

## PUBLIC RECORD

Dates: 20/05/2024 - 04/06/2024

Medical Practitioner's name: Dr Hapuraja Pathirannahalage Ayesha  
MADUWANTHI

GMC reference number: 7811119

Primary medical qualification: MB BS 2005 University of Sri  
Jayewardenepura

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

**Summary of outcome**

Erasure

Immediate order imposed

**Tribunal:**

Legally Qualified Chair	Mr Robin Ince
Lay Tribunal Member:	Ms Morgan Phillips
Medical Tribunal Member:	Dr Candida Borsada

Tribunal Clerk:	Mr Sewa Singh Ms Keely Crabtree – 22/05/2024 Mr John Poole – 03/06/2024 (am)
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**Attendance and Representation:**

Medical Practitioner:	Not present, not represented
Medical Practitioner's Representative:	None
GMC Representative:	Ms Katie Nowell, Counsel

**Attendance of Press / Public**

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

## Determination on Facts - 30/05/2024

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

### Background

2. Dr Maduwanthi qualified in 2005 at the University of Sri Jayewardenepura. At the time when concerns about the events which are the subject of the Allegation in this case first arose, Dr Maduwanthi was working as a consultant anaesthetist at the East Kent Hospitals NHS Foundation Trust ('EKT').

3. The Allegation against Dr Maduwanthi is that she submitted application forms for the post of consultant anaesthetist to three separate trusts: East Cheshire NHS Trust ('ECT'), United Lincolnshire Hospitals NHS Trust ('ULT') and EKT. In one, she stated that she had received a 'Pass' result for the Fellowship of the Royal College of Anaesthetists ('FRCA') from the Royal College of Anaesthetists ('RCoA') in March 2022; and in the other two, stated that she had received a 'Pass' result for the FRCA exam from the RCoA in July 2022. It is also alleged that in October 2022 Dr Maduwanthi emailed EKT stating that her results for the final FRCA structured oral examination ('SOE') had been misinterpreted, and that she also sent a letter to the RCoA stating that she had mistakenly used a different College Reference Number ('CRN'). It is further alleged that Dr Maduwanthi created or caused to be created documents purporting to be from the RCoA stating that she had been successful in the SOE together with the SOE result showing a pass mark. Further, Dr Maduwanthi is alleged to have provided false information to the GMC in relation to her RCoA exams. Finally, it is alleged that Dr Maduwanthi knew she had not passed the SOE and that her actions were dishonest, and that her fitness to practise is impaired by reason of misconduct.

4. These matters came to the attention of the GMC following a referral by the Medical Director at Wrexham Maelor Hospital (WMH).

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

5. The Tribunal granted an application, made by Ms Katie Nowell, Counsel for the GMC, pursuant to Rule 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to proceed in Dr Maduwanthi's absence. The Tribunal's full decision on the application is included at Annex A.

6. The Tribunal granted Ms Nowell's application to amend paragraph 11 of the Allegation pursuant to Rule 17 of the Rules. The Tribunal's full decision on the application is included at Annex B.

7. The Tribunal granted Ms Nowell’s application to amend paragraphs 5 and 6 of the Allegation pursuant to Rule 17(6) of the Rules. The Tribunal’s full decision on the application is included at Annex C.

8. The Tribunal, of its own volition during its deliberations on facts, amended paragraph 14 of the Allegation pursuant to Rule 17 of the Rules. The Tribunal’s full decision on the application is included at Annex D.

### The Allegation and the Doctor’s Response

9. The final version of the amended Allegation (amendments in **bold**) made against Dr Maduwanthi is as follows:

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

1. On 12 July 2022, you submitted an application for employment to East Kent Hospitals University NHS Foundation Trust (‘East Kent’) in which you stated that you had received a pass result for the Fellowship of the Royal College of Anaesthetists (‘FRCA’) exam from the Royal College of Anaesthetists UK (‘RCoA’).  
**To be determined**
2. In or around September 2022, you submitted an application for employment to East Cheshire NHS Trust (‘East Cheshire’) in which you stated that you had received a pass result for the FRCA exam from the RCoA.  
**To be determined**
3. In 2022, you submitted an application for employment to United Lincolnshire Hospitals NHS Trust (‘United Lincolnshire’) in which you stated that you had received a pass result for the FRCA exam from the RCoA.  
**To be determined**
4. On 3 October 2022, you emailed East Kent and stated that your results for the final FRCA structured oral examination (‘SOE’) had been misinterpreted due to:
  - a. a discrepancy in your surname;  
**To be determined**
  - b. a different college reference number (‘CRN’) being used.  
**To be determined**
5. On 12 October 2022, you **wrote** a letter to RCoA and stated:
  - a. you had mistakenly used a different CRN number whilst applying for the SOE;  
**To be determined**

b. you did not have evidence to say that you had been unsuccessful for the SOE.

**To be determined**

6. **Between October 2022 and January 2023**, you created or caused to be created the following documents which were not genuine documents:

a. a document purporting to be from the RCoA dated 11 July 2022 ('Document 1') which:

i. stated that you had been successful in the SOE;

**To be determined**

ii. included details of your SOE result.

**To be determined**

b. a document purported to be from the RCoA dated 11 July 2022 ('Document 2') which stated:

i. you had been successful in the SOE;

**To be determined**

ii. details of your SOE result;

**To be determined**

iii. you would be admitted to the Fellowship of the RCoA on 29 July 2022;

**To be determined**

iv. after 29 July 2022, you could describe yourself as an RCoA fellow and use the designation FRCA.

**To be determined**

7. On 14 October 2022, you emailed East Kent and attached Document 1.

**To be determined**

8. On 11 January 2023, you had a telephone conversation with the GMC in which you stated that, in reference to the SOE, you "sat the exam and got through, but the Hospital had given the wrong information, which was not your fault and you had evidence to prove this" or words to that effect.

**To be determined**

9. On 23 January 2023, you emailed the GMC and attached Document 2.

**To be determined**

10. When submitting the Applications referred to at paragraphs 1-3, you knew:
- a. that you did not have the FRCA qualification;  
**To be determined**
  - b. that you had not received a pass result for the SOE from the RCoA.  
**To be determined**
11. When engaging in the communication(s) referred to at paragraphs 4, 5, 7, 8 and 9, you knew:
- a. that you had not received a pass result for the SOE from the RCoA;  
**To be determined**
  - b. the RCoA had notified you that you had failed the SOE;  
**To be determined**
  - c. there had not been a discrepancy with your surname and / or CRN by the RCoA;  
**To be determined**
  - d. that the documents as described at paragraph 6 were not genuine;  
**To be determined**
  - e. your actions as described at paragraphs 7-9 gave the false impression that you had passed the SOE.  
**To be determined**
12. Your actions as set out in paragraphs 1, 2 and 3 were dishonest by reason of paragraph 10.  
**To be determined**
13. Your actions as set out in paragraphs 6 were dishonest.  
**To be determined**
14. Your actions as set out in paragraph(s) 4, 5, 7, 8, and 9 were dishonest by reason of paragraph 11.  
**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

10. No facts were admitted at the hearing as Dr Maduwanthi was not present or represented.

### The Facts to be Determined

11. In light of the above, the Tribunal had to make a determination in relation to each of the disputed paragraphs of the Allegation, as set out above.

### Factual Witness Evidence

12. The Tribunal received on behalf of the GMC oral evidence from the following witnesses together with their witness statements and appended exhibits:

- Dr A, Consultant Anaesthetist at Stockport NHS Foundation Trust – witness statement dated 28 April 2023;
- Mr B, Director of Education, Training and Examinations at the RCoA - witness statements dated 2 May 2023 and 28 November 2023;
- Dr C, Consultant Physician at WMH - witness statement dated 3 May 2023;
- Ms D, Investigation Officer at the GMC – witness statement dated 13 June 2023;
- Dr E, Chief Medical Officer at EKT - witness statement dated 6 June 2023;
- Mr F, Deputy Director of People and Organisation Development at ULT - witness statement dated 3 December 2023.

### Documentary Evidence

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

- The application forms submitted by Dr Maduwanthi to EKT, ULT and ECT;
- Email chains between Dr A and others in relation to Dr Maduwanthi's qualifications;
- Documentation from RCoA regarding Dr Maduwanthi's examination results;
- Correspondence between the RCoA and Dr Maduwanthi;
- Record of the telephone call between Dr Maduwanthi and the GMC on 23 January 2023;
- Dr Maduwanthi's SOE interview score sheet;
- Dr Maduwanthi's undated affidavit;
- Documentation arising from the internal investigation carried out by EKT concerning Dr Maduwanthi.

### The Tribunal's Approach

14. The Tribunal accepted the Legally Qualified Chair's advice.

15. In reaching its decision on facts, the Tribunal bore in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Maduwanthi does not need to prove anything. The standard of proof applied is that applicable to civil proceedings,

namely the balance of probabilities, i.e. whether it is more likely than not that the events occurred.

16. The Tribunal reminded itself that it must form its own judgment about the evidence presented to it.

17. The Tribunal noted the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Limited (t/as Crockfords Club) [2017] UKSC 67* ('Ivey') is that it must,

*'...first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts...[and] once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he had done is, by those standards, dishonest'*

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

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

#### Paragraph 1

**1.** On 12 July 2022, you submitted an application for employment to East Kent Hospitals University NHS Foundation Trust ('East Kent') in which you stated that you had received a pass result for the Fellowship of the Royal College of Anaesthetists ('FRCA') exam from the Royal College of Anaesthetists UK ('RCoA').

19. The Tribunal was provided with a copy of Dr Maduwanthi's completed application form to EKT. Under the section headed 'Personal details', it noted that the following details are recorded:

<b>'Title</b>	<i>Dr</i>
<b>Forename</b>	<i>Hapuraja Pathirannahalage Ayesha</i>
<b>Middle name(s)</b>	
<b>Address</b>	<i>[redacted]</i>
<b>.....'</b>	

20. It also noted that, under the section headed 'Membership of Professional Bodies', the following details were recorded:

**'Membership / Registration number**  
*7811119'*

21. Further, in the box entitled 'Education and Professional Qualifications' it stated:

<i>'Subject/Qualifications Year</i>	<i>Place of study</i>	<i>Grade/Result</i>	<i>Obtained</i>
<i>Fellowship of the Royal College of Anaesthetists (FRCA-UK)'</i>	<i>Royal College of Anaesthetists, UK</i>	<i>Pass</i>	<i>July 2022</i>

22. At paragraphs 5 and 6 of her witness statement, dated 6 June 2023, Dr E stated:

*'5. During [EKT's] recruitment process, which I believe commenced during August 2022, Dr Maduwanthi reported on her application for employment form, which I believe was submitted on 12 July 2022, to have successfully completed and held the full FRCA. ...'*

and

*'6. [EKT's] took the information provided by Dr Maduwanthi in good faith and following a successful interview during the recruitment process on 26 August 2022, Dr Maduwanthi was offered a position as Locum Consultant in the Anaesthetics directorate at [EKT's]. ...'*

23. The Tribunal noted that at no point since these matters came to light has Dr Maduwanthi denied submitting an application form for the post of locum consultant anaesthetist at EKT. The Tribunal considered that it is inconceivable that Dr Maduwanthi would have been offered and undergone an interview process at EKT without having submitted an application form for the post she subsequently took up.

