

PUBLIC RECORD

Dates: 26/04/2021 - 29/04/2021

Medical Practitioner's name: Dr Ignacio DE ASÚA

GMC reference number: 7062327

Primary medical qualification: Medico 2007 Escuela de Medicina Instituto Universitario CEMIC

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

Summary of outcome

Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair	Mrs Kim Parsons
Medical Tribunal Member:	Dr Neil Smart
Medical Tribunal Member:	Dr Julius Parker

Tribunal Clerk:	Mr Sewa Singh 26/04/2021 Ms Anne Bhatti 27/04/2021 - 29/04/2021
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Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Mr David Toal, 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 Facts - 27/04/2021

Background

1. Dr De Asúa qualified in 2007. Dr De Asúa practised as a Clinical Fellow at Harefield Hospital ('the Hospital'), part of Royal Brompton and Harefield Hospitals NHS Trust ('the Trust') from 14 November 2014 to 30 June 2015 and 22 February 2016 to 20 February 2017, around 19 months in total. At the time of the first events in 2017, Dr De Asúa was practising as a Clinical Fellow at the Hospital, while at the same time, being registered with the ID Medical ('IDM') locum agency as a locum doctor.

2. The allegation that has led to Dr De Asúa's hearing can be summarised that, on four occasions between January 2017 and March 2019, Dr De Asúa sent emails to IDM attaching employment references, falsely purporting that these were valid references. One reference purportedly came from Dr A and two from Dr B (one of these was sent twice). It is alleged in doing so, his actions were dishonest.

3. The initial concerns were raised with the GMC on 17 April 2019 by Professor C, Consultant General and Vascular Surgeon and Responsible Officer (RO) for IDM.

4. The matter was referred to the GMC via an online referral form, dated 17 May 2019, by IDM.

The Outcome of Applications Made during the Facts Stage

5. The Tribunal found that notice of the hearing pursuant to Rules 15 and 40 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), had been properly served on Dr De Asúa. The GMC applied to proceed in Dr De Asúa's absence under Rule 31 of the Rules. The Tribunal acceded to the GMC's application. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

6. The Allegation made against Dr De Asúa is as follows:

1. On 17 January 2017 at 15:26 you sent an email to ID Medical from the email address set out in Schedule 1 ('the First Email') which:
 - a. falsely purported to be from Dr A, in that you had:
 - i. created the email address which contained Dr A's name in its username;
To be determined
 - ii. signed the email off with Dr A's name;
To be determined
 - b. attached an employment reference dated 16 January 2017 ('the First Reference'), which falsely purported to have been completed by Dr A.
To be determined
2. When sending the First Email, you knew that:
 - a. you did not have Dr A's permission to send the First Email;
To be determined
 - b. the First Reference had not been completed by Dr A.
To be determined
3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.
To be determined
4. On 17 January 2017 at 17:01 you sent an email to ID Medical from the email address set out in Schedule 2 ('the Second Email') which:
 - a. falsely purported to be from Dr B, in that you had:
 - i. created the email address which contained Dr B's name in its username;
To be determined
 - ii. signed the email off with Dr B's name;
To be determined
 - b. attached an employment reference dated 16 January 2017 ('the Second Reference'), which falsely purported to have been completed by Dr B.
To be determined
5. When sending the Second Email, you knew that:

a. you did not have Dr B's permission to send the Second Email;

To be determined

b. the Second Reference had not been completed by Dr B.

To be determined

6. Your actions as described at paragraph 4 were dishonest by reason of paragraph 5.

To be determined

7. On 12 March 2019 at 11:06 you submitted an employment e-reference dated 12 March 2019 ('the Third Reference') to ID Medical which falsely purported to have been completed by Dr B.

To be determined

8. When submitting the Third Reference, you knew that it had not been completed by Dr B.

To be determined

9. Your actions as described at paragraph 7 were dishonest by reason of paragraph 8.

To be determined

10. On 29 March 2019 at 06:22 you sent an email to ID Medical from the email address set out in Schedule 3 ('the Third Email') which:

a. falsely purported to be from Dr B, in that you had:

i. created the email address which contained Dr B's name in its username;

To be determined

ii. signed the email off with Dr B's name;

To be determined

b. attached a copy of page 2 of the Third Reference, endorsed with a forged stamp of 'Harefield Hospital' ('the Stamp').

To be determined

11. When sending the Third Email, you knew that:

a. you did not have Dr B's permission to send the Third Email;

To be determined

b. the Stamp on the Third Reference was forged.

To be determined

12. Your actions as described at paragraph 10 were dishonest by reason of paragraph 11.

To be determined

The Facts to be Determined

7. The Tribunal was provided with correspondence from Dr De Asúa in which he indicated he accepted the allegations in full. However, given he was not present or represented at this hearing, the Tribunal proceeded to determine the allegations as set out above.

Evidence

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

- Dr D, Consultant Anaesthetist, Critical Care, at the Hospital, Clinical Governance Lead for the Hospital;
- Ms E, Governance Manager, IDM;
- Dr B, Consultant in Intensive Care Medicine, at the Hospital;
- Dr A, Consultant in Critical Care at the Royal Brompton and Harefield Hospital.

Documentary Evidence

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

- Online referral to the GMC from IDM, dated 17 April 2019;
- Three References for Dr De Asúa, referee named as Dr B, dated 16 January 2017, 12 March 2019 and one undated with a '*Harefield Hospital*' stamp on it;
- Reference for Dr De Asúa, referee named as Dr A, dated 16 January 2017;
- Emails from Dr De Asúa to GMC, dated 26 May 2019 and 11 October 2019;
- Letter from Dr De Asúa to Dr D, dated 23 June 2019;
- Emails from Dr De Asúa to Professor C, dated 15 April 2019 and 18 July 2019;
- Two references sent by Dr De Asúa to IDM, dated 28 May 2019 and 4 June 2019 ;
- Email from Dr De Asúa to the GMC, dated 17 March 2021.

The Tribunal's Approach

10. 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 De Asúa does not

need to prove anything. The standard of proof is that applicable to civil proceedings, namely, given the balance of probabilities, whether it is more likely than not that the events occurred.

11. It is alleged that in relation to some particulars of the Allegation, Dr De Asúa's actions were dishonest. The Tribunal had regard to the test for determining dishonesty which is set out in the case of *Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67*.

