PUBLIC RECORD

Dates: 31/10/2022 - 04/11/2022

Medical Practitioner's name:	Dr Hwa FOO
GMC reference number:	4451181
Primary medical qualification:	MB BCh 1993 National University of Ireland

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

Summary of outcome

4 months suspension

Tribunal:

Legally Qualified Chair	Mr Andrew Lewis
Medical Tribunal Members:	Dr Michelle Taggart, Mr Julian Williams

Tribunal Clerk:	Ms Fiona Johnston

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Christopher Mellor, Counsel, instructed by Medical Protection
GMC Representative:	Mr Terence Rigby, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on the Facts and Impairment - 02/11/2022

(1) THE FACTS

Background

1. Dr Foo qualified with a MB BCh BAO from the Royal College of Surgeons in Ireland in 1993. Dr Foo moved to the UK in 1994 after having completed one year as an intern in Ireland between 1993 and 1994. Dr Foo gained full registration with the GMC in 1994. Thereafter Dr Foo started his training in obstetrics and gynaecology at the Countess of Chester Hospital, before completing a two-year rotation at St George's Hospital in London. Dr Foo then decided to turn to a career in general practice and completed his GP vocational training in 1998 as part of the Merseyside Training Scheme.

2. At the end of 1998/early 1999, Dr Foo moved back to Malaysia, where he worked as a general medical officer for the Ministry for Health. He returned to the UK in March 2001 and took up a locum position with XXX ("the Practice") in Cambridge. In September 2001, he was offered a full-time position at the Practice and after six months he was offered a partnership at the Practice, where he has worked since then, for over 20 years.

3. The Allegation arises from Dr Foo's treatment of one patient, a 12 (nearly 13) year old boy known throughout these proceedings as Patient A, in September 2020. Patient A was a long-standing patient of the Practice, as were his parents.

4. In September 2020, special precautions were in place in all GP surgeries, as a result of the Covid-19 pandemic. Most GP appointments were conducted by telephone and only a small number of patients were "triaged" to see a doctor face to face.

5. On 28 September 2020 Dr Foo had a face-to-face appointment with Patient A and it is alleged that he failed to examine Patient A's abdomen and subsequently made a false entry in Patient A's records in which he recorded that he had carried out such an examination and recorded the results.

The circumstances which led to that examination are as follows.

18.09.2020 - Patient A came home from school vomiting and complaining of abdominal pain.

21.09.2020 - Patient A's mother phoned 111 and was instructed to seek an in-person exam with their GP.

22.9.2020- Patient A's mother phoned [the Practice] and had a triage telephone consultation with Dr Foo who booked a same day, in-person appointment with another doctor. The doctor conducted a physical exam, tested Patient A's urine, diagnosed him with a urinary tract infection and prescribed antibiotics.

25.9.2020 -Patient A's mother phoned [the Practice] to say that the antibiotics did not seem to be working. The receptionist told her that the urine sample culture from 22.9.2020 came back normal. Patient A's mother had a triage telephone consultation and explained he had ongoing abdominal pain, was losing weight and had black circles under his eyes. Patient A was prescribed a new, broad spectrum antibiotic.

28.9.2020 - Patient A's mother phoned [the Practice] to report that his health was continuing to decline. She had a triage telephone consultation where she explained that Patient A had diarrhoea, no appetite and a very tender abdomen. She mentioned that he had trouble standing and that he held his side when he walked to the toilet. A same day, in-person consultation with Dr Foo was booked, which Patient A attended with his mother. At that consultation, Dr Foo did a urine test and told her that Patient A's sample was full of ketones indicating that he was dehydrated. Dr Foo then explained that the antibiotics needed more time to work. Dr Foo said that Patient A would feel better if he drank at least 2 litres of water a day.

It is at that consultation that it is alleged that Dr Foo failed to examine Patient A's abdomen and made the false entry in his records.

01.10.2020- Patient A's mother phoned [the Practice] and had a triage telephone consultation, following which, an in-person appointment was scheduled for later the same day with Dr Foo's colleague. The doctor examined Patient A and immediately sent him to A&E at Addenbrookes hospital.

01.10.2020 – 18.10.2020 Patient A spent 18 days in the children's ward of Addenbrookes. A CT scan showed a very thick-walled abscess associated with his appendix.

07.10.2020 - Patient A received general anaesthesia and an interventional radiologist used imaging guidance to place a tube in his abdomen to drain the abscess. A PICC line was also inserted. The abscess was drained for 10 days. Patient A started showing signs of sepsis and his infection could not be initially brought under control. As a precaution, he was consulted by a paediatrician from intensive care unit.

18.10.2020 -Patient A was discharged and continued to receive daily treatment of IV antibiotics as an outpatient in Addenbrookes as well as with a community nurse who visited his home.

In November 2020, Patient A's mother raised with the Practice her concerns that Patient A had not been properly examined during his consultation with Dr Foo on 28 September 2020. On 11 January 2021 the doctors who had been concerned with Patient A's treatment held a meeting to discuss Patient A's case. On 13 January 2021 the doctors, including Dr Foo, held an online meeting with Patient A's mother.

Following that meeting, Dr Foo wrote to patient A's mother, on 18 February 2021, acknowledging that he had not examined patient A's abdomen on 28 September 2020 and had subsequently made a false entry in Patient A's notes.

In the meantime, Patient A's mother made a formal complaint to the GMC about both Dr Foo's failure to examine Patient A's abdomen on 28 September and about the false entry he made in Patient A's records.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted applications by Mr Terence Rigby, Counsel, on behalf of the GMC, made pursuant to Rule 17(6) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to withdraw Paragraphs 1a (ii) of the allegation. Mr Christopher Mellor, Counsel, did not oppose the application. The Tribunal granted the application. The reasons for the Tribunal's decision are set out in Annex A.

7. Following Mr Rigby's application the Tribunal determined to amend paragraph 1a (ii) of the Allegation under Rule 17(6) of the Rules by striking out paragraph 1a (ii).