24. On the evidence before it, the Tribunal was therefore satisfied that, on the balance of probabilities, Dr Maduwanthi submitted an application form to EKT on 12 July 2022 in which she stated that she had received a pass result for the Fellowship of the Royal College of Anaesthetists ('FRCA') exam from the Royal College of Anaesthetists UK ('RCoA'). It therefore found paragraph 1 of the Allegation proved.

## Paragraph 2

**2. In or around September 2022, you submitted an application for employment to East Cheshire NHS Trust ('East Cheshire') in which you stated that you had received a pass result for the FRCA exam from the RCoA.**

25. The Tribunal was provided with a copy of Dr Maduwanthi's completed application form to ECT. Dr Maduwanthi's name does not appear on the front page of the application form. The Tribunal noted, however, that under the section headed 'Membership of Professional Bodies' the following details are recorded:

***'Membership / Registration number***



7811119'

26. It noted that this is Dr Maduwanthi's GMC registration number.
27. The Tribunal had regard to paragraph 3 of Dr A's statement, dated 28 April 2023, where he stated:

*"I'm not sure when Dr Maduwanthi first submitted her Application. I recall that there were two candidates for the position, though there may have been three initially. Dr Maduwanthi's application is shown in Exhibit RL2."*

28. In the box entitled 'Education and Professional Qualifications' it stated:

<i>'Subject/Qualifications</i>	<i>Place of study</i>	<i>Grade/Result</i>	<i>Year Obtained</i>
<i>Fellowship of the Royal College of Anaesthetists (FRCA-UK)</i>	<i>Royal College of Anaesthetists, UK</i>	<i>Pass</i>	<i>July 2022</i>

29. The Tribunal noted that at no point since these matters came to light has Dr Maduwanthi denied submitting an application form for the post of locum consultant anaesthetist at ECT. The Tribunal also noted that the application form gave Dr Maduwanthi's correct GMC number. Moreover, the Tribunal took account of the fact that, in almost every other respect, the information in this application form was identical to the information about the applicant contained in the application form submitted to EKT (such as current and previous employers, the latter including an employer in Sri Lanka, and training courses attended). The Tribunal therefore considered that the most likely explanation was that this application form was submitted by Dr Maduwanthi.

30. On the evidence before it, the Tribunal was therefore satisfied that, on the balance of probabilities, Dr Maduwanthi submitted the application form to ECT in or around September 2022 in which she stated she had received a pass result for the Fellowship of the Royal College of Anaesthetists ('FRCA') exam from the Royal College of Anaesthetists UK ('RCoA'). It therefore found paragraph 2 of the Allegation proved.

### Paragraph 3

- 3. In 2022, you submitted an application for employment to United Lincolnshire Hospitals NHS Trust ('United Lincolnshire') in which you stated that you had received a pass result for the FRCA exam from the RCoA.**

31. The Tribunal was provided with a copy of Dr Maduwanthi's completed application form to ULT. Dr Maduwanthi's name does not appear on the front page of the application form. The Tribunal noted, however, that under the section headed 'Membership of Professional Bodies' the following details are recorded:

*‘Membership / Registration number  
7811119’*

32. It noted that this is Dr Maduwanthi’s GMC registration number.
33. In the box entitled ‘Education and Professional Qualifications’ it stated:

<i>‘Subject/Qualifications</i>	<i>Place of study</i>	<i>Grade/Result</i>	<i>Year Obtained</i>
<i>Fellowship of the Royal College of Anaesthetists (FRCA-UK)’</i>	<i>Royal College of Anaesthetists, UK</i>	<i>Pass</i>	<i>March 2022</i>

34. The Tribunal had regard to paragraphs 3 and 4 of Mr F’s statement, dated 3 December 2023, where he stated:

*‘3. I have been asked by the GMC to confirm whether the Trust received an application for employment from Dr Maduwanthi in July 2022. At the time that this application was received by the Trust, I wasn’t working at the Trust, however I can access the Trust’s system called “TRAC” and can see from this system that this application was received. I produce a copy of this application as **Exhibit NB/1**.*

*4. Dr Maduwanthi would’ve submitted this application via TRAC, as all job application sites redirect applicants to TRAC to submit their job applications. From TRAC, I can see that the vacancy was advertised last year, however the applicant files are only uploaded to the applicant’s Electronic Staff Record (ESR) once the TRAC vacancy is moved to shortlisting. I can see that the date that this application was received on Dr Maduwanthi’s ESR is 10 July 2022, however the application would have been made before this.’*

35. Mr F confirmed in his oral evidence to the Tribunal that Dr Maduwanthi’s full application was on the TRAC system and that it gave her name and other personal details.

36. The Tribunal also noted that at no point since these matters came to light has Dr Maduwanthi denied submitting an application form for the post of locum consultant anaesthetist at ULT.

37. On the evidence before it, the Tribunal was therefore satisfied that, on the balance of probabilities, Dr Maduwanthi submitted the application form to ULT in which she stated she had received a pass result for the Fellowship of the Royal College of Anaesthetists (‘FRCA’) exam from the Royal College of Anaesthetists UK (‘RCoA’). It therefore found paragraph 3 of the Allegation proved.

#### Paragraphs 4a and 4b

4. On 3 October 2022, you emailed East Kent and stated that your results for the final FRCA structured oral examination ('SOE') had been misinterpreted due to:
- a. a discrepancy in your surname;
  - b. a different college reference number ('CRN') being used.

38. The Tribunal considered paragraphs 4a and 4b together.

39. The Tribunal had regard to the email of 3 October 2022 from Dr Maduwanthi to Dr G at EKT. It noted that the email address from which the email was sent is that of Dr Maduwanthi's registered address on the GMC's database. In the email, Dr Maduwanthi stated:

*'While I was working in UK some part of my name was ignored due to the inherent nature of long length of the name. Meanwhile the first name and the surname were used inappropriately on several occasions. My Final FRCA results have been misinterpreted in a wrong way due to this discrepancy of my name. In addition I was noted very recently that I have used two CRN number which were sent to me by RCOA while applying for the final FRCA. And so even though I passed both parts of the final FRCA my results have been misinterpreted.'*

40. The Tribunal noted that in her statement dated 6 June 2023, Dr E references an email chain between Dr Maduwanthi and her colleagues at EKT. At paragraph 8, Dr E stated:

*'...It is my understanding that Dr G contacted Dr Maduwanthi to communicate the concerns and was reassured by Dr Maduwanthi that there was a misunderstanding with the RCoA, although I do not know how this conversation between Dr G and Dr Maduwanthi happened or on what date. Dr Maduwanthi explained to Dr G that, due to her name, she had been given two separate College Reference Number's ('CRN') with RCoA and had two identifications on the RCoA's system. On 3 October 2022, I was forwarded email correspondence between Dr G and Dr Maduwanthi by my colleague Kim Fishlock, EKHUFT's Medical Workforce Manager. From review of the email chain, it was my understanding that Dr Dr Maduwanthi maintained that she had received her FRCA results in each of the separate CRN's; one examination result in one CRN and the other in the other CRN. Dr Maduwanthi stated that due to the differing, multiple CRN's held with RCoA under her name, the results had been 'misinterpreted in a wrong way' ....'*

41. On the evidence before it, the Tribunal was satisfied that on the balance of probabilities, that Dr Maduwanthi emailed EKT and stated that her results for the final FRCA structured oral examination ('SOE') had been misinterpreted due to a discrepancy in her surname and a different college reference number ('CRN') being used. It therefore found paragraphs 4a and 4b of the Allegation proved.

Paragraph 5a

5. On 12 October 2022, you wrote a letter to RCoA and stated:
- a. you had mistakenly used a different CRN number whilst applying for the SOE;

Paragraph 5b

- b. you did not have evidence to say that you had been unsuccessful for the SOE.

42. The Tribunal considered paragraphs 5a and 5b together.

43. It had regard to a letter from Dr Maduwanthi to the RCoA. At the top of the letter was the date '12.10.2022' and it was addressed to:

*{Name redacted}*  
*Examination Manager*  
*Royal College of Anaesthetists*  
*35 Red Lion Square*  
*Churchill House London*  
*WC1R 4SG'*

44. The letter was also signed at the bottom with Dr Maduwanthi's name and was dated '12.10.2022'. The Tribunal considered that, when writing a letter, an author would most likely date the letter on the date it was written. It was therefore satisfied that the letter was written on 12 October 2022.

45. The Tribunal acknowledges in passing that there is no evidence before it that this letter was ever sent to the RCoA by Dr Maduwanthi. The Tribunal had regard to paragraph 5 of Mr B's supplementary statement dated 28 November 2023 in which he stated, and confirmed in his oral evidence to the Tribunal:

*'I have been asked by the GMC whether this letter was sent to the RCoA. I confirm that the document shown in Exhibit RA9 [namely the letter dated 12 October 2022] is not a document that we have seen and so [am] unable to comment on it. I know this because we have searched our physical and online email files for all communications relating to Dr Maduwanthi.'*

46. In the letter dated 12 October 2022, Dr Maduwanthi stated:

*'To inform the discrepancies noted in Final FRCA SOE results-  
Dr. Ayesha Maduwanthi Abeyrathna issued in July 2022*

*Dr. C, Medical Director, BCUHB (Betsi Cadwaladr University Health Board) emailed me*

on 20/09/2022

While I was on annual leave in Sri Lanka that RCOA had denied that I hold full FRCA and I'm yet to gain final SOE section of this qualification. I had ended up my contract with the BCUHB on 09/10/2022. Even though I requested an internal investigation medical director is not willing to conduct an internal investigation and he wants to refer this to GMC directly

Herewith I'm handing over to you the printed hard copies of the results sheets Final FRCA Written, Final FRCA SOE issued to me and the above email of Dr. C.

According to my understanding **I had mistakenly used a different CRN number** while I was applying for the SOE.

The two CRN numbers are as follows 10005603 for CRQ/MCQ, 10005508 for SOE. I got the results for SOE saying that I had passed. **Currently I don't have any evidence to say that I'd been unsuccessful at the Final FRCA.**

Could I kindly request an urgent investigation at your earliest possibility to clarify this issue.' **(Emphasis added)**

47. The Tribunal noted in paragraph 11 of his statement, dated 2 May 2023, Mr B stated:

*'I have been asked to confirm whether I am able to find any results for Dr Maduwanthi under the College Reference Number ('CRN') 10005508 and the name Hapuraja Pathirannahalage Ayesha Maduwanthi Abeyrathna. I can confirm that no other exam results for this candidate under the CRN 10005508 exist. The CRN 10005508 is not associated with Dr Maduwanthi – each CRN is unique to an individual member, follows them throughout their life at the RCoA, and has no reason to change. The CRN 10005508 is assigned to another member of the Faculty of intensive Care Medicine (FICM), with an entirely different name, who has not sat the exam in question. This is assigned to a member of the FICM which is a faculty of the RCoA. I can also confirm that I have searched for the name 'Abeyrathna' in the records of the RCoA, and there is no individual with that surname that matches Dr Maduwanthi's name. The name 'Abeyrathana' occurs only once, as another individual's middle name, and their name is otherwise entirely different from Dr Maduwanthi's name.'*

48. Further, during the interview on 3 March 2023, conducted by EKT as part of its Maintaining High professional Standards (MHPS) investigation, Dr Maduwanthi stated, in response to the question put 'So the Royal College have never said to you directly, this email of 11<sup>th</sup> July saying congratulations is fraudulent, they've never said that to you?':

*'Even though I asked on several occasions right I asked what is this, this is the one right I clearly explained this is my address, so Mr J is the one who sent me the results*

*and so this is what I've written right to inform the discrepancies related to final FRCA results so this is the name of the Medical Director, emailed me on 20<sup>th</sup> September while I was on annual leave in Sri Lanka the Royal College has denied that I hold FRCA and I'm yet to gain the final section of the qualification. ...'.*

49. Accordingly, from the evidence before it, the Tribunal determined, on the balance of probabilities, that on 12 October 2022, Dr Maduwanthi wrote a letter to RCoA in which she stated that she had mistakenly used a different CRN number whilst applying for the SOE; and she did not have evidence to say that she had been unsuccessful for the SOE. The Tribunal therefore found paragraphs 5a and 5b of the Allegation proved.

