. Dr Holmes did not provide his own witness statement or a witness statement from another person.

### Documentary Evidence

9. The Tribunal had regard to the documentary evidence provided by the parties. The bundles prepared by the GMC for the hearing, as disclosed to Dr Holmes prior to the hearing, included some documents written by Dr Holmes. Dr Holmes did not provide a bundle. The documentary evidence included but was not limited to:

- IOT submissions from Dr Holmes dated 3 February 2021 for the IOT hearing on 4 February 2021- he attended but was not represented
- IOT Determination dated 4 February 2021
- Letter of Notification of the IOT Determination to Dr Holmes' registered email address
- Dr Holmes' email dated 18 February 2021
- Dr Holmes' Work Details Form signed and sent to the GMC on 1 March 2021

- Correspondence from a ‘Freedom to Speak Up Guardian’, Dr B and Professor M regarding concerns about Dr Holmes in March 2021
- Contemporaneous accounts of some of the alleged events made by some of the witnesses relied on by the GMC
- Correspondence between the GMC and Dr Holmes relating to the GMC investigation and referral to this Tribunal.

### The Relevant Legal Principles

10. 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 Holmes 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. In relation to the assessment of reliability and credibility of evidence, the LQC advised that the Tribunal should consider all the evidence before coming to a conclusion about a witness’ credibility.

#### *Equality Act 2010*

11. In relation to the GMC’s allegation under section 26(1) of the Equality Act 2010, the LQC advised that paragraph 2 of the Allegation seeks to characterise the conduct alleged in paragraph 1 as ‘harassment related to a disability’. Counsel for the GMC did not refer the Tribunal to any specific parts of the Equality Act.

12. The LQC advised that section 26(5) states that ‘disability’ is a relevant protected characteristic, and that section 6 defines ‘disability’ as follows:

*‘6(1) A person (P) has a disability if -*

*(a) P has a physical or mental impairment, and*

*(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.*

13. Further, section 6(6) refers to schedule 1, where paragraph 2 provides that the effect of an impairment is ‘long term’ if it has lasted or is likely to last for at least 12 months or is likely to last for the rest of the life.

14. In relation to the meaning of ‘harass’, the LQC advised that:

- Section 26(1) provides that A harasses B if (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect set out in subsection (1)(b). The purposes or effects in subsection 1(b) are:
  - (i) violating B's dignity, or
  - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- Section 26(4) states that when deciding whether conduct has one of these statutory effects, the Tribunal must take into account each of the following:
  - (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.

15. The LQC referred to *Professional Standards Authority for Health and Social Care v Health and Care Professions Council and Yong* [2021] EWHC 52 in which Mr Justice Griffiths stated that a comment that has one of the statutory effects does not necessarily create an ‘environment’ of that effect for the purposes of section 26. In relation to the facts in that case, the judge stated at [74],

*“Worker 5 was clearly offended by the two comments; she was, as I have said, “horrified” by the first and “disgusted” by the second. But an offensive comment does not necessarily create an “offensive environment” for the purposes of the Act. It might. But it is a matter of fact and degree whether or not it does”.*

16. In summary, in relation to ‘harassment related to a disability’, the GMC must prove:

- That Patient A had a disability within the meaning of section 6;
- That Dr Holmes engaged in unwanted conduct related to a disability AND
- His conduct had the purpose or effect of (i) violating Patient A’s dignity; or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for Patient A.

### *Dishonesty*

17. In respect of the allegations that Dr Holmes acted dishonestly, the LQC advised that the Tribunal must adopt the two stage process for determining dishonesty as set out in *Ivey v Genting Casinos Ltd (UK) Ltd (t/a Crockfords)* [2017] UKSC 67 at [74]:



- (a) the Tribunal must first ascertain (subjectively) the actual state of Dr Holmes' knowledge or belief as to the facts. The reasonableness or otherwise of the belief is a matter of evidence going to whether he genuinely held the belief, but it is not an additional requirement that the belief must be reasonable; the question is whether the belief was genuinely held; and
- (b) the Tribunal must then consider whether that conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. There is no requirement that Dr Holmes must appreciate that what he has done is, by those standards, dishonest.

18. The LQC advised that *Group Seven Ltd v Nasir* [2019] EWCA Civ 614 supports the following principles:

- When considering the actual state of mind of the doctor for the first stage of Ivey, it is appropriate to look at the totality of the doctor's actual knowledge and blind-eye knowledge; [104]
- Blind-eye knowledge is imputed knowledge if there is suspicion combined with a conscious decision not to make inquiries which might result in knowledge: see *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469 at [59-60]. Lord Scott states, '*In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe.*'

#### *Adverse inference*

19. The LQC advised that unless it would be unfair to do so, the Tribunal may draw an adverse inference when a practitioner does not give evidence at their MPT hearing (at all or in relation to a particular issue). Whether an adverse inference should be drawn will be highly fact dependent and the Tribunal must ensure that the relevant criteria are met before doing so. The four criteria are set out in *R (Kuzmin) v GMC* [2019] EWHC 2129 (Admin) at [61] by Hickinbottom LJ as follows:

- (1) A *prima facie* case to answer has been established;
- (2) The doctor has been given appropriate notice and an appropriate warning that, if he does not give evidence, then such an inference may be drawn; and an opportunity to explain why it would not be reasonable for him to give evidence and, if it is found that there is no reasonable explanation, be given an opportunity to give evidence;
- (3) There is no reasonable explanation for the doctor not giving evidence; and

- (4) There were no other circumstances in the particular case which would make it unfair to draw an adverse inference.

20. Hickinbottom LJ referred [at 55] to the responsibility of a doctor to engage in the disciplinary process as set out in *GMC v Adeogba* [2016] EWCA Civ 162 by Sir Brian Leveson PQBD:

*"... [T]here is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."*

21. The LQC advised that where all four criteria are satisfied, the Tribunal is not obliged to draw an adverse inference; it may exercise its judgement on whether to do so, and if it decides to draw an adverse inference, on how much weight to give to this factor. Where a Tribunal does consider it appropriate to draw an adverse inference, that by itself cannot be determinative of the allegation in issue; any such adverse inference is one factor to be taken into account in the balance when deciding whether the allegation is proved to the civil standard (*GMC v Udoe* [2021] EWHC 1511).

### **The Tribunal's Analysis of the Evidence and Findings**

22. Mr Lodge opened the case for the GMC, referred the Tribunal to the evidence relied on by the GMC and to the further documents in the bundle written by Dr Holmes. Mr Lodge submitted that paragraphs 1-14 of the Allegation were proved by the evidence. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts.

#### Paragraph 1

23. The Tribunal considered whether on or around 21 August 2019 Dr Holmes said, in the presence of Patient A, that she required a CT Scan, "to see if she had a brain" or words to that effect. This involves the Gosport Hospital.

24. The Tribunal had regard to the evidence of Ms D, Community Nursing Sister at the Gosport Hospital, in her witness statement and her email dated 22 August 2019. Ms D stated,

*“On the second paragraph at page 2 of exhibit HS2 I describe a comment made by Dr Holmes about a patient. This comment was made in a clinic regarding a female patient in her 70s who had a slight learning disability. I only picked up on this learning disability when I looked at her notes on RIO, as she presented that she understood everything said in the consultation. Dr Holmes was sat at his desk in the consultation room, with the patient at the side of the desk and me on a chair about eight feet away. Dr Holmes said a CT scan was needed for the patient “to see if she’s got a brain”. I cannot remember whether Dr Holmes was looking at the patient as he said this, or at his notes.*

*I did not speak with the patient about this comment at the time, nor did I challenge Dr Holmes about it either before or after the consultation. I thought it was an unacceptable remark to make to someone with a disability. When the consultation ended, I spoke with the patient as I walked her out and asked if she was okay. She did not appear to have heard his remark. She needed to have several tests done but she did not subsequently attend. I was worried that we had scared her.”*

25. The Tribunal noted Ms D’s account that Patient A was able to understand everything in the consultation, that Patient A had a ‘slight learning difficulty’ and that Patient A did not hear the remark. The Tribunal noted the email dated 22 August 2019 in which Ms D wrote, “diagnosed with slight learning difficulties” and “luckily the patient did not hear his remark”. The Tribunal noted there was no evidence from Patient A in the form of a complaint at the time or a statement for this hearing.

26. The GMC raised this incident with Dr Holmes by email dated 7 November 2023, nearly 4 years later. The Tribunal considered Dr Holmes’ responses to the GMC as follows:

*“Thanks for your missive received. I really do not think I would have made such suggestions and as far as I can recall, were a long time ago and my memory does not hold all the information that you have obtained, unlike a computer. I therefore cannot realistically recall the incidents mentioned.” Email 7 November 2023*

*“... i have been through the list of allegations and the responses of the GMC review and these are very fair in being scrupulous about not receiving hearsay evidence. The thing that I find irritating is that It is highly unlikely that I would have made a comment about doing a CT scan to see if someone had a brain, which I find offensive and insulting. This could be a comment among friends as a joke between other doctors but never in the sight of a patient. I also note with amazement how innuendos can be*

*made presumably on a scurrilous nature, that is obviously deliberately harmful as to ruin someones career.”* Email 21 March 2024

27. The Tribunal considered that the contemporaneous email written by Ms D was a plausible and credible account and was consistent with and supported the account in her witness statement. Dr Holmes did not give notice to require her to attend for cross-examination on this issue. The Tribunal considered the possibility that Ms D was mistaken in her honest perception of what she heard but rejected this as improbable. The Tribunal determined it was more likely than not that these words were spoken by Dr Holmes in the presence of Patient A. The Tribunal considered the submission made by Counsel for the GMC that it was unclear whether Patient A had heard the remark and did not agree with that submission. The Tribunal accepted the contemporaneous email account of Ms D that Patient A did not hear the remark.

28. Accordingly, the Tribunal found paragraph 1 of the Allegation proved.

#### Paragraph 2

29. The Tribunal considered whether the conduct at paragraph 1 found proved constituted harassment related to a disability as defined in Section 26(1) of the Equality Act 2010, in that Dr Holmes engaged in unwanted conduct related to a disability which had the purpose or effect of violating the dignity of Patient A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Patient A.

30. The Tribunal considered that the GMC had not provided sufficient evidence to prove that it was more likely than not that Patient A had a ‘disability’ as defined in section 6(1) of the Equality Act 2010. Ms D referred to ‘a slight learning disability’ which she only picked up when she looked at the notes on ‘RIO’ and considered that Patient A had understood everything said in the consultation. The Tribunal had not received medical records for Patient A about a mental impairment or any evidence from Patient A. There was no evidence of a ‘substantial and long-term adverse effect’ on Patient A’s ability to carry out normal day-to-day activities. The Tribunal determined that the allegation in paragraph 2 failed for this reason.

31. Further, the Tribunal noted the evidence of Ms D that Patient A had not heard the remark, which evidence the Tribunal accepted. There was no evidence that the remark had an effect on Patient A. There was no evidence of Patient A’s perception about the remark. This presented a further evidential hurdle for the GMC in relation to establishing ‘harassment’ as defined in section 26(1).

32. The Tribunal determined that the GMC had not discharged the burden in relation to paragraph 2 of the Allegation. Accordingly, the Tribunal found paragraph 2 of the Allegation not proved.

### Paragraph 3

33. The Tribunal considered whether on one or more occasions between 22 August 2019 and 26 September 2019, whilst working at Southern Health NHS Foundation Trust, Dr Holmes exposed his penis in a work environment and urinated in a clinical sink on a ward. This involves the Gosport Hospital.

34. The Tribunal noted the scope of the allegation and evidence presented by the GMC. The GMC's case is that the conduct took place in Dr Holmes' consulting room after morning clinic had finished. There is no evidence that anyone else was present in his consulting room or that the conduct was directed towards another person. There is no evidence that the door was open. The GMC's evidence is that on two separate occasions, Dr Holmes was seen by another member of staff, from the corridor through an internal window in the wall of his consulting room. There is no allegation or evidence that Dr Holmes knew that such conduct would be visible to a passerby in the corridor.

35. The Tribunal considered the evidence of Ms E, Staff Nurse at the Gosport Hospital, regarding 26 September 2019. Ms E signed a contemporaneous statement the same day which included:

*"As I walked past I paused as I was shocked to see through the window that looks out onto the corridor, blinds fully open, standing very close, side on to the window, by the clinic room sink, fully clothed with his penis in his hand over the sink. He had the tap running a cup in his other hand into which he was running water and pouring into the sink. He was not aware of being observed. I reported this immediately to my manager"*

36. The Tribunal considered that her contemporaneous statement supported the detailed account given in her witness statement, which included:

*"... I saw Dr Holmes very discreetly expose his penis in a consulting room.*

*At the time of the incident, 12:50pm, the corridor would have been quiet as the morning clinic would have probably finished.... Occasionally members of the public came down the corridor if they were lost, but usually at this time there would only be*

*the occasional nurse moving along the corridor with notes from the clinic. Patients could also come down the corridor at any time, some from other clinics or with general queries.*

*I saw through the window of the consulting room that Dr Holmes was standing very close to the sink, side on to the window. He was fully clothed. He was running the tap and pouring water from a cup in his hand into the sink. He looked like he was washing out the sink. Dr Holmes' penis was in his other hand over the sink. I couldn't see if he was urinating, but I think his penis was out and I believe I saw the end of his penis exposed. I am not sure exactly how long I observed Dr Holmes, but it was a short while, longer than a glance, so I was aware of what he was doing. He was oblivious to me throughout. I believe I am not mistaken about Dr Holmes having his penis out as, towards the end of my time observing him, he started to move away from the sink and pushed his hips back as if to start to do his zip up. I then left the window."*

37. The Tribunal also considered the witness statement of Ms D, Community Nursing Sister at the Gosport Hospital, which included:

*"Not long after this meeting with Ms N however, Dr Holmes left the Trust. On either the Wednesday or the Thursday one of the nurses, Ms E, told me that she had seen Dr Holmes peeing in the sink.*

*I thought I had witnessed something similar some days earlier, but I could not believe my eyes as I thought I also saw Dr Holmes peeing in the sink in the consulting room he used..... I saw through the glass window that backed onto the corridor Dr Holmes peeing in the sink.... I think the morning clinic had recently finished.*

*.... I was totally shocked by what I thought I'd seen.... I couldn't be definite that I had seen it, as I was so shocked."*

38. The Tribunal considered that the contemporaneous signed statement of Ms E was a plausible and credible account and was consistent with and supported her witness statement. The Tribunal noted that the evidence of Ms E was supported by the witness statement of Ms D. Dr Holmes did not give notice to require Ms E or Ms D to attend for cross-examination on this issue.