The Allegation and the Doctor's Response

8. The Allegation made against Dr Foo is as follows:
That being registered under the Medical Act 1983 (as amended):

1. On 28 September 2020 you consulted with Patient A and you:

1. failed to:

    1. perform an examination of his abdomen; Admitted and found proved

    2. ~~provide safety netting advice to contact you should his condition deteriorate or not improve;~~ Withdrawn

2. falsely recorded that you had examined Patient A's abdomen. Admitted and found proved

2. You knew the information recorded at paragraph 1b was untrue. Admitted and found proved

3. Your actions as described at paragraph 1b were dishonest by reason of paragraph 2. Admitted and found proved

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

The Admitted Facts

9. At the outset of these proceedings, through his counsel Mr Christopher Mellor, Dr Foo made admissions to all paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation were admitted and found proved.

10. Following Dr Foo's admissions and before the GMC opening, both parties raised an issue regarding the Tribunal having seen the partially unredacted bundle. Mr Rigby having agreed admissions with Mr Mellor, submitted that:

4. That there is no allegation that Dr Foo claimed that he had done an abdominal examination, and therefore failed to tell the truth, either at the Significant Event Analysis Meeting (on 11 January 2021) or at the virtual meeting with Patient A's mother on 13 January 2021; and the Tribunal should entirely disregard any suggestion to that effect that they may have seen in the unredacted correspondence from Patient A's mother (who has not provided a witness statement and is not being called in this case).

5. Similarly, there is no allegation that Dr Foo has ever been involved in any similar case and, once again, the Panel should entirely disregard any suggestion that they may have seen to that effect.

6. With Patient A's mother's concerns in mind, the GMC expert evidence is that it is not possible to say what an abdominal examination would have shown, or led to, if it had been undertaken on 28 September 2020 (see, for example, Dr E's report at paragraph 3(c) at p.132 of the GMC Hearing Bundle).

7. Again, despite Patient A's mother's concerns, the Addenbrookes' clinicians would not have had access to Dr Foo's record of his consultation on 29 September 2020, and Dr May's emergency admission letter on 1 October 2020 made no reference to that consultation. Consequently, as a matter of fact, the Addenbrookes' doctors' decision making could not have been prejudiced by it (as confirmed in Dr B's email, dated 18 February 2021, at ps.91-92 in the GMC Hearing Bundle).

(2) IMPAIRMENT

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

Factual Witness Evidence

12. Dr Foo provided a witness statement dated 30 October 2022 and gave oral evidence in which he stated:

> The incident occurred during the Covid-19 pandemic. Most consultations with patients were by telephone and if a patient needed to be seen, a face to face consultation was allocated during triage, usually for later that day. Only one doctor was seeing patients face to face between 2pm and 5pm each day, and these sessions were so busy they tended to be overbooked and would overrun. It was intended that up to 12 patients would be seen during those three hours, with 15 minutes allocated for each patient. However, frequently additional patients would have to be seen. After each patient the room had to be sanitized by the GP and the GP then had to change their PPE before the next patient. These consultations were extremely time pressured.
>
> Dr Foo stated that on the 28 September 2020 he saw Patient A for a face to face consultation. As he was the duty doctor on call that day and the only GP seeing patients face to face. He said that Patient A was chatty and that he looked quite well. Patient A seemed to be very engaged, quite cheerful and mature for his age.

Dr Foo explained that he would have reviewed Patient A's previous notes before seeing him he noted a reported history of tiredness, reduced appetite, intermittent lower abdominal discomfort and nausea. Patients A's mother had brought a urine sample in with them, which he tested. Dr Foo said he used a dipstick to test the urine, he told Patent A's mum the result of the dipstick and said there was a trace of ketones in it, but there's nothing else. He checked Patient A's temperature, which was normal (36.7).

Dr Foo stated that his clinical impression at the time was that the previously diagnosed urine infection was the likely cause of Patient A's ongoing symptoms, and that his advice was to allow a few more days for the antibiotics to treat the infection. He said that he advised on increased fluid intake and to continue the antibiotics while we awaited the results from the urine culture.

Dr Foo admitted that he did not examine Patient A's abdomen. He also admitted that when he completed Patient A's records after the consultation, under the examination section, he recorded "abd (abdomen) soft nontender". Dr Foo explained that he had about 2-3 minutes between consultations to enter the information into the computer system. Dr Foo said that he had no recollection of making this entry. However, Dr Foo accepted that he did not carry out an abdominal examination during this consultation and this entry is therefore inaccurate and misleading.

Dr Foo said it was completely out of character for him and that he was incredibly sorry, upset, and completely horrified that it happened. The incident has had a profound effect on him, and he has come to terms with the whole process of his actions, his mistake and wrongdoing.

Dr Foo said that he has reflected extensively on his dishonest behaviour and made many changes to his working pattern and working conditions. He has also reduced the number of sessions and also consciously takes regular lunch breaks to rest and reflect on his work and the care he gives to his patients at practice level. Dr Foo stated that the Practice has now introduced regular catch-up intervals to allow doctors to manage time better to reduce stress caused by delays.

Dr Foo said he has undertaken courses and now understands what he has done wrong. The courses have given him a structured reflection to his wrongdoing and reinforced the absolute importance for him to never repeat his behaviour or his dishonesty.

Testimonial Witness Evidence

13. Dr B a GP at the practice provided oral evidence on behalf of Dr Foo. Dr B also provided a testimonial statement dated 24 October 2022 in which he stated:

'[the Practice] has faced several significant challenges during, and since, the Covid pandemic. Working in General Practice during the pandemic was very stressful and difficult. Since the end of the pandemic General Practice has faced a large increase in workload and patient contact, including telephone, video and face to face. In addition, we have had to accommodate both clinical and non-clinical staff being on sick leave or self-isolating due to Covid infections.

There have been difficulties in recruiting doctors, nurses, administrative and reception staff. Patient expectations have increased, although I do feel that we have largely been able to meet them. Out of necessity the doctors have had to step in, often at short notice, to cover sessions left unmanned due to ill health and self-isolation.