#### Paragraphs 6ai and 6aii

6. Between October 2022 and January 2023, you created or caused to be created the following documents which were not genuine documents:
- a. a document purporting to be from the RCoA dated 11 July 2022 ('Document 1') which:
    - i. stated that you had been successful in the SOE;
    - ii. included details of your SOE result.

#### Paragraphs 6bi – 6biv

- b. a document purported to be from the RCoA dated 11 July 2022 ('Document 2') which stated:
  - i. you had been successful in the SOE;
  - ii. details of your SOE result;
  - iii. you would be admitted to the Fellowship of the RCoA on 29 July 2022;
  - iv. after 29 July 2022, you could describe yourself as an RCoA fellow and use the designation FRCA.

50. The Tribunal considered paragraphs 6a(i) and (ii) and 6b(i) – (iv) together. It noted that 'Document 1' is the document dated 11 July 2022 apparently sent by the RCoA to Dr Maduwanthi.

51. The Tribunal noted that in 'Document 1' is headed 'FINAL FRCA SOE – JUNE 2022' and below that it states:

*' Name: Ayesha Maduwanthi Abeyrahtna*

**College Reference No: 10005508**

**Candidate email: [Dr Maduwanthi's email address]**

And then

*'Congratulations ! We are please to confirm that **your success in Final FRCA Structured Oral Examination (SOE) for the diploma of Fellow of the Royal College of Anaesthetists.***

*The scores for each sub-section, the total score and the pass mark for your SOE are set out below:*

<i>SOE 1</i>	<i>SOE1</i>	<i>SOE2</i>	<i>Total Score</i>	<i>Pass mark</i>
<i>Part A</i>	<i>Part B</i>	<i>Long case &amp; short cases</i>		
<b>14</b>	<b>14</b>	<b>16</b>	<b>44</b>	<b>40</b>

52. The Tribunal also had regard to a further document which in this case has been referred to as 'Document 2' by the GMC. This is also dated 11 July 2022 and sets out as follows:

**'FINAL FRCA SOE – JUNE 2022'**

**Candidate Name: Ayesha Maduwanthi**

**CRN: 10005603**

**Candidate Email: [redacted]**

*Dear Dr Maduwanthi*

*I am very pleased to confirm **your success in the College's Final FRCA examination. A summary of your SOE result is found below.***

*Please accept my congratulations on this achievement. **You will be formally admitted to the Fellowship of the Royal College of Anaesthetists** by the Board of Education, Training and Examinations on **29 July 2022**. Please note that your presence is not required. Your seniority as a fellow dates from then and this is the date that will appear on your Diploma. **It is only after that date that you may describe yourself as a fellow of the College and use the designation FRCA.***

*The membership Engagement team will organize the creation of your diploma and sent it to you by recorded post. You should expect to receive your diploma around 14 weeks after results are released. If you change address in the meantime, please email the Membership Engagement team, [membership@rcoa.ac.uk](mailto:membership@rcoa.ac.uk)*

*On Friday 08 September 2023 (date TBC), the College plans to hold a ceremony of presentation of diplomates at Central Hall Westminster when new fellows are formally presented to the President of the College. However, we will continue to monitor the*

*Government guidance and this may be subject to change. Out Events department will be in contact with you.*

*.....’ (Emphasis added)*

53. The Tribunal noted Dr Maduwanthi’s email to Dr G at EKT, dated 14 October 2022, in which the subject heading is stated as ‘Final FRCA results’. The Tribunal also noted the email from Dr Maduwanthi to the GMC, dated 23 January 2023, in which she stated:

*‘Good morning ! I hope you are well.’*

*I’m writing to you to inform you that I was confirmed by the RCOA that I had come down the Final FRCA SOE in June 2022. This confirmation was made following my recent inquiry after receiving the confidential GMC correspondence on 11<sup>th</sup> January 2023.*

*I wasn’t provided a proper explanation for the discrepancy of my results by RCOA. When I was applying for the jobs previously I had used the details of the results that I was issued by RCOA in July 2022 mentioning that I have succeeded the exam.*

*I’m planning to take the legal actions against the RCOA regarding this matter at present.*

*I have already informed about this to my current revalidation officer – Dr E, Head HR- Kim Fishlock and Lead of the department QEQM-Dr G of East Kent Hospitals University Foundation NHS Trust.*

*Herewith attached I’m sending you what I was informed by RCOA previously.*

*.....’*

54. Further, the Tribunal noted the letter emailed to Dr Maduwanthi from the RCoA, dated 19 April 2022 which stated:

*‘Dear Dr Maduwanthi*

***Final FRCA Written Examination – March 2022***

*We are pleased to confirm your success in the Final FRCA Written examination for the Diploma of Fellow of the Royal College of Anaesthetists.*

***Name: H.P.Ayesha Maduwanthi      College Ref.no.: 10005603      Result: Pass***

<b><i>PASS MARK</i></b>		<b><i>YOUR SCORE</i></b>	
<b><i>Overall:</i></b>	<b><i>125.5%</i></b>	<b><i>Overall:</i></b>	<b><i>126.3%</i></b>
<b><i>MCQ:</i></b>	<b><i>70.55%</i></b>	<b><i>MCQ:</i></b>	<b><i>77.16%</i></b>
<b><i>CRQ:</i></b>	<b><i>55.00%</i></b>	<b><i>CRQ:</i></b>	<b><i>49.17%</i></b>



55. The Tribunal noted the discrepancy in the CRNs stated in the documents – in Document 1 it is 10005508 and in Document 2 it is 10005603. It took into account that Document 1 was first referred to and provided by Dr Maduwanthi on 12 October 2022 whereas Document 2 was first referred to and produced by Dr Maduwanthi on 23 January 2023. The Tribunal also noted that Dr Maduwanthi had never informed EKT that she had received two letters from the RCoA in any of her communications prior to being offered the post of locum consultant anaesthetist or leading up to her dismissal from EKT. Further, Document 2 was only provided by Dr Maduwanthi to the GMC in response to its investigation.

56. At paragraph 3 of his supplementary statement dated 28 November 2023, Mr B stated:

*'I have been asked by the GMC whether this letter was sent by the RCoA. I can confirm that the document shown in **Exhibit RA8** is not an authentic document that has been sent from the Royal College of Anaesthetists. I know this because we have scanned the email account and servers for emails sent from Mr [J], and cannot find evidence of this letter. Furthermore, checking the source database, it that Dr Maduwanthi did not pass the said examination, an extract of the information relating to this examination sitting can be found in the evidence bundle. The document is not timestamped, and we have a record of the correct email from our email servers. There is also a typographical error in the letter produced that the College would not have in our official communications. Finally, the formatting used in **Exhibit RA8** does not match the official formatting used in the letters/emails used to confirm passes in the FRCA.'*

57. In addition, the Tribunal noted Mr B's oral evidence in relation to the typographical errors to which he had alluded in his witness statement. Mr B stated that there was a typographical error in that there was a space between the word "Congratulations" and the following exclamation mark. Moreover, the phrase "your success in Final" should have read "your success in **the** Final".

58. The Tribunal also noted, in passing, that Dr Maduwanthi, in her email to the GMC of 23 January 2023, stated *I'm planning to take the legal actions against the RCOA regarding this matter at present.* The Tribunal has not been provided any evidence that she did this.

59. Further, the Tribunal noted that at no point in any of her correspondence with EKT did Dr Maduwanthi refer to having received two separate letters from the RCoA advising her she had passed the SOE or to two separate CRNs being used. The Tribunal considered that, with important documents such as these, at the very least Dr Maduwanthi would have queried with the RCoA why she had been allocated two separate CRNs, or why she had received two Pass letters from it.

60. The Tribunal had regard to correspondence sent by Dr Maduwanthi in relation to these matters and noted the use of language which appeared to be inconsistent with the template referred to in Mr B's evidence. For example, in her email to the GMC dated 23

January 2023 she started by stating:

*‘Good morning ! (sic) I hope you are well.’*

and

In her email to Ms H at EKT, dated 20 February 2023, Dr Maduwanthi stated:

*‘Dear Vanessa  
Good morning ! (sic)  
I hope you are well.’*

62. The Tribunal noted Dr Maduwanthi’s habitual use of exclamation marks in her correspondence, with her leaving a space between the word and the exclamation mark. It also noted the grammatical errors and discrepancies in the written text, for example, in Document 2 (dated 11 July 2022), reference to FRCA is only abbreviated whereas in Document 1 (also dated 11 July 2022) reference to FRCA is also spelt out in full.

63. Document 2 followed more closely the RCoA’s template and includes the correct candidate name and CRN – ending in 03. However, the Tribunal noted Mr B’s oral evidence that the letter was not in the correct format as it had ‘hanging’ paragraphs, which he stated would not have been in a genuine ‘pass’ email. Further, he noted that this document was not date stamped, as it would have been had it been sent in the usual way by email.

64. In the circumstances, and in the absence of any evidence to the contrary, the Tribunal determined that, on the balance of probabilities, Document 1 and Document 2 are two entirely separate documents, were not genuine documents, and that they contained the information as alleged in paragraphs 6ai – 6aii and 6bi – 6biv.

65. Finally, the Tribunal noted that Dr Maduwanthi was the person who produced Documents 1 and 2 to EKT and to the GMC. Since Mr B has confirmed that the documents did not emanate from the RCoA, the most likely explanation for their existence is that Dr Maduwanthi created them, or caused them to be created – the Tribunal could not think of anyone else who would be interested in creating them or who would benefit by their production.

66. The Tribunal therefore determined, on the balance of probabilities, that Dr Maduwanthi created or caused to be created the documents purporting them to be from the RCoA and it found paragraphs 6ai – 6aii and 6bi – 6biv of the Allegation proved.

### Paragraph 7

**7. On 14 October 2022, you emailed East Kent and attached Document 1.**

67. The Tribunal noted the email from Dr Maduwanthi to Dr G at EKT, dated 14 October 2022. In her email, Dr Maduwanthi stated in the subject heading ‘Final FRCA results’.

68. In her written and oral evidence to the Tribunal, Dr E confirmed that Document 1 was the document which was attached to Dr Maduwanthi's email.

69. The Tribunal determined that Dr Maduwanthi attached Document 1 to her email of 14 October 2022, as alleged, and it therefore found paragraph 7 of the Allegation proved.

