PUBLIC RECORD

Dates: 13/11/2023 - 21/11/2023, 13/12/2023 and 20/12/2023

Medical Practitioner's name: Dr Harminderjeet SURDHAR

GMC reference number: 4331768

Primary medical qualification: MB BS 1996 University of London

Type of case
Restoration following disciplinary erasure

Summary of outcome
Restoration application refused. No further applications allowed for 12 months from last application.

Tribunal:

Legally Qualified Chair	Mr Simon Bond
Lay Tribunal Member:	Ms Rama Krishnan
Medical Tribunal Member:	Dr Suzanne Joels

Tribunal Clerk:	Mrs Anne Bhatti

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Ghazan Mahmood, Counsel, instructed by Mr O, Hempsons
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 partly in public and partly in private.

Overarching Objective

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

Determination on Restoration following disciplinary erasure - 20/12/2023

1. This determination will be handed down in private given references to XXX. However, as this case concerns alleged misconduct and an application for restoration, a redacted version will be published at the close of the hearing.

2. The Tribunal has convened to consider Dr Surdhar's application for his name to be restored to the Medical Register following his erasure for disciplinary reasons in 2016.

3. The Tribunal has considered the application in accordance with Section 41 of the Medical Act 1983, as amended ('the Act') and Rule 24 of the General Medical Council's ('GMC') (Fitness to Practise) Rules 2004, as amended ('the Rules').

4. This is Dr Surdhar's first application to be restored to the Medical Register.

Background – the circumstances that led to disciplinary erasure

5. Dr Surdhar qualified in 1996 from the University of London. From 2000 he worked as a General Practitioner ('GP') and from 2009 was the owner of the Five Ways Health Centre, Birmingham ('the Centre'). At the time of the events that led to Dr Surdhar's erasure he was practising at the Centre as a single-handed GP.

6. Dr Surdhar's name was erased from the Medical Register following a hearing before a Medical Practitioners' Tribunal in June 2016 ('the 2016 Tribunal'). The facts that led to the 2016 Tribunal can be summarised as follows: it was alleged that between July 2011 and March 2013 Dr Surdhar had been providing private health clearance checks, in particular, blood immunity tests and inoculations, but was using NHS resources to do so.
7. The Centre submitted the relevant blood tests to the pathology department at City Hospital in Birmingham ('the Hospital'). A form, completed by the Centre, would

accompany the sample of blood. An investigation by the NHS established that of 150 forms submitted by the Centre, only five contained any information that they concerned a private patient. Those five forms were dated after June 2012, which was when Dr Surdhar became aware that the matter was being investigated. Subsequently, reports detailing all virology tests submitted by Dr Surdhar to the Hospital from 1 January 2010 to 6 July 2011 were compared with his NHS patient lists, past and present. The investigation showed that of the 284 individuals for whom a virology blood test had been submitted, only 70 were NHS patients on his list.

8. On 12 February 2013, Dr Surdhar was interviewed under caution. Throughout the interview he blamed the Hospital for not explaining to him that he needed to include the blood analysis cost in the amount charged to each patient or that 'private' had to be ticked on the referral forms.

9. Following Dr Surdhar's interview under caution, another report was obtained relating to all virology tests submitted by him to the Hospital for the period between 6 July 2011 and 20 March 2013. This report showed that a further 123 tests had been conducted, which did not pertain to NHS patients on his list.

10. On 29 February 2016 at Birmingham Crown Court, Dr Surdhar was convicted upon indictment of five counts of fraud by false representation, contrary to section 2 of the Fraud Act 2006. He was sentenced to 12 months' imprisonment, suspended for 24 months, and was required to complete a community order of unpaid work for 200 hours.

11. During the 2016 Tribunal hearing, Dr Surdhar admitted the allegation relating to his criminal conviction in its entirety and the 2016 Tribunal found the allegation to be proved.

12. The 2016 Tribunal was of the view that Dr Surdhar's criminal actions had clearly breached fundamental tenets of the profession, specifically the need to act with honesty and integrity. The 2016 Tribunal considered that his conduct had brought the profession into disrepute.

13. The 2016 Tribunal also had regard to the sentencing remarks made by HHJ Webb:

> *'The jury has found that you were dishonest. Indeed I would go as far as to say that you were very dishonest because what you did you did over a period of some months, in excess of a year, and on many, many occasions.'*

14. The 2016 Tribunal concluded that the conduct underlying Dr Surdhar's conviction was serious, in that he committed fraud against the NHS and had denied it throughout the investigation. The 2016 Tribunal determined that public confidence in the profession and the need to maintain proper standards of conduct within the profession would be seriously undermined if a finding of impairment was not made. The 2016 Tribunal bore in mind that at the time of the hearing there remained 18 months left of Dr Surdhar's suspended sentence. In all the circumstances, the 2016 Tribunal concluded that Dr Surdhar's fitness to practise was impaired by reason of his conviction.

15. Before reaching its decision on what sanction, if any, to impose, the 2016 Tribunal identified a number of aggravating and mitigating factors. Amongst other matters, it found the following to be aggravating factors:

- that Dr Surdhar had denied his conduct prior to the 2016 Tribunal hearing and had only recently admitted that his actions were dishonest;
- his dishonesty had been repeated and persistent, and had taken place over a period of 18 months; and
- Dr Surdhar had not begun his remediation until June 2016 and had blamed others for his actions.

16. The 2016 Tribunal found a number of mitigating factors including that Dr Surdhar had accepted his dishonesty after his conviction and had started to develop some (albeit limited) insight.

17. The 2016 Tribunal was unable to conclude that there was a low risk of repetition of Dr Surdhar repeating the dishonesty. It found no evidence that he had apologised to the staff members at the Hospital for attempting to shift the blame onto them, nor that he had apologised to his staff at the Centre.

18. The 2016 Tribunal determined that erasure from the Medical Register was proportionate and was the only sanction that would meet the overarching objective of maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct for members of the profession.

The Current Restoration Hearing

Dr Surdhar's application for restoration

19. Dr Surdhar applied to the GMC for his name to be restored to the Medical Register by way of Form UD4 which he completed by hand and which was signed and dated 28 January 2022.

New Allegation of impaired fitness to practise

20. The GMC opposed Dr Surdhar's application for restoration on the basis of new allegations relating to his fitness to practise which had arisen following his erasure in 2016.

21. On 4 September 2018, Ms E, Deputy Chief Officer, Sandwell & West Birmingham Clinical Commissioning Group ('CCG') raised concerns with the GMC about Dr Surdhar. In her referral email to the GMC, Ms E asserted that, following his erasure, Dr Surdhar had been working as a Senior Health Care Assistant ('SHCA') at the Centre. She stated that following a rating of 'inadequate' by the Care Quality Commission ('CQC') and the suspension of its CQC licence, the Centre had been under independent investigation commissioned by the CCG. Ms E alleged to the GMC that Dr Surdhar had been performing primary care services that were beyond the remit of an SHCA and appeared to be purporting to practise as a GP.

22. In addition to the allegation raised by Ms E, the GMC had concerns about Dr Surdhar's application for restoration. In particular, the GMC alleged that Dr Surdhar had completed certain parts of the application form dishonestly.

23. Further, in an email dated 22 February 2023, Dr Surdhar had informed the GMC that he had been unable to work between September 2017 and September 2018. The GMC alleged that Dr Surdhar's statement to that effect had been dishonest.

The Outcome of Applications made during the hearing

24. The Tribunal granted an application made by Ms Katie Nowell, Counsel on behalf of the GMC, to adduce in evidence a report from Dr F dated 5 August 2018. The Tribunal had previously been supplied with a redacted copy of Dr F's report, but Ms Nowell's application sought to adduce another copy of the report with a number of redactions removed. Ms Nowell contended that the items to be unredacted were relevant to the Allegation to be considered by the Tribunal and, in particular, to the dates of Dr Surdhar's employment at the Centre following his erasure. Mr Ghazan Mahmood, Counsel on behalf of Dr Surdhar, did not object to the application.

The Allegation and the Doctor's Response

25. The Allegation made against Dr Surdhar is as follows:

1. On 24 June 2016 a Medical Practitioners Tribunal determined to direct that your name be erased from the Medical Register and whilst working as an SHCA at Five Ways Health Centre:

a. between November 2016 and January 2018, on one or more of the occasions set out in Schedule 1 you inappropriately completed clinical tasks which fell outside of the role of an SHCA; Admitted in part

b. on 3 February 2017 you prepared a letter for Patient B ('the Letter') and signed this off 'Dr H Surdhar Partner, Five ways Health Centre' which was misleading as you failed to state that at the relevant time you were working in the capacity of an SHCA. To be determined

2. On or around 13 February 2022 you submitted an application to the GMC for restoration to the medical register ('the Application') and you:

a. ticked the box which stated 'within the last five years, I have not provided medical services either as an employee, or under a contract or arrangement to provide such services'; Admitted and found proved

b. failed to declare in the work history section that you had worked as a SHCA at Five Ways Health Centre within the last five years. Admitted and found proved

3. When completing the Application you knew you had:

a. provided medical services within the last five years; Admitted and found proved

b. worked as an SHCA at Five Ways Health Centre during the relevant time(s). Admitted and found proved

4. On 21 February 2022 you were asked by the GMC to clarify your work history between September 2017 and September 2018, and in an email dated 22 February 2022 you

stated 'to confirm then from the period September 2017 - September 2018 I was unable to work...'. Admitted and found proved

5. You knew the information you provided to the GMC as set out at paragraph 4 was untrue, in that you knew you had worked as an SHCA at Five Ways Health Centre during the relevant time(s). To be determined

6. Your actions as set out at paragraph(s):

a. 2a were dishonest by reason of paragraph 3a; To be determined

b. 2b were dishonest by reason of paragraph 3b; To be determined

c. 4 were dishonest by reason of paragraph 5. To be determined

The Admitted Facts

26. Dr Surdhar made admissions through his Counsel, Mr Mahmood, to some paragraphs and sub-paragraphs of the Allegation, as set out above.

The Evidence

27. The Tribunal took into account all the evidence it received, both oral and documentary.

Documentary Evidence

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

GMC bundle

- MPTS Record of Determination dated 24 June 2016;
- Initial referral email dated 4 September 2018;
- Dr F's CCG report dated 5 August 2018;
- CQC correspondence with the Centre dated 8 June 2018;
- Dr Surdhar's restoration application dated 28 January 2022;
- GMC correspondence with Dr Surdhar regarding work history dated 22 February 2022;
- Medical records of various patients with various dates;

- Email correspondence from Dr G dated 29 August 2023;
- GMC guidance regarding the question '*have you provided medical service in the last five years?*'; and
- GMC form '*VERL – UD8 – Medical Services Statement*'.

Dr Surdhar's reflections bundle, relating to

- Clinical observations;
- Continuing professional development;
- Personal reflections including personal development plan;
- Mentoring sessions; and
- Support group meetings.