39. The Tribunal noted the absence of a response by Dr Holmes to paragraph 3 of the Allegation. The Tribunal considered the four criteria which must be satisfied before an adverse inference from silence may be drawn (*Kuzmin*, above). The Tribunal was satisfied that a *prima facie* case to answer was established and Dr Holmes had been given appropriate notice and an appropriate warning that, if he does not give evidence, such an inference may

be drawn (see GMC's Rule 34(9) letter 6 September 2024, emailed to Dr Holmes on 6 September 2024). The Tribunal was satisfied that Dr Holmes had been informed of this hearing and had voluntarily absented himself, as set out in the Annex A determination. XXX. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on the paragraph 3 Allegation and there were no other circumstances which would make it unfair to draw an adverse inference from his silence.

40. The Tribunal considered the possibility that each of Ms E and Ms D was mistaken in her honest perception of what she saw but rejected this as improbable. The Tribunal determined that it was more likely than not that, on two separate dates, after morning clinic had finished, Dr Holmes exposed his penis and urinated in the clinical sink in his consulting room, whilst he was alone in the room but visible through an internal window to a passerby in the corridor. The Tribunal accepts the evidence of Ms E that Dr Holmes was not aware of being observed by her. The Tribunal found that it was more likely than not that Dr Holmes did not realise that he was visible from the corridor through the internal window.

41. Accordingly, the Tribunal found paragraph 3 of the Allegation proved.

#### Paragraph 4

42. The Tribunal considered whether on one or more occasions between September and October 2020, whilst working at University Hospitals Dorset NHS Foundation Trust, Dr Holmes failed to follow infection control protocols in that he failed to wear his face mask in its correct position and ensure his face mask remained in its correct position. This involves the Bournemouth Hospital.

43. The Tribunal had regard to the witness statement of Mr H, Interim Directorate Manager for Emergency Acute Medicine at the Bournemouth Hospital. Mr H said that Dr Holmes was interviewed for a locum Consultant post in the Acute Medical Unit ('the AMU'). By reference to time sheets, Mr H believed that Dr Holmes started on 20 September 2020 and worked on the 'blue pathway' which was the pathway for patients with confirmed or suspected COVID. Mr H explained the circumstances in which he terminated Dr Holmes' contract on 1 October 2020. He said,

*"One concern raised about Dr Holmes regarded him not wearing a face mask or wearing one incorrectly. At the time the guidance, both at the Trust and nationally, was for members of staff to always wear surgical face masks when in the hospital. However, at the time face mask compliance was a contentious thing among some members of staff so it was difficult to manage compliance with this policy around the*

*hospital. As Dr Holmes was a senior doctor, I expected him to abide by the regulations. I attach an action card issued by the Trust containing information regarding PPE usage ...This action card was in use from April 2020 and was used at the time Dr Holmes worked at the Trust.”*

44. The Tribunal considered the Covid-19 Action Card 1 headed ‘PPE requirements’ and found that it required all healthcare staff in general clinical areas to wear a fluid repellent mask. The Tribunal noted the evidence of Mr H that it was difficult to manage compliance with this policy.

45. The Tribunal noted the evidence of Mr H that on 1 October 2020 he saw Dr Holmes in the corner of the AMU with his face mask down under his chin. Mr H emailed Human Resources on 2 October 2020 to explain the circumstances in which he had decided to terminate his contract, listing the concern about mask-wearing first:

*“When I met with Dr Holmes I discussed the following areas as issues of concern that I felt were having a tangible effect on patient safety within the Acute Medical Unit.*

- *The resistance to consistently wear a mask, on two separate occasions he has been asked by the service Matron and the Clinical Lead to ensure that he wears his mask in line with both the Trust Policy and Public Health England Guidelines. He had been observed on further occasion by ward staff not wearing his mask appropriately. This has occurred whilst working with patients on the “blue pathway” (reasonable suspicion of Covid 19) and working within the broader department. This represents a risk to both the safety of all patients on the unit and staff should he contract the illness due to poor compliance.*
- *....”.*

46. The Tribunal had regard to the witness statement of Ms F, Deputy Sister on the AMU at the Bournemouth Hospital, in which she described the policy about face masks, gave her account of seeing non-compliance by Dr Holmes and set out her concerns for patients and staff and that other junior staff might follow his lead. She said, *“time and time again he would have his face mask down while walking around the ward and talking to people”*. She said that when she challenged him about it, he would pull the mask up over his mouth but often not his nose and she felt that he kept ignoring her request to have it over his mouth and nose at all times. Her witness statement is supported by her contemporaneous email to Mr H dated 4 October 2020, which read,

*“Following our conversation on Thursday 1 October regarding Dr Holmes...*



*1) The constant concern regarding the consultant not wearing his facial mask appropriately. I constantly reminded him about professionalism [sic] and how he needs to be a role model for other staff and patients. Despite reminding him he continued to ward [sic] around the unit with his mask placed inappropriately.”*

47. The Tribunal also had regard to the witness statement of Dr G, a F1 junior on AMU at the Bournemouth Hospital at the time. She said she worked with Dr Holmes almost daily and was the junior who had the most contact with him. She described her understanding of the policy that they were expected to wear a surgical face mask to cover the mouth and nose at all times on the ward. She set out details of a specific instance of seeing non-compliance by Dr Holmes when moving between a bay containing Covid-19 positive or suspected patients and a separate bay containing vulnerable patients who were shielding or did not have Covid-19; she said that when she asked him to pull up his mask, he did. She also gave a general account of seeing non-compliance by Dr Holmes as follows:

*“Dr Holmes would very often wear his face mask below his nose and mouth. I remember that I regularly saw Dr Holmes wear his mask incorrectly, sometimes below his chin and sometimes covering his mouth but below his nose. As the junior doctor working with Dr Holmes, I was asked regularly by the nurses to tell him, as my consultant, to pull his face mask up, which I did on a few occasions, and I remember he was asked by the nurse in charge at the time as well.”*

48. The Tribunal had regard to evidence from Dr Holmes in relation to this Allegation. In his written submissions for the IOT hearing on 4 February 2021, under a heading for the Bournemouth Hospital, he wrote, *“I do recall a few instances of the slipping mask off the nose. I had noticed that the better mask to have was the one with wide tabs instead of the string variety, when these are worn they don’t slip off and are a snug fit”*. Dr Holmes attended the IOT hearing but was not represented. The IOT Determination stated at paragraph 16 that Dr Holmes *‘specifically refuted the allegations in relation to the wearing of PPE’*. In his more recent email correspondence with the GMC in March 2024, in relation to the Bournemouth Hospital Dr Holmes wrote, *“No thanks given [for his work on AMU relating to 4 patients], but concern about a slipped mask.”*

49. The Tribunal considered that Dr Holmes accepted there were some instances of his face mask not being in the correct position while working at the Bournemouth Hospital and that he sought to minimise the issue and characterise it as a few accidental instances.

50. The Tribunal balanced the evidence of Dr Holmes against the witness statement evidence of Mr H, Ms F and Dr G, as supported by the contemporaneous emails of Mr H and

Ms F. Dr Holmes did not give notice to require these witnesses to attend for cross-examination on this issue. The Tribunal noted the consistency in the accounts given by three members of staff and considered there was detailed and credible evidence of repeated non-compliance with the policy to wear a face mask by Dr Holmes. The Tribunal preferred the evidence of Mr H, Ms F and Dr G on this issue.

51. Accordingly, the Tribunal found paragraph 4 of the Allegation proved.

#### Paragraph 5

52. The Tribunal considered whether on 30 October 2020 Dr Holmes attended work at Wigan, Wrightington and Leigh NHS Foundation Trust, whilst showing symptoms of Covid-19 in that he had a constant cough and a temperature of 39 degrees Celsius. This involves the Wigan Hospital.

53. It is common ground that Dr Holmes started work as a locum Consultant at the Wigan Hospital in early October 2020 (most likely 5 October) and had accommodation at the Leigh site. Dr Holmes describes being at the Wigan Hospital for approximately 4 weeks in his IOT submissions. His last day was Friday 30 October 2020. He worked on Pemberton Ward, a 12 bed isolation ward for patients with infectious diseases, in single separate side rooms. It is common ground that he tested positive for Covid-19 after leaving the ward on 30 October 2020 (most likely taking the test on Monday 2 November).

54. The Tribunal had regard to the witness statement of Ms J, Nurse and Ward Manager of Pemberton Ward at the time. Ms J said they were very short staffed due to staff members isolating and for this reason she was usually looking after patients rather than participating in ward rounds with Dr Holmes. XXX

55. The Tribunal noted Ms J's recollection that on his last day, someone mentioned to her that Dr Holmes had arrived at work looking awful and very unwell, was coughing a lot and was bright red in the face, and in response to this she went to find him in the kitchen. She said,

*"I took a thermometer and stuck it in his ear, which registered a temperature of 39 Celsius. This is a high temperature, which is a symptom of COVID-19. The heavy cough is also a COVID-19 symptom. I told him he needed to leave the ward and get a COVID-19 test, which he did. I was surprised that he did not seem to acknowledge that he was unwell and had turned up to work anyway despite having COVID-19 symptoms...."*

*... The hospital later had a temperature check on entry but this was not in place at the time.*

*Either a couple of days or longer passed and I was informed by infection control that Dr Holmes had tested positive...*

*...In addition to Dr Holmes 11 members of staff on the ward tested positive for COVID-19 which created a really difficult situation for us to continue treating patients safely.”*

56. The Tribunal had regard to the witness statement of Dr K, a F3 junior doctor on Pemberton Ward at the time. She described her final day working with Dr Holmes on 30 October 2020. She said he arrived onto the ward looking extremely unwell and coughing a lot and she saw him leant over, coughing and spluttering in the ward kitchen. She said she was surprised he made the decision to come into work. She recalled Ms J taking his temperature at 39 degrees Celsius and telling him to leave. She said that she herself tested positive on Monday 2 November.

57. The Tribunal had regard to Dr Holmes’ IOT submissions in relation to this Allegation. Dr Holmes stated that he “*picked up the disease from that overcrowded poorly managed ward*” and explained that XXX was normal for him, as follows:

*“I want to lay to rest the allegation, that firstly I supposedly knew that I had COVID symptoms and refused to leave the ward. On the contrary, I XXX. Secondly I had no other symptoms, until the last day, a Friday, when I felt really unwell, had developed temp of 39 and the sister on the ward advised that I should go home get tested and not come back if positive. I don’t think I needed persuading, but the whole week I felt ok. There was a slight temp of 37.3 on Monday as the sister had taken to checking everyones temp on a regular basis, but only on the Friday did I get the temp. Up to that time on Friday there was no suggestion on my part or any one else that I was knowingly suffering and refusing to leave. I would have relished 2 weeks paid isolation rather than continuing at work.”*

58. The Tribunal noted that Dr Holmes did not give notice to require Ms J or Dr K to attend for cross-examination on this issue. The Tribunal considered that their evidence on this issue was plausible and credible and accepted it. The Tribunal determined that it was more likely than not that on 30 October 2020, Dr Holmes attended work at the Wigan Hospital whilst showing symptoms of Covid-19 in that he had a constant cough and a temperature of 39 degrees Celsius.

59. Accordingly, the Tribunal found paragraph 5 of the Allegation proved.

Paragraph 6

60. The Tribunal considered whether on one or more occasions between October and November 2020, whilst working at Wigan, Wrightington and Leigh NHS Foundation Trust, Dr Holmes failed to follow infection control protocols in that he failed to (a) wear a face mask; (b) when wearing a face mask, wear it in its correct position and ensure that it remained in its correct position. This involves the Wigan Hospital in the period 5 October to 30 October 2020.