#### Paragraph 8

**8. On 11 January 2023, you had a telephone conversation with the GMC in which you stated that, in reference to the SOE, you "sat the exam and got through, but the Hospital had given the wrong information, which was not your fault and you had evidence to prove this" or words to that effect.**

70. The Tribunal was provided with a copy of the telephone note between Dr Maduwanthi and Ms D of the GMC. It noted the date of the telephone call is 11 January 2023. In the note of the telephone conversation it is recorded:

*'...  
Dr said that she sat for the exam and got through but hospital given the wrong info, which isn't her fault. She has evidence to prove this.'*

71. During her oral evidence to the Tribunal, Ms D confirmed that the note of the telephone call (which she would have typed up immediately or shortly after the call had terminated) accurately reflected the conversation with Dr Maduwanthi.

72. On the evidence before it, the Tribunal was satisfied that Dr Maduwanthi made the alleged statements to the GMC. It therefore found paragraph 8 of the Allegation proved.

#### Paragraph 9

**9. On 23 January 2023, you emailed the GMC and attached Document 2.**

73. The Tribunal had regard to Dr Maduwanthi's email to Ms D, dated 23 January 2023, as set out above at paragraph 53 of this determination.

74. In her written and oral evidence to the Tribunal, Ms D confirmed that Document 2 was the document which was attached to Dr Maduwanthi's email.

75. The Tribunal determined that Dr Maduwanthi attached Document 2 to her email of 23 January 2023, as alleged, and it therefore found paragraph 9 of the Allegation proved.

#### Paragraph 10a

**10. When submitting the Applications referred to at paragraphs 1-3, you knew:**

- a. that you did not have the FRCA qualification;

Paragraph 10b

- b. that you had not received a pass result for the SOE from the RCoA.

76. The Tribunal considered paragraphs 10a and 10b together.

77. At paragraphs 8 and 13 of his statement, dated 2 May 2023, Mr B stated:

*'8. Page 3 of the RCoA statement in **Exhibit RA2** also shows that Dr Maduwanthi sat the SOE on 20 June 2022. Dr Maduwanthi failed the SOE that she sat on 20 June 2022.'*

and

*'13. On 11 July 2022, the RCoA emailed Dr Maduwanthi to inform her that she had failed the SOE, as shown in Exhibit RA5. The email address to which it was sent matches our email on file for Dr Maduwanthi. The email also has the full name and college reference of Dr Maduwanthi. The format again matches the template letter the RCoA uses, with the individual data on the email, including the marks, drawn from a data source.'*

78. Accordingly, the Tribunal finds that Dr Maduwanthi was notified by the RCoA on 11 July 2022 that she had failed the SOE and therefore that she was not a Fellow of the FRCA. No suggestion has ever been made by Dr Maduwanthi that she did not read the email confirming this result on 11 July 2022, so the Tribunal sees no reason not to conclude that it was on and from this date that she was aware that she had failed the SOE exam and thus was not a Fellow of the FRCA.

79. The Tribunal notes that Dr Maduwanthi submitted her application to EKT on 12 July 2022, one day after receiving the email from RCoA dated 11 July 2022. Accordingly, insofar as it relates to Paragraph 1 of the Allegation, the Tribunal finds Paragraphs 10a and 10b proved.

80. The Tribunal notes that Dr Maduwanthi submitted her application to ECT at some time in September 2022, around two months after receiving the email from RCoA dated 11 July 2022. Accordingly, insofar as it relates to Paragraph 2 of the Allegation, the Tribunal finds Paragraphs 10a and 10b proved.

81. In relation to the application to ULT, the Tribunal noted that, at paragraphs 3 and 4 of his statement, dated 3 December 2023, Mr F stated:

*'3. I have been asked to confirm whether the Trust received an application for employment from Dr Maduwanthi in July 2022. At the time that this application was received by the Trust, I wasn't working at the Trust, however I can access the Trust's system called "TRAC" and can see from this system that this application was received.'*

*I produce a copy of this application as Exhibit NB/1.'*

and

*4. Dr Maduwanthi would've submitted this application via TRAC, as all job application sites redirect applicants to TRAC to submit their job applications. From TRAC, I can see that the vacancy was advertised last year, however the applicant files are only uploaded to the applicant's Electronic Staff Record (ESR) once the TRAC vacancy is moved to shortlisting. I can see that the date that this application was received on Dr Maduwanthi's ESR is 10 July 2022, however the application would have been made before this.'*

82. The Tribunal notes that Dr Maduwanthi submitted her application to ULT on 10 July 2022, one day before receiving the email from RCoA dated 11 July 2022. However, even though she made the application at a time when she did not know the results of her SOE exam, it is still the case that, at the time she made the application, Dr Maduwanthi knew that she did not have the FRCA qualification precisely because she had not then received any notification of the results of her SOE exam. Accordingly, insofar as it relates to Paragraph 3 of the Allegation, the Tribunal finds Paragraphs 10a and 10b proved.

83. The Tribunal therefore found paragraph 10 in relation to paragraphs 1, 2 and 3 of the Allegation proved.

#### Paragraph 11a

11. When engaging in the communication(s) referred to at paragraphs 4, 5, 7, 8 and 9, you knew: (Amended under Rule 17(6))

- a. that you had not received a pass result for the SOE from the RCoA;

#### Paragraph 11b

- b. the RCoA had notified you that you had failed the SOE;

#### Paragraph 11c

- c. there had not been a discrepancy with your surname and / or CRN by the RCoA;

84. Paragraph 11 relates to matters at paragraphs 4, 5, 7, 8 and 9 of the Allegation and alleges that at specific dates or periods, Dr Maduwanthi 'knew' about the alleged matters set out within each of sub-paragraphs (a) to (e) of Paragraph 11. Paragraph 4 relates to what she knew on 3 October 2022, paragraph 5 relates to 12 October 2022, paragraph 7 relates to 14 October 2022, paragraph 8 relates to 11 January 2023 and paragraph 9 relates to 23 January 2023.

Paragraphs 11a – 11c in relation to paragraphs 4, 5, 7, 8 and 9

85. The Tribunal considered paragraphs 11a – 11c in relation to paragraphs 4, 5, 7, 8 and 9 together. The Tribunal therefore has to consider what Dr Maduwanthi knew as at 3, 12 and 14 October 2022, and as at 11 and 23 January 2023.

86 The Tribunal has already found that Dr Maduwanthi knew, on 11 July 2022, that she had not passed the FRCA exam (as set out in paragraph 78 above). All of the events outlined in paragraphs 4, 5, 7, 8 and 9 postdated 11 July 2022.

87. Therefore, the Tribunal was of the view that, on the balance of probabilities, when Dr Maduwanthi engaged in the communications alleged at paragraphs 4, 5, 6, 7 and 8, she knew she had not received a pass result for the SOE from the RCoA; that the RCoA had notified her that she had failed the SOE; and that there had been no discrepancy with her surname and/or her CRN by the RCoA. The Tribunal therefore found paragraphs 11a, 11b and 11c in relation to paragraphs 4, 5, 7, 8 and 9 of the Allegation proved.

Paragraph 11d

**When engaging in the communication(s) referred to at paragraphs 4, 5, 7, 8 and 9, you knew: (Amended under Rule 17(6))**

- c. **that the documents as described at paragraph 6 were not genuine;**

Paragraph 11d in relation to paragraphs 4, 5, 7, 8 and 9

88. Paragraph 11d makes reference to paragraph 6 of the Allegation which concerns Document 1 (paragraph 6a) and Document 2 (paragraph 6b) both of which are dated 11 July 2022. The Tribunal was mindful that it had already found paragraphs 6a and 6b proved.

89. The Tribunal reminds itself that it has to consider what Dr Maduwanthi knew as at 3, 12 and 14 October 2022, and as at 11 and 23 January 2023.

Document 1

90. The Tribunal first considered Document 1. The Tribunal took into account that, notwithstanding that it is dated 11 July 2022, there is no evidence before it that Document 1 existed prior to 14 October 2022. The first time it was known about is when Dr Maduwanthi submitted it as an attachment to her email to Dr G on 14 October 2022. The Tribunal therefore considered that it would not be appropriate to conclude that Document 1 existed before 14 October 2022.

91. Accordingly, as the dates covered by paragraphs 4 and 5 of the Allegation (3 and 12 October 2022) pre-date the email of 14 October 2022, the Tribunal could not be satisfied, on the balance of probabilities, that when she engaged in the communications on 3 and 12 October 2022, Dr Maduwanthi knew that Document 1 was not genuine since there is no

evidence that it existed before those events took place. It therefore found, as regards Document 1, paragraph 11d in relation to paragraphs 4 and 5 of the Allegation, not proved.

92. However, as regards paragraphs 7, 8 and 9, as these events occurred on or after 14 October 2022, when Dr Maduwanthi attached Document 1 to her email of that date, the Tribunal was satisfied on the balance of probabilities that, when she engaged in the communications on 14 October 2022 and 11 and 23 January 2023, Dr Maduwanthi knew that Document 1 was not genuine as it had come into being by those dates. It therefore found, as regards Document 1, paragraph 11d in relation to paragraphs 7, 8 and 9 of the Allegation, proved.

#### Document 2

93. The Tribunal next considered Document 2. The Tribunal took into account that, notwithstanding that it is dated 11 July 2022, there is no evidence before it that Document 2 existed prior to 23 January 2023. The first time it was known about is when Dr Maduwanthi submitted it as an attachment to her email to the GMC on 23 January 2023. The Tribunal therefore considered that it would not be appropriate to conclude that Document 2 existed before 23 January 2023.

94. Accordingly, as the dates covered by paragraphs 4, 5, 7 and 8 of the Allegation (3, 12 and 14 October 2022; and 11 January 2023) pre-date the email of 23 January 2023, the Tribunal could not be satisfied, on the balance of probabilities, that when she engaged in the communications on 3, 12 and 14 October 2022, and 11 January 2023 Dr Maduwanthi knew that Document 2 was not genuine since there is no evidence that it existed before those events took place. It therefore found, as regards Document 2, paragraph 11d in relation to paragraphs 4, 5, 7 and 8 of the Allegation, not proved.

95. However, as regards paragraph 9, as this event occurred on 23 January 2023, when Dr Maduwanthi attached Document 2 to her email of that date, the Tribunal was satisfied on the balance of probabilities that when she engaged in the communication on 23 January 2023, Dr Maduwanthi knew that Document 2 was not genuine as it had come into being by that date. It therefore found, as regards Document 2, paragraph 11d in relation to paragraph 9 of the Allegation proved.

#### Paragraph 11e

- d. **your actions as described at paragraphs 7-9 gave the false impression that you had passed the SOE.**

#### Paragraph 11e in relation to paragraphs 7, 8 and 9

96. The Tribunal has approached its decision in relation to paragraph 11e somewhat differently to the previous paragraphs 11a to 11d. It reminds itself that the stem of the charge refers to Dr Maduwanthi's knowledge "*when engaging in*" various communications and therefore that, on the face of it, it has to consider each communication separately.

However, it also takes account of the amendment to Paragraph 11, which added “(s)” to the word “communication”. The Tribunal considers that this gives it a degree of flexibility and allows it to make decisions without having to consider each and every event outlined in the stem. This is particularly helpful when some of the events described in the stem are not applicable since they refer to events which occurred before the matters raised in the sub-paragraphs of the charge (as with 11d above). The Tribunal has therefore limited its consideration of paragraph 11e only to the events referred to in that sub-paragraph and to what Dr Maduwanthi’s intentions were at the specific time of those events.

