

PUBLIC RECORD

Dates: 07/05/2024 - 20/05/2024

Medical Practitioner's name: Dr Herwig THIBAUT

GMC reference number: 4484862

Primary medical qualification: MD 1986 Universitaire Instelling Antwerpen

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

Summary of outcome

Suspension -3 months
Review hearing directed

Tribunal:

Legally Qualified Chair	Mr Stephen Killen
Lay Tribunal Member:	Mr John Kelly
Medical Tribunal Member:	Dr Suzanne Joels
Tribunal Clerk:	Ms Fiona Johnston

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Ranald Davidson, Counsel, instructed by MDU
GMC Representative:	Ms Chloe Fordham, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 10/05/2024

The Outcome of Applications Made during the Facts Stage

1. This determination will be handed down in private. However, as this case concerns Dr Thibaut's misconduct, a redacted version will be published at the close of the hearing.

2. At the outset of the hearing, Ms Fordham, counsel, on behalf of the General Medical Council ('GMC'), made an application pursuant to Rule 17(6) of the GMC (Fitness to Practise) Rules 2004, as amended ('the Rules') to amend paragraph 4 of the Allegation, as follows:

4. Your actions as described in paragraph 2 constituted ~~unlawful~~ racial harassment ~~by virtue of~~ as defined by Section 26(1) of the Equality Act 2010 in that you engaged in unwanted conduct related to race which had the purpose or effect of violating the dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr C.

3. Mr Davidson, counsel, on behalf of Dr Thibaut did not oppose the application. The Tribunal granted the application as it was satisfied that these amendments would not cause prejudice to either party and were necessary for the fair disposal of the case.

4. Subsequently, in response to issues raised by the Tribunal, Ms Fordham made a further application to amend paragraph 4 of the Allegation, to specifically refer to paragraph 2(a), rather than the entirety of paragraph 2. Again, Mr Davidson did not oppose this amendment and he indicated that if paragraph 4 were amended in this way, Dr Thibaut would admit the paragraph. Again, the Tribunal granted the application as it was satisfied that the amendment would not cause prejudice to either party and was necessary for the fair disposal of the case.

Background

5. Dr Thibaut obtained his medical qualification in Belgium in 1986. He then completed specialist training in diagnostic radiology. He moved to the UK in 1988 and took up a post at the Durham and Darlington NHS Trust where he worked until 2010. He then undertook a short role on the Isle of Man before joining the North Tees and Hartlepool NHS Foundation Trust ('the Trust') as a consultant clinical radiologist in September 2011. Dr Thibaut was working in this role at the time of the events.

The Allegation and the Doctor's Response

6. The events giving rise to this case are outlined in full in the Allegation, as amended, below.

7. At the outset of these proceedings, through his counsel, Mr Davidson, Dr Thibaut made admissions to some paragraphs and sub-paragraphs of the Allegation, in accordance with Rule 17(2)(d) of the Rules. In accordance with Rule 17(2)(e), the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

1. On 26 July 2021, whilst in conversation with Dr A, you referred to Dr B in words to the effect of those indicated in Schedule 1. [Schedule 1 – 'Paki doctor'] **Admitted and found proved**
2. On 23 December 2021, whilst in a meeting for your annual appraisal with Dr C, you:
 - a. said words to the effect of those indicated in Schedule 2; [Schedule 2 – 'That's what you yellow people are like'] **Admitted and found proved**
 - b. refused to leave Dr C's office despite being asked to do so by Dr C multiple times; **Admitted and found proved**
 - c. positioned yourself between Dr C and the door, blocking the only exit to the room; **To be determined**
 - d. stepped towards Dr C with your hands balled into fists; **To be determined**
 - e. said "do you want to fight me" or words to that effect; **To be determined**
 - f. said "go on then call security" or words to that effect; **Admitted and found proved**

g. cancelled, twice, a telephone call Dr C was attempting to make to security.

To be determined

3. Your actions at paragraph 1 and 2.a were racist. **Admitted and found proved**
4. Your actions as described in ~~paragraph 2~~ paragraph 2.a constituted ~~unlawful~~ racial harassment ~~by virtue of~~ as defined by Section 26(1) Equality Act 2010 in that you engaged in unwanted conduct related to race which had the purpose or effect of violating the dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr C. **Amended under Rule 17(6).**
Admitted and found proved

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

8. In light of Dr Thibaut's response to the Allegation made against him the Tribunal is required to determine whether paragraphs 2c, 2d, 2e and 2g are proved.

Witness Evidence

On behalf of the GMC

9. The Tribunal received a witness statement dated 31 March 2023 and oral evidence via video-link from Dr C, consultant radiologist at the Trust. Dr C is the doctor referred to in the Allegation as 'Dr C'.

10. The Tribunal also received a witness statement dated 26 February 2023 from Dr A, consultant radiologist and Clinical Director of Radiology at the Trust. Dr A is the doctor referred to in the Allegation as 'Dr A'.

11. Notwithstanding the fact that Dr A and Dr C had been anonymised in the Allegation, Ms Fordham indicated to the Tribunal at the outset of the hearing that the GMC did not consider that either person needed to be anonymised.

On behalf of Dr Thibaut

12. Dr Thibaut provided his own witness statement, dated 16 February 2024 and also gave oral evidence at the hearing.

Documentary Evidence

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

- Record of interview conducted by the Trust’s internal investigation team with Dr Thibaut;
- ‘Notes on Statement of Confrontation’;
- ‘Notes on Conversation with Dr Thibaut’, dated 26 July 2021;
- Report of Professor D, dated 6 February 2024;
- Various exhibits including email communication and a diagram of Dr C’s office, provided by Dr C during his evidence.

The Tribunal’s Approach

14. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Thibaut does not need to prove anything. The standard of proof is that applicable to civil proceedings, namely the balance of probabilities, i.e., whether it is more likely than not that the events occurred.

15. The Tribunal was mindful of the principle that a witness giving an inconsistent account does not necessarily mean that the account is untrue. The Tribunal should allow for the passage of time and bear in mind that we believe memories to be more faithful than they are. Therefore, contemporary documents are always of the utmost importance. It is proper for the Tribunal to assess the demeanour of witnesses but must be careful not to put too much weight on this when making its decisions.

16. The Tribunal was also mindful of the fact that some of the evidence before it was hearsay evidence, which should be examined with particular care.

The Tribunal’s Analysis of the Evidence and Findings

17. The Tribunal noted that those paragraphs of the Allegation which remain to be determined all relate to events during a meeting on 23 December 2021, which had been arranged in order for Dr C to conduct Dr Thibaut’s appraisal (‘the appraisal meeting’). The only direct witnesses to the events under consideration were Dr C and Dr Thibaut themselves.

Dr C’s Evidence

18. In his witness statement and oral evidence, Dr C stated that the appraisal meeting had been scheduled to take place in his office at 13.30 hours on 23 December 2021. Dr C stated that Dr Thibaut had indicated to him prior to the meeting that he (Dr Thibaut) was worried about the appraisal and Dr C knew that he *'would need to confront him about the amount of CPD (continuing professional development) he had completed in 2021'*.

19. Dr C indicated that he initially felt that the appraisal was going well, albeit that *'Dr Thibaut seemed a little bit anxious and agitated'*, which Dr C did not consider particularly unusual either for Dr Thibaut or in the context of an appraisal generally.

20. Dr C said that Dr Thibaut became more agitated when he was asked about his CPD and why he had not done more. Dr C said that *'this topic seemed to be the trigger for his behaviour as it all started to go downhill from here'*.