Dr Foo has consistently worked additional sessions without complaint and with good grace. He has contributed significantly to the management of the practice and the challenges General Practice has faced over the past 3 years. Dr Foo has maintained a high level of clinical care, which has rightly been appreciated by patients and staff here at [the Practice]. He has always, and continues, to act in a highly professional manner and I have had no concerns over the standard of his clinical practice, morality or ethics.

I have never had cause to question his honesty and integrity and there have been no probity issues. He is well regarded by patients, staff and colleagues. He is responsible for organising our medical student teaching and administers this in an efficient and effective manner. He is a very highly valued member of [the Practice] partnership.

I consider him to be an excellent doctor, who shows compassion and empathy and, as noted above, his clinical skills are very good. My belief is that the actions which have led to the MPT hearing are very much out of character.'

Documentary Evidence

14. The Tribunal had regard to the documentary evidence provided by the parties. This evidence included, but was not limited to witness statements, Dr Foo's Work Details Form, Patient A's medical records, local investigation documents from the practice, GMC Expert Report, CPD Certificates, testimonials from a number of colleagues who have known Dr Foo for a number of years all of whom had been informed of the allegations and Dr Foo's admissions to it and Dr Foo's reflective statement.

Submissions

Mr Rigby on behalf of the GMC

15. Mr Rigby stated that it is the GMC submission that by reason of the charges which Dr Foo has admitted his fitness to practice was and remains impaired.

16. Mr Rigby took the Tribunal through the chronology of events in the case. He submitted that Patent A's symptoms were progressing and the consultation on the 28 September was in effect an urgent consultation. He reminded the Tribunal that Dr Foo has admitted that he failed to examine Patient A's abdomen on that day and subsequently made a false entry in the records shortly after the consultation. He submitted that Dr Foo could readily have made contact with patient A's mother, who was clearly available and no doubt she would have returned straight away with Patient A to be examined. He submitted that Dr Foo failed to do that but made a false record of an examination which had not taken place.

17. He acknowledge that the GMC did not submit that there were adverse consequences from the doctor's failure to examine or making a false entry in the medical records. He submitted that no one knows what Dr Foo would have found on the 28th of September and clearly one cannot know whether he would have saved Patient A from delay. Nevertheless, he reminded the Tribunal that Patient A was in hospital for 18 days, facing very considerable risk, he had an operation under general anaesthetic and required treatment for a considerable time because, he submitted, that illustrated the level of risk to which Patient A was exposed by the Dr Foo not examining correctly.

18. He further submitted that there is no mitigation available to Dr Foo within the circumstances of what he did because any doctor would have seen from the circumstances how Patient A's condition had progressed that there was a need for an examination of Patient A and no doctor should tell a lie.

19. With regard to failing to examine patient A, he submitted it was in breach of paragraphs 15-A and B of good medical practice ('GMP'). He also reminded the Tribunal of the evidence of Dr E that this failure fell seriously below the standard expected of a competent GP. With regard to the false recording of the "non-examination", there are, he submitted, breaches, paragraphs 19 and 20 of GMP. He submitted that the GMC expert, Dr E describes the false entry in the records as seriously below the standard expected of a competent GP because medical records are, fundamental to medical practice and for a doctor to falsify them amounts to serious misconduct.

20. Mr Rigby submitted that if the Tribunal were to find serious misconduct, the next issue is whether Dr Foo's fitness to practice is, currently impaired. The Tribunal will have to take into account his good character as a man and indeed as to his clinical ability as a doctor, which a number of his colleagues testify. Nevertheless, he submitted that Dr Foo's insight had been slow to develop and was incomplete because it was apparent from his reflective statement of 30 October 2022 that he still did not fully understand why he had behaved as he did. As far as remediation is concerned, he submitted that was insufficient and too late. He reminded the Tribunal that Dr Foo had booked to attend an ethics course on 28 October 2022 that did not commence until 1 December 2022.

21. He submitted that the combination of Dr Foo's failure to examine patient A and the making of the dishonest record engaged all three limbs of the overarching objective. He stated that public confidence, including Patient A and his mother's confidence, in the medical

profession and in its regulator would be adversely affected if Dr Foo's fitness to practice were not found to be impaired.

Mr Mellor on behalf of Dr Foo

22. He submitted as far as misconduct is concerned, from the outset of this hearing, Dr Foo admitted both his failure to perform an examination of Patient A's abdomen. Dr Foo has also admitted to falsely and dishonestly recording that he had conducted such an examination. Dr Foo also, for the avoidance of doubt, entirely accepts that his actions amounted to serious misconduct.

23. Mr Mellor directed the Tribunal to Dr Foo's written statement in which he said: '*This was a fundamental failing on my part and it should not have happened. I fully understand that honesty and integrity is a fundamental tenet of the profession and I would like to apologize to Mrs C patient A and the Tribunal for my significant failing in that regard and for its impact on patient A and Mr D, but also potentially on the public's confidence in the profession as a whole.'*

24. He submitted that Dr Foo accepts, as he confirmed in his oral evidence, that failure to perform an examination of patient A's abdomen was seriously below the standard expected of a reasonably competent GP. Dr Foo has profusely apologized to patient A and to his mother and to the Tribunal and for his failing in that regard.

25. Dr Foo does not seek to minimise the seriousness of that clinical failing, however the failure to examine Patient A's abdomen was an isolated incident. It related to one patient at one consultation.

26. He stated that Dr Foo knows that he behaved dishonestly, and wholeheartedly accepts that his actions in this case were very serious. Dr Foo also wholeheartedly accepts that the Tribunal may very reasonably find his fitness to practice is impaired on the basis of that past behaviour, given his understanding as stated in his witness statement, that integrity is a fundamental tenet of the medical profession. He further stated that Dr Foo accepted the need to maintain public confidence in the profession and the need to uphold professional standards.

