PUBLIC RECORD

Dates: 11/09/2024 - 27/09/2024

Medical Practitioner's name:	Dr Janet Helen CORKINDALE
GMC reference number:	6079483
Primary medical qualification:	MB BS 1999 University of Sydney

Type of case	Outcome on facts	Outcome on impairment
New - Misconduct	Facts relevant to impairment found proved	Not Impaired

Summary of outcome

No warning

Tribunal:

Legally Qualified Chair	Miss Gillian Temple-Bone
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Keith Dunnett

Tribunal Clerk:	Mx Nate Caruso-Kelly

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Andrew Colman, Counsel, instructed by Clyde & Co
GMC Representative:	Ms Katie Jones, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 26/09/2024

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

Background

2. Dr Corkindale qualified as a doctor in 1998 at the University of Sydney, having previously qualified as a registered nurse in the UK in 1987. Dr Corkindale returned to the UK in 2003 and completed her GP training in 2005. Dr Corkindale worked as a locum GP in various practices until 2009, when she secured a permanent position at Silverdale Medical Practice. Dr Corkindale left Silverdale Medical Practice in 2013 and worked in NHS Merseyview Walk in Centre in Liverpool until 2016. Thereafter, Dr Corkindale worked at various GP practices in the Liverpool area as a locum. Dr Corkindale began working at the Medislim Clinic ('the Clinic') in 2011.

3. The allegation that has led to Dr Corkindale's hearing can be summarised as: Between 2011 and 2015, Dr Corkindale was employed by the Medislim Clinic, and she knew that the Clinic distributed the Controlled Drugs Phentermine (18.6mg and 37.2mg tablets) and Diethylpropion (75mg tablets).

4. It is alleged that Dr Corkindale knew that XXX ('Ms A'), the nurse owner of the Clinic, was transporting the Controlled Drugs, assembling them into individual patient packs, and distributing them to patients, without the supervision of an appropriately qualified doctor. It is also alleged that Dr Corkindale knew that the Controlled Drugs were distributed to patients without an appropriately issued prescription, that one or more patients received them in bulk supplies, and that the stock was not properly monitored and/or recorded. Further, that during her employment at the Clinic, Dr Corkindale failed to raise patient safety concerns in respect of the activities of the Clinic to the appropriate authorities.

5. Finally, it is alleged that during her employment at the Clinic, Dr Corkindale failed to inform her Responsible Officer and/or NHS Appraiser of her employment at the Clinic, although she knew she was required to declare the full scope of her clinical work, and that this failure was dishonest.

6. The events which gave rise to the allegation were first brought to the attention of the GMC in October 2015, following an inspection of the Clinic at Ellesmere Port on 21 September 2015. It was found that the Clinic was possibly in breach of legislation and the professionals of their professional regulatory standards. Dr Corkindale was at that time working for two hours a week on Wednesdays at the Clinic in Manchester.

7. During the regulatory proceedings against Ms A, the Nursing and Midwifery Council ('NMC'), police, and NHS England ('NHSE') made a referral to the GMC in November 2020, but Dr Corkindale's name was not provided to the GMC until February 2021. In May 2021, the GMC decided to close the case against Dr Corkindale and take no further action. That decision was reviewed, and in August 2022, the GMC re-opened the investigation into Dr Corkindale. The GMC notified Dr Corkindale in March 2023 that they were taking regulatory proceedings against her, eight years after the events of 2015. Dr Corkindale first began to work for the Clinic in 2011. This hearing in September 2024 is happening 13 years after Dr Corkindale began her employment there.

The Outcome of Applications Made during the Facts Stage

8. At the preliminary stage of the hearing, the Tribunal refused Dr Corkindale's application, made pursuant to Rule 17(2)(a) of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the Tribunal grant a stay of proceedings in relation to all paragraphs of the Allegation. The Tribunal's full decision on the application is included at Annex A.

9. Further, the Tribunal granted Dr Corkindale's application, made pursuant to Rule 34(1) of the Rules, that evidence of Dr Corkindale's 'interview' with the police on 23 September 2015 be excluded. The Tribunal's full decision on the application is included at Annex B.