21. Dr C stated that, at this point, Dr Thibaut accused him of not having a personal interest in Dr Thibaut's appraisal and Dr C explained that he is not supposed to have any personal interest in it. Dr C said that the reasons Dr Thibaut gave for not having completed more CPD were very similar to those given in his 2020 appraisal meeting, which related to having insufficient time due to the Covid-19 pandemic and pressure from work in the department.

22. Dr C said that Dr Thibaut accused him of, among other things, not understanding how important his work was, not understanding him or the pressures of Covid, having an angry face and of being unhappy about doing the appraisal. Dr C described Dr Thibaut's presentation as confrontational, angry, personal and spiteful. He said that Dr Thibaut *'seemed very tense, was scowling very hard and balling his fists in his hands'*. He said that Dr Thibaut's *'voice and tone were becoming louder and increasingly threatening'*.

23. Dr C said that Dr Thibaut told him that he was being unsympathetic and *'that is what you yellow people are like'*. He said that he challenged Dr Thibaut, telling him that he cannot use racist statements like that, and that Dr Thibaut responded by saying that he is not a racist and denying having used the racist words referred to.

24. Dr C stated that he informed Dr Thibaut that he would not continue with the appraisal as he would not tolerate racist abuse and he asked Dr Thibaut to leave his office. He said that Dr Thibaut did not leave the office and Dr C repeated himself. Dr C said that Dr Thibaut stood up between him and the door to the office and did not leave. Dr C remained seated at his desk, but he felt very concerned for his own safety. He stated:

‘... Dr Thibaut was obviously agitated and angry, both in stance and tone of voice, by which I mean that his voice was becoming louder and angrier, his face was scowling more aggressively, he was becoming red in the face, and his speech was also much quicker. In terms of his stance, he had his shoulders hunched forward and his hands balled into fists, all while taking steps towards me.’

25. Dr C said that after asking Dr Thibaut to leave approximately three times, he warned him that he would call security if he did not do so, to which Dr Thibaut replied *‘go on then, call security’*. Dr C said he stood to reach the telephone and call security but before he was able to reach the telephone, Dr Thibaut *‘changed his stance by putting one foot behind him and raising up his balled fists, and he then asked me ‘do you want to fight me?’*

26. Dr C said that he declined and told Dr Thibaut he was calling security. He said that he reached over a cabinet to reach the phone and attempted to call security twice, but that both times Dr Thibaut cancelled the call.

27. Dr C said that, at this point, he felt physically threatened and so he raised his voice and repeated *‘please leave my office’*. In response, Dr Thibaut repeatedly shouted *‘what about my appraisal?’* and insisted that Dr C continue with it.

28. Dr C said that he tried to explain his reasons for not continuing with the appraisal, referring to the racist comments, but Dr Thibaut denied having used that language and insisted that the appraisal continue. Dr C estimated that he asked Dr Thibaut to leave the office on approximately ten occasions and said that Dr Thibaut eventually did leave, without saying anything before leaving or acknowledging what he had done was wrong.

Dr Thibaut’s Evidence

29. XXX. Dr Thibaut said that he is aware that he can easily become agitated and frustrated.

30. Dr Thibaut said that, prior to the appraisal meeting, he had heard from colleagues that Dr C did not want to carry out his appraisal and so he was nervous when he started the meeting. Dr Thibaut said that the beginning of the appraisal *‘ran smoothly’*, but *‘then discussion turned to the number of CPD credits [he] had accrued during the year, with Dr C highlighting that [he] had an insufficient number of hours.’*

31. Dr Thibaut said that he tried to explain to Dr C that he was struggling to balance the requirements and that wider work pressures, in particular the backlog caused by the Covid-19 pandemic, had meant he prioritised clinical work and had not set aside sufficient time to complete the full CPD requirement.
32. Dr Thibaut said that he felt upset that Dr C was not supportive and did not empathise with his position. He said that Dr C compared his CPD to that completed by other colleagues, which Dr Thibaut felt was unfair. Dr Thibaut said that he felt singled out, stressed and humiliated.
33. Dr Thibaut accepted that during the appraisal meeting he said the racist words *'that's what you yellow people are like'*. He said that he deeply regrets the remark which he said was made *'in the heat of the moment'*.
34. Dr Thibaut said that, after making this remark, Dr C asked him to leave his office and he said he was right to do so. Dr Thibaut said that he should have left immediately and collected his thoughts before contacting Dr C with an apology and suggesting a further date to complete the appraisal. Dr Thibaut accepted that Dr C asked him to leave the office on multiple occasions and that he did not leave.
35. Dr Thibaut said that, at the time, he was so focused on trying to finish the appraisal that he failed to appreciate that communication had broken down and the appraisal could not continue.
36. Dr Thibaut stated that he regrets that he remained in Dr C's office after being asked to leave. He denied positioning himself deliberately in the path of the door and indicated that Dr C's office is set up in such a way that his desk is closer to the far window (further from the door), with a chair positioned in front (closer to the door) where he was sitting during the appraisal. Dr Thibaut said that he remained either seated in the chair, or stood immediately next to the chair, but he did not stand deliberately in the way of the exit.
37. Dr Thibaut said that, on one occasion, Dr C reached to make a telephone call and he (Dr Thibaut) pressed down on the telephone receiver. He said that, at the time, he viewed Dr C's actions as cancelling the appraisal which he was entirely focused on trying to complete.
38. Dr Thibaut said that he regrets that *'[he] let that focus get the better of [him] and failed to appreciate that the appraisal could not be completed that day because of [his] own behaviour'*.

39. When it was put to Dr Thibaut that cancelling the call was an aggressive act, he responded to say that *'I wouldn't use the word aggressive. Perhaps mischievous.'*

40. Dr Thibaut accepted that he used words to the effect of *'go on then call security'*. He denied cancelling the call a second time and stated that this happened only once. When asked why he cancelled the call, Dr Thibaut said that he felt ashamed and he *'would have been marched out'*.

41. Dr Thibaut denied balling his hands into fists or saying words to the effect of *'do you want to fight me?'*. He accepted that he *'may have stood up once or twice'* but he denied stepping toward Dr C. He denied standing to make himself more physically imposing and said that he stood due to the *'need to stretch [himself]'*. Dr Thibaut said that he had no idea why Dr C felt the need to call security and that he found it quite hurtful for him to do so as it was *'treating [Dr Thibaut] as a criminal'*.

42. Dr Thibaut said in his oral evidence that he had *'been pushed to the limit in the course of the appraisal'*. He said that his actions were not explainable but can maybe be seen in the light of his state of distress.

43. Dr Thibaut denied that he was angry or that he lost his temper, stating that he was instead irritated and frustrated. He said that Dr C was *'trying to baffle [him] with statistics and to portray [him] as an outlier who was performing less well than others'*. Dr Thibaut said that people who perform appraisals should be understanding and should *'use the carrot and not the stick'*. He said that Dr C was being unsympathetic.

44. Dr Thibaut said that he was in control of his emotions during the appraisal meeting.

Paragraph 2(c)

45. The Tribunal first considered whether Dr Thibaut had positioned himself between Dr C and the door to the office, blocking the only exit to the room.

46. The Tribunal considered that this paragraph of the Allegation implied an intention on Dr Thibaut's part to block Dr C from leaving the room.

47. The Tribunal noted the layout of the room from the hand-drawn plan of the office, which both Dr C and Dr Thibaut indicated represented an accurate reflection of the room, subject to issues such as scale and furniture.

48. The Tribunal noted that Dr C indicated that the room itself is fairly small and that it has furniture and cabinets etc. which further reduce the space available. The Tribunal noted that Dr C accepted that he had arranged the seating and that Dr Thibaut had taken the seat offered to him by Dr C. Dr C indicated that the positioning of the seats meant that Dr Thibaut was positioned between Dr C and the door, and there was limited space to move past Dr Thibaut, had he wished to exit the room.