Paragraph 1

1. On 17 January 2017 at 15:26 you sent an email to ID Medical from the email address set out in Schedule 1 ('the First Email') which:

a. falsely purported to be from Dr A, in that you had:

i. created the email address which contained Dr A's name in its username;

Found proved

ii. signed the email off with Dr A's name;

Found proved

b, attached an employment reference dated 16 January 2017 ('the First Reference'), which falsely purported to have been completed by Dr A.

Found proved

12. The Tribunal considered paragraphs 1(a)(i and ii) and 1(b) together.

13. The Tribunal was provided with a copy of the email dated 17 January 2017, timed at 15:26, sent to IDM. In the email it stated '*I attach Dr de Asua's reference form.*' The Tribunal noted that the email appeared to have been sent from the email address set out in Schedule 1 for Dr A. Attached to the email was IDM's template reference form dated 16 January 2017. The reference contained details including Dr De Asúa's full name, his GMC reference number, and information about his clinical skills and a supporting statement from Dr A commending Dr De Asúa. In addition, the template appeared to be signed off by Dr A and was stamped bearing the Hospital's full name, address and contact number.

14. The Tribunal took account of Dr A's witness statement, dated 11 September 2019. At paragraphs 5 and 9 of his witness statement, Dr A stated:

'5. In April 2019 my secretary showed me a reference for Dr De Asua, which had allegedly been written by me. The reference was not written by me. At the time of providing this statement, the GMC have provided me with a copy of a reference, dated 16 January 2017. I confirm that this is the reference which my secretary showed to me and I attach a copy of this reference as Exhibit [XXX].'

'9. The reference contains the email address [Dr A]nhs@gmail.com and I confirm that this is not an email address that I have or have ever used.'

15. In paragraph 10 of his witness statement, Dr A stated:

'10. The signature at page 2 of Exhibit [XXX] is not my signature. I can also confirm that I did not stamp the reference with the Harefield Hospital stamp.'

16. The Tribunal noted that during both periods of employment at Harefield Hospital, Dr A had been Dr De Asúa's Educational Supervisor and that Dr A had provided Dr De Asúa with a reference in around 2015, after his first period of employment. Further the Tribunal noted that during his first period of employment Dr A said Dr De Asúa's work was very good.

17. The Tribunal also had regard to paragraph 9 of Dr D's witness statement in which he stated:

'9. I looked at the references and very quickly I could tell that the signatures were not [Dr B] or [Dr A's] signatures and they had clearly been fabricated. Both doctors confirmed to me that they had not supplied any of these references. On 5 April 2019 I spoke by telephone with [Ms E] at ID Medical to express my concern and to confirm that the references were not provided by the Trust.'

18. The Tribunal took into account that information about the 2017 email and reference only came to light when IDM made inquiries with the Hospital to verify another reference provided to IDM in respect of Dr De Asúa in 2019. The Tribunal was of the view that the email was sent by Dr De Asúa on 17 January 2017 with the intention to mislead IDM that the email was sent from a genuine source and that the reference attached within it was genuine.

19. In all the circumstances, the Tribunal was satisfied, based on the evidence before it, that Dr A did not complete the reference, he did not create the email address set out in the allegation, nor send the reference to IDM from that email address and that he did not sign off the email. Further, the Tribunal was satisfied that Dr A did not attach the employment reference attached to that email. The Tribunal was satisfied, taking into account the full admissions made in correspondence with the GMC, that Dr De Asúa likely completed these actions.

20. The Tribunal therefore found paragraphs 1(a)(i and ii) and 1(b) of the Allegation proved.

Paragraph 2

2. When sending the First Email, you knew that:

a. you did not have Dr A's permission to send the First Email;

Found proved

b. the First Reference had not been completed by Dr A.

Found proved

21. The Tribunal had regard to Dr A's witness statement of 11 September 2019 and it was clear from the statement that Dr A was unaware of the email of 17 January 2017, and that he had not given his permission to that email being sent.

22. The Tribunal had regard to correspondence provided by Dr De Asúa. In a letter to Dr D at Harefield Hospital, dated 23 June 2019, Dr De Asúa stated:

'I am writing to deeply apologize for providing an fraudulent reference from a clinical supervisor at Harefield Hospital. Completing the application process for a locum agency from outside the UK proved very difficult and I let the pressure to meet all the requirements in time affect my judgement. I have now reflected and realise that this has been a terrible mistake and breaches the principles of trust and integrity and I am sincerely sorry. I can assure this will never happen again and I of course will be eager to undertake any and every remedial the GMC may suggest. I can only hope my untainted record up to this point will support that this has been a one off mistake never to be repeated.'

23. In an email dated 26 May 2019, to the GMC, Dr De Asúa stated 'Regarding the allegations of producing false references to complete the application process for ID Medical locum agency, I plead guilty.' On 25 October 2019, in an email to the GMC, Dr De Asúa again repeated his wrongdoing.

24. Based on the information before it, the Tribunal concluded that Dr De Asúa knew that he did not have Dr A's permission to send the First Email; and that he knew the First Reference had not been completed by Dr A.

25. It therefore found paragraph 2(a) and 2(b) of the Allegation proved.

Paragraph 3

3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.

Found proved

26. The Tribunal had regard to Dr De Asúa's email of 11 October 2019, to the GMC, in which he stated:

'Many apologies for the delay in my response. As a final statement I would like to again apologise for my actions, for failing to follow GMC guidance on good medical practice and for letting down my supervisors. I finished my last clinical placement over a month ago and I am no longer practicing medicine. Finally, I would like to attach a

letter from the HR manager at my last job complimenting me on my performance to demonstrate that although there is now [sic] excuse for my actions, patient care was never compromised.

Many thanks for your time and assistance during the investigation.'

27. It also had regard to Dr De Asúa email of 25 October 2019 in which he stated:

'Regarding the allegations stated in Annex A stating I provided fraudulent references to complete the application process for ID Medical locum agency. I again plead guilty and I agree with all the evidence against me, I provided false references from past clinical supervisors to complete the application process. This is inexcusable behaviour and I deeply regret my actions. Completing the application process and navigating the admission requirements from outside the UK proved very difficult and I let the pressure cloud my judgement. I understand that my actions breach the principles of trust and integrity that govern medical practice in the UK and I am sincerely sorry. I accept full responsibility for my regrettable actions.'