61. The Tribunal had regard to the witness statement of Ms J on this issue. She described her concern that Dr Holmes was not following the hospital's policy in relation to face masks,

*“While Dr Holmes worked on the ward his infection control was not good. When I was on the ward with him I had to remind him frequently, every day about infection control. Trust policy at the time was that members of staff should wear surgical face masks at all times and regularly wash their hands or use alcohol. I had to remind him to do things such as regularly washing his hands and pulling his mask up over his nose and mouth, as he would often wear it below his chin. When I challenged Dr Holmes about this, he would usually correct his mask wearing without questioning. Nobody is perfect, so it is natural that people sometimes forgot to wear their masks properly. Dr Holmes was the worst member of staff for not wearing his mask properly.... Most of the times I saw him with his mask down was on the ward rather than in patient rooms.”*

62. The Tribunal also had regard to the witness statement of Dr K. She said that hospital policy at the time was that surgical face masks, covering the nose and mouth, should always be worn by all staff on site. She recalled “multiple occasions” when she was working with Dr Holmes and he would not wear a mask or he would be wearing one under his chin. She said that she and the nurses would prompt him but, despite their prompts, it happened multiple times each week and he tended to have his mask down outside of patient rooms on the ward. She said she was not sure whether what Dr Holmes was doing was absent-minded, but it was not what she would expect from a doctor, particularly a Consultant. The Tribunal noted the contemporaneous email from Dr K on 20 October 2020 in which she described Dr Holmes “speaking to patients and relatives without surgical mask in place (and often coughing)”.

63. The Tribunal considered the witness statement of Mr I, Antimicrobial Specialist Clinical Pharmacist at the Wigan Hospital. Mr I described first meeting Dr Holmes in early October and recalled that he was either not wearing a mask or wearing one loosely while stood at the nurses' station in the middle of the ward. Mr I said,

*“In my email at exhibit MJD1 I describe concerns about Dr Holmes’ attitude toward infection control. Dr Holmes’ attitude to infection control was a concern I had throughout his time on the ward. When I completed anti-microbial ward rounds with Dr L, I remember him challenging Dr Holmes various times about not wearing a face mask at all or wearing one below the chin. Each time he was challenged by Dr L, Dr Holmes would address this behaviour and get a mask or change how he was wearing it. Face masks were mandatory in the hospital for staff. Despite being challenged, this was a frequent issue I saw on multiple occasions when I worked with Dr Holmes... Dr Holmes had a habit of pulling his mask down to speak, either to colleagues in person, but particularly speaking on the phone. A lot of people did this at the time, but it was happening consistently with Dr Holmes.”*

64. The Tribunal noted the contemporaneous email from Mr I to Dr L dated 5 November 2020, detailing his concerns,

*“Based on my limited time working with this consultant I have growing concerns about their attitude towards infection control: they frequently fail to wear a mask on the ward....”*

65. The Tribunal noted the witness statement of Dr L, Consultant Microbiologist at the Wigan Hospital, who was the infection control doctor at the time. He said he met Dr Holmes once on Pemberton Ward and his mask was around his chin and on being asked to place it correctly, Dr Holmes immediately complied with his request. He commented, *“I am unsure whether he was consciously aware that he didn’t have his mask on correctly or if it had just slipped down.”* Dr L had described this event in his contemporaneous email dated 4 November 2020.

66. The Tribunal had regard to evidence from Dr Holmes in relation to this Allegation. As stated above, the IOT Determination stated that Dr Holmes *‘specifically refuted the allegations in relation to the wearing of PPE’*. In his IOT submissions, under a heading for the Wigan Hospital, Dr Holmes wrote,

*“I accept that the surgical mask had a tendency to slip off the nose, or when I had a itchy nose at that time, now improved, or when I was talking on the phone or speaking to relatives on the phone, which I did on a regular basis, or answering the phone in the absence of others doing so, My mask could inadvertently come off but I would put it back on. There was no deliberate wilfulness to disobey the rules....”*

67. The Tribunal considered that Dr Holmes accepted that there were some instances of his face mask not being on or not being in the correct position while working at the Wigan Hospital and that he sought to minimise the issue and characterise it as a few accidental instances.

68. The Tribunal balanced the evidence of Dr Holmes against the witness statement evidence of Ms J, Dr K, Mr I and Dr L, as supported by the contemporaneous emails of Dr K, Mr I and Dr L. Dr Holmes did not give notice to require these witnesses to attend for cross-examination on this issue. The Tribunal noted the overall consistency in the accounts given by four members of staff at the Wigan Hospital. The Tribunal noted the overall consistency with the same concern in late September 2020 at the Bournemouth Hospital (paragraph 4 of the Allegation). The Tribunal considered there was detailed and credible evidence of repeated non-compliance by Dr Holmes with the policy of the Wigan hospital about the requirement to wear a face mask. The Tribunal accepted the evidence of Ms J, Dr K, Mr I and Dr L on this issue. It determined that it was more likely than not that Dr Holmes did not always follow mask-wearing infection control protocol at the Wigan Hospital to the expected standard.

69. Accordingly, the Tribunal found paragraph 6 of the Allegation proved.

#### Paragraph 7

70. The Tribunal went on to consider paragraph 7 of the Allegation. The core of the allegation is that from 4 February 2021 Dr Holmes knowingly failed to comply with the interim order for conditions imposed on his registration by the IOT on 4 February 2021, in that he continued to work at the Wirral Hospital without supervision and he failed to make the requisite notifications to the GMC, his Responsible Officer(s) and locum agencies he was registered with.

71. The Tribunal was mindful of the inter-relationship between paragraphs 7 to 14 of the Allegation. The GMC's evidence for paragraphs 7 to 14 is in the witness statements of Dr B, Consultant Physician at the Wirral Hospital; Professor M Responsible Officer for various locum agencies, and Mr C, GMC Investigations Officer. Dr Holmes did not give notice to require any of these three witnesses to attend for cross-examination. The Tribunal noted that Dr Holmes has not responded in any detail to paragraphs 7 to 14 of the Allegation. The Tribunal noted his email dated 7 November 2023, replying to the GMC, to the effect that he cannot realistically recall the incidents mentioned.

72. The Tribunal noted that the IOT Determination stated that the order took effect from 4 February 2021. The Tribunal had regard to Conditions 1, 5 and 7, as set out below:

*“ 1. He must personally ensure that the GMC is notified of the following information within seven calendar days of the date these conditions become effective:*

*a of the details of his current post, including:*

*i his job title*

*ii his job location*

*iii his responsible officer (or their nominated deputy)*

*b the contact details for his employer and any contracting body, including his direct line manager*

*c of any organisation where he has practising privileges and/or admitting rights*

*d of any training programmes he is in*

*e of the organisation on whose medical performers list he is included*

*f of the contact details of any locum agency or out-of-hours service he is registered with.*

*....*

*5. a He must be closely supervised in all of his posts by a clinical supervisor, as defined in the Glossary for undertakings and conditions. His clinical supervisor must be appointed by his responsible officer (or their nominated deputy).*

*b He must not work until:*

*i his responsible officer (or their nominated deputy) has appointed his clinical supervisor and approved his supervision arrangements.*

*ii he has personally ensured that the GMC has been notified of these arrangements.*

*c He must provide a report from his clinical supervisor in advance of or at his next IOT review hearing.*

....

*7. He must personally ensure that the following persons are notified of the conditions listed at 1 to 6:*

*a his responsible officer (or their nominated deputy)*

*b the responsible officer of the following organisations*

*i his place(s) of work and any prospective place of work (at the time of application)*

*ii all his contracting bodies and any prospective contracting body (prior to entering a contract)*

*iii any organisation where he has, or has applied for, practising privileges and/or admitting rights (at the time of application)*

*iv any locum agency or out-of-hours service he is registered with*

*v if any organisation listed at (i to iv) does not have a responsible officer, he must notify the person with responsibility for overall clinical governance within the organisation. If he is unable to identify this person, he must contact the GMC for advice before working for that organisation.*

*c the responsible officer for the medical performers list on which he is included or seeking inclusion (at the time of application)*

*d his immediate line manager and senior clinician (where there is one) at his place of work, at least 24 hours before starting work (for current and new posts, including locum posts). ”*

73. The Tribunal found that Dr Holmes attended the IOT Hearing, unrepresented, and the next day, on 5 February 2021, the MPTS sent a letter of Notification of the IOT Determination to his registered email address. The letter enclosed an acknowledgement slip. There was no



evidence that Dr Holmes returned the slip. The documents show that Dr Holmes had used his registered email address on 3 and 18 February. The Tribunal was satisfied that it was reasonable to infer his email address was active and Dr Holmes received the Notification on 5 February. The Tribunal found that Dr Holmes asserted in his email dated 18 February 2021 (replying to Professor M via administrators, ACI Doctors) that he was aware of the Conditions. Dr Holmes wrote,

*“I am aware [sic] of the conditions, and as per my reply, I am considering my future. I do not do Skype as per previous communications, and I will consider work when I see fit to resume. I do not think at present that there is any further information required.”*

74. For these reasons, the Tribunal found it was more likely than not that Dr Holmes acquired knowledge of the Conditions imposed on 4 February 2021 by reason of his attendance at the hearing and/or on 5 February 2021 by reason of receipt of the Notification. In any event, his own assertion is that he had knowledge of the conditions by 18 February 2021 at the latest.

*Paragraph 7a: failure to give requisite notifications*

75. The Tribunal considered and accepted the evidence of Dr B to the effect that Dr Holmes was placed at the Wirral Hospital by an agency called Locum Reach, that he began work as a general medical Consultant locum in late January 2021, and worked until Dr B terminated the contract on 15 March 2021. This period of work at the Wirral Hospital is consistent with Dr Holmes’ statement that he worked there for 7 weeks in his email dated 15 March 2021 to Mr C of the GMC.

76. The Tribunal found that Condition 1 required Dr Holmes to notify the GMC of details of ‘his current post’ within 7 days. The Tribunal considered the witness statement of Mr C to the effect that Dr Holmes did not notify the GMC of his current post at the Wirral Hospital, within 7 days or prior to termination of the contract on 15 March 2021. Mr C said that on 1 March 2021, the GMC received an email from Dr Holmes attaching his signed ‘Work Details Form’ (‘WDF’), and Dr Holmes had omitted his current post from the WDF. This omission is the subject of paragraph 9 of the Allegation below. On the basis of the evidence of Mr C and the Tribunal’s further consideration of paragraph 9 below, the Tribunal found that Dr Holmes failed to notify the GMC of his current post at the Wirral Hospital in breach of Condition 1. Paragraph 7(a)(i) of the Allegation is proved.

77. The Tribunal had regard to the witness statement of Dr B in which he explained that he was alerted to an issue about conditions on Dr Holmes’ registration by an email from the

Trust's 'Freedom to Speak Up Guardian' on 15 March 2021. Dr B said he immediately checked the GMC website. He stated,

*"... [I] noted that Dr Holmes had conditions on his licence to practise that had been put in place after the Trust had employed him. I believe the conditions went 'live' on 4 February 2021. I therefore became aware that Dr Holmes had breached these conditions within a few minutes of receiving the email...."*

*There were numerous items listed under the conditions on Dr Holmes' registration, but I could see that he needed to inform his own RO, the RO at any trust he was working at as a locum and any line manager that there were restrictions on his licence. If Dr Holmes had notified any member of staff in the department of the restrictions on his licence, that person would be required to report to the restrictions to the Human Resources Department. I spoke to the Trust's Human Resources Department and they were unaware of any restrictions on Dr Holmes' licence. It was therefore my understanding that Dr Holmes had not informed the RO at the Trust or his line manager. In terms of supervision, the hospital needed to be aware of this restriction and he failed to tell us.*

*I would have expected Dr Holmes to inform one of his line managers immediately of the conditions on his licence when they were put in place. I would have expected him to do this firstly and most importantly to protect patients but secondly, it is a significant probity issue to not fully and appropriately declare such GMC restrictions that have been put in place..."*

78. The Tribunal noted that by email dated 15 March 2021 to Mr C, Dr Holmes acknowledged that he had breached Conditions. He wrote,

*"Just to let you know that I apparently breached the lockdown restrictions from the GMC in that i worked at Arrowpark hospital in Liverpool for 7 weeks. Could you let me know when my Parole board meeting is, so I can get back to a relatively normal working environment, ie under supervision of my own nanny, in case I make a mess again...."*

79. The Tribunal noted that Condition 7 did not state a time limit for making notifications to the persons listed therein. The Tribunal considered it was implicit that such notifications should be made reasonably promptly and without delay. The Tribunal accepted as credible the evidence of Dr B to the effect that Dr Holmes did not notify any member of staff at the Wirral Hospital of Conditions 1-6.

80. The Tribunal considered the witness statement of Professor M in which he stated that Dr Holmes had not notified him of the Conditions, in his capacity as his Responsible Officer in relation to Dr Holmes' use of an agency called National Locums, and also considered Professor M's contemporaneous emails. The Tribunal accepted as credible the evidence of Professor M that he learnt of the Conditions on receipt of a letter on 17 February 2021 from another source and, that when his admin team contacted Dr Holmes on 17 February, Dr Holmes replied on 18 February (quoted above) that he would '*consider work when I see fit to resume*'. The content of Dr Holmes' 18 February email is the subject of paragraph 8 of the Allegation below. The Tribunal noted there is no evidence that Dr Holmes took steps to notify any other persons listed in Condition 7. The Tribunal found that Dr Holmes breached Condition 7. Paragraph 7(a)(ii) of the Allegation is proved.

*Paragraph 7(b): worked without supervision*

81. On the basis of the evidence of Dr B above, the Tribunal found that, following the making of the IOT order on 4 February 2021, Dr Holmes worked in his post at the Wirral Hospital without being closely supervised by a clinical supervisor appointed by his Responsible Officer. Further, he failed to stop working until such a supervisor was appointed, approved and notified to the GMC. The Tribunal found that Dr Holmes breached Condition 5. Paragraph 7(b) of the Allegation is proved.