49. The Tribunal noted that any person who stood up from the seat allocated to Dr Thibaut would inevitably be positioned between Dr C and the door, as indeed is the case with any person sitting in that seat.

50. Dr Thibaut accepted in his evidence that he stood up, but he indicated that he did not do so to block the exit to the room. He indicated that at all times while he was in the room, he was physically between Dr C and the door and as a result of the limited space in the room. Dr Thibaut accepted that, when he was stood up, for Dr C to have left he would either have had to push past Dr Thibaut or Dr Thibaut would have had to move out of the way.

51. The Tribunal noted that Dr C stated in his evidence that he did not at any time attempt to leave the room or indicate a wish to leave the room.

52. The Tribunal noted that the only evidence it received which was at all indicative of Dr Thibaut positioning himself was that Dr Thibaut stood up during the meeting.

53. Overall, the Tribunal did not consider that the evidence presented was sufficient to establish that Dr Thibaut deliberately positioned himself between Dr C and the door with the intention of blocking the only exit to the room. Dr Thibaut was, at all times between Dr C and the door. There was nowhere else that he could have been during the meeting given that small size of the room and the fact that the seating positions were selected by Dr C. Dr C gave no indication of an intention or wish to exit the room.

54. The Tribunal therefore found this paragraph of the Allegation not proved.

Paragraphs 2(d) and 2(e)

55. The Tribunal then considered whether Dr Thibaut stepped towards Dr C with his hands balled into fists and whether he said *'do you want to fight me'* or words to that effect. The Tribunal considered that these two paragraphs of the Allegation were closely intertwined and should appropriately be considered in conjunction with each other.

56. The Tribunal noted the overall context of events during the appraisal meeting. Both Dr C and Dr Thibaut described a highly charged, difficult and confrontational series of events.

57. The Tribunal considered that Dr Thibaut's denials of anger or having lost his temper were inconsistent with the evidence overall, and with his own account of events. As outlined above, Dr Thibaut himself stated that:

- he was nervous prior to going into the meeting, and he had been informed that Dr C did not wish to conduct the appraisal;
- Dr C had been unsympathetic toward him and had tried to baffle him with statistics and portray him as an 'outlier' in the department;
- he felt singled out, stressed and humiliated;
- he had '*been pushed to the limit in the course of the appraisal*' and referred to being in a '*state of distress*';
- he had used racist language during the meeting;
- he refused to leave, despite being asked to do so multiple times;
- he cancelled one call which Dr C attempted to make to security.

The Tribunal considered that the matters as outlined above, and particularly the use of racist language, were strongly supportive and indicative of Dr Thibaut presenting in an angry and aggressive manner, as outlined by Dr C. They are also indicative of Dr Thibaut not being in control of himself or his emotions at that time. It was clear to the Tribunal that Dr C felt under sufficient pressure during the appraisal meeting that he considered that there was a need to telephone security.

58. In his evidence, Dr C was adamant that Dr Thibaut did in the course of the appraisal meeting step towards him with his hands balled into fists and said words to the effect of '*do you want to fight me*'.

59. The Tribunal noted that Dr C's account of the appraisal meeting could be said to have changed over time between his initial email to Dr F, his written account that day and his more recent formal written statement:

- In his initial email, sent at 14.02hours on the day of the appraisal meeting (which started at 13.30hours), Dr C did not describe either of the details which form the basis of paragraphs 2 d and 2 e;
- In his expanded statement to the Trust, which was typed later that same day, Dr C described Dr Thibaut as '*...obviously agitated and angry, both in stance and tone of voice*' and included the assertion that Dr Thibaut said '*Do you want to fight me?*';

- In his formal witness statement, Dr C then gave further detail which included the following:

‘...by which I mean that his voice was becoming louder and angrier, his face was scowling more aggressively, he was becoming red in the face, and his speech was also much quicker. In terms of his stance, he had his shoulders hunched forward and his hands balled into fists, all while taking steps towards me. The GMC have asked why I did not include these details in [the earlier statements] and the reason is that...I was trying to keep my original statements as factual as possible. When asked by the GMC to clarify what I meant...I still had the image of Dr Thibaut from 23 December 2021 in my mind and could elaborate on what I meant by his ‘stance and tone’.

60. The Tribunal acknowledged that memories are fallible and are not always reliable. It acknowledged that Dr C’s formal statement was written some time after the events in question and his memory was likely to be better closer to the time of the events under consideration.

61. However, having considered Dr C’s clear and credible oral evidence in conjunction with his written contemporaneous accounts, the Tribunal concluded that his explanation for not including every detail of the appraisal meeting in his initial accounts was reasonable. At the time of his email and indeed at the time of his initial written account, Dr C did state that Dr Thibaut was acting in an aggressive manner, and he did include the assertion that Dr Thibaut asked *‘do you want to fight me’* in his more detailed written account prepared that day.

62. The Tribunal considered it reasonable that Dr C would not have included every detail in those two earlier documents and it accepted his explanation as to why these details were not so in all documents. In reaching this conclusion, the Tribunal considered that these two paragraphs of the Allegation were consistent with its impression of the events of the appraisal meeting overall, as described by both Dr C and Dr Thibaut.

63. The Tribunal determined that Dr C had cause to call security on at least one occasion during the incident with Dr Thibaut and that this was most likely due to Dr Thibaut’s demeanour. The fact of Dr C’s contemporaneous account of Dr Thibaut asking if he wanted to fight lent this allegation weight and the Tribunal determined that it was more likely than not that Dr Thibaut did say this. The Tribunal considered it unlikely that, in the circumstances, Dr Thibaut would have said this with a neutral demeanour and so determined that it was

more likely than not that he had stepped towards Dr C with his hands balled into fists when asking if Dr C wanted to fight.

64. Therefore, the Tribunal determined that both these paragraphs of the Allegation were proved.

Paragraph 2(g)

65. The Tribunal reminded itself that Dr Thibaut had admitted to cancelling Dr C's call to security on one occasion.

66. It also reminded itself of its overall impression of events and its conclusions regarding Dr Thibaut's actions and aggressive presentation during the appraisal meeting as outlined in relation to paragraphs 2d and 2e. In circumstances in which Dr Thibaut felt '*in a state of distress*' and '*pushed to the limit*', the Tribunal considered that his memory of specific details such as the number of telephone calls attempted, may not be reliable.

67. The Tribunal considered that the same proposition may equally apply to Dr C's recollection on the issue. However, the Tribunal considered that Dr C's account was clear from the first instance that he had attempted to call security twice and that Dr Thibaut had cancelled both of these calls. This was recorded contemporaneously in Dr C's email at 14.02 hours on the day of the appraisal. The contemporaneous record was strongly indicative of two calls being attempted and cancelled.

68. Overall, therefore, the Tribunal considered that Dr C has been clear and consistent on this issue from the very outset and it accepted his evidence. The Tribunal considered it more likely than not that Dr C attempted to make two telephone calls to security, and that Dr Thibaut cancelled both.