27. He submitted that Dr Foo has no previous fitness to practice history and an unblemished career of approaching 30 years. Dr Foo is of good character, apparent from the testimonial evidence that the Tribunal have seen and the oral evidence of Dr B.

28. Mr Mellor reminded the Tribunal of the number of testimonials which describe Dr Foo is a well-intentioned, caring doctor whose integrity and honesty have no reason to doubt his standards of professionalism, clinical practice and has been a valuable partner at [the Practice]. All these were written in full knowledge of the allegation and Dr Foo's admissions.

29. In those circumstances he urged the Tribunal to accept Dr Foo's evidence that in Dr Foo's 30 years of practice, whenever he has realised that he failed to perform an examination, he has simply contacted the patient to rectify it. His actions that day were entirely out of character.

30. Mr Mellor submitted that the consultation took place some months into the COVID pandemic. It was a very difficult, pressured and stressful time for GP's generally, and the practice in particular, only a few members of the practice we're seeing patients in person and Dr Foo was the only one on the 28th of September. He submitted that Dr Foo was under time pressure due to the conditions in which he had to see patients.

31. With regards to insight and remediation, he submitted that Dr Foo has, by his own admission, as set out in his reflective statement and in his oral evidence, struggled with processing his failings, particularly his dishonesty in this case. However, as he also stated in his evidence, he has eventually come to terms with it. Dr Foo entirely accepts that it's only very recently that he started undertaking specific courses in relation to probity and ethics in particular. Dr Foo has apologised to patient A and his mother for his actions and its impact not just on their confidence in the profession, but also potentially on the public's confidence in the profession as a whole and his is reflections support this.

32. He submitted that the Tribunal can be reassured on the basis of the evidence that this is not an issue that will ever arise again. Dr Foo has made changes to his working practice and conditions to ensure that he's not under such pressured situations again. He has reduced his hours now that he's been able to from 8 to 6 sessions per week, and as a practice they have introduced regular catchup tools to allow doctors to manage their time better and to reduce stress. He also reminded the Tribunal of Dr Foo's evidence about the policy of only working to capacity at the practice.

33. He submitted that Dr Foo entirely accepts that he is only undertaking courses in relation to probity and ethics very recently, and as the Tribunal have seen, he's booked onto a further face to face virtual course.

34. He submitted that Dr Foo entirely appreciates the seriousness of this past misconduct in the case, and he makes no positive submission in relation to impairment generally.

The Relevant Legal Principles

35. The Tribunal accepted the advice given by the Legally Qualified Chair, which it has followed in this decision. The Legally Qualified Chair set out the approach to be taken by the Tribunal and referred to case law relevant to the issue of impairment of fitness to practise, including, *Roylance v GMC (no2) (2000) 1 AC 311, Cohen v GMC (2008) EWHC 581* and *Cheatle v GMC (2009) EWHC 645*.

36. 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.

37. In approaching its decision, the Tribunal was mindful of the two-stage process to be adopted: first whether the facts admitted and found proved amounted to misconduct that was serious, and then whether the finding of that misconduct which was serious, led to a finding of impairment.

38. With regard to whether the matters admitted and found proved amounted to serious misconduct the Tribunal had regard to the guidance given by the High Court in Solicitors ***Regulation Authority v. Day and ors [2018] EWHC 2726 (Admin):*** *'We do not, we emphasise, say that there is a set standard of seriousness or culpability for the purposes of assessing breaches of the core principles in tribunal proceedings. It is a question of fact and degree in each case. Whether the default in question is sufficiently serious and culpable thus will depend on the particular core principle in issue and on the evaluation of the circumstances of the particular case as applied to that principle.'*

39. With regard to impairment, the Tribunal reminded itself that it must determine whether Dr Foo's fitness to practise is impaired today, taking into account Dr Foo'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.

40. The Tribunal had particular regard to the questions set out in paragraph 76 of the judgment in the case of ***CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin)***, in which Mrs Justice Cox set out the following approach to the determination of impairment:

'Do our findings of fact in respect of the doctor's misconduct…show that his/her fitness to practise is impaired in the sense that s/he:

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

The Tribunal also reminded itself of the need to pursue the overarching objective of the GMC, namely the protection of the public and this involves the pursuit of the following objectives:

(a) to protect, promote and maintain the health, safety and well-being of the public,

(b) to promote and maintain public confidence in the medical profession, and

c) to promote and maintain proper professional standards and conduct for members of that profession.

The Tribunal's Determination on Impairment

Misconduct

Clinical failures admitted at paragraph 1 of the Allegation

41. The Tribunal first considered whether the facts as admitted and found proved, are a sufficiently serious departure from the standards reasonably expected of Dr Foo, to amount to misconduct that is serious. The Tribunal had regard to paragraphs 15(a), (b) of GMP

'15. You must provide a good standard of practice and care. If you assess, diagnose or treat patients, you must:

a. adequately assess the patient's conditions, taking account of their history (including the symptoms and psychological, spiritual, social and cultural factors), their views and values; where necessary, examine the patient

b. promptly provide or arrange suitable advice, investigations or treatment where necessary

42. The tribunal reminded itself that Dr Foo was working in difficult conditions because of the COVID pandemic. It also accepted that the error he made was an isolated error which was very much out of character. Nevertheless, the tribunal found that there were compelling reasons why Dr Foo should have proceeded with particular care in his consultation with patient A.

8. He knew that only patients who had been identified as being at risk were admitted to a face to face consultation;
9. He was aware of Patient A's previous medical history that Patient A had been unwell for over a week and had been prescribed 2 courses of antibiotics;

10. There was evidence that Patient A's condition had been worsening although there was no evidence of urinary tract infection;
11. The consultation of 28 September 2020 was Patient A's second face to face consultation;
12. it was particularly important that he did not close his mind to the possibility that the working diagnosis of urinary tract infection was wrong.

