PUBLIC RECORD

Dates: 15/01/2024 - 30/01/2024; 26/04/2024; 15/07/2024 – 16/07/2024

Medical Practitioner's name:	Dr Gurkirit KALKAT
GMC reference number:	3325245
Primary medical qualification:	MB ChB 1989 University of Liverpool

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

Summary of outcome

Suspension, 12 months.

Tribunal:

Legally Qualified Chair	Mr Stephen Killen
Lay Tribunal Member:	Mr David Propert
Medical Tribunal Member:	Mr Julian Williams

Tribunal Clerk:	Miss Keely Crabtree

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Mr Ryan Donoghue, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 26/01/2024

Background

1. Dr Kalkat qualified in 1989 with a Bachelor of Medicine, and Bachelor of Surgery (MB ChB) from the University of Liverpool. He completed a diploma in Family Planning in 1993, before completing the speciality training for General Practice (MRCGP) in 1994.

2. Dr Kalkat worked as a House Surgeon at Whipps Cross Hospital London from August 1989 until January 1990. He then moved to St Margaret's Hospital, in Essex working as a House Physician until July 1990. In August 1990, Dr Kalkat became a Senior House Officer at Princess Alexander Hospital in Essex, working in Accident & Emergency, Obstetrics & Gynaecology, Psychiatry and Paediatrics.

3. Dr Kalkat commenced his General Practitioner (GP) training at South Street Surgery, in Hertfordshire and in December 1994 he moved to Thames View Health Centre ('the Health Centre') in Barking as a GP. In 1995, Dr Kalkat took over as sole owner of the Health Centre.

4. In 2002, Dr Kalkat completed specialist GP training in Substance Abuse, via a one-year online training course arranged by the Royal College of General Practitioners. In April 2020, after the events which give rise to the Allegation in this case, the Health Centre merged with King Edwards Medical Group and became Aurora Medcare. Dr Kalkat works solely at the Health Centre.

5. On 31 October 2020, the GMC received a self-referral from Dr Kalkat following advice from his local Performance Advisory Group (PAG) as a result of concerns which had been raised by Patient A with NHS England on 10 February 2020.

6. Patient A had a history of addiction to prescription drugs and was for a number of years a patient at the Health Centre.

7. The allegation that has led to Dr Kalkat's hearing is set out in full below.

The Outcome of Applications Made during the Facts Stage

8. The Tribunal determined that service of the notice of this hearing had been effected in accordance with Rule 40 of the GMC (Fitness to Practise Rules) 2004 as amended ('the Rules') and determined to proceed with the hearing in Dr Kalkat's absence in accordance with Rule 31. The Tribunal's full decision on the application is included at Annex A.

9. The Tribunal granted the GMC's application, made pursuant to Rule 17(6), for a typographical amendment to Schedule 5, which relates to paragraph 9 of the Allegation. The Tribunal was satisfied that it would cause no injustice to amend the schedule. The date will now read 3 January 2020, instead of 3 October 2020. Dr Kalkat's representatives had been placed on notice of the GMC's application at the request of the Tribunal, and they indicated by email that there was no objection to the amendment.

10. The Tribunal granted Dr Kalkat's application, made pursuant to Rule 34(1), to admit further evidence. The evidence (GK/03) consisted of a report that was prepared following an incident on 3 February 2020 at the Health Centre and Patient A's subsequent removal from Dr Kalkat's patient list. Within the document Ms C, an employee at the Health Centre, appears to have prepared a written account of what she witnessed during the interaction between Dr Kalkat and Patient A on that date. Mr Donoghue on behalf of the GMC, opposed the application. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Kalkat is as follows:

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

1. On or around 25 and/or 27 September 2019 you inappropriately:

a. asked Patient A to sign a contract which stipulated:

"you are happy with Dr Kalkat's practice offer to pay for your treatment for rehabilitation treatment at [XXX], and therefore agree not to take any further legal action or make a complaint against Dr Kalkat, other doctors at the practice or any staff regarding this situation"; To be determined

b. advised Patient A that the Health Centre would only pay for him to attend a rehabilitation clinic on the condition that when he came out, he would write to his local MP and tell her how good you had been to Patient A, or words to that effect. To be determined

2. On one or more of the dates set out in:

a. Schedule 1, you made a payment to Step One Recovery UK Ltd; To be determined

b. Schedule 2, you made a payment to Step to Step Recovery; To be determined

for Patient A to undergo private rehabilitation treatment, which was inappropriate as the money used was from your personal bank account.

3. Between December 2019 and January 2020 you inappropriately gave one or more monetary gifts Patient A as set out in Schedule 3. To be determined

4. In or around October 2019, whilst Patient A was an in-patient at XXX you telephoned him and said that you had been speaking with one of your lawyer friends about Patient A and he had advised you that:

a. Patient A was in the wrong, not you; To be determined

b. if Patient A were to make a complaint or seek legal action, then your insurance and lawyers would cover it and it would take Patient A over a year to get any legal help and by that time he would still be on all the pills and would have to get a hospital detox'; To be determined

or words to that effect.

5. Your actions as described at paragraphs 1 - 4 were designed to prevent Patient A from making a formal complaint and/or taking action against you and/or Thames View Health Centre ('the Health Centre') regarding the monitoring of his prescription medication. To be determined

6. During consultations on or around the dates set out in Schedule 4, on one or more occasion you told Patient A that you could no longer be his general practitioner as you:

   a. had blood cancer; To be determined
   b. were going to travel to America for treatment; To be determined
   c. only had six months to live; To be determined
   d. had a 90 percent chance of dying; To be determined

   or words to that effect, which was untrue.

7. You knew that the statements you made to Patient A as set out at paragraph 6 were untrue. To be determined

8. Your actions as described at paragraph 6 were:

   a. designed to encourage Patient A to register with another general practitioner; To be determined

   b. dishonest by reason of paragraph 7. To be determined

9. On one or more of the dates set out in Schedule 5 you inappropriately offered to give Patient A £15,000 to fund further rehabilitation treatment on the condition that Patient A register with another general practice surgery ('the Offer'). To be determined

10. On one or more occasion you told Patient A that if he didn't accept the Offer, you could ruin him, or words to that effect. To be determined

11. On one or more occasion in September 2019, you:

    a. attended at Patient A's home address unannounced and:

       i. banged loudly on the front door; To be determined

       ii. asked to speak to Ms B. To be determined

12. On 3 February 2020 you informed the police that Patient A had assaulted you, which was untrue. To be determined

13. You knew the information you provided to the police as set out in paragraph 12 was untrue. To be determined

14. Your actions as described at paragraph 12 were dishonest by reason of paragraph 13. To be determined

15. On 22 September 2020, as part of an investigation into your treatment of Patient A, you were asked to give details of payments made to the rehabilitation centre for his treatment, or words to that effect. To be determined

16. On 15 October 2020 you provided the response set out in Schedule 6 ('the Response'), containing information which was untrue, in that:

    a. you had not made any payments to Patient A directly; To be determined

    b. the total amount you stated you had paid was incorrect. To be determined

17. You knew that the Response contained information which was untrue. To be determined

18. Your actions as described at paragraph 16 were dishonest by reason of paragraph 17. To be determined

19. At all material times Patient A was vulnerable due to his health. To be determined

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

The Admitted Facts

12. Dr Kalkat was not present or represented at the hearing and therefore no oral admissions were made during the hearing.

13. However, via his legal representatives, Dr Kalkat submitted his own formal witness statement dated 8 December 2023 which the Tribunal has read and considered in reaching its decisions.

14. In that statement, Dr Kalkat made admissions to a number of the paragraphs of the Allegation, which the Tribunal took into account. However, the Tribunal decided that, in the circumstances of this case, it would treat all of the paragraphs of the Allegation as 'to be determined' until all of the evidence had been heard and considered.

Witness Evidence

15. The Tribunal received evidence on behalf of the GMC from the following factual witnesses via video-link:

- Patient A; and
- Ms B.

Expert Witness Evidence

16. The Tribunal received an expert report dated 23 September 2021 and a supplemental expert report dated 16 March 2022 prepared by Dr E, expert witness for the GMC. Dr E is an experienced General Practitioner, with training in the management of substance misuse in general practice. The Tribunal also heard oral evidence from Dr E via video-link.

Documentary Evidence

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

- Dr Kalkat's self-referral to the GMC dated 31 October 2020;
- NHS England investigation documents;
- Patient A's initial complaint and statement to the GMC dated 16 April 2021;
- Patient A medical records;
- Contract between Dr Kalkat and Patient A dated 25 to 27 September 2019;
- Letter from Dr Kalkat to Patient A dated 30 September 2019;

- Bank statement of Patient A recording entries of monetary deposits sent to him from Dr Kalkat on 23 December 2019 and 26 January 2020;
- Transcripts of audio recordings made covertly by Patient A during three separate consultations with Dr Kalkat: recording 1 dated 3 January 2020, recording 2 dated 10 January 2020 and recording 3 dated 17 January 2020;
- Police Case Summary date 10 January 2022;
- Correspondence between the GMC and Ms C;
- Correspondence between the GMC and the Metropolitan Police Service (MPS);
- MPS computer aided dispatch (CAD) screen shot;
- Testimonials in support of Dr Kalkat.

The Tribunal's Approach

18. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests entirely on the GMC and Dr Kalkat 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.

19. The Tribunal also heard and accepted the legal advice received from the Legally Qualified Chair (LQC) which, whilst being a matter of record, included, but was not limited to, advice on:

- the burden and standard of standard of proof;
- the assessment of witness' credibility and demeanour;
- inconsistencies;
- dishonesty;
- inferences and adverse inferences;
- previous lies;
- character; and
- hearsay.

20. The Tribunal has taken into account all of the evidence and the submissions made by Mr Donoghue and Dr Kalkat's legal representatives in their letter dated 12 January 2024.

The Tribunal's Analysis of the Evidence and Findings

21. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings on the facts. In reaching its decisions, the Tribunal was conscious of the fact that Dr Kalkat had submitted a formal written statement to the Tribunal in which he admits a number of the paragraphs, and that Rule 34(6) provides that:

> *"(6) The practitioner may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved".*

22. Having heard and considered all of the evidence presented / admitted, the Tribunal considered that in respect of a number of the paragraphs of the Allegation, Dr Kalkat had formally made written admissions and it was appropriate to find proved those paragraphs of the Allegation to which the admissions related.

Paragraph 1(a)

'1. On or around 25 and/or 27 September 2019 you inappropriately:

a. asked Patient A to sign a contract which stipulated:

"you are happy with Dr Kalkat's practice offer to pay for your treatment for rehabilitation treatment at [XXX], and therefore agree not to take any further legal action or make a complaint against Dr Kalkat, other doctors at the practice or any staff regarding this situation";'

23. The Tribunal noted that it had been provided with copies of two contracts – one dated 25 September 2019 and the second dated 27 September 2019. Both contracts were headed *'Contract between Dr Kalkat's Practice and [Patient A] DOB XXXX'*. Both contracts appeared to be signed by Dr Kalkat, Patient A and a third-party witness. Six of the seven clauses of each of the contracts relate to agreements regarding the prescribing of controlled medication. The seventh and final clause in each of the contracts contained the wording alleged in paragraph 1a of the Allegation.

24. In his email of complaint to the GMC in April 2021, Patient A said that:
'*Before sending me there, I had to sign a contract on the 27th September 2019, this contract stated that I was happy with the practice paying for me to go to rehab.'*

25. In his oral evidence, Patient A said that Dr Kalkat drew up the contracts and in an initial version a statement was included which indicated that Patient A accepted having 'ordered' extra medication. Patient A said that he informed Dr Kalkat that he would not sign that and this statement was then removed from the two contracts which he then signed, following telephone calls with Dr Kalkat. Patient A said that, in one of these phone calls, Dr Kalkat had indicated that he had re-worded the last paragraph of the proposed contract and added the lines referred to in this paragraph of the Allegation.

26. When asked if clause seven was inserted / amended at his request, Patient A was adamant that it was not his suggestion or request. Patient A queried why he would have requested such wording to be put in a contract.

27. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

> *'30. Following Patient A's complaint and following his request for inpatient treatment, I had explained to Patient A that we should have an agreement in place for how his prescriptions would be monitored going forwards. This was intended as a way to ensure Patient A would stick to the plan. The wording of the agreement was prepared following a discussion with Patient A about what he would want to see in the agreement. I prepared the wording that is set out in the agreement at page 106 of the GMC's bundle. Initially the agreement did not contain the wording in paragraph 7 which relates to Patient A not taking matters further. However, Patient A requested this was included. At the time I did not question why Patient A wanted this including and I did not turn my mind to whether it was appropriate.'*
>
> *…*
>
> *'I accept that Patient A signed the agreement which contained the above wording. However, as explained at paragraph 30 above, at the time I did not consider the wording was inappropriate; I accepted the wording Patient A wanted including in the agreement.*
>
> *In hindsight, I accept that I should not have agreed to include the wording which said Patient A would not take the matter further. It was never my intention to limit or stop Patient A from taking his complaint further if he felt it was necessary to do so. I fully accepted that Patient A had raised a complaint with the Health Centre around August*

2019 and had investigated the concerns thoroughly. The result of which was this agreement which set out a plan for monitoring prescriptions and Patient A's medication intake going forwards. In addition, I reminded Patient A on 11 October 2019 (after the agreement was signed) that he could complain to the CCG or the Health Ombudsman if he remained unhappy.'

28. The Tribunal had regard to the unchallenged evidence in Dr E's written report, in which he stated:

"In my opinion, on 25th and 27th September 2019, the contract signed by Dr Kalkat and Patient A was not appropriate; in particular, with regard to the provision that Patient A:

> *"[was] happy with Dr Kalkat's practice offer to pay for your treatment for rehabilitation treatment at [XXX], and therefore agree not to take any further legal action or make a complaint against Dr Kalkat, other doctors at the practice or any staff regarding this situation."*

This aspect of the contract associated Dr Kalkat's payment for treatment with Patient A not taking further action against Dr Kalkat's Surgery. Chronologically this contract was signed around the time of Dr Kalkat's first payment to the rehabilitation facility; in my opinion, this further strengthens the association. Dr Kalkat's action in seeking to have this agreement between him and Patient A drawn up and signed was not consistent with GMC Good Medical Practice'.

29. In support of his conclusions that this clause was inappropriate, Dr E referenced paragraphs 58, 61, 65 and 80 of Good Medical Practice ('GMP'), which read as follows:

'58
You must not deny treatment to patients because their medical condition may put you at risk. If a patient poses a risk to your health or safety, you should take all available steps to minimise the risk before providing treatment or making other suitable alternative arrangements for providing treatment.

61
You must respond promptly, fully and honestly to complaints and apologise when appropriate. You must not allow a patient's complaint to adversely affect the care or treatment you provide or arrange.

65

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

80

You must not ask for or accept – from patients, colleagues or others – any inducement, gift or hospitality that may affect or be seen to affect the way you prescribe for, treat or refer patients or commission services for patients. You must not offer these inducements'.

30. The Tribunal noted that the contracts which were signed were prepared by Dr Kalkat. As confirmed by Dr E in his oral evidence, the majority of the provisions in the contracts were of a standard nature and dealt with issues regarding the prescription of controlled drugs. These were the types of contracts / agreements which are routinely signed up to by patients with dependency on these types of drugs.

31. However, according to Dr E, the provision in clause seven of each of the contracts was not of a type ordinarily seen in these types of contracts. The clause clearly sought to preclude Patient A from either making a complaint or taking legal action against Dr Kalkat or staff at the Health Centre and Dr E considered it inappropriate for the reasons above.

32. The Tribunal accepted Dr E's unchallenged expert opinion that this provision was inappropriate, and his reasoning in respect of those conclusions. In reaching this view, the Tribunal noted that Dr Kalkat accepts that Patient A signed the agreement containing the wording alleged. He said that he did not at the time consider the wording to be inappropriate, but 'in hindsight', he should not have 'agreed' to include the wording.

33. The Tribunal considered that, at all stages in respect of the formation and execution of this contract, Dr Kalkat was in a position of power – being the person offering to pay for rehabilitation treatment for Patient A on foot of the signing of the written contract; and being the person preparing it.

34. The Tribunal did not consider it credible that the clause was inserted at the request of Patient A. Patient A would have nothing to gain from the inclusion of such a clause. The Tribunal considered that the only party to the contract to benefit from this clause was Dr Kalkat.

35. In light of the above, the Tribunal found paragraph 1(a) of the Allegation proved.

Paragraph 1(b)

'1. On or around 25 and/or 27 September 2019 you inappropriately:

b. advised Patient A that the Health Centre would only pay for him to attend a rehabilitation clinic on the condition that when he came out, he would write to his local MP and tell her how good you had been to Patient A, or words to that effect.'

36. In his written email of complaint which was sent in April 2021, Patient A stated:

'Also before sending me there [rehabilitation centre]*, he* [Dr Kalkat] *stated that he would only send me on one condition, this condition was that when I come out of rehab that I would have to write to the local MP and tell her how good Dr Kalkat has been to me and how nice it was of him to send me to the rehab, he said that this would get him extra funding for the surgery so it was very important to him that I did this.'*

37. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'This allegation is denied.

I did not advise Patient A that the Health Centre would pay for him to attend a rehabilitation clinic on the condition that he would write to his local MP and comment on how good I had been. My intention was only ever to help Patient A.

There was no benefit in Patient A complimenting me to the local MP.'

38. In reaching a decision in respect of this paragraph of the Allegation, the Tribunal noted that there was no condition or mention in the contract between Patient A and Dr Kalkat stipulating that Patient A should write to his local MP about the treatment he had received from Dr Kalkat. In his oral evidence, Patient A stated:

'I actually thought it was at the bottom of the contract but it is not. The time we spoke about it was in between all this, while we was doing this. It was two or three days I had to keep going back and forward, taking an old one back and getting another one.

We spoke about it when we first spoke about going to rehab. He was doing something kind for me and I could do something kind for him. He said I could help students coming in and out of rehab and I could write to MP.'

39. The Tribunal also noted that Patient A had indicated in his oral evidence that he had written to the named local MP previously about a different unrelated matter. When the contents of Dr Kalkat's statement were put to Patient A on this issue, Patient A said:

'It wasn't a condition. The condition was I sign the contract. But I was asked after I came out of rehab, the condition for going to rehab was that I sign the contract'.

40. However, Patient A then said:

'We had a long conversation about this. It was a condition.'

41. In all the circumstances, the Tribunal concluded that a conversation regarding representations to a local MP likely did occur between Patient A and Dr Kalkat, however the Tribunal could not be sure when the conversation took place or who the person was to bring the matter up. The Tribunal noted that this was not a condition included in the signed contracts, which one might have expected had Dr Kalkat considered it a condition for payment of the rehabilitation fees.

42. Overall, the Tribunal did not consider that the GMC had discharged its burden of proof on this matter and accordingly it found this paragraph of the Allegation not proved.

Paragraph 2(a) and (b)

'*2. On one or more of the dates set out in:*

a. Schedule 1, you made a payment to Step One Recovery UK Ltd;
b. Schedule 2, you made a payment to Step to Step Recovery;

for Patient A to undergo private rehabilitation treatment, which was inappropriate as the money used was from your personal bank account.'

43. The Tribunal noted that, in his first report, Dr E opined as follows:

'It was not, in my opinion, appropriate for Dr Kalkat to fund Patient A's rehabilitation as he did. This is the case whether Dr Kalkat's account is accepted or if Patient A's account is accepted. Both Dr Kalkat's account and Patient A's account are broadly consistent in stating that between September 2019 and November 2019, Dr Kalkat provided payments to two drug rehabilitation facilities of around £25,000, when a refund from the first facility is said to have taken place. Dr Kalkat stated that his initial impulse to fund Patient A's treatment was due to concern that his Surgery's prescriptions had contributed to Patient A's problems. Furthermore, Dr Kalkat stated that he had a history of giving money to charitable causes. Dr Kalkat does not state that, at this time, he was being subjected to threats from Patient A. Patient A's account also associates these payments with Dr Kalkat being concerned about how Patient A had been treated and implies that he believed that Dr Kalkat was seeking to help him at this time. In my opinion, whichever account is considered, then Dr Kalkat's initial funding of approximately £25,000 for Patient A's rehabilitation was exceptional and far beyond any reasonable consideration of what was appropriate for a relationship between a doctor and patient. … However, the size of this payment is disproportionate and goes beyond any reasonable definition of goodwill; for example, as might be claimed to justify a small payment to a patient who had been disadvantaged financially by an administrative error made by the surgery or suffered damage to their property on surgery premises. Dr Kalkat paying money directly out of his own bank account rather than via his Surgery was also inappropriate. Whatever Dr Kalkat's intention, this gift, in my opinion, established an improper financial relationship between Dr Kalkat and Patient A, in the sense that Dr Kalkat's actions made Patient A 'indebted' to Dr Kalkat financially, and this had the potential to inappropriately influence Patient A's care. This gift, in my opinion, had the potential to undermine trust in the medical profession. The size of this gift was such that it should have been understood by Dr Kalkat at the time of the events of concern that his actions were inappropriate. Dr Kalkat's action in giving Patient A the initial funding for his drug rehabilitation was inconsistent with GMC Good Medical Practice and seriously below the standard expected of a reasonably competent general practitioner. …

44. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'33. The treatment centre Patient A found was called [XXX]. I had not heard of them before so I researched them online and also contacted the facility by telephone to confirm it was CQC registered and to also find out more information regarding the

type of clinical supervised treatment plans the service would provide to Patient A. Following this, I made a bank transfer to [XXX] of £3,000 as a deposit on 25 September 2019, followed by £13,800 on 1 October 2019. This money was transferred from my personal bank account to Step One Recovery UK Limited (the company who runs [XXX]). This paid for a six week detox under medical supervision.