69. The Tribunal therefore determined that this paragraph of the Allegation was proved.

The Tribunal's Overall Determination on the Facts

70. The Tribunal has determined the facts as follows:

1. On 26 July 2021, whilst in conversation with Dr A, you referred to Dr B in words to the effect of those indicated in Schedule 1. **Admitted and found proved**

2. On 23 December 2021, whilst in a meeting for your annual appraisal with Dr C, you:
 - a. said words to the effect of those indicated in Schedule 2; **Admitted and found proved**
 - b. refused to leave Dr C’s office despite being asked to do so by Dr C multiple times; **Admitted and found proved**
 - c. positioned yourself between Dr C and the door, blocking the only exit to the room; **Determined and found not proved**
 - d. stepped towards Dr C with your hands balled into fists; **Determined and found proved**
 - e. said “do you want to fight me” or words to that effect; **Determined and found proved**
 - f. said “go on then call security” or words to that effect; **Admitted and found proved**
 - g. cancelled, twice, a telephone call Dr C was attempting to make to security. **Determined and found proved**
3. Your actions at paragraph 1 and 2.a were racist. **Admitted and found proved**
4. Your actions as described in ~~paragraph 2~~ paragraph 2.a constituted ~~unlawful~~ racial harassment ~~by virtue of~~ as defined by Section 26(1) Equality Act 2010 in that you engaged in unwanted conduct related to race which had the purpose or effect of violating the dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for Dr C. **Admitted and found proved**

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

Determination on Impairment - 16/05/2024

71. This determination will be handed down in private. However, as this case concerns Dr Thibaut’s misconduct a redacted version will be published at the close of the hearing.

72. The Tribunal now has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which have been found proved as set out in the Tribunal's previous determination, Dr Thibaut's fitness to practise is currently impaired by reason of misconduct.

The Evidence

73. The Tribunal took into account all of the evidence received during the facts stage of the hearing, both oral and documentary.

74. The evidence in relation to paragraphs 2, 3 (insofar as it relates to paragraph 2a) and 4 of the Allegation was outlined in the facts determination.

75. With regard to paragraph 1 (and 3, insofar as it relates to paragraph 1) of the Allegation, which were admitted by Dr Thibaut at the outset of the hearing, Dr F's witness statement outlined the following:

'On 26 July 2021, I was working in my usual capacity as consultant and director of radiology at the Trust. I was speaking to two colleagues, Dr C and Dr D, in their office about a clinical matter. ... I was standing in the doorway of their office discussing this when Dr Thibaut emerged from the adjacent office and interrupted the conversation saying he wanted to speak with me. Dr Thibaut's behaviour felt rude and inappropriate. This is because even after I acknowledged Dr Thibaut's request to speak with me and said I would be with him in a minute, he didn't accept this and insisted that he needed to speak to me about something more important. ... I abandoned my conversation with Dr D and Dr C, and Dr Thibaut and I moved to his office which was just next door.

It was just Dr Thibaut and I in his office Dr Thibaut expressed to me that he was unhappy that his reports had been amended by other members of staff. I had already heard from another colleague (I don't remember who) that he had been complaining about an amendment made to one of his reports

Dr Thibaut also raised with me that he feels unfairly targeted with criticism by his colleagues and cited an email from Dr B, who Dr Thibaut referred to in this conversation as 'some paki doctor'. I believe these are the exact words he used, and that he only used this phrase once.

I remember that I was shocked when Dr Thibaut made the comment, ‘some paki doctor’ because even for him it was a surprising thing to hear. I didn’t challenge him on his language, I just ignored it as he was already quite agitated, and I didn’t want to escalate things even further. The GMC have asked me to clarify what I mean by Dr Thibaut being ‘agitated’..... and I can confirm he was raising his voice, becoming restless and looking at the floor rather than at me’.

76. In his witness statement, Dr Thibaut stated the following:

‘Events of 26 July 2021

On 26 July 2021 I had a conversation with my line manager, Dr [F], regarding my work arrangements and an amendment which had been made to one of my reports. I can remember the discussion which took place and recall that I was terribly upset at the time.

I was unhappy with the lack of variation in my workload. I felt I was being treated unfairly in comparison with other clinical staff, that my workload was deliberately geared towards having no patient contact and I was not receiving any recognition for the work that I was undertaking. I had raised these issues with Dr Aon previous occasions, but felt that my concerns were not being addressed. I found this very upsetting and stressful.

In addition, I was upset that Dr B had marked up one of my reports and questioned a gold star alert which I had attached to highlight the presence of an abdominal aortic aneurysm. This is a system used to alert significant findings which require clinical follow up. I was upset by the manner in which Dr B had queried this with me as he had presumed that my report was incomplete, which I found humiliating.

With hindsight I recognise that I was frustrated, upset and irritated from the outset of this conversation.

I accept that I made a racist remark in reference to Dr B and that I referred to him in the manner particularised at Schedule 1. I am extremely sorry for doing so. There is no excuse for my behaviour and, although I was in an agitated state, I should never have used this racist language and accept that it was entirely wrong’.

77. In his oral evidence at the facts stage, Dr Thibaut accepted that he knew at the time he said it that his comment about Dr B would be perceived as being racist. He accepted that he knew that it was not an appropriate term to use in conversation. Dr Thibaut accepted that he used the term because it was offensive to Dr B and it was intended to belittle him.

78. Dr Thibaut said that, in a clear state of mind, he would not use racist language but he was irritated, frustrated and angry at the time.

On behalf of the GMC

79. The Tribunal received further versions of the hearing bundles which included some portions of the evidence which had previously been redacted.

On behalf of Dr Thibaut

80. The Tribunal received a Stage 2 GMC bundle from Dr Thibaut, which included the following documents:

- XXX;
- XXX;
- a testimonial letter dated 22 April 2024, sent by Dr I, consultant radiologist at the Trust;
- a BMJ Learning certificate of completion dated 22 November 2023 – ‘The Impact of Micro-behaviours’;
- a BMJ Learning certificate of completion dated 20 December 2023 – ‘Understanding Unconscious Bias’;
- a BMJ Learning certificate of completion dated 10 December 2023 – ‘Introduction to managing others through change’;
- a BMJ Learning certificate of completion dated 10 December 2023 – ‘Assertiveness in the Workplace’ and;
- a BMJ Learning certificate of completion dated 10 December 2023 – ‘The Art of Effective Feedback’.

81. The Tribunal also received a statement dated 24 March 2024 from Dr H – Dr Thibaut’s Responsible Officer.

82. Further, the Tribunal received oral evidence from Professor D at this stage.

Submissions

On behalf of the GMC

83. Ms Fordham submitted that the facts found proved in this case amount to serious misconduct and that Dr Thibaut’s fitness to practise is impaired by reason of that misconduct.

She referred the Tribunal to the 2024 edition of Good Medical Practice (GMP) and submitted that paragraphs 48, 49, 52 and 56, as set out below, were engaged in this case:

'48 You must treat colleagues with kindness, courtesy and respect.

49 To develop and maintain effective teamworking and interpersonal relationships you must:

- a. listen to colleagues*
- b. communicate clearly, politely and considerately*
- c. recognise and show respect for colleagues' skills and contributions*
- d. work collaboratively with colleagues and be willing to lead or follow as the circumstances require*

52 You must help to create a culture that is respectful, fair, supportive, and compassionate by role modelling behaviours consistent with these values.

56 You must not abuse, discriminate against, bully, or harass anyone based on their personal characteristics, or for any other reason. By 'personal characteristics' we mean someone's appearance, lifestyle, culture, their social or economic status, or any of the characteristics protected by legislation – age, disability, gender reassignment, race, marriage and civil partnership, pregnancy and maternity, religion or belief, sex and sexual orientation'

84. Ms Fordham submitted that Dr Thibaut has breached not only GMP, but also section 26 of the Equality Act 2010, which applies to all places of work. With regard to Dr C, she said that Dr Thibaut has accepted that his racist language was intended to upset him and Dr Thibaut knew it would be hurtful. With regard to Dr Thibaut's racist comment to Dr A about Dr B, Dr Thibaut accepted that it was language that he used for the purposes of belittling him.

85. Further, in the case of Dr C, Ms Fordham submitted that Dr Thibaut's actions had been threatening and caused him to fear for his safety. She submitted that Dr Thibaut's actions had a significant impact upon Dr C, and they caused him to take several months off work.