43. The Tribunal also had regard to the GMC expert report dated 3 July 2021 and accepted the evidence of in which he stated:

> *'In my opinion, in this case, Dr Foo's failure to undertake an adequate assessment on 28/9/2020 was seriously below the standard expected of a reasonably competent General Practitioner. I say seriously below because, in my opinion, given Patient A's history an abdominal examination was indicated. It is my opinion that this lack of an abdominal examination put Patient A at risk of a delayed diagnosis of a serious underlying problem'.*

44. The Tribunal agreed that even though this was an isolated error on the part of Dr Foo, working in difficult circumstances, his failure, having regard to both his culpability and the seriousness of the risk to which he exposed Patient A, amounted to conduct which fell so far below the standard expected of an experienced and competent GP that it amounted to misconduct that was serious.

<u>Dishonesty admitted and found proved at paragraphs 2 and 3</u>

45. Dr Foo admitted at the outset of these proceedings that having failed to examine Patient A he made a false entry in Patient A's medical records.

The Tribunal had regard to paragraphs 19, 20, 65, 68 and 71of GMP which state as follows:

> ***19*** *Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.*
>
> ***20*** *You must keep records that contain personal information about patients, colleagues or others securely, and in line with any data protection law requirements.*
>
> ***65*** *You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession*
>
> ***68*** *You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate*

> ***71*** *You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents.*[22] *You must make sure that any documents you write or sign are not false or misleading*

46. The Tribunal accepted that the false entry was made in a very short period of time after the consultation, and it is not suggested that it was made in response to a complaint. Nevertheless, despite the complaint raised by patient A's mother in November 2020, the Tribunal found that Dr Foo did not admit what he had done until the meetings in January 2021 and he wrote to Patient A's mother in February 2021.

47. The Tribunal also had regard to evidence of Dr E that this conduct fell seriously below the standard expected of a competent GP.

48. The Tribunal had no doubt that Dr Foo's conduct represented a significant departure from the standards of conduct and behaviour relating to honesty and integrity expected of a doctor and fell so far below the standards of conduct reasonably expected of a doctor that it amounted to misconduct that was serious.

Impairment

49. Having found that the facts admitted and found proved amounted to serious misconduct, the Tribunal went on to consider whether, as a consequence, Dr Foo's fitness to practise is currently impaired.

50. The Tribunal asked each of the questions set out in the Grant case referred to above.

51. For the reasons set out above, the Tribunal was satisfied that by failing to examine Patient A's abdomen, Dr Foo put a patient at unwarranted risk of harm.

52. The tribunal also found that by making a false entry in Patient A's records, Dr Foo brought the profession into disrepute, breached the fundamental tenet of the profession that doctors must be honest and acted dishonestly.

53. The Tribunal then considered whether Dr Foo was liable to do these things in the future by repeating his misconduct. The Tribunal found that the misconduct admitted at paragraph one is capable of being remediated. The Tribunal noted that the deficiencies in the care that he provided Patient A occurred approximately two years ago. During the intervening period there have been no further complaints with regards to his clinical practice. There was also evidence that Dr Foo had undertaken some study and learning to ensure that he was competent in this area of practice. The testimonials provided on her behalf of Dr Foo attest to his competence. The Tribunal accepted there was compelling evidence before the Tribunal that Dr Foo is currently working effectively and competently as a GP.

54. Turning to the matters giving rise to the finding of dishonesty, the tribunal reminded itself that dishonesty is not easy to re mediate. Nevertheless, the tribunal bore in mind that, on all the evidence before it, this was an isolated incident in an otherwise unblemished career. For those reasons the tribunal found that Dr Foo's dishonesty was, in principle capable of remediation.

55. The Tribunal considered the evidence before it of the insight and remediation that Dr Foo had undertaken since 2020. The Tribunal had regard to Dr Foo's statement of personal reflections. It considered that Dr Foo had expressed genuine remorse and did have some insight into his misconduct, he attempted to explain why he acted as he did and set out the impact of his failings on Patient A. However, the Tribunal found that he did not yet have a sufficiently clear understanding of the cause of his misconduct, its impact on the profession and public and how to ensure there was no repetition. The Tribunal noted that by his own admission, he has struggled with processing his failings, particularly his dishonesty in this case and concluded that that the process of developing insight was still at a relatively early stage.

56. In respect of his remediation, the Tribunal noted that the CPD (certificates provided) and courses have all been completed in 2022, almost two years after the incident. Dr Foo's remediation has started late in the day and is still slowly developing. With regard to remediation of his dishonesty in particular, the Tribunal has already observed that an important ethics course has only recently been arranged and is yet to start.

57. The Tribunal accepted that Dr Foo's remorse is genuine. It found that Dr Foo's remorse taken together with the isolated nature of his misconduct and the matters set out above were sufficient to satisfy it that the risk of repetition is not high, nevertheless there is not sufficient evidence to reassure it that there is no longer any significant risk.

58. Finally, the Tribunal considered whether a finding of impairment was also required pursuant to the second and third limbs 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.

59. In considering the wider public interest the Tribunal had regard to the observations made by Ms Justice Cox in CHRE v NMC & Grant [2011] EWHC 927 (Admin), which were as follows:

> '*The Committee should… ask themselves not only whether the registrant continued to present a risk to members of the public, but whether the need to uphold proper professional standards and public confidence in the registrant and the profession would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.'*

60. In all the circumstances, the Tribunal concluded that a finding of impairment is required to mark the seriousness of Dr A's misconduct. The Tribunal was satisfied that public confidence would be undermined if a finding of impairment of fitness to practise were not made in the circumstances of this case.

61. Therefore, the Tribunal determined that Dr Foo's fitness to practise is impaired by reason of his misconduct under all 3 limbs of the overarching objective.

Determination on Sanction - 03/11/2022

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

The Evidence

2. The Tribunal has taken into account the background of this case and the evidence received during the previous stages of the hearing, where relevant, in reaching a decision on what action, if any, it should take with regard to Dr Foo's registration. No further evidence was provided by either party at this stage.