28. In his email to the GMC of 17 March 2021, in relation to the hearing before this Tribunal, Dr De Asúa stated:

*'I do not object to any of the documents
-I do not consider any redactions necessary
-I do not require any witness to attend and give oral evidence
-I agree with the draft witness schedule
-I do not intend to introduce documents as evidence or call any witnesses
-I will not be able to attend the hearing and relinquish right to representation and appeal
-I plead guilty to all charges and take full responsibility for the allegations
-I would be grateful if you could relay my apologies to the witnesses and tribunal members for having to invest their valuable time in this hearing due to my misconduct'*

29. On the basis of the evidence before it, the Tribunal concluded that Dr De Asúa had repeatedly and consistently admitted his wrongdoing and accepted that his actions were fraudulent. It determined that Dr De Asúa's actions at paragraph 1 were dishonest by reason of paragraph 2, and, therefore, found paragraph 3 of the Allegation proved.

Paragraph 4

4. On 17 January 2017 at 17:01 you sent an email to ID Medical from the email address set out in Schedule 2 ('the Second Email') which:

- a. falsely purported to be from Dr B, in that you had:
 - i. created the email address which contained Dr B's name in its username;

Found proved

ii. signed the email off with Dr B's name;

Found proved

b. attached an employment reference dated 16 January 2017 ('the Second Reference'), which falsely purported to have been completed by Dr B.

Found proved

30. The Tribunal considered paragraphs 4(a)(i and ii) and 4(b) together.

31. The Tribunal was provided with a copy of the email dated 17 January 2017, timed at 17:01, from Dr B to IDM. In the email it stated '*I enclose Dr Ignacio de Asua's reference form. With thanks*'. The Tribunal noted that the email appeared to have been sent from the email address set out in Schedule 2. Attached to the email was IDM's template reference form dated 16 January 2017. The reference contained details including Dr De Asúa's full name, his GMC reference number, and information about his clinical skills and a supporting statement from Dr B recommending Dr De Asúa. In addition, the template appeared to be signed off by Dr B and was stamped bearing the Hospital's full name, address and contact number.

32. The Tribunal took account of Dr B's witness statement, dated 16 August 2019. At paragraphs 5 and 8 of her witness statement, Dr A stated:

'5. In April 2019, my secretary [Ms F] forward to me a reference from the company ID Medical regarding Dr De Asua, which had allegedly been written by me. I did not produce any reference for Dr De Asua.'

'8. At page 2 of Exhibit [XXX], the email address harefieldhospitalicu@nhs.org.uk is provided. I confirm that this is not my email address and is not a real email address for the hospital.'

33. The Tribunal noted that Dr B said the stamp used was the real hospital stamp but that she had not stamped the reference. The Tribunal was of the view that the email was sent by Dr De Asúa on 17 January 2017 with the intention to mislead IDM that the email was sent from a genuine source and that the reference attached within it was genuine.

34. The Tribunal also had regard to paragraph 9 of Dr D's witness statement, as referred to above.

35. In all the circumstances, the Tribunal was satisfied, based on the evidence before it, that Dr B did not complete the reference, she did not create the email address set out in the allegation, nor send the reference to IDM from that email address and that she did not sign off the email. Further, the Tribunal was satisfied that Dr B did not attach the employment reference attached to that email. The Tribunal was satisfied, taking into account the admissions made in correspondence with the GMC, that Dr De Asúa likely completed these actions.

36. The Tribunal therefore found paragraphs 4(a)(i and ii) and 4(b) of the Allegation proved.

Paragraph 5

5. When sending the Second Email, you knew that:

a. you did not have Dr B's permission to send the Second Email;

Found proved

b. the Second Reference had not been completed by Dr B.

Found proved

37. The Tribunal had regard to Dr B's witness statement of 16 August 2019 and it was clear from the statement that Dr B was unaware of the email of 17 January 2017, and that she had not given her permission to that email being sent.

38. The Tribunal noted that Dr B worked with Dr De Asúa often on a daily basis between the end of 2014 and August 2015. Further that she provided him with a reference at the end of this period of work. She said she did not have any concerns about his fitness to practise at that time but she said she did not provide him with any subsequent references.

39. The Tribunal took into account the correspondence exchanged between the GMC and Dr De Asúa, as referred to above, where he acknowledged his wrongdoing, and also the letter to Dr D apologising for his actions.

40. Based on the evidence before it, the Tribunal concluded that Dr De Asúa knew that he did not have Dr B's permission to send the Second Email; and that he knew the Second Reference had not been completed by Dr B.

41. It therefore found paragraph 5(a) and 5(b) of the Allegation proved.

Paragraph 6

6. Your actions as described at paragraph 4 were dishonest by reason of paragraph 5.

Found proved

42. On the basis of the evidence before it, and for the same reasons as set out in relation to paragraph 3 of the Allegation, the Tribunal concluded that Dr De Asúa had repeatedly and consistently admitted his wrongdoing and accepted that his actions were fraudulent. It determined that Dr De Asúa's actions at paragraph 4 were dishonest by reason of paragraph 5, and, therefore, found paragraph 6 of the Allegation proved.

Paragraph 7

7. On 12 March 2019 at 11:06 you submitted an employment e-reference dated 12 March 2019 ('the Third Reference') to ID Medical which falsely purported to have been completed by Dr B.

Found proved

43. The Tribunal was provided with a copy of the email dated 12 March 2019, timed at 11:06, sent from the email address set out in Schedule 3, and purportedly from Dr B to IDM. In the email it stated:

'Hi

A reference has been completed for Dr Ignacio de Asua (GMC Number: 7062327)

They will be sending the completed reference shortly.

If you have not received this in 2 working days, please contact the referee using the information below:

Name: [Dr B]

Position: Consultant

Hospital: Harefield Hospital

Telephone Number: (0044) 1895 823737

Email Address: harefieldhospitalicu@nhs.org.uk'

44. The Tribunal noted that IDM's template reference form was dated 12 March 2019. The reference contained details including Dr De Asúa's full name, his GMC reference number, and information about his clinical skills. The template appeared to be signed off by Dr B. The false reference said that Dr De Asúa was suitable for the post applied for.

45. The Tribunal noted that on 13 March 2019, IDM sent an email to Dr B's secretary asking her to verify the reference by responding via her official email address or putting a hospital stamp on the reference.

46. Dr B confirmed in her statement that she did not provide the reference dated 12 March 2019 and did not stamp it.

47. At paragraphs 8, 9 and 10 Dr B stated:

'8. At page 2 of Exhibit [XXX], the email address harefieldhospitalicu@nhs.org.uk is provided. I confirm that this is not my email address and is not a real email address for the hospital.'