97. The Tribunal therefore simply considered whether sending the false documents to EKT (Document 1) and to the GMC (Document 2) and advising the GMC in the telephone conversation on 11 January 2023, that Dr Maduwanthi had passed the SOE and that she had evidence to prove it, gave the false impression that she had passed the SOE. Given that she knew on 11 July 2022 that she had not passed that exam, the Tribunal unhesitatingly concludes that Dr Maduwanthi intended to and did give the false impression that she had passed the SOE on each occasion referred to in paragraph 11e.

98. Accordingly, the Tribunal was satisfied, on the balance of probabilities, that when she engaged in the communications on 14 October 2022 and 11 and 23 January 2023, Dr Maduwanthi intended to give the false impression that she had passed the SOE. It therefore found paragraph 11e in relation to paragraphs 7, 8 and 9 of the Allegation proved.

### Paragraph 12

#### **11. Your actions as set out in paragraphs 1, 2 and 3 were dishonest by reason of paragraph 10.**

99. As this allegation alleges that Dr Maduwanthi’s actions were dishonest, the Tribunal reminded itself of the principles in the case of *Ivey v Genting Casinos Ltd [2017] UKSC 67*:

*‘...first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts...[and] once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he had done is, by those standards, dishonest’*

100. The Tribunal was mindful that it had already found paragraph 10 of the Allegation proved and therefore that, at the times of submitting the three applications, Dr Maduwanthi knew she had not passed the FRCA SOE exam. Further, the Tribunal reminded itself that Dr Maduwanthi claimed in her application forms to EKT, ECT and ULH that she had passed the FRCA exam, when she had not.

101. The Tribunal therefore went on to consider whether ordinary decent people would say that submitting an application form for employment which contained false information about the applicant’s qualifications was dishonest. The Tribunal unhesitatingly concluded



that they would consider such an action as dishonest.

102. In the circumstances, the Tribunal was satisfied that Dr Maduwanthi's actions as set out in paragraphs 1, 2 and 3 of the Allegation were dishonest. It therefore found paragraph 12 of the Allegation proved.

### Paragraph 13

#### **12. Your actions as set out in paragraphs 6 were dishonest.**

103. The Tribunal has already found paragraphs 6a and 6b of the Allegation, that Dr Maduwanthi had created or caused to be created Document 1 and Document 2, proved. The Tribunal has already found that both documents were forgeries and were provided by Dr Maduwanthi in October 2022 and January 2023 in an attempt to show that she had passed her SOE exam.

104. The Tribunal therefore went on to consider whether ordinary decent people would say that creating, or causing to be created, a document which contained false information about the applicant's qualifications was dishonest. The Tribunal unhesitatingly concluded that they would consider such an action as dishonest.

105. In the circumstances, the Tribunal found Dr Maduwanthi's actions as set out in paragraphs 6a and 6b were dishonest. It found paragraph 13 of the Allegation proved.

### Paragraph 14

#### **13. Your actions as set out in paragraph(s) 4, 5, 7, 8, and 9 were dishonest by reason of paragraph 11.**

106. Prior to considering this paragraph of the Allegation, the Tribunal of its own volition, determined to amend the allegation by inserting '(s)' at the end of the word '*paragraph*', so that it reflected the Tribunal's amendment to paragraph 11 of the Allegation.

107. The Tribunal had regard to its findings in relation to paragraphs 11a – 11e and to the specific matters found proved. Those findings were that Dr Maduwanthi, at various times and in a number of separate communications, gave false information about passing her SOE exam and produced false documents which gave the impression that she had passed that exam, in an attempt to maintain the fiction that she had passed that exam and was a Fellow of the RCoA.

108. The Tribunal therefore went on to consider whether ordinary decent people would say that engaging in such communications which contained false information and produced false documents about Dr Maduwanthi's qualifications was dishonest. The Tribunal unhesitatingly concluded that they would consider such actions would be dishonest.

109. In the circumstances, the Tribunal was satisfied that Dr Maduwanthi's actions at paragraphs 4, 5, 7, 8 and 9 were dishonest. It therefore found paragraph 14 of the Allegation proved.

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

110. The Tribunal has determined the facts as follows:

1. On 12 July 2022, you submitted an application for employment to East Kent Hospitals University NHS Foundation Trust ('East Kent') in which you stated that you had received a pass result for the Fellowship of the Royal College of Anaesthetists ('FRCA') exam from the Royal College of Anaesthetists UK ('RCoA').

**Found proved**

2. In or around September 2022, you submitted an application for employment to East Cheshire NHS Trust ('East Cheshire') in which you stated that you had received a pass result for the FRCA exam from the RCoA.

**Found proved**

3. In 2022, you submitted an application for employment to United Lincolnshire Hospitals NHS Trust ('United Lincolnshire') in which you stated that you had received a pass result for the FRCA exam from the RCoA.

**Found proved**

4. On 3 October 2022, you emailed East Kent and stated that your results for the final FRCA structured oral examination ('SOE') had been misinterpreted due to:

a. a discrepancy in your surname;

**Found proved**

b. a different college reference number ('CRN') being used.

**Found proved**

5. On 12 October 2022, you sent a letter to RCoA and stated:

a. you had mistakenly used a different CRN number whilst applying for the SOE;

**Found proved**

b. you did not have evidence to say that you had been unsuccessful for the SOE.

**Found proved**

6. In or around October 2022, you created or caused to be created the following documents which were not genuine documents:

a. a document purporting to be from the RCoA dated 11 July 2022 ('Document 1') which:

i. stated that you had been successful in the SOE;

**Found proved**

ii. included details of your SOE result.

**Found proved**

b. a document purported to be from the RCoA dated 11 July 2022 ('Document 2') which stated:

i. you had been successful in the SOE;

**Found proved**

ii. details of your SOE result;

**Found proved**

iii. you would be admitted to the Fellowship of the RCoA on 29 July 2022;

**Found proved**

iv. after 29 July 2022, you could describe yourself as an RCoA fellow and use the designation FRCA.

**Found proved**

7. On 14 October 2022, you emailed East Kent and attached Document 1.

**Found proved**

8. On 11 January 2023, you had a telephone conversation with the GMC in which you stated that, in reference to the SOE, you “sat the exam and got through, but the Hospital had given the wrong information, which was not your fault and you had evidence to prove this” or words to that effect.

**Found proved**

9. On 23 January 2023, you emailed the GMC and attached Document 2.

**Found proved**

10. When submitting the Applications referred to at paragraphs 1-3, you knew:

a. that you did not have the FRCA qualification;

**Found proved**

b. that you had not received a pass result for the SOE from the RCoA.

**Found proved**

11. When engaging in the communication(s) referred to at paragraphs 4, 5, 7, 8 and 9, you knew:
- a. that you had not received a pass result for the SOE from the RCoA;  
**Found proved**
  - b. the RCoA had notified you that you had failed the SOE;  
**Found proved**
  - c. there had not been a discrepancy with your surname and / or CRN by the RCoA;  
**Found proved**
  - d. that the documents as described at paragraph 6 were not genuine;  
**As regards Document 1, in relation to paragraphs 4 and 5 of the Allegation, not proved; in relation to paragraphs 7, 8 and 9 of the Allegation, found proved. As regards Document 2, in relation to paragraphs 4, 5, 7 and 8 of the Allegation, not proved; in relation to paragraph 9 of the Allegation, proved.**
  - e. your actions as described at paragraphs 7-9 gave the false impression that you had passed the SOE.  
**Found proved**

12. Your actions as set out in paragraphs 1, 2 and 3 were dishonest by reason of paragraph 10.  
**Found proved**

13. Your actions as set out in paragraphs 6 were dishonest.  
**Found proved**

14. Your actions as set out in paragraph(s) 4, 5, 7, 8, and 9 were dishonest by reason of paragraph 11.  
**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 - 03/06/2024

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

#### The Evidence

2. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. The Tribunal received no further evidence at this stage.

#### Submissions for the GMC:

3. Ms Nowell submitted that Dr Maduwanthi's fitness to practise is impaired by reason of misconduct. She reminded the Tribunal that Dr Maduwanthi's actions were dishonest in that she provided misleading information in respect of her FRCA exam results in three separate application forms; fraudulently produced two letters allegedly from the RCoA purporting to demonstrate that she had passed the FRCA exam, in support of those application forms; and lied about the circumstances in which her oral exam was taken in order to explain the RCoA's assertion that she had failed the exam. Ms Nowell submitted that Dr Maduwanthi has shown no remorse or insight into her actions.

4. Ms Nowell reminded the Tribunal that impairment is a two-stage process and that it must first consider whether Dr Maduwanthi's actions amounted to misconduct, before considering impairment. She submitted that in reaching its decision as to whether Dr Maduwanthi's fitness to practise is impaired, the Tribunal should look to the past and the original conduct before considering what has happened since that time which may impact on Dr Maduwanthi's fitness to practice. She referred the Tribunal to relevant case law.

5. Ms Nowell went on to say that Dr Maduwanthi's actions had breached paragraphs 1, 65 and 66 of Good Medical Practice (GMP) (2013 version) and added that the nature of the conduct and, in particular, the fact that dishonesty had been found, was contrary to one of the main tenets of Good Medical Practice, such that serious misconduct has been demonstrated.

6. Ms Nowell also referred the Tribunal to the overarching objective and submitted that all limbs were engaged. With respect to the first limb, whilst no complaints or concerns about Dr Maduwanthi's clinical competence had been raised, any doctor working outside of their registration and beyond their qualifications had the potential to harm the safety and welfare of their patients. As for the second and third limbs, Ms Nowell added that Dr Maduwanthi's dishonesty was serious and was bound to impact upon patients and the public's confidence in the medical profession.

7. Ms Nowell submitted that Dr Maduwanthi has shown no evidence of remediation or insight such that the Tribunal could properly consider that her misconduct will not be repeated in the future. Dr Maduwanthi had not engaged in these proceedings. Further, her response to the GMC and the EKT's investigations was not to admit her dishonesty and apologise, but rather to claim that the RCoA had made a mistake, thereby perpetuating her dishonesty.

8. Ms Nowell submitted that Dr Maduwanthi's dishonesty was serious, persistent and repeated over a course of a year, with no evidence of remediation or insight. In the

circumstances, she submitted that there was no reason to depart from the usual finding of impairment following a finding of dishonesty. She invited the Tribunal to find Dr Maduwanthi's fitness to practise is impaired.

### The Relevant Legal Principles

9. The Tribunal accepted the LQC's advice on the approach to be taken by the Tribunal in relation to impairment.

10. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts found proved amounted to misconduct which was serious; and secondly, whether the finding of serious misconduct should lead to a finding of impairment.

11. The Tribunal noted of the case of *Roylance v C (no2) (2000) 1 AC 311* in which 'misconduct' was defined as a:

*'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'.*

12. Further, it noted the LQC's reference to the case of *R v. Nursing and Midwifery Council (ex parte Johnson and Maggs) (No 2) [2013] EWHC 2140 (Admin)* where it was stated that "conduct that would be seen as "deplorable" by fellow practitioners was required".

13. The Tribunal was also mindful of the case of *Cohen v GMC (2008) EWHC 581* in which the Court held that the task of the panel, in considering impairment, is to take account of the practitioner's misconduct and then consider it in light of all the other relevant factors known to them. The Court stated that it will be highly relevant in determining if fitness to practise is impaired to consider:

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

14. The Tribunal must determine whether Dr Maduwanthi's fitness to practise is impaired today, taking into account her conduct at the time of the events and any relevant factors since then. It should also consider whether a finding of impairment is warranted in any event taking into account the wider public interest.