Submissions

3. On behalf of the GMC, Mr Rigby submitted that that the only appropriate sanction in this case, that meets the overarching objective, is suspension. Mr Rigby referred the Tribunal to paragraphs 91, 93, 97, 120, 125 and 128 of the sanction guidance ('the SG').

65. He submitted that the Tribunal had determined that all the limbs of the overarching objective are engaged in this case. He reminded the Tribunal of Dr Foo's unblemished record, his service to his patients and the Tribunal's assessment of his insight and remediation and the risk of repetition in light of his admissions to all the charges he faced.

66. He submitted that the Tribunal had found Dr Foo guilty of serious misconduct, which included, breaches of good medical practice, and which had, by his dishonesty, breached a fundamental tenet of the profession and brought the profession into disrepute. Nevertheless, he submitted that Dr Foo's misconduct was not fundamentally incompatible with continued registration.

67. Mr Rigby submitted that a period of suspension would be appropriate and proportionate in this case as it would serve to maintain public confidence in the medical profession and allow Dr Foo to complete his remediation. He stated that the length of the suspension was a matter entirely for the Tribunal to determine.

68. Mr Rigby submitted that a review would be appropriate because the tribunal had found Dr Foo's insight and remediation were incomplete. Mr Rigby reminded the Tribunal that Dr Foo had only enrolled on an ethics course in October 2022 and had not yet begun that course.

8. On behalf of Dr Foo, Mr Mellor submitted that Dr Foo entirely accepts the seriousness of his dishonest conduct and that he breached a fundamental tenet of the medical profession and brought the medical profession into disrepute. He further submitted that Dr Foo has also accepted from the outset that his failure to perform an abdominal examination at the consultation was also a very significant omission and fell seriously below the standard expected of a competent doctor and he entirely accepts the Tribunal's conclusion.

70. Nevertheless, he submitted that Dr Foo's misconduct was very much out of character, and was a one-off isolated lapse in a lengthy career in general practice without any concerns as to his clinical practice or his probity.

71. Mr Mellor outlined the mitigating factors set out in paragraph 25 of the SG and submitted that Dr Foo had demonstrated that he understands the problem and has insight and has attempted to address or remediate. He submitted that Dr Foo had demonstrated this by admitting facts relating to the case, apologising to Patient A and his mother, making efforts to prevent behaviour reoccurring and correcting deficiencies in performance by study, appropriate discussions with his colleagues and reducing his working hours, from 8-6 sessions per week, so that he was under less pressure. He reminded the Tribunal that the practice has also instigated catch up intervals to allow all doctors to manage their time better and to reduce stress and there is a practice policy of only working to capacity.

72. Mr Mellor submitted that the consultation took place some months into the COVID pandemic so that Dr Foo was working in difficult conditions. He reminded the Tribunal that, the practice manager Ms F refers to the extreme pressure and unprecedented challenges that Dr Foo was working under at the time. He submitted that the unprecedented and extremely stressful situation that Dr Foo found himself in does provide some mitigation in accordance with the sanction guidance.

73. He accepted the Tribunal's finding that Dr Foo is still at a relatively early stage of developing insight, particularly into his dishonesty. Nevertheless, he reminded the Tribunal that it had found that Dr Foo does have some insight into his misconduct and has attempted to explain why he acted as he did, and that he has set out the impact of his failings on patient A.

74. He accepted that Dr Foo has, by his own admission, struggled with processing his failings, particularly his dishonesty in this case, and, "openly and transparently" volunteered in his evidence that he thinks he was in denial for a long time.

75. He submitted that the Tribunal have concluded that his remediation has started late but he has undertaken some steps towards remediation of his past dishonesty. Although Dr Foo entirely accepts that it is only very recently that he has started doing specific courses, particularly in relation to probity and ethics, he has already made efforts to prevent the behaviour reoccurring and to correct deficiencies in performance.

76. With regard to the risk of repetition he reminded the Tribunal that although it had concluded that there is not sufficient evidence to reassure the Tribunal that there is no

longer any significant risk in relation to a repeat of this misconduct, it has expressly found that Dr Foo's remorse, taken together with the isolated nature of his misconduct and the matter set out above, were sufficient to satisfy it that the risk of repetition is not high.

77. He accepted that, a complaint was raised by patient A's mother in November 2020 and Dr Foo did not admit what he had done until the meetings in January 21 and his subsequent email to patient's mother in February 2021. However, he submitted that Dr Foo's dishonesty was not persistent and or covered up as referred to in the sanction guidance. Dr Foo, he submitted, did not deny his actions or attempt to cover them up.

78. He submitted that this is not a case where conditions would be appropriate. He accepted the GMC submission that the appropriate sanction would be a suspension. He further submitted that when considering the length of the suspension, the tribunal should have regard to the matters set out in paragraph 100 of the sanction guidance. Finally, he reminded the tribunal of the importance of having regard to the principle of proportionality and outlined the financial hardship that would be caused to Dr Foo and his family by any period of suspension. He also reminded the Tribunal that there was a public interest in a good doctor continuing to practise and serve his patients.

The Tribunal's Approach

79. The decision as to the appropriate sanction, if any, to impose is a matter for this Tribunal exercising its own judgement. In so doing, it has given consideration to the submissions made by both parties and the mitigating factors.

80. Throughout its deliberations, the Tribunal bore in mind the overarching objective and that the purpose of sanctions is not to be punitive, but to protect the public interest, although they may have a punitive effect. The public interest includes maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.