*Knowingly failed to comply with the Conditions*

82. The Tribunal next considered the main stem of paragraph 7 and the issue as to whether Dr Holmes knowingly failed to comply with the Conditions. As stated above, the Tribunal found it was more likely than not that Dr Holmes acquired knowledge of the Conditions by reason of his attendance at the hearing on 4 February 2021 and/or on 5 February 2021 by reason of the MPTS Notification, and in any event by 18 February 2021. The Tribunal was satisfied that Dr Holmes knew what the Conditions were while he continued to work at the Wirral Hospital and must have known that he had not taken the steps required by Conditions 1, 5 and 7 in the period 4 February to 15 March 2021.

83. The Tribunal took into account that Dr Holmes has not offered any evidence to the Tribunal to refute this allegation of knowingly failing to comply with the Conditions. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on this issue and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to its analysis. The Tribunal was satisfied that Dr Holmes had actual

knowledge of his failure to comply and in any event at least *blind eye* knowledge of his failure. The Tribunal determined it was more likely than not that Dr Holmes knowingly failed to comply with the Conditions.

84. Accordingly, the Tribunal found paragraph 7 of the Allegation proved in its entirety.

#### Paragraph 8

85. The Tribunal considered the email dated 18 February 2021 sent from Dr Holmes' registered email address (quoted above). The Tribunal determined that on 18 February 2021, Dr Holmes sent this email to 'ACI Doctors' who were acting as administrators for Professor M, a Responsible Officer of Dr Holmes via Dr Holmes' connection with 'National Locums'. It determined that in this email Dr Holmes stated, "*I will consider work when I see fit to resume*". Dr Holmes was replying to the email from ACI Doctors, on behalf of Professor M, dated 17 February 2021.

86. Accordingly, the Tribunal found paragraph 8 of the Allegation proved.

#### Paragraph 9

87. The Tribunal considered the WDF. Counsel for the GMC explained that when the GMC investigates a doctor, it is standard practice to send the doctor a WDF to complete and return and the WDF was not a specific consequence of the IOT Determination. There was no evidence of the date on which the GMC had provided the WDF to Dr Holmes for completion.

88. The Tribunal considered the instructions on the front page of the WDF and the entries made by Dr Holmes before he signed and dated the document 1 March 2021. Section 4 required Dr Holmes to '*provide details of all medical work that you have undertaken in the last six months only*' and gave guidance by listing categories of relevant work. The Tribunal found that Dr Holmes entered details of medical work at four hospitals, spanning July to November 2020, but did not refer to his current post at the Wirral Hospital, which he had begun in late January 2021, prior to the IOT hearing. The Tribunal noted that Dr Holmes had not used up all the boxes under Section 4 and there was space to enter his current post. Dr Holmes has not offered any evidence to the Tribunal as to why he did not refer to his current post. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on this issue and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to the analysis. The Tribunal found that he should have included his current post and failed to do so.

89. The Tribunal considered the Section 9 Declaration, *“I have provided the GMC with accurate details of my current and previous work as required. I can confirm that I have provided these details to the GMC truthfully and in good faith”* and found that this declaration was signed by Dr Holmes and dated 1 March 2021.

90. Accordingly, the Tribunal found paragraph 9 of the Allegation proved.

#### Paragraph 10

91. The Tribunal determined that it was self-evident and obvious that while Dr Holmes was working at the Wirral Hospital as a locum from late January 2021 until 15 March 2021, he knew he was doing that. Accordingly, the Tribunal found paragraph 10(a) of the Allegation proved.

92. The Tribunal considered the wording of Dr Holmes’ email dated 18 February 2021 (quoted above) and the evidence of Professor M that on receipt of this email *“[he] took Dr Holmes at his word and believed he was not working”*.

93. The Tribunal was of the view that the natural and ordinary meaning of *‘I will consider work when I see fit to resume’*, when read in the context of the email to which he was replying, was that Dr Holmes was not currently working. Dr Holmes has not offered an alternative interpretation of these words to the Tribunal. The Tribunal considered it was very hard to think of a plausible alternative interpretation. The express words refer to work as a future activity and imply he was not currently working. The Tribunal found that the interpretation by Professor M was not only reasonable but was the most obvious and logical interpretation. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on paragraph 10(b) of the Allegation and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to its analysis. The Tribunal was satisfied that Dr Holmes must have known that such words in his email were false. Accordingly, the Tribunal found paragraph 10(b) of the Allegation proved.

94. In relation to paragraphs 10(c) and 10(d) of the Allegation, the Tribunal referred to its findings about the WDF under paragraph 9 of the Allegation above. The Tribunal noted that the instructions on the front included, *‘You should ensure the details are accurate and up to date’* and *‘If you are unsure what information you should include on this form, or if you need assistance in completing it, please contact your investigation officer’*. The Tribunal considered that Section 4 made it clear that *‘all medical work that you have undertaken in the last six*

*months*' should be disclosed, including locum work. Dr Holmes had started at the Wirral Hospital in late January 2021, and therefore by 1 March 2021, it was 'medical work undertaken in the last six months' and should have been included in the WDF. The wording of the Declaration in Section 9 made it clear that disclosure of accurate details of his '*current work*' was required.

95. Dr Holmes has not offered an explanation to the Tribunal why he omitted his current post from Section 4 or about his understanding of the Declaration in Section 9. The Tribunal considered the possibility that the omission was a careless mistake, or a mistake caused by a form being overly complex, difficult to understand and overwhelming. The Tribunal noted that having ticked 'No' under section 3, Dr Holmes did not need to fill in section 3 but had done so; and there was an apparent mistake about the dates of a post at a Birmingham hospital as the dates differed between his two mentions of that hospital. However, to counter characterisation as a mistake, the Tribunal noted the following factors:

- Dr Holmes knew he was under investigation by the GMC, had recently attended the IOT hearing and received the IOT Determination;
- His responsibility to engage with the regulator (as stated in *Adeogba* above) should have been at the forefront of his mind when completing the WDF;
- The Tribunal was satisfied that it was reasonable to infer that he read what was printed in the form when completing Sections 4 and 9. The instruction at the start of Section 4 was clear and stated in plain language. The Declaration in Section 9 was brief and stated in plain language;
- The Tribunal took into account its finding above, that 11 days previously on 18 February, Dr Holmes had written a false email to Professor M which implied he was not working;
- The Tribunal considered there was no reasonable explanation for Dr Holmes not giving evidence on paragraphs 10(c) and 10(d) of the Allegation and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to the analysis.

96. In the context of all the evidence, the Tribunal rejected characterisation of the omission as a mistake. The Tribunal found it was more likely than not that Dr Holmes had actual knowledge that he was required to disclose all medical work undertaken in the last six months and in any event at least *blind eye* knowledge to that effect. Accordingly, the Tribunal found paragraph 10(c) of the Allegation proved. The Tribunal found it was more likely than not that he had actual knowledge that his Declaration in Section 9 was false and in any event

at least *blind eye* knowledge to that effect. Accordingly, the Tribunal found paragraph 10(d) of the Allegation proved.

97. Accordingly, the Tribunal found paragraph 10 proved in its entirety.

#### Paragraph 11

98. In relation to paragraph 11 of the Allegation, the Tribunal considered the test for dishonesty in *Ivey* (above). The Tribunal first considered Dr Holmes' state of knowledge or belief as to the facts when he sent his email dated 18 February 2021 and when he signed the WDF on 1 March 2021. Dr Holmes has not offered evidence to the Tribunal about his state of mind. The Tribunal reminded itself of its findings above that:

- Dr Holmes acquired knowledge of the Conditions by reason of his attendance at the hearing on 4 February 2021 and/or on 5 February 2021 by reason of the MPTS Notification, and in any event by 18 February 2021;
- He knew he was working in a locum position at the Wirral Hospital;
- He knew his email dated 18 February 2021 to Professor M was false;
- He knew his Declaration on the WDF dated 1 March 2021 to the GMC was false.

99. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on paragraph 11 of the Allegation and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to the analysis. The Tribunal determined that Dr Holmes could not have had a genuinely held belief on 18 February 2021 that he was not working. The Tribunal determined that Dr Holmes could not have had a genuinely held belief on 1 March 2021 that the WDF did not require mention of his current post at the Wirral Hospital.

100. Having established the state of Dr Holmes' knowledge, the Tribunal went on to consider whether by the standards of ordinary, decent people, his actions in relation to his 18 February email and his WDF were dishonest. The Tribunal considered that an honest reaction to the email from Professor M on 17 February, if a practitioner had not yet understood the Conditions or had not yet taken steps to comply, would have been to seek an immediate discussion with Professor M and take steps to remedy the default. Instead, Dr Holmes declined a Skype meeting and wrote '*I do not think at present that there is any further information required*' as if to close down the conversation. The Tribunal considered that an honest approach to completion of his WDF would have been to disclose his current post at

the Wirral Hospital in Section 4, especially as Condition 5 required him not to work until a supervisor had been arranged, approved and notified to the GMC for any current post.

101. The Tribunal determined that Dr Holmes' actions in relation to his 18 February 2021 email and his completion and signature of his WDF on 1 March 2021 would be regarded as dishonest by the standards of ordinary decent people.

102. Accordingly, the Tribunal found paragraph 11 proved in its entirety.

#### Paragraph 12

103. The Tribunal went on to consider whether on 15 March 2021, Dr Holmes told Dr B that he *"didn't believe his IOT conditions applied to his current post"* or words that effect.

104. The Tribunal had regard to Dr B's witness statement in which he described his meeting with Dr Holmes on 15 March 2021 in the late morning, with the Divisional Director, Shaun Brown, also present. Dr B stated,

*"With regard to the GMC issue, I am absolutely certain that Dr Holmes confirmed that he knew that the restrictions on his licence to practise were in place and he also knew that he had breached the conditions. I cannot recall the precise words he used but I believe he said that he had been too busy to do anything about the restrictions and he may have said that he believed the restrictions only applied to future employment."*

105. The Tribunal considered the contemporaneous email from Dr B to Professor M in the early afternoon about what Dr Holmes had said at the meeting. The Tribunal considered it was plausible that Dr Holmes offered such an excuse in the meeting. There is no evidence from Dr Holmes to give a contrary account of the meeting. The Tribunal found the detailed, uncontested evidence of Dr B to be credible. The Tribunal found it more likely than not that Dr Holmes spoke such words to Dr B.

106. Accordingly, the Tribunal found paragraph 12 of the Allegation proved.

#### Paragraph 13

107. The Tribunal considered the test for dishonesty in *Ivey* (above) in relation to Dr Holmes' oral statement at the meeting with Dr B on 15 March 2021. In assessing the state of Dr Holmes' knowledge or belief as to the facts on 15 March 2021, the Tribunal had regard to its earlier findings that he had acquired knowledge of the Conditions by reason of his



attendance at the hearing on 4 February 2021 and/or on 5 February 2021 by reason of the MPTS Notification, and in any event by 18 February 2021. The Tribunal noted that ‘*current post*’ is expressly stated at the start of the Conditions, at 1(a), and that the prohibition against working until a supervisor is arranged in Condition 5 (which refers to needing a supervisor ‘*in all of his posts*’) necessarily applied to any current post. The Tribunal was of the view that the wording of Condition 7 was sufficiently clear that notification was required to the Responsible Officer of his place of work and any locum agency he was registered with. Dr Holmes has not offered evidence to the Tribunal about his state of mind. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on paragraph 13 of the Allegation and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to the analysis.

108. Given these factors, the Tribunal determined that Dr Holmes could not have had a genuinely held belief on 15 March 2021 that the IOT conditions did not apply to his current post at Wirral. The Tribunal found it was more likely than not that he had actual knowledge that his IOT conditions applied to his current post at Wirral, and in any event at least *blind eye* knowledge to that effect.

109. The Tribunal went on to consider whether by the standards of ordinary decent people, Dr Holmes’ oral statement to Dr B on 15 March 2021 would be regarded as dishonest. The Tribunal determined that Dr Holmes, in making this statement, would be regarded as dishonest by the standards of ordinary decent people.

110. Accordingly, the Tribunal found paragraph 13 of the Allegation proved.

#### Paragraph 14

111. Having found Dr Holmes’ actions in relation to his email dated 18 February, his WDF on 1 March and his statement to Dr B on 15 March 2021 to be dishonest, the Tribunal went on to consider whether such actions were a deliberate attempt to conceal his breach of IOT conditions.

112. Dr Holmes has not offered an alternative explanation to the Tribunal. The Tribunal considered the possibilities that one or more of these actions was due to Dr Holmes being unable to cope with day-to-day matters following the IOT Determination, or having ‘put his head in the sand’ or was making careless mistakes. There was no evidence to support such possibilities. The Tribunal noted that such possibilities were not consistent with the fact that Dr Holmes was continuing to go to work at the Wirral Hospital, was prompt in replying to

Professor M on 18 February and had completed and returned the WDF on 1 March. The Tribunal determined that there was no obvious or irresistible inference to be drawn to establish these possibilities. The Tribunal noted that by 15 March, nearly six weeks had passed since the IOT hearing. Dr Holmes, if not attempting to conceal his breach, had had ample time in which to consider the Conditions, realise he was in breach and take steps to remedy the situation. He had been prompted by Professor M on 17 February to address the consequences of the IOT Determination and had been prompted by the GMC to be open about any current work on the WDF. The Tribunal considered there is no reasonable explanation for Dr Holmes not giving evidence on paragraph 14 of the Allegation and there were no other circumstances which would make it unfair to draw an adverse inference from his silence. The Tribunal determined that his silence on this issue added some support to the analysis.