86. Ms Fordham submitted that it is telling that there were two incidents of racist language some months apart. It suggests not just a 'one-off' loss of control, but hints at some more deep-seated views which may need to be addressed. She said that there is not a great deal of material before the tribunal which shows that Dr Thibaut has truly tried to address the views that he may have held or currently holds. Nor is there material which really

goes to demonstrate that Dr Thibaut has sought to address the impact of his racist language upon the individuals concerned, or the impact of his intimidatory behaviour on Dr C.

87. Ms Fordham submitted that there is evidence in the unredacted documents of difficult interactions with other staff members at the hospital since the events in question. Ms Fordham submitted that Dr Thibaut has shown that he is not able to cope with the stresses of his role. She submitted that he does not seem to have significant insight into the effect on others of things he says, and he always seems surprised that people are upset by his behaviour.

88. Ms Fordham referred to XXX. She submitted that there is no detail on how Dr Thibaut demonstrated his remorse XXX, and there is no evidence of any reflection. Ms Fordham referred to Dr Thibaut having completed a number of BMJ courses, but she submitted that there is no evidence regarding any effect that they had on his attitudes or how they would impact on future interactions. Ms Fordham said that Dr Thibaut refers in his statement to having developed coping strategies, but she submitted that this is not elaborated upon and there is no *'concrete'* evidence of examples of such strategies.

89. Ms Fordham submitted that it was not until a year after the incident with Dr C that Dr Thibaut wrote a letter of apology to him, and she said that the letter itself makes no direct reference to Dr Thibaut's use of racist language. She submitted that the letter did not indicate insight into how Dr Thibaut's actions would have impacted upon Dr C.

90. Ms Fordham accepted that Dr Thibaut has agreed to engage in workplace mediation sessions with Dr C and, through no fault of his own, these have not yet taken place. However, she said there would have been nothing in the interim to have stopped Dr Thibaut from making a more fulsome and appropriate apology.

91. Ms Fordham submitted that the Tribunal will no doubt, and rightly, take into account any limitations on Dr Thibaut's ability to develop and demonstrate insight, XXX. She submitted, however, that despite XXX, his efforts were severely lacking.

92. Ms Fordham submitted that XXX does provide some useful context to the events under consideration. With regard to the issue of impairment, however she submitted that it does little to help the tribunal with the questions of remorse, insight, remediation or the risk of repetition. In these respects, Ms Fordham submitted that there is insufficient evidence to lead the Tribunal away from a conclusion that Dr Thibaut's fitness to practise is currently impaired.

93. Ms Fordham submitted that, overall, a finding of current impairment is required in accordance with limbs two and three of the overarching objective, that is:

- 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.

On behalf of Dr Thibaut

94. Mr Davidson submitted that Dr Thibaut accepts that the facts found proved represent a serious falling short of the standard expected of a registered medical practitioner which would be considered deplorable by fellow members of the profession. He indicated that he did not seek to persuade the Tribunal that the facts under consideration did not amount to serious misconduct.

95. Turning to the issue of impairment Mr Davidson invited the Tribunal to have regard to XXX and the circumstances in which his conduct took place. Mr Davidson submitted that it is clear from the evidence both of Dr A and Dr C that Dr Thibaut was clearly anxious and agitated at the time of each of the two individual incidents which gave rise to the Allegation.

96. Mr Davidson referred the Tribunal to Professor D's expert report in which he stated that *'in such heightened states of arousal [...] those who suffer from ASD find it harder to regulate their behaviour and control their emotions.'*

97. XXX

98. XXX

99. Mr Davidson submitted that it is important to emphasise that he does not seek to excuse Dr Thibaut's behaviour by reference to XXX, but to highlight to the Tribunal the impact XXX on matters such as the underlying reasons for the misconduct, Dr Thibaut's motivations, the scope for insight and remediation, and the risk of repetition.

100. Mr Davidson submitted that it is important to emphasise that, although the GMC points to a previous pattern of difficult interactions between Dr Thibaut and staff at the Trust, there is no suggestion that any of that behaviour was racist or included racist

comments, save for one comment which Dr Thibaut himself said that he had made some years previously.

101. Mr Davidson submitted that Dr Thibaut’s racist comments were uttered only once on each of the two occasions under consideration. He submitted that, while Dr Thibaut’s behaviour during the two events was clearly inappropriate, he is not a racist and his actions and comments were not the result of an underlying racist motivation.

102. Mr Davidson submitted that Dr Thibaut XXX after the incident in December 2021, and then XXX, which indicated a commitment to addressing the issues which gave rise to his actions. Mr Davidson submitted that the feedback XXX states that Dr Thibaut has expressed remorse in relation to his behaviour toward his colleagues and he appeared to be sincerely motivated to better understand his behaviour.

103. Mr Davidson referred the Tribunal to Dr Thibaut’s Responsible Officer’s letter and the courses he has undertaken in 2022 and extending through to 2023.

104. XXX

105. Mr Davidson submitted that, as a result of these two incidents, Dr Thibaut has been required by the Trust to work at home in isolation, which has been to the detriment of XXX. In the same period, Dr Thibaut has co-operated with the Trust and GMC investigations.

106. With regard to insight, Mr Davidson submitted that Dr Thibaut has apologised for his behaviour and openly acknowledged that his racist comments were unacceptable.

107. Mr Davidson submitted that Dr Thibaut has repeated his apology in his letter to Dr C, in his statement for these proceedings and his oral evidence. He submitted that insight is further shown through Dr Thibaut’s admissions to several of the paragraphs of the Allegation at the outset of this case, XXX.

108. Mr Davidson submitted that there has been no direct evidence of any repetition of inappropriate behaviour, and certainly no evidence of racist comments since 2021. He submitted that the Tribunal might accept that there has been little opportunity for the doctor to demonstrate that the risk repetition is low, given that he has been required by the Trust to work at home in isolation for the majority of the time.

109. Mr Davidson submitted that the GMC's reference to, and reliance upon, a history of problematic or difficult interactions between Dr Thibaut and colleagues prior to 2021 must be treated with considerable caution. He reminded the Tribunal that there are no specific details or direct evidence of such concerns and noted that there is no suggestion that they involved any racist or physically aggressive behaviour.

110. XXX. Mr Davidson stated that, prior to 2021, Dr Thibaut has not been the subject of any Trust disciplinary proceedings or GMC regulatory proceedings, despite his many years of practise.

111. Mr Davidson submitted that XXX, in conjunction with the consequential obligations placed on the Trust as his employers, both act to reduce any risk of future repetition. This is because Dr Thibaut now has the benefit of increased knowledge and awareness of the potential impact of XXX on his behaviour, and he has participated in XXX to assist with issues such as developing coping strategies and stress management. Mr Davidson said that Dr Thibaut has learned lessons and has engaged in activities which will develop his insight into XXX and in turn provide him with the ability to avoid the same situations arising again. This is not just through XXX or his participation in courses or reading, but also from the '*painful learning*' of participating in two disciplinary processes and having to work in isolation in the years since 2021.

112. He submitted that there is no reasonable prospect of the Dr Thibaut's behaviour being repeated in the future.

The Relevant Legal Principles

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

114. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts as found proved amounted to misconduct which is serious and, secondly, whether that misconduct (if found), leads to a finding of impairment.

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

116. The LQC referred the Tribunal to the test for impairment as set out in the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin) ('Grant')*:

'a) Whether the registrant 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;

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

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

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

117. The Tribunal reminded itself of the statutory overarching objective which is:
a. to protect and promote the health, safety and wellbeing of the public;

Determination on Impairment

Misconduct

118. The Tribunal first considered whether the facts which have been found proved amounted to misconduct and, if so, whether that misconduct was serious.

119. The Tribunal noted that Mr Davidson did not seek to persuade the Tribunal that Dr Thibaut's admitted actions or those which were found proved were such that they would not amount to serious misconduct.