81. In reaching its decision, the Tribunal also had regard to the principle of proportionality which required it to weigh up and balance the interests of the public with those of Dr Foo and impose no greater restriction on his ability to practise his profession than is necessary to achieve its objectives. In addition, the Tribunal was mindful that as the primary purpose of imposing sanctions is the public interest, mitigating factors carry less weight than they would in other jurisdictions. It is for this reason that even where a doctor is unlikely to pose a direct risk to patients, and/or is unlikely to re-offend in the same manner and/or has accepted full responsibility for his or her actions from the outset, it may still be necessary to impose a sanction in the interests of maintaining public trust and confidence. Accordingly, the Tribunal bore in mind the observation made by Sir Thomas Bingham in the case of *Bolton v The Law Society* [1994] 1 WLR 512:

"The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

The Tribunal's Determination on Sanction

Aggravating and Mitigating Factors

82. The Tribunal identified the following mitigating factors:

- This case arose from an isolated incident and Dr Foo has no previous fitness to practice history;
- Dr Foo's dishonesty was not persistent or covered up;
- The misconduct, relating to both his clinical failure and his dishonesty, occurred when Dr Foo was working under stressful conditions caused by the pandemic;
- Dr Foo has expressed genuine remorse and regret, albeit not immediately;
- Dr Foo has developed some insight and started to undertake remediation;
- Dr Foo has taken some steps to remedy his clinical failings and conduct including attending relevant courses;
- There has been no repetition of this misconduct or any other adverse incident since;
- Dr Foo admitted the entirety of the Allegation at the outset of the proceedings;
- Dr Foo's excellent testimonials from colleagues who have worked closely with him for a considerable period of time and who were aware of the allegations and Dr Foo's admissions.

83. The Tribunal considered whether there were aggravating factors and considered paragraph 55 of the Sanctions Guidance ('SG'). The Tribunal concluded that although the Dr Foo's apology came late in the day and his remediation and insight were slow to develop these factors were not so serious overall in the context to amount to aggravating factors.

84. The Tribunal took the mitigating factors into account in determining the appropriate and proportionate sanction.

No action

85. The Tribunal first considered whether to conclude the case by taking no action. In doing so, the Tribunal paid particular attention to paragraphs 68, 69 and 70 of the SG:

> *"68 . Where a doctor's fitness to practise is impaired, it will usually be necessary to take action to protect the public... But there may be exceptional circumstances to justify a tribunal taking no action.*

69. To find that a doctor' s fitness to practise is impaired, the tribunal will have taken account of the doctor's level of insight and any remediation, and therefore these mitigating factors are unlikely on their own to justify a tribunal taking no action.

70 . Exceptional circumstances are unusual, special or uncommon, so such cases are likely to be very rare. The tribunal' s determination must fully and clearly explain:

a . what the exceptional circumstances are

b . why the circumstances are exceptional

c. how the exceptional circumstances justify taking no further action."

86. The Tribunal first considered whether to conclude Dr Foo's case by taking no action. The Tribunal noted that following a finding of impairment, taking no action is only appropriate where there are exceptional reasons for doing so. Noting the serious nature of Dr Foo's misconduct, the Tribunal determined that there were no exceptional circumstances which would justify a decision to take no action. It therefore determined that taking no action would not be appropriate, proportionate or in the public interest

Conditions

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

88. The Tribunal considered that it may well have been possible to draft appropriate conditions if the only concern had been about Dr Foo's clinical performance. However, in a case involving this type of dishonesty, conditions could not be formulated to adequately protect the public interest and maintain public confidence in the medical profession or send the appropriate message to Dr Foo the profession and the public with regard to the high standards of conduct and behaviour expected of registered doctors at all times.

89. Therefore the Tribunal concluded that there are no conditions it could impose that would be appropriate or proportionate.

Suspension

90. The Tribunal then went on to consider whether a period of suspension would be an appropriate and proportionate sanction to impose on Dr Foo's registration.

91. The Tribunal had regard to paragraphs 91, 92, 93, 95, 98, paragraphs of 97(a), (e), (f) and (g), 120 of the SG which state:

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

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

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

95 *In such cases, to protect the public, the tribunal might wish to impose a period of suspension. The suspension will need to be reviewed and therefore a review hearing should be directed. Such a direction should indicate in broad terms the type of action and evidence of remediation (such as complying with any invitations from the GMC to undergo a performance assessment or English language assessment) which, if carried out during the period of suspension, may help the tribunal's evaluation at any subsequent review hearing. However, the tribunal should bear in mind that during the period of suspension the doctor will not be able to practise.*

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*

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

f *No evidence of repetition of similar behaviour since incident.*

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

98 The tribunal must also consider, as required by rule 17(2)(o),22 whether to suspend the doctor's registration with immediate effect. The tribunal must consider any evidence received and any submissions made by the parties before making and announcing its decision.

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

92. The Tribunal has already found that Dr Foo's misconduct was serious for the reasons set out about above. Nevertheless, Dr Foo's failings related to a single patient during one consultation, and a single incident of dishonestly. The Tribunal was satisfied that Dr Foo's failings 2 years ago are not fundamentally incompatible with his continued registration. He has started to remediate his previous conduct and behaviour and he has worked effectively and competently as a doctor without complaint since his misconduct. For the reasons set out above, the tribunal has found that Dr Foo has developed some insight and the risk of repetition is not high.

93. In these circumstances the Tribunal concluded that a period of suspension was the proportionate sanction to mark the serious nature of Dr Foo's serious misconduct and to maintain public trust and confidence in the profession.

94. The Tribunal bore in mind that suspension from the medical register has a punitive effect, in that, Dr Foo would be prevented from practising medicine during the suspension period. However, the Tribunal also took into account the deterrent effect of a suspension and the importance of sending a signal to the wider profession, and the public with regard to the standards of conduct and behaviour expected of a registered doctor.

95. The Tribunal noted that there is a public interest (in the general sense) in permitting a doctor to continue to practise their profession for the public good, provided that it is not inconsistent with the overarching objective, which must take priority. The Tribunal also had regard to the hardship that was likely to be caused to Dr Foo by a period of suspension.

96. The Tribunal concluded that Dr Foo's professional and personal interests were significantly outweighed by the Tribunal's duty to protect the public including the wider public interest.