Expert evidence

29. The Tribunal received an expert report dated 7 December 2022, on behalf of the GMC, by Dr G. He has been a GP principal since 1985, a lead assessor in general practice for the GMC since 1997; a part-time clinical adviser to the Health Care Commission, 2003 to 2007; and a forensic medical examiner for the police, 1990 to 2009. Dr G was asked by the GMC to describe what the typical tasks of an SHCA would include and what tasks would fall outside the remit of an SHCA. He was also asked to confirm whether a number of tasks allegedly performed by Dr Surdhar were appropriate for someone working in the role of an SHCA.

Witness Evidence

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

- Dr F, GP, provided a statement dated 1 July 2022 and a supplemental statement dated 9 December 2022;
- Mr H, Practice Manager at Heathfield Family Centre, provided a statement dated 17 May 2023;
- Ms I, Medical Secretary at Karis Medical Centre, provided a statement dated 14 August 2023; and
- Mr J, IT Officer at Highgate Medical Centre, provided a statement dated 24 August 2023.

31. Dr Surdhar provided his own witness statement dated 2 November 2023 and also gave oral evidence at the hearing. In addition, the Tribunal received evidence from the following witnesses, called by Dr Surdhar:

- Dr K, Pleck Health Centre. Dr K provided the Tribunal with a letter dated 7 November 2023 and gave oral evidence by video link; and
- Dr L, Coach/Mentor. Dr L provided the Tribunal with a letter dated 7 November 2023 and gave oral evidence by video link.

Summary of witness evidence

Dr Surdhar

32. Relevant aspects of Dr Surdhar's evidence are summarised later in this determination.

Dr F

33. In his witness statement dated 1 July 2022, Dr F stated that, in 2018, he had been commissioned by the CCG to conduct an inspection of the Centre, following the CQC's rating of inadequate. During the course of his inspection, Dr F noted that Dr Surdhar had carried out a clinical examination on 13 February 2017. Dr F's understanding had been that Dr Surdhar was only allowed to operate as an SHCA following his erasure from the Medical Register in 2016.

34. Dr F stated that he had been asked by the CCG to investigate Dr Surdhar's contact with patients since the commencement of his role as an SHCA. Dr F described how he ran a 'session search' through EMIS (the Centre's records management system) by putting Dr Surdhar's name as the clinical entrant. Dr F stated that he found evidence that Dr Surdhar appeared to have performed clinical tasks or duties that fell outside the remit of an SHCA, such as diagnosing and examining patients.

35. In his supplementary witness statement dated 9 December 2022 Dr F provided further background as to how he came to investigate the Centre on behalf of the CCG. He also commented on a sample of medical records obtained by the GMC for those patients referred to in his investigation report. Dr F stated that the medical records included evidence that Dr Surdhar had undertaken tasks such as making diagnoses and performing examinations.

Ms I, Mr J and Mr H

36. The witness statements of Ms I, Mr J and Mr H related to certain entries within the Centre's medical records. A number of those entries confirmed the name of the clinician who conducted particular consultations, but also contained another line which stated that the consultation record had been 'entered by' another individual. The evidence from these three witnesses was that the 'entered by' line had been created in the course of the relevant medical records being transferred to (and being accepted by) another practice when the Centre lost its contract.

Dr K

37. Dr K stated that, from March 2021 until April 2023, Dr Surdhar had 'shadowed' him and other clinical practitioners at Pleck Health Centre, Walsall on one day a week. Dr K explained that, from May 2023, Dr Surdhar had taken the role of a GP Assistant, which involved clinical and administrative activity including the initial assessment of patients with '*undifferentiated patients*' who were then reviewed by the supervising GP.

38. Dr K stated that throughout his placement and his current employment, Mr Surdhar had come across as an honest, caring and disciplined individual who understood the limitations of his knowledge and his job profile. Dr K expressed the view that Dr Surdhar had developed excellent consultation techniques and interpersonal skills to provide patient centered care. As Dr Surhdar had not provided any clinical advice independently, Dr K was not confident for Dr Surdhar to practise unsupervised in the near future. However, Dr K stated that, with appropriate support and supervision, Dr Surdhar would be able to independently consult, prescribe and manage patients' complex and undifferentiated presentations.

Dr L

39. Dr L confirmed that she had, since 22 November 2018, been working with Dr Surdhar in the capacity of coach/mentor. She stated that they had engaged in nine intensive face-to-face coaching sessions and eight shorter sessions, together with regular email and telephone contact. Dr L described Dr Surdhar as very open about the circumstances of his erasure. In addition, she stated that Dr Surdhar had readily and willingly engaged with her and had not shied away from sometimes challenging conversations.

40. Dr L explained that, during their discussions, she had supported Dr Surdhar to reflect on his reasons for undertaking the role of an SHCA at the Centre. She believed that Dr Surdhar was sincere in his desire to continue providing a service to his previous patients

and that the role of SHCA gave him that opportunity. However, Dr L was of the view that he had not considered the difficulties that this would present and that Dr Surdhar's compassion clouded his ability to foresee the unintended consequences.

41. Dr L believed that both Dr Surdhar's insight and self-awareness was at a high level. She expressed the view that his appreciation of the factors that led to his dishonesty was excellent and that his determination to ensure there was no recurrence was impressive.

The Tribunal's Approach

42. The Legally Qualified Chair ('LQC') gave legal advice to the Tribunal on the approach to be taken in Restoration cases. He drew the Tribunal's attention to MPTS's 'Guidance for Medical Practitioners Tribunals on Restoration following Disciplinary Erasure' ('the Guidance').

43. The LQC advised that the Guidance states that the onus is on the doctor applying for restoration to satisfy the Tribunal that they are fit to return to unrestricted practice. The Tribunal should not seek to go behind the original Tribunal's findings on facts, impairment and sanction.

44. Where there are previously untested allegations which call into question the doctor's fitness to practise, the Guidance states that Tribunals must weigh the evidence carefully to reach a judgment:

    a firstly on whether the new allegations are proved on the balance of probabilities; and
    b secondly on whether the doctor's fitness to practise is impaired by reason of those new allegations.

45. The Guidance confirms that it is for the GMC to prove any such new allegations on the balance of probabilities, ie whether it is more likely than not that the events occurred. The LQC highlighted the case of *Re B [2008] UKHL 35* in which the Supreme Court clarified that neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The Court said that there is no logical or necessary connection between seriousness and probability. The inherent probabilities were simply something to be taken into account, where relevant, in deciding where the truth lies.

46. The LQC also highlighted the case of *Ivey v Genting Casinos (2017) UKSC 67* in which the Supreme Court set out a 2-stage test for dishonesty, and held that a fact-finding tribunal must:

> *'first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief may evidence whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held*'

47. Once that had been established the Tribunal must determine '*whether [the individual's] conduct was dishonest by applying the objective standards of ordinary decent people. It is not necessary for the individual to appreciate that what he has done is, by those standards, dishonest'*.

48. The LQC gave further legal advice to the Tribunal, which is summarised later in this determination.

49. The Tribunal first considered each outstanding paragraph of the Allegation separately and evaluated the evidence in order to make its findings of fact.

FACTS

The Tribunal's Analysis of the Evidence and Findings

Paragraph 1(a)

50. Dr Surdhar admitted this paragraph of the Allegation, namely that between November 2016 and January 2018, on one or more of the occasions set out in Schedule 1, he inappropriately completed clinical tasks which fell outside the role of an SHCA.

51. In his evidence, Dr Surdhar admitted that, on reflection, he may have transgressed the limitations of his SHCA role on a number of occasions. He stated that this had been completely inadvertent, whilst working on 'autopilot' and because he knew some of the patients well. However he told the Tribunal that those consultations were then immediately discussed with Dr M, who had been supervising him at the Centre. Dr Surdhar told the Tribunal that, in hindsight, he had underestimated the scale of his SHCA role, which had presented a *'significant challenge*' given that he continued to work at the Centre and was familiar with many patients.

52. However Dr Surdhar's admission to paragraph 1(a) of the Allegation was qualified in that he denied behaving inappropriately on each of the occasions listed in Schedule 1. On Dr Surdhar's behalf Mr Mahmood clarified that it was not admitted that Dr Surdhar 'issued' a sick note to Patient A, 'prescribed' amoxicillin to Patient A and/or Patient C, or prescribed ibuprofen to Patient D.

53. Dr Surdhar stated that his NHS smart card settings had been changed following his erasure, such that he had not been able to prescribe medication as an SHCA.

54. In view of Dr Surdhar's qualified admission the Tribunal considered the tasks, in relation to each of the Patient consultations, described in Schedule 1 of the Allegation.

Patient A

4 November 2016

55. Dr Surdhar conducted a consultation with Patient A on 4 November 2016. The clinical tasks allegedly performed by Dr Surdhar during that consultation included: a medication review; examining Patient A's back; and diagnosing Patient A with a lipoma.

56. Dr G in his expert report dated 7 December 2023 stated that in his opinion:

> *'Dr Surdhar undertook a medication review…this was an inappropriate action for a Senior Health Care Assistant (SHCA) to undertake. This would normally be undertaken by a GP or a registered prescriber such as a nurse or pharmacist.*
> *…*
> *it was not appropriate for Dr Surdhar, in the role of an SHCA to examine the lump on Patient A's back.*
> *…*
> *it was not appropriate for Dr Surdhar, working as an SHCA to make a diagnosis of a lipoma. Whilst an SHCA may look at a lump and refer to a GP, I would not expect an SHCA to make a diagnosis as this would not, in my opinion, be in their remit.'*

57. The Tribunal accepted Dr G's opinion. It concluded that Dr Surdhar had inappropriately completed the clinical tasks described in Schedule 1 during his consultation with Patient A on 4 November 2016.

6 December 2016

58. Dr Surdhar also carried out a consultation with Patient A on 6 December 2016. The clinical tasks allegedly performed by Dr Surdhar during that consultation included: conducting a GP consultation; diagnosing Patient A with lethargy; and issuing Patient A with a sick note.

59. Patient A's medical records dated 6 December 2016 read as follows:

> *'Problem Lethargy - symptom (First)*
> *History Had a virus last week*
> *vomiting /diahorrea and extreme lethargy*
> *general muscle aches*
> *and her full appetite has not returened*
> *needs time off work to recuperate.*
> *Document eMED3 (2010) new statement issued, not fit for work Fit Note Document (Diagnosis: Lethargy - symptom, D and V; Duration 06/12/2016 - 20/12/2016)'*

60. Dr Sudhar in his oral evidence denied that he had issued a sick note to Patient A. He said that he had attempted to raise the sick note but immediately took it to Dr M who had issued it.

61. Dr G in his expert report stated that in his opinion:

> *'Patient A should not have been given an appointment with Dr Surdhar who was working as an SHCA. Patient A should have been given an appointment with a GP or other appropriately trained clinician*
> *…*
> *when Dr Surdhar saw Patient A, he should have realised that this was not an appropriate presentation for an SHCA and he should have arranged for her to see a GP or appropriately trained clinician.*
> *…*
> *this was not appropriate because Dr Surdhar was working as an SHCA and in my opinion making diagnoses is not part of an SHCA's role.*
> *…*
> *it was not appropriate for Dr Surdhar to issue Patient A with a sick note. In my opinion and experience in 2016, sick notes could only be issued by a registered doctor and therefore Dr Surdhar, acting as an SHCA, could not legally issue a sick note.'*

62. The Tribunal accepted Dr G's opinion however in light of Dr Surdhar's oral evidence, the Tribunal found that, on the balance of probabilities, although Dr Surdhar had raised the sick note, he had not issued it to Patient A on 6 December 2016.