'9. The telephone number ((0044) 1895 823737) provided in the reference is not my direct number. It is the switchboard number for the hospital.'

'10. I also confirm that the signature at page 3 of the Exhibit [XXX] is not my signature.'

48. Further at paragraph 12 Dr B stated:

'The email address which has been used to send the reference – [Dr B]@gmail.com – is a fake email address. I confirm that this is not my email address and I did not send this email.'

49. The Tribunal concluded, from the evidence before it, and Dr De Asúa's admissions in correspondence, that Dr B had not submitted the third reference and that Dr De Asúa had sent it purporting it to be sent from Dr B. It therefore found paragraph 7 of the Allegation proved. The Tribunal was of the view that the email was sent by Dr De Asúa on 12 March 2019 with the intention to mislead IDM that the email was sent from a genuine source and that the reference attached within it was genuine.

Paragraph 8

8. When submitting the Third Reference, you knew that it had not been completed by Dr B.

Found proved

50. For the same reasons as already explained above, the Tribunal concluded that Dr De Asúa knew that the reference had not been completed by Dr B.

51. It therefore found paragraph 8 of the Allegation proved.

Paragraph 9

9. Your actions as described at paragraph 7 were dishonest by reason of paragraph 8.

Found proved

52. On the basis of the evidence before it, and for the same reasons as set out in relation to paragraphs 3 and 6 of the Allegation, the Tribunal concluded that Dr De Asúa had repeatedly and consistently admitted his wrongdoing and accepted that his actions were fraudulent. It determined that Dr De Asúa's actions at paragraph 7 were dishonest by reason of paragraph 8, and, therefore, found paragraph 9 of the Allegation proved.

Paragraph 10

10. On 29 March 2019 at 06:22 you sent an email to ID Medical from the email address set out in Schedule 3 ('the Third Email') which:

- a. falsely purported to be from Dr B, in that you had:

i. created the email address which contained Dr B's name in its username;

Found proved

ii. signed the email off with Dr B's name;

Found proved

b. attached a copy of page 2 of the Third Reference, endorsed with a forged stamp of 'Harefield Hospital' ('the Stamp').

Found proved

53. The Tribunal considered paragraphs 10(a)(i and ii) and 10(b) together.

54. The Tribunal was provided with a copy of the email dated 29 March 2019, timed at 06:22, purportedly sent by Dr B to IDM. In the email it stated:

'Dear [XXX]

I attach a copy of the reference, now with Harefield Hospital stamp.'

55. The Tribunal noted that the email address used on 29 March 2019, containing Dr B's name, was different from that provided in the 12 March 2019 reference. Further a stamp had been added to the reference. This stamp was different from the official hospital stamp used on the 2017 references. It read simply 'Harefield Hospital', and it did not provide the full address or contact number. IDM raised concerns about the authenticity of the reference, including the Hospital stamp and sought to verify this with the Hospital. Given earlier concerns already raised by the Hospital with IDM about the validity of the 12 March 2019 reference, IDM asked the hospital to confirm the reference received on 29 March 2019 was provided by Dr B. Dr B confirmed it was not provided by her. Dr B said the stamp was not an official hospital stamp and it was not her email address.

56. The Tribunal also took into account that Dr A observed that the departmental stamp used on Dr B's purported reference for Dr De Asúa was not an official hospital stamp.

57. In all the circumstances, the Tribunal was satisfied, based on the evidence before it and Dr De Asúa's admissions in correspondence, that he sent the email, dated 29 March 2019 at 06:22, falsely purporting it to be from Dr B, and that he likely created the email address which contained Dr B's name in its username; and signed the email off with Dr B's name. Further, the Tribunal was satisfied that Dr De Asúa forged page 2 of the third reference by endorsing it with the stamp 'Harefield Hospital'.

58. The Tribunal therefore found paragraphs 10(a)(i and ii) and 10(b) of the Allegation proved.

Paragraph 11

11. When sending the Third Email, you knew that:
- a. you did not have Dr B's permission to send the Third Email;
Found proved
 - b. the Stamp on the Third Reference was forged.
Found proved

59. The Tribunal was of the view that Dr De Asúa had admitted on a number of occasions sending false references to complete the application process for IDM locum agency. Based on the evidence before it, the Tribunal concluded that Dr De Asúa knew that the reference had not been completed by Dr B.

60. Further the Tribunal noted that, Dr De Asúa in his email of 17 March 2021, said "*I plead guilty to all charges and take full responsibility for the allegations*". The Tribunal therefore found paragraphs 11(a) and 11(b) of the Allegation proved finding that there was no other plausible explanation for why an unofficial stamp had been added to an already fraudulent reference, other than that Dr De Asúa had added it.

Paragraph 12

12. Your actions as described at paragraph 10 were dishonest by reason of paragraph 11.
Found proved

61. On the basis of the evidence before it, and Dr De Asúa's admissions in correspondence with the GMC, the Tribunal concluded that Dr De Asúa had admitted fully his wrongdoing in relation to all parts of the Allegations, thereby accepting that his actions were dishonest. It determined that Dr De Asúa's actions at paragraph 10 were dishonest by reason of paragraph 11, and, therefore, it found paragraph 12 of the Allegation proved.

The Tribunal's Overall Determination on the Facts

62. The Tribunal has determined the facts as follows:
1. On 17 January 2017 at 15:26 you sent an email to ID Medical from the email address set out in Schedule 1 ('the First Email') which:
 - a. falsely purported to be from Dr A, in that you had:
 - i. created the email address which contained Dr A's name in its username;
Determined and found proved

- ii. signed the email off with Dr A's name;
Determined and found proved
 - b. attached an employment reference dated 16 January 2017 ('the First Reference'), which falsely purported to have been completed by Dr A.
Determined and found proved
- 2. When sending the First Email, you knew that:
 - a. you did not have Dr A's permission to send the First Email;
Determined and found proved
 - b. the First Reference had not been completed by Dr A.
Determined and found proved
- 3. Your actions as described at paragraph 1 were dishonest by reason of paragraph 2.
Determined and found proved
- 4. On 17 January 2017 at 17:01 you sent an email to ID Medical from the email address set out in Schedule 2 ('the Second Email') which:
 - a. falsely purported to be from Dr B, in that you had:
 - i. created the email address which contained Dr B's name in its username;
Determined and found proved
 - ii. signed the email off with Dr B's name;
Determined and found proved
 - b. attached an employment reference dated 16 January 2017 ('the Second Reference'), which falsely purported to have been completed by Dr B.
Determined and found proved
- 5. When sending the Second Email, you knew that:
 - a. you did not have Dr B's permission to send the Second Email;
Determined and found proved
 - b. the Second Reference had not been completed by Dr B.
Determined and found proved
- 6. Your actions as described at paragraph 4 were dishonest by reason of paragraph 5.