Erasure

97. While the Tribunal was satisfied that a period of suspension would satisfy the overarching objective, it also considered the sanction of erasure. Having considered the mitigating factors and all the circumstances of this case, the Tribunal accepted the

submissions of Mr Rigby and Mr Mellor that Dr Foo's conduct was not fundamentally incompatible with continued registration. The Tribunal considered that to erase Dr Foo's name from the register would be disproportionate for the reasons set out above and because erasure was not the only sanction which would protect the public including the wider public interest in maintaining public confidence and standards of conduct for the medical profession.

Length of suspension

98. The Tribunal has set out its reason for imposing a period of suspension so that Dr Foo can complete his remediation and in the wider public interest in order to maintain confidence in the profession and promote and maintain proper professional standards.

99. The Tribunal went on to consider the length of the period of suspension. In determining the length of the order the Tribunal had regard to paragraph 100 of the SG, which states:

> *"100 The following factors will be relevant when determining the length of suspension:*
>
> *a the risk to patient safety/public protection*
>
> *b the seriousness of the findings and any mitigating or aggravating factors;*
>
> *c ensuring the doctor has adequate time to remediate.*

100. The Tribunal considered the mitigating factors in this case, including that the clinical events took place 2 years ago. The Tribunal was satisfied that the likelihood of repetition in the future is not high, and in relation to probity more widely, that Dr Foo has started to develop insight into his actions, albeit this is currently not complete. Further he has expressed regret and remorse for how he behaved and, at the outset of the hearing, admitted to the Allegation before this Tribunal. The Tribunal also considered, based on the testimonial evidence, that Dr Foo is a competent and dedicated medical practitioner. The Tribunal was mindful that when considering the appropriate length of suspension, it ought to be for a sufficient period for Dr Foo to develop insight and complete his remediation.

101. Balancing all these factors, the tribunal concluded that a period of four months suspension would be sufficient to mark the gravity of Dr Foo's misconduct and give him time to complete his remediation while properly and fairly reflecting the considerable mitigation in this case.

102. Accordingly, the Tribunal determined to suspend Dr Foo's registration for a period of four months.

Review

103. The Tribunal determined to direct a review of Dr Foo's case. A review hearing will convene shortly before the end of the period of suspension, unless an early review is sought either by Dr Foo or the GMC.

104. The Tribunal wishes to clarify that at the review hearing, the onus will be on Dr Foo to demonstrate how he has developed insight, remediated and reflected on his misconduct. It therefore may assist the reviewing Tribunal if Dr Foo is able to provide:

- Dr Foo's attendance at the review;
- A detailed written reflection on his misconduct and its impact on the profession and the wider public;
- Evidence of his attendance on courses or eLearning modules, particularly targeted at ethics and probity;
- Evidence that he has maintained his medical skills and knowledge including the area of physical examination;
- Any other information that he considers will assist the reviewing tribunal.

Determination on Immediate Order - 04/11/2022

1. Having determined that Dr Foo's registration should be suspended, the Tribunal has now considered, in accordance with Section 38 of the Medical Act 1983 as amended, whether to impose an immediate order to suspend his registration.

2. The Tribunal has borne in mind the test to be applied with regard to imposing an immediate order; it 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.

Submissions

107. Mr Rigby did not make an application for the imposition of an immediate order on Dr Foo's registration.

108. Mr Mellor submitted first that an immediate order was not in Dr Foo's best interests. He reminded the Tribunal of its findings that Dr Foo's misconduct was an isolated lapse in an otherwise blameless career and that he had practised safely without restriction for over two years since his misconduct. Finally, he submitted that there was no need for an immediate order in the wider public interest, which would be properly served by the substantive order coming into effect in 28 days.

Tribunal's decision

109. The Tribunal has taken account of the relevant paragraphs of the *SG* in relation to when it is appropriate to impose an immediate order. Paragraphs 172 and 173 of the *SG* states:

> 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.'*

110. The Tribunal reminded itself of its findings and in particular its finding that the risk of repetition was not high in this case. It reminded itself that Dr Foo had worked unrestricted for 2 years, since his misconduct. It also found that in this case the wider public interest would be properly served by the substantive order the Tribunal has imposed.

111. This means that Dr Foo's registration will be suspended 28 days from when notice of this decision is deemed to have been served upon him, unless he lodges an appeal. If

Dr Foo does lodge an appeal, he will remain free to practise unrestricted until the outcome of any appeal is known.

112. That concludes the case.

9. There is no interim order to revoke.

ANNEX A – 31/10/2022

1. At the start of the hearing, Mr Rigby informed the tribunal that the GMC proposed to offer no evidence in respect of paragraph 1 a i of the Allegation. He invited the Tribunal to permit this and to amend the Allegation by striking out that paragraph.

2. Mr Rigby submitted that the paragraph of the Allegation was not supported by any direct evidence or by Dr E, the expert relied upon by the GMC. Mr Mellor supported the application and submitted that paragraph 1 a i was not supported by any evidence before the Tribunal.

3. The tribunal accepted the advice of the legally qualified chair which it has followed in the decision set out below. The tribunal had regard to the directions given to tribunals in ***Professional Standards Authority for Health and Social Care v. Nursing and Midwifery Council and X*** *[2018] EWHC 70 (Admin).* It reminded itself that the GMC has the power to offer no evidence, but the tribunal must supervise the exercise of that power. In particular, it must ensure that by offering no evidence the GMC is not "undercharging" and so preventing the tribunal from carrying out its duty to protect the public.

4. The Tribunal reminded itself that all paragraphs of the Allegation arose from Dr Foo's conduct of a single consultation. It also noted that while the conduct giving rise to the remaining paragraphs of the Allegation had been described by Dr E as falling seriously bellow the standards expected, the matters alleged in paragraph 1 a i were not, in his view seriously below. In those circumstances, the Tribunal was satisfied that this paragraph was very unlikely to play any part in the Tribunal's decision whether Dr Foo's fitness to practise was impaired.

5. The Tribunal also agreed with the parties' assessment of the state of the evidence in relation to this paragraph and found that there was no number realistic prospect of obtaining any further evidence at this distance of time.

6. For those reasons, the tribunal allowed the application and amended the Allegation by striking out paragraph 1 a i.