15. Whilst there is no statutory definition of impairment, the Tribunal is assisted by the guidance provided by Dame Janet Smith in the Fifth Shipman Report, as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal noted that any of the following features are likely to be present when a doctor's fitness to practise is found to be impaired:

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

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

17. Finally, the Tribunal reminded itself of the overarching objective which is: to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in the medical profession; and to promote and maintain proper professional standards and conduct for members of that profession.

## The Tribunal's Decision

### Misconduct

18. The Tribunal first considered whether the facts found proved amounted to serious misconduct. The Tribunal had regard to the following paragraphs of GMP which it considered to be engaged in this case:

*'1. Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.*

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

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

(underlining added by the Tribunal)

19. The Tribunal also took into account that the use of the words 'you must' in paragraphs 65 and 66 denotes an overriding duty or principle.

20. The Tribunal first of all reminded itself as to what facts it had found proved. Dr Maduwanthi submitted three separate application forms to three different potential employers in which she claimed she had passed the FRCA exam, when she had not. After the matters came to light, during the subsequent EKT and GMC investigations, Dr Maduwanthi

persistently maintained that she had passed the exam and that she had been so advised by the RCoA. Further, she claimed that RCoA had made a mistake in that, due to the nature and length of her name, it had assigned two separate CRNs which led to the error on their part that she had not passed the FRCA exam.

21. Further, the Tribunal also found that Dr Maduwanthi had created or caused to be created two separate letters on two separate occasions (in October 2022 and January 2023) purporting to be from the RCoA in July 2022 advising her that she had passed the SOE part of the FRCA exam. During the EKT investigation and to the GMC, Dr Maduwanthi claimed that the RCoA had made a mistake in the use of her CRN and that she had evidence of this. Dr Maduwanthi also wrote or prepared a letter to the RCoA threatening to instigate legal action against them for their error. Although the Tribunal noted that there is no evidence that Dr Maduwanthi sent this letter, she did produce it to others. The Tribunal considered this to be part of Dr Maduwanthi's attempts to cover up her dishonest actions and to try and persuade her employer and the GMC that she was telling the truth. Finally, the Tribunal noted that Dr Maduwanthi's dishonest behaviour spanned a total of some ten months, from July 2022 to April 2023, a significant period of time.

22. The Tribunal had little hesitation in determining that Dr Maduwanthi's actions breached the paragraphs of GMP, as set out above. It considered that her actions demonstrated that she was not "*honest and trustworthy*" nor did she "*act with integrity*" (as required by paragraph 1 of GMP). Further, she was not "*honest about [her] experience, [and] qualifications*" and her behaviour did not justify "*patients' trust in [her] and the public's trust in the profession*" (as required respectively by paragraphs 66 and 65).

23. Having established that Dr Maduwanthi's actions breached GMP, the Tribunal went on to assess their seriousness. The Tribunal noted the remarks of Mrs Justice O'Farrell in the case of *GMC v Dr Iheany Chidi Nwachuku [2017] EWHC 2085 (Admin)* where she stated that

*"...46. Dishonesty constitutes a breach of a fundamental tenet of the profession of medicine: PSA v GMC & Igwilo [2016] EWHC 524. A finding of dishonesty lies at the top end in the spectrum of gravity of misconduct: Patel v GMC Privy Council Appeal No.48 of 2002."*

24. Further, the Tribunal noted that the Sanctions Guidance indicates that dishonesty is serious, particularly when persistent and repeated. Finally, it noted the LQC's advice which indicated that "*conduct that would be seen as "deplorable" by fellow practitioners was required*" for a finding of misconduct. Given that Dr Maduwanthi's conduct amounted to: deliberate acts of dishonesty to deceive her employer, EKT, and her regulator, the GMC, and were persistent and repeated on multiple occasions, the Tribunal concluded that fellow practitioners would find her actions "*deplorable*". The Tribunal therefore concluded that Dr Maduwanthi's actions not only crossed the threshold of seriousness but fell significantly below the standards expected of a registered doctor and therefore amounted to serious professional misconduct.

#### Impairment by reason of misconduct



25. Having found that the facts found proved amounted to misconduct, which was serious, the Tribunal went on to consider whether, as a result of that misconduct, Dr Maduwanthi's fitness to practise is currently impaired.

26. The Tribunal had regard to the guidance provided by Dame Janet Smith in the *Fifth Shipman report* as adopted by the High Court in *CHRE v NMC and Paula Grant [2011] EWHC 297 Admin*. The Tribunal considered the four elements of the guidance, as set out in paragraph 15 above, and was satisfied that all four were engaged, for instance: the Tribunal agrees with Ms Nowell's submission that any doctor working outside of their registration and beyond their qualifications had the potential to harm the safety and welfare of their patients; Dr Maduwanthi's dishonest actions brought the medical profession into disrepute; her actions breached a fundamental tenet of the profession; and she acted dishonestly.

27. In determining whether Dr Maduwanthi's fitness to practise is currently impaired, the Tribunal looked for evidence of remediation and insight, and considered the likelihood of repetition, bearing in mind at all times the need to uphold the three strands of the statutory overarching objective.

28. The Tribunal first considered whether Dr Maduwanthi's misconduct was remediable. It was mindful that dishonesty is difficult to remediate but not impossible, and that, in certain circumstances, it is remediable and can be remediated. It therefore went on and considered whether Dr Maduwanthi had remediated the misconduct found.

29. The Tribunal took into account that Dr Maduwanthi has, at no point during the EKT investigation or the GMC investigation, nor in the lead up to these proceedings, accepted her wrongdoing. Furthermore, the Tribunal has not been provided with any evidence of Dr Maduwanthi demonstrating any understanding of the nature and gravity of her actions, nor could it identify any indications of insight from the evidence before it. There was no indication that Dr Maduwanthi had taken any steps to remediate her misconduct. She had not engaged with the investigation process beyond her communication with the GMC in which she maintained her dishonest stance. There was no evidence that Dr Maduwanthi understood what she had done was wrong, no appreciation of what she should have done differently, nor any understanding of how she could act differently in the future. Finally, there was no indication that she appreciated what impact her actions had, or would have, on: the public; colleagues; the reputation of the medical profession; or public confidence in the medical profession.

30. By way of example, the Tribunal considered that Dr Maduwanthi's overall attitude to these matters was best encapsulated in her email of 17 February 2023 to Ms H, in which she wrote:

*'Many thanks for helping to clarify this. I'm sorry about the delay in replying to your email. I had an extensive discussion with MDU. I strongly condemn the contradicted information which had been provided to you by RCoA.'*

*Could you please forward me the proper result sheath [sic] which mentions that I was unsuccessful at the SOE if you don't mind.*

*I wasn't unable to retrieve the emails that was sent to me with my results by RCoA yet. I'm trying my best to do it.*

*[Even though] I forwarded and moved my results of SOE of final FRCA from spam folder into important email folder, what I couldn't understand is all these emails have been taken off from the system. I couldn't understand how it happened.*

*During my extensive search I found a previously taken printout mentioning that I was sent this email by Mr J on 11th July 2022 at 12.01 which mentions that I have succeeded with the SOE examination. Herewith attached I'm sending you a scanned copy of it. This is the only evidence that I could submit currently to you. As soon as I retrieve the emails about my SOE results of RCOA I would forward them to you. I registered with MDU according to your advice and I'm going to take legal actions against RCOA after retrieving the previous emails about the SOE results of mine. Until then please act according to your trust policies.*

*Could you please inform me at the earliest whether I'm going to loose my GMC registration. Even though I file a case with MDU for this it is going to be an extensive process which is time consuming. Before that I could do the Final FRCA SOE in June 2023 again. Until then I can stay employed in the same position because I already have post graduate qualification MD Anaesthesiology equivalent to Final FRCA. According to my knowledge final FRCA is not a mandatory qualification of the current position I hold. Am I eligible to apply for another job in another NHS hospital?*

*If I'm going to loose the GMC registration I don't mind going back to my mother country too.*

*I would be very much grateful if you could inform me definitive decision about this as early as possible.*

*I have forwarded your message to GMC, investigating officer and lead clinician of my department. Currently I am excluded from all clinical work according to your request.'*

31. The Tribunal considered that the email demonstrates Dr Maduwanthi's attitude and approach to the whole matter. She maintains her innocence; alleges that she had further evidence (which never materialised) and gives excuses for not being able to produce evidence. She reiterates threats against the RCoA and apparently attached false documentation showing that she had passed the SOE. There is no acceptance of any wrongdoing, nor any indication of remorse, apology or regret for her actions. To the contrary, it is quite the opposite.

32. Accordingly, the Tribunal concluded that Dr Maduwanthi failed to demonstrate any insight during the EKT and GMC investigations, and she has not presented any evidence of

such to this Tribunal. Consequently, the Tribunal was led to the view that there remains a high risk of Dr Maduwanthi repeating her misconduct in the future. In the circumstances of this case, which involves repeated and persistent dishonesty, a practitioner would need to demonstrate significant evidence of insight and remediation. The Tribunal has been provided with no evidence at all. The Tribunal therefore finds Dr Maduwanthi's fitness to practise impaired.

33. The Tribunal went on to consider whether a finding of impairment should be made on public interest grounds. It was satisfied that a member of the public, aware of the full facts of the case, would be concerned that a doctor had acted in such a way, and that a fellow professional would find Dr Maduwanthi's actions wholly unacceptable. The Tribunal was of the view that, given the nature of the misconduct found, public confidence in the profession would be undermined if a finding of impairment were not made. A finding of impairment was therefore needed (a) to protect, promote and maintain the health, safety and well-being of the public, (b) to promote and maintain public confidence in the medical profession and (c) to promote and maintain proper professional standards and conduct for members of that profession. Further, a finding of impairment was required to send out a message that this type of behaviour and departure from GMP will not be tolerated.

34. The Tribunal therefore determined that Dr Maduwanthi's fitness to practise is impaired by reason of her misconduct.

#### **Determination on Sanction - 28/05/2024**

1. Having determined that Dr Maduwanthi'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**

2. The Tribunal has taken into account evidence received during the earlier stages of the hearing, where relevant, in reaching a decision on sanction. The Tribunal was not provided with any further evidence at this stage of the proceedings.

#### **Submissions on Sanction**

##### For the GMC

3. Ms Nowell made written and additional oral submissions to the Tribunal. She submitted at the outset that the appropriate sanction in this case is erasure but acknowledged that this was a matter for the Tribunal based on its own independent judgment. She reminded the Tribunal of the relevant case law and directed it to the Sanctions Guidance ('SG') (February 2024 version) and the overarching objective as set out in the Medical Act 1983. She submitted that all three limbs of the latter were engaged in this case. Ms Nowell reminded the Tribunal that, in considering the appropriate sanction, it must

start with the least restrictive and that, in determining the appropriate sanction, it is necessary to weigh the interests of the public against those of the doctor.

4. Ms Nowell reminded the Tribunal that it should consider the mitigating and aggravating factors in the case. In relation to mitigating features, she submitted that there were no mitigating features in this case.

5. In relation to aggravating features, Ms Nowell submitted that: Dr Maduwanthi had provided no evidence of any insight; she has not apologised for her actions; her dishonesty was persistent and repeated on several occasions; and it was perpetuated and covered up when asked about it by producing two false documents purporting to show that she had passed the FRCA exam.