Determined and found proved

7. On 12 March 2019 at 11:06 you submitted an employment e-reference dated 12 March 2019 ('the Third Reference') to ID Medical which falsely purported to have been completed by Dr B.

Determined and found proved

8. When submitting the Third Reference, you knew that it had not been completed by Dr B.

Determined and found proved

9. Your actions as described at paragraph 7 were dishonest by reason of paragraph 8.

Determined and found proved

10. On 29 March 2019 at 06:22 you sent an email to ID Medical from the email address set out in Schedule 3 ('the Third Email') which:

a. falsely purported to be from Dr B, in that you had:

i. created the email address which contained Dr B's name in its username;

Determined and found proved

ii. signed the email off with Dr B's name;

Determined and found proved

b. attached a copy of page 2 of the Third Reference, endorsed with a forged stamp of 'Harefield Hospital' ('the Stamp').

Determined and found proved

11. When sending the Third Email, you knew that:

a. you did not have Dr B's permission to send the Third Email;

Determined and found proved

b. the Stamp on the Third Reference was forged.

Determined and found proved

12. Your actions as described at paragraph 10 were dishonest by reason of paragraph 11.

Determined and found proved

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

Determination on Impairment - 28/04/2021

63. 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 before, Dr De Asúa's fitness to practise is impaired by reason of misconduct.

The Evidence

64. The Tribunal has taken into account all the evidence received during the facts stage of the hearing.

Submissions

65. On behalf of the GMC, Mr Toal submitted that Dr De Asúa's actions constituted misconduct and that his fitness to practise was impaired. He told the Tribunal that the facts found proved were serious, as there had been a clear breach of GMP, in relation to Dr De Asúa's honesty and integrity. He submitted that doctors had to be honest in all communications with colleagues and that doctors must make sure that any document written or signed by them was not false or misleading.

66. Mr Toal submitted that Dr De Asúa's behaviour had brought the medical profession into disrepute and the medical profession and the public would regard his behaviour as inappropriate. Mr Toal submitted that given the findings of dishonesty, this amounted to serious professional misconduct. He stated that Dr De Asúa's behaviour fell significantly short of the standards expected of a member of the medical profession.

67. Mr Toal stated that even if the risk of repetition was remote, due to the serious nature of the misconduct, if a finding of impairment was not made, then public confidence in the medical profession and the standards expected from doctors would be undermined. He submitted that a finding of impairment was justified to maintain public confidence in the medical profession and reaffirm to the profession clear standards of professional conduct.

The Relevant Legal Principles

68. 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.

69. 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 and that the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment. The Tribunal considered the case of *Roylance v General*

Medical Council (No.2) [2000]1 AC 311 (UKPC) and the two-stage process for determining cases of misconduct.

70. The Tribunal reminded itself it must determine whether Dr De Asúa's fitness to practise is impaired today, taking into account Dr De Asúa'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 *Cohen v GMC [2008] EWHC 581 (Admin)*.

Legally Qualified Chair's Advice

71. In addition, the Legally Qualified Chair ('LQC') stated, that whilst remediation is important, the Tribunal should not focus on this to the detriment of the other considerations in the overarching objective as highlighted in *CHRE v NMC and Grant [2011] EWHC 927 (Admin)*, as referred to in the case of *GMC v Chaudhary [2017] EWHC 2561 (Admin)*, where it was said:

'...Where a FTPP considers that the case is one where the misconduct consists of violating such a fundamental rule of the professional relationship between medical practitioner and patient and thereby undermining public confidence in the medical profession, a finding of impairment of fitness to practise may be justified on the grounds that it is necessary to reaffirm clear standards of professional conduct so as to maintain public confidence in the practitioner and in the profession. In such a case, the efforts made by the medical practitioner in question to address his behaviour for the future may carry very much less weight than in a case where the misconduct consists of clinical errors of incompetence.'

72. The LQC also referred the Tribunal to the case of *General Medical Council v Dr Ihenayi Chidi Nwachuku [2017] EWHC 2085 (Admin)* highlighting the following paragraphs:

'45. Dishonesty encompasses a very wide range of different facts and circumstances. Any instance of it is likely to impair a professional person's fitness to practise: R (Hassan) v General Optical Council [2013] EWHC 1887 per Leggatt J at paragraph [39].

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

47. A finding of impairment does not necessarily follow upon a finding of dishonesty. If misconduct is established, the tribunal must consider as a separate and discrete exercise whether the practitioner's fitness to practise has been impaired: PSA v GMC and Uppal [2015] EWHC 1304 at paragraph [27].

48. However, it will be an unusual case where dishonesty is not found to impair fitness to practise: *PSA v Health and Care Professions Council & Ghaffar* [2014] EWHC 2723 per Carr J at paragraphs [45] and [46].

49. The attitude of a practitioner to the allegations made and any admissions of responsibility for the misconduct will be taken into account as relevant factors in determining whether or not fitness to practise has been impaired: *Nicholas-Pillai v GMC* [2009] EWHC 1048 per Mitting J at paragraph [18].

50. The overarching concern is the public interest in protecting the public and maintaining confidence in the practitioner and medical profession when considering whether the misconduct in question impairs fitness to practise: *Yeong v GMC* [2009] EWHC 1923 per Sales J at paragraphs [50] and [51]; *Nicholas-Pillai* (above) at paragraph [27]:

"In cases of actual proven dishonesty, the balance ordinarily can be expected to fall down on the side of maintaining public confidence in the profession by a severe sanction against the practitioner concerned. Indeed, that sanction will often and perfectly properly be the sanction of erasure, even in the case of a one-off instance of dishonesty."

The Tribunal's Determination on Impairment

Misconduct

73. In determining whether Dr De Asúa's fitness to practise is currently impaired by reason of misconduct, the Tribunal first considered whether the facts found proved amounted to misconduct and whether that misconduct was serious.

74. The Tribunal found that Dr De Asúa had breached paragraphs 65, 68 and 71 of GMP:
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. [...]