…

42. Due to the threats from Patient A, I agreed to fund a second rehabilitation centre, [XXX]. Patient A found [XXX]; I understand Patient A had been researching a new inpatient facility whilst he was still at [XXX]. I had not heard of the [XXX] facility prior to this. The plan was for Patient A to go to [XXX] for inpatient treatment like had been the plan at [XXX]. As I had not heard of [XXX] before, I researched the facility online and also contacted the facility by telephone to confirm it was CQC registered and to also find out more information regarding the type of clinical supervised treatment plans the service would provide to Patient A, like I had done with [XXX]. Following this, I made a bank transfer to [XXX] of £7,000 on 11 November 2019, followed by £19,000 on 13 November 2019. This money was transferred from my personal bank account to Step by Step Recovery (the company who runs [XXX]). This paid for a 12 week residential treatment and reduction programme. This time the inpatient treatment was for 12 weeks as Patient A had said that is what he wanted as he felt that a longer rehabilitation would be better for him.'

'As set out at paragraphs 33 and 42 above, I transferred the money set out Schedule 1 from my personal bank account to Step One Recovery UK Ltd and the money set out in Schedule 2 from my personal bank account to Step by Step Recovery.

At the time I did not turn my mind to whether this was inappropriate, however in hindsight, I fully accept that it was not appropriate for me to use money from my personal bank account to fund Patient A's inpatient treatment.'

45. The Tribunal noted that, despite Dr Kalkat's assertions of Patient A having threatened him and his suggestions that he was acting under duress, he accepts that it was inappropriate for him to use money from his personal bank account to fund Patient A's inpatient treatment.

46. Dr E was clear in his report and in his oral evidence that, even if there were threats or duress applied, it was still in his view inappropriate for Dr Kalkat to make payments for rehabilitation treatment from his personal bank account for the reasons outlined.

47. In light of Dr E's unchallenged conclusions and Dr Kalkat's own acceptance of the fact that he did make the two alleged payments and it was inappropriate to do so, the Tribunal found paragraphs 2(a) and (b) of the Allegation proved. In the circumstances, it did not consider that it was necessary to come to any conclusions in respect of any asserted threats or duress for the purposes of finding this fact proved or not proved.

Paragraph 3

'3. Between December 2019 and January 2020 you inappropriately gave one or more monetary gifts Patient A as set out in Schedule 3.'

48. In his initial complaint, Patient A stated that shortly before Christmas 2019, Dr Kalkat transferred £1200 into his back account as a gift and said this was to spend on Patient A's partner and children. Patient A said *'I politely declined but this was put in my bank account directly from him*'.

49. Patient A also said that Dr Kalkat subsequently transferred £150 into his account.

50. The Tribunal was provided with copies of Patient A's bank statements confirming these payments.

51. In his witness statement, Dr Kalkat said the following:

> *'49. Following Patient A's threats, I regrettably transferred £1,200 to Patient A on 23 December 2019. This amount was specified by Patient A and I got his bank details as he came into the Health Centre and told me them verbally whilst I wrote them down.*
> *…*
> *52. On 28 January 2020, I transferred £150 to Patient A. Again I accept that I should not have transferred the money to Patient A, however he told me that he needed the money to see a Specialist Consultant Psychiatrist. Patient A said that this money could be taken from the £15,000 he had asked for. Patient A had asked for this money and he never tried to return this money to me.'*
>
> *'This allegation is admitted.*

As set out at paragraphs 49 and 52 above, I transferred the money to Patient A following threats of harm. I sincerely regret giving Patient A the money on these two occasions, however I was genuinely scared of Patient A and did not know what other options I had.'

52. The Tribunal noted that, in his first report, Dr E opined as follows:

'Dr Kalkat denies giving any money directly to Patient A. If this is accepted, then no inappropriate gift was given to Patient A. Dr Kalkat says that during December 2019 he was subjected to threats to himself and his family from Patient A. If this accepted then, while giving this gift to Patient A would potentially undermine GMC Good Medical Practice as set out in relation to Dr Kalkat's original payment for rehabilitation at Q.8 (above), I am mindful that Dr Kalkat may have been genuinely fearful for his own and his families welfare, which would potentially provide mitigation for his actions. If it is accepted that sufficient mitigation is provided by this consideration then Dr Kalkat's actions, although in retrospect unwise, were understandable.

If it is not accepted that sufficient mitigation is provided by this consideration then Dr Kalkat's actions were unacceptable, inconsistent with GMC Good Medical Practice and seriously below the standard expected or a reasonably competent general practitioner. Dr Kalkat's actions were seriously below the standard expected because they undermined GMC Good Medical Practice in a fundamental way. If Patient A's account is accepted then, at the end of December 2019, Dr Kalkat gave Patient A a gift of £1,200 and subsequently, at the end of January 2020, a gift of £150 when Patient A had not threatened Dr Kalkat, and indeed when Patient A did not wish to receive such a gift. If this accepted then Dr Kalkat's actions were unacceptable, inconsistent with GMC Good Medical Practice and seriously below the standard expected or a reasonably competent general practitioner. Dr Kalkat's actions were seriously below the standard expected because they undermined GMC Good Medical Practice in a fundamental way'.

53. In his second report, following receipt of further documentary evidence, Dr E then stated:

'…However, the additional information does provide corroborative evidence that Dr Kalkat did provide funds directly to Patient A's bank account and indicates dates on

which these transfers took place. This leads to some amendments in my opinion, and my conclusions, as shown at Q.8 & Q.9 (below).

…

I would now wish to amend my opinion to:

> *If Patient A's account, including the evidence provided by Patient A in his bank statements, is accepted then, on 23rd December 2019, Dr Kalkat gave Patient A a gift of £1,200 and subsequently, on 28th January 2020, a gift of £150 when Patient A had not threatened Dr Kalkat, and indeed when Patient A did not wish to receive such gifts. If this is accepted, then Dr Kalkat's actions were unacceptable, inconsistent with GMC Good Medical Practice and seriously below the standard expected of a reasonably competent general practitioner. Dr Kalkat's actions were seriously below the standard expected because they undermined GMC Good Medical Practice in a fundamental way.*
>
> *…*
>
> *See GMC (2013) Maintaining a professional boundary between you and your patient. This guidance focuses upon sexual and improper emotional relationships between doctors and patients, but Dr Kalkat's actions established a financial relationship which was improper and analogous to the relationships envisaged in this document'.*

54. The Tribunal noted that Dr Kalkat accepts that he made the two payments in question and having had the benefit of legal advice he admits the allegation which includes the assertion that the payments were inappropriate. On this basis, and taking into account Dr E's views as outlined, the Tribunal found this paragraph of the Allegation proved.

55. Although the Tribunal accepted Dr Kalkat's admissions in this regard, for the avoidance of any doubt, for the same reasons articulated above in relation to payment by Dr Kalkat of rehabilitation fees, the Tribunal considered the payment of monies to a patient was generally inappropriate, but it was particularly so in the overall circumstances which pertained between Dr Kalkat and Patient A.

Paragraphs 4(a) and (b)

'4. In or around October 2019, whilst Patient A was an in-patient at [XXX] you telephoned him and said that you had been speaking with one of your lawyer friends about Patient A and he had advised you that:

a. Patient A was in the wrong, not you;

b. if Patient A were to make a complaint or seek legal action, then your insurance and lawyers would cover it and it would take Patient A over a year to get any legal help and by that time he would still be on all the pills and would have to get a hospital detox';

or words to that effect.'

56. The Tribunal noted Patient A's witness statement dated 2 August 2022, which states:

'Dr Kalkat also used to ring me on a private number daily about how I was doing but the conversations became threatening. This happened because on one occasion, Dr Kalkat was asking me what doctors were saying. I told him that the doctors at rehab were not happy with the medication. Dr Kalkat said he had been talking to his lawyer friend and I was in the wrong not him… I was really upset after the call, so the carers at rehab told me to stop answering his calls which I did, but Dr Kalkat tried to call me on a private number which I answered, and he apologised to me.'

57. In his written complaint against Dr Kalkat in April 2021 Patient A stated:

'Whilst I was there, he insisted that there was consistent contact between us, during one of our conversations he told me that "i have been speaking to one of my lawyer friends about you and he has advised me that you are in the wrong and not me", I responded to dr kalkat by asking whether or not I should seek legal advice as he is. To this he responded with "my lawyer friend has advised me that if you were to make a complaint or seek legal action then my insurance and my lawyers would cover it and it would take you over a year to get any legal help and by that time you will still be on all the pills and you will have to get a hospital detox"…'

58. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'39. On 9 October 2019, Patient A called me and said he would need longer than six weeks at [XXX]. At this point, I told Patient A that there was no more funding and he became very vocal and threatened legal action. I recorded that I felt Patient A was trying to blackmail me and the Health Centre and felt there was a breakdown in the doctor/patient relationship. I accept that at this point I should have sought advice

from other colleagues but at the time my focus was to get Patient A help. It is difficult to explain my thought process at the time, other than I was not thinking rationally and felt under immense pressure to help Patient A.

40. On 11 October 2019, Patient A called me asking for me to pay for an additional four weeks of rehabilitation treatment. I recorded in his medical records that I felt Patient A was trying to blackmail me and the Health Centre. In addition, I reminded Patient A that he could complain to the CCG or the Health Ombudsman if he was unhappy in any way. I also recorded that I felt intimidated and threatened by Patient A.

41. Following the above interactions, Patient A called me and said that he did not feel that [XXX] were reducing his medication quickly enough and he wanted to seek treatment at another rehabilitation facility. Patient A would call the Health Centre frequently asking to speak to me and became very aggressive towards staff who answered the telephone. During one of the telephone calls, Patient A began threatening to harm me and my family if I did not get him into another inpatient facility and fund it. Patient A also said he knew where I lived. I was very concerned and took these threats seriously. Patient A made comments about knowing I lived on an estate which confirmed to me that he did know where I lived. In hindsight, I should have called the Police at that point, however I did not as I was really frightened of repercussions from Patient A. I have never in all my years as a GP experienced threats from a patient and was genuinely scared of Patient A.

These allegations are denied.

Whilst I did speak to Patient A when he was an inpatient at [XXX] I never once spoke to him in a threatening manner or said he was wrong or that if he did complain it would take him over a year to resolve and would need a hospital detox.
As I have set out above, over the years of seeing Patient A I have made several attempts to get him into treatment; my intention has only ever been to help Patient A.'

59. The Tribunal had regard to the notes made by Dr Kalkat on 9 October 2019 at 16:30 in Patient A's medical records, as follows:

'Problem - Telephone encounter (Review)

History - I spoke with [Patient A] this afternoon. He is the rehabilitation centre and has started to reduce his medication. He advised me that he thinks that he will need longer than the 6 weeks that has been facilitated and paid for by the practice. I have advised that there is no more funding that can we can put in now. At this point he became very vocal and suggested that he would make a complaint and threatened taking legal action. I advised him that we had dealt with his initial complaint appropriately and he was happy with that and had also agreed for us to facilitate the funding for his current rehabilitation admission (which he acknowledged and agreed that we have done). I feel that he is trying to blackmail me and our practice, and will discuss with the practice manager. I feel there has been a break down of doctor/ patient relationship.'

60. The Tribunal also had regard to the notes made by Dr Kalkat on 11 October 2019 at 15:25 in Patient A's medical records, as follows:

'Problem - Telephone encounter (Review}

History – [Patient A] has once again contacted me and is asking us to pay for an additional 4 weeks for his rehabilitation. Once again I feel that he is trying to blackmail the me and the practice. I reminded him of the discussion/complaint that we on 25/09/2019. I also reminded him that he can complain to the CCG or Health Ombudsman if he is unhappy in any way. I feel intimidated and threatened by the patient. I will discuss with my practice manager.'

61. In reaching a conclusion in respect of this paragraph of the Allegation, the Tribunal took into account all available evidence.

62. The Tribunal noted that both Patient A and Dr Kalkat have indicated that telephone contact did continue between them while Patient A was an in-patient at XXX. Both suggest that the telephone calls involved threats, however both allege the threats emanated from the other. On the basis of both accounts, therefore, the conversations were at times clearly 'heated'. Some contemporaneous records exist which were entered by Dr Kalkat which, if accepted as genuine, might be said to support Dr Kalkat's version of events.

63. Patient A has been reasonably consistent in his accounts of this alleged telephone conversation, both in writing and in his oral evidence. When Dr Kalkat's written version of events was put to Patient A on this issue, he was adamant that the conversation as alleged took place.

64. However, the Tribunal was conscious that during his oral evidence, Patient A was, at times, somewhat inconsistent in his recall of certain events and his evidence on specific details could sometimes be vague or conflicting.

65. These are not criticisms of Patient A. He was attempting to recall events at a very difficult time of his life, and which now had occurred more than four years ago. The difficulties Patient A was experiencing at the time related to the use of very large doses of prescribed controlled medication. Reference was made by Patient A in both his written and oral evidence to the impact of the medication on his body and mind at that time.

66. However, the Tribunal considered that the inconsistencies identified had to weigh in the balance when assessing some aspects of Patient A's evidence on specific details of alleged events.

67. The identified inconsistencies / conflicting evidence included the following:

- With regard to paragraph 1b of the Allegation, the Tribunal found that Patient A's evidence was inconsistent as to what he considered to be a condition of payment for rehabilitation treatment.
- With regard to evidence relating to paragraph 11 of the Allegation, as outlined in more detail in the discussion relating to that paragraph below,
    - Patient A said that Ms B was not present, whereas Ms B said that she was;
    - Patient A said that Dr Kalkat knocked on the door, whereas Ms B said that Dr Kalkat rang the external intercom;
    - Patient A said that he spoke to Dr Kalkat face to face, whereas Ms B said that Patient A answered the intercom and she and Patient A ultimately ignored Dr Kalkat;
    - Patient A referred to several telephone numbers, whereas Ms B referred to one telephone number.
- With regard to events leading up to the incident on 3 February 2020, which form the basis of paragraphs 12 – 14 of the Allegation,
    - Patient A stated in some detail in his written complaint in April 2021 that a difficult exchange with Ms D occurred via telephone and during this telephone conversation Patient A indicated he wanted to return £150 that Dr Kalkat had placed in his bank account. Patient A concluded describing this event by detailing that Ms D 'put the phone down'.

  - However, in his oral evidence with regard to this exchange, Patient A described, again in some detail, how he physically attended the Health Centre to return a £150 postal order and had asked to speak to Dr Kalkat. Patient A described speaking face to face / having an argument with Ms D and placing the postal order down on the counter of the surgery.
  - An entry in Patient A's GP notes and records, entered by Ms D recorded that the exchange occurred by telephone. The Tribunal did note, however, that the GK/03 report made reference, which was not replicated in Patient A's notes and records, to Patient A attending the surgery twice on 31 January 2020.
  - When the Tribunal put the inconsistency between his written statement and oral evidence to Patient A, he was adamant that the exchange had taken place face to face and he said that his son had assisted him in putting his complaint email together and typing it up. Patient A said that his detailed written complaint was prepared over the course of three months in conjunction with his son.
- Patient A stated that he had informed Ms B about the £1200 which Dr Kalkat had transferred to his account in December 2019, when it was transferred. He said she was 'a bit shocked as well'. However, Ms B in her oral evidence said that she was only aware of £150 being transferred she did not know about this larger sum of £1200. Ms B indicated that she thought that this was the amount Dr Kalkat was offering to Patient A to leave the surgery.
- In his oral evidence, Patient A initially said that he tried to return the £1200, however this did not appear in his written evidence; and subsequently in his oral evidence, Patient A said that he did not try to return the money and he used it for Christmas presents.
- With regard to the incident on 3 February 2020 at the Health Centre, which forms the basis of the allegations at paragraphs 12 – 14 of the Allegation, there were inconsistences in Patient A's written statement and oral evidence as to how and when Ms C entered the room, and also as to who told Dr Kalkat to press the panic button. These are outlined in more detail in the discussion relating to that paragraph.

68. In all the circumstances, the Tribunal concluded that it was not satisfied that it could rely on Patient A's account when it came to the specific detail of this paragraph of the Allegation. As such, although the Tribunal concluded that heated conversations were occurring between Patient A and Dr Kalkat at the relevant time, it could not be satisfied to the requisite standard that Dr Kalkat had said the words alleged, or indeed words to that effect.

69. Accordingly, the Tribunal found paragraphs 4(a) and (b) of the Allegation not proved.

Paragraph 5

'5. Your actions as described at paragraphs 1 - 4 were designed to prevent Patient A from making a formal complaint and/or taking action against you and/or Thames View Health Centre ('the Health Centre') regarding the monitoring of his prescription medication.'

70. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

> *'This allegation is denied*
>
> *… I reminded Patient A that he could complain to the CCG or the Health Ombudsman if he was unhappy. Ultimately, Patient A did submit a complaint, both locally and to the GMC.*
>
> *…*
>
> *The wording as set out in allegation 1a was included at the request of Patient A; I did not include this wording initially. I accept I should have turned my mind to whether it was appropriate to include such wording, however it was never included with the intention of preventing Patient A from taking his complaint further.*
>
> *I accept making the payments to the two inpatient treatment facilities but this was to help Patient A; it was never done with the intention of preventing Patient A from taking his complaint further.*
>
> *…I accept making the two payments directly to Patient A, however this was following threats from Patient A who demanded the money. Again, this was never done with the intention of preventing Patient A from taking his complaint further. When Patient A complained around August 2019 I looked into his concerns thoroughly and told Patient A about the action I had taken. As far as I was aware, Patient A was happy with the action I had taken. I have never stopped and would never try and stop Patient A or any other patient from complaining.*

My intention throughout all this was to help Patient A. I never expected or would ever expect anything in return; as a GP my job is to help patients, something which I have done for 30 years.'

71. As indicated previously, the provision in clause seven of each of the two contracts which Dr Kalkat had Patient A sign was not of a type ordinarily seen in these types of contracts. The clause by its explicit wording clearly sought to preclude Patient A from either making a complaint or taking legal action against Dr Kalkat or staff at the Health Centre.

72. Furthermore, as previously indicated the Tribunal found it inherently implausible that Patient A would ask for his own ability to make a complaint to be restricted or curtailed. The Tribunal could identify no reason why Patient A would ask for this clause to be inserted and determined that the only person it benefitted was Dr Kalkat.

73. The Tribunal therefore concluded that Dr Kalkat had been the instigator of this contract and had asked Patient A to sign it, agreeing not to complain in exchange, as the condition of his treatment being funded by Dr Kalkat.

74. Dr Kalkat had paid significant amounts of money for Patient A's private rehabilitation treatment from his personal bank account after the execution of the second contract, containing this clause.

75. The Tribunal considered that the available evidence made it patently obvious that Dr Kalkat's actions at paragraphs 1(a), 2(a) and 2(b) of the Allegation were designed to prevent Patient A from making a formal complaint and/or taking action against him and/or Thames View Health Centre regarding the monitoring of his prescription medications.

76. With regard to Dr Kalkat's payments to Patient A of £1200 and £150 respectively, Dr Kalkat indicated in his statement that these payments were made following threats of harm by Patient A.

77. The Tribunal noted that Dr Kalkat did not attend the hearing and did not give oral evidence. His statement evidence could therefore not be tested. The Tribunal noted that other hearsay evidence relating to apparent threats by Patient A in entries in Patient A's GP notes and records also could not be tested. For reasons explained in detail in the analysis relating to paragraph 12 of the Allegation, below, the Tribunal considered it appropriate to draw an adverse inference in this case as a result of Dr Kalkat's failure to attend and give

evidence. Further, again as outlined below in the analysis relating to paragraph 12 of the Allegation, the Tribunal took into account the fact that Dr Kalkat had lied during the investigation of these matters.

78. In those circumstances and taking account of the Tribunal's conclusions regarding paragraphs 1, 2(a) and 2(b) the Tribunal considered it appropriate to infer that the subsequent payments of £1200 and £150 respectively, were also made to prevent Patient A from making a formal complaint and/or taking action against him and/or Thames View Health Centre regarding the monitoring of his prescription medications.

79. The Tribunal therefore concluded that Dr Kalkat's combined actions towards Patient A, as set out in paragraphs 1(a), 2(a), 2(b) and 3 of the Allegation, both individually and collectively, were intended to prevent Patient A from making a formal complaint against the surgery or taking other action against it, regarding the prescription issues which had arisen.

80. Accordingly, the Tribunal found paragraph 5 of the Allegation determined and found proved as it relates to those paragraphs.

Paragraph 6(a), (b), (c) and (d)

'6. During consultations on or around the dates set out in Schedule 4, on one or more occasion you told Patient A that you could no longer be his general practitioner as you:

a. had blood cancer;
b. were going to travel to America for treatment;
c. only had six months to live;
d. had a 90 percent chance of dying;

or words to that effect, which was untrue.'

81. The Tribunal had regard to Dr Kalkat's response to these paragraphs of the Allegation, as follows:

'These allegations are admitted.'

82. The Tribunal accepted Dr Kalkat's admissions and, accordingly, found paragraphs 6(a), (b), (c) and (d) of the Allegation proved.

Paragraph 7

'7. You knew that the statements you made to Patient A as set out at paragraph 6 were untrue.'

83. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

> *'This allegation is admitted.*
>
> *I did not have or suspect I had blood cancer. I told Patient A this information in the hope he would feel sorry for me and stop threatening me.'*

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

Paragraph 8(a)

'8. Your actions as described at paragraph 6 were:

a. designed to encourage Patient A to register with another general practitioner;'

85. The Tribunal reminded itself that Dr Kalkat admitted that, although untrue, he had told Patient A that he (Dr Kalkat):

- had blood cancer;
- was travelling to America for treatment;
- had only six months to live;
- had a 90% chance of dying.

86. The Tribunal noted Dr Kalkat's written response to this Allegation, in which the following was stated:

> *'This allegation is denied, however against a background of extreme pressure [XXX] I do accept that during the course of consultations in January 2020, Patient A changing GPs arose during conversations and I saw this as a way to end my patient/doctor relationship with Patient A.*

However, I first told Patient A I was unwell prior to the January 2020 consultations. I told Patient A I was unwell so that he would hopefully feel sorry for me and stop with the threats and trying to extort money from me. That was the primary reason.'