63. The Tribunal found that Dr Surdhar had inappropriately conducted a GP consultation and had diagnosed Patient A with lethargy on 6 December 2016, but had not issued a sick note.

23 January 2017

64. Patient A attended a further consultation with Dr Surdhar on 23 January 2017. The clinical tasks allegedly performed by Dr Surdhar included: taking a history from Patient A; examining Patient A's respiratory system; diagnosing Patient A with upper respiratory tract infection; issuing Patient A with a sick note; and prescribing amoxicillin to Patient A.

65. Patient A's medical records read:

'Problem	*Upper respiratory tract infection NOS (First)*
History	*Productive cough -green sputum* *started 2 weeks ago* *exteremel;y[sic]; lethargic*
Examination	*O/E - rate of respiration 14 /minute • O/E - chest expansion normal • O/E – percussion note normal • O/E - breath sounds normal • O/E - no adventitious sounds*
Medication	*(NOT ISSUED) Amoxicillin 500mg capsules One To Be Taken Three Times A Day, 21 capsule*
Document	*eMED3 (2010) new statement issued, not fit for work Fit Note Document (Diagnosis: Upper respiratory tract infection NOS; Duration 23-Jan-2017 - 30-Jan-2017)'*

66. Dr G in his expert report stated in his opinion:

> *'whilst an SHCA might make a note of the reason for attending, they do not go on to take a full history and then examine the patient. In my opinion it was inappropriate for Dr Surdhar, working as an SHCA, to take a history from and examine Patient A.*
> *…*
> *it was not appropriate for him to make a diagnosis, this being out with the remit of an SHCA.*
> *…*

it was not appropriate for Dr Surdhar to issue Patient A with a sick note. In my opinion and experience in 2016, sick notes could only be issued by a registered doctor and therefore Dr Surdhar, acting as an SHCA, could not legally issue a sick note.

…

this would be inappropriate because prescribing is out with the remit of an SHCA. The record is somewhat confusing as it records amoxicillin being given but notes that the prescription was not issued. I am unsure of the meaning of this.'

History, examination and diagnosis

67. The Tribunal accepted Dr G's evidence that Dr Surdhar took a history from Patient A; examined Patient A's respiratory system and diagnosed Patient A with upper respiratory tract infection. Dr Surdhar did not challenge this expert evidence and the Tribunal found this aspect of the Allegation proven.

Issuing a sick note

68. Dr Surdhar in his evidence stated that he had attempted to raise a sick note for Patient A on 23 January 2017 but realised immediately that it needed to be done by Dr M. He said he then took the sick note to Dr M who told him that he could not do this. Dr M contacted IT to change Dr Surdhar's computer settings to remove 'Med-3' to prevent a reoccurrence in the future.

69. The Tribunal determined that Dr Surdhar's action in raising the sick note was not the same as him printing it off and giving it to Patient A. The Tribunal accepted Dr Surdhar's evidence that he had attempted to raise the sick note and as soon as he realised what he had done, he had taken it to Dr M.

70. The Tribunal concluded that whilst Dr Surdhar had gone through a process of completing the sick note, it had not been issued by him. It found that the Allegation that Dr Surdhar inappropriately issued Patient A with a sick note was not proven.

Prescribing amoxicillin

71. In his witness statement, Dr Surdhar emphasised that his role was a non-prescribing one, and he denied that he had issued or signed any prescription whilst working at the Centre as an SHCA. He stated that in any situation in which a prescription may have been indicated, the case was discussed with Dr M, who would then review his SHCA consultation, print the prescription, sign it and then give it to the patient or the reception staff, who would then let the patient know that their prescription was ready for collection.

72. In his witness statement Dr Surdhar noted Dr G's observation that Patient A's records suggested that a prescription for amoxicillin had not been issued. He stated that the prescription had not been issued because he was not able to prescribe in his role as an SHCA.

73. In his submissions on behalf of Dr Surdhar, Mr Mahmood reiterated that Dr Surdhar had been unable to prescribe and that all prescriptions were completed by Dr M. Mr Mahmood submitted that this was supported by the evidence that it had not been possible for Dr Surdhar to issue prescriptions, although Mr Mahmood accepted that Dr Surdhar may have raised them inadvertently.

74. The Tribunal concluded that it was more likely than not that having taken a history from Patient A, examined them and then made a diagnosis, Dr Surdhar went on to make the clinical decision that amoxicillin was required, even though the prescription was not issued. The Tribunal considered the meaning of the word, 'prescribe'; it considered that the word should be given its ordinary meaning, namely that when a clinician prescribes medicine or treatment for a patient, he or she tells the patient what medicine or treatment to have. The Tribunal concluded that by advising Patient A that amoxicillin was indicated, Dr Surdhar had inappropriately prescribed that medication to Patient A.

Patient B

31 January 2017

75. Dr Surdhar carried out a consultation with Patient B on 31 January 2017. The clinical tasks allegedly performed by Dr Surdhar included: taking a history from Patient B; examining Patient B's neck; and diagnosing Patient B with cervical Radiculitis.

76. Dr G's expert report stated in his opinion:

> *'this was not appropriate because taking a history and examining a patient is not within the remit of an SHCA.*
>
> *…*
>
> *it was not appropriate for him to make a diagnosis of cervical radiculitis because making a diagnosis is not within the remit of an SHCA'*

77. The Tribunal accepted Dr G's opinion and it was not challenged by Dr Surdhar. The Tribunal concluded that, during the consultation on 31 January 2017, Dr Surdhar had inappropriately completed clinical tasks which fell outside the role of an SHCA.

3 February 2017

78. Dr Surdhar conducted a further consultation with Patient B on 3 February 2017. It is alleged that Dr Surdhar prepared the Letter for Patient B which contained a clinical assessment and workplace recommendations.

79. In his witness statement, Dr Surdhar stated that he recalled neither the Letter nor the consultation with Patient B. His recollection was that, at that stage, he had been five months into his SHCA role.

80. Dr G was of the opinion that:

> *'this type of letter would be written by a GP who has assessed the patient and is making recommendations. In my opinion an SHCA would not have the training or skills to write this letter. In my opinion therefore, it was not appropriate for Dr Surdhar, working as an SHCA, to generate this letter. In my opinion it should have been done by a GP.'*

81. The Tribunal considered that although Dr Surdhar may have had the skills to write the Letter, it was inappropriate for him to have done so. This was because the Letter confirmed a diagnosis of cervical radiculitis and set out some reasoning for that diagnosis. That fell outside the remit of an SHCA, which had been Dr Surdhar's role at the time that the Letter was prepared. The Tribunal was of the view that the reference in the Letter to workplace assessments was of less concern. That was because Dr Surdhar was simply setting out his understanding of what workplace adjustments had been recommended, rather than providing advice on that issue.

82. The Tribunal concluded that the Letter prepared for Patient B was inappropriate because it contained a clinical assessment. To that extent it found this aspect of the Allegation proven. However, the Tribunal did not find proven the Allegation that the Letter was inappropriate because it contained workplace assessments.

Patient C

83. Dr Surdhar conducted a consultation with Patient C on 20 November 2017. The clinical tasks allegedly performed by Dr Surdhar included: taking a history from Patient C's mother; examining Patient C's chest; diagnosing Patient C with upper respiratory tract infection; and prescribing amoxicillin to Patient C.

84. Dr G in his expert report stated he was of the opinion that:

> *'it was inappropriate for Dr Surdhar to take a history from Patient C's mother and examine Patient C because Dr Surdhar was working as an SHCA and an SHCA would not, in my opinion and experience, take a history and examine a patient.*
> *…*
> *it was not appropriate…to examine Patient C*
> *…*
> *it was not appropriate…to diagnose Patient C with an upper respiratory tract infection.*

85. Dr Surdhar did not challenge Dr G's opinion relating to history taking, examination or diagnosis. The Tribunal accepted Dr G's evidence in relation to those matters. Accordingly, it found that that Dr Surdhar had inappropriately taken a history from Patient C, examined their chest and diagnosed them with upper respiratory tract infection.

86. The Tribunal went on to consider whether Dr Surdhar inappropriately prescribed amoxicillin to Patient C. Dr Surdhar denied that aspect of the Allegation for the reasons set out above.

87. In his expert report Dr G expressed the following opinion:

> *'If Dr Surdhar prescribed amoxicillin to Patient C whilst working as a SHCA, in my opinion this would be inappropriate because prescribing is out with the remit of a SHCA. The record is somewhat confusing as it records amoxicillin being given but notes that the prescription was not issued. I am unsure of the meaning of this'.*

88. The Tribunal took into consideration Patient C's medical records in relation to their consultation with Dr Surdhar on 20 November 2017 which state, '*d/w GP*', discussed with GP. It also had regard to the entry in the records which indicated that a prescription was not issued. The Tribunal found, on the balance of probabilities, that Dr Surdhar had discussed Patient C's case with Dr M and that no prescription had been issued to Patient C. For these reasons it concluded that it could not be proved that Dr Surdhar had prescribed amoxicillin to Patient C.

Patient D

89. Dr Surdhar conducted a consultation with Patient D on 4 January 2018. The clinical tasks allegedly performed by Dr Surdhar included: taking a history from Patient D; examining Patient D's neck; and prescribing ibuprofen to Patient D.

90. The Tribunal noted that, in Dr G's report, Patient D was labeled as Patient F. Dr G stated that it was not appropriate for Dr Surdhar to have taken a history from Patient D and to have examined Patient D's neck because these tasks fell outside the remit of Dr Surdhar's role as an SHCA. The Tribunal accepted Dr G's evidence in that regard and found those elements of the Allegation proved.

Prescribed ibuprofen to Patient D

91. Dr Surdhar denied having prescribed ibuprofen to Patient D for reasons set out above.

92. In his expert report Dr G gave the following opinion:

> *'If Dr Surdhar prescribed ibuprofen to Patient F whilst working as a SHCA, in my opinion this would be inappropriate because prescribing is out with the remit of a SHCA.*
>
> *The record is somewhat confusing as it records ibuprofen being given but notes that the prescription was not issued. I am unsure of the meaning of this'*

93. The Tribunal took into consideration Patient D's medical records in relation to the consultation on 4 January 2018. These state, '*d/w GP*', discussed with GP and*, '(NOT ISSUED) Ibuprofen 400mg tablets'*. The Tribunal found, on the balance of probabilities, that Dr Surdhar had discussed Patient D's case with Dr M and that no prescription had been issued to Patient D. For these reasons it concluded that it could not be proved that Dr Surdhar had prescribed ibuprofen to Patient D.