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

75. Dr De Asúa admitted all parts of the Allegation, including four matters of dishonesty. He sent a number of false emails to IDM for the purposes of obtaining employment as a doctor, attaching three false references. The conduct occurred over a period of two years and was repeated. Dr De Asúa created and sent emails from three separate email addresses,

using Dr A and Dr B's names when creating the email accounts to make the communication appear more credible. He falsely inserted the doctors' signatures on the references. He used IDM's relevant template forms and on the First and Second references the official hospital stamp, so as to make the references appear authentic. Further, on 29 March 2019 because he was likely to be familiar with the reference verification process used by IDM, Dr De Asúa attempted to conceal that he had submitted an earlier false reference by adding an unofficial hospital stamp to the Third reference. In the Tribunal's view this was an attempt to conceal the fact that this was not a genuine reference and an attempt to avoid IDM contacting the referee to check the authenticity of the reference.

76. The Tribunal noted that whilst Dr De Asúa did not secure employment by submitting these references, he would not have known that at the time of submitting them, so this did not make his actions any less serious.

77. The Tribunal was of the view that Dr De Asúa's behaviour breached fundamental tenets of the medical profession and GMP. The Tribunal concluded that his conduct fell significantly below that which could be reasonably expected of a registered practitioner and amounted to misconduct which was serious.

Impairment

78. The Tribunal having found that the facts found proved amounted to misconduct went on to consider whether, as a result of that misconduct, Dr De Asúa's fitness to practise is currently impaired.

79. The Tribunal considered the relevant factors as set out by Dame Janet Smith in her Fifth Shipman Report and cited by Cox J in *CHRE v NMC and Grant (2011) EWHC 927 (Admin)*. In particular, the Tribunal found that that Dr De Asúa's conduct engaged the three limbs set out in that decision, as shown below, in that Dr De Asúa:

'...

- 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.'*

80. In determining whether Dr De Asúa is currently impaired, the Tribunal considered whether the misconduct had been remedied, whilst noting that matters of dishonesty are more difficult to remediate. It looked for evidence of insight, remediation and the likelihood

of repetition and balanced those against the three limbs of the statutory overarching objective.

81. In terms of insight, the Tribunal noted that Dr De Asúa had admitted his wrongdoing immediately when concerns were first raised with him by his Responsible Officer at IDM. He admitted the Allegation at an early stage in correspondence to the GMC. The Tribunal noted Dr De Asúa's explanation to the GMC for his wrongdoing, that completing the application process from outside the UK had proved very difficult, and he had let this pressure cloud his judgement. He had also described his actions as inexcusable. The Tribunal observed that Dr De Asúa had not chosen to participate in the hearing before this Tribunal. Further at the time of creating and submitting the First and Second references he was in fact working at the Hospital and would have been able to request references in the normal way. The Tribunal therefore found that Dr De Asúa had limited insight.

82. The Tribunal noted his expressions of remorse and the apologies given to Dr D, Dr G (his Responsible Officer), the witnesses concerned and to this Tribunal.

83. The Tribunal took into account that Dr De Asúa did not produce any evidence to substantiate the steps taken to remediate, albeit in his email dated 25 October 2019, he had stated that he had taken steps to do so. The Tribunal took into account that dishonesty can be difficult to remediate. Given the limited insight and repeated misconduct here, the Tribunal considered there was a risk of repetition if Dr De Asúa had to complete a similar application process again.

84. The Tribunal noted Dr De Asúa's observations that:

'In spite of these remedial actions, I believe I have breached the trust of my supervisors, the General Medical Council and the public beyond repair. I have full insight on the gravity of my misconduct and I do not feel I am fit to practice medicine in the UK ever again.'

85. Based on the limited information available, the Tribunal concluded there appeared to be no evidence of clinical concerns, nor did it appear that patient safety had been compromised by Dr De Asúa's actions.

86. The Tribunal took into consideration an email regarding potential re-employment sent to Dr De Asúa by the Medical Workforce Lead at Heartlands Hospital, where Dr De Asúa worked until August 2019. In addition, the Tribunal considered a supervision report provided by Dr De Asúa from an employee of Auckland City Hospital, New Zealand, dated 27 October 2015. The Tribunal noted the comments made by Dr A and Dr B in their statements, that during his first period of employment with the Hospital he had done 'very good' work and there were no concerns about his fitness to practise. However, it noted for the most part, that these positive comments pre-dated the events set out in the Allegation.

87. The Tribunal noted that the public and the profession are entitled to be able to place trust in doctors to act with honesty and integrity. The Tribunal was of the view that Dr De Asúa's actions were so serious and fell so far short of the standards expected in medical practise that a finding of impairment was necessary in the public interest 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.

88. The Tribunal has therefore determined that Dr De Asúa's fitness to practise is impaired by reason of misconduct.

Determination on Sanction - 29/04/2021

89. Having determined that Dr De Asúa'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

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

Submissions

91. On behalf of the GMC, Mr Toal submitted that although Dr De Asúa's dishonesty had not resulted in direct harm to patients, he had falsified references and that his behaviour amounted to a serious breach of GMP and undermined public trust in the medical profession.

92. Mr Toal submitted that taking no action was not appropriate in this case given the seriousness of the misconduct. Further, he said, there were no exceptional circumstances here to justify that sanction.

93. He also stated that, given the seriousness of Dr De Asúa's wrongdoing, undertakings were also wholly inappropriate and would not be workable as Dr De Asúa had indicated he was not currently in practise.

94. Mr Toal submitted that conditions would also be inappropriate and impractical and would not properly mark the seriousness of the misconduct.

95. Mr Toal further submitted that although suspension has a deterrent effect and can be used to send a message to the doctor, the public and the profession about unacceptable conduct, a sanction of suspension was inappropriate in Dr De Asúa's case, given the seriousness of his misconduct. He referred the Tribunal to paragraph 13 of its own Impairment Determination. He said that Dr De Asúa's conduct was fundamentally incompatible with continued registration. He stated that whilst Dr De Asúa had admitted fault, this was only when confronted. Mr Toal said that Dr De Asúa's behaviour was pre-

planned and sophisticated and had been carried out over a period of two years. Further, he said there was no evidence to show Dr De Asúa had taken steps to mitigate his behaviour.