The Allegation and the Doctor's Response

10. The Allegation made against Dr Corkindale is as follows:

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

1. Between approximately 2011 and 2015, you were employed at the Medi-Slim Clinic ('the Clinic'), and you knew that:

a. on one or more occasion, the Clinic distributed Controlled Drugs as set out in Schedule 1 (the 'Controlled Drugs');

To be determined.

b. without the supervision of an appropriately qualified doctor, Ms A was:

i. transporting the Controlled Drugs;

To be determined.

ii. assembling the Controlled Drugs into individual patient packs;

To be determined.

iii. distributing the Controlled Drugs to patients;

To be determined.

c. the Controlled Drugs were distributed to patients without an appropriately issued prescription;

To be determined.

d. one or more patients received bulk supplies of the Controlled Drugs;

To be determined.

e. the stock of Controlled Drugs within the Clinic was not properly maintained and/or recorded.

To be determined.

2. During your employment at the Clinic, you failed to:

   a. raise patient safety concerns in respect of the activities as described in paragraph 1 to the appropriate authorities;

      To be determined.

   b. inform your Responsible Officer and/or NHS Appraiser of your employment at the Clinic.

      To be determined.

3. You knew you were required to declare all clinical posts to your Responsible Officer and/or NHS Appraiser during your appraisals.

   To be determined.

4. Your actions as described in paragraph 2b was dishonest by reason of paragraph 3.

   To be determined.

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

Witness Evidence

11. The Tribunal received oral evidence and witness statements on behalf of the GMC from the following witnesses:

- Dr C, Accountable Officer for Controlled Drugs at NHSE, dated 15 and 16 February 2024;
- Mr D, senior pharmacy professional advisor to NHSE, dated 8 February 2023;
- DC E, Detective Constable in the Drug Expert Witness Unit at Cheshire Constabulary, dated 23 August 2023 and 6 March 2024;
- Dr F, GP and GP Appraiser, dated 19 October 2023.

12. The Tribunal also received evidence on behalf of the GMC in the form of a witness statement from the following witness who was not called to give oral evidence:

- Patient B, dated 17 March 2023.

13. Dr Corkindale provided her own witness statement dated 13 August 2024, as well as an impact statement dated 27 August 2024, and gave oral evidence at the hearing.

Documentary Evidence

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

- Record of police interview with Dr Corkindale, dated 15 January 2016;
- Police statement of Dr Corkindale, dated 7 February 2018;
- Police statement of Dr C, with exhibits, dated 20 July 2017;
- Police statement of Patient B, dated 14 July 2017;
- Police statement of Mr D, undated;
- Controlled Drugs declaration form, dated 16 March 2015;
- Email exchanges between Dr C, Mr D and DC E, dated between June and September 2015;
- Witness statement provided by Mr D to the NMC, undated;
- Schedules of drugs stock checks, order forms and delivery notes, dated between 2013 and September 2015;
- Report by law firm Blake Morgan, prepared for the police investigation, dated 5 January 2017;
- NICE Guidelines: Obesity: Identification, assessment and management, November 2014;
- NICE Guidelines: Controlled drugs and drug dependence, 2023;
- NICE Guidelines: Controlled drugs: safe use and management, April 2016;
- Good Medical Practice 2006;
- Good Medical Practice 2013;
- Good Practice in the Prescribing and Managing Medicines 2013;
- Dr Corkindale's annual appraisals, dated 31 October 2012 and 1 September 2014;
- 'Guidance Note' from the Clinic, dated 2014;
- Medical Case Examiner's Advice to the GMC, undated but received on 7 April 2021
- Rule 4 Decision, dated 18 May 2021;
- Rule 12 Decision, dated 18 November 2021; and
- Rule 12 Decision, dated 19 August 2022.

The Tribunal's Approach

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

16. The legal advice to the Tribunal included a direction concerning the passage of time, that it was concerned with events which are said to have taken place on and before 2 pm on the 21 September 2015. Witnesses cannot be expected to remember with crystal clarity events which occurred nine or more years ago. The Tribunal should note that when considering the evidence of any witness in this case, it should bear in mind the extent to which the passage of time may have affected the memory of the witness and make allowances for the fact that from an accused person's point of view, the longer the time since an alleged incident, the more difficult it may be for her to answer it. If the Tribunal consider that Dr Corkindale has been placed at a real disadvantage in putting forward her case by reason of the passage of time, it is right that the Tribunal should take that into account in her favour when deciding if the GMC has satisfied it that the Allegation, or any part of it, is proved.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1(a)

18. The Tribunal noted the evidence of Dr Corkindale, in which she accepted that she had worked at the Medislim Clinic between 2011 and 2015. It then went on to consider whether Dr Corkindale knew, during her employment at Medislim, whether the Clinic distributed Controlled Drugs, namely Phentermine and Diethylpropion.