120. The Tribunal considered Dr Thibaut's actions in referring to Dr B using the word '*paki*', and saying to Dr C '*that's what you yellow people are like*', fell so far short of the standards of conduct reasonably expected of a medical practitioner as to plainly amount to serious misconduct.

121. Dr Thibaut's remarks were openly racist and he accepted that he knew them to be such. Dr Thibaut accepted that he intended to belittle Dr B, and that he intended to cause hurt to Dr C. Dr Thibaut's racist comments occurred in the workplace on two separate

occasions some months apart. His actions in respect of Dr C constituted a breach of section 26 of the Equality Act 2010 and amounted to *‘unwanted conduct related to race which had the purpose or effect of violating the dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment’* for Dr C.

122. The Tribunal acknowledged that both incidents involving racist language occurred while Dr Thibaut was in a heightened state of stress / distress. While cognisant of the potential impact of XXX on his ability to control his emotions and behaviour in certain circumstances, the Tribunal did not, however, consider that the evidence, including that given by Professor D, regarding XXX was such that his racist language could be regarded as anything other than serious misconduct.

123. The Tribunal also considered that Dr Thibaut’s actions in refusing to leave Dr C’s office, stepping toward Dr C with balled fists and asking *‘do you want to fight me’*, saying *‘go on then, call security’* and cancelling two calls by Dr C to security, were such that they fell so far short of the standards of conduct reasonably expected of a medical practitioner as to plainly amount to serious misconduct. Dr Thibaut’s actions were aggressive, intimidating and frightening to Dr C. Such behaviour is unacceptable in any workplace.

124. The Tribunal again took into account XXX. The Tribunal again noted that Dr Thibaut was in a state of heightened stress / distress during his meeting with Dr C. Again, however, the Tribunal did not consider that the evidence given, including that of Professor D, regarding XXX was such that his intimidating and aggressive behaviour could be regarded as anything other than serious misconduct.

125. The Tribunal reviewed GMP and, in particular, those paragraphs of GMP which Ms Fordham submitted had been breached by Dr Thibaut’s actions, as outlined above. The Tribunal noted that Ms Fordham referred to the 2024 version of GMP, which was not in operation at the time of Dr Thibaut’s actions. It therefore considered the 2013 version, which was in place at the relevant time. From that version, the Tribunal considered that the following paragraphs were engaged and had been breached by Dr Thibaut in his actions:

‘35 You must work collaboratively with colleagues, respecting their skills and contributions.

36 You must treat colleagues fairly and with respect.

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

59 You must not unfairly discriminate against patients or colleagues by allowing your personal views to affect your professional relationships...'

Impairment

126. Having determined that the facts which have been found proved all amount to serious misconduct, the Tribunal went on to consider whether, as a result of that serious misconduct, Dr Thibaut's fitness to practise is currently impaired.

127. XXX

128. The Tribunal was very concerned by Dr Thibaut's racist comments and the fact that they occurred some months apart on two occasions. The comments made were overtly discriminatory and offensive. They represented unacceptable language from a medical practitioner in any context, and particularly so in the workplace. Dr Thibaut's actions breached a fundamental tenet of the medical profession to treat others fairly, equally and without discrimination. He accepted that, at the time he made the comments, he knew they were racist.

129. The Tribunal was also concerned by Dr Thibaut's aggressive and intimidating actions toward Dr C, which clearly appeared to have had a significant and detrimental impact upon him. Those actions also represented behaviour which is completely unacceptable in the workplace.

130. The Tribunal considered Dr Thibaut's actions, in particular his racist actions, to be difficult to remediate. As previously stated, it considered racist beliefs and actions by a doctor to breach of a fundamental tenet of the medical profession. Having regard, however, to the specific racist misconduct under consideration, together with the impact of XXX, the Tribunal considered that the misconduct in this case is capable of remediation.

131. The Tribunal noted that there are no clinical concerns in this case and Dr Thibaut is considered to be a capable medical practitioner in his field of expertise. The Tribunal noted the positive comments of Dr I in the testimonial submitted. It noted that Dr I stated that he has not encountered any problems in his interactions with Dr Thibaut and at no time did Dr Thibaut ever voice any inappropriate or prejudicial remarks in general or toward any colleague.

Remediation and Insight

132. The Tribunal acknowledged that Dr Thibaut has demonstrated some remorse for his actions and has recognised that they would be considered by others to be offensive. It noted that Dr Thibaut did write to Dr C with an apology and, via his counsel, offered a further apology in the course of this hearing.

133. The Tribunal noted from the report from XXX that Dr Thibaut is said to have expressed remorse for his behaviour XXX and to be *‘sincerely motivated to better understand his behaviour’*. The report outlined the author’s view that Dr Thibaut *‘appeared to develop an improved understanding of factors likely to be influencing his expression of anger, as well as his willingness to change his behaviour to address aspects of his behaviour that he recognised were inappropriate’*. The Tribunal considered that these were positive indications of Dr Thibaut’s desire and willingness to address the issues which have brought him before the Tribunal.

134. However, the Tribunal was not satisfied Dr Thibaut has at this time demonstrated a full understanding of his misconduct or full insight into his actions. The Tribunal considered that Dr Thibaut did not in his written or oral evidence appear to fully acknowledge the seriousness of his actions or their impact on others.

135. The Tribunal noted that Dr Thibaut initially denied using racist comments and has throughout the period of the Trust and GMC investigations given different accounts of the incident with Dr C. Dr Thibaut said in his oral evidence that, since his original account, he is now in a *‘different frame of mind’* and accepts that he made the comment and that it was racist.

136. The Tribunal noted the following excerpt from Dr H’s statement:

‘The People Business Manager and I met with Dr Thibaut on 8 March 2024. During this discussion, Dr Thibaut outlined remorse for the incidents that had occurred. Dr Thibaut was asked what he understood to be the reason for the recent investigation, temporary restriction regarding on-site working and referral to the GMC.

*During this discussion, Dr Thibaut noted that he had “called a P**i doctor a P**i”. Whilst this seemed unintentional, inadvertent and was possibly being used as a literal abbreviated descriptor, it was necessary that I draw the language use to his attention and the inappropriateness of it in any setting, as he seemed unaware of its impact.’*

137. The Tribunal accepted Dr H’s assessment that Dr Thibaut’s use of the racist word in this context seemed unintentional, inadvertent and possibly being used as a literal abbreviated descriptor, however it caused the Tribunal to hold a concern as to whether Dr Thibaut does, in fact, fully understand how unacceptable his use of racist language was.

138. The Tribunal noted that Dr Thibaut continues to assert that Dr C was partially responsible for the events during the appraisal meeting due to Dr C's own behaviour towards Dr Thibaut. He referred to Dr C '*using the stick instead of the carrot*', being '*unsympathetic*' and trying to '*baffle*' him with statistics.

139. XXX.

140. However, the Tribunal was concerned by Dr Thibaut's assertions in his oral evidence that he was in control of his emotions during the appraisal meeting and his denial that he was angry. Dr Thibaut denied that he became aggressive in his appraisal meeting. In circumstances in which Dr Thibaut had become frustrated and irritated to the extent that he had not only referred to Dr C using a racist slur, but was also refusing to leave the office and security were being called, the Tribunal considered Dr Thibaut's own view of his actions, notwithstanding XXX, to be somewhat indicative of a lack of insight in not recognising or accepting that he had become angry or lost control of his emotions.

141. The Tribunal noted that Dr Thibaut appeared to minimise his actions to an extent, for example denying in his oral evidence that cancelling a call to security was aggressive, and instead categorising it as '*perhaps mischievous*'.