87. The Tribunal noted the Police Case Summary dated 10 January 2022, as follows:

'…There are also concerns that GSK has told [Patient A] that he has cancer in order to get [Patient A] to stop being his patient…'

88. The Tribunal had regard to the transcripts of Patient A's consultations with Dr Kalkat, which Patient A secretly recorded. It considered that the conversations gave the clear and indisputable impression that Dr Kalkat was attempting to influence Patient A to register with another general practitioner. An example of the exchanges which gave the Tribunal this clear impression are as follows:

'Dr Kalkat: And I only come in to see certain people – yeah? But what I want to do is I want to make sure that before I go, and hope ... You know, like the guys say, with this immunotherapy they're going to give me these antibodies

Patient A: Yeah.

Dr Kalkat: -- which fight the cancer, so it's a bit like chemotherapy ---

Patient A: Yeah.

Dr Kalkat: -- but slightly different. If it works, it might give me another five or six months.

Patient A: Yeah.

Dr Kalkat: If it doesn't work, then I might not be about summer.

Patient A: Because I ... Do you know what, on ... I was sitting at home and I was thinking to myself, do you know what, like ... I mean, you're really ill ---

Dr Kalkat: Mmm.

Patient A: -- and you're still at work and you're still ...

Dr Kalkat: Somebody has got to earn.

Patient A: Yeah, and you're still offering to give me money when really ---

Dr Kalkat: I'm going ---

Patient A: -- you could just go home and ---

Dr Kalkat: -- I'm going to do that for you.

Patient A: Yeah.

Dr Kalkat: Because I promised you.

Patient A: Yeah, yeah, yeah.

GK: Man to man – right? All I want you to do is get yourself set up with a practice.

Patient A: Yeah.

GK: Next week, come and see me.

Patient A: Yeah.

GK: The week after, get yourself registered.

Patient A: Yeah.

GK: That week, in the middle of the week, I'll transfer the £10K ... £15K to you.'

'GK: That's only £11 ... £12,000, giving you an extra £3,000.'

89. The Tribunal considered that the audio transcripts of conversations between Patient A and Dr Kalkat supported this paragraph of the Allegation that Dr Kalkat's actions as described at paragraph 6 were designed to encourage Patient A to register with another

general practitioner. Dr Kalkat made the case that he first told Patient A he was ill prior to the January 2020 consultations, and that his primary reason was the hope that Patient A '*would hopefully feel sorry for me and stop with the threats and trying to extort money from me'.* However, the Tribunal considered the conversations during the consultations to be clear in proving this paragraph of the Allegation, as it is worded.

90. Accordingly, the Tribunal found paragraph 8(a) of the Allegation proved.

Paragraph 8(b)

'8. Your actions as described at paragraph 6 were:

b. ***dishonest by reason of paragraph 7.'***

91. The Tribunal noted that Dr Kalkat stated the following in his formal statement:

'This allegation is admitted.

I fully accept my actions in being dishonest to Patient A were wrong and I regret acting in such a way. At the time I was very worried and confused and felt the only way out was to try and convince Patient A that I was unwell so he would feel sorry for me and stop the threats.'

92. The Tribunal accepted Dr Kalkat's admissions and accordingly found paragraph 8(b) of the Allegation determined proved.

Paragraph 9

'9. On one or more of the dates set out in Schedule 5 you inappropriately offered to give Patient A £15,000 to fund further rehabilitation treatment on the condition that Patient A register with another general practice surgery ('the Offer').'

93. In his complaint email, Patient A stated:

'Moreover, he attempted to bribe me to leave his surgery with money when I returned from the rehab. He offered me £15,000 cash to leave his surgery as he was dying of cancer and he wanted "to do right by me" as he was apparently dying. I was told if I didn't take this money then he could "ruin" me. This was done in January 2020'

94. In Patient A's witness statement dated 2 August 2022, Patient A referred to the audio recordings he produced and stated:

> *'These recordings state that Dr Kalkat offered to pay me £15,000 to leave the surgery…*

95. In his oral evidence, Patient A maintained his assertion and he referred to the recorded consultations between Patient A and Dr Kalkat which have been transcribed.

96. In his statement, Dr Kalkat said:

> *'I did not offer the £15000 to Patient A on the condition he would register with another GP surgery. Patient A said he needed the money whilst he was at [XXX] to set up his life and to also fund some treatment. Patient A then began mentioning it again when he left [XXX].*
>
> *However, I accept that during the consultations in January 2020 it may come across that the money was on the condition of Patient A registering elsewhere'.*

97. In reaching a decision in respect of this paragraph, the Tribunal considered the nature of the conversations between Dr Kalkat and Patient A during the three recorded consultations.

98. The Tribunal noted that some examples of excerpts from the recordings which relate to this paragraph of the Allegation, read as follows:

> *'Dr Kalkat: Man to man – right? All I want you to do is get yourself set up with a practice.*
>
> *Patient A:Yeah.*
>
> *Dr Kalkat: Next week, come and see me.*
>
> *Patient A: Yeah.*
>
> *Dr Kalkat: The week after, get yourself registered.*

Patient A: Yeah.

Dr Kalkat: That week, in the middle of the week, I'll transfer the £10K ... £15K to you.'

Dr Kalkat: That's only £11 ... £12,000, giving you an extra £3,000.'

'Dr Kalkat: Yeah? The biggest favour you've ever done for me and your family ---

Patient A: Yeah.

Dr Kalkat: -- is not registering with me.'

...

'Dr Kalkat: I'm a man of my words, so I'm going to make sure you get yourself ... Next week, if you want to get registered next week, you can. The sooner you do, I'll get you the £15K.

Patient A: Yeah, yeah, yeah.

Dr Kalkat: Yeah? But I want to make sure definitely by that date, because after that date there's no guarantee you're going to get it.

Patient A: Yeah.

Dr Kalkat: And I don't want it to be that case.

Patient A: Yeah, yeah, yeah.'

...

'Dr Kalkat: -- but I'll ... If you get yourself registered, I'll ... I can transfer £15,000.

Patient A: Yeah, yeah, yeah.

Dr Kalkat: Yeah? But if you can't get yourself transferred or whatever ---

Patient A: Yeah.

Dr Kalkat: -- then obviously it's going to be difficult because ---'

…

'Dr Kalkat: What I'm saying is if you've got yourself registered ---'

99. The audio transcripts give clear evidence of the conversations between Patient A and Dr Kalkat. In the course of those conversations, Dr Kalkat is clearly offering to pay Patient A to fund further rehabilitation treatment on the condition that he register with another surgery. The Tribunal considered this to be the clear and natural reading of the relevant sections of the transcripts. On the basis of the recorded evidence, the Tribunal concluded that there could be little doubt regarding whether this paragraph was proved.

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

Paragraph 10

'10. On one or more occasion you told Patient A that if he didn't accept the Offer, you could ruin him, or words to that effect.'

101. In his complaint email in April 2019, Patient A's account includes reference to Dr Kalkat threatening to ruin him if he did not take the additional £15,000 offered by Dr Kalkat.

102. In his oral evidence, Patient A repeated his assertion that Dr Kalkat said this, saying *'he did tell me he would ruin me. His exact words were that his high powered lawyers would destroy me and I would end up detox in hospital. He told me that my relationships were affected because I was so doped up in hospital I couldn't do anything'*.

103. Dr Kalkat denies this and states that he has only ever wanted to help Patient A and that it is not in his character to use a phrase such as that alleged.

104. In reaching a conclusion in respect of this paragraph of the Allegation, the Tribunal was mindful of its conclusions in respect of paragraph 4 of the Allegation, as articulated above.

105. For the same reasons as outlined in respect of that paragraph, in all the circumstances, the Tribunal concluded that it was not satisfied that it could rely on Patient A's account when it came to the specific detail of this allegation. As such, although the

Tribunal concluded that heated conversations were occurring between Patient A and Dr Kalkat at the relevant time, it could not be satisfied to the requisite standard that Dr Kalkat had said the words alleged, or indeed words to that effect.

106. Accordingly, the Tribunal found paragraph 10 of the Allegation not proved.

Paragraphs 11(a)(i) and (ii)

'11 On one or more occasion in September 2019, you:

a. attended at Patient A's home address unannounced and:

i. banged loudly on the front door;

ii. asked to speak to Ms B.'

107. The Tribunal noted that both Patient A and Ms B confirmed in their oral evidence that Dr Kalkat has visited their home on two occasions - the first occurring circa 2015; and the second occurring in and around September 2019. It is the second visit which gave rise to this paragraph of the Allegation.

108. In his written complaint in April 2019, Patient A stated:

> *'Before I went to rehabilitation (at the beginning of September 2019), … . My partner became very irritated with Dr Kalkat and she had gotten to the point where she wanted to make a complaint about him. After this, at my next appointment with Dr Kalkat, I had explained to him that Ms B was not happy and she wanted to make a complaint. Thereafter, he began to panic. He asked if he could speak to her, I told him that she didn't want to speak to him. This didn't stop him from attempting to contact her. After the appointment he harassed my partner, he repeatedly called her on several different numbers, one even being his private mobile number. The next day he turned up at my address, uninvited and unpronounced, this. He banged loudly on the door early in the morning, I opened the door and it was Dr Kalkat. He asked to speak to Ms B, she wasn't in at the time [XXX].'*

109. In Dr Kalkat's statement, he outlined the following:

'At no point have I ever attended Patient A's home address and banged loudly on the front door or asked to speak to Ms B.

I attended Patient A's house as I was concerned about his mental health. I was only there to speak to Patient A and check he was OK; I had no reason to speak to Ms B and I did not bang on the front door.

I have also done a home visit previously but this was a pre-planned appointment.'

110. In her written statement, Ms B said the following:

'10. Over the next few days, Dr Kalkat tried to contact me on my mobile number which I didn't answer. I cannot remember the specific dates that he called but it was quite a few times. I don't know where he got my mobile number from, I assume it was from my records at the Surgery. I did not ask to be called. When Dr Kalkat called me, I felt pressured and harassed. I don't have any phone records of these calls. I knew it was Dr Kalkat's personal number as if you write the number on WhatsApp in your phone, sometimes you can identify a name and number. On Dr Kalkat's number, there was a picture of the Sikh symbol, and I knew Dr Kalkat was a Sikh.

11. Dr Kalkat also came to my house during this time. The only time Dr Kalkat had been to my house before was when Patient A had mumps, Dr Kalkat never really does house visits. I knew it was Dr Kalkat at my door as when the doorbell rang, Patient A picked it up and said that it was Dr Kalkat so I believe Dr Kalkat must have said something to Patient A. We ignored him, then Dr Kalkat rang my mobile number and I ignored this too.'

111. Ms B's oral evidence was consistent with her written statement. She stated that, while she had been present at home with Patient A, Dr Kalkat rang the intercom to her home. XXX

112. Ms B said that Patient A lifted the intercom and spoke to Dr Kalkat but she did not know what was said. She said that Patient A did not open the door to Dr Kalkat and did not speak to him face to face.

113. With regard to telephone calls she had been receiving, Ms B said that these originated from one number, as opposed to several, as indicated by Patient A. She saved the number in

her phone and the WhatsApp profile picture for the number had a Sikh symbol. From this alone, Ms B concluded that the number belonged to Dr Kalkat.

114. In his oral evidence, Patient A was consistent with his written complaint as outlined above. However, Patient A said that Dr Kalkat's knock had been a *'normal knock at the door'*. He also said that when he had answered the door to Dr Kalkat, he had asked to speak to Miss B, who was not at home at the time XXX.

115. The Tribunal put it to Patient A that Ms B had given a markedly different account of this incident to the Tribunal and that there was a divergence in accounts including:

- Patient A said that Ms B was not present, whereas Ms B said that she was;
- Patient A said that Dr Kalkat knocked on the door, whereas Ms B said that Dr Kalkat rang the external intercom;
- Patient A said that he spoke to Dr Kalkat face to face, whereas Ms B said that Patient A answered the intercom and she and Patient A ultimately ignored Dr Kalkat;
- Ms B referred to one telephone number as opposed to several.

116. In response, Patient A maintained that Ms B was not home XXX. The Tribunal noted that when Ms B's version of events were put to Patient A, he became somewhat unclear about the events.

117. Mr Donoghue submitted that the GMC wished to withdraw paragraph 11(a)(i) of the Allegation as a result of the inconsistent evidence as between Patient A and Ms B. He submitted however that the GMC considered that paragraph 11aii was proved despite the conflicting evidence.

118. The Tribunal noted the inconsistencies between Patient A's written and oral evidence and Ms B's. It considered that, whereas Dr Kalkat accepted that he attended at Patient A's property, the GMC's evidence regarding this exchange was not reliable and the GMC had therefore not discharged its burden in respect of either paragraph 11(a)(i) or (ii) of the Allegation. While not relating to a specific paragraph of the Allegation, the Tribunal considered that Ms B's and Patient A's conclusions that a telephone number belonged to Dr Kalkat by virtue solely of a Sikh symbol to be pure presumption.

119. Accordingly, the Tribunal found paragraphs 11(a)(i) and (ii) of the Allegation not proved.

Paragraph 12

'12. On 3 February 2020 you informed the police that Patient A had assaulted you, which was untrue.'

120. In his written complaint, Patient A stated the following:

> *'I was called on the Monday 3/2/2020 to come and see dr. kalkat … This is when I went Into dr Kalkats office shortly followed by Ms C … . I went in to his office for my appointment, this is where the alleged incident took place, Dr. Kalkat gave me 4 weeks of prescriptions, then he stood up and walked towards the door he then threw himself against the door slightly and put his fist on his chest and said " stop hitting me , ow this is violence your attacking me" I was still sat in the chair and started to laugh a little bit because I honestly thought he was joking at first , but then when he said to Ms C "you just see him hit me didn't you?" And she replied "yes, I did". I was still sat in the chair. … Dr kalkat was still standing near the door and I was still sat in the same chair. He said "to me now you have used violence you have to leave my surgery" I replied to him "what are you doing are you being serious or is this some sick joke?" He again replied "no!". I said to dr kalkat "I have done nothing wrong and now I have worked out what you're doing this is how your trying to remove me from your books, because you have been lying about dying of blood cancer and trying to bribe me with money to change surgery as you and another Dr's surgery are joining together and is going to be called Aurora and today is the day this happens. Ms C said to dr. Kalkat "you need to press the emergency button" so dr kalkat walked straight past me sitting down and pressed the button. I still hadn't moved off the seat I was on. He then said "you have to leave now "I replied and said I have done absolutely nothing wrong and was sat there in shock. … Both police officers which arrived on scene both believed me and didn't believe what dr Kalkat said. I was released without charge. Dr Kalkat admitted to one of the officers that he has been lying to me about having cancer in an attempt to blackmail me to leave his surgery.'*

121. In his formal statement, Patient A said the following:

> *'The last time I went to Dr Kalkat for an appointment was on Monday 3 February at lunchtime at the surgery. When I went into Dr Kalkat's room, … Ms C also followed me into the room. Dr Kalkat gave me four weeks' worth of prescriptions which I thought was strange as he usually gave me prescriptions at the end of our appointment. As I*

mention in Exhibit 1, Dr Kalkat made it look like I hit him, but he was punching himself whilst shouting that I was attacking him. I confirm that I didn't touch Dr Kalkat, I was sat in my chair the whole time. Ms C then asked Dr Kalkat to press the panic button and people started coming into the room, apart from [XXX] who is the Practice Manager which I thought was strange. A member of the surgery staff called the police, and I was put in handcuffs and sent home.'

122. In his written evidence, Dr Kalkat's responded to this paragraph of the Allegation as follows:

'54. On 3 February 2020, Patient A attended his appointment with me and whilst he was in the consultation room, Patient A began demanding the £15,000. I rang [Ms C], to bring the referral letter for Patient A and when Ms C was in the consultation room Patient A continued to demand money and I told Patient A that I would not give him the money. Whilst Ms C was not aware of the situation with Patient A, I felt safer responding to Patient A whilst someone else was in the room. However, Patient A started to raise his voice and I went to open the door, hoping that Patient A would just leave after I had given him the referral letter and told him I would not pay him the money. However, at that point Patient A pushed me against the wall and hit me in the chest. Patient A pushed me where the wall meets the door in the corner of the consultation room. When this happened, Ms C alerted staff and the police were called. When the Police arrived they escorted Patient A off the Health Centre's premises. The Police asked whether I wanted to press charges, but ultimately I decided not to as I did not want to see Patient A again and was worried about any repercussions. As mentioned above, prior to the assault, Patient A had threatened to harm me and my family and I did not want to have to relive matters during a police investigation or any court case that may have followed. In all my years working as a GP, I have never been assaulted or threatened by a patient before.'

'This allegation is denied.
As set out above at paragraph 54, Patient A did assault me on 3 February 2020 during a consultation. This is supported by the account of Ms C which is included in Exhibit GK/03.'

123. As indicated previously the Tribunal decided to admit Exhibit GK/03 into evidence. This had been opposed by the GMC. GK/03 consisted of a report that was prepared on 9 March 2020 following this incident on 3 February 2020 at the Health Centre and Patient A's subsequent removal from Dr Kalkat's patient list. Within the document Ms C appears to have

prepared a written account of what she witnessed during the interaction between Dr Kalkat and Patient A on that date. The Tribunal noted that there were two component parts to GK/03 – the report itself, and the written account attributed to Ms C:

The Report

124. The report appears to have been completed by Ms D and it is headed 'NHS England Appeal Panel Practice Incident Form'. It contains the following description of the relevant event:

> *'The patient attended on Monday 3/2/2020 and was called into see Dr Kalkat at 12.19pm. he went into see Dr Kalkat. During the consultation Dr Kalkat had to ask Ms C to bring a choose and book letter for the patient. When Ms C came into Dr Kalkat's room, and as she handed the paper work to Dr Kalkat the patient got up from his chair and pushed Dr Kalkat against the door and hit him on the left side of the chest. The incident was witnessed by Ms C. immediately after the incident, Ms C went to reception to ask to call the police urgently, and then she returned to Dr Kalkat's room and stayed until the police arrived. The police attended and escorted the patient away.'*

125. The detail of the above account is not specifically attributed to a particular person, but the report itself was completed by Ms D, who was not present in the consultation room at the time of the event.

126. The report contained the following entries:

- 'not known' is ticked in response to the section entitled 'apparent cause of incident'
- 'not known' is ticked in response to the section entitled 'If known, aggravating factors'
- 'No' is ticked in response to the section entitled 'Have there been any behaviour issues in respect of this patient in the last 12 months'
- 'No' is ticked to the section entitled 'Could the incident which resulted in immediate removal and allocation to the SAS scheme have been foreseen'
- 'No' is ticked to the section entitled 'Was there anything the practice could have done to prevent it'
- 'No' is ticked to the section entitled 'Are there any underlying clinical, psychological or social causes which could have precipitated this behaviour'

The written account attributed to Ms C

127. The signed account which appears to have been given by Ms C states the following:

> *'On Monday 3/2/2020 I was working at the Health Centre. Shortly after 12pm, Dr Kalkat phoned through to reception to ask me to bring him a referral letter for a patient called X. I took the letter and went into Dr Kalkat's room. When I entered Dr Kalkat's room, I noticed the patient was sitting on a chair. As I handed the letter to Dr Kalkat, the patient suddenly got up from the chair that he was sitting on and pushed Dr Kalkat against the consultation room door and hit Dr Kalkat on the left side of the chest using his right hand. Dr Kalkat appeared shocked. I immediately went to the reception and asked for help and to call the police. Then I went back to Dr Kalkat's room and stayed until the police arrived and escorted the patient away. After witnessing the violent assault on Dr Kalkat I was shocked and upset for several days after.'*

128. In his oral evidence, Patient A adamantly maintained that he did not assault Dr Kalkat, and that Dr Kalkat had fabricated the allegation as a further attempt to remove Patient A from his patient list. When Dr Kalkat's statement and the statement said to be from Ms C were put to Patient A, he strongly maintained his position. Patient A did, however, accept that although he had said in his written evidence that Ms C had followed him into the consultation room when he entered, he told the Tribunal in his oral evidence that Dr Kalkat physically left the room to go and get Ms C. Further, when Dr Kalkat's statement was put to Patient A, in which Dr Kalkat said that he had telephoned Ms C to ask her to come in, Patient A said that he could not now fully remember the sequence of events. Further, although Patient A said in his written evidence that Ms C told Dr Kalkat to press the alarm button, he said in his oral evidence that this was said by an asthma nurse instead. On the central issue of whether he had assaulted Dr Kalkat, however, Patient A strongly disputed Dr Kalkat's version of events.

129. The Tribunal noted the following information recorded in the Metropolitan Police Summary following this incident:

> *'Case Summary*
>
> *Please note: No arrests were made, no police interviews were carried out, no witness statements were obtained and no evidence was gathered, as the registrant [Dr Kalkat] being the victim did not wish to pursue the case. However there are concerns around the registrant who of his own admission, for unknown reasons allegedly gave*

his patient £4000 for rehab treatment and then Patient requesting a further £15000 which was part of the conversation that took place prior to Patient allegedly assaulting registrant. There are also concerns that registrant has told his patient that he has cancer in order to get patient to stop being his patient.

…

Police were called … after reports of a patient assaulting a doctor at the location.

Police attended and found Dr and patient inside a patient room both were sitting down in the room

Doctor states patient had punched doctor in the chest and pushed him against the door. Patient strongly denied this and stated that he hasn't touched him.

Patient was handcuffed and taken out of the building and detained.

Doctor stated that he doesn't want patient to be his patient anymore and he has even told patient that he has cancer in order to get patient not to be his patient anymore.