Conclusion

94. Patient A
4 November 2016

- Medication review; **Determined and found proved**
- Examined Patient A's back; **Determined and found proved**
- Diagnosed Patient A with a lipoma; **Determined and found proved**
6 December 2016

- Conducted a GP consultation; **Determined and found proved**
- Diagnosed Patient A with lethargy; **Determined and found proved**
- Issued Patient A with a sick note; **Determined and found not proved**
  23 January 2017
- Took a history from Patient A; **Determined and found proved**
- Examined Patient A's respiratory system; **Determined and found proved**
- Diagnosed Patient A with upper respiratory tract infection; **Determined and found proved**
- Issued Patient A with a sick note; **Determined and found not proved**
- Prescribed amoxicillin to Patient A; **Determined and found proved**

Patient B
31 January 2017

- Took a history from Patient B; **Determined and found proved**
- Examined Patient B's neck; **Determined and found proved**
- Diagnosed Patient B with cervical radiculitis; **Determined and found proved**
  3 February 2017
- Prepared the Letter for Patient B which contained a clinical assessment and workplace recommendations. **Determined and found proved in relation to clinical assessment**

Patient C
20 November 2017

- Took a history from Patient C's mother; **Determined and found proved**
- Examined Patient C's chest; **Determined and found proved**
- Diagnosed Patient C with upper respiratory tract infection; **Determined and found proved**
- Prescribed amoxicillin to Patient C; **Determined and found not proved**

Patient D
4 January 2018

- Took a history from Patient D; **Determined and found proved**
- Examined Patient D's neck; **Determined and found proved**
- Prescribed ibuprofen to Patient D; **Determined and found not proved**

Paragraph 1(b)

95. The Tribunal considered whether, on 3 February 2017, Dr Surdhar prepared the Letter for Patient B and signed it off as 'Dr H Surdhar Partner, the Centre'. It is alleged that the Letter was misleading as Dr Surdhar failed to state that at the relevant time he was working in the capacity of an SHCA.

96. In Dr Surdhar's witness statement he stated:

> *'20. It is correct that the letter is signed off in my name in print at the end, although no handwritten signature appears. I do not recall this letter or patient encounter….*
>
> *21. Whilst in February 2017 I was fairly new to the SHCA role, I was busy from the outset and would have been seeing in the region of 15 patient a day, or approximately 70 per week. As could sometimes happen, a patient might have an SHCA appointment scheduled with me, however, at the conclusion of the SHCA aspect the patient might ask me about something else. I imagine this may have been what happened here, in that the patient may have said at the end of the appointment that they needed a letter for their employer. On reflection I suspect it probably was me who dictated the letter, which I would have done automatically without thinking and the whole process would have taken in the region of 20-30 seconds.'*

97. In his oral evidence, Dr Surdhar stated that he had dictated the Letter himself using automatic recognition software; he said it had then been produced on an old letterhead but had not been sent out. In addition, Dr Surdhar stated that he remembered having taken the Letter to Dr M, who would have reviewed and corrected the Letter before it was '*actioned*'.

98. Mr Mahmood submitted that Dr Surdhar admitted failing to make it clear in the Letter that he was working as an SHCA, although this had been accidental. Mr Mahmood further submitted that the Letter had not in fact been '*signed off*' in that the Letter was, in fact, unsigned. In addition, Mr Mahmood highlighted that the Letter bears the name of Dr N as the 'referring GP'.

99. The Tribunal went on to consider whether the Letter was 'signed off' by Dr Surdhar and whether any such sign off was misleading. The Tribunal bore in mind that there was no handwritten signature but it took the view that was not unusual as the version of the Letter produced to the Tribunal was a copy from Patient B's file. The Tribunal considered it likely that any version of the Letter that was sent to the recipient would have been

signed, rather than a file copy. As a result the Tribunal concluded that the Letter had been 'signed off' by Dr Surdhar notwithstanding the lack of any actual handwritten signature.

100. The Tribunal noted the inconsistency in Dr Surdhar's evidence in that within his written witness statement he stated he did not recall the Letter or patient encounter, however in his oral evidence he described having dictated the Letter and taking it to Dr M. On the balance of probabilities, the Tribunal found that the Letter had been mistakenly generated using an old letterhead. However it took the view that it had been Dr Surdhar's responsibility to check the Letter (including any file copy). The Tribunal noted that the Letter appeared in Patient B's file and, as a result, it was likely to have been sent to the recipient. There was no evidence that the Letter had been sent in any different format or with any other wording. Neither was there any evidence to support the submission that Dr M had corrected the Letter or had otherwise intervened to ensure that the Letter was not sent. Although Dr N was referred to at the top of the Letter as the 'referring GP', the Letter was addressed to the recipient by Dr Surdhar and the assertions made in the Letter were those of Dr Surdhar.

101. The Tribunal reminded itself of its earlier finding that the Letter had been inappropriate because it contained a clinical assessment of Patient B. The Tribunal considered that, although Dr Surdhar was entitled to use the title 'doctor', notwithstanding his erasure, he had failed to make it clear that he was acting in the capacity of an SHCA at the relevant time. In addition, the Tribunal was of the view that the Letter carried greater weight given that it described Dr Surdhar as a Partner of the Centre and had not clarified his status as an SHCA. As a result, the Tribunal concluded that the Letter had been misleading and that the recipient of the letter would have reasonably interpreted it as being from a GP Partner at the Centre.

102. For these reasons the Tribunal found paragraph 1(b) proved.

Paragraph 2(a)

103. The Tribunal next considered those paragraphs of the Allegation relating to Dr Surdhar's completion of the Application.

104. Dr Surdhar admitted paragraph 2(a) of the Allegation, namely that, within the Application, he ticked the box which stated, '*within the last five years, I have not provided medical services either as an employee or under a contract or arrangement to provide such services*'. In his witness statement, Dr Surdhar explained that his understanding of

the phrase 'medical services' had been '*activity for which medical registration is required*'. He stated that it was on this basis that he confirmed in the Application that he had not been undertaking medical services. He said he believed that to be the correct and appropriate response and he accepted in oral evidence that he had not read the definition of medical services within the relevant guidance.

105. Mr Mahmood submitted that Dr Surdhar had made an inadvertent error when incorrectly ticking the box about the provision of medical services. Mr Mahmood submitted that Dr Surdhar's misunderstanding of the phrase was supported by his other references within the Application to 'medical services'. Mr Mahmood submitted that Dr Surdhar's use of those words plainly implied that he had conflated the definition of medical services with the requirement for
GMC registration.

106. Ms Nowell described Dr Surdhar's explanation, that he was confused by the term 'medical services', as 'incredible'. She invited the Tribunal to consider the nature of Dr Surdhar's entries in the 'recent professional expereience' section of the Application, none of which fitted his definition of 'medical services'.

107. The Tribunal accepted Dr Surdhar's evidence that he was genuinely confused by the meaning of medical services. The Tribunal noted that there had been no definition of medical services given in the Application nor any link to the relevant guidance. On the balance of probabilities, the Tribunal found that Dr Surdhar's use of the term 'medical services' elsewhere in the Application supported his assertion that he mistakenly interpreted 'medical services' as those requiring GMC registration.

Paragraph 2(b)

108. Dr Surdhar admitted paragraph 2(b) of the Allegation, namely that, within the Application, he had failed to declare in the work history section that he had worked as an SHCA at the Centre within the last five years.

Paragraphs 3(a) and (b)

109. Dr Surdhar admitted paragraph 3 of the Allegation, namely that he knew when completing the Application that he had (a) provided medical services within the last five years and (b) worked as an SHCA at the Centre during the relevant times(s).

Paragraph 4

110. Dr Surdhar admitted paragraph 4 of the Allegation, namely that within an email to the GMC dated 22 February 2022 ('the Email') he stated, '*to confirm then from the period September 2017 – September 2018 I was unable to work…*'

Paragraph 5

111. The Tribunal considered whether Dr Surdhar knew the information he provided to the GMC in the Email was untrue, in that he knew at that time that he had worked as an SHCA at the Centre.

112. In his witness statement and his oral evidence, Dr Surdhar said he now realised that he had been mistaken about the dates set out in the Email. He clarified that it was, in fact, from February 2018 that he had not been working and that situation continued until he started a driving job in October 2020. Dr Surdhar stated that the period from 2016 onwards had been immensely challenging. He said that XXX had died in June 2017 and XXX. In additon, he stated that in September 2019 the Centre had been closed which had been a matter of great sadness to him and had affected him deeply.

113. Mr Mahmood submitted that the traumatic life-changing events described by Dr Surdhar had caused him to become confused as to the dates in the Email. In addition Mr Mahmood highlighted that Dr Surdhar had commenced a clinical attachment in 2021, had previously undertaken an observation attachment in India and had later worked as a GP assistant. Mr Mahmood submitted that Dr Surdhar had done a lot of work over a prolonged period of time and it was not surprising that he had failed to recollect matters accurately when asked to recall events several years before.

114. Ms Nowell submitted that Dr Surdhar knew or should have known the importance of information he provided to the GMC being accurate and complete, particularly against the background of a conviction based on inaccurately filling in forms. She submitted that his mistakes or inaccuracies must be judged in light of that knowledge. Ms Nowell added that had the CQC not notified the GMC of the concerns they had regarding Dr Surdhar's role as an SHCA at the Centre, their ability to investigate his time in that role would have been severely hampered given the inaccuracies in both the Application and the Email.

115. The Tribunal noted that the 'recent professional experience' section of the Application provided no details of Dr Surdhar's work history between September 2017 and September 2018. It further noted that the Email had been sent in response to an enquiry from the GMC asking Dr Surdhar to clarify his work history between those dates. The

Tribunal took the view that if Dr Surdhar had (as he claimed) inadvertently omitted details of his SHCA role from the Application, it was unlikely that he would have made the same error within the Email in relation to that work when prompted on the issue by the GMC.

116. Whilst it acknowledged the significant life events that Dr Surdhar had experienced following his erasure in 2016, the Tribunal did not acccept that those matters alone adequately explained why Dr Surdhar had stated that he had been unable to work for a 12 month period between September 2017 and September 2018. The Tribunal accepted that within one of his reflections statements Dr Surdhar had mistakenly stated that XXX had taken place in March 2018 rather than April 2018. The Tribunal took the view that it was understandable that Dr Surdhar might get confused over the date on which a particular event (such as XXX) had taken place. However the Tribunal considered it highly unlikely that Dr Surdhar would simply have forgotten that he had been working at the Centre as an SHCA during the 7 month period from September 2017 to the end of April 2018. That conclusion was reinforced by Dr Surdhar's oral evidence in which he had provided the Tribunal with a very clear description of being at work at the Centre when Dr M had told him XXX in April 2018.

117. The Tribunal also took into account that the onus was on Dr Surdhar to ensure that the information he provided to the GMC was accurate. The Tribunal was of the view it was highly unlikely that Dr Surdhar would not have checked the relevant dates before clarifying what work he had undertaken between September 2017 and September 2018, considering how important it was for him to be restored onto the Medical Register. Furthermore, working as an SHCA was evidence of Dr Surdhar keeping his knowledge and skills up to date and would therefore have been an important aspect of the Application.

118. The Tribunal found that Dr Surdhar's evidence that he had been confused about the dates in the Email was not credible. It considered it more likely than not that Dr Surdhar knew that the information he provided to the GMC in the Email was untrue. The Tribunal concluded that paragraph 5 of the Allegation was proven.