19. The Tribunal took into consideration the absence of documents concerning the Clinic due to the passage of time. This included the 'induction bundle' described variously as voluminous and comprehensive; the Standard Operating Procedure for MediSlim referred to by Dr C from the Clinic inspection in 2015; patient records and medical records. When available it was noted by Dr C that none of the documents referred to the drugs as being Controlled Drugs. Regrettably, without sight of those documents, the Tribunal cannot rely on them to assist Dr Corkindale's contention that there was a professionalism about the Clinic apparent from the information she was given and the use of forms, patient records and

medical records, nor to support the case of the GMC that Dr Corkindale should have conducted her own independent enquiries in the light of such information.

20. The Tribunal considered the various accounts given by Dr Corkindale about her knowledge of the drugs being supplied to patients by the Clinic. In her first police interview on 15 January 2016, Dr Corkindale stated,

> *'A lots happened since, in my life for sure, but I knew she [Ms A] was a Registered Nurse, a family lady, children, and she had several previous Clinics so.*
>
> *I think there'd been several and she'd scaled down, after she'd stopped being a [XXX] and this Doctor was leaving and she explained, well I found out, she was a member of the Obesity Management Association, she explained how the Clinics ran in terms of really my role.*
>
> *Like I said, it was a running concern, when I joined, with a previous GP, I think [Ms A] would confirm, he'd been there for about 9 years and this was what was there. This was already in the pipeline, these were already what she'd chosen and I just didn't have any cause to question what had been going on.'*

21. The Tribunal then considered the account given by Dr Corkindale in her statement to police on 7 February 2018, in which she stated:

> *'I can say that I did not check to see if the clinic had all of the relevant licenses as the business had been established for several years and was being run by a previous GP and [Ms A] who was a registered nurse.*
>
> *The fact the [Ms A] was a registered nurse who had been running these types of clinics for several years I assumed that she was authorised to supply the drugs as part of her own qualifications and that I had taken over the same role of the previous GP. The previous GP had not made any changes to the running of the clinic that I was aware of. If I have been aware of the fact that the company required licenses which they did not hold I would never have started to work for [Ms A] at the clinic. Also if I had become aware of this whilst working there of the lack of licenses I would have left immediately.'*

22. The Tribunal further considered the witness statement Dr Corkindale prepared for these proceedings, in which she stated:

> *'As above, while I was working at Pendlebury Health Centre, I met [Ms G] who told me that she worked at the Clinic, which was owned by her friend, Ms A. [Ms G] also told me that the Clinic had been open for many years and that Ms A employed a GP who had been there for over ten years but was emigrating, and for this reason, Ms A was looking to replace them.*
>
> *I met with Ms A we discussed the role and how the clinic operated. I recall Ms A telling me that there was a special licence for the slimming medication that was issued and she gave me a white A4 folder containing information about the company, the drugs and the suppliers. Unfortunately, I no longer have that folder and I believe that it was in my car when I was involved in an accident and I did not retrieve it.*
>
> *Ms A also told me about the drugs, their side-effects and contraindications. However, I do not recall her telling me that the medications used were controlled drugs. On reflection, had I been aware of this I think it is likely that I would have asked further questions about the procedures at the Clinic. I accept now that I should have checked this before taking on the role.'*

23. The Tribunal noted that in her initial account to police in 2016, her second account in 2018, and her statement prepared for these proceedings, Dr Corkindale repeated her assertion that she relied on the information provided by Ms A at her induction in 2011. The Tribunal found that Dr Corkindale had been open and honest with the police in her initial interview, and she had maintained a consistent position throughout the police investigation and during these proceedings in her oral evidence.

24. The Tribunal then considered the documents which were available from the induction pack. The Tribunal had been provided with a version of the 'Clinical Guidance' that Dr Corkindale had described as forming part of the A4 folder used for her induction at the Clinic, however it was not legible following photocopying and the original had been lost. The Tribunal were provided with a later copy, which seems to be the same document updated in 2014. The Tribunal was mindful that this may not be identical to that which was included in the induction pack, however it had limited information available to it, given the passage of more than nine years since the events in question.

25. The 'Clinical Guidance' stated as follows,

'Phentermine and Diethylpropion are Licensed by the MHRA The Committee on Safety of Medicines has advised that, as with Amfepramone, there are no major public health concerns in relation to Phentermine and Diethylpropion products remain on the UK market.