Doctor stated that he has given patient £4000 of his own money so patient could go to rehab. Doctor stated that patient had asked for another 15 grand today and doctor refused. Doctor was asked why he was giving this money and doctor didn't say.

Doctor didn't want to sustain any allegations.

Patient was removed from the location and told not to come back.

Patient stated that this made him very ill and that he rang doctors' advice anonymously.

Patient stated that he told doctor this and doctor offered to pay for all the rehab. Patient played videos of this with doctor offering to pay the money. He was given advice not to return to the surgery and to complain to the GMC.

As the doctor did not want to pursue the allegation, the suspect was not arrested and not interviewed. No statements were taken from anyone and no other accounts were obtained.

The case was not proceeded with and closed.'

130. In reaching a decision in respect of this paragraph of the Allegation, the Tribunal took into account all available evidence and the overall context of this case. The Tribunal was conscious that burden of proof lies solely on GMC.

131. The Tribunal reminded itself of its conclusions regarding a number of inconsistencies in Patient A's evidence and conflicting evidence. It noted that it had determined that it was not always able to rely to the requisite standard of proof on Patient A's evidence in relation to some specific details of events or conversations. It noted that Patient A's evidence was in some respects inconsistent regarding this incident on 3 February 2020, as outlined above.

132. However, the Tribunal drew a distinction between the reliability of specific details of conversations or sequence of events, and the reliability of Patient A's evidence in respect of an incident such as that under consideration. The Tribunal considered that, whereas Patient A was at times inconsistent on details which could perhaps be described as peripheral or collateral, he was not at any time inconsistent on this central issue. He maintained at all times that he did not assault Dr Kalkat and that Dr Kalkat fabricated the allegation. Patient A had submitted to giving oral evidence on all events, with the prospect of cross-examination. Dr Kalkat's written version of events was put to Patient A, and on the issue of whether he had assaulted Dr Kalkat, Patient A was immovable and consistently maintained that he had not.

133. The Tribunal noted that Patient A's denial of having assaulted Dr Kalkat has been consistent since the incident itself, when the police recorded that he strongly denied it. The Tribunal was provided with confirmation from the Metropolitan Police that Patient A had attempted to make his own statement of complaint in relation to the incident in the weeks that followed. In circumstances in which Patient A had been informed that no further action or criminal prosecution was being taken against him, the Tribunal considered that the making of a complaint by Patient A was capable of supporting Patient A's version of events. The Tribunal considered it unlikely that Patient A would make a formal complaint of this nature, if he knew he had been witnessed assaulting Dr Kalkat by Ms C.

134. The Tribunal noted that Dr Kalkat stated in his written evidence that this alleged assault was precipitated by Patient A demanding £15,000 from him. The Tribunal considered that this assertion was undermined by the content of the transcripts of the January consultations, in particular those sections referred to in the discussion regarding Paragraph 9 of the Allegation, above. This was because the general nature of those conversations did not appear to be heated or involve any threats. Further, in those conversations, it was Dr Kalkat wishing to give Patient A the money, as opposed to Patient A asking for or demanding money. Dr Kalkat had therefore been offering Patient A money prior to this incident on 3 February

2020. The Tribunal took into account the fact that Patient A knew that he was recording the conversations, whereas Dr Kalkat did not, and it could be said that Patient A would not allow himself to be recorded making such demands. However, the transcripts did not read as though Dr Kalkat was in fear and he made no reference himself to threats etc.

135. Both Dr Kalkat's and Patient A's accounts of the incident state there was a period of several minutes from when the alleged assault occurred and the police arrived. There is consistency between all accounts that Dr Kalkat, Patient A and Ms C were alone together in the consulting room during this time. There is no suggestion that Patient A was in any way restricting access to the room. The Tribunal found it highly improbable that Dr Kalkat would have remained in the same room as his supposed assailant, being also the person he alleges was making threats against himself and his family, and not attempted to get himself, and Ms C, to safety. Dr Kalkat's, Ms C's and Ms D's accounts are silent on what Patient A did immediately after allegedly punching Dr Kalkat and there is no suggestion that any restraint measures were required. This is notable in light of the police report which states that Patient A and Dr Kalkat were sitting down in the room when they arrived. The Tribunal preferred Patient A's account that he had remained seated in the room throughout the incident and chose to stay in order to provide the police with his version of events.

136. The Tribunal considered the proposition that a doctor would, in the ordinary course of events, accuse a patient of assaulting him knowing that to be untrue, to be inherently implausible.

137. However, taking into account the contextual background to this case, the Tribunal considered that the inherent implausibility of such a notion was significantly displaced.

138. Leading up to 3 February 2020, Dr Kalkat had been taking very unusual steps:

- He had entered into a contract with Patient A which sought to restrict Patient A's ability to complain or take legal action;
- He had paid around £40,000 from his own bank account on foot of that contract for rehabilitation facility costs;
- He had lied to Patient A, telling him that he had blood cancer, was going to America for treatment, had six months to live and a 90% chance of dying;
- He had offered Patient A a further £15,000 on the condition that he register with another surgery.

139. The transcript of the recording of Patient A's consultation with Dr Kalkat on 17 January 2020 – the last consultation prior to 3 February 2020 – records that Patient A had begun to challenge Dr Kalkat about the information he had been told about Dr Kalkat's asserted illness and plans.

140. The context of events leading up to 3 February 2020, in the Tribunal's view, made this paragraph of the Allegation much less implausible. Dr Kalkat had been taking increasingly inappropriate / desperate / dishonest actions with a view to Patient A registering elsewhere. By the time of 3 February 2020, Dr Kalkat was aware that Patient A was not convinced by his assertions of illness and Patient A had not registered with another practice. Having said that, the Tribunal was conscious that, for this proposition to be true, Ms C would have to be some form of co-conspirator or participant to the alleged fabrication.

141. It was clear from Dr E's oral evidence that, if Dr Kalkat reported Patient A for being violent towards him, he would no longer be required to act as his GP. Dr E provided an explanation of the process followed for such patients and how they would be "off-listed" in those circumstances.

142. The Tribunal had regard to notes made by Dr Kalkat on 3 February 2020 at 12:48 in Patient A's medical records, as follows:

> *'Problem - Patient review (Review)*
> *History - he demanding more money for treatment. Witness by receptionist [Ms C]. I feel that he is trying to extort/blackmail money from me. I have previously also noted this in the records [Patient A] then jumped up, shoved me to the door and punched me on the left side of the chest'*

143. The Tribunal considered that this entry and potentially others were capable of supporting Dr Kalkat's version of events (conscious again, that Dr Kalkat is not required to prove or disprove anything). However, in the context of Dr Kalkat's actions which have been either admitted or found proved, and the context of the case as a whole, the Tribunal was not content that it could attach significant weight to any of the notes, none of which contained the level of detail which one might expect to be recorded for incidents of the nature suggested by Dr Kalkat, and none of which could be tested.

144. The Tribunal considered that the statement attributed to Ms C and entries made by her in the notes and records were also capable of supporting Dr Kalkat's version of events. Again, however, the Tribunal was not content that it could attach much, if any, weight to this

hearsay evidence. The Tribunal was mindful that a formal statement of evidence had not been obtained or submitted. No medical evidence had been obtained to corroborate the reasons for Ms C being unavailable or unable to make a formal statement. The evidence was not capable of being tested. It was created for a different purpose. It did not contain any reference to Patient A demanding money, which Dr Kalkat stated Ms C was a witness to.

145. Similar considerations applied to the incident report form in GK/03. The evidence could not be tested. Its provenance was unclear. The document was created for a different purpose. The person who completed the form did not give evidence. The contents of the report, as outlined above, could arguably be read as corroborating Patient A's evidence regarding the absence of any previous threats etc. Overall, the Tribunal did not consider that any weight could be attached to this report in reaching its decision in respect of this paragraph of the Allegation.

146. The Tribunal noted that it had not heard directly from Dr Kalkat and it was not therefore able to test his evidence via questioning.

147. The Tribunal determined that, in the circumstances of this case, it is appropriate to draw an adverse inference from Dr Kalkat's failure to attend the hearing and to have his evidence tested. It considered that it was appropriate to infer that Dr Kalkat did not wish to submit to being cross-examined and the Tribunal approached Dr Kalkat's written statement evidence in this context.

148. The Tribunal was satisfied from the evidence presented that a prima facie case against Dr Kalkat has been established by the GMC. In pre-hearing correspondence issued by the GMC, Dr Kalkat has been given appropriate notice of the hearing and a warning that if he does not attend and / or provide relevant evidence, an adverse inference may be drawn.

149. Dr Kalkat has been given an opportunity to attend and/or provide relevant evidence or explain why it would not be reasonable for him to do so. Dr Kalkat's solicitors have stated the following regarding Dr Kalkat's absence:

> *'…the Tribunal will be aware that Dr Kalkat's position is he has been subject to threats at the hands of Patient A and also an assault that occurred on 3 February 2020. It is against this backdrop that Dr Kalkat feels he is unable to be present during the hearing. Patient A is aware of where Dr Kalkat's family resides and has previously made threats against both Dr Kalkat and his family. Furthermore, Dr Kalkat was*

subject to an assault by Patient A in Dr Kalkat's consultation room when another individual was present. This incident impacted Dr Kalkat as he has never experienced such an incident before or since. Whilst Dr Kalkat would like to attend and assist the Tribunal in their consideration of this case, he feels he is unable to do so due to the fear of further threats or possible repercussions for both himself and his family. Dr Kalkat is also genuinely fearful of seeing Patient A again given the volatile history of Patient A. Dr Kalkat felt able to provide a witness statement setting out his account of his interactions with Patient A as he understood it was important to assist the Tribunal, and it did not require him to have any interactions (directly or indirectly) with Patient A which may result in Patient A feeling antagonised (for example as a result of cross-examination). We have discussed with Dr Kalkat whether there are any adjustments that could be made to enable him to feel safer in attending however after much thought and reflection, Dr Kalkat considers there is nothing which could be put in place that would alleviate his concerns (relating to both himself and his family during and outside of the hearing), whilst also enabling him to participate in the hearing and give instructions in a meaningful manner. Dr Kalkat would like to make it clear he is not absenting himself as he does not consider these proceedings important; he is extremely aware of the importance of both the concerns that have been raised and also the need for such matters to be aired in a public forum, however he has had to put his and his family's safety and health first. This is not a decision Dr Kalkat has taken lightly. Dr Kalkat means no disrespect and would like to apologise to the Tribunal for his absence and hopes the Tribunal will take into consideration the above reasons. Dr Kalkat confirms that the FtP hearing can proceed in his absence.'

150. The Tribunal did not consider the explanation as outlined above to be a reasonable explanation for Dr Kalkat's non-attendance. It noted that since the events which give rise to the Allegation, there has now been a period of almost four years in which there is no suggestion whatsoever that Patient A has done or attempted to do anything to threaten or harm Dr Kalkat or his family. The hearing is taking place remotely. This completely avoids the prospect of Dr Kalkat and Patient A meeting etc. There are steps which can be taken to assist witnesses who are in fear, for example, Dr Kalkat's camera could be turned off while Patient A gave evidence, or Dr Kalkat could have attended for part of the hearing only. Dr Kalkat's lawyers indicate that potential measures have been discussed with Dr Kalkat. Patient A would not have been present by the time Dr Kalkat came to give his evidence. Regardless of Dr Kalkat's attendance at the hearing, his written statement required to be put to Patient A in his absence. The result as regards potential antagonism or reaction by Patient A to Dr Kalkat's position is therefore largely the same. Dr Kalkat, on calling police to his surgery on 3

February 2020, had the opportunity to pursue criminal charges against Patient A and elected not to do so. The Tribunal considered that, if Dr Kalkat were genuinely fearful of Patient A as a result of threats of harm etc, this was a highly unusual approach to take.

151. The Tribunal did not consider that there were other circumstances specific to the case which would make it unfair to draw an adverse inference.

152. The Tribunal noted that lies told by a doctor may in some circumstances be capable of supporting or corroborating other evidence against the doctor and may therefore be probative of an allegation. In this regard, the Tribunal noted that Dr Kalkat has accepted that he has lied to NHS England about payments when it was investigating the matters giving rise to the Allegation. These issues formed the basis of paragraph 16 of the Allegation. These lies were deliberate untruths and did not arise from any confusion or mistake. They related to significant issues in this case. They were told to NHS England, in the Tribunal's view, in the hope of preventing the full information about Dr Kalkat's actions from coming to light. In circumstances in which Dr Kalkat has lied to NHS England in its investigation, the Tribunal considered that Dr Kalkat's previous lies were capable of providing some, albeit limited, support to this paragraph of the Allegation.

153. In light of the admissions by Dr Kalkat, to include admissions to matters of dishonesty, the Tribunal did not consider that the absence of previous regulatory findings etc could support either his credibility or the absence of propensity to act as alleged. The Tribunal did not consider the testimonial evidence submitted on Dr Kalkat's behalf to be of much evidential value in determining the likelihood of Dr Kalkat to act as alleged in this paragraph of the Allegation. The Tribunal considered that these might be more relevant at a later stage of the proceedings.

154. Taking all of the available evidence as outlined above into account, the Tribunal concluded that, overall, it was more likely than not that Dr Kalkat's report to police that Patient A had assaulted him on 3 February 2020 was untrue. The Tribunal considered that the preponderance of the evidence pointed to the likelihood of Dr Kalkat having engineered this incident as part of his attempts to have Patient A removed from his patient list.

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

Paragraph 13

'13. You knew the information you provided to the police as set out in paragraph 12 was untrue.'

156. In light of its conclusions in respect of paragraph 12 of the Allegation, the Tribunal concluded that Dr Kalkat knew the information he provided to the police was untrue.

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

Paragraph 14

'14. Your actions as described at paragraph 12 were dishonest by reason of paragraph 13.'

158. In relation to the allegation of dishonesty, the Tribunal reminded itself of the correct test as set out in the case of *Ivey v Genting Casinos.*

159. The Tribunal has concluded that Dr Kalkat was aware that the information he gave to the police that Patient A had assaulted him was untrue.

160. The Tribunal considered that, in applying the objective standards of ordinary decent people, there could be no dispute as to whether Dr Kalkat's actions were dishonest.

161. Accordingly, the Tribunal found paragraph 14 of the Allegation proved.

Paragraph 15

'15. On 22 September 2020, as part of an investigation into your treatment of Patient A, you were asked to give details of payments made to the rehabilitation centre for his treatment, or words to that effect'.

162. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

> *'This allegation is admitted.*
>
> *On 22 September 2020, I received an email from [Ms F], Practitioner Performance Case Manager for NHSE, asking me to provide details of what I paid to the rehabilitation centre, when it was paid and who I paid it to. In addition, [Ms F] also asked for any invoices.'*

163. Accordingly, the Tribunal found paragraph 15 of the Allegation proved.

Paragraph 16(a)

'16. On 15 October 2020 you provided the response set out in Schedule 6 ('the Response'), containing information which was untrue, in that:

a. you had not made any payments to Patient A directly;'

164. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'This allegation is admitted.

I accept that I had not made any payments to Patient A directly (aside from the two payments in December 2019 and January 2020). As set out above, the payments for the inpatient treatment were paid directly to the facilities.'

165. The Tribunal accepted Dr Kalkat's evidence. Accordingly, the Tribunal found paragraph 16(a) of the Allegation proved.

Paragraph 16(b)

'16. On 15 October 2020 you provided the response set out in Schedule 6 ('the Response'), containing information which was untrue, in that:

b. the total amount you stated you had paid was incorrect.'

166. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'This allegation is admitted.

In my response on 15 October 2020, I noted the amount paid was £25,000 however this was incorrect.

64. … I provided some additional notes where I admitted to providing incorrect information to NHSE. I fully regret my actions. My interactions with Patient A, particularly the threats and abuse, [XXX] and I was worried about providing

information which may anger Patient A if he were to find out. I apologise unreservedly for my actions and my only explanation is that I was not thinking clearly at the time due to the threats from Patient A and I was concerned about any repercussions, as [XXX] Patient A had not only threatened me but my family.'

167. The Tribunal accepted Dr Kalkat's admission which accorded with the documentary evidence before it. Accordingly, the Tribunal found paragraph 16(b) of the Allegation proved.

Paragraph 17

'17. You knew that the Response contained information which was untrue.'

168. The Tribunal noted that Dr Kalkat admitted this allegation in his statement and it referred again to the information provided by him at paragraph 64 of that statement as replicated above.

169. Accordingly, the Tribunal found paragraph 17 of the Allegation proved.

Paragraph 18

'18. Your actions as described at paragraph 16 were dishonest by reason of paragraph 17.'

170. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'64. … I provided some additional notes where I admitted to providing incorrect information to NHSE. I fully regret my actions. My interactions with Patient A, particularly the threats and abuse, [XXX] and I was worried about providing information which may anger Patient A if he were to find out. I apologise unreservedly for my actions and my only explanation is that I was not thinking clearly at the time due to the threats from Patient A and I was concerned about any repercussions, as [XXX] Patient A had not only threatened me but my family.'

'This allegation is admitted.

117. As noted at paragraph 64 above, I fully regret my actions in respect of providing incorrect information to NHSE. My interactions with Patient A, particularly the threats

and abuse, [XXX] and I was worried about providing information which may anger Patient A if he were to find out.'

171. The Tribunal accepted Dr Kalkat's evidence. Accordingly, the Tribunal found paragraph 18 of the Allegation proved.

Paragraph 19

'19. At all material times Patient A was vulnerable due to his health.'

172. The Tribunal had regard to the GMC expert Dr E's clear conclusions that Patient A was vulnerable in his report and in his oral evidence in which he summarised as follows:

'Patient A was vulnerable because of complex medical and psychiatric conditions. He was vulnerable because of substance dependency and he was vulnerable because he depended on Dr Kalkat to provide some of the medications upon which he was dependant.'

173. The Tribunal had regard to the evidence provided by Dr Kalkat in his witness statement, as follows:

'I accept Patient A had complex health in respect of his pain management and also other health issues which required specialist referrals, however Patient A would attend appointments on his own and was able to advocate for himself.'

174. The Tribunal concluded that the evidence strongly supports Patient A being a vulnerable person in a number of respects throughout the period relevant to the Allegation. It did not consider that such a proposition could reasonably be disputed, and it noted that although Dr Kalkat did not go so far in his written statement as formally admitting this paragraph of the Allegation, he did not appear to make a significant attempt to dispute it.

175. The Tribunal considered that Dr Kalkat, as an experienced GP, would be in no doubt that Patient A would be considered to be a vulnerable person in the context of the GP/patient relationship which existed, and in the context of his considerable and complex medical needs and ongoing intervention, which included the prescription of large doses of strong medications and which necessitated periods of rehabilitation treatment.

176. Accordingly, the Tribunal found paragraph 19 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

177. The Tribunal has determined the facts as follows:

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

1. On or around 25 and/or 27 September 2019 you inappropriately:

   a. asked Patient A to sign a contract which stipulated:

   "you are happy with Dr Kalkat's practice offer to pay for your treatment for rehabilitation treatment at [XXX], and therefore agree not to take any further legal action or make a complaint against Dr Kalkat, other doctors at the practice or any staff regarding this situation";
   Determined and found proved

   b. advised Patient A that the Health Centre would only pay for him to attend a rehabilitation clinic on the condition that when he came out, he would write to his local MP and tell her how good you had been to Patient A, or words to that effect. Not proved

2. On one or more of the dates set out in:

   a. Schedule 1, you made a payment to Step One Recovery UK Ltd;
   Determined and found proved

   b. Schedule 2, you made a payment to Step to Step Recovery;
   Determined and found proved

   for Patient A to undergo private rehabilitation treatment, which was inappropriate as the money used was from your personal bank account.

3. Between December 2019 and January 2020 you inappropriately gave one or more monetary gifts Patient A as set out in Schedule 3. Determined and found proved

4. In or around October 2019, whilst Patient A was an in-patient at XXX you telephoned him and said that you had been speaking with one of your lawyer friends about Patient A and he had advised you that:

a. Patient A was in the wrong, not you; Not proved

b. if Patient A were to make a complaint or seek legal action, then your insurance and lawyers would cover it and it would take Patient A over a year to get any legal help and by that time he would still be on all the pills and would have to get a hospital detox'; Not proved

or words to that effect.

5. Your actions as described at paragraphs 1 - 4 were designed to prevent Patient A from making a formal complaint and/or taking action against you and/or Thames View Health Centre ('the Health Centre') regarding the monitoring of his prescription medication. Determined and found proved

6. During consultations on or around the dates set out in Schedule 4, on one or more occasion you told Patient A that you could no longer be his general practitioner as you:

a. had blood cancer; Determined and found proved
b. were going to travel to America for treatment; Determined and found proved
c. only had six months to live; Determined and found proved
d. had a 90 percent chance of dying; Determined and found proved

or words to that effect, which was untrue.

7. You knew that the statements you made to Patient A as set out at paragraph 6 were untrue. Determined and found proved

8. Your actions as described at paragraph 6 were:

a. designed to encourage Patient A to register with another general practitioner; Determined and found proved

b. dishonest by reason of paragraph 7. Determined and found proved

9. On one or more of the dates set out in Schedule 5 you inappropriately offered to give Patient A £15,000 to fund further rehabilitation treatment on the condition that Patient A register with another general practice surgery ('the Offer'). Determined and found proved

10. On one or more occasion you told Patient A that if he didn't accept the Offer, you could ruin him, or words to that effect. Not proved

11. On one or more occasion in September 2019, you:

    a. attended at Patient A's home address unannounced and:

        i. banged loudly on the front door; Not proved

        ii. asked to speak to Ms B. Not proved

12. On 3 February 2020 you informed the police that Patient A had assaulted you, which was untrue. Determined and found proved

13. You knew the information you provided to the police as set out in paragraph 12 was untrue. Determined and found proved

14. Your actions as described at paragraph 12 were dishonest by reason of paragraph 13. Determined and found proved

15. On 22 September 2020, as part of an investigation into your treatment of Patient A, you were asked to give details of payments made to the rehabilitation centre for his treatment, or words to that effect. Determined and found proved

16. On 15 October 2020 you provided the response set out in Schedule 6 ('the Response'), containing information which was untrue, in that:

    a. you had not made any payments to Patient A directly; Determined and found proved

    b. the total amount you stated you had paid was incorrect. Determined and found proved

17. You knew that the Response contained information which was untrue. Determined and found proved

18. Your actions as described at paragraph 16 were dishonest by reason of paragraph 17. Determined and found proved

19. At all material times Patient A was vulnerable due to his health. 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 - 30/01/2024

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

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence comprising of Dr Kalkat's Continuous Professional Development (CPD) certificates comprised of certificates for training he has attended. In addition, the Tribunal received a letter from Dr Kalkat's Responsible Officer dated 13 November 2023 and some associated documents.