142. The Tribunal agreed with Ms Fordham that Dr Thibaut's written apology to Dr C might usefully have been more directly accepting of, and apologetic for, the use of racist language.

143. The Tribunal took into account that the events under consideration occurred when Dr Thibaut was in a state of heightened stress / distress, and Professor D's evidence of how such situations can impact on a person XXX. The Tribunal considered that XXX may well have factored into his actions in respect of both incidents under consideration, however the Tribunal did not consider that XXX could serve to excuse those actions.

144. Furthermore, the Tribunal noted it had not received detailed evidence in writing or orally of how Dr Thibaut would handle a stressful situation in the future, and what safeguards he has put or will put in place to prevent similar misconduct occurring again. Having said that, the Tribunal did accept that, having been formally notified of XXX, the Trust does now also bear an obligation to XXX and will likely be required to take steps to assist Dr Thibaut in dealing with or avoiding stressful situations. The Tribunal also accepted that Dr Thibaut appears to have meaningfully engaged XXX, which was suggestive of an increasing level of insight.

145. The Tribunal had regard to the CPD courses undertaken by Dr Thibaut. The Tribunal acknowledged that Dr Thibaut completed courses which included unconscious bias training, civility training and a course on the impact of ‘micro-behaviour’. These courses might be said to relate to the issues under consideration. However, the Tribunal noted that the courses themselves appeared to be limited in duration. Further, the Tribunal considered that, in the absence of evidence from Dr Thibaut of reflection on his learning, it was unable to assess whether or to what extent any of the specific elements of the Allegation had been addressed.

146. The Tribunal noted from Dr H’s statement that Dr Thibaut has worked with a Trust coach, which was a recommendation made by the Trust disciplinary panel, to reflect on his previous actions. These coaching sessions were said to be continuing.

147. The Tribunal did not attach any weight to the anecdotal or hearsay evidence of communication or interpersonal difficulties between Dr Thibaut and colleagues since 2021.

148. Overall, the Tribunal concluded that Dr Thibaut has demonstrated partial and developing insight into his misconduct, but this is not complete. It also determined that, while Dr Thibaut has indeed taken positive steps towards remediation, he has not yet demonstrated that he has remediated his misconduct. In the circumstances as outlined, although Dr Thibaut has shown a desire and willingness to address the issues which have given rise to this case, the Tribunal considered that there currently remains a risk of repetition, particularly in situations involving heightened stress or difficult conversations with colleagues.

149. Taking all of the available evidence into account, the Tribunal therefore considered that a finding of impairment is currently required to meet limbs two and three of the overarching objective:

- *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.*

150. Dr Thibaut’s misconduct brought the medical profession into disrepute. The Tribunal considered that confidence in the profession would be undermined and that there would be a failure to promote and maintain professional standards if a finding of impairment were not made in this case.

151. Accordingly, the Tribunal determined that Dr Thibaut’s fitness to practise is impaired by reason of his misconduct.

Determination on Sanction - 20/05/2024

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

The Evidence

153. The Tribunal had regard to the evidence received during the earlier stages of the hearing where relevant to reaching a decision on sanction.

Submissions

On behalf of the GMC

154. Ms Fordham referred the Tribunal to those paragraphs of the Sanctions Guidance (November 2020) (‘the SG’) which the GMC considered to be of relevance and submitted that the appropriate and proportionate sanction is a period of suspension.

155. In respect of the mitigating factors to be taken into account in this case, Ms Fordham referred to the previous findings of the Tribunal and submitted that Dr Thibaut’s insight and remediation is partial and developing. She stated that Dr Thibaut made admissions to the majority of the allegations at the outset of the hearing and referred to the lapse of time since the events under consideration – approximately two and a half years since the latter of the two incidents.

156. In respect of the aggravating factors, Ms Fordham submitted that Dr Thibaut’s efforts to remediate are noticeably scant. She said that there is limited evidence of relevant CPD courses having been completed, and there is no evidence of what Dr Thibaut has learned or taken from such courses. Ms Fordham submitted that there is very little evidence that Dr Thibaut has reflected on his misconduct, or that he has gained a proper understanding of the impact of his actions on Dr C. Further, she submitted there is little material before the Tribunal which demonstrates how Dr Thibaut would manage stressful situations in the future.

157. With regard to Dr Thibaut's letter of apology to Dr C, Ms Fordham referred to the lapse of a year prior to this being sent. She submitted that, overall, the development of Dr Thibaut's insight and his efforts to remediate have not been timely. Ms Fordham submitted that, until relatively recently Dr Thibaut continued to claim that he did not recall saying anything racist in his conversation with Dr F, and he continued to criticise Dr C for portraying himself as a victim.

158. Ms Fordham submitted that, taking into account the evidence of Professor D, there is a degree to which XXX may be a relevant factor to consider. She said that there is a link between stressful environments and Dr Thibaut's reactions. However, Ms Fordham submitted that the Trust had clearly already gone to some lengths to address Dr Thibaut's difficulties with actions such as the reduction in patient-facing work and reduction in the volume of scans that he was required to review.

159. Ms Fordham submitted that the evidence of both Dr C and Dr A would suggest that they, in particular, had taken steps to help Dr Thibaut and had been continuing to try to help him cope with any stress that he may have felt at work. She said that they had tried as best they could to make allowances for any difficulties that Dr Thibaut might have had. Ms Fordham submitted that, nevertheless, Dr Thibaut did not appear to recognise or appreciate those efforts.

160. Ms Fordham submitted that there are no exceptional circumstances in this case which would justify the Tribunal taking no action, given that the nature of the serious misconduct conduct involved. She submitted that that that an order of conditions would not appropriately address the issues arising in this case. Ms Fordham submitted that, overall, a period of suspension was appropriate.

On behalf of Dr Thibaut

161. Mr Davidson submitted that Dr Thibaut is of previous good character, having been in practice since 1986 – some 38 years - and has never before been required to appear before his regulator, either in the UK, Dubai or Belgium.

162. Mr Davidson submitted that the circumstances of Dr Thibaut's misconduct involved him experiencing workplace stress in 2021, which derived from a perception of injustice. Mr Davidson submitted that Dr Thibaut perceived his work allocation to be different to that of

his colleagues, and Dr Thibaut's resulting sense of injustice was compounded by Dr C's comparison of his CPD with others during the appraisal meeting.

163. Mr Davidson submitted that the GMC's suggestion that the steps taken by Dr A and Dr C regarding the allocation of work to Dr Thibaut and the reduction of patient-facing work represented a '*cheap-fix*' on the part of the Trust, and these actions did not address XXX or assist him in real terms. Mr Davidson submitted that these actions were in fact more to the benefit of the Trust and they resulted in Dr Thibaut working in relative isolation and feeling upset and '*something of an outlier*' within the department.

164. Mr Davidson submitted that both GMC witnesses commented on Dr Thibaut's anxiety and his agitation at the time of his misconduct. XXX.

165. Mr Davidson submitted that it is important to take into account the lapse of time since the latter of Dr Thibaut's instances of misconduct. He reminded the Tribunal that there has now been some two and a half years since that incident in 2021, and during the intervening period there has been no repetition of inappropriate behaviour. He said that this period of time reflects a significant break in any pattern of behaviour.

166. Mr Davidson submitted that Dr Thibaut has shown a desire and willingness to address the issues which have given rise to this case. He has expressed regret and remorse from the time of the original Trust investigation. Mr Davidson submitted that regret and remorse is a feature of Dr Thibaut's XXX discussions with XXX, as mentioned within his letter to Dr C.

167. Mr Davidson submitted that Dr Thibaut's XXX, his participation in relevant CPD, and his co-operation with the Trust and GMC investigations indicate that Dr Thibaut has insight and a willingness and desire to address his misconduct.