96. Mr Toal submitted that even though there was no risk to patients, erasure was the only means to maintain public confidence in the profession and to promote and maintain proper professional standards and conduct. He pointed out that in correspondence with the GMC on 25 October 2019, Dr De Asúa had conceded that a sanction of erasure may be appropriate. Mr Toal submitted that Dr De Asúa's conduct was incompatible with continued registration and erasure from the Medical Register was the only appropriate sanction given the circumstances of this case.

Legally Qualified Chair's legal advice

97. The LQC brought to the Tribunal's attention the case of *Parkinson v Nursing and Midwifery Council [2010] EWHC 1898 (Admin)*, where Mr Justice Mitting said:

'A [registrant] found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the register. A [registrant] who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation the conduct criticised was dishonest, and an undertakings that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.'

98. The LQC pointed out that although Dr De Asúa had not appeared before the Tribunal, he had made admissions to the GMC in correspondence. She reminded the Tribunal of its Impairment Determination as regards Dr De Asúa's insight, remediation and any risk of repetition.

The Tribunal's Determination on Sanction

99. The decision as to the appropriate sanction, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision, the Tribunal has taken account of the Sanctions Guidance (November 2019) ('the SG') and the statutory overarching objective. The Tribunal recognises that the purpose of a sanction is not to be punitive, although it may have a punitive effect.

100. Throughout its deliberations the Tribunal has applied the principle of proportionality, balancing Dr De Asúa's interests with the public interest. It reminded itself that it should only impose the minimum sanction necessary to achieve the overarching objective. In deciding what sanction, if any, to impose the Tribunal considered each of the sanctions available, starting with the least restrictive. It also considered and balanced the mitigating and aggravating factors in this case.

Aggravating and mitigating factors

101. The Tribunal identified the following aggravating and mitigating factors relating to this case:

Mitigating

- Dr De Asúa had apologised early on for his '*mistake*', but only after being confronted by his Responsible Officer. He had also apologised for his actions to the GMC, the witnesses involved and to this Tribunal.
- he made early and consistent admissions to the GMC in his correspondence.
- he had shown some insight into the reasons behind his misconduct.
- he had fully acknowledged the seriousness of his behaviour and the impact that this may have on his continuing registration.
- there were no patient safety concerns, nor was there any evidence that the reason for providing false references was because there were concerns about Dr De Asúa's clinical practise.

Aggravating

- these were serious breaches of GMP.
- Dr De Asúa repeated his dishonest conduct on four occasions spanning over a two-year period.
- this was not an isolated incident of poor judgement, nor was it inadvertent or a '*mistake*'. His actions were pre-planned, calculated and a deliberate attempt to avoid and conceal.
- he attempted to conceal his earlier dishonest behaviour, by further dishonest conduct - adding an unofficial hospital stamp to the Third false reference.
- Dr De Asúa told the GMC the reasons for his actions were that it was difficult to complete the application and admissions process from outside the UK, when in fact, he was working in the UK in 2017 when the First and Second false references were sent to IDM. His justification did not reflect the true position, or overall seriousness of the situation.
- Dr De Asúa's actions were for the purpose of gaining employment and obtaining a personal benefit, whether that benefit materialised or not.

No action

102. The Tribunal first considered whether to conclude Dr De Asúa's case by taking no action. The Tribunal had already determined that Dr De Asúa's fitness to practise is impaired by reason of his serious misconduct. It determined that given the departures from GMP found, including dishonesty, and in the absence of any exceptional circumstances, it would be disproportionate to conclude this case by taking no action.

Undertakings

103. The Tribunal considered whether to accept undertakings. The Tribunal was of the view that given the seriousness of the misconduct, accepting undertakings would be inappropriate, impractical and unworkable. In addition, given that Dr De Asúa had not participated in this hearing, the Tribunal was not in a position to accept undertakings.

Conditions

104. The Tribunal next considered whether it would be sufficient to impose conditions on Dr De Asúa's registration. Any conditions imposed would need to be appropriate, proportionate, workable and measurable.

105. The Tribunal was of the view that it could not formulate appropriate, workable, proportionate and measurable conditions to address the seriousness of the issues raised by Dr De Asúa's misconduct. Further, it noted that Dr Asua had stated that he was not currently working as a doctor. The Tribunal determined that a period of conditional registration would not adequately protect public confidence in the profession or maintain and promote proper professional standards of conduct for members of the profession.

Suspension

106. The Tribunal then went on to consider whether imposing a period of suspension on Dr De Asúa's registration would be appropriate and proportionate.

107. The Tribunal took account of the SG in relation to suspension, including in particular, paragraphs, 92, 93 and the table at page 30 of the SG:

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

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

108. The Tribunal bore in mind the aggravating factors in this case as set out above, in particular, that Dr De Asúa had repeated his dishonesty on four occasions over a period of two years, falsifying documents for personal benefit with a view to obtaining employment.

Furthermore, he aggravated his dishonest actions, by carrying out further dishonest actions. The Tribunal concluded his behaviour had been planned and calculated.

109. The Tribunal took into consideration that there had been some acknowledgement of fault, but that Dr De Asúa had demonstrated only limited insight into the reasons for his misconduct. He had however accepted in his email of 25 October 2019, that his misconduct may lead to erasure. The Tribunal relied on the rationale set out in paragraphs 19 to 21 of the Impairment Determination in relation to insight, remediation and risk of repetition. There was no evidence to show that Dr De Asúa had taken steps to remediate, and the Tribunal had found that there was a risk of repetition.

110. Given these circumstances, and the significant departure from GMP, the Tribunal was satisfied that a sanction of suspension would be inappropriate and insufficient to mark the seriousness of Dr De Asúa's misconduct, to protect public confidence in the medical profession or to uphold proper professional standards of conduct and behaviour. The Tribunal concluded Dr De Asúa's conduct was fundamentally incompatible with continued registration.

Erasure

111. Having considered the SG in relation to erasure, the Tribunal was of the view that paragraphs 108, 109 (a) (b) (h), 124 and 125 (c) and 128 of the SG were particularly relevant in Dr De Asúa's case:

'108 Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.

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

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

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

h Dishonesty, especially where persistent and/or covered up...

124 Although it may not result in direct harm to patients, dishonesty related to matters outside the doctor's clinical responsibility (eg providing

false statements or fraudulent claims for monies) is particularly serious. This is because it can undermine the trust the public place in the medical profession. Health authorities should be able to trust the integrity of doctors, and where a doctor undermines that trust there is a risk to public confidence in the profession. Evidence of clinical competence cannot mitigate serious and/or persistent dishonesty.