113. The Tribunal concluded it was more likely than not that Dr Holmes' actions in relation to his email dated 18 February, his WDF on 1 March and his statement to Dr B on 15 March were a deliberate attempt to conceal his breach of IOT conditions. Accordingly, the Tribunal found paragraph 14 of the Allegation proved.

### The Tribunal's Overall Determination on the Facts

114. The Tribunal has determined the facts as follows:

1. On or around 21 August 2019 you said, in the presence of Patient A, that she required a CT Scan, "to see if she had a brain" or words to that effect. ***Determined and found proved.***
2. Your actions as set out at paragraph 1 constituted harassment related to a disability as defined in Section 26(1) of the Equality Act 2010, in that you engaged in unwanted conduct related to a disability which had the purpose or effect of violating the dignity of Patient A, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Patient A. ***Not proved***
3. On one or more occasions between 22 August 2019 and 26 September 2019, whilst working at Southern Health NHS Foundation Trust, you:
  - a. exposed your penis in a work environment; ***Determined and found proved.***
  - b. urinated in a clinical sink on a ward. ***Determined and found proved.***

4. On one or more occasions between September and October 2020, whilst working at University Hospitals Dorset NHS Foundation Trust, you failed to follow infection control protocols in that you failed to:
  - a. wear your face mask in its correct position; ***Determined and found proved.***
  - b. ensure your face mask remained in its correct position. ***Determined and found proved.***
  
5. On 30 October 2020 you attended work at Wigan, Wrightington and Leigh NHS Foundation Trust, whilst showing symptoms of Covid19 in that you had a:
  - a. constant cough; ***Determined and found proved.***
  - b. temperature of 39 degrees celsius. ***Determined and found proved.***
  
6. On one or more occasions between October and November 2020, whilst working at Wigan, Wrightington and Leigh NHS Foundation Trust, you failed to follow infection control protocols in that you failed to:
  - a. wear a face mask; ***Determined and found proved.***
  - b. when wearing a face mask:
    - i. wear your face mask in its correct position; ***Determined and found proved.***
    - ii. ensure your face mask remained in its correct position. ***Determined and found proved.***
  
7. You knowingly failed to comply with the interim order of conditions imposed on your registration on 4 February 2021, in that whilst working for National Locums at Wirral University Teaching Hospital NHS Foundation Trust between 21 January and 15 March 2021, you:
  - a. failed to personally ensure that:
    - i. the GMC was notified of the details of your current post within seven calendar days; ***Determined and found proved.***
    - ii. your Responsible Officer and the Responsible Officer of your place(s) of work and any prospective place of work (at the time of application) and any locum agency or out-of-hours service you were registered with were notified of the conditions; ***Determined and found proved.***
  - b. worked without being closely supervised in all of your posts by a clinical supervisor appointed by your Responsible Officer and did not stop work until

the Responsible Officer had appointed your clinical supervisor and approved your supervision arrangements. ***Determined and found proved.***

8. On 18 February 2021 you sent an email to ACI Doctors who were acting on behalf of your Responsible Officer, stating that you would “consider work when I see fit to resume”. ***Determined and found proved.***
9. On 1 March 2021 you completed a Work Details Form (‘WDF’) and you:
  - a. failed to include your locum position as set out paragraph 7; ***Determined and found proved.***
  - b. signed the declaration stating “I have provided the GMC with accurate details of my current and previous work as required. I can confirm that I have provided these details to the GMC truthfully and in good faith.” ***Determined and found proved.***
10. You knew:
  - a. you were working in a locum position as set out at paragraph 7; ***Determined and found proved.***
  - b. the email you sent at paragraph 8 was false as it implied you were not working at the time when you were working in the post described at paragraph 7; ***Determined and found proved.***
  - c. you were required to disclose all medical work undertaken in the last six months on the ‘WDF’; ***Determined and found proved.***
  - d. that the declaration you signed at paragraph 9b was false. ***Determined and found proved.***
11. Your actions as set out at paragraph:
  - a. 8 were dishonest by reasons of paragraphs 10a-b; ***Determined and found proved.***
  - b. 9a were dishonest by reason of 10a and 10c; ***Determined and found proved.***
  - c. 9b were dishonest by reason of paragraphs 10a, c and d. ***Determined and found proved.***
12. On 15 March 2021, you told Dr B that you “didn’t believe your IOT conditions applied to your current post” or words that effect. ***Determined and found proved.***
13. Your actions as set out at paragraph 12 were dishonest as you knew your IOT conditions applied to your current post as you were:

- a. in attendance at the hearing in which they were imposed; ***Determined and found proved.***
- b. served with a copy of your conditions after the hearing. ***Determined and found proved.***

14. Your actions as set out in paragraphs 8, 9 and 12 were a deliberate attempt to conceal your breach of IOT conditions. ***Determined and found 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 - 22/10/2024**

115. 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 Holmes' fitness to practise is impaired by reason of misconduct.

#### **The Evidence**

116. The Tribunal has taken into account all the evidence received during the facts stage of the hearing. No further evidence was adduced at this stage of the proceedings.

#### **Submissions**

117. On behalf of the GMC, Mr Lodge, Counsel, submitted that Dr Holmes had breached paragraphs 1, 11, 12, 28, 37, 46, 65 and 76 of Good Medical Practice (2013) ('GMP'). He submitted that the need to uphold proper professional standards and to uphold public confidence in the profession would require a finding of impairment in this case.

*"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.*

*11 You must be familiar with guidelines and developments that affect your work.*

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

*28 If you know or suspect that you have a serious condition that you could pass on to patients, or if your judgement or performance could be affected by a condition or its treatment, you must consult a suitably qualified colleague. You must follow their advice about any changes to your practice they consider necessary. You must not rely on your own assessment of the risk to patients.*

*37 You must be aware of how your behaviour may influence others within and outside the team*

*46 You must be polite and considerate.*

*65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

*76 If you are suspended by an organisation from a medical post, or have restrictions placed on your practice, you must, without delay, inform any other organisations you carry out medical work for and any patients you see independently."*

118. Mr Lodge referred to the case of *General Medical Council v Meadow* [2006] EWCA Civ 1390 at [32] which set out:

*'.....the purpose of FTP proceedings is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise. The FPP thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.'*

119. Mr Lodge referred to *Spencer v General Osteopathic Council* [2012] EWHC 3147 (Admin) and *Nandi v GMC* [2004] EWHC 2317 (Admin) and submitted that a definition of misconduct is set out in the case of *Roylance v The General Medical Council* (Medical Act 1983) [1999] UKPC 16:

*'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word "professional" which links the misconduct to*

*the profession of medicine. Secondly, the misconduct is qualified by the word "serious". It is not any professional misconduct which will qualify. The professional misconduct must be serious.'*

120. Mr Lodge submitted that each of Dr Holmes' actions falls within that definition. Taking the proved allegations in turn, he submitted that Dr Holmes was disrespectful and offensive towards a vulnerable patient and that members of the profession and the public would be rightly appalled and find such a comment made in the presence of a patient to be deplorable, whether or not the patient heard it. He submitted that urinating in the sink in the consultation room was highly inappropriate and indecent as the doctor failed to take appropriate steps to ensure cleanliness or privacy.

121. In terms of Dr Holmes' face mask use during Covid-19 in late 2020 prior to vaccines being available, and in light of the frequency with which the concern was observed by colleagues and reminders to correct his usage of a mask were given, Mr Lodge submitted that this conduct amounts to serious misconduct, which members of the profession and the public would consider deplorable behaviour in the circumstances.

122. In relation to the finding that Dr Holmes attended work while showing Covid-19 symptoms, Mr Lodge submitted that due to the significant cough and high temperature it must have been obvious to him that he had a condition which could be Covid-19 and he should have consulted a colleague or stayed away from work and gone for a test. Mr Lodge submitted that attending work with those symptoms was an unacceptable act and deplorable in the eyes of other practitioners.

123. Mr Lodge reminded the Tribunal of its findings that Dr Holmes knowingly failed to comply with the IOT Conditions placed on his registration on 4 February 2021, that Dr Holmes continued to work for about six weeks without close supervision and failed to give the requisite notifications to the GMC, his current employer and others. Mr Lodge submitted that Dr Holmes deliberately chose not to take steps to comply with the Conditions and acted dishonestly in an attempt to conceal his breaches of the Conditions. He sent a misleading email to his Responsible Officer implying he was not working and deliberately failed to disclose the required information on his WDF to the GMC. Once he was found not to have been complying with his conditions by his employer, he lied to a colleague by saying he did not believe the Conditions applied to his current post, in an attempt to conceal his breaches. Mr Lodge submitted that this misconduct was a serious departure from GMP.

124. Mr Lodge reminded the Tribunal to have regard to the statutory overarching objective and referred to the guidance provided by Dame Janet Smith in the Fifth Shipman report as adopted by the High Court in *CHRE v NMC and Paula Grant* [2011] EWHC 927 (Admin) (*'Grant'*). In particular, the Tribunal should consider whether its finding of facts showed that Dr Holmes' fitness to practise is impaired in the sense that he:

- 'a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- b. has in the past or is likely 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.*
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'*

125. Mr Lodge submitted that three, if not all, of those factors apply to this case.

126. Mr Lodge drew the Tribunal's attention to *Cohen v GMC* [2008] EWHC 581 in which the Court held that the task of the panel, in considering impairment, is to take account of the practitioner's misconduct and then consider it in light of all the other relevant factors known to them. The Court stated that it will be highly relevant to consider:

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

127. Mr Lodge submitted that Dr Holmes has shown little, if any insight, as to the serious nature of his misconduct. Rather than reflecting properly on the misconduct alleged against him, Dr Holmes has sought to minimize his own behaviour or deflect attention and responsibility by making criticisms of others.

128. Mr Lodge submitted that dishonesty is not easily remediable and there is no evidence of remediation. He submitted that Dr Holmes has in fact demonstrated a disregard for the regulatory process. Mr Lodge reminded the Tribunal of the email Dr Holmes sent to the GMC on 15 March 2021 and submitted it was indicative of Dr Holmes' attitude towards the regulatory process. There is a lack of evidence of insight, remorse or remediation.

129. Mr Lodge acknowledged that Dr Holmes is now over 70 years old. Mr Lodge submitted that Dr Holmes has not taken part in the hearing or provided evidence of a firm and settled intention not to seek more work as a doctor. Mr Lodge submitted that the



Tribunal can properly conclude that there remains a risk that in future, he could repeat similar misconduct.

130. Mr Lodge invited the Tribunal to find Dr Holmes' fitness to practice currently impaired on the private ground that insufficient insight was shown but also on the two public interest grounds of maintaining public confidence in the profession and upholding proper standards for the profession.

### The Relevant Legal Principles

131. The LQC advised the Tribunal 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.

132. In approaching the decision, the Tribunal must follow a two stage process: (i) to consider whether the facts found proved amounted to misconduct that is serious, and, if so, (ii) to consider whether fitness to practise is currently impaired by reason of that misconduct.

133. In relation to the first stage, the LQC advised that misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The Tribunal is guided by the standards set out in GMP. The threshold for disciplinary intervention is serious professional misconduct. The conduct must be linked to the practice of medicine or otherwise brings the profession into disrepute and it must be serious. It is some act or omission which falls short of what would be proper in the circumstances (*Yeong v GMC* [2009] EWHC 1923 (Admin) and *Roylance v GMC* (No 2) [2000] 1 AC 311 at [38]).

134. If serious misconduct is found, the Tribunal will move to the second stage and consider current impairment. The Tribunal must determine whether Dr Holmes' fitness to practise is impaired today, taking into account his conduct at the time of the events and any relevant factors since then, such as whether the matters are remediable, have been remedied and any likelihood of repetition (*Cohen v GMC* [2008] EWHC 581 (Admin) at [62-65]).

135. The Tribunal is required to have regard to the overarching objective of the Medical Act 1983 at s.1A and s.1B to protect the public and to consider each of the three limbs:

- 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.

136. There is no statutory definition of impairment, but the Tribunal is assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by Mrs Justice Cox in *CHRE v NMC and Paula Grant* [2011] EWHC 927 Admin. The Tribunal will consider whether the findings of fact show that the doctor's fitness to practise is impaired by reference to the four questions already set out by Mr Lodge above.

137. The Tribunal must pay close attention to the doctor's current understanding of and attitude towards what he has done and whether the insight shown and/or remediation undertaken addresses the true seriousness of the case found proved against him (*GMC v Khetyar* [2018] EWHC 813). When considering whether the doctor has developed insight since the events, the Tribunal will note that insight means an acknowledgement and appreciation of a failing, its magnitude and its consequences for others. Insight is essential for that failing to be properly understood, addressed and eliminated for the future. Insight is concerned with future risk of repetition.

138. The Tribunal will consider all relevant mitigation material provided by Dr Holmes. However, the Tribunal will bear in mind that matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public (*Sanusi v GMC* [2019] EWCA Civ 1172 at [95]).

#### *Dishonesty allegations*

139. The LQC advised that the nature and extent of dishonesty may be variable and must be evaluated on a case-by-case basis. As set out in *Sun v General Medical Council* [2023] EWHC 1515 at [38]:

*'...issues of probity, integrity and honesty are fundamental tenets of the medical profession, in a context where doctors occupy a position of privilege in trust and are expected to act in a manner which maintains public confidence and uphold proper standards of conduct.'*

140. The Tribunal was referred to *Nkomo v GMC* [2019] EWHC 2625 (Admin) at [35]:

*‘The starting point is that dishonesty by a doctor is almost always extremely serious. There are numerous cases which emphasise the importance of honesty and integrity in the medical profession, and they establish a number of general principles. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct.... Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance.... In such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member...’*

141. The Tribunal is guided by Mrs Justice Cox in *Grant* (above) at [74] as follows:

*‘In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.’*

## The Tribunal’s Determination on Impairment

### Misconduct

142. The Tribunal first considered whether Dr Holmes’ actions amount to misconduct, and whether that misconduct was serious, given the facts found proved.