168. Mr Davidson submitted that Dr Thibaut has not been the subject of an interim order of conditions while the GMC investigation has been ongoing, and the written warning imposed by the trust for a period of 18 months has now lapsed.

169. Mr Davidson submitted that Dr Thibaut has been working in isolation and he referred to the effect, as outlined in the report of Professor D, that this has had on XXX.

170. Mr Davidson stated that Dr Thibaut has resigned from the Trust, which will become effective at the end of his three-month notice period on 11 June 2024. He said that the primary reason for his resignation has been the adverse effect of isolation XXX.

171. Mr Davidson said that Dr Thibaut awaits the outcome of this hearing before deciding if he will look for alternative employment as a medical practitioner.

172. Mr Davidson submitted that, taking into account Dr Thibaut's desire and willingness to remediate, together with the steps he has taken in that regard, it may be open for the Tribunal to formulate conditions in this case. He said that conditions could be imposed which would require Dr Thibaut to complete further courses XXX and continue on his trajectory towards insight and remediation.

173. Mr Davidson submitted that, if the Tribunal consider suspension to be the appropriate sanction, then a brief period of suspension would be most appropriate in the circumstances of this case, and he said that there would not be a need for a review hearing.

The Tribunal's Determination on Sanction

174. The decision as to the appropriate sanction, if any, to impose, is a matter for the Tribunal exercising its own judgement. The Tribunal reminded itself that the main purpose of imposing a sanction is to protect the public. Sanctions are not intended to be punitive, although they may have a punitive effect. In reaching its decision, the Tribunal applied the principle of proportionality, balancing Dr Thibaut's interests with the public interest. It took account of the SG and it had regard to the overarching objective. The Tribunal also took into account its conclusions as outlined in its determinations on facts and impairment.

Aggravating Factors

175. The Tribunal identified the following aggravating factors in this case:

- Dr Thibaut's actions amounted to discrimination on the basis of race against colleagues;
- Dr Thibaut's use of racist remarks occurred on two occasions;
- Dr Thibaut did not immediately accept or apologise for his misconduct; and
- Dr Thibaut's misconduct toward Dr C placed him in fear and involved words relating to physical violence.

Mitigating Factors

176. The Tribunal identified the following mitigating factors:

- Dr Thibaut has demonstrated a desire and willingness, and has taken steps, to gain insight and to remediate his misconduct, albeit that he has not yet achieved full insight or fully remediated;
- XXX;
- XXX; and
- Dr Thibaut was at the time of both instances under consideration noted to be agitated and stressed;
- Dr Thibaut has now made attempts to apologise to Dr C (albeit that a more fulsome and focussed apology might assist) and he has demonstrated remorse for his actions;
- There has been no repetition of the misconduct over the two and a half years since the latter of the two incidents.

177. The Tribunal balanced the aggravating and mitigating factors throughout its deliberations and went on to consider each sanction in order of ascending severity, starting with the least restrictive.

No action

178. The Tribunal first considered whether to conclude the case by taking no action. It noted that the taking of no action following a finding of impaired fitness to practise is generally only appropriate in exceptional circumstances.

179. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

180. The Tribunal next considered whether to impose conditions on Dr Thibaut's registration. Taking into account the context of Dr Thibaut's misconduct and the circumstances of the case overall, the Tribunal concluded that no measurable or workable conditions could be formulated in this case which would address the misconduct under consideration. The Tribunal considered that, given the seriousness of the misconduct, the imposition of conditions would not meet the requirements of the overarching objective.

Suspension

181. The Tribunal then considered whether suspending Dr Thibaut's registration would be appropriate and proportionate.

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

183. The Tribunal considered that Dr Thibaut’s misconduct – in particular his misconduct involving racist comments - was very serious and significantly departed from GMP. However, it took into account the fact that this occurred on two occasions over a lengthy career during which Dr Thibaut has not come to the attention of his regulator. The Tribunal also recognised that there has been no repetition of his misconduct in the two and a half years since the latter of the two incidents.

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

185. The Tribunal had regard to its findings in respect of misconduct and impairment, and to its previous conclusions in relation to Dr Thibaut’s insight, remediation and the risk of repetition. It reminded itself of its conclusion that Dr Thibaut’s misconduct is capable of remediation.

186. The Tribunal also reminded itself that Dr Thibaut has demonstrated some positive evidence of developing insight and has taken steps towards remediation. He made significant admissions at the outset of the hearing and accepted significant aspects of his misconduct. Dr Thibaut has demonstrated remorse, albeit that the Tribunal identified that such remorse might be more fully articulated.

187. Whereas the Tribunal previously concluded that a risk of repetition currently remains, it considered that Dr Thibaut is currently on a path toward both remediation and developing full insight which, if successful, will significantly reduce that risk. In the circumstances of this case, notwithstanding the risk of repetition previously identified, the Tribunal determined that paragraph 93 of SG applied in support of suspension as the appropriate sanction:

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

188. Further, the Tribunal considered that the following paragraphs of SG also applied in the circumstances of this case in support of suspension as the appropriate sanction:

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

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

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

f No evidence of repetition of similar behaviour since incident.

189. Taking all of the evidence, submissions and its own earlier conclusions into account, the Tribunal determined that a period of suspension would be an appropriate and proportionate sanction balancing Dr Thibaut’s interests with those of the public. Additionally, it would have the deterrent effect of sending a signal to Dr Thibaut, the profession and the public that his misconduct was unbecoming of a registered doctor and would not be tolerated. It would also allow him time to continue to develop and demonstrate insight, including demonstrating an appreciation of the impact of his actions on his colleagues and to offer a full apology.

190. In the circumstances of this case, the Tribunal considered that an order of erasure would be disproportionate and amount to an unnecessarily punitive sanction. It considered that Dr Thibaut should be afforded the further opportunity to gain full insight and complete his remediation.

Duration of Suspension

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

192. The Tribunal considered that, while it could not excuse Dr Thibaut's actions and racist comments, it was important to take into account XXX and the fact that XXX impacts on his communication and interactions with others, particularly in times of stress. XXX. Dr Thibaut was at the time of both incidents noted to be agitated and stressed.

193. In all the circumstances, the Tribunal determined that the appropriate period of suspension which would be sufficient to meet Dr Thibaut's misconduct is a period of three months.

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

Review Hearing Directed

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

- any ongoing Continuing Professional Development, including reflections on his learning;
- reflections on his misconduct and the findings of the Tribunal;
- steps taken to remediate;
- full insight into his misconduct; and
- coping strategies to be implemented in stressful situations.

196. It is also open to Dr Thibaut to provide any other evidence he considers helpful to the reviewing Tribunal.

Determination on Immediate Order - 20/05/2024

197. Having determined to suspend Dr Thibaut's registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr Thibaut's registration should be subject to an immediate order.

Submissions

198. On behalf of the GMC, Ms Fordham submitted that it was not necessary in this case to make an immediate order.

199. On behalf of Dr Thibaut, Mr Davidson submitted that an immediate order is neither necessary nor desirable in the public interest.

The Tribunal's Determination

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

***172** The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor. The interests of the doctor include avoiding putting them in a position where they may come under pressure from patients, and/or may repeat the misconduct, particularly where this may also put them at risk of committing a criminal offence. Tribunals should balance these factors against other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.*

***173** An immediate order might be particularly appropriate in cases where the doctor poses a risk to patient safety. For example, where they have provided poor clinical care or abused a doctor's special position of trust, or where immediate action must be taken to protect public confidence in the medical profession.*

***178** Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect."*

201. The Tribunal had regard to its previous determinations and the submissions made by Ms Fordham and Mr Davidson.

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

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

204. Case concluded.

SCHEDULE 1

“Paki doctor”

SCHEDULE 2

“that’s what you yellow people are like”