125 Examples of dishonesty in professional practice could include:

...

c submitting or providing false references

128 Dishonesty, if persistent and/or covered up, is likely to result in erasure...'

112. The Tribunal bore in mind Dr De Asúa's repeated dishonesty and the serious and deliberate departure from the principles set out in GMP.

113. Whilst the Tribunal noted Dr De Asúa's misconduct did not pose a risk to patient safety, the misconduct was particularly serious, and his dishonest actions were intended to mislead others and to cover up his wrongdoing, thereby undermining the trust the public may place in the profession. The fact that there appeared to be no clinical concerns could not mitigate the seriousness of his dishonesty. However, the Tribunal took into account that there was no evidence that the purpose of his false references was to hide any concerns about his clinical practise.

114. Looked at overall, the Tribunal concluded that Dr De Asúa's conduct was fundamentally incompatible with ongoing registration, and that erasure from the Medical Register was the only proportionate sanction in all the circumstances to maintain public confidence in the profession and promote and maintain proper professional standards of conduct.

115. The Tribunal therefore directed that Dr Asua's name be erased from the Medical Register.

Determination on Immediate Order - 29/04/2021

116. Having determined that Dr De Asúa name should be erased from the Medical Register, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether Dr De Asúa's registration should be subject to an immediate order to suspend his registration.

117. The Tribunal has borne in mind the test to be applied with regards to imposing an immediate order. It may impose an immediate order if it determines that it is necessary to protect members of the public, is otherwise in the public interest, or is in the best interests of the doctor.

Submissions

118. On behalf of the GMC, Mr Toal submitted that an immediate order was necessary, for the protection of the public and in the public interest, to maintain public confidence in the profession, and in the best interests of the doctor. Mr Toal submitted that given the seriousness of the matter, an immediate order of suspension was necessary and wholly justified, to prevent the doctor continuing in unrestricted practise.

The Tribunal's Determination

119. The Tribunal has taken into account paragraphs 172 to 178 of the SG in relation to when it is appropriate to impose an immediate order. In particular 172 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...'

120. The Tribunal has determined that, given the gravity of Dr De Asúa's misconduct, and its findings in relation to his impairment and the appropriate sanction, it is necessary to protect members of the public, and is in the public interest, to make an order suspending Dr De Asúa's registration immediately.

121. The substantive decision of erasure, as already announced, will take effect 28 days from when notice is deemed to have been served upon Dr De Asúa, unless he lodges an appeal in the interim. If Dr De Asúa lodges an appeal, the immediate order for suspension will remain in force until such time as the outcome of any appeal is determined.

122. There is no interim order to revoke.

123. That concludes the case.

Confirmed

Date 29 April 2021

Mrs Kim Parsons, Chair

ANNEX A – 26/04/2021

Service and Proceeding in Absence

Service

124. Dr De Asúa is neither present nor represented today.

125. The Tribunal has considered whether notice of this hearing has been properly served upon Dr De Asúa in accordance with Rules 15 and 40 of the General Medical Council (Fitness to Practise) Rules 2004 (as amended) (the Rules), and Schedule 4, Paragraph 8 of the Medical Act 1983 (as amended). In so doing, the Tribunal has taken into account all the information placed before it, together with Mr Toal's submissions on behalf of the General Medical Council (GMC).

126. The Tribunal had regard to the GMC service bundle, which included pre-hearing correspondence between the GMC and Dr De Asúa. The Tribunal noted that notice can be given by email and the GMC's information letter dated 3 March 2021 was sent to Dr Asua's registered email address. Dr De Asúa confirmed receipt of this email on 4 March 2021.

127. On 11 March 2021, the Medical Practitioners Tribunal Service ('MPTS') sent a Notice of Hearing ('NOH') letter to Dr De Asúa's registered email address, in accordance with the Rules. Dr De Asúa confirmed receipt of the GMC's email on the same day.

128. In the circumstances, the Tribunal is satisfied that the GMC and MPTS has made all reasonable efforts to serve notice of the hearing and that it has been properly served, in accordance with Rules 15 and 40 of the GMC (Fitness to Practise) Rules 2004.

Proceeding in Absence

129. The Tribunal has already determined that service is effective and as such is satisfied that all reasonable efforts have been made to serve notice of this hearing on Dr De Asúa. The Tribunal then considered, in accordance with Rule 31 of the Rules, whether to proceed with the case in Dr De Asúa's absence.

130. The Tribunal was mindful that the discretion to proceed in Dr De Asúa's absence should be exercised with utmost care and caution and with regard to the overall fairness of the proceedings.

131. The Tribunal had regard to *R v Hayward*, *R v Jones*, *R v Purvis QB 862 [2001]* EWCA Crim 168 [2001] and the guidance provided in *GMC v Adeogba 2016 EWCA Civ 162*. It noted in particular the following relevant considerations:

- The nature and circumstances of the doctor's behaviour in absenting himself.

- In particular, whether the behaviour was voluntary and therefore that the doctor waived the right to be present;
- Whether an adjournment would result in the doctor attending on a subsequent occasion;
- Whether the doctor, although absent, wished to be represented, or whether he had waived his right to be represented.
- The extent to which the doctor may be at a disadvantage by not being able to give his account of events;
- When exercising discretion the Tribunal had to have regard to fairness to the doctor as being of prime importance, but also take into account fairness to the GMC and the general public interest, taking into account the regulatory remit of the GMC.

132. The Tribunal noted Dr De Asúa's email dated 17 March 2021 in which he stated that he will not be attending the hearing and will not be represented. It also noted that Dr De Asúa has not requested a postponement prior to today's hearing.

133. On the basis of the information provided, the Tribunal was satisfied that Dr De Asúa is aware of the hearing, has not requested an adjournment and was content for the Tribunal to proceed in his absence. Dr De Asúa had the opportunity to attend the hearing virtually, however, chose not to do so. The Tribunal was satisfied that Dr De Asúa has therefore voluntarily absented himself. There was no indication that were it to adjourn today, that he would attend a future hearing.

134. The Tribunal had regard to the GMC's regulatory remit and that registrants must submit to the regulatory regime. Further, it took into account the GMC's role to represent the public interest. The Tribunal concluded that it was in the public interest that the hearing proceeds today.

135. Therefore, in accordance with Rule 31, the Tribunal has determined that in the particular circumstances of this case it is fair and reasonable to proceed in Dr De Asúa's absence.

Schedule 1

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Schedule 2

[Dr B]@gmail.com

Schedule 3

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