Paragraph 6 – submissions

119. Mr Mahmood submitted that the evidence militates against the allegations of dishonesty. He submitted that the following issues were relevant:

a. that Dr Surdhar had taken extensive steps to remediate his past failings and demonstrate full insight into the importance of integrity, honesty, and probity. Mr Mahmood submitted that the sheer extent of Dr Surdhar's efforts in that regard militate against the suggestion that Dr Surdhar had been dishonest when completing the Application;
b. Dr Surdhar had notified the GMC in 2016 of his intention to work at the Centre, in writing. Mr Mahmood submitted that having done so it was simply not credible that Dr Surdhar would choose to deliberately hide the very subject matter of his disclosure, particularly when the GMC had (seemingly) endorsed Dr Surdhar's suggestions for work;
c. When Dr Surdhar completed the Application he was unaware of the Allegation. Accordingly Mr Mahmood submitted that the GMC's allegation that Dr Surdhar dishonestly chose to omit details of his SHCA role to avoid scrutiny makes no sense;
d. Dr Surdhar had not been shown a copy of Dr F's report in 2018, and had been unaware of it until 2022. Mr Mahmood submitted that, as a result, Dr Surdhar had no reason or motive to hide details of his SHCA role;
e. Dr Surdhar took legal advice around the time of completing the Application and spent three months collating considerable supporting evidence. Mr Mahmood submitted that it was nonsensical to suggest that Dr Surdhar deliberately chose to omit details of his SHCA role within his application whilst simultaneously including such details in his reflective statements;
f. Mr Mahmood submitted that Dr Surdhar had nothing to gain by allegedly behaving dishonestly, but everything to lose;
g. Dr Surdhar's recent testimonials demonstrate that since ending his role as a SHCA he had acted in a transparent, open, and honest manner, and has always respected the limits of his new roles. Mr Mahmood submitted that such behaviour was not consistent with the allegation of dishonesty.

120. Mr Mahmood submitted that Dr Surdhar had not chosen to deliberately hide his SHCA role and the simple fact was that Dr Surdhar had made some mistakes on dates, but these had not been dishonest. In support of that submission, Mr Mahmood made reference to errors over dates made by Dr Surdhar within his reflections bundle.

121. Ms Nowell invited the Tribunal to consider the following submissions in respect of Dr Surdhar's credibility and propensity to lie:

i the original conviction arose out of an allegation that Dr Surdhar had dishonestly used NHS resources in furthering his private practice;

ii the mechanism for doing this was inaccurately filling in the form accompanying blood samples, in particular failing to tick the box for private patients;

iii Dr Surdhar's defence at the time was that he did not appreciate how to fill in the form, blaming it on the hospital;

iv Dr Surdhar now admits that that defence was a lie and that he knew how to fill in the forms; and

v the explanations for the new admitted facts are very similar to those rejected by the jury in the criminal trial.

122. Ms Nowell submitted that Dr Surdhar had been an SHCA at the Centre for at least 17 months. She submitted that it was a practice that was important to him and that he had been desperate to continue working there, despite his erasure. Ms Nowell reminded the Tribunal of Dr Surdhar's evidence that he had been devastated when the CQC suspended then closed down the Centre. In light of this Ms Nowell submitted that it was incredible to suggest Dr Surdhar forgot about his SHCA role when completing the Application.

123. She submitted that Dr Surdhar's conviction and erasure, coupled with his remediation must have enforced the importance of accuracy in filling in forms and providing an accurate work history. Ms Nowell submitted that the admitted facts revealed not just one slip up but several potentially dishonest acts or omissions.

124. Ms Nowell submitted that Dr Surdhar had significant motivation to hide his work as an SHCA in that he knew that the Application would be used by the GMC to investigate his fitness to practise and that he had overstepped his role as an SHCA. She highlighted Dr Surdhar's email correspondence with the GMC prior to starting that role, in which the GMC had stressed the importance of him not blurring the lines of that role. Ms Nowell reminded the Tribunal of the evidence that Dr M had spoken to Dr Surdhar about that issue and that the CQC had suspended the Centre at least in part because of concerns about Dr Surdhar's role.

125. Ms Nowell submitted that the reflections documents prepared by Dr Surdhar that were known to pre-date the GMC's disclosure in May 2022 make no reference to the SHCA role. She highlighted that those reflections which evolved over the entire seven year period since his erasure do mention the role but post-date the GMC's disclosure.

<u>Paragraph 6(a)</u>

126. The Tribunal considered whether Dr Surdhar had been dishonest because he had ticked a box within the Application confirming that he had not provided medical services within

the last five years but knew, when he completed the Application, that he had provided medical services during that time.

127. The Tribunal reminded itself that Dr Surdhar had admitted ticking the relevant box within the Application form and had admitted knowing that he had provided medical services within the last five years.

128. The Tribunal considered the test for dishonesty set out in the case of *Ivey*. It first ascertained the actual state of the Dr Surdhar's knowledge or belief as to the facts. In that regard the Tribunal reminded itself of its earlier finding that, when he completed the Application, Dr Surdhar had genuinely misunderstood the definition of '*medical services'*.

129. The Tribunal next considered whether Dr Surdhar's conduct was dishonest by applying the objective standards of ordinary decent people. The Tribunal concluded that an ordinary decent person, in possession of all relevant facts, would not regard Dr Surdhar's actions to be dishonest. This was because although Dr Surdhar had incorrectly ticked the relevant box within the Application and knew that he had provided medical services, he was genuinely mistaken about what comprised medical services.

130. The Tribunal concluded that paragraph 6(a) of the Allegation was not proved.

Paragraph 6(b)

131. The Tribunal considered whether Dr Surdhar had been dishonest because he had failed to declare in the work history section of the Application that he had worked as an SHCA at the Centre within the last five years and, when he completed the Application, he had known that he had worked as an SHCA at the Centre during that time.

132. Dr Surdhar admitted both that he had failed to declare the SHCA role in the work history section of the Application and that he knew that he had worked at the Centre at the relevant time.

133. In his witness statement Dr Surdhar said he did not know why he did not include the SHCA role in the work history section of the Application. He stated that it was at the forefront of his mind that he had not worked as a doctor since 2016. He added that the omission of his SHCA role was a genuine oversight and that he had not intended to be misleading. In addition, he said that he had it in his mind that the SHCA role was not relevant to the restoration application.

134. The Tribunal took into account the relevant section of the Application to which paragraph 2(b) of the Allegation relates. The section entitled, 'recent professional experience' states:

> *'Please list your work history covering the last five years. You should include* ***all*** *periods of:*
>
> - *Medical service*
> - *Non-medical work*
> - *Extended leave/vacation*
> - *Maternity/paternity*
> - *Training/study*
>
> *We realise that sometime doctors have gaps between jobs, so please account for these in your list'*

135. The Tribunal noted that the work details set out by Dr Surdhar comprised:

- September 2016 – September 2017: MA Medical Ethics and Law, Keele University;
- September 2018 to present day: '*took on the services of a mentor.. continuous professional development'*;
- October 2020 to present day: Clinical observership of (i) City Road Medical Practice Birmingham; (ii) Pleck Health Centre, Walsall;
- October 2020 to present day: Driver/ team leader of Woodside Motor Services, Rugby

136. The Tribunal considered that the requirements of the 'recent professional experience' within the Application were very clear, namely that all work undertaken by Dr Surdhar in the last five years should be set out. The word 'all' appeared in bold within the Application form. The Tribunal noted that Dr Surdhar had listed work that he had undertaken in both clinical and non-clinical settings, with the exception of his SHCA role at the Centre. The Tribunal took the view that it was inherently unlikely that Dr Surdhar would simply have forgotten a period of time during which he worked at the Centre. This was because of the importance of the Centre to him and the important role it had played in his career; Dr Surdhar described to the Tribunal how he had built up his practice at the Centre, that he had worked there over many years as a single handed GP, how he developed friendships with a number of his former patients and had been keen to return to work there following his erasure. He also told the Tribunal how devastated he was when the Centre closed. The Tribunal rejected Dr Surdhar's claim that his failure to mention the SHCA role had simply been a mistake on his part or that he did not regard the role as relevant to his Application.

137. The Tribunal considered the emails that Dr Surdhar sent to the GMC in 2016, in which he informed the GMC that, notwithstanding his erasure, he wished to return to work at the Centre. The Tribunal did not accept that these emails tended to suggest that Dr Surdhar had no reason to hide his work as an SHCA at the Centre. The emails were simply an enquiry by Dr Surdhar as to whether it was permissible for him to work at the Centre in a non-GP role; the emails were not therefore a declaration that he was working at the Centre. In addition the emails had been sent prior to Dr Surdhar's actions in acting outside the remit of the SHCA role.

138. The Tribunal considered Dr Surdhar's oral evidence that he had attended a meeting at the Centre regarding the CQC's outcome letter following its inspection. It also took into account the importance of the Centre to Dr Surdhar and his sadness at its closure. The Tribunal further noted that Dr Surdhar's XXX had worked at the Centre as Practice Manager. Although, Dr Surdhar stated that he had no knowledge as to the reasons for the closure of the Centre, nor that he had asked about it because he had been focusing on his significant life events, the Tribunal found it highly unlikely that Dr Surdhar would not have discussed with his XXX and Dr M, at least in high level terms, the findings of the CQC inspection. Taking these factors into account, the Tribunal found it likely that, at the time he completed the Application, Dr Surdhar had been aware, at least in general terms, that the Centre had been inspected by the CQC and that some of the CQC's concerns related to the fact that he had he acted outside of his role as an SHCA.

139. The Tribunal concluded, on the balance of probabilities, that Dr Surdhar had a motive in omitting to mention his SHCA role on the Application, because it would have led to further investigations by the GMC in light of the Centre having been closed as a result of a CQC inspection.

140. The Tribunal took into account that the Application had been poorly completed by Dr Surdhar in a number of respects. In addition to those concerns set out in paragraph 2 of the Allegation, the Application was in some places barely legible and with some errors simply crossed out. The Tribunal therefore considered whether Dr Surdhar had simply been reckless or sloppy when he completed the work history section of the Application. The Tribunal noted Dr Surdhar's oral evidence where he stated that he had not intended to mislead but his state of mind at that time due to the '*trauma*' he had experienced, had led him to making mistakes. However given the importance of the Application, the relevance of the SHCA role to the Application, the importance of the Centre to Dr Surdhar and the motivation for him to omit the SHCA role, the Tribunal concluded that

his failure as expressed in paragraph 2(b) of the Allegation could not be explained by Dr Surdhar's sloppiness or recklessness alone.

141. In considering whether Dr Surdhar had been dishonest, the Tribunal first ascertained the actual state of his knowledge or belief as to the facts. In that regard the Tribunal considered that, when he completed the Application, Dr Surdhar knew or believed:

- that he was required to set out all work within the last five years (whether clinical or otherwise) in the work history section;
- that he had worked as an SHCA at the Centre within that five year period;
- the importance of the Application and the importance of completing forms accurately. This was particularly given the circumstances which had led to his erasure in 2016 had involved the provision of inaccurate or misleading information within forms;
- that he had worked outwith his role as an SHCA at the Centre and that the CQC's concerns about the Centre related, at least in part, to that fact;
- that the GMC would, following receipt of the Application, make any necessary checks to verify the information he had provided. He was aware of this because a statement to that effect was included in the declaration signed by him; and
- that his actions in acting outwith his SHCA role would work against his restoration application.