### Paragraph 1

143. In determining whether its findings above about the remark made by Dr Holmes in the presence of Patient A and Nursing Sister, Ms D, amounted to serious misconduct, the Tribunal has borne in mind paragraphs 45 and 46 of GMP,

*‘46 You must be polite and considerate.*

*47 You must treat patients as individuals and respect their dignity and privacy.’*

144. The Tribunal reminded itself of Dr Holmes' emails in November 2023 and March 2024 in which he said he does not recollect such incident and it is highly unlikely he made such a remark, which he would find offensive and insulting. The Tribunal determined that the remark made by Dr Holmes was unacceptable as it was rude and offensive. It showed poor judgment while consulting with a patient. Dr Holmes failed in his duty to be polite and considerate of Patient A's position as a patient and it showed a lack of understanding on his part that it was his responsibility not to make a patient feel uncomfortable. It was fortunate that Patient A did not hear the remark, but his colleague, Ms D, did.

145. The Tribunal considered that despite this being an isolated incident in terms of inappropriate remarks, Dr Holmes' conduct was a departure from paragraphs 46 and 47 of GMP and engaged all three limbs of the overarching objective. The Tribunal considered that this conduct fell short of the standard expected for a medical practitioner, as members of the public expect doctors to treat patients with dignity and consideration. Other doctors would condemn such an inappropriate remark, as would the wider public. Dr Holmes has not accepted responsibility for making the remark.

146. Taking all of those factors into consideration, the Tribunal reached a finely balanced conclusion that Dr Holmes' conduct at paragraph 1 amounted to serious misconduct.

### Paragraph 3

147. The Tribunal went on to consider whether its findings above that on two occasions Dr Holmes was seen urinating in a sink in his consultation room by nursing colleagues through an internal window from the corridor amounted to misconduct. The Tribunal has borne in mind paragraph 36 of GMP:

*'36 You must treat colleagues fairly and with respect.'*

148. The Tribunal reminded itself of its findings above that there is no allegation or evidence that Dr Holmes was aware that he was visible or that he was being observed. However, it noted Mr Lodge's submission that it was indecent and a failure to take appropriate steps to ensure privacy. Dr Holmes has not responded to this allegation. He has not put forward evidence of urinary urgency or of a physical or medical need, or of an inability to go to a WC or close the blinds on the internal window before exposing his penis in his consulting room. It was not an isolated event but witnessed on two occasions. In the absence of any such mitigating evidence, the Tribunal concluded that Dr Holmes' conduct fell

short of the standards of conduct reasonably expected of a doctor so as to amount to misconduct.

149. Taking all of those factors into consideration, the Tribunal reached a finely balanced conclusion that Dr Holmes' conduct at paragraph 3 amounted to serious misconduct.

#### Paragraphs 4 and 6

150. The Tribunal considered whether its findings above in relation to failing to wear a face-mask to comply with infection control protocols at two Hospitals during Covid-19 amounted to serious misconduct. The Tribunal has borne in mind paragraphs 11, 12 and 37 of GMP referred to by Mr Lodge (above) and also 22(b):

*'22 You must take part in systems of quality assurance and quality improvement to promote patient safety. This includes:*

*...*

*b regularly reflecting on your standards of practice and the care you provide."*

151. The Tribunal considered that Dr Holmes' conduct was not an isolated departure from infection control policy but was repeated time and time again and witnessed by various members of staff. It noted that after leaving the Bournemouth Hospital where staff had prompted him to correct his mask-wearing, he repeated the behaviour at the Wigan Hospital where staff also had to prompt him to wear his mask appropriately. The conduct took place in a clinical setting, in the course of patient care. The failure to follow infection control protocol was frequent, repeated and persistent, despite requests from colleagues to comply. Dr Holmes was a very experienced Consultant and should have been aware of the infection control guidelines.

152. The Tribunal reminded itself that Dr Holmes, in his IOT submissions in February 2021, had accepted there were some instances of his mask not being in the correct position and had sought to minimise the issue and characterise it as a few accidental instances. The Tribunal did not accept his characterisation, in light of the evidence it had considered. The Tribunal considered that its findings above reflected a pattern of unacceptable behaviour by Dr Holmes and that all three limbs of the overarching objective were engaged.

153. In the circumstances, the Tribunal concluded that Dr Holmes' conduct fell seriously short of the standards of conduct reasonably expected of a doctor so as to amount to serious misconduct.

Paragraph 5

154. In determining whether its findings above about coming to work on 30 October 2020 while showing two symptoms of Covid-19 amounted to serious misconduct, the Tribunal found paragraph 28 of GMP (above) to be engaged.

155. The Tribunal reminded itself that Dr Holmes had explained in his IOT submissions that XXX and had set out his account of the circumstances in which he came to work that day and that when his temperature was taken and was found to be 39 degrees, he left. There was no allegation that Dr Holmes had come to work knowing that he had Covid-19. The Tribunal reminded itself of the evidence from GMC witnesses, as set out in its earlier determination, about the pressure due to being short-staffed and about the number of other colleagues who tested positive around the same time. The Tribunal bore in mind paragraph 38 of GMP:

*'38 Patient safety may be affected if there is not enough medical cover. So you must take up any post you have formally accepted, and work your contractual notice period before leaving a job, unless the employer has reasonable time to make other arrangements.'*

156. The Tribunal determined that it was poor judgment of Dr Holmes to come into work that day but considered that in the context of the pressure of staff shortages it was understandable, especially as there was no allegation or evidence that he knew his temperature was 39 degrees.

157. As such, the Tribunal concluded that Dr Holmes' conduct at paragraph 5 did not fall sufficiently short of the standards of conduct reasonably expected of a doctor as to amount to serious misconduct.

Paragraph 7

158. The Tribunal had regard to its findings that Dr Holmes knowingly failed to comply with the IOT Conditions imposed on his registration in February 2021 in that he continued to work at the Wirral Hospital without supervision and failed to make the requisite notifications to the GMC, his current employer, his Responsible Officer and others.

159. The Tribunal was mindful of the inter-relationship between paragraph 7 and paragraphs 8-14 of the Allegation. When considering the nature of the conduct proved in paragraphs 7-14, in addition to paragraphs 1, 65 and 76 of GMP referred to by Mr Lodge (above), the Tribunal considered that paragraphs 66, 68, 71 were also engaged:

*‘66 You must always be honest about your experience, qualifications and current role.*

*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.’*

160. The Tribunal reminded itself of its findings about Dr Holmes’ breaches of Conditions 1, 5 and 7, and that he had knowledge of these conditions and had knowingly failed to comply with them. He disregarded the prohibition against working until a clinical supervisor was arranged, approved and notified to the GMC. Dr Holmes put his own interest in continuing to work as a locum at the Wirral Hospital before those of his patients. This was very serious and engaged all three limbs of the overarching objective.

161. The Tribunal found Dr Holmes’ knowing failure to comply with the IOT Conditions particularly troubling. It determined that this conduct represented a very significant departure from the standards set by paragraphs 1, 65, 66 and 76 of GMP and that such conduct brings the profession into disrepute.

162. In the circumstances, the Tribunal concluded that Dr Holmes’ conduct in paragraph 7 fell seriously short of the standards of conduct reasonably expected of a doctor so as to amount to serious misconduct.

Paragraphs 8, 10(a), 10(b), 11(a) and 14

163. The Tribunal considered Dr Holmes' email dated 18 February 2021 to Professor M, as one of his Responsible Officers. His conduct in sending this email must be assessed in the context of the further proved Allegations 10(a), 10(b), 11(a) and 14. The Tribunal reminded itself of its findings that (i) Dr Holmes knew his email was false as it implied he was not working at the time but he was working at the Wirral Hospital; (ii) his email was dishonest, and (iii) his email was a deliberate attempt to conceal his ongoing breach of the IOT conditions.

164. The Tribunal reminded itself of its findings that from 4 February to 15 March 2021, Dr Holmes breached Condition 5 by continuing to work at the Wirral Hospital without being closely supervised by a clinical supervisor, and had breached Condition 7 by failing to give the requisite notification of Conditions 1-6 to Professor M.

165. The Tribunal considered that his dishonest conduct in relation to the content of his 18 February email:

- was a failure to make care of his patient his first concern and a failure to act with integrity (GMP 1);
- was liable to damage the public's trust in the profession (GMP 65);
- was a failure to be honest about his current role (GMP 66); and
- was a failure to be honest and trustworthy when writing an email (GMP 71).

166. This was a dishonest and deliberate attempt to conceal from a Responsible Officer his ongoing breach of Condition 5 which prohibited working until supervision was in place. The Tribunal considered that this engaged all three limbs of the over-arching objective. This conduct put patients at risk of harm, brought the profession into disrepute, breached a fundamental tenet of the medical profession and was dishonest. The Tribunal considered that this conduct fell far below the standards expected of a doctor. The Tribunal determined that Dr Holmes' conduct regarding this email constituted serious misconduct in the professional context.

Paragraph 9, 10(c), 10(d), 11(b), 11(c) and 14

167. The Tribunal considered Dr Holmes' completion and signature of the WDF on 1 March 2021. This conduct must be assessed in the context of the further proved Allegations 10(c), 10(d), 11(b), 11(c) and 14. The Tribunal reminded itself of its findings (i) about Dr Holmes' knowledge at the time and (ii) that the omission of his current post from, and signature of, the Declaration were dishonest and a further deliberate attempt to conceal his breaches of the IOT Conditions.



168. The Tribunal considered that this dishonest conduct in relation to the WDF:

- was a failure to make care of his patient his first concern and a failure to act with integrity (GMP 1);
- was liable to damage the public's trust in the profession (GMP 65);
- was a failure to be honest about his current role (GMP 66); and
- was a failure to be honest and trustworthy when completing and signing a form (GMP 71).

169. This was a dishonest attempt to conceal from the GMC as regulator his ongoing breach of Condition 5, which prohibited working until clinical supervision was in place. The Tribunal considered that this engaged all three limbs of the over-arching objective and was very serious. This conduct put patients at risk of harm, brought the profession into disrepute, breached a fundamental tenet of the medical profession and was dishonest. The Tribunal considered that this conduct fell far below the standards expected of a doctor. The Tribunal determined that Dr Holmes' conduct regarding the completion of his WDF constituted serious misconduct in the professional context.

Paragraph 12, 13 and 14

170. The Tribunal considered Dr Holmes' oral statement to Dr B in the meeting on 15 March 2021 in the late morning. Dr B of the Wirral Hospital had just found out about the IOT Conditions and had called Dr Holmes to the meeting. Dr Holmes' conduct in stating that he did not believe that the IOT Conditions applied to his current post must be considered in the context of the further proved Allegations 13 and 14. The Tribunal reminded itself of its findings that his statement to his current employer was dishonest and a deliberate attempt to conceal breaches of his IOT Conditions. The Tribunal considered that his dishonest conduct:

- was a failure to act with integrity (GMP 1);
- was liable to damage the public's trust in the profession (GMP 65);
- was a failure to be honest and trustworthy in his communication with colleagues (GMP 68).

171. The Tribunal considered that this conduct fell seriously below the standards expected of a doctor and engaged the second and third limbs of the overarching objective. This

conduct brought the profession into disrepute, breached a fundamental tenet of the medical profession and was dishonest. The Tribunal concluded that Dr Holmes' conduct regarding his oral statement to Dr B constituted serious misconduct in the professional context.

Impairment by reason of misconduct

172. The Tribunal, having found that the facts found proved amounted to serious misconduct (excluding paragraph 5 of the Allegation), went on to consider whether, as a result of that serious misconduct, Dr Holmes' fitness to practise is currently impaired.

173. The Tribunal considered whether the misconduct could be remedied. The Tribunal considered that the insulting comment in the presence of Patient A, the urination in the sink of his consulting room and his failures to comply with infection control protocols were, in principle, capable of remediation. The Tribunal considered that the knowing failure to comply with the IOT Conditions and the three instances of dishonesty in a deliberate attempt to conceal his breaches were far more difficult to remediate.

174. The Tribunal looked for evidence of insight on the part of Dr Holmes or of steps taken to remediate, in order to assess the likelihood of repetition and balance the risk of repetition against the three limbs of the statutory overarching objective.

175. The Tribunal noted its earlier finding that Dr Holmes had voluntarily absented himself from these proceedings (Annex A). He had not provided the Tribunal with evidence, submissions or an explanation for the conduct which gave rise to the Allegation. In 2021, Dr Holmes had provided written submissions to the IOT about the matters that were before the IOT at that stage and attended the IOT hearing unrepresented. As set out in its earlier determination of the facts, the Tribunal had considered those parts of his IOT submissions and emails which were relevant to some of the Allegations. The Tribunal noted that his breaches of the IOT Conditions and three instances of dishonesty arose subsequently and Dr Holmes has not provided any response to those allegations.

176. The email correspondence between the GMC and Dr Holmes in late 2023 and 2024 showed very limited engagement by Dr Holmes with these proceedings. Dr Holmes was sent the Tribunal's determination on day 1 that the hearing would proceed in his absence and has not subsequently chosen to participate. The Tribunal recognised that he was entitled to require the GMC to prove the allegations during the first stage of the hearing, but also recognised that the process allowed him the opportunity to address the Tribunal during this second stage and he had not done that.