Both drugs are licensed by the Medicines Control Agency and as such are only available on prescription from a GMC registered doctor. OMA cannot overstate the important of Members fully complying with the terms of the MHRA Licences.

Essential Nutrition and Cambridge Healthcare have agreed to produce a summary of product characteristics and prescribing parameters. A copy of both papers accompany these guidance notes.

Phentermine and Diethylpropion are not, and never have been, banned drugs. Their marketing authorisations were briefly withdrawn due to a European Commission legal challenge which was successful resolved and their marketing authorisations were reinstated in November 2002 …

<u>Prescribing Phentermine and Diethylpropion</u>
When prescribing either Phentermine or Diethylpropion it is essential that they are used within the terms of their respective licenses. Please refer to the 'product characteristics' papers at the end of this document.

The MHRA have issued UK licences for
- *Phentermine 15mg and 30mg*
- *Diethylpropion 25mg*

Diethylpropion 75mg can be prescribed under a specials licence'

26. The Tribunal was satisfied that the 'Clinical Guidance' did not contain any reference to the drugs being Controlled Drugs. It then considered why Dr Corkindale did not carry out her own research into the drugs, which would have revealed to her that they were, in fact, Controlled Drugs. In her statement, Dr Corkindale described the Clinic,

'I came away from the initial meeting with the impression that this was a long-standing set-up, where a GP had worked for many years and I would simply take over

the GP role from where they had left off. I had not worked in this type of role before and did not consider or question how the Clinic operated, its governance, structure or compliance with relevant legislation and regulations; I did not think I had any reason to do so.

My responsibilities, in taking over from the previous GP were to carry out health checks on patients, provide advice on healthy diet and exercise and complete the requisition forms. I was not responsible for record keeping or stocktaking as these tasks were completed by Ms A.'

27. The Tribunal took into consideration the advice from the Medical Case Examiner received by the GMC, regarding this case, on 7 April 2021 that in response to the question: '*Do you consider it was a significant failing on the doctor's part not to have checked that the MediSlim clinics were appropriately licensed to store and provide controlled drugs to patients*?' the Medical Case Examiner advised : '*It would not have been the doctor's responsibility to make these checks when they started working for the company. Most doctors would not do this when starting work for an established organisation and therefore I do not think this is a significant failing*.'

28. The Tribunal bore in mind that Dr Corkindale accepted, in her oral evidence, that she had access to the various NICE guidelines on managing obesity, as well as the British National Formulary ('BNF'). The BNF is the authority on the selection and use of medicines. The Tribunal noted that if Dr Corkindale had looked up the drugs, she would have known that they were Controlled Drugs and the Clinic was not operating in the proper manner, however she did not do that. The Tribunal bore in mind Dr Corkindale had been qualified as a GP since 2005, and previous to that had practised as a nurse for some time. Dr Corkindale accepted that she was familiar with the handling of Controlled Drugs in GP and hospital settings and was aware of the regulations surrounding Controlled Drugs in private settings.

29. The Tribunal found that, had Dr Corkindale been aware of the fact that the drugs used by the Clinic were Controlled Drugs, she had the requisite knowledge and experience to understand that the handling of Controlled Drugs at the Clinic was in breach of the relevant guidance. The Tribunal found that it was therefore more likely than not that Dr Corkindale had trusted Ms A and relied on the good standing of the Clinic, having been operating for more than ten years and serving hundreds of patients weekly, as evidence that the procedures in place were correct.

30. The Tribunal then considered whether the events of July and August 2015 should have alerted Dr Corkindale to the fact that the drugs were Controlled Drugs. The Tribunal considered Dr Corkindale's statement to police in January 2016, in which she set out,

> *'In July 2015, I was made aware by [Ms A] that an 'inspection' was going to be made in the near future of the slimming clinic in Ellesmere Port. She informed me that this was a CQC inspection. I can remember [Ms A] was very stressed. AS a result of this [Ms A] appeared to be busy reviewing the policies and paperwork relating to the running of the clinic. She asked me to provide a DRB check and a copy of my contract with SSP Health.*
>
> *In August 2015 I was asked to attend the clinic in Manchester as there was a fresh stock of drugs due to be delivered. This was the first time since joining the clinic that there was discussion about myself being present at the point of the delivery at the clinics. At this time it crossed my mind that this change in process was as a result of the impending inspection.*
>
> *Also in August 2015 [Ms A] asked myself and [Dr H] to complete a stock transfer form of medicines from the Manchester branch to the Ellesmere Port branch, for [Dr H] to prescribe to her patients. Again this was the first time that this had ever been requested for this to happen.'*

31. The Tribunal found that it was reasonable for Dr Corkindale to have taken Ms A and the information provided at face value and believe her statements that the inspection was in regard to a possible CQC registration. The Tribunal bore in mind that, at this time, Dr Corkindale had no reason to believe that Ms A had been dishonest to her about the operation of the Clinic or her role.