142. The Tribunal next considered whether Dr Surdhar's conduct was dishonest by applying the objective standards of ordinary decent people. The Tribunal took the view that an ordinary decent person, in possession of all relevant facts, would regard Dr Surdhar's conduct as dishonest. That is because such a person would conclude that Dr Surdhar had deliberately omitted his SHCA role from the Application and had sought to withhold details of that role from the GMC.

143. The Tribunal found paragraph 6(b) of the Allegation to be proven.

Paragraph 6(c)

144. The Tribunal considered whether Dr Surdhar's statement to the GMC in the Email that he had been unable to work from the period September 2017 to September 2018 had been dishonest because he knew that information was untrue.

145. The Tribunal reminded itself of its earlier findings that:

- Dr Surdhar had been prompted by the GMC to explain why there was a gap in his work history from September 2017 to September 2018;
- the significant life events that Dr Surdhar had experienced following his erasure in 2016, did not adequately explain why Dr Surdhar had stated that he had been unable to work for a 12 month period between September 2017 and September 2018;
- the onus had been on Dr Surdhar to ensure that the information he provided to the GMC was accurate;
- it was not credible that Dr Surdhar would not have checked before clarifying what work he had undertaken between September 2017 and September 2018;
- Dr Surdhar's evidence that he had been confused about his work history during the dates referred to in the Email was not credible;
- it was more likely that not that Dr Surdhar knew that the information he provided to the GMC in the Email was untrue; and
- Dr Surdhar had a motive to withhold mention of the SHCA role in the Application.

146. In considering whether Dr Surdhar had been dishonest, the Tribunal first ascertained the actual state of his knowledge or belief as to the facts. In that regard the Tribunal considered that, when he wrote the Email, Dr Surdhar knew or believed:

- that the GMC were prompting him to explain why there was a gap in the work history section of the Application;
- that he had not declared his SHCA role in the Application;
- that he had worked as an SHCA at the Centre from September 2017 to April 2018;
- the importance of providing accurate information to the GMC;
- that he had worked outwith his role as an SHCA at the Centre and that the CQC's concerns about the Centre related, at least in part, to that fact; and
- that his actions in acting outside his SHCA role would work against his restoration application.

147. The Tribunal next considered whether Dr Surdhar's conduct was dishonest by applying the objective standards of ordinary decent people. The Tribunal took the view that an ordinary decent person, in possession of all relevant facts, would regard Dr Surdhar's conduct as dishonest. That is because such a person would conclude that Dr Surdhar had deliberately provided false information to the GMC because of his concern that his restoration application would be adversely affected by his actions in working outside the remit of his SHCA role.

148. The Tribunal concluded that paragraph 6(c) of the Allegation was proven.

The Tribunal's Overall Determination on the Allegation

149.The Tribunal determined the Allegation as follows:

1. On 24 June 2016 a Medical Practitioners Tribunal determined to direct that your name be erased from the Medical Register and whilst working as a Senior Health Care Assistant ('SHCA') at Five Ways Health Centre:

a. between November 2016 and January 2018, on one or more of the occasions set out in Schedule 1 you inappropriately completed clinical tasks which fell outside of the role of an SHCA;

Schedule 1:
Patient A
4 November 2016

- Medication review; **Determined and found proved**
- Examined Patient A's back; **Determined and found proved**
- Diagnosed Patient A with a lipoma; **Determined and found proved**

6 December 2016

- Conducted a GP consultation; **Determined and found proved**
- Diagnosed Patient A with lethargy; **Determined and found proved**
- Issued Patient A with a sick note; **Determined and found not proved**

23 January 2017

- Took a history from Patient A; **Determined and found proved**
- Examined Patient A's respiratory system; **Determined and found proved**
- Diagnosed Patient A with upper respiratory tract infection; **Determined and found proved**
- Issued Patient A with a sick note; **Determined and found not proved**
- Prescribed amoxicillin to Patient A; **Determined and found proved**

Patient B
31 January 2017

- Took a history from Patient B; **Determined and found proved**
- Examined Patient B's neck; **Determined and found proved**
- Diagnosed Patient B with cervical radiculitis; **Determined and found proved**

3 February 2017

- Prepared the Letter for Patient B which contained a clinical assessment and workplace recommendations. **Determined and found proved in relation to clinical assessment**

Patient C
20 November 2017

- Took a history from Patient C's mother; **Determined and found proved**
- Examined Patient C's chest; **Determined and found proved**
- Diagnosed Patient C with upper respiratory tract infection; **Determined and found proved**
- Prescribed amoxicillin to Patient C; **Determined and found not proved**

Patient D
4 January 2018

- Took a history from Patient D; **Determined and found proved**
- Examined Patient D's neck; **Determined and found proved**
- Prescribed ibuprofen to Patient D; **Determined and found not proved**

b. on 3 February 2017 you prepared a letter for Patient B ('the Letter') and signed this off 'Dr H Surdhar Partner, Five ways Health Centre' which was misleading as you failed to state that at the relevant time you were working in the capacity of an SHCA. **Determined and found proved**

2. On or around 13 February 2022 you submitted an application to the General Medical Council ('GMC') for restoration to the medical register ('the Application') and you:

a. ticked the box which stated 'within the last five years, I have not provided medical services either as an employee, or under a contract or arrangement to provide such services'; **Admitted and found proved**

b. failed to declare in the work history section that you had worked as a SHCA at Five Ways Health Centre within the last five years. **Admitted and found proved**

3. When completing the Application you knew you had:

a. provided medical services within the last five years; **Admitted and found proved**

b. worked as an SHCA at Five Ways Health Centre during the relevant time(s). **Admitted and found proved**

4. On 21 February 2022 you were asked by the GMC to clarify your work history between September 2017 and September 2018, and in an email dated 22 February 2022 you stated 'to confirm then from the period September 2017 - September 2018 I was unable to work...'. **Admitted and found proved**

5. You knew the information you provided to the GMC as set out at paragraph 4 was untrue, in that you knew you had worked as an SHCA at Five Ways Health Centre during the relevant time(s). **Determined and found proved**

6. Your actions as set out at paragraph(s):

a. 2a were dishonest by reason of paragraph 3a; **Determined and found not proved**

b. 2b were dishonest by reason of paragraph 3b; **Determined and found proved**

c. 4 were dishonest by reason of paragraph 5. **Determined and found proved**

IMPAIRMENT

150. The Tribunal moved on to consider whether or not Dr Surdhar's fitness to practise is impaired by reason of those paragraphs of the Allegation that it found proved.

The Evidence

151. The Tribunal took into account all the evidence received during the hearing, both oral and documentary.

Submissions on Impairment

Submissions on behalf of the GMC

152. On behalf of the GMC, Ms Nowell submitted that Dr Surdhar's fitness to practise is impaired. She submitted that if the Tribunal accept that the new facts demonstrate dishonesty on the part of Dr Surdhar then this is a clear case where fitness to practise is impaired.

153. Ms Nowell submitted that Dr Surdhar, by his dishonesty, breached the fundamental tenets of the Good Medical Practice dated April 2013 ('the GMP') and it would therefore be necessary to find his fitness to practise impaired in order to uphold the standards of the medical profession and to protect its reputation. Ms Nowell submitted that even without dishonesty and even if the Tribunal accepts Dr Surdhar's contention that there was no deliberate intention to mislead, the GMC contends that the new facts demonstrate that Dr Surdhar's fitness to practise is impaired.

154. Ms Nowell reminded the Tribunal that Dr Surdhar had worked beyond his role as an SHCA and that the undisputed evidence of Dr G was he had acted as a GP on occasions, despite his erasure. She submitted that a responsibly minded doctor or member of the public would find Dr Surdhar's actions abhorrent and would be shocked if his fitness to practise was found not to be impaired in light of the same. Further, Ms Nowell submitted that it would make a mockery of the registration system if an erased practitioner were permitted to continue working as a doctor without consequence.

155. Ms Nowell submitted that paragraphs 19 to 21 and 71 of the GMP make it clear how important it is to be accurate when keeping notes and signing forms. She submitted that, had the CQC not notified the GMC of the concerns they had regarding Dr Surdhar's SHCA role, their ability to investigate that issue would have been severely hampered by the inaccuracies in both the Application and the Email.

156. Ms Nowell submitted that if Dr Surdhar is restored, the inability to place any restrictions on his registration would be such that the GMC and the safety of his patients would be wholly reliant on accurate form filling by Dr Surdhar. She submitted that Dr Surdhar knew or should have known the importance of the information he provided being accurate and complete, particularly against the background of a conviction based on inaccurately filling in forms. Ms Nowell submitted that his mistakes or inaccuracies must be judged in light of this knowledge.

Submissions on behalf of Dr Surdhar

157. Mr Mahmood submitted that Dr Surdhar's fitness to practise is not impaired. He submitted that paragraphs 1(a) and 1(b) of the Allegation related to events between 2016 to 2018 which was approximately six to eight years ago. Mr Mahmood highlighted that there had been no suggestion of any similar behaviour since and that the transgressions related to four patients only, out of around 4700 consultations conducted by Dr Surdhar as an SHCA. Mr Mahmood submitted that the transgressions were entirely inadvertent and arose in highly unusual circumstances at a time when Dr Surdhar was

working in his old surgery, dealing with patients he knew well and who had been previously notified about the limitations to his role.

158. Mr Mahmood submitted that '*the patients had arranged appointments [with Dr Surdhar] but then raised additional matters which Dr Surdhar, whilst operating in autopilot, had discussed and noted*'. Mr Mahmood stated that all such consultations were later reviewed by Dr M and that Dr Surdhar was counselled appropriately. Mr Mahmood submitted that Dr Surdhar acknowledged that by returning to the Centre as an SHCA he created an impossible problem for himself which he deeply regrets.

159. Mr Mahmood highlighted that since March 2021, Dr Surdhar had undertaken work under the supervision of others and there was not a single occasion when he had transgressed. Mr Mahmood submitted that Dr Surdhar had never denied his transgressions, nor sought to make excuses for his behaviour. He further submitted that Dr Surdhar has complete insight into his conduct and has never repeated similar conduct since.

160. Mr Mahmood submitted that paragraphs 2 to 6 of the Allegation, refer to Dr Surdhar's restoration application and the mistakes made therein. Mr Mahmood reminded the Tribunal that Dr Surdhar had admitted making mistakes, which had been inadvertent rather than malicious or calculated. Mr Mahmood highlighted that Dr Surdhar had made other mistakes in the Application, which had been entirely innocent and illustrated a lapse in attention at worst. He submitted that, '*the errors do not imply current impairment in any sense*'.