177. The Tribunal was satisfied that Dr Holmes had had an opportunity to provide evidence, explain his conduct, apologise for any misconduct and provide evidence of having gained insight since the events, but appeared to have chosen not to do so.

178. The Tribunal determined there was no evidence of an acknowledgment, appreciation of, or apology for, his proven serious misconduct. There was no evidence that Dr Holmes had taken any steps to reflect on the individual aspects or the totality of his conduct or taken any other steps to try and remediate his conduct. There was an absence of evidence of expression by Dr Holmes of any insight.

179. The Tribunal reminded itself that Dr B discovered there were conditions on the registration of Dr Holmes and met with him to discuss this in the late morning of 15 March 2021 and that later that day Dr Holmes sent an email to the GMC, which read,

*'Just to let you know that I apparently breached the lockdown restrictions from the GMC in that i worked at Arrowpark hospital in liverpool for 7 weeks. Could you let me know when my Parole board meeting is, so I can get back to a relatively normal working environment, ie under supervision of my own nanny , in case I make a mess again, and if this is not feasible than I could finish, because what I see as an environment for work, does not comply with my feelings of normality, as I think If i was in a restricted Country like the communist blok or such, I would be more likely to be free to practice as it used to be years ago in this country and has now been changed out of all recognition, with due respect to the GMC. Specifically what is the next step to getting employment, through the GMC restriction, with an appointed supervisor?'*

180. The Tribunal considered that this email showed a complete lack of respect for his regulator and the order made at the IOT hearing. It showed a negative attitude. The Tribunal concluded there was a real risk of repetition of further disregard for the regulator and dishonesty.

181. The breaches of the IOT Conditions over a period of about 6 weeks and the three instances of dishonesty were the most serious instances of misconduct. This was not a case of one moment of bad judgment or bad choice while in a stressful clinical situation. Dr Holmes had time to compose the email on 18 February and time to complete and sign the WDF on 1 March 2021. The Tribunal considered that the breaches of Conditions and his dishonesty breached the fundamental tenet of honesty, probity and integrity and brought the profession into disrepute. This undermines public confidence in the profession. The Tribunal was under no doubt that Dr Holmes' fitness to practice was currently impaired by the very serious misconduct found at paragraphs 7-14 of the Allegation.

182. The Tribunal considered that the misconduct found at paragraph 1 would be capable of remediation and that Dr Holmes had described such a remark as insulting (while not accepting that he had made it). There was no evidence of a current apology to the member of staff who heard the remark or of training undertaken to remediate. In the absence of evidence of insight and remediation, the Tribunal considered there was a real risk of repetition. The Tribunal determined that this misconduct added a further element to the conclusion that Dr Holmes' fitness to practice is currently impaired by misconduct.

183. The Tribunal considered that the misconduct found at paragraph 3 would be capable of remediation. However, Dr Holmes has not responded to this allegation about urination in the sink in his consulting room. There was no evidence of a current apology to the members of staff who saw his exposed penis from the corridor or of training undertaken to remediate. In the absence of evidence of insight and remediation, the Tribunal considered there was a real risk of repetition. The Tribunal determined that this misconduct added a further element to the conclusion that Dr Holmes' fitness to practice is currently impaired by misconduct.

184. The Tribunal considered that the misconduct found at paragraphs 4 and 6 relating to failing to comply with infection control protocols was capable of remediation. However, there was no evidence of a current apology or of training undertaken to remediate. In the absence of evidence of insight and remediation, the Tribunal considered there was a real risk of repetition. The Tribunal determined that this misconduct added a further element to the conclusion that Dr Holmes' fitness to practice is currently impaired by misconduct.

185. The Tribunal reminded itself of the overarching objective and its duty to protect, promote and maintain the health safety and wellbeing 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 accepted that there was no evidence of any harm to patients. The Tribunal considered that Dr Holmes' serious misconduct brought the medical profession into disrepute and breached one or more of the fundamental tenets of the medical profession.

186. In considering whether Dr Holmes' fitness to practise is currently impaired, the Tribunal balanced its findings in respect of insight, remediation and the risk of repetition against the statutory overarching objective. The Tribunal determined that Dr Holmes' proven dishonesty would damage public confidence in the medical profession if a finding of impairment were not made. The Tribunal further concluded that given its findings of fact and serious misconduct, a finding of impairment of fitness to practise was necessary to promote and maintain proper standards of conduct for the medical profession.

187. The Tribunal therefore determined that Dr Holmes' fitness to practise is impaired by reason of misconduct.

#### **Determination on Sanction - 23/10/2024**

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

#### **The Evidence**

189. The Tribunal took into account the evidence received during the earlier stages of the hearing where relevant to a decision on sanction. No further evidence was adduced at this stage.

#### **Submissions**

190. On behalf of the GMC, Mr Lodge submitted that the appropriate sanction was one of erasure. He referred the Tribunal to its determination on impairment as well as a number of paragraphs in the Sanctions Guidance (February 2024) (the 'SG').

191. Mr Lodge submitted that all three limbs of the overarching objective were engaged and needed to be kept in mind. He reminded the Tribunal that the sanction was not intended to be punitive but recognised that it may have this effect. He further reminded the Tribunal of Dr Holmes' conduct giving rise to these proceedings, including failing to comply with conditions imposed by the IOT, dishonesty, an insulting remark made in the presence of a patient and not following infection control protocols.

192. In relation to mitigating factors, Mr Lodge referred to the lapse of time since the misconduct whilst also noting that IOT restrictions had prevented scope for repetition of any misconduct. In relation to aggravating factors, Mr Lodge submitted that there was a lack of insight, there was no apology for or acceptance of the misconduct and there had been a failure to work collaboratively with colleagues in relation to the wearing of a mask during Covid-19 and urinating in the sink.

193. Mr Lodge submitted that taking no action in this case would be inappropriate and would undermine public confidence. He submitted there are no exceptional factors in this case to justify taking no action.

194. Mr Lodge submitted that imposing conditions would be inappropriate and not workable. He said that Dr Holmes' past failure to comply with the IOT Conditions was evidence that he could not be trusted to comply with regulatory conditions. He said that Dr Holmes has shown insufficient insight and has taken no steps towards remediation. Therefore, conditions would be inappropriate.

195. Mr Lodge submitted that suspension was also not appropriate. He reminded the Tribunal that suspension was appropriate in cases where the conduct is serious but falls short of being fundamentally incompatible with continued registration. He stated there has been no acknowledgement of fault by Dr Holmes, that Dr Holmes has failed to engage with these proceedings and has shown no remorse, remediation or insight. He further stated there was no evidence of how Dr Holmes would prevent a recurrence of his misconduct. He submitted there is nothing upon which the Tribunal could conclude that remediation is likely to be successful.

196. Mr Lodge submitted that the only appropriate sanction open to the Tribunal was one of erasure. He stated that Dr Holmes had made serious and repeated departures from 2013 GMP and has undermined public confidence in the profession and the maintenance of proper standards and conduct. He submitted that the allegations found proved were serious; that Dr Holmes' attitude towards infection control and his IOT Conditions showed a blatant disregard for the safeguards designed to protect members of the public and maintain high standards, and that Dr Holmes' dishonesty has been persistent and serious. He stated that the dishonesty was to cover up breaches of the IOT Conditions and started with failure to disclose to his employer the IOT Conditions and was compounded by dishonest communications with his Responsible Officer.

197. Mr Lodge submitted that Dr Holmes' repeated and serious departures from the principles in 2013 GMP, his persistent and repeated acts of dishonesty and lack of insight, all indicated that a sanction of erasure was necessary to meet the overarching objective.

### **The Tribunal's Approach and Determination on Sanction**

198. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken into account the SG and the statutory overarching objective.

199. Following the LQC's advice, the Tribunal bore in mind that the primary purpose of a sanction is to uphold the overarching objective to protect the public, rather than to punish

doctors, although a sanction may have a punitive effect. In deciding what sanction is necessary to protect the public, the Tribunal will consider the range of sanctions available, starting with the least restrictive and working up through the scale.

200. The Tribunal took a proportionate approach, balancing the interests of Dr Holmes with the public interest. It bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor, as set out in *GMC v Khetyar* [2018] EWHC 813 (Admin) at [60], “... it is a fundamental tenet of the sanctions regime, reflecting the statutory overarching objective, that the reputation of the profession as a whole is more important than the interests of any individual doctor”.

201. The Tribunal considered all relevant aggravations and mitigations. It bore in mind that matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public.

202. The Tribunal reminded itself of what is stated about dishonesty by a doctor in paragraph 35 of *Nkomo* (above, in the determination on impairment) and noted that paragraph 35 also states, ‘Where dishonest conduct combined with a lack of insight, is persistent, or covered up, nothing short of erasure is likely to be appropriate’.

203. The Tribunal bore in mind that any sanction must be proportionate to the gravity of the misconduct and impairment. The Tribunal noted that the cases consistently emphasise the inherent gravity of dishonesty in a doctor but also make clear that erasure for dishonesty is not automatic; this is because the nature and extent of dishonesty may be variable and must be evaluated on a case by case basis (*Sawati v GMC* [2022] EWHC 283 at [121, 127]).

### **Mitigating factors**

204. The Tribunal, during the course of the hearing, gave careful consideration to the documents written by Dr Holmes in the bundle, including his written submissions dated 3 February 2021 for the IOT hearing and email correspondence with the GMC.

205. The Tribunal considered that the lapse of time since the misconduct was essentially neutral by reason of the interim order of suspension which has been in place since April 2021.

206. The Tribunal noted its earlier finding that Patient A had not heard the insulting remark. The Tribunal also noted there was no evidence before it that actual harm came to

any patient during the period when Dr Holmes continued to work at the Wirral Hospital in breach of the IOT Conditions, including the prohibition against working until a clinical supervisor was arranged, approved and notified to the GMC. However, the Tribunal understood that any such mitigation should be given limited weight in cases of dishonest misconduct which damages the reputation of the profession, because the reputation of the profession is more important than the fortunes of an individual member.

### **Aggravating factors**

207. The Tribunal considered it was an aggravating factor that, as set out in its determination on impairment, there was no evidence of expression by Dr Holmes of insight into his breaches of the IOT Conditions, his three instances of dishonesty or other proven misconduct. There was no acceptance of responsibility or apology. The Tribunal recognised that Dr Holmes had been entitled to require the GMC to prove the allegations during the first stage of the hearing, but also recognised that the process allowed him the opportunity to address the Tribunal during the second and third stages and he had not done so.

208. The fact that some of the misconduct involved lack of probity was an aggravating factor. As set out in its earlier determination of facts, Dr Holmes had knowingly breached the IOT Conditions. His breaches included failing to inform his current employer of the Conditions, continuing to work despite the prohibition against working until a clinical supervisor was arranged, approved and notified to the GMC and failing to give requisite notifications to other persons. He also engaged in three instances of dishonesty in a deliberate attempt to conceal his breaches. His dishonesty involved sending a misleading email to his Responsible Officer on 18 February, signing a false declaration on the WDF and returning it to the GMC on 1 March, and making a false statement to Dr B at a meeting on 15 March 2021. This dishonest misconduct related to his professional work as a doctor and was directed towards a Responsible Officer, the GMC as regulator and his current employer.

209. This is not a case of an isolated, single incident of ‘heat of the moment’ dishonesty when under pressure on the clinical front line and for no personal gain. Dr Holmes was in breach of the IOT Conditions for a period of about six weeks. Dr Holmes had time to consider the content of his email to his Responsible Officer on 18 February and had time to complete and sign the WDF for the GMC. These attempts to conceal his breaches were to his personal gain as they enabled him to continue to work at the Wirral Hospital and earn money as a locum. His oral statement to Dr B about his conditions was a little different, as it was made in the moment at a meeting.



210. The Tribunal considered that the repeated failure by Dr Holmes to wear a face mask correctly during Covid-19 and his urinating in the sink in his consultation room were failures to work collaboratively with colleagues.

### No action

211. The SG says that on a finding of impairment, there must be exceptional circumstances to justify taking no action to protect the public. The Tribunal determined that there were no such circumstances in this case to justify taking no action.

### Conditions

212. The Tribunal had regard to paragraphs 81 and 82 of the SG:

*81 Conditions might be most appropriate in cases:*

*a involving the doctor's health*

*b involving issues around the doctor's performance*

*c where there is evidence of shortcomings in a specific area or areas of the doctor's practice*

*d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.'*

*82 Conditions are likely to be workable where:*

*a the doctor has insight*

*b a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings*

*c the tribunal is satisfied the doctor will comply with them*

*d the doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.*

213. The Tribunal considered that, in principle, conditions might be an appropriate and proportionate sanction to address the insulting comment made by Dr Holmes in the presence of Patient A, his urination in the sink in his consultation room and his failures to follow infection control protocols, if those issues stood alone, but they did not. The further findings that Dr Holmes knowingly breached the IOT Conditions and engaged in three instances of dishonesty in a deliberate attempt to conceal his breaches were very serious and demonstrated a significant attitudinal failure rendering conditions unsuitable.

214. The Tribunal noted that the IOT Conditions imposed on 4 February 2021 had allowed Dr Holmes to continue to practice, if he complied with what was required of him at that time. That interim order gave him the opportunity to address and manage the regulatory concerns under consideration at that time. However, Dr Holmes breached the IOT Conditions and in those circumstances the IOT suspended his registration in April 2021.