3. The Tribunal also had regard to two testimonials from Dr Kalkat's colleagues at the Health Centre.

Submissions

4. On behalf of the GMC, Mr Donoghue submitted there can be no doubt that the facts found proved amount to misconduct, given the circumstances of this case and the fact that the Tribunal has found that Dr Kalkat acted dishonestly.

Misconduct

5. Mr Donoghue reminded the Tribunal of the two-stage approach to be taken at this stage of the proceedings, firstly considering the issue of misconduct and secondly to consider impairment.

6. Mr Donoghue submitted that Dr Kalkat's actions had brought the medical profession into disrepute, he had breached one of the fundamental tenets of the medical profession, and his integrity could not be relied upon.

7. Mr Donoghue referred the Tribunal to the authorities of *Nandi v General Medical Council [2004] EWHC 2317 (Admin), Roylance v General Medical Council [1999]* and *R*

(Remedy UK Ltd) v General Medical Council [2010] EWHC 1245 (Admin) which give guidance as to how Tribunals are to approach the issue of misconduct. Mr Donoghue stated that paragraph 32 of *Nandi* was particularly useful when considering the expert witness Dr E's opinions on the different elements of this case. Further, that *Remedy*, was relevant to the fact that Dr Kalkat's actions arose in his day-to-day practice of medicine in that he was dealing directly with Patient A and this could be considered dishonourable or disgraceful.

8. Mr Donoghue stated that Dr Kalkat's actions had breached a number of paragraphs of Good Medical Practice (GMP), in particular paragraphs 53, 58, 65, 68, 73 and 80.

9. Mr Donoghue stated that, whilst there are a number of different allegations, the GMC proposed grouping them into several separate elements of misconduct.

10. Mr Donoghue reminded the Tribunal of its findings that Patient A was a vulnerable patient; and that Dr Kalkat had sought to preclude or discourage him from complaining about his treatment. Mr Donoghue stated that it was clear from Patient A's evidence that he was very keen to receive rehabilitation treatment which Dr Kalkat paid for as a result of the contract entered into. Mr Donoghue reminded the Tribunal of its finding that it was implausible for Dr Kalkat to suggest that Patient A would have requested these terms as set out in the contract. Mr Donoghue submitted that these were important considerations for the Tribunal to take into account.

11. Mr Donoghue submitted that, with regard to the personal payments made by Dr Kalkat for Patient A's private rehabilitation treatment, this financial relationship was improper. Mr Donoghue stated that Dr E had opined that this conduct was seriously below the expected standards and that the size of the gift was such that it should have been understood by Dr Kalkat at the time of the events that his actions were inappropriate. Mr Donoghue submitted that making payments of such significant amounts for private treatment, particularly in the circumstances of this case, were a serious departure from the expected standards and therefore amount to misconduct which is serious.

12. With regard to Dr Kalkat sending Patient A monetary gifts of £1,200 and £150, Mr Donoghue referred to Dr E's evidence, in which he expressed his views that these actions were unacceptable, inconsistent with good medical practice and seriously below the expected standards, for similar reasons outlined in respect of his payment for rehabilitation treatment. Mr Donoghue reminded the Tribunal of Dr E's evidence that, putting the amounts to one side, these payments could be considered even more serious because there was no

clinical link whatsoever to them. Mr Donoghue submitted that again, this comes back to the improper financial relationship established between Patient A and Dr Kalkat.

13. Mr Donoghue reminded the Tribunal of its finding at stage one that the particular circumstances between Dr Kalkat and Patient A at the time made these gifts particularly inappropriate. Mr Donoghue stated that this comes back to Dr Kalkat's motivation during the early stages of the allegations that he was preventing or intending to prevent Patient A from making a formal complaint. Mr Donoghue submitted that this conduct was sufficiently serious that it amounts to misconduct.

14. Mr Donoghue referred to the dishonest statements made by Dr Kalkat to Patient A with regard to Dr Kalkat suffering from cancer, being required to travel abroad for treatment, and having a 90% chance of dying. Mr Donoghue submitted that any dishonest conduct has the potential to significantly bring the profession into disrepute and undermine public confidence in the profession. He submitted that this amounted to serious misconduct.

15. Mr Donoghue stated that the dishonest actions found proved occurred in the course of Dr Kalkat's professional practice, and that he had essentially told lies to a vulnerable patient. Mr Donoghue submitted that this was planned and calculated and must have required at least some advance thought. Mr Donoghue reminded the Tribunal of the repeated instances of this being discussed in the three recorded consultations and submitted that this was persistent and repeated on multiple occasions. Mr Donoghue stated that these lies were intended to persuade Patient A to register with another GP, which was very inappropriate. Mr Donoghue submitted that Dr E had made it clear that, if there were genuine reasons for wanting a patient to register elsewhere, there were processes to follow. Mr Donoghue stated that Dr E had opined in his written report that this was seriously below the expected standard of a doctor and Dr Kalkat's actions fundamentally undermined good medical practice. Mr Donoghue reminded the Tribunal that Dr E in his oral evidence had described these actions as an outrageous lie, and he referred to the impact this would have had upon Patient A. Mr Donoghue submitted that this was serious dishonesty with a patient and a serious departure from the expected standards, which amounted to misconduct.

16. Mr Donoghue submitted that the offer of a further £15,000 to Patient A and Dr Kalkat's lies regarding his health were motivated by his desire to move Patient A to another doctor or persuade Patient A to move himself to another doctor. This was against the backdrop of the significant amounts of money which had already been paid for Patient A's rehabilitation treatment following the signing of the contract. Mr Donoghue stated that Dr E

was clear in his oral evidence that this was completely improper. He said that a doctor could appropriately advise a patient that their best interests would be served by seeing another practitioner or registering with another surgery, and that there would be situations where a relationship had deteriorated, and a doctor would seek to enforce that. However, to induce that through an offer of money or lies when it appeared that Patient A did not want to move was clearly inappropriate. Mr Donoghue submitted that this was a significant departure from the expected standards of a doctor and amounts to serious misconduct.

17. Mr Donoghue stated that, with regard to Dr Kalkat making false reports to the police about Patient A, this was a very serious instance of dishonesty and it could have had potentially very serious consequences for Patient A. Whilst Dr Kalkat did not pursue the complaint when the police attended the Health Centre, Patient A explained to the Tribunal the impact upon him of him being seen being taken back to his community by police car. Mr Donoghue stated that Dr Kalkat's actions must be placed in the context of his repeated attempts to end his relationship with Patient A. He submitted that Dr Kalkat's actions were a calculated and planned instance of dishonesty. Further, it appeared to be a plan which Dr Kalkat had devised to try to get Patient A to register with another GP, which was essentially a last resort with no other options having worked.

18. Mr Donoghue submitted to the Tribunal that Dr Kalkat's actions had achieved the desired result, and that Patient A ultimately had to register elsewhere. He reminded the Tribunal of the unsuccessful appeals process Patient A went through. Mr Donoghue submitted that Dr Kalkat's actions were in stark contrast to what was expected in good medical practice and they amount to serious misconduct.

19. Mr Donoghue stated, with regard to Dr Kalkat's actions in lying about the amounts paid for rehabilitation treatment during the NHS England investigation, this was dishonest behaviour by Dr Kalkat during an official investigation by a designated body, and an attempt by him to downplay the amount of money he had given to Patient A. Mr Donoghue submitted that dishonesty of this nature was serious and amounted to serious misconduct.

20. Mr Donoghue submitted that all seven areas of the case, whilst engaging slightly different considerations, have to be placed in the context of this being a doctor – patient relationship between Dr Kalkat and Patient A, who was a vulnerable patient.

<u>Impairment</u>

21. Mr Donoghue referred the Tribunal to the case of *Meadow v General Medical Council [2007] QB 462*, reminding the Tribunal that it must looking forward and not back, that impairment was an assessment as of today, but in order to form a view as to fitness to practise, the Tribunal will have to take account of the way in which the person has acted or failed to act in the past, and that it was a relevant consideration for the Tribunal to look at how easily remediable the actions are.

22. Mr Donoghue submitted that Dr Kalkat's misconduct is not easily remediable. He referred the Tribunal to the case of *Cheatle v GMC [2009] EWHC 645,* and reminded the Tribunal that, while the index events occurred around four years ago, the issue was whether at the present time the misconduct was such that Dr Kalkat's fitness to practise is impaired.

23. Mr Donoghue stated that the Tribunal must have regard to the seriousness of Dr Kalkat's misconduct and the serious departures from the standards expected of doctors. Mr Donoghue submitted that Dr Kalkat must have realised at the time the inappropriateness of all his actions, and in particular, his dishonesty.

24. Mr Donoghue stated that the Tribunal will take into account any insight which Dr Kalkat has demonstrated. However, Mr Donoghue invited the Tribunal to keep at the forefront of its mind the promotion of the overarching objective, particularly the second and third limbs. Mr Donoghue submitted that, in all areas of the facts found proved in this case, Dr Kalkat's actions risked bringing the profession into disrepute, undermining the public's confidence in the profession, and the high standards which are expected of doctors. Mr Donoghue submitted that patients and the public expect honesty from their doctors and Dr Kalkat's actions towards a vulnerable patient seriously undermine those standards.

25. Mr Donoghue stated that, with regard to Dr Kalkat's insight, he had provided some evidence of reflection on areas of the case within his witness statement, and he had made some admissions. However, Mr Donoghue submitted that these reflections had to be considered in the context of the purported explanations which Dr Kalkat had provided for his actions in several respects. Mr Donoghue stated that even in those areas where admissions have been made, in several instances, Dr Kalkat sought to attribute the blame to Patient A and provide justification/explanation for his actions.

26. Mr Donoghue stated that Dr Kalkat had said that Patient A had been threatening towards him or had acted in a way which caused him to act in the manner alleged. Mr Donoghue submitted that this was contrary to what the evidence in the case shows and what

the Tribunal has found. Therefore, considerations in terms of insight and remediation had to be viewed in that context. In any event, Mr Donoghue submitted that the nature of the misconduct under consideration was of such seriousness that a finding of impaired fitness to practise is required in the public interest.

27. Mr Donoghue submitted that there are a number of very serious allegations found proved, particularly in relation to dishonesty. He submitted that any member of the public, and any member of the medical profession, would not expect a doctor who has conducted themselves in these ways be permitted to return to unrestricted practice. Mr Donoghue submitted that a finding of impairment was required in this case.

28. On behalf of Dr Kalkat, Ms Dawson indicated via email that Dr Kalkat accepted that a finding of impairment was likely, and that further comments would be provided at a later stage.

The Relevant Legal Principles

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

30. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: firstly it must consider whether the facts as found proved amounted to misconduct which was serious; and secondly, whether such misconduct leads to a finding of impairment.

31. In deciding whether Dr Kalkat's fitness to practise is impaired, the Tribunal has exercised its own judgement and borne in mind the statutory overarching objective of the GMC set out in Section 1(1B) of the Medical Act 1983 to:

> *'a. Protect, promote and maintain the health, safety and well-being of the public,*
> *b. Promote and maintain public confidence in the medical profession, and*
> *c. Promote and maintain proper professional standards and conduct for members of that profession.'*

32. The Tribunal must determine whether Dr Kalkat's fitness to practise is impaired today, taking into account Dr Kalkat's conduct at the time of the events and any relevant factors

since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

33. Whilst there is no statutory definition of impairment, the Tribunal was assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as endorsed by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin.* The Tribunal should therefore consider whether the practitioner:

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

34. The Legally Qualified Chair (LQC) gave legal advice with specific reference to the approach that the Tribunal should take generally, and particularly in relation to cases of dishonesty.

The Tribunal's Determination on Impairment

Misconduct

35. The Tribunal first considered whether the facts found proved amounted to misconduct which was serious.

Paragraph 1(a)

36. The Tribunal had regard to Dr E's conclusions in his report, in which he stated:
'Dr Kalkat's action in seeking to have this agreement between him and Patient A drawn up and signed was not consistent with GMC Good Medical Practice. Dr Kalkat's action in arranging for Patient A to sign this contract was seriously below the standard expected because to associate a financial arrangement with an agreement not to pursue further complaint, outside of a transparent legal process, was to undermine GMC Good Medical Practice in a fundamental way.'

37. The Tribunal had regard to its finding that Patient A was a vulnerable patient. The Tribunal considered that Dr Kalkat's actions in seeking to preclude Patient A from complaining about him or pursuing action, in exchange for funding his private rehabilitation treatment, were a serious departure from the standards expected of medical practitioners. The Tribunal considered the contract was not executed in an open or transparent legal process and, as previously outlined, it rejected Dr Kalkat's position that Patient A requested the relevant clause to be included. The Tribunal considered that there was a considerable imbalance of power between Patient A, who was vulnerable, and Dr Kalkat who was offering to pay for rehabilitation treatment, subject to conditions.

38. The Tribunal considered the applicable paragraphs of GMP to be as follows:

> *61*
> *You must respond promptly, fully and honestly to complaints and apologise when appropriate. You must not allow a patient's complaint to adversely affect the care or treatment you provide or arrange.*
>
> *65*
> *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *80*
> *You must not ask for or accept – from patients, colleagues or others – any inducement, gift or hospitality that may affect or be seen to affect the way you prescribe for, treat or refer patients or commission services for patients. You must not offer these inducements.*

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

Paragraph 2

40. The Tribunal had regard to Dr E's conclusions, in which he linked this element of the case to the signing of the contract and opined as follows:

'It was not, in my opinion, appropriate for Dr Kalkat to fund Patient A's rehabilitation as he did. This is the case whether Dr Kalkat's account is accepted or if Patient A's account is accepted. Both Dr Kalkat's account and Patient A's account are broadly consistent in stating that between September and November 2019 Dr Kalkat provided payments to two drug rehabilitation facilities of around £25,000. Dr Kalkat does not state that, at this time, he was being subjected to threats from Patient A. Patient A's account also associates these payments with Dr Kalkat being concerned about how Patient A had been treated and implies that he believed that Dr Kalkat was seeking to help him at this time. Dr Kalkat's initial funding of approximately £25,000 for Patient A's rehabilitation was exceptional and far beyond any reasonable consideration of what was appropriate for a relationship between a doctor and patient. Whatever Dr Kalkat's intention, this gift, in my opinion, established an improper relationship between Dr Kalkat and Patient A, in the sense that Dr Kalkat's actions made Patient A 'indebted' to Dr Kalkat financially, and this had the potential to inappropriately influence Patient A's care. This gift, in my opinion, had the potential to undermine trust in the medical profession. The size of this gift was such that it should have been understood by Dr Kalkat at the time of the events of concern that his actions were inappropriate. Dr Kalkat's action in giving Patient A the initial funding for his drug rehabilitation was inconsistent with GMC Good Medical Practice and seriously below the standard expected of a reasonably competent general practitioner. This was seriously below the standard expected because Dr Kalkat's actions fundamentally undermined GMC Good Medical Practice.'

41. Again, the Tribunal had regard to its finding that Patient A was a vulnerable patient. The Tribunal considered that Dr Kalkat's actions in seeking to preclude Patient A from complaining about him or pursuing legal action, in exchange for funding his private rehabilitation treatment, were a serious departure from the standards expected of medical practitioners. The Tribunal considered that there was a considerable imbalance of power between Patient A, who was vulnerable, and Dr Kalkat who was offering to pay for rehabilitation treatment, subject to conditions. It considered that Dr Kalkat's actions very significantly blurred the doctor – patient boundaries. It created a financial relationship between Dr Kalkat and Patient A in which very large sums of money were being paid by Dr Kalkat personally for Patient A's treatment. The Tribunal considered that this also had the effect of creating a personal relationship between Patient A and Dr Kalkat outside the normal doctor – patient dynamic. Dr Kalkat was a very experienced GP and the Tribunal considered that he could not have been under any illusion as to whether his actions significantly deviated

from those appropriate for a doctor – patient relationship. The Tribunal considered that Dr Kalkat's actions breached the following paragraphs of GMP:

> *'65*
> *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*
>
> *80*
> *You must not ask for or accept – from patients, colleagues or others – any inducement, gift or hospitality that may affect or be seen to affect the way you prescribe for, treat or refer patients or commission services for patients. You must not offer these inducements.'*

42. In the circumstances as outlined above, the Tribunal concluded that Dr Kalkat's actions in personally paying for Patient A's treatment amounted to misconduct which was serious.

Paragraph 3

43. The Tribunal had regard to Dr E's conclusions, he stated:

> *'If Patient A's account is accepted then in December 2019 Dr Kalkat gave Patient A a gift of £1,200 and in January 2020 Dr Kalkat gave Patient A a further gift of £150 when Patient A had not threatened Dr Kalkat, and indeed when Patient A did not wish to receive such a gift. If this accepted then Dr Kalkat's actions were unacceptable, inconsistent with GMC Good Medical Practice and seriously below the standard expected or a reasonably competent general practitioner. Dr Kalkat's actions were seriously below the standard expected because they undermined GMC Good Medical Practice in a fundamental way.'*

44. The Tribunal also had regard to Dr E's opinion that, on one view, putting the amounts to one side, these gifts could be considered more serious than Dr Kalkat paying for Patient A's treatment, as there was no direct link to any clinical element.

45. The Tribunal considered that there was plainly an improper financial relationship established between Dr Kalkat and Patient A. The Tribunal had regard to its conclusions that the payment of these two sums of money to Patient A and its conclusions that these

payments were also designed to prevent Patient A from making a formal complaint or taking action against the Health Centre. For the same reasons as outlined above in respect of paragraph 2 of the Allegation, the Tribunal considered that these two payments were clearly inappropriate, and they amounted to serious misconduct on the part of Dr Kalkat.

Paragraph 5

46. The Tribunal reminded itself that it found that Dr Kalkat's actions as described at paragraphs 1(a), 2(a), 2(b) and 3 of the Allegation were designed to prevent Patient A from making a formal complaint and/or taking action against Dr Kalkat and/or the Health Centre regarding the monitoring of his prescription medication.

47. The Tribunal again had regard to its finding that Patient A was a vulnerable patient. As indicated above, the Tribunal considered that Dr Kalkat's actions in seeking to preclude Patient A from complaining about him or pursuing action, in exchange for funding his private rehabilitation treatment, were a serious departure from the standards expected of medical practitioners. The Tribunal considered the contract was not executed in an open or transparent legal process and it rejected Dr Kalkat's position that Patient A requested the relevant clause to be included. The Tribunal considered that there was a considerable imbalance of power between Patient A, who was vulnerable, and Dr Kalkat who was offering to pay for rehabilitation treatment, subject to conditions. The Tribunal considered that it was clearly inappropriate for a doctor to attempt to avoid a complaint being lodged via monetary or treatment inducements. As a very experienced GP, the Tribunal considered that Dr Kalkat must have known this. The Tribunal considered that Dr Kalkat's actions were in breach of paragraphs 61, 65 and 80, as previously quoted, of GMP and they clearly amounted to serious misconduct.

Paragraphs 6(a), (b), (c), (d), 7 and 8

48. The Tribunal reminded itself that Dr Kalkat admitted these paragraphs of the Allegation, which were self-evidently proved when one considered the transcripts of the consultations recorded by Patient A.

49. The Tribunal had regard to Dr E's comments in his written report, as follows:
'If Patient A's account and the evidence of the transcripts he caused to have made is accepted, then during consultations on 3rd January 2020, 10th January 2020 and 17th January 2020 Dr Kalkat persistently advised Patient A that he was seriously unwell and

did so as part of an apparent strategy to encourage Patient A to register with another general practitioner. Dr Kalkat told Patient A that he had cancer when he did not in fact have cancer and did so to coerce Patient A to cease to be registered with the Surgery. Furthermore, Dr Kalkat offered a further inducement in the form of a payment of £15,000 for Patient A to cease to be registered with the Surgery. If Patient A's account is accepted, then Dr Kalkat lied to Patient A and did so in such a way to exploit his vulnerabilities with dependence on an idiosyncratic treatment regimen which 'locum' doctors covering for Dr Kalkat's absence would decline to prescribe. Dr Kalkat sought to offer Patient A a financial inducement to change his registration, with the Surgery which was against his terms of service as a general practitioner. Dr Kalkat's actions were inappropriate and not consistent with GMC Good Medical Practice. Dr Kalkat's actions were seriously below the standard expected of a reasonably competent general practitioner because his actions fundamentally undermined GMC Good Medical Practice. If Dr Kalkat's account is accepted, then at this time Dr Kalkat was subject to threats from Patient A which might mitigate his actions.'

50. The Tribunal also had regard to Dr E's oral evidence, as follows:

'This appears to be an instance of a doctor with a longstanding relationship with a patient telling them a series of quite complex lies about themselves, as well as lying to a patient being, I struggle to think of a circumstance when it is appropriate, but as well as that, Dr K would have reason to believe that it would cause Patient A distress as Patient A was very invested in Dr K, notwithstanding Dr K being his provider of treatment. This was a person who, so far as one could tell, Patient A had a good relationship with for a long time. Telling Patient A he would go away for a terminal condition is an outrageous lie.'