6. Ms Nowell took the Tribunal through the SG and highlighted why taking no action or imposing a period of conditional registration were not the appropriate sanction. She then referred the Tribunal to those paragraphs of the SG, particularly paragraph 97, which indicate when suspension might be the appropriate sanction. Ms Nowell submitted that none of the factors listed under paragraph 97 applied in this case, adding that Dr Maduwanthi's actions and misconduct were so serious a departure from GMP that they were incompatible with her continued registration on the medical register.

7. Addressing the Tribunal on erasure, Ms Nowell referred the Tribunal to paragraphs 107 – 111 which indicate when erasure might be the appropriate sanction. She submitted that paragraph 109 (a), (b), (j) and (j) were engaged in this case. She also referred the Tribunal to paragraphs 120 – 128 of the SG and submitted that paragraphs 120, 124, 125 and 128 were particularly relevant in this case.

8. In conclusion, Ms Nowell submitted that, given the complete lack of insight, apology and acknowledgement of any wrongdoing, or any evidence of remediation, erasure is the only proportionate sanction and she invited the Tribunal to erase Dr Maduwanthi's name from the medical register.

### **The relevant legal principles**

9. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken account of the February 2024 version of the SG and the statutory overarching objective. It reminded itself that, where appropriate, it should only impose the minimum sanction necessary to protect the public and the public interest.

10. Throughout its deliberations the Tribunal has applied the principle of proportionality, balancing Dr Maduwanthi's interests with the public interest.

11. The Tribunal reminded itself of the requirement in SG to consider the least restrictive sanction first and then, if necessary, consider the other sanctions, taking into account the

evidence and submissions that have been heard, including its earlier findings on facts and impairment.

12. The Tribunal accepted the Legally Qualified Chair’s advice. It also considered and balanced any aggravating and then mitigating factors in this case.

### The Tribunal’s Determination on Sanction

#### Aggravating and Mitigating Factors

13. In reaching its decision, the Tribunal considered the mitigating factors (paragraphs 24 – 49) and the aggravating factors (paragraphs 50 – 60) in this case.

#### Mitigating

- Dr Maduwanthi has no previous adverse history with the GMC.

#### Aggravating

- Dr Maduwanthi has provided no evidence at all of insight into her misconduct;
- Her initial dishonest actions were deliberate and repeated;
- She then perpetuated her misconduct by persistently attempting to cover up her dishonesty by blaming others, forging documents, and consistently stating to EKT, and to her regulator, the GMC, that she had done nothing wrong;
- Her misconduct persisted over a long period of some ten months;
- Dr Maduwanthi has ignored, by persistently not engaging with, her regulator, beyond her communication in January 2023.

14. The Tribunal bore in mind all the aggravating and mitigating factors throughout its deliberations as regards the appropriate and proportionate sanction. Having balanced these factors, the Tribunal concluded that the mitigating factors had significantly less weight than the aggravating factors.

15. The Tribunal then considered each sanction in ascending order of severity, starting with the least restrictive.

### No action

16. In coming to its decision as to the appropriate sanction, if any, to impose in Dr Maduwanthi’s case, the Tribunal first considered whether to conclude the case by taking no action. The Tribunal considered the oral submissions made by Ms Nowell. It also considered paragraphs 68-70 of the SG which highlight that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

17. The Tribunal determined that, given the seriousness of the facts found proved, and in the absence of any exceptional circumstances in this case, taking no action would be neither appropriate, proportionate nor in the public interest.

### Undertakings

18. No undertakings were submitted to the Tribunal.

### Conditions

19. The Tribunal next considered whether it would be sufficient to impose conditions on Dr Maduwanthi's registration.

20. The Tribunal took account of paragraph 80 of the SG which highlights that, in many cases, the purpose of conditions is to help the doctor remedy any deficiencies in their practice, while protecting the public. Further, the Tribunal noted paragraph 81 of SG which confirms that conditions might be most appropriate in cases involving issues around the doctor's performance or where there is evidence of shortcomings in areas of the doctor's practice.

21. The Tribunal also considered paragraph 82 of SG which advises that:

*'82 Conditions are likely to be workable where:*

- a. the doctor has insight;*
- b. a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings;*
- c. the Tribunal is satisfied that the doctor will comply with them;*
- d. the doctor has the potential to respond positively to remediation or retraining or to their work being supervised.'*

22. It also had regard to paragraph 85, which states:

*'85 Conditions should be appropriate, proportionate, workable and measurable.'*

23. The Tribunal reminded itself that it is not concerned with Dr Maduwanthi's clinical performance.

24. The Tribunal concluded that conditions would not be a sufficient response given the seriousness of Dr Maduwanthi's misconduct. Further, it considered that none of the factors outlined in paragraph 82 of SG applied. The Tribunal had found that Dr Maduwanthi had no insight; retraining and/or supervision were not appropriate methods of addressing dishonesty; and given Dr Maduwanthi's complete lack of engagement, the Tribunal considered that it was most likely that she would not comply with conditions, nor respond positively to them. The Tribunal therefore determined that conditions would not be appropriate in this case.

## Suspension

25. The Tribunal then went on to consider whether imposing a period of suspension on Dr Maduwanthi's registration would be a sufficient sanction or would satisfy the statutory overarching objective.

26. The Tribunal took account of the SG in relation to suspension, including particularly paragraphs 91, 92 and 93. These state:

*'91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*

*92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession);*

*93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions (see paragraphs 24–49).'*

27. The Tribunal also reminded itself of the following paragraphs of the SG

*'31 Remediation is where a doctor addresses concerns about their ... conduct or behaviour. Remediation can take a number of forms, including coaching, mentoring, training, and rehabilitation (this list is not exhaustive), and, where fully successful, will make impairment unlikely.*

*32 However, there are some cases where a doctor's failings are irremediable. This is because they are so serious or persistent that, despite steps subsequently taken, action is needed to maintain public confidence...'*

28. The Tribunal also considered sub-paragraphs of paragraph 97 of the SG:

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

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

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

*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.'*

29. The Tribunal considered that none of the factors listed in paragraph 97 of SG were applicable in Dr Maduwanthi's case. It reminded itself that it had determined at the impairment stage that Dr Maduwanthi's actions were a serious departure from GMP and that her actions were at the upper end of the scale of dishonesty. Further, it considered that there was abundant evidence that remediation was unlikely to be successful, given her persistent denial of culpability and lack of engagement. Although there is no evidence to suggest that Dr Maduwanthi has repeated her misconduct, the Tribunal has found that she has no insight and therefore, that there was a high risk of repetition.

30. The Tribunal therefore concluded that suspension would be inappropriate and insufficient to mark the seriousness of Dr Maduwanthi's misconduct, protect the public, uphold proper standards of conduct and behaviour, and maintain public confidence in the medical profession.

## **Erasure**

31. The Tribunal therefore went on to consider whether the sanction of erasure was appropriate and proportionate in this case.

32. The Tribunal reminded itself of its findings of fact and the aggravating and mitigating factors had identified. It considered the following paragraphs of the SG particularly relevant to its deliberations:

*'107 The tribunal may erase a doctor from the medical register in any case – except one that relates solely to the doctor's health and/or knowledge of English – where this is the only means of protecting the public.*

*'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards*



*designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.*

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

*a A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.*

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

*h Dishonesty, especially where persistent and/or covered up (see guidance below at paragraphs 120–128).*

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

33. The Tribunal also had regard to paragraphs 120 – 128, in particular paragraph 128 which states:

*'128 Dishonesty, if persistent and/or covered up, is likely to result in erasure (see further guidance at paragraph 120–128)'*

34. The Tribunal considered that paragraph 108 applied in this case. Whilst there were no concerns about Dr Maduwanthi's clinical competency, the Tribunal considered that she has "*shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession*". She was not only dishonest on more than one occasion, but she then attempted to cover up her actions by persistently refusing to acknowledge any culpability and by repeating her dishonest behaviour, which spanned a period of around 10 months. Furthermore, the Tribunal was of the view that her repeated failure to engage with the GMC, or with these proceedings, demonstrated a complete disregard for her regulator. Accordingly, the Tribunal was led to the inescapable conclusion that her actions, taken overall, were "*incompatible with continued registration as a doctor*".

35. Furthermore, the Tribunal considered that all of the factors listed in paragraph 109 a, b, h and j applied in this case, as did paragraph 128. The Tribunal would go so far as to say that, in its collective experience, it has not come across a case of such persistent dishonesty coupled with such a complete lack of acknowledgement of culpability.

36. In all the circumstances, the Tribunal determined that erasure was required to send a message to the medical profession and to the public that this type of behaviour was unacceptable. The Tribunal considered that erasure was also required so as to uphold the three limbs of the overarching objective, namely to protect the public, declare and uphold

proper standards in the medical profession and to maintain public confidence in the medical profession.

37. The Tribunal therefore determined to erase Dr Maduwanthi's name from the Medical Register.

#### Determination on Immediate Order - 04/06/2024

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

#### Submissions

##### For the GMC

2. On behalf of the GMC, Ms Nowell submitted that an immediate order of suspension is necessary in this case. She referred the Tribunal to paragraphs 172 and 173 of the SG applicable to when an immediate order may be appropriate. She submitted that given the misconduct found in this case, an immediate order was required to protect public safety and to maintain public confidence in the medical profession.

3. Ms Nowell also asked the Tribunal to revoke the current interim order of suspension on Dr Maduwanthi's registration.

#### The Tribunal's Determination

4. The Tribunal had regard to paragraphs 172 to 178 of the SG. It took account of the relevant guidance, and the submissions made by Ms Nowell. It also had regard to the specific basis upon which the Tribunal reached its determination on sanction.

*'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...*

*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.'*

5. The Tribunal determined that, given the seriousness of Dr Maduwanthi's misconduct, its findings on impairment and the sanction it has imposed, it is in the public interest to suspend her registration with immediate effect. Further, the Tribunal agreed with Ms Nowell that an order was necessary on the ground of public protection. It concluded that not to suspend Dr Maduwanthi's registration with immediate effect would be perverse in the circumstances of this case and, would undermine the overarching objective to protect the

public, to uphold and maintain high standards in the medical profession, and to maintain public confidence in the medical profession.

6. This means that Dr Maduwanthi's registration will be suspended from today. The substantive direction, as already announced, will take effect 28 days from the date on which written notification of this decision is deemed to have been served upon Dr Maduwanthi, unless she appeals in the interim. If she does appeal, the immediate order will remain in force until the appeal has concluded.