215. The Tribunal considered that a sanction of conditions would not be sufficient to address the public interest in protecting public safety and well-being, in maintaining public confidence in the profession or in maintaining proper professional standards and conduct for practitioners. Conditions would not address the need to protect members of the public from practitioners in whose honesty and integrity they cannot trust. The Tribunal considered that the breaches of IOT Conditions and dishonesty fall outside the scope of SG 81. Further, the Tribunal could not have any confidence that conditions would be complied with or be workable because of the past breaches of IOT Conditions and the lack of evidence of insight.

### Suspension

216. Having determined that an order of conditions would not be an appropriate sanction, the Tribunal went on to consider suspension. It considered paragraphs 91, 92 and 93 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.*

217. The Tribunal was satisfied that Dr Holmes' misconduct in relation to breaching the IOT Conditions and his dishonesty was so serious as to require action to be taken to protect members of the public and maintain public confidence in the profession, therefore satisfying the first part of SG 92.

218. The Tribunal considered that Dr Holmes' knowing breaches of the IOT Conditions and his three instances of dishonesty in a deliberate attempt to conceal his breaches were very serious matters and at the upper end of the spectrum of gravity of misconduct. Such misconduct was difficult to remediate. Further, there is evidence that remediation of this misconduct is unlikely to be successful, because of the nature of this conduct and his current unwillingness to engage with this regulatory process or attend this hearing. The Tribunal did not consider that this misconduct fell short of being fundamentally incompatible with continued registration; therefore, this case does not satisfy the second part of SG 92.

219. Further, in relation to SG 93, the Tribunal noted there was no evidence of an acknowledgement of fault in relation to his insulting remark in the presence of Patient A, his urination in the sink, his repeated failure to wear his face mask, his breaches of the IOT Conditions or his three instances of dishonesty. Given the lack of expression of his current understanding of and attitude towards these findings of misconduct, the Tribunal could not be satisfied that Dr Holmes has insight, or that there was no risk of repetition in future or that the risk was so small as to be acceptable.

220. The Tribunal also considered paragraph 97 of the SG, which sets out some factors that indicate when suspension may be appropriate. The Tribunal found that this case does not match sub-paragraphs a, e or g as follows:

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

*a A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the medical register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.*

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

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

221. The Tribunal considered that the breaches of the IOT conditions and the three instances of dishonesty are fundamentally incompatible with continued registration. The Tribunal considered that complete removal from the register is in the public interest and suspension would not be sufficient to protect the public. Therefore, the Tribunal considered that an order of suspension would not be sufficient or appropriate to address the regulatory concern.

### Erasure

222. The Tribunal went on to consider erasure. It had regard to paragraphs 108 and 109 of the SG:

*108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*

*109 Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).*

*a A particularly serious departure from the principles set out in Good medical practice where the behaviour is difficult to remediate.*

*b A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.*

*...*

*h Dishonesty, especially where persistent and/or covered up*

*j Persistent lack of insight into the seriousness of their actions or the consequences.*

223. The Tribunal also considered paragraphs 120 -128 of the SG relating to dishonesty. In particular:

*120 Good medical practice states that registered doctors must be honest and trustworthy, and must make sure that their conduct justifies their patients' trust in them and the public's trust in the profession.*

*...*

*124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing false statements or*

*fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.*

125 *Examples of dishonesty in professional practice could include:*

.....

*e failing to take reasonable steps to make sure that statements made in formal documents are accurate*

.....

128 *Dishonesty, if persistent and/or covered up, is likely to result in erasure.*

224. The Tribunal considered that Dr Holmes' knowing breaches of the IOT Conditions for nearly six weeks, and his three instances of dishonesty in a deliberate attempt to conceal his breaches, were fundamentally incompatible with continued registration as a doctor. The Tribunal considered that erasure is necessary to maintain public confidence in the profession and to promote and maintain proper professional standards. It determined that the factors described in paragraphs 109 (a), (b), (h) and (j) of SG were present for the reasons set out in its determination on facts and on impairment.

225. The Tribunal determined it would be consistent with the SG to conclude that the most appropriate and proportionate sanction for the misconduct of Dr Holmes was that his name should be erased from the register. It is a fundamental tenet of the Sanctions regime, reflecting the overarching objective, that the reputation of the profession as a whole is more important than the interest of any individual doctor. The Tribunal considered that there was nothing in the evidence before it to show circumstances to justify departing from the clear steer towards erasure set out in the SG.

226. The Tribunal determined that Dr Holmes, through his breaches of the IOT Conditions and his three instances of dishonesty, had seriously undermined public confidence in the profession and had brought the profession into disrepute. It concluded that the sanction of erasure was necessary and proportionate to repair public confidence in the profession and to promote and maintain proper professional standards.

**Determination on Immediate Order - 23/10/2024**

227. Having determined to erase Dr Holmes' name from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Holmes' registration should be subject to an immediate order.

## Submissions

### Submissions on behalf of the GMC

228. Mr Lodge submitted that an immediate order is necessary to protect members of the public and protect public confidence in the profession. He also submitted that the current interim order should be revoked.

## The Tribunal's Determination

229. The Tribunal had regard to the submissions made by Mr Lodge and to the guidance contained within the SG, in particular, paragraphs 172, 173 and 178 which state:

*“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.”*

230. The Tribunal bore in mind the above paragraphs of the SG and took account of its findings on impairment and sanction. The Tribunal determined that an immediate order of suspension is necessary to protect members of the public, to protect confidence in the medical profession and is in the wider public interest.

231. This means that Dr Holmes' registration will be suspended from the date on which notification of this decision is deemed to have been served upon him. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

232. The interim order will be revoked when the immediate order takes effect.

233. That concludes this case.

ANNEX A – 14/10/2024

Determination on service and proceeding in Dr Holmes' absence

234. Dr Holmes was neither present nor represented at the hearing held remotely on TEAMS. This new MPT hearing involves allegations of misconduct. The Tribunal considered whether it would be appropriate to proceed with this hearing in Dr Holmes' absence pursuant to Rule 31 of the GMC (Fitness to Practise) Rules 2004 ('the Rules'), which states:

*'Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'*

#### Service of the Notice of Allegation and the Notice of Hearing

235. The Tribunal had regard to the bundle of documents provided to it in relation to service of documents and considered the submissions made by Mr Adam Lodge, Counsel, on behalf of the General Medical Council (GMC). Mr Lodge submitted that the Notice of Hearing had been properly served on Dr Holmes in accordance with Rule 40(1) of the General Medical Council ('GMC') ('Fitness to Practise') Rules Order of Council 2004 ('the Rules') and that the hearing should proceed in the doctor's absence.

236. The Tribunal considered the Medical Practitioners Tribunal Service (MPTS) Notice of Hearing, dated 6 September 2024, which was emailed to Dr Holmes's GMC registered email address and the 'read receipt' received from Dr Holmes' email address on 9 September 2024, which stated that the email had been opened on 7 September 2024.

237. The Tribunal considered the GMC's email sent to Dr Holmes's GMC registered email address on 6 September 2024 attaching the Notice of Allegation and a Rule 34(9) letter. The Tribunal considered the email reply from Dr Holmes sent by him on 7 September in which Dr Holmes acknowledged receipt. Dr Holmes did not give notice that he required any GMC witness to attend the hearing to give oral evidence or be available for cross-examination.

238. The Tribunal considered the further email correspondence between the GMC and Dr Holmes on 9 September 2024 in which the GMC asked Dr Holmes whether he intended to attend the hearing and Dr Holmes replied, *'Unfortunately not available due to a prior commitment, Best wishes Matthew'*. The GMC sent a further email to ask Dr Holmes if he would attend if the hearing was to be rearranged and Dr Holmes replied, *'No thanks but thanks for the consideration, most thoughtful of you'*.



239. The Tribunal was satisfied that the contents of the MPTS Notice of Hearing satisfied the requirements of Rule 15(1)(b).

240. Accordingly, having considered the service bundle provided by the GMC, together with Mr Lodge's submissions and all of the evidence before it, the Tribunal was satisfied that the GMC Notice of Allegation and the MPTS Notice of Hearing had been properly served in accordance with Rules 15 and 40 of the Rules and paragraph 8 of Schedule 4 to the Medical Act 1983.

### **Proceeding in Dr Holmes' absence**

241. Having been satisfied that the Notice of Hearing had been properly served on Dr Holmes, the Tribunal went on to consider whether it would be appropriate to use its discretion to proceed with this hearing in Dr Holmes' absence under Rule 31.

242. Mr Lodge invited the Tribunal to proceed and referred to the case of *General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162*. Mr Lodge submitted that Dr Holmes was aware of these proceedings but had voluntarily absented himself. He submitted that there was no explanation for his non attendance, no application for an adjournment and no indication that any adjournment would result in securing his attendance. Mr Lodge submitted it was in the public interest for the allegations to be dealt with as swiftly as possible.

243. The Tribunal had regard to the eight propositions set out by Mr Justice Morris at paragraph 22 in *Ramaswamy v GMC [2021] EWHC 1619 (Admin)*.

244. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with great care, that fairness to both sides must be taken into account, balancing the interests of the doctor with the wider public interest and the over-arching objective of section 1(1A) of the Act.

245. The Tribunal noted that there is a burden on practitioners to engage with the GMC in relation to the resolution of allegations made against them. The Tribunal was satisfied that Dr Holmes had been informed of the hearing. The documents provided by the GMC and MPTS to Dr Holmes included appropriate guidance and informed him of his options to seek an adjournment or assistance, as well as informing him that the hearing may proceed in his

absence. The Tribunal considered the emails on 9 September 2024 in which the doctor initially said that he was not available due to a prior commitment but then confirmed that he did not wish to attend should the hearing be rearranged. The Tribunal noted there was no application for an adjournment from Dr Holmes. In light of the evidence before it, the Tribunal was satisfied that Dr Holmes had voluntarily absented himself from these proceedings.

246. The Tribunal acknowledged that Dr Holmes' input in these proceedings would be helpful, if not crucial, in determining whether the allegations should be found proved. The Tribunal noted that the disadvantage to a practitioner in not taking part in the hearing is mitigated by the overriding objective of the Rules to deal with cases fairly and justly. It noted that the GMC still has the burden of proving allegations at stage 1 and, that in the absence of admissions from the doctor at stage 1, the Tribunal will consider all the evidence and make findings of fact to determine what is more likely than not.

247. However, the Tribunal balanced any disadvantage to Dr Holmes in not taking part against the seriousness of the allegations to be determined, as well as the fact that there was no evidence that any adjournment would result in securing Dr Holmes' attendance at any subsequent hearing. The Tribunal had regard to the need for the fair, economical, expeditious and efficient disposal of allegations, the GMC's statutory overarching objective and the wider public interest. Having balanced all of the relevant factors and having regard to all the circumstances of the case, the Tribunal determined that it was in the public interest to proceed with the hearing, as scheduled, in the doctor's absence.

248. Therefore, in accordance with Rule 31, the Tribunal has determined to proceed in Dr Holmes' absence.

## **ANNEX B– 21/10/2024**

### **Determination on Application to Amend the Allegation pursuant to Rule 17(6)**

249. On day 3 of the hearing, Mr Adam Lodge as Counsel for the GMC, applied to amend paragraph 7 of the Allegation pursuant to Rule 17(6) of the GMC's (Fitness to Practise) Rules 2004, as amended ('the Rules'). The amendment was to the identity of the locum agency for whom Dr Holmes was working in early 2021. The proposed amendment was to change 'National Locums' to 'Locum Reach'.

250. Rule 17(6) provides:

*17(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—*  
*(a) the allegation or the facts upon which it is based and of which the*  
*practitioner has been notified under rule 15, should be amended; and*  
*(b) the amendment can be made without injustice,*  
*it may, after hearing the parties, amend the allegation in appropriate terms.*

251. The GMC applied to amend on the basis of the witness statement evidence of Dr B and Professor M to the effect that Dr Holmes was placed at Wirral University Teaching Hospital NHS Foundation Trust in early 2021 by an agency called ‘Locum Reach’.

252. The Tribunal considered whether the amendment would cause injustice to Dr Holmes who was not participating in the hearing. The Tribunal was satisfied on the evidence that it was more likely than not that Dr Holmes was associated with more than one locum agency. The Tribunal noted that Dr Holmes must have known the identity of the agency that he had used to obtain the placement at Wirral in early 2021 and therefore the proposed change to ‘Locum Reach’ would not introduce a new matter outside his knowledge or take him by surprise.

253. The Tribunal considered that the identity of the agency that had placed him is relevant to Allegation 7(a)(ii), that he failed to comply with condition 7 of the order made by the Interim Orders Tribunal (‘IOT’) on 4 February 2021. Condition 7 required notification to various persons, including his Responsible Officer and the Responsible Officer of any locum agency or out-of-hours service he was registered with. Condition 7 was not limited to notification to the agency which had placed him at his current work. Dr Holmes has not sought to defend the allegation by evidence that he had notified a specific agency, by contrast to other agencies. Dr Holmes has not put forward evidence of having taken steps to give the notifications required by the order for conditions.

254. The Tribunal noted that Dr Holmes had identified ‘National Locums’ when he signed a Work Details Form on 1 March 2021 and emailed it to the GMC. The Tribunal considered that the original drafting as ‘National Locums’ was a minor error and the evidence supported a correction to ‘Locum Reach’.

255. The Tribunal determined that the amendment from ‘National Locums’ to ‘Locum Reach’ could be made without injustice to Dr Holmes. The Tribunal determined that the allegation should be amended and that it was appropriate in the circumstances to make the amendment.