51. The Tribunal considered that Dr Kalkat's dishonesty in telling these untruths to Patient A was particularly serious. It occurred in the course of Dr Kalkat's professional practice; it constituted lies to a vulnerable patient; it was planned and calculated in that Dr Kalkat must have given at least some advance thought to this plan; it was persistent and repeated on several occasions; and it was intended to persuade Patient A to register with another GP.

52. The Tribunal considered that honesty is a fundamental tenet of the medical profession and any dishonest conduct on the part of a doctor is such that it has the potential to bring the profession into disrepute and undermine public confidence. Where dishonesty

occurs in the context of professional practice as it did in Dr Kalkat's case, that dishonesty is easily viewed to be sufficiently serious to amount to serious misconduct. The Tribunal considered that Dr Kalkat's actions were in breach of paragraphs 65 (quoted above) and 68 of GMP:

> '*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.'*

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

Paragraph 9

54. The Tribunal had regard to Dr E's oral evidence, as follows:

> *'Again, that would be completely improper. One could advise a patient that their best interest would be served by seeing another practitioner or registering with another surgery and there would be situations where a relationship had deteriorated and you would seek to enforce that. To induce through an offer of money, when he didn't wish to do so, seems inappropriate.'*

55. The Tribunal reminded itself of the context in which Dr Kalkat came to offer Patient A £15,000 to register with another GP, in which Dr Kalkat had personally paid in excess of £40,000 for private rehabilitation treatment and had then lied about his own health in an attempt to persuade Patient A to register elsewhere. The Tribunal considered that Dr Kalkat's actions, in offering Patient A a further £15,000 on the condition that he register elsewhere to be inherently improper. It was very concerned by the transcripts of the conversations between Patient A and Dr Kalkat and the Tribunal considered that, if a proper and genuine reason existed for a doctor wishing a patient to register elsewhere, proper procedures exist and must be followed. To attempt to induce a patient to register elsewhere again created an improper doctor – patient relationship and blurred the appropriate lines which exist. The Tribunal considered that Dr Kalkat's actions were in breach of paragraphs 65, 68 and 80 of GMP and amounted to serious misconduct.

Paragraphs 12, 13 and 14

56. The Tribunal reminded itself of its conclusions in respect of these paragraphs of the Allegation. It considered that Dr Kalkat's actions constituted a particularly serious instance of dishonesty on Dr Kalkat's part for reasons including the following:

- honesty and probity are fundamental tenets of the profession;
- Dr Kalkat's allegation to police that Patient A had assaulted him could potentially have had very serious ramifications for Patient A, and the potential for a criminal conviction;
- even though Dr Kalkat did not pursue the criminal complaint, serious consequences for Patient A did flow from Dr Kalkat's dishonest actions, in that Patient A was placed on a patient list for violent patients and found it difficult to get appointments etc.
- Patient A was observed by members of his community being brought home in handcuffs and a police car and he described the impact on him personally of this;
- Dr Kalkat's actions were again in the context of him trying to end his relationship with Patient A;
- this was, again, a calculated and planned instance of dishonesty.

57. The Tribunal considered that Dr Kalkat's actions represented a very significant breach of paragraphs 65, 68 (quoted above) and 73 (quoted below) of GMP:

> '*73*
> *You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in confidentiality*'

58. In all the circumstances, the Tribunal concluded that Dr Kalkat's actions amounted to serious misconduct.

Paragraphs 15, 16, 17 and 18

59. The Tribunal reminded itself of its findings in respect of these paragraphs of the Allegation and Dr Kalkat's admissions that he dishonestly gave information which was untrue to NHS England in the course of their investigation.

60. The Tribunal again noted that dishonest actions are generally considered to breach a fundamental tenet of the medical profession. The Tribunal considered that the following factors made Dr Kalkat's dishonesty as referred to in these paragraphs of the Allegation more serious:

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- it was dishonesty in the course of an official investigation by a designated body; and
- it was an attempt by Dr Kalkat to downplay the amount of money he had given to/for Patient A.

61. The Tribunal considered that Dr Kalkat's actions were in breach of paragraphs 65, 68 and 73 of GMP, as quoted above.

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

Paragraph 19

63. As indicated above, the fact that, at all times, Patient A was vulnerable due to his health was taken into account by the Tribunal in reaching its conclusions as to whether Dr Kalkat's actions amounted to serious misconduct.

64. In the circumstances, as outlined above, the Tribunal concluded that Dr Kalkat's conduct, both individually and collectively, fell so short of the standards of conduct reasonably expected of a doctor so as to amount to serious misconduct.

Impairment

65. Having found that the facts found proved amounted to serious misconduct, the Tribunal went on to consider whether Dr Kalkat's fitness to practise is currently impaired by reason of that misconduct.

66. The Tribunal noted that no direct issues regarding Dr Kalkat's clinical knowledge and skills are raised in this case and Dr Kalkat has a previously unblemished regulatory record.

67. The Tribunal has noted and taken into account the CPD and that Dr Kalkat has kept his knowledge and skills up to date. The Tribunal also noted the positive testimonials, which outlined the following:

> *'Dr Kalkat was and is still very much a trusted and appreciated GP within our clinical network. His approach to teaching and supervision was impressive - he could speak to multiple GPs on topics / latest guidance and was able to impart a feeling of honesty and impeccable character to all.'*
>
> *'My view is that he is a very caring, hardworking ,trust worthy doctor with high clinical standards and has always displayed a high standard of integrity. He has always been knowledgeable and has contributed and designed multiple clinical pathways across Barking and Dagenham due to his work has been nominated and has won awards over the years.*
>
> *Since joining together as a clinician I have seen first-hand that he is very thorough and as a clinician always tried to keep up to date and use that knowledge in his decision making. His clinical acumen/ knowledge, clinical skills and experience is impressive and is regarded as a mentor to much of our clinical and non-clinical staff. He is a well-liked clinician and is regarded as a team player /has always been approachable for support. This was demonstrated during covid as he would make sure all staff were supported and checked on. He is well loved by his patients and his patients always remark on his clinical skills, and how he had supported them throughout the years. Previous to our practices joining on a number of occasions I had sought counsel on leadership and his clinical expertise. Many GPs in our area regard him as an excellent clinician /leader that he could be called upon for support.*
>
> *…*
>
> *As a clinical leader for over 20 years he has been instrumental in leading the work for the former BD CGG/ BHR CCG on Primary care and medicines management. He has brought fantastic innovations to improve clinical care for primary care and secondary care. Indeed he has been instrumental in developing the relationships between consultant colleagues and primary care colleagues under his leadership has developed multiple clinical pathways across the system to improve the dialogue between primary care and secondary care whilst improving quality, safety and patient care. He has mentored and supported many of his GP colleagues in their professional development*

and has tutored many professionals of other disciplines and supported them to become future leaders.

As part of the practice commitment to reducing health inequalities and improving access Dr Kalkat has been very much involved /instrumental in setting up and supporting community outreach GP pop up clinics in which we as lead GPs took time on our annual leave / days off to offer GP reviews in the community for hard to reach populations working with community groups and local teams. This work recently (Nov 23) won an award for 'collaborative project of the year' by the Royal College of GPs North East London faculty.

…
I hope the GMC will consider his considerable input and devotion to not only in his own practice and his own care with patients but across 137 practices in the BHR area and the 35 practices in Barking and Dagenham as well as also the multiple pathways that he has over seen over the years improving clinical care and safety for our patients.

68. The Tribunal noted that dishonesty can be difficult to remediate, but that in certain circumstances, it can be capable of remediation.

69. In relation to the issue of Dr Kalkat's insight, the Tribunal concluded that it was negligible. The Tribunal considered that, in his witness statement, Dr Kalkat did not demonstrate any meaningful acceptance of culpability on his part, maintaining at various times that he was only in the position he finds himself because of Patient A's actions, which the Tribunal has not accepted. The Tribunal considered that, where admissions had been made by Dr Kalkat, they appeared to be somewhat 'qualified' and Dr Kalkat did not fully acknowledge his own culpability in his actions. In his witness statement, Dr Kalkat referred on a number of occasions to acting as he did as a result of threats of harm from Patient A. Whereas the Tribunal considered that such threats, if they occurred, might feasibly provide some context in assessing the issue of impairment, the Tribunal reminded itself of the fact that Patient A had denied making threats, Dr Kalkat had not given oral evidence to permit these assertions to be discussed/tested, and the Tribunal had considered in determining the facts that the notes and records which referred to threats had to be viewed in that context. In addition to the foregoing, the Tribunal considered that recognition by Dr Kalkat of the effect of his actions on either Patient A or on the profession was lacking from Dr Kalkat's statement.

70. The Tribunal considered that there had been limited evidence of focussed or targeted remediation, particularly in relation to the issue of dishonesty. The Tribunal considered that the CPD certificates simply demonstrated that Dr Kalkat had completed courses of the nature expected of any GP in practice. The courses attended subsequent to the events under consideration did not, in the main, appear to the Tribunal to be designed to address any of the issues raised in this case. The Tribunal did note that Dr Kalkat completed a number of short probity and ethics courses since the events under consideration. However, again in the absence of hearing from Dr Kalkat on these issues, the Tribunal was unable to determine what Dr Kalkat had learned from such courses or how his attendance factored into the Tribunal's assessment of insight and remediation. The testimonials were of limited assistance in light of the absence of demonstrable insight and remediation.

71. With regard to the risk of repetition, the Tribunal was concerned that, should Dr Kalkat be put in a similar situation again, it could not be satisfied that he was unlikely to act dishonestly in the future. In reaching that conclusion, the Tribunal was mindful that Dr Kalkat has not attended this hearing to give evidence and its assessment was therefore limited to the available documentary evidence. In light of the Tribunal's conclusions on the issues of insight and remediation, the Tribunal was not satisfied that the risk of repetition was low.

72. The Tribunal considered that Dr Kalkat's dishonest actions breached a fundamental tenet of the medical profession. They were liable to bring the medical profession into disrepute. They had the potential of putting a patient at unwarranted risk of harm, in that the availability of medical treatment was made contingent on contractual terms. There were associated potential impacts on Patient A's mental health and difficulty in obtaining continuity of care.

73. In the circumstances, given the nature of the serious misconduct involved and the fact that it occurred in a clinical setting; and in light of Dr Kalkat's very low level of insight, the absence of evidence of remediation and the Tribunal's conclusions regarding risk of repetition, the Tribunal concluded that a finding of impaired fitness to practise was required to:

> *'a. Protect, promote and maintain the health, safety and well-being of the public,*
> *b. Promote and maintain public confidence in the medical profession, and*
> *c. Promote and maintain proper professional standards and conduct for members of that profession.'*

74. The Tribunal has therefore determined that Dr Kalkat's fitness to practise is impaired by reason of his misconduct on each of the three limbs of the overarching objective.

Determination on Sanction - 16/07/2024

Events Following the Tribunal's Determination on Impairment

1. On 30 January 2024 (day 12 of the hearing), having been unable to conclude its deliberations and the drafting of its stage 3 sanction determination, the Tribunal listed one further day for the hearing to conclude, on 26 April 2024.

2. In the days prior to the hearing reconvening on 26 April 2024, Patient A, the GMC's key witness in relation to many of the factual allegations considered by the Tribunal, sent a number of emails to the GMC.

3. On 26 April 2024, having read the correspondence from Patient A and hearing submissions on behalf of the parties, the Tribunal decided that further time was required to consider this issue and for the parties to make more detailed submissions. The Tribunal's full decision addressing the issues raised by Patient A's correspondence is included at Annex C. Having reconvened on 15 July 2024, the Tribunal determined that no action was required or appropriate and that it should proceed to give its decision on sanction.

Stage 3 - Sanction

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

The Evidence

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

6. The Tribunal received further evidence on behalf of the GMC including:

- Note of telephone call between Patient A and the GMC dated 25 April 2024;
- Emails between Patient A and the GMC dated between 25 and 26 April 2024;
- Note of telephone call between Patient A and the GMC dated 26 April 2024;
- Emails between Patient A and the GMC dated May 2024;
- Note of telephone call between Patient A and the GMC dated 20 May 2024;
- Note of telephone call between Patient A and the GMC dated 3 June 2024;
- Email from Patient A to the GMC dated 11 June 2024.

7. The Tribunal received further evidence on behalf of Dr Kalkat including:

- Dr Kalkat's reflections / learning;
- A number of Continuous Professional Development (CPD) certificates.

Submissions

On behalf of the GMC

8. Mr Donoghue referred the Tribunal to a number of paragraphs in the Sanctions Guidance ('SG') which the GMC consider relevant and submitted that, in the GMC's view, the appropriate and proportionate sanction in this case is a period of suspension. Mr Donoghue submitted that such a sanction would promote and maintain public confidence in the medical profession and would promote and maintain proper professional standards and conduct for members of the profession.

9. With regard to the mitigating factors in this case, Mr Donoghue stated that Dr Kalkat has provided two testimonials from colleagues at his current GP practice, and he said that these support the general position that Dr Kalkat is a valued member of his GP practice and a competent and committed GP. Further, Mr Donoghue stated that Dr Kalkat was of previous good character and this case represents his first appearance before a Medical Practitioners Tribunal.

10. Mr Donoghue submitted that the GMC accepted that Patient A was, as Dr E described him, a particularly complex patient with a difficult and complicated history of addiction to prescription medication. Whilst the GMC does not accept multiple elements of Dr Kalkat's assertions regarding the nature of his relationship with Patient A, it does accept that the

complexity of Patient A's condition was such that it was likely causing Dr Kalkat to feel some work-related stress or pressure, as Patient A's GP.

11. Mr Donoghue submitted that the context of Dr Kalkat's misconduct is relevant, in that it occurred solely in his actions towards a single patient, Patient A's medical needs and presentation were complex and Dr Kalkat had a difficult relationship with Patient A. Mr Donoghue submitted that these are all relevant mitigating factors for the Tribunal to take into account.

12. Mr Donoghue stated that the misconduct found proved dates back to September 2019 to November 2020. As such, a period of around four years has passed since the time of the misconduct and there is no suggestion of repetition in the intervening period.

13. Mr Donoghue submitted that insight and remediation was best viewed as a sliding scale, with full insight and remediation at one end (providing a doctor with a significant mitigation) and no insight or remediation at the other end (acting as an aggravating factor). Mr Donoghue submitted that, in this case, Dr Kalkat has in his witness statement demonstrated only very limited insight into his misconduct, in his admissions made to several paragraphs of the Allegation and the brief reflections upon his relationship with Patient A. He noted that the Tribunal found at stage 2 that Dr Kalkat essentially sought to qualify each of the admissions he made and attribute blame to Patient A; and in those circumstances Dr Kalkat's insight can only be considered to be *'negligible'*.

14. Mr Donoghue stated that Dr Kalkat has engaged in some remediation type activities, including the completion of professional boundaries training. However, he submitted that there was still further work which Dr Kalkat could have completed, particularly focused on the issue of dishonesty and more extensive reflections upon his conduct towards Patient A.

15. Mr Donoghue submitted that Dr Kalkat's insight into the entirety of his misconduct can only be considered partially developed and, consequently, Dr Kalkat falls towards the *'lower end of the sliding scale'*. Therefore, in Mr Donoghue's submissions, the issues of both insight and remediation act as slight aggravating factors in Dr Kalkat's case.

16. With regard to the dishonesty elements of Dr Kalkat's misconduct, Mr Donoghue referred the Tribunal to paragraphs 120 to 128 of the SG. He submitted that Dr Kalkat engaged in three separate instances of dishonesty as follows:

- dishonesty in relation to his purported cancer diagnosis, which was repeated and sustained over more than three consultations with Patient A;
- the dishonest verbal statement to police that Patient A had assaulted him; and
- dishonesty with the NHSE investigation which involved attempts to mislead a professional investigative body looking into his relationship with Patient A.

17. Mr Donoghue reminded the Tribunal that the SG makes clear that the Tribunal is required to start by considering the least restrictive sanction first.

18. Mr Donoghue submitted that there were no exceptional circumstances which would justify the Tribunal taking no action in this case and would not be an appropriate course to take.

19. With regard to conditions, Mr Donoghue stated that whilst Dr Kalkat has some limited insight and may comply with conditions, a period of retraining and/or supervision was not the most appropriate way of addressing the misconduct, given its nature. Further, he submitted that it would not be possible to formulate a set of workable conditions which appropriately address Dr Kalkat's misconduct in this case, nor would the imposition of a period of conditional registration sufficiently protect and promote the overarching objective, given the seriousness of the misconduct.

20. With regard to suspension, Mr Donoghue submitted that the type of conduct described in paragraphs 92 and 93 of the SG was reflective of Dr Kalkat's misconduct in this case, which included multiple serious breaches of GMP. Mr Donoghue submitted that there has been a partial (albeit often-qualified) acknowledgment by Dr Kalkat of fault. In addition, there was also some limited evidence of steps taken by Dr Kalkat to mitigate his actions.

21. Mr Donoghue submitted that paragraphs 97(a), (e), (f) and (g) of the SG were relevant in this case. He stated that Dr Kalkat's misconduct was not such that it was incompatible with continued registration, when the relevant aggravating and mitigating factors are balanced. Mr Donoghue stated that there was no evidence to suggest that remediation was unlikely to be successful and there have been no previous unsuccessful attempts to remediate. He submitted that Dr Kalkat has already undertaken some limited remediation, albeit that further work is required.

22. Mr Donoghue stated that there was no evidence of repetition of Dr Kalkat's behaviour since its occurrence in 2019 and 2020, despite the passage of time.

23. Mr Donoghue submitted that a period of suspension was the most appropriate sanction in this case. It would mark the seriousness of Dr Kalkat's misconduct and the way in which it departed from key principles of GMP. It will also ensure that public confidence in the medical profession is protected and proper professional standards are promoted and maintained.

24. Mr Donoghue submitted that Dr Kalkat's actions are not fundamentally incompatible with continued registration.

25. With regard to the length of suspension, Mr Donoghue submitted that the type of misconduct in this case was such that a suspension towards the upper end of the available range would be warranted. Mr Donoghue stated that Dr Kalkat engaging in three separate instances of dishonesty, as well as other actions in breach of GMP, was such that it only just falls short of the type of misconduct which would warrant a sanction of erasure.

26. Mr Donoghue submitted that Dr Kalkat only made partial admissions in this case and given that his insight remains limited, a review hearing should be directed.

On behalf of Dr Kalkat

27. On behalf of Dr Kalkat, his solicitor – Ms Dawson - submitted via email that Dr Kalkat was in agreement with the GMC's proposal that a suspension was appropriate. In addition, Dr Kalkat also agreed that a review hearing was required.

28. Ms Dawson stated that Dr Kalkat had considered the Tribunal's comments carefully regarding this matter and considered a review hearing would assist him so that he can update his knowledge further in the areas identified by the Tribunal in its determination and provide assurances to the Tribunal that there is no risk of repetition and that he has fully remediated.

29. Ms Dawson submitted that Dr Kalkat fully accepted the serious nature of the allegations which have been found proved and, whilst not trying to diminish the seriousness in any way, he would respectfully ask that the Tribunal take into account that the circumstances regarding Patient A were unique and related to a single patient over a medical career spanning 30 years. Furthermore, his Responsible Officer (RO), has confirmed to the

Tribunal that since the incidents relating to Patient A, no further concerns have been reported and she was not aware of any previous concerns.

30. Ms Dawson sought to remind the Tribunal that it had noted at stage 2 that there are no direct issues regarding Dr Kalkat's clinical knowledge and skills, and he has a previously unblemished regulatory record. Ms Dawson submitted that this demonstrates that the events with Patient A were entirely out of character for Dr Kalkat.

31. Ms Dawson stated that, whilst a similar issue arising in the future is highly unlikely, Dr Kalkat would like to reassure the Tribunal that he would not let himself get into a similar position in the future. His working situation has now changed so he has appropriate support in place, and he has fully reflected on the events with Patient A.

32. Ms Dawson submitted that Dr Kalkat fully accepts that his actions fell below what is expected of him and sincerely regrets making a significant error in judgement regarding his interactions with Patient A.

The Tribunal's Determination on Sanction

33. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In reaching its decision, the Tribunal has taken GMP and the SG into account and has, at all times, borne in mind the overarching objective.

34. The Tribunal reminded itself that the main reason for imposing any sanction is to protect the public and that sanctions are not imposed to punish doctors, even though they may have a punitive effect. Throughout its deliberations, the Tribunal has applied the principle of proportionality, balancing Dr Kalkat's interests with the public interest.

35. Before considering what action, if any, to take in respect of Dr Kalkat's registration, the Tribunal considered the mitigating factors and aggravating factors in this case.

Mitigating Factors

36. The Tribunal considered the following to be mitigating factors in this case:

- Dr Kalkat has had a long career spanning 30 years as a medical practitioner, and this has been otherwise unblemished;

- Although the incidents occurred over several months, they related to one patient with particularly complex needs, which caused him to make 'a significant error of judgement';
- Evidence has been provided to the Tribunal by Dr Kalkat's RO that there have been no further concerning incidents in the four years since the index events;
- Dr Kalkat is an otherwise competent and valued member of the profession, as attested to by the testimonials provided by colleagues at his current GP practice;
- Dr Kalkat made partial admissions to aspects of the Allegation, albeit that in the Tribunal's view these were somewhat qualified in nature.

Aggravating Factors

- Dr Kalkat's dishonesty was persistent and protracted and occurred in three distinct instances;
- Dr Kalkat was dishonest during an official investigation by a designated body;
- Dr Kalkat's verbal statement to police that he had been assaulted by Patient A could potentially have led to serious criminal consequences for Patient A;
- Patient A was a vulnerable patient;
- Dr Kalkat has demonstrated very limited insight.

37. The Tribunal has taken the above factors into account in considering the appropriate sanction under the SG. It considered each sanction in ascending order of severity, starting with the least restrictive.