Legal advice

161. The LQC gave legal advice to the Tribunal on the issue of impaired fitness to practise. He highlighted the case of *CHRE v NMC & Grant (2011) EWHC 927 (Admin)* in which Cox J referred with approval to the comments of Dame Janet Smith in her 5th report of the Shipman inquiry which Cox J regarded as a valuable test for panels considering impairment of a doctor's fitness to practise, namely:

> *'do our findings in respect of the doctor's misconduct, deficient professional performance, adverse health, … show that his / her fitness to practise is impaired in the sense that he/ she:*
>
> *(a) has in the past acted and/ or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*

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

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

(d) has in the past acted dishonestly and/or is liable to act dishonestly in the future'

162. The LQC drew the Tribunal's attention to the case of *Cheatle v GMC (2009) EWHC 645* in which Cranston J stated that in considering the issue of impairment a panel must engage in a 2-step process:

1. First it must decide whether there has been serious misconduct or whether the other circumstances set out in s35C Medical Act 1983 are present;
2. Then the panel must go on to determine whether, as a result, fitness to practise is impaired

163. The LQC referred to the case of *Roylance v GMC (no2) (2000) 1 AC 311* in which the term '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'.* In the case of *Nandi v General Medical Council [2004] EWHC* the Court emphasised the need to give the issue of seriousness proper weight and observed that in other contexts serious professional misconduct had been referred to as '*conduct which would be regarded as deplorable by fellow practitioners*'.

164. The LQC advised the Tribunal that in *Cohen v GMC (2008) EWHC 581* the Court held that when considering impairment, a panel should take account of the practitioner's misconduct and then consider it in light of all the other relevant factors known to them. In Cohen it was 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

165. The LQC highlighted those factors set out in the Guidance which may also be relevant to a Tribunal's decision on whether the doctor's fitness to practise is impaired, namely:

- evidence the doctor has insight into the concerns about their fitness to practise and has actively addressed them;
- the lapse of time since erasure;
- the steps the doctor has taken to keep their medical knowledge and skills up to date; and
- what the doctor has done since their name was erased from the register.

The Tribunal's Decision

166. Having determined the Allegation, the Tribunal had to decide whether, on the basis of the facts which it found proved as set out before, Dr Surdhar's fitness to practise is currently impaired by reason of misconduct.

167. The Tribunal reminded itself that there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal's judgement alone.

168. The Tribunal was aware that it must determine whether Dr Surdhar's fitness to practise is impaired today, taking into account Dr Surdhar's conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

169. The Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and that the misconduct was serious. Then whether the finding of that misconduct which was serious could lead to a finding of impairment. The Tribunal applied this test to each of the paragraphs of the Allegation.

Misconduct

Paragraph 1(a)

170. The Tribunal considered Schedule 1 of the Allegation and noted Dr Surdhar's admission that he had inappropriately completed a number of clinical tasks which fell outside the remit of his role as an SHCA. The Tribunal considered that this was not a case in which Dr Surdhar had deliberately set out to disregard the consequences of his erasure and continue to operate in the role of a GP. It reached that conclusion because of the relatively limited number of consultations, over 14 months, during which Dr Surdhar had transgressed his SHCA role. The Tribunal was of the view that Dr Surdhar had put himself in a very difficult position by returning to work at the Centre, dealing with patients with whom he had long standing relationships. Nevertheless, the Tribunal took the view that

it had been Dr Surdhar's responsibility to ensure that he remained within the boundaries of his SHCA role and to respect the 2016 Tribunal's decision to erase his name from the Medical Register.

171. The Tribunal was of the view that although the GMP might not have been directly applicable to Dr Surdhar at the time he was working as an SHCA, it was a useful benchmark to determine whether Dr Surdhar's behaviour amounted to misconduct which was serious.

172. The Tribunal considered paragraph 15 of GMP which states:

> *'15 You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:*
> *c refer a patient to another practitioner when this serves the patient's needs.'*

173. The Tribunal concluded that, given Dr Surdhar's erasure, there had been limited oversight of his activities as an SHCA and that, accordingly, his trangressions in that role had the potential to impact patient safety. The Tribunal also took the view Dr Surdhar's actions undermined confidence in the medical profession, in that members of the public would be concerned to learn that a doctor who had been erased from the Medical Register had completed clinical tasks that should have been undertaken by a GP.

174. For these reasons the Tribunal concluded the Dr Surdhar's actions amounted to misconduct that was serious.

Paragraph 1b

175. The Tribunal determined that the Letter signed off by Dr Surdhar had been misleading. However it also found that the Letter had been produced inadvertently on an old letterhead and that it was the standard signature on that letterhead which had caused the Letter to be misleading.

176. The Tribunal therefore found that this did not amount to misconduct.

Paragraph 2(a)

177. The Tribunal reminded itself of its findings that:

- Dr Surdhar had been genuinely confused as to the meaning of medical services when he ticked the relevant box in the Application; and
- that his actions in ticking that box did not amount to dishonesty.

178.The Tribunal therefore found that this did not amount to misconduct.

Dishonesty – paragraphs 2(b), 3(b), 4, 5, 6(b) and 6(c)

179.The Tribunal took account of its earlier findings that Dr Surdhar had been dishonest:

- when he failed to declare in the work history section of the Application that he had worked as an SHCA at the Centre within the last five years; and
- when he informed the GMC in the Email that he was unable to work during the period September 2017 to September 2018.

180.The Tribunal considered paragraphs 65, 66, 71 of the GMP to be relevant:

> *'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.*
> *…*
> *71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.22 You must make sure that any documents you write or sign are not false or misleading.*
> *a You must take reasonable steps to check the information is correct.*
> *b You must not deliberately leave out relevant information.'*

181.The Tribunal took the view that honesty is a fundamental tenet of the medical profession and it concluded that Dr Surdhar's dishonesty amounted to misconduct which was serious.

Conclusion

182.The Tribunal concluded that Dr Surdhar's conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to serious misconduct in relation to paragraphs 1(a) and 6(b) and 6(c).

Impairment

183. Having found that Dr Surdhar's actions as set out in paragraphs 1(a), 6(b) and 6(c) amounted to misconduct that was serious, the Tribunal went onto consider whether Dr Surdhar's fitness to practise is currently impaired by reason of his misconduct.

184. The Tribunal considered the following factors set out in Part B of the Guidance:

What has Dr Surdhar done since erasure?

185. The Tribunal noted in particular the following activities undertaken by Dr Surdhar following his erasure:

- Medical observation attachment at Satguru Partap Singh (SPS) Hospital India in December 2017;
- Working as an SHCA at the Centre between October 2016 to March 2018;
- Clinical obervership at City Road Medical Practice, Birmingham
- Honorary Clinical attachment at Pleck Health Centre, March 2021 to April 2023, one day a week;
- Employment as a GP Assistant by South PCN 1, Walsall since May 2023;
- Undertaken CPD, including study towards a MA in Medical Ethics and Law at Keele University;
- Developed a CPD Personal Development Plan;
- Undertaken mentoring sessions with Dr L since November 2018; and
- Attended Doctors' Support Group Meetings.

Has Dr Surdhar kept his skills update to date?

186. The Tribunal took into account Dr K's letter dated 7 November 2023 which stated:

'As he has not provided any clinical advice independently I am not confident for Mr. Surdhar to practice unsupervised in the near future. With appropriate support and supervision, however, I am confident that Mr. Surdhar will be able to independently consult, prescribe and manage patients' complex and undifferentiated presentations.'

187. Notwithstanding his reservations about Dr Surdhar practising unsupervised, Dr K described Dr Surdhar as a '*keen learner*' who had regularly attended GP registrar tutorials, actively participated in a quality improvement project and case-based discussions. In addition Dr K stated that Dr Surdhar has kept regular clinical logs of his learning and '*demonstrated his progress after a significant gap of clinical practice*'.

188. The Tribunal considered that Dr Surdhar had made good efforts to keep his knowledge and skills up to date. He had produced a personal development plan, engaged in 17 mentoring sessions with Dr L since October 2018 and had undertaken a range of relevant CPD courses. In addition, he had worked in a number of clinical settings as identified above, including most recently as a GP Assistant.

The lapse of time since erasure

189. The Tribunal took into account that it has been 7 years since Dr Surdhar was erased from the Medical Register. The Tribunal considered the following paragraph of the Guidance:

'B33 The length of time that has elapsed since the doctor was erased will be relevant although will not necessarily equate to them no longer posing a risk to patients or to public confidence in the profession'

'B34 The longer the doctor has been away from clinical practice, the greater the likelihood that their knowledge and skills will have deteriorated to a degree that may place patients at risk'.

190. The Tribunal took the view that despite the passage of time since his erasure, Dr Surdhar had made good efforts to keep his clinical skills and knowledge up to date. However it considered that the real issue in this case was the level of Dr Surdhar's remediation and insight into his misconduct.

Remediation and insight

191. In considering Dr Surdhar's insight the Tribunal had regard to all relevant paragraphs of the Guidance in particular to paragraph B10 of the Guidance:

'B10 *Factors that can be relevant to a doctor demonstrating genuine insight include, but are not limited to, evidence they have:*

a. *considered the concern, understood what went wrong and accepted they should have acted differently*
b. *demonstrated that they fully understand the impact or potential impact of their performance or conduct, for example by showing remorse*
c. *demonstrated empathy for any individual involved, for example by apologising fully*
d. *taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising.'*

Paragraph 1(a)

192. The Tribunal first considered Dr Surdhar's insight in relation to paragraph 1(a) of the Allegation.

193. The Tribunal had regard to Dr Surdhar's witness statement, in which he stated:

> *'when I look back, on reflection, transitoning from [a] GP to SHCA was bound to involve a huge mental shift in approach, and I do believe I probably underestimated the scale of what this would entail. To take up the new role of SHCA, against the background of my previous experience of working as a GP at the same practce over several years, with the same patents, was inevitably going to present a significant challenge. Having been a doctor for the previous 16 years and 7 years as GP at Five Ways, it was very easy for me to go into "autopilot", and complete a quick and routne task that, in my previous role as GP, I would have undertaken thousands of times without thinking'.*

194. The Tribunal also took into consideration Dr L's letter dated 7 November 2023 in which she stated that:

> *'During our discussions I supported Mr. Surdhar to reflect on his reasons for undertaking the role of SHCA within the practice he worked in prior to his erasure. I believe he is sincere in his desire to have wished to continue to provide a service to his previous patients, the role of SHCA gave him that opportunity. However, he had not considered the difficult situation this presented for himself, his previous patients, his medical colleagues and his previous staff. It is my belief that his compassion to be of some service to his previous patients clouded his ability to foresee the unintended consequences, that is overstepping his responsibilities. I also believe that he does, on deeper reflection, appreciate that he acted outside his role in some interactions with patients, but he did so without considered intention to mislead and he has learnt from that experience and carried the learning through to his current role as GP Assistant'.*

195. The Tribunal was of the view that Dr Surdhar's misconduct in relation to paragraph 1(a) of the Allegation was potentially remediable, particularly in a work setting with clear boundaries, effective supervision and line management. The Tribunal considered that Dr Surdhar had attempted to address the concerns by taking his honorary clinical attachment role at Pleck Health Centre and latterly in his role as a GP Assistant. In Dr K's letter dated 7 November 2023 he stated:

'Mr. Surdhar always introduced himself as a clinical support worker and at no point did he transgress his role. He had good understanding of his limitations and worked within limitations.'