7. The Tribunal revoked the interim order of suspension upon Dr Maduwanthi's registration with immediate effect.

8. That concludes the case.

ANNEX A – 23/05/2024

**Application: Service and Proceeding in Absence (Rule 40) – handed down 23/05/24**

Service of Notice of the Hearing

1. Dr Maduwanthi is neither present nor represented at this hearing.
2. The Tribunal considered the submissions made by Ms Katie Nowell, Counsel, on behalf of the General Medical Council (GMC), that notification of this hearing has been properly served upon Dr Maduwanthi in accordance with Rule 40 of the General Medical Council ('GMC') ('Fitness to Practise') Rules Order of Council 2004 ('the Rules') and that the hearing should proceed in the doctor's absence.
3. Ms Nowell referred the Tribunal to the proof of service bundle which included a screenshot of the GMC database respectively showing Dr Maduwanthi's registered postal and email addresses. The Tribunal noted that, in an email dated 11 January 2023, Dr Maduwanthi confirmed that she was content to be contacted at the email address on the GMC database, and she also provided a mobile contact number. Dr Maduwanthi stated  
  
*'I would like to receive it to my personal email address [redacted]  
You can contact me to my mobile [redacted].'*
4. The Tribunal further noted the email correspondence between the GMC and Dr Maduwanthi from the email address in relation to correspondence regarding the MPT hearing.
5. On 11 March 2024, the GMC sent the hearing bundle and witness timetable to Dr Maduwanthi at the confirmed email address, and included details of today's hearing. The Tribunal noted that this was followed by a Rule 34(9) letter and the Rule 15 allegations on 9 April 2024 via email. In this email the GMC also mentioned that the correspondence related to Dr Maduwanthi's MPT hearing on today's date. On 10 April 2024, the GMC sent a copy of these details by post to Dr Maduwanthi at her registered address. The Tribunal noted the Royal Mail Track and Trace receipt which showed that the item was marked 'Return to sender' and 'addressee gone away' on 12 April 2024 by the Royal Mail.
6. The Tribunal noted that on 11 April 2024, the MPTS also sent the Notice of Hearing (NoH) to Dr Maduwanthi at her confirmed email address. This NoH contained details of the date and time of this hearing and also stated that the hearing would be conducted virtually commencing at 09:30 am. It included details of the proceedings as required by the Rules. It also advised Dr Maduwanthi that the Tribunal can hear and make a decision about her case in her absence under the relevant rule. An attempt was made to deliver this at Dr Maduwanthi's registered address on 11 April 2024 but was subsequently marked 'Return to sender' and returned back to the MPTS on 15 April 2024.

7. On 17 April 2024, the GMC attempted to contact Dr Maduwanthi by telephone on the mobile number she had provided in her email of 11 January 2023. There was no answer and a voicemail message was left for Dr Maduwanthi regarding the correspondence sent to her via email and at her registered address.

8. From the information before it, the Tribunal was satisfied that the NoH included details of today's hearing. Further, the Tribunal considered that several attempts had been made by email and by post to serve the NoH upon Dr Maduwanthi in accordance with the relevant rules. The Tribunal therefore determined that the NoH had been served upon Dr Maduwanthi in accordance with Rule 40 of the Rules.

#### Proceeding in Absence

9. Having determined that the NoH has been properly served, the Tribunal went on to consider, under Rule 31, whether it should proceed with the hearing in Dr Maduwanthi's absence.

10. Ms Nowell submitted that since January 2023, there has been no engagement with the GMC, and therefore, there could be no suggestion that if the NoH were to be re-sent to Dr Maduwanthi, she would attend a future hearing. Ms Nowell submitted that, given the history of the case, realistically the GMC would not be able to contact Dr Maduwanthi in any manner where she would reply. She invited the Tribunal to proceed in Dr Maduwanthi's absence.

11. The Tribunal was conscious 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.

12. The Tribunal noted the email from Dr Maduwanthi to the GMC, dated 11 January 2023, and that this is the email to which correspondence and the NoH relating to the hearing has been sent.

13. The Tribunal took into account that there has been no engagement from Dr Maduwanthi, either via email or by post, since 11 January 2023. It noted the numerous attempts made by the GMC and the MPTS to serve the hearing bundle and the NoH on Dr Maduwanthi by email and by post. It has also noted the telephone voicemail message left by the GMC on the mobile number provided by Dr Maduwanthi, and that despite this, Dr Maduwanthi has not been in contact with the GMC or the MPTS.

14. In the circumstances, the Tribunal determined that Dr Maduwanthi was aware of today's hearing, and that she had voluntarily absented herself from it. It noted that no request for an adjournment has been submitted to the Tribunal or to the MPTS Case Manager to enable her to attend on a later date. The Tribunal was satisfied, from the information before it, that an adjournment would not result in Dr Maduwanthi's participation at a hearing in the future.

15. Having decided that Dr Maduwanthi's absence was voluntary, the Tribunal determined, given the seriousness of the issues raised in this case, that it was appropriate to proceed with the case in Dr Maduwanthi's absence. In particular, it noted that six witnesses, most of them no doubt busy medical practitioners, were scheduled to give evidence this week. The Tribunal considered that, if the hearing was adjourned today, it would likely take several months to relist the matter on dates convenient to those witnesses. Such a further delay would likely give rise to a risk that there would be a further deterioration in their respective recollections of events that took place almost two years ago.

16. The Tribunal has balanced the public interest against Dr Maduwanthi's interests and concluded that the wider public interest in the case proceeding expeditiously outweighed Dr Maduwanthi's own interests in adjourning, particularly when no useful purpose would be served by adjourning to a later date.

17. In accordance with Rule 31, the Tribunal determined to proceed in Dr Maduwanthi's absence.

## ANNEX B – 23/05/2024

### Application: Application to amend Allegation - Rule 17(6) – 23/05/24

#### Submissions on behalf of the GMC

1. On 20 May 2024, (Day 1), under Rule 17(6) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004 ('the Rules'), following an enquiry by the Tribunal, Ms Katie Nowell, Counsel for the GMC, made an application to amend paragraph 11 of the Allegation by the addition of '(s)' to the word 'communication'. She submitted that the amendment was sought to provide clarification that the charge applied to one or more of the matters alleged under paragraph 11. Ms Nowell submitted that the amendment would cause no prejudice to Dr Maduwanthi and, as she was not present or represented, would not have affected her decision to attend these proceedings or how she presented her case. Ms Nowell said that the amendment did not introduce any additional charge. She invited the Tribunal to grant the application.

#### The Tribunal's Decision

2. The Tribunal considered Rule 17(6) of the Rules which states:

*'Where, at any time, it appears to the Medical Practitioners Tribunal that—*

*(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*

*(b) the amendment can be made without injustice,*

*it may, after hearing the parties, amend the allegation in appropriate terms.'*

3. The Tribunal was mindful that Dr Maduwanthi is not present and is not represented at this hearing. It took into account Ms Nowell's submissions. It also took into account that the application was in response to a request by the Tribunal for clarification of the meaning and ambit of paragraph 11 of the Allegation, and the application did not result in any significant amendment to the Allegation nor did it add any new allegations. It was therefore of the view that to grant the amendment would cause no injustice to Dr Maduwanthi. Accordingly, the Tribunal granted the application to amend paragraph 11 of the Allegation to read as follows:

'11. When engaging in the communication(s) referred to at paragraphs 4, 5, 7, 8 and 9, you knew:'

#### ANNEX C – 04/06/2024

#### Rule 17(6) Application to amend Allegation

#### Submissions on behalf of the GMC

1. On 24 May 2024, (Day 5), under Rule 17(6) of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004 ('the Rules'), following an enquiry by the Tribunal, Ms Katie Nowell, Counsel for the GMC, made an application to amend paragraphs 5 and 6 of the Allegation as follows:

Paragraph 5 to read:

5. On 12 October 2022, you ~~sent~~ wrote a letter to RCoA and stated:

and

Paragraph 6 to read:

6. ~~In or around~~ Between October 2022 and January 2023, you created or caused to be created the following documents which were not genuine documents:

2. Ms Nowell submitted that the amendment did not change the nature of the allegations or add any new allegations, adding that the amendments provided clarification to the existing allegations 5 and 6. Further the amendments were sought following the Tribunal's own query and would cause no prejudice to Dr Maduwanthi. She invited the Tribunal to grant the application.

#### The Tribunal's Decision

3. The Tribunal considered Rule 17(6) of the Rules which states:

*‘Where, at any time, it appears to the Medical Practitioners Tribunal that—*

*(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*

*(b) the amendment can be made without injustice,*

*it may, after hearing the parties, amend the allegation in appropriate terms.’*

4. The Tribunal was mindful that Dr Maduwanthi is not present and is not represented at this hearing. It took into account Ms Nowell’s submissions and that the application was in response to a request by the Tribunal to provide clarification for paragraphs 5 and 6 of the Allegation.

5. In relation to Paragraph 5, having considered all the evidence presented by the GMC, the Tribunal was aware that there was no evidence to show that the letter dated 12 October 2022 was actually sent to the RCoA by Dr Maduwanthi. However, some evidence had been produced by the GMC that suggested that Dr Maduwanthi had prepared and/or written this letter and that she had referred to it in her representations to others. Further, there was no evidence before the Tribunal to suggest that Dr Maduwanthi had ever denied preparing this letter.

6. The Tribunal therefore concluded that the suggested amendment did not add any new allegation for the reason that, essentially, the previous wording of paragraph 5 already incorporated an allegation that Dr Maduwanthi had prepared the letter, prior to sending it. Consequently, the Tribunal concluded that the suggested amendment did not result in any significant change to the Allegation.

7. In relation to Paragraph 6, having considered all the evidence presented by the GMC, the Tribunal was aware that there was no evidence to show exactly when Documents 1 and 2 were actually created by Dr Maduwanthi. However, some evidence had been produced by the GMC that indicated when Dr Maduwanthi had first referred to and produced those documents to others (Document 1 in October 2022 and Document 2 in January 2023). Further, there was no evidence before the Tribunal to suggest that Dr Maduwanthi had ever denied preparing these documents.

8. The Tribunal therefore concluded that the suggested amendment did not add any new allegation for the reason that it merely clarified when the GMC was alleging each document had been created. Consequently, the Tribunal concluded that the suggested amendment did not result in any significant change to the Allegation.

9. In summary, the Tribunal was therefore of the view that to grant the amendments would cause no injustice to Dr Maduwanthi. Accordingly, the Tribunal granted the application to amend paragraphs 5 and 6 to read as set out above.



ANNEX D – 04/06/2024

## Rule 17(6) Application to amend Allegation

### Submissions on behalf of the GMC

1. On 24 May 2024, the Tribunal retired into in-camera session to deliberate on the facts. During its deliberations, the Tribunal noted that paragraph 14 alleged that Dr Maduwanthi's actions were dishonest by reason of paragraph 11 and read as follows:

'14. Your actions as set out in paragraph 4, 5, 7, 8, and 9 were dishonest by reason of paragraph 11.'

2. Rule 17(6) of the of the General Medical Council ('GMC') (Fitness to Practise) Rules 2004 ('the Rules'), states:

*'Where, at any time, it appears to the Medical Practitioners Tribunal that—*

*(a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and*

*(b) the amendment can be made without injustice,*

*it may, after hearing the parties, amend the allegation in appropriate terms.'*

3. The Tribunal was mindful that it had granted Ms Nowell's application to amend paragraph 11 of the Allegation by the addition of '**(s)**' at the end of the word 'communications'. The Tribunal noted that it had not heard submissions from parties, as required by the Rules. However, it considered that the amendment it proposed to make, of its own volition, was necessary to reflect the amendment at paragraph 11 and to correct the grammatical error in the previous wording which referred to several paragraphs in the singular. Consequently, it considered that the amendment could be made without injustice to Dr Maduwanthi. The Tribunal therefore determined to amend paragraph 14 by the addition of '**(s)**' at the end of the word 'paragraph'.

4. Prior to handing down its determination on facts, the Tribunal raised this matter with Ms Nowell, who confirmed that she had no objection to the amendment.

5. Paragraph 14 now reads:

'14. Your actions as set out in paragraph**(s)** 4, 5, 7, 8, and 9 were dishonest by reason of paragraph 11.'