No action

38. The Tribunal first considered whether to conclude the case by taking no action. The Tribunal determined that there are no exceptional circumstances in this case which would warrant the taking of no action in the context of the facts found proved and the Tribunal's determination on impairment; and it considered that the taking of no action would not be sufficient, proportionate, or in the public interest.

Conditions

39. The Tribunal next considered whether to impose conditions on Dr Kalkat's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable. In the light of the misconduct under

consideration together with its findings, the Tribunal determined that it would not be possible to formulate a set of appropriate or workable conditions which could adequately address Dr Kalkat's misconduct, in particular those aspects of his misconduct which related to dishonesty. In any event, the Tribunal concluded that a period of conditional registration would not be a sufficient, appropriate, or proportionate sanction to satisfy the public interest.

Suspension

40. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Kalkat's registration. It considered that paragraphs 120 to 122, 124 and 125(e) and 128 of the SG, which refer to instances of dishonest misconduct, to be engaged:

> *'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.*
>
> *…*
>
> *122 Paragraphs 78–80 of Good medical practice and the separate guidance on Financial and commercial arrangements and conflicts of interest,25 further emphasise the duty to avoid conflicts of interest.*
>
> *…*
>
> *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.

41. The Tribunal was in no doubt that Dr Kalkat's misconduct was sufficiently serious that significant action is required to meet the needs of the overarching objective and, in particular, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal considered that a message must be sent to the medical profession and the public that Dr Kalkat's behaviour was entirely unacceptable.

42. The Tribunal considered that the following paragraphs of SG were applicable and indicated that suspension may be an appropriate sanction in the context of this case:

'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 (i.e. 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).'

…

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

a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any

sanction lower than suspension would not be sufficient to protect the public or maintain confidence in doctors.

…

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

f No evidence of repetition of similar behaviour since incident.

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

43. The Tribunal recognised that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Kalkat, the profession, and the public about what is regarded as behaviour unbefitting a registered doctor. It also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to maintain public confidence in the profession, but which falls short of being fundamentally incompatible with continued registration.

44. The Tribunal considered that Dr Kalkat's misconduct – in particular his dishonest misconduct - was very serious and significantly departed from GMP. Dr Kalkat's actions did verge on being fundamentally incompatible with continued registration and a number of the paragraphs of the SG may have lent support to erasure as an appropriate sanction to impose.

45. However, taking into account all of the circumstances of this case, and balancing all of the aggravating and mitigating factors, the Tribunal ultimately determined that Dr Kalkat's misconduct was not such that it is fundamentally incompatible with continued registration.

46. In reaching this conclusion, the Tribunal placed some weight on Dr Kalkat's long and otherwise unblemished career, the positive testimonial evidence from his RO and colleagues, Dr Kalkat's (albeit qualified) admissions, the fact that these events appeared to be entirely out of character for Dr Kalkat, the fact that there has been no evidence of repetition in the last four years, and (to a lesser extent) the fact that they related to one patient with particularly complex needs.

47. The Tribunal considered that Dr Kalkat has demonstrated some very limited insight into his misconduct and has undertaken limited remediation, and that further work is required.

48. The Tribunal considered that, although Dr Kalkat has a long way to go in demonstrating insight and remediating, it is, overall, proportionate to allow him an opportunity to reflect on his misconduct and the findings of the Tribunal, and to develop insight and to remediate. The Tribunal considered that there is some evidence which indicates a willingness to engage on the part of Dr Kalkat on these issues. For example, although Dr Kalkat did not attend the hearing, he did provide a detailed witness statement and other evidence and via his lawyers, Dr Kalkat did make (limited) submissions remotely.

49. The Tribunal noted that Dr Kalkat has indicated that his working situation has now changed, and he now has appropriate support in place which makes future repetition unlikely. The Tribunal noted Dr Kalkat's comments in this regard, however given his absence from the hearing, the Tribunal has not been able to probe or test Dr Kalkat's evidence to satisfy itself about support structures etc.

50. As noted above, the Tribunal considered that, while a number of the paragraphs of SG might be considered to support the sanction of erasure, such a sanction would not be proportionate. In reaching this conclusion, the Tribunal took into account the public interest in having an otherwise competent doctor able to practise. It also reminded itself that the purpose of a sanction is not to be punitive, albeit that a sanction inevitably has a punitive effect.

51. In all of the circumstances, having balanced Dr Kalkat's interests with the public interest, the Tribunal determined that a period of suspension is the appropriate and proportionate sanction to impose in this case. It considered that such a sanction meets the needs of the overarching objective and sends a clear message that Dr Kalkat's behaviour was wholly unacceptable for a member of the medical profession.

52. In reaching a decision on the length of time that Dr Kalkat's registration shall be suspended, the Tribunal again noted the aggravating and mitigating factors identified above. It reminded itself of the seriousness of Dr Kalkat's misconduct and departures from GMP, and of its own conclusions as set out in its previous determinations. The Tribunal reminded itself that Dr Kalkat's misconduct included instances of significant dishonesty and that Dr Kalkat has not addressed the issues giving rise to this case.

53. In all the circumstances, the Tribunal determined that the minimum period of suspension which would be sufficient to meet Dr Kalkat's misconduct, is the maximum period available to the Tribunal – 12 months.

54. The Tribunal considered that suspension for this period of time marks the seriousness of Dr Kalkat's actions, sends a clear message to him, the profession, and the wider public, and that his actions constitute behaviour unbefitting a registered medical practitioner. This period of suspension will also give Dr Kalkat adequate time to further remediate and gain sufficient insight into his actions.

55. The Tribunal determined to direct a review of Dr Kalkat's case to be convened shortly before the end of the period of suspension. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Kalkat to demonstrate how he has developed his insight and remediated his misconduct and to satisfy the Tribunal that he is fit to return to unrestricted practice. It may therefore assist the reviewing Tribunal if Dr Kalkat provides evidence of:

- remorse;
- having reflected on his misconduct and the findings of the Tribunal;
- having developed full insight;
- steps taken to remediate;
- steps taken to maintain clinical skills and knowledge.

56. Dr Kalkat may also provide any other information that he considers will support his case in showing that his fitness to practise is no longer impaired.

Determination on Immediate Order - 16/07/2024

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

Submissions

2. Mr Donoghue submitted that the GMC's position is that there is no application for an immediate order in this case. He also asked that the interim order of conditions on Dr Kalkat's registration be revoked.

3. On behalf of Dr Kalkat, no submissions were made.

The Tribunal's Determination

4. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or is in the best interests of the practitioner. It has also considered the guidance given in paragraphs 172, 173, and 178 of the SG relating to immediate orders:

> *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.

5. The Tribunal had regard to its previous determinations and the submission made by Mr Donoghue.

6. The Tribunal determined that it is not necessary to impose an immediate order to protect members of the public, it is not in the public interest, and it is not in the best interests of the doctor. The Tribunal was conscious of the seriousness of the misconduct but determined that this was adequately addressed by the substantive decision of suspension.

7. In all the circumstances, the Tribunal determined not to impose an immediate order of suspension on Dr Kalkat's registration.

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

9. The interim order is hereby revoked.

10. That concludes this case.

ANNEX A – 26/01/2024

Service and Proceeding in Absence

1. Dr Kalkat was neither present nor legally represented at this hearing.

Service

2. At the outset of these proceedings, on behalf of the General Medical Council ('GMC'), Mr Donoghue, counsel, made submissions in relation to service. The Tribunal was also provided with a copy of a GMC Service bundle detailing email correspondence with Dr Kalkat's representative Ms Dawson, solicitor.

3. Mr Donoghue referred the Tribunal to a letter sent by the GMC by email to Dr Kalkat's legal representative on 4 December 2023, which outlined the following:

- the date, time and venue of the hearing,
- Dr Kalkat's right to attend the hearing and to be represented at it;
- the power of the Tribunal to proceed in Dr Kalkat's absence,
- Dr Kalkat's right to adduce evidence and to call and cross-examine witnesses, and
- the Tribunal's powers of disposal under section 35D, section 38, section 41A of, and paragraph 5A(3D) or 5C(4) of Schedule 4 to, the Act.

4. On 5 December 2023, Dr Kalkat's representative Ms Dawson replied to the GMC and confirmed that she had received the email from the MPTS. Further, on 12 January 2024, a letter from Ms Dawson was received by the MPTS which stated:

> *'We are instructed by the Medical Defence Union ('MDU') to assist its member Dr Gurkirit Kalkat in connection with the General Medical Council ('GMC') proceedings. The Fitness to Practise ("FtP") hearing is due to commence on Monday 15 January 2024.*
>
> *We write to inform you that Dr Kalkat will not be attending the FtP hearing and will also not be represented by Counsel. Please note that CMS remain on record as Dr Kalkat's representation and would be grateful if you could keep [Ms Dawson] (contact details above) updated as the hearing progresses and when decisions are handed down so we can advise Dr Kalkat accordingly.*

5. Mr Donoghue submitted that this evidence demonstrates that the notice of hearing has been properly served upon Dr Kalkat.

6. Having considered all the documentation contained within the service bundle and in particular as set out above, the Tribunal determined that notice of this hearing had been served on Dr Kalkat in accordance with Rules 15 and 40 of the Rules, and paragraph 8 of Schedule 4 to the Medical Act 1983, as amended. In particular, a notice of hearing containing the prescribed information and notifying Dr Kalkat of the date of today's hearing, was sent by email to his representative and acknowledged.

Proceeding in Absence

7. The Tribunal went on to consider whether to proceed in Dr Kalkat's absence in accordance with paragraph 31 of the Rules. It was noted that the decision was a matter for its discretion.

8. Mr Donoghue referred the Tribunal to the criminal case of *R v Hayward; R v Jones; R v Purvis [2001] EWCA Crim 168* and *General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 162* which set out the various considerations to take into account when deciding whether to proceed in absence.

9. Mr Donoghue submitted that given the content of the letter from Dr Kalkat's representative dated 12 January 2024, it is clear that Dr Kalkat was voluntarily absenting himself from these proceedings. He stated that there was no suggestion that an adjournment was being sought by Dr Kalkat. Mr Donoghue submitted that an adjournment would not lead to Dr Kalkat attending the hearing because he was actively taking the decision not to attend, rather than there being a particular circumstance related to this hearing which is preventing him from doing so.

10. Mr Donoghue stated that representation was another factor to be considered, and whilst Dr Kalkat was not represented at this hearing, he was still represented in the proceedings and would be aware of the possibility of being represented at the hearing if he wished to be.

11. Mr Donoghue stated that the letter dated 12 January 2024 from Dr Kalkat's representative specifically indicates consent on his behalf, for the hearing to proceed in his absence. Mr Donoghue submitted that there is a clear public interest in the allegations in this

case, which are serious allegations, being determined at the earliest possible opportunity, and therefore the application was that the Tribunal proceed with the hearing in Dr Kalkat's absence.

12. Mr Donoghue referred the Tribunal to Dr Kalkat's reason for not attending the hearing detailed in the letter from his representative dated 12 January 2024, which states:

> *'…Dr Kalkat's position is he has been subject to threats at the hands of Patient A and also an assault that occurred on 3 February 2020. It is against this backdrop that Dr Kalkat feels he is unable to be present during the hearing.*
>
> *Patient A is aware of where Dr Kalkat's family resides and has previously made threats against both Dr Kalkat and his family...'*

13. Mr Donoghue stated that it was the GMC's position that this was not relevant to the Tribunal's decision whether to proceed in his absence and may in fact be more relevant to the Tribunal's assessment of the evidence in the case as a whole. Mr Donoghue submitted that the GMC does not accept those reasons which are outlined. He stated that it will be part of the Tribunal's role in this case to assess whether the assertions that Dr Kalkat makes regarding Patient A's behaviour are in fact correct and the GMC will make submissions in that regard as the case progresses.

14. Mr Donoghue stated that the allegations which arise in this case date back to late 2019 and early 2020. He said that it was suggested within the letter from Dr Kalkat's representative that Patient A knows the locality in which he lives and there was some fear which arises as a result of that. However, Mr Donoghue submitted that there was absolutely no suggestion that, in the almost four years since the latest of the allegations arose, there has been any conduct on the part of patient A which could or should have caused Dr Kalkat to fear attending this hearing.

15. Mr Donoghue submitted that the suggestion that was the reason why Dr Kalkat was unable to attend this hearing was implausible and invited the Tribunal to have regard to that only to the extent that the Tribunal may be considering whether or not it was an issue which affects its decision whether to proceed with the hearing in the absence of the doctor.

16. Mr Donoghue, invited the Tribunal to proceed with the hearing in Dr Kalkat's absence.

Tribunal Decision

17. In deciding whether to proceed with this hearing in Dr Kalkat's absence, the Tribunal carefully considered all the information before it. The Tribunal took account of the service bundle and correspondence from Dr Kalkat's representative. The Tribunal noted that the discretion to proceed in the absence of a doctor should be exercised with the utmost care and caution, balancing the interests of the doctor with the wider public interest.

18. The Tribunal acknowledged the reason given by Dr Kalkat's representative as to why he feels unable to be present during the hearing, namely that he has been subjected to threats at the hands of Patient A and also an assault that occurred on 3 February 2020.

19. The Tribunal considered that it was difficult to make a reasoned judgement on this matter as it had not at this stage heard any direct evidence relating to such matters. However, the Tribunal noted that no application for an adjournment had been made and no special measures had been requested by Dr Kalkat via his legal representative. Indeed, Dr Kalkat's representative indicated that Dr Kalkat consented to the hearing proceeding in his absence. There was therefore no evidence to suggest that an adjournment today would result in Dr Kalkat's participation in a hearing in the future. In their letter to the Tribunal Dr Kalkat's legal representatives confirmed that they had discussed with Dr Kalkat the availability of potential measures which could alleviate any potential concerns regarding direct contact between Dr Kalkat and Patient A. The Tribunal reminded itself that this hearing was being conducted remotely and that direct contact in those circumstances can be avoided. Dr Kalkat's legal representatives made it clear that Dr Kalkat still did not intend to attend the hearing and he consented to it proceeding in his absence.

20. The Tribunal was of the view that the seriousness of the Allegation requires this matter to be finalised; it is in the public interest and in the interests of the witnesses and also in Dr Kalkat's interest that the matter be dealt with expeditiously. In all the circumstances, the Tribunal therefore determined that it was appropriate to proceed with the hearing in Dr Kalkat's absence.

ANNEX B – 26/01/2024
Application for the admission of further evidence

1. Prior to opening of the hearing, on behalf of Dr Kalkat, Ms Dawson made an application under Rule 34(1) to admit further evidence by written submissions. The evidence ('GK/03') consisted of an incident report prepared following the assault on 3 February 2020 and Patient A's subsequent removal from the patient list. Within the document there was a statement which purported to be given by Ms C, an employee at Dr Kalkat's surgery, which contained a written account of the interaction between Dr Kalkat and Patient A on 3 February 2020.

2. In her letter dated 12 January 2024 to the Tribunal, Ms Dawson stated that the GMC have objected to its inclusion in the hearing bundle as "*the witness statement appears to undermine the GMC's case on the assault related allegation*". Ms Dawson submitted that, unfortunately, Ms C was unable to assist at the present time due to her serious ill-health; in respect of which she gave some further detail. As a result, Ms Dawson indicated that she has been unable to obtain a formal witness statement from Ms C for the purpose of these proceedings. Ms Dawson stated that in recent limited communication between her offices and Ms C, Ms C has confirmed that she is content for CMS to share the information regarding her ill-health with the GMC and MPTS, but not the wider public. It was indicated that Ms C has also stated that unfortunately she cannot assist due to her ill-health.

3. Ms Dawson submitted that:

(i) *'allowing into evidence Exhibit GK/03 was clearly relevant as it directly relates to allegations being levelled against Dr Kalkat and is an independent account of a third individual that is neither Dr Kalkat nor the complainant, Patient A, that was prepared close in time to the incident';*

(ii) *'allowing into evidence Exhibit GK/03 is fair on the basis that CMS are unable to obtain a further witness statement from [Ms C] due to her current ill health';*

(iii) *'it would be unfair to exclude evidence which undermines the GMC's case, in circumstances where the witness is unable to assist due to her serious ongoing health issues'*; and

(iv) '*should the Tribunal allow Exhibit GK/03 into evidence, it was open to the GMC to make any submissions they wish to in respect of the written account of [Ms C]'*.

4. On behalf of the GMC, Mr Donoghue stated that no issue was taken with the submission received in the defence letter that Rule (34) was the applicable rule for the Tribunal to consider and that the Tribunal therefore is not bound by the rules of evidence applicable in the courts. Mr Donoghue stated that the GMC can potentially recognise a distinction between different parts of Exhibit GK/03, the first part, the report generally which purports to be prepared by the practice manager 'Ms D' (the report as a whole) and the second part which purports to be a statement which appended from Ms C.

5. Mr Donoghue stated that in relation to the first part, on every other account which the Tribunal has of this incident, Ms D was not in the room and therefore could not assist. The Tribunal is therefore in a position of not knowing what has informed that part of the report because it is not stated. With regard to the second part, the statement of Ms C, the GMC can appreciate that on both Dr Kalkat's and Patient A's accounts, Ms C was in the consultation room.

6. Mr Donoghue stated that to an extent, Patient A in his evidence (his initial account) states that Ms C initially supported the false allegation which Dr Kalkat was making against him. However, even with that distinction in mind, the GMC invites the Tribunal to have careful regard to the principles to be applied and that those principles are best summarised in the case of *Thorneycroft v Nursing and Midwifery Council [2014] EWHC 1565 (Admin).*

7. Mr Donoghue stated that in *Thorneycroft*, the court reviewed the previous authorities dealing with applications on evidence of this nature and set out a number of guiding principles. Mr Donoghue referred the Tribunal in particular to paragraph 45 which details that the first of the principles is that the omission of a statement of an absent witness should not be regarded as a routine matter, and the fitness to practise rules require the Tribunal to consider the issue of fairness before admitting the evidence. Mr Donoghue submitted that fairness was of prime importance, both to Dr Kalkat and to the GMC, which represents the public interest in these proceedings.

8. Mr Donoghue submitted that the second principle was the fact that the absence of a witness can be reflected in the weight to be attached to the evidence, but this will not always be sufficient to answer the objection to admissibility, and that was the most common argument quoted in support of admitting hearsay evidence. Mr Donoghue stated that the purported statement is not a formal witness statement of a witness who has been engaging with legal representatives but is unable to attend the hearing, and it is not supported by a formal statement of truth.

9. Mr Donoghue submitted that individuals who provide accounts in formal witness statements, can be held to account if the contents were found to be false, however in the case of this document as a whole, that could not be the case. Mr Donoghue stated that the concerns as far as the report of the practice manager are concerned are greater because it is known that she was not in the room at the time of the incident and therefore the account that was provided by her in the earlier part of the report would seem to be multiple hearsay from an unknown source. However, even in terms of the evidence which is said to derive from Ms C, the earlier concerns in terms of the lack of a statement of truth for the formality of the statement would still apply.

10. Mr Donoghue stated that the third factor in *Thorneycroft* is that the existence or otherwise of a good and cogent reason for the non-attendance of the witness is an important factor. However, the absence of a good reason does not automatically result in the exclusion of the evidence. Mr Donoghue stated that in terms of the Ms D, the position was quite simple because there was no detail whatsoever provided and there does not seem to have been any consideration given to seeking a witness statement from her to exhibit this document. Therefore, the Tribunal has no known information whatsoever to assess why, in fact, Ms D is not here as a witness in relation to Ms C or generally.

11. Mr Donoghue stated that there was some detail provided in terms of health reasons and the Tribunal have noted from reading the bundle of correspondence from the GMC that there were attempts made by the GMC to contact Ms C and obtain her account in relation to this incident but she declined that request. The decline was on a different basis to that which was now the basis of the defence application to admit the evidence. The two reasons are not necessarily entirely inconsistent with each other, but they are notably different and that is why the GMC invites the Tribunal to scrutinise the application carefully because there is no further supporting evidence provided.

12. Mr Donoghue submitted that it would be right for the Tribunal to inquire into firstly, what attempts have been made by Dr Kalkat's representatives to actually obtain a formal witness statement to place it on a more formal footing of having a statement of truth and being signed by the witness and then an application being made. Mr Donoghue stated that the Tribunal has no evidence of any such efforts, and no evidence other than what was stated in the letter as to why there is an inability to attend the hearing.

13. Mr Donoghue stated that the fourth factor in *Thorneycroft* was where such evidence was the sole or decisive evidence in relation to the charges, the decision whether or not to

admit it requires the Tribunal to make a careful assessment, weighing up the competing factors. In doing so, the Tribunal must consider the issues in the case, the other evidence which is to be called upon and the potential consequences of admitting the evidence. Mr Donoghue stated that the Tribunal must be satisfied either that the evidence is demonstrably reliable, or alternatively, that there will be some means of testing its reliability.

14. Mr Donoghue stated that it was right to say that the accounts within this document are not the sole evidence about this incident, because the Tribunal will have the oral evidence of Patient A in due course and also has the written evidence of Dr Kalkat. However, it has the potential to be evidence which is decisive in relation to this incident, because that depends upon the view the Tribunal takes of the evidence of Patient A against the evidence of Dr Kalkat. Mr Donoghue stated that where it has that potential, the GMC submit that *Thorneycroft* requires that the evidence be demonstrably reliable and that was not the case here because there was no reference to any other independent evidence which can demonstrate the reliability of this statement. In fact, the evidence which is sought to be admitted was not actually going to be supported by any other oral evidence, because all of the defence evidence was now here.