32. The Tribunal then considered the requisition or order forms which Dr Corkindale had signed over the period 2013-2015. The forms had the appearance of a letter, headed with the MediSlim 'logo', address and telephone number. Each letter had a similar format with different quantities of drugs being ordered. The letter dated 24 September 2014 stated,

> *'Please supply the following medication for individual patient use:-*
> *3 x 1000 Phentermine Hydrochloride 37.2mg SR tablets "Special"*
> *1 x 300 Diethylpropion Hydrochloride 75mgs DR tablets "Special"*

Yours sincerely
(signature)
Dr Janet Corkindale *Recieved 2X/9/14*
GMC No: 6079483 *(signature)'*

33. To the left of the note '*recieved 2X/9/14*' was a darkened box which appeared to be a sticker affixed to the letter, that stated:

'PHENTERMINE HYDROCLORIDE 37.2mg
EQUIVALENT TO 30mg PHENTERMINE
SLOW RELEASE TABLETS
1000 Tablets CD
…
Batch No: 14-037-092-0087 Expiry: 04/2016
…'

34. The Tribunal understood, from the evidence of Dr C, that 'CD' is a common abbreviation for 'Controlled Drug'. Dr Corkindale accepted that she was aware of the use of this abbreviation and its meaning.

35. The Tribunal bore in mind that Dr Corkindale accepted that the signature on the left was hers but could not recall whether she had signed the form a second time under the word 'recieved'. She further stated that she could not be sure she had ever seen the sticker which contained the abbreviation 'CD'.

36. The Tribunal noted that almost all the requisition forms signed by Dr Corkindale, as well as the single one which Dr H accepted she signed, had the word 'received' spelled incorrectly as 'recieved' on the right- hand side of the form, together with a signature. It is more likely than not that this was because the word received, spelled wrongly, was written by someone else, namely Ms A.

37. The sticker had been affixed to the page over the words 'Yours sincerely', and Dr Corkindale's signature. The typed words and signature were visible through the sticker, meaning it was transparent. The Tribunal concluded that it was more likely than not that Ms A was removing transparent stickers from the packaging on the medication after it had been received, and placing the sticker on the requisition form, before decanting the medication into smaller 'pots' for patient use.

38. The Tribunal noted that some of the requisition forms have a different format of sticker, which appears as follows,

'Name ……
……..
Date……..
Batch No121460400053Expiry02/14
Caution when driving or operating
machinery may cause drowsiness'

39. This other format of sticker did not contain the label 'CD'. Therefore, the Tribunal concluded that even if Dr Corkindale had seen or signed some of the requisition forms to confirm receipt, it was not apparent from each form that the drugs being ordered were Controlled Drugs.

40. The Tribunal therefore found that while Dr Corkindale signed the order forms, it is unlikely that she signed them upon receipt of the drugs and saw the sticker which contained the 'CD' marking. Therefore, she did not know the drugs were Controlled Drugs by virtue of this requisition form. It is more likely that the sticker was affixed after the drugs had been received by Ms A, whom it is accepted by both parties was ordering the drugs to be delivered to her home.

41. Finally, the Tribunal took into account Dr Corkindale's XXX personal circumstances at the time. XXX. In her impact statement, Dr Corkindale stated,

'Throughout this time (police and then GMC investigation) I have experienced [XXX].

I was aware that locum GPs were starting to apply for salaried positions but did not feel that I could do so, given my lack of revalidation date and ongoing GMC investigation. I simply could not, and still cannot, see that anyone would wish to hire me in these circumstances. Over the last 11 months I have seen advertisements for five salaried GP roles which I have not felt able to apply for.

As a result, I am [XXX].

[XXX].'

42. The Tribunal bore in mind that Dr Corkindale, at the time of events, and in the following years, has XXX. The Tribunal, as noted above, was mindful throughout that the Allegation relates to events which occurred more than 10 years ago, and that Dr Corkindale's initial induction meeting with Ms A was now 13 years ago. It therefore took