196. There was no evidence before the Tribunal that Dr Surdhar had acted outside the roles he had undertaken since January 2018. It was of the view that Dr Surdhar's misconduct as described in paragraph 1(a) of the Allegation was situation specific in that it largely arose because of his decision to return to work at the Centre and have involvement with his former patients. Dr Surdhar acknowledged that decision had placed him in a very difficult position. The Tribunal considered that, whilst Dr Surdhar should have taken greater care, he had a good understanding of what had caused him to act outside the remit of his SHCA role. The Tribunal concluded that, in view of Dr Surdhar's good level of insight and remediation, there was a low risk of repetition.

197. The Tribunal concluded that Dr Surdhar's fitness to practise is not impaired in relation to paragraph 1(a) of the Allegation.

Dishonesty

198. The Tribunal considered whether Dr Surdhar's fitness to practise is impaired because of his dishonest misconduct. The Tribunal reminded itself that the 2016 Tribunal had erased his name from the Medical Register because of criminal conduct which had involved defrauding the NHS. That behaviour had included the inappropriate completion of forms which had been submitted to the Hospital. HHJ Webb who passed sentence on Dr Surdhar in 2016 had described him as '*very dishonest*'.

199. Dr Surdhar provided the Tribunal with an extensive bundle containing a number of documents reflecting on the dishonesty which had led to his erasure in 2016. These included:

- A 'GMC Personal Reflective Statement';
- 'Insight and Reflections: A Further reflection October 2023';
- 'Notes on fraud'; and
- 'How I have maintained my behaviour, clinical skills and knowledge'.

200. The Tribunal bore in mind Dr Surdhar's reflections regarding the events which led to his criminal conviction and subsequent erasure in 2016. These included the following observations by him:

'FIRSTLY, putting my needs above that of the patients. I was very enthusiastic and had seen a window of opportunity to make more money and I just latched onto it without taking the proper amount of time and care. As I look back more, I feel that I was not content and satisfied with what I had and with what I was doing. Instead I was greedy and egocentric wanting more and more and this led to my unethical behaviour. I just did not know how to say 'NO'. It was an expansion of my human frailty.'

'On further reflection I can also now admit to myself that this was: Dishonest, Irresponsible, Irrational, Unprofessional, Unethical and Reckless'

201. As already noted, Dr Surdhar engaged the services of Dr L in the capacity of coach/mentor. In addition, Dr Surdar had undertaken courses on probity and ethics; boundaries; probity support; and maintaining professional ethics. Following each of the courses he had written reflections on them. He also commenced a Masters Degree in Medical Ethics, in which he partially qualified.

202. The Tribunal was of the view that Dr Surdhar was to be given credit for his efforts to address the dishonest behaviour which had led to his criminal conviction and subsequent erasure. It bore in mind that dishonesty is difficult to remediate, albeit not impossible.

203. However, notwithstanding his considerable efforts at remediation and learning, Dr Surdhar had repeated his dishonest behaviour and it was notable that his dishonesty in 2022 had again included the inappropriate completion of forms. The Tribunal concluded that, despite the apparent quantity of Dr Surdhar's reflections, remediation and learning, those efforts had not become embedded and he had failed to demonstrate adequate insight or learning into the dishonest misconduct which had led to his erasure from the Medical Register. Consequently, he had acted dishonestly again in 2022.

204. Given Dr Surdhar's repetition of the dishonesty that led to his erasure, the Tribunal concluded that there was a real risk of further repetition.

205. The Tribunal determined that Dr Surdhar has in the past brought and is liable in the future to bring the medical profession into disrepute; he has in the past breached and is liable in the future to breach one of the fundamental tenets of the medical profession; and he has in the past acted dishonestly and is liable to act dishonestly in the future.

206. The Tribunal considered that a finding of impairment is necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal

determined that public confidence in the medical profession would be undermined if there were no finding of impairment in this case.

RESTORATION

The circumstances that led to erasure

Submissions on Dr Surdhar's application for restoration

207. Mr Mahmood submitted that Dr Surdhar's name should be restored to the Medical Register. He referred the Tribunal to the determination of the 2016 Tribunal and submitted that there was nothing to suggest in its findings that: there was an irreversible attitudinal issue or deep-seated character failing; Dr Surdhar's misconduct was pre-planned from the outset; or that it had been repeated since. Mr Mahmood submitted that Dr Surdhar had shown remorse at the 2016 Tribunal hearing and had continued to express this remorse ever since, including an apology to all parties involved.

208. Mr Mahmood referred the Tribunal to B10 of the Guidance which might be relevant in demonstrating insight. He submitted that each of the factors in that paragraph have been evidenced in this case, including an understanding of what went wrong, an understanding of the impact of his conduct, remorse, empathy and steps to remediate to avoid similar issues arising. Mr Mahmood submitted that Dr Surdhar had considerable and complete insight into his misconduct and had taken every possible, conceivable and practical step to remedy his previous misconduct and had demonstrated full insight.

209. Mr Mahmood submitted that Dr Surdhar had enaged in extensive remediation for some six years and had engaged in numerous reflective exercises, mentoring, group discussions and self-reflections, on an ongoing basis. He further submitted that Dr Surdhar had participated in training, supervision and coaching relevant to the concerns raised. Mr Mahmood reminded the Tribunal that Dr Surdhar had worked in a clinical attachment from March 2021 to April 2023, and thereafter as a GP Assistant where no concerns had been identified. He submitted that the previous findings of misconduct are remediable, had been remedied and are not likely to be repeated.

210. Mr Mahmood submitted that the lapse of time since erasure was also relevant. He highlighted that the criminal offences in issue took place between 2010 to 2012 and Dr Surdhar had been convicted and erased in 2016. Mr Mahmood submitted that the offences were more than a decade old, and that Dr Surdhar's reflections have been ongoing for some seven years without any repetition of his misconduct.

211. Mr Mahmood submitted that in the circumstances, a well-informed member of the public, with knowledge of all relevant facts, including the extensive remediation of Dr Surdhar would not be concerned to learn of the doctor's return to practise, nor was it inconsistent with the need to maintain professional standards to allow Dr Surdhar to return to practise.

Submissions on behalf of the GMC

212. Ms Nowell submitted that Dr Surdhar's name should not be restored to the Medical Register and that Dr Surdhar had not demonstrated that he is now fit to practise as a GP without restriction to his registration. She submitted that the findings of the 2016 Tribunal related to serious dishonesty, which Dr Surdhar denied up until the month of the 2016 Tribunal hearing. Ms Nowell highlighted that the 2016 Tribunal found Dr Surdhar's insight to be limited.

213. Ms Nowell reminded the Tribunal that Dr Surdhar was convicted of dishonestly using NHS resources for reasons of financial gain. She submitted that although Dr Surdhar's witness statement and his bundle of documents admit dishonesty, his reflections still suggest that the root cause of his conviction was inattention to detail and a lack of governance.

214. Ms Nowell submitted that whilst Dr Surdhar had demonstrated that he had taken the right steps towards remediation, his remediation was in reality totally lacking when considering his responses to the new Allegation. She submitted that Dr Surdhar's defence to the new facts, together with his witness statement and supporting documents, demonstrate that he continued either to act dishonestly or with the same lack of attention to detail and sloppiness which he claimed to have remediated. Ms Nowell reminded the Tribunal of Dr Surdhar's evidence whereby he drew a comparison with the failure to correctly fill in the forms accompanying private patient's samples and the failure to accurately fill in the restoration application.

The Tribunal's Approach

215. The Tribunal reminded itself that its power to restore a practitioner to the Medical Register is a discretionary power to be exercised in the context of the Tribunal's primary responsibility to act in accordance with the statutory overarching objective, to protect the public, as set out later in this determination.

216. While the Tribunal bore in mind the submissions made by the parties, it was aware that the decision as to whether to restore Dr Surdhar's name to the Medical Register, is a matter for it exercising its own judgment.

217. The LQC advised the Tribunal that the Guidance states that tribunals have a broad discretion when considering restoration applications and may direct a doctor's name be restored to the register '*if they think fit*'. The LQC stated that the onus is on the doctor applying for restoration to satisfy the Tribunal that they are fit to return to unrestricted practice.

218. The LQC also advised the Tribunal of the test to be applied in restoration hearings, namely:

> *'Having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective'*

219. The LQC drew the Tribunal's attention to that part of the Guidance which states that the test for restoration will not be met if Tribunal finds the doctor's fitness to practise to be impaired.

220. The LQC advised the Tribunal that having considered the specific concerns about the doctor, the factors set out in the Guidance and its findings in relation to fitness to practise, the Tribunal should then step back and balance its findings against whether restoration will meet each of the elements of the overarching objective, namely:

a to protect and promote the health, safety and wellbeing 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 the members of the profession.

The Tribunal's Conclusion

221. The Tribunal reminded itself that:

- Dr Surdhar had been erased from the Medical Register in 2016 following a criminal conviction for fraud;
- he had been dishonest again in 2022 within the Application and the Email;
- despite a substantial quantity of reflective material and learning, Dr Surdhar's remediation was incomplete given the repetition of his misconduct;

- Dr Surdhar's insight into his dishonesty (both that which led to his erasure and that in 2022) was lacking;
- there was a real risk of further repetition; and
- Dr Surdhar's fitness to practise is currently impaired by reason of his misconduct.

222. The Tribunal concluded that, given these findings, public confidence in the medical profession and the need to promote and maintain proper professional standards of conduct for members of the profession would not be met if Dr Surdhar's name was restored to the Medical Register.

223. Whilst Dr Surdhar's misconduct did not fall within those types of exceptionally serious cases listed in paragraph B49 of the Guidance, he had nevertheless breached a fundamental tenet of the medical profession on a number of occasions and there was a risk of further repetition. The Tribunal therefore determined that it would not be appropriate for Dr Surdhar to hold unrestricted registration.

224. In conclusion, the Tribunal determined that Dr Surdhar's name should not be restored to the Medical Register.

SCHEDULE 1

Patient A

Date of consultation	Clinical tasks
4 November 2016	• Medication review • Examined Patient A's back • Diagnosed Patient A with lipoma
6 December 2016	• Conducted a GP consultation • Diagnosed Patient A with lethargy • Issued Patient A with a sick note
23 January 2017	• Took a history from Patient A • Examined Patient A's respiratory system • Diagnosed Patient A with upper respiratory tract infection • Issued Patient A with a sick note • Prescribed amoxicillin to Patient A

Patient B

Date of consultation	Clinical tasks
31 January 2017	• Took a history from Patient B • Examined Patient B's neck • Diagnosed Patient B with cervical radiculitis
3 February 2017	• Prepared the Letter for Patient B which contained a clinical • assessment and workplace • recommendations

Patient C

Date of consultation	Clinical tasks
20 November 2017	• Took a history from Patient C's mother • Examined Patient C's chest • Diagnosed Patient C with upper respiratory tract infection • Prescribed amoxicillin to Patient C

Patient D

Date of consultation	Clinical tasks
4 January 2018	• Took a history from Patient D • Examined Patient D's neck • Prescribed ibuprofen to Patient D