15. Mr Donoghue stated that the GMC has not taken any issue with Dr Kalkat's evidence being admitted in the interests of fairness, but the GMC submit that a balance has to be struck as essentially there was no means for the GMC to test the reliability of this evidence. Nobody who has authored the report or provided the statement within it or exhibited the document itself, will be present before the Tribunal to give evidence and be cross examined about its contents and in this jurisdiction, cross examination was the means by which reliability is tested. Mr Donoghue stated that the difference between the hearsay evidence upon which the GMC relies provided by Patient A or Ms B about discussions she had with Patient A was that they will both be presenting themselves and giving evidence to the Tribunal, and that was why the GMC invites the Tribunal to scrutinise this application very carefully. Mr Donoghue submitted that in all the circumstances of this case, it would not be fair that this evidence was admitted where there is no ability for it to be tested.

Tribunal Decision

16. The Tribunal had regard to the submissions from both parties and Rule 34(1) of the Rules, which states:

'The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.'

17. The Tribunal noted that Exhibit GK/03 consisted of a NHS England SAS Appeal Panel Practice Incident Form, completed by Ms D. Within the document Ms C appears to have prepared and signed a written account of what she witnessed during the interaction between Dr Kalkat and Patient A on 3 February 2020. This appears to have been prepared and signed some weeks after that incident.

18. The Tribunal concluded that Exhibit GK/03 was not the sole and decisive evidence in relation to the matters under consideration. The content was potentially consistent with other evidence already placed before the Tribunal by the GMC and did not deviate from the police summary evidence which the Tribunal noted was also hearsay evidence. The Tribunal concluded that it would be able to test the evidence to an extent, by hearing the evidence of Patient A, and comparing it with the police evidence and Dr Kalkat's notes.

19. The Tribunal acknowledged that it had been given a good reason why Ms C could not produce a witness statement and could not attend the hearing, albeit that no corroborating medical evidence was provided and limited information as to steps taken to obtain formal evidence was given.

20. The Tribunal noted that no reason had been given as to why Ms D has not produced a witness statement and could not attended the hearing. However, it considered that the report produced by Ms D, was an investigation report which would have been produced routinely in the ordinary course of business after an incident had occurred at the practice.

21. The Tribunal noted that Exhibit GK/03 had the potential to both assist and undermine both the GMC's and Dr Kalkat's cases.

22. In all the circumstances, the Tribunal determined to grant Dr Kalkat's application for the admission of Exhibit GK/03, in its entirety. The Tribunal considered that Exhibit GK/03 was relevant to the matters which it had to determine and it determined that, if the evidence were not admitted, overall, it would be unfair to Dr Kalkat and potentially to the GMC itself. The Tribunal determined that although a cogent reason for the absence of Ms D had not been given, a reason for Ms C's absence had (albeit this was uncorroborated), and overall, the Tribunal determined that fairness required the admission of the document. The Tribunal

considered that it could properly assess what weight to attach to the hearsay evidence in due course.

ANNEX C – 16/07/2024

Background

1. Dr Kalkat's hearing took place over a period of 12 days from 15 to 30 January 2024. During this time the Tribunal:

- handed down its determination on the facts at 'stage 1', finding a number of factual allegations proved;
- handed down its determination on impairment at 'stage 2' finding that Dr Kalkat's fitness to practise was currently impaired by reason of his misconduct; and
- received submissions and retired in camera to consider its determination on sanction at 'stage 3', but it had not yet handed down this determination.

2. As previously indicated, Dr Kalkat was not present, nor represented at the hearing, albeit Dr Kalkat did have ongoing legal representation outside of the hearing, such that submissions were advanced on his behalf at each of the three stages. In addition, an observer from Dr Kalkat's solicitors attended most of the hearing as a member of the public.

3. The Tribunal listed one further day for the hearing to conclude, on 26 April 2024.

4. In the days prior to the hearing reconvening on 26 April 2024, Patient A, the GMC's key witness in relation to many of the factual allegations considered by the Tribunal, sent a number of emails to the GMC following an initial telephone call to update him on 25 April 2024.

5. In several emails on 25 and 26 April 2024, Patient A made reference withdrawing his statement and support for the GMC's case and he stated that he would say that he had lied in his evidence to the Tribunal. The emails and notes from calls included the following:

'*Email dated 25 April 2024, 6:08pm*

…

I'm absolutely disgusted by this decision and I think I'd like to withdraw my statement, if that's not possible il be saying I lied as all the gmc have done is waste my time cause me stress and emotional trauma and I'm sick to death of it !

...

I'm honestly going to withdraw my statement, and I feel that strongly about this I will be calling the gmc tomorrow and if they won't withdraw il write a letter saying its all wrong and just let him carry on living his great life while I suffer!

...

Email dated 25 April 2024, 6:27pm

...

this doesn't mean I won't be withdrawing my statement or anything else I've said in my last email!

...

Email dated 26th April 2024, 11:33am

...

I'm left in an absolute mess and there's nothing I can do so I'm not sure I'm interested anymore and will just do what I said in my 1st email and also take all this to the papers including all the stuff from gmc and all my emails about how I was worried about all this from day one!

...

Email dated 26th April 2024, 1:46pm

...

Then il publicly tell everyone about Dr Kalkat and that it's all made up lies , and I will do woteva I can to let the gmc or whoever your passing this blame off to now , another department that can't help ! That this is all a big mistake

...

It's absolutely disgusting that I have to keep going through all this still to this day , I have absolutely nothing left to give , I'm so close to just giving up on everything as I've had as much as I can take !

Telephone Note dated 26 April 2024, 4:08pm

…
I don't want to go ahead with this – just going to give a witness statement. it was very difficult to go through giving evidence. I suffer really bad with ptsd. 3 years I've been wai□ng for therapy. I still hear in mind the I'm dying of cancer.
…
I wanted to see that I'm going to withdraw everything and then I get an email from someone else [email from Ms G] and that's when I though oh sorry.
…
The GMC is set up for GPs by GPs – and I am just done with this and I'm going to go. …'

6. The GMC disclosed the emails to Dr Kalkat's representatives and a request was made by those representatives that the emails be brought to the attention of the Tribunal at the reconvened hearing on 26 April 2024. The GMC did not oppose this approach and the email exchanges were provided.

7. On 26 April 2024, having read the correspondence from Patient A and hearing submissions on behalf of the parties, the Tribunal decided that further time was required to consider this issue and for the parties to make more detailed submissions. The hearing was therefore listed for a further three days, on 15, 16 and 19 July 2024 and the parties were directed to submit skeleton arguments addressing the issues, if any, raised by Patient A's correspondence.

Correspondence Since the Hearing on 26th April 2024

8. In his written submissions to the Tribunal, Mr Donoghue stated that, *'due to the potential uncertainty surrounding Patient A's comments in his correspondence, the GMC invited Patient A to clarify the comments he had made in his earlier emails'*. Mr Donoghue outlined that, on 3 June 2024, a GMC Legal Adviser contacted Patient A by telephone and the following note was recorded, as part of a wider discussion:

'[Patient A] explained - I stand by everything that I said – I told the truth and have never lied about anything. I was annoyed about the GMC and how they went about everything, including their investigation and feeling of not being taken seriously. I was also annoyed about the fact that Dr K is still working. I am not withdrawing my

statement, it was a very silly thing to say, I was very emotional at the time and was annoyed with the process and the system and how everything played out.'

9. Mr Donoghue said that, in light of the above, Patient A was asked by the GMC Legal Adviser to confirm his position regarding his evidence, in writing, and 11 June 2024, Patient A sent an email to the GMC stating the following:

'I will send the email confirming all what I said in my statement and at the tribunal was 100% the truth, I said I'd lie and withdraw because I was upset and stressed about how the gmc tribunal was taking so long, and I felt like they did not take the charges that seriously.
But I did not lie at the tribunal or in my statement at all, I had no reason to'

GMC Submissions

Powers of the Tribunal

10. Mr Donoghue stated that given the Tribunal had already formally handed down its stage 1 and stage 2 decisions, the GMC did not consider that the Tribunal had the power to re-open these decisions in light of any further evidence. In any event, he submitted that even if the Tribunal did consider itself to have the power to re-open its decisions at either of stages 1 and/or 2, such an approach would not be appropriate or necessary in this case.

11. Given the Tribunal was yet to formally hand down its determination at stage 3, Mr Donoghue's position was that the Tribunal is, as far as the parties agree or the Tribunal directs, able to receive further evidence deemed relevant to that decision. This was on the basis that the GMC, at the hearing on 26 April 2024, agreed to the Tribunal being provided with copies of the correspondence from Patient A since the first hearing from the perspective of fairness to Dr Kalkat. The parties have now agreed that the Tribunal can be provided with the additional evidence, in the form of further correspondence between the GMC and Patient A, since the further hearing day on 26 April 2024.

12. Mr Donoghue stated that the GMC's position on the powers of the Tribunal at this stage was that the Tribunal is entitled to consider the additional evidence provided as part of reaching its determination on sanction. However, he submitted that this additional evidence should not change the Tribunal's approach.

Correspondence with Patient A

13. Mr Donoghue highlighted extracts from Patient A's emails and notes of telephone calls, and submitted that these comments had to be read in the context of what else was said by Patient A in each piece of correspondence. He submitted that the following was a fair and accurate summary of the full position set out in the correspondence sent by Patient A:

- Patient A was dissatisfied with the overall management of his involvement in the GMC's investigation and believed he was given a misleading impression in terms of the extent of his involvement and/or the role of the GMC;
- Patient A was dissatisfied with the overall hearing process, particularly the fact that his evidence lasted longer than originally envisaged;
- Patient A was concerned regarding some of the questions he was asked at the hearing, particularly when aspects of Dr Kalkat's case and/or account were put to him;
- Patient A was dissatisfied with the information which the GMC had been willing to provide to him, at the time of the correspondence, in terms of the Tribunal's determinations at stages 1 and 2; and
- due to the above circumstances, Patient A expressed his dissatisfaction by way of an intention to "withdraw" his support for the case against Dr Kalkat, stating that he would say that he had lied in his evidence to the GMC and the Tribunal.

14. Mr Donoghue clarified that none of these factors could necessarily be said to be Patient A's fault. However, they provided important context to the comments made by Patient A.

15. Mr Donoghue stated that the point for Patient A giving evidence (stage 1) had passed and, as such, he submitted that any 'withdrawal' of ongoing support for the GMC's case did not affect the case position. In any event, Patient A had now made clear that he did not wish to 'withdraw' his statement. Furthermore, at no point in his correspondence did Patient A state that he had actually lied, or not told the truth, in his witness statement or in his oral evidence to the Tribunal. This position was confirmed by Patient A, both in the telephone call and by email on 11 June 2024. In his email, Patient A stated that his evidence to the Tribunal was 100% the truth and he had previously stated that he would withdraw as he *'was upset and stressed about how the GMC Tribunal was taking so long'* and '*felt like they did not take the charges that seriously.'* Patient A went on to confirm again that he did not lie in his evidence to the Tribunal or in his witness statement.

16. Mr Donoghue submitted that Patient A's explanations in his most recent correspondence, were entirely in keeping with an ordinary and sensible reading of the original correspondence with which some concern has been raised. Patient A was, at the time of his engagement with Dr Kalkat, and at the time of giving his evidence, a vulnerable witness. He submitted that Patient A's vulnerability can only have increased since the first hearing, on the basis of Patient A being unwell in the intervening period (as referred to in the telephone note of 25 April 2024).

17. Mr Donoghue submitted that Patient A's vulnerability had to be considered when assessing the nature of his correspondence. He stated that during the facts stage, Patient A's evidence was subject to close scrutiny, in the form of questions from the Tribunal. Such an approach was entirely appropriate, in the absence of Dr Kalkat being present to cross-examine Patient A himself or having a representative to ask questions on his behalf. Furthermore, Mr Donoghue submitted that the Tribunal's determination at stage 1 demonstrated that the Tribunal undertook a careful and diligent analysis of the evidence given by Patient A and used that analysis to inform its decisions on each paragraph of the Allegation. This was demonstrated by the fact that, in relation to paragraphs of the Allegation where the Tribunal did not consider the burden and standard of proof to be satisfied, those paragraphs were not found proved.

18. Mr Donoghue submitted that the correspondence sent by Patient A since the first hearing was evidently borne out of frustration with the process, rather than anything else. Patient A was also concerned and unhappy regarding the way in which Dr Kalkat had acted towards him in the past.

19. Mr Donoghue submitted that, in all the circumstances of the case, the Tribunal's decisions at stages 1 and 2 should be unaffected by the correspondence sent by Patient A since the first hearing and, in light of the additional correspondence, the Tribunal should proceed to conclude its deliberations at stage 3. Furthermore, he submitted that, had the Tribunal already reached a decision as to the appropriate sanction to be imposed in this case but simply not yet concluded the process of reducing this decision to writing, the correspondence from Patient A to the GMC should not cause the Tribunal to change course from its original decision. Mr Donoghue stated that for the avoidance of doubt, the GMC's submissions on sanction remain unchanged.

Submissions on behalf of Dr Kalkat

20. Ms Cooper, on behalf of Dr Kalkat, provided a letter to the Tribunal.

Reopening a determination

21. Ms Cooper, referred the Tribunal to Rule 17(2)(j) of the Rules which states:

> *'the Medical Practitioners Tribunal shall consider and announce its findings of fact and shall give its reasons for those findings;'*

22. She also referred the Tribunal to the relevant case law of *TZ v GMC [2015] EWHC 1001 (Admin)* and *Nduka v GMC [2017] EWHC 1396 (Admin)* which, she said, state that once a Tribunal has announced a decision, there was no power to reverse it absent an appeal. However, she stated that it was not suggested that the position was as clear cut as these cases would suggest. The fact no power to revisit a decision is expressed under the rules was not determinative.

23. Ms Cooper stated that there are circumstances when statutory Tribunals (and other public bodies) can exercise limited inherent jurisdiction and reconsider their own decisions. However, Ms Cooper accepted that, in the circumstances of Dr Kalkat's case, the requisite threshold for the Tribunal to reopen the earlier determinations was not met.

Patient A's credibility / material non-disclosure by GMC

24. Ms Cooper stated that the correspondence from Patient A to the GMC clearly goes towards Patient A's credibility as a witness in these proceedings. As a result of Patient A's comments, correspondence between the GMC and Patient A had been requested. Ms Cooper stated that she had reviewed Patient A's correspondence regarding his witness statement, as well as the draft witness statements and noted that there were differences between the interview notes, the draft witness statements, final version and Patient A's initial complaint. For example, in the witness interview notes there was no mention of Dr Kalkat hitting himself, but then, by the time of the second draft of Patient A's witness statement, reference to '*punching*' had been added. Furthermore, in Patient A's initial complaint, he comments that Dr Kalkat '*threw himself against the door slightly and put his fist on his chest…*'.

25. Ms Cooper stated that whilst there are other additions between the first draft statement and the final version, this was the most significant part. She reminded the Tribunal that the allegation relating to the assault was strongly refuted by Dr Kalkat, but was ultimately found proved.

26. Ms Cooper stated that these issues indicated that the GMC had failed to conduct an appropriate disclosure exercise and, therefore, an explanation had been sought from the GMC as to how, and why, relevant material was not disclosed when it met the necessary test. Ms Cooper stated that the GMC responded in respect of this point on 3 July 2024 and stated:

> *'In respect of your query relating to the witness interview notes with Patent A. In response to this query, I note that the paralegal who took Patent A's statement has left the GMC. As you have noted, in the initial complaint it did state that Dr Kalkat threw himself against the door slightly and put his fist on Patient A's chest and said 'stop hitting me, ow this is violence your attacking me'… The paralegal and Patient A would have had this document available to them for discussion in the interview. It is also noted that Patient A provided evidence to the Tribunal in respect of this incident and his credibility would have been considered in light of the evidence he provided. In his evidence, Patient A described the "punch" more as Dr Kalkat "tapping" himself in the chest".*

27. Ms Cooper submitted that this response was not sufficient because Patient A's evidence during the hearing was of no relevance as to why the GMC did not disclose the relevant material earlier in the proceedings. Ms Cooper stated that a further response had been requested from the GMC and she was currently awaiting a response.

28. Ms Cooper submitted that this issue gives rise to grave concerns, particularly regarding a failure of make proper disclosure.

29. However, Ms Cooper submitted that the requisite threshold for the Tribunal to reopen its earlier determinations was not met in this case.

30. No application was made by Dr Kalkat's representatives, either in relation to Patient A's communications with the GMC or in respect of asserted disclosure issues. No request was made for the Tribunal to take any particular course of action in respect of these matters.

31. Ms Cooper confirmed that Dr Kalkat's previous position regarding the appropriate sanction in this case had not changed, and that a sanction of suspension with a review hearing directed was merited.

The Tribunal's Approach

32. The LQC reminded the Tribunal that neither the GMC nor Dr Kalkat's representatives had submitted that Patient A's communications since handing down its decision on impairment had any material impact on the Tribunal's decisions made to date or the appropriateness of the Tribunal proceeding to hand down its determination on sanction.

33. The LQC also reminded the Tribunal that there was no application, as such, before it which it had been requested to adjudicate upon. Although Dr Kalkat's legal representatives have in their letter indicated that they hold concerns regarding disclosure made to them by the GMC and they have raised further issues relating to Patient A's credibility, no application has followed. Instead, Dr Kalkat's representatives have maintained that the Tribunal should proceed to issue a decision on sanction and have submitted that the appropriate sanction is one of suspension. The GMC have made similar submissions.

34. The Tribunal has been provided by Dr Kalkat's representatives a number of further documents which they request are taken into account in the Tribunal's decision on sanction. The LQC advised the Tribunal that as the decision on sanction has not yet been announced or handed down, there was no reason why those documents may not be taken into account by the Tribunal.

35. With regard to the Tribunal's previous decisions on facts and impairment which have been announced and handed down. The LQC advised the Tribunal as follows:

- The cases of *TZ v GMC* and *Nduka v GMC* which had been referred to by Dr Kalkat's representatives, would tend to support the proposition that the Tribunal does not have the power, or at least it does not have an express power under the Rules to re-open arguments or receive evidence in relation to decisions which have already been handed down. Further authorities such as *R(B) v NMC [2012] EWHC 1264 Admin* would also tend to indicate that the Tribunal does not have an inherent jurisdiction to set aside its previous decisions.
- However, the absence of an express provision in the Rules was not in and of itself entirely determinative.

- There may be circumstances in which a Tribunal may appropriately revisit or reopen an earlier decision.
- However, such action would only be appropriate in genuinely exceptional circumstances. Support for such a view may be found in the case of *R (Jenkinson) v NMC [2009] EWHC 1111*.
- However, the Tribunal may wish to adopt a cautious approach to revisiting any earlier decisions, particularly given that no such application has been made and given that both the GMC and Dr Kalkat's representatives are in agreement that to do so would not be justified.

The Tribunal's decision

Disclosure

36. The Tribunal noted that there was no application before it to determine an issue relating to disclosure. The Tribunal considered that the issues raised by Dr Kalkat's representatives were not such that any action on its part and of its own motion were appropriate. The Tribunal noted that, in its consideration of the evidence at stage 1, it had already highlighted a number of inconsistencies in Patient A's evidence, and these had been taken into account in finding facts. Therefore, the Tribunal concluded that it would not take any action with regard to disclosure issues now arising.

Patient A communications

37. Again, the Tribunal noted that there was no application before it to determine an issue relating to Patient A's communications and both the GMC and Dr Kalkat's representatives were of the view that the communication should not have a bearing on the Tribunal's actions in concluding this case. Both parties were of the view that the Tribunal's earlier decisions should not be re-visited.

38. The Tribunal considered that, in the context of the authorities referred to, Patient A's email and telephone exchanges were not such that it is required or permitted to re-visit its earlier determinations on fact and/or impairment. The Tribunal considered this to be the case, particularly in circumstances in which, to do so, the Tribunal would be acting of its own motion. The Tribunal did not consider the content of the emails and telephone calls to be such as would meet the threshold of amounting to exceptional circumstances.

39. In reaching these conclusions, the Tribunal noted that, at no point in his correspondence and exchanges, did Patient A state that he had actually lied, or not told the truth, in his witness statement or in his oral evidence to the Tribunal.

Schedule 1 – Payments to Step One Recovery Ltd

Date	Payment amount
25 September 2019	£3000.00
1 October 2019	£13800.00

Schedule 2 – Payments to Step by Step Recovery

Date	Payment amount
11 November 2019	£7000.00
13 November 2019	£19000.00

Schedule 3 – Payments to Patient A

Date	Payment amount
on or around 23 December 2019	£1200.00
on or around 28 January 2019	£150.00

Schedule 4

3 January 2020

17 January 2020

10 January 2020

Schedule 5

3 October 2020

10 January 2020

17 January 2020

Schedule 6

'The patient advised that he would need £25,000 for his treatment. Although he said that he needed the full payment in one lump sum, I had advised him that I would give him the payment in 2 parts as I would need some time for the full amount of funds to be transferred from my deposit account to my current account. He said that he would like the money to be paid to him so that if he was not happy with the treatment, then he would be able to leave and not lose all the money. The first would be paid when he went to the Rehabilitation Centre and then I would hold back the second part for at least a week. I gave him £12,000 on 28th September (this included the £3000 deposit that was paid to the Rehabilitation Centre) and then gave the second amount of £13,000 on 8th October. He contacted me on 9th and 11th October saying that he would need additional payment for even more treatment and at this point I became suspicious about his intentions. He later contacted me on 8th November and

advised that he was leaving the first centre and was going to another centre, and that he had a large surplus of around £14,000 left from the money that I had given him, which he would be using to fund that. I advised him that he had been deceitful when he had requested the funding of £25,000, at which point he laughed and advised me that I had been silly to believe him. As he was using the funds that I had given him I noted in my consultation that we would be facilitating his treatment in the second rehabilitation centre. In November he attended the new rehabilitation centre and upon his admission I had requested a copy of the invoice of payment for the treatment, as evidence that he was going to the centre. I did get a copy of that invoice but have not kept that copy. After he had been there a few weeks, on 20th December he phoned me to say that he was unhappy with his treatment and did not feel that he needed any more inpatient treatment would be self-discharging himself. He said that he thought outpatient treatment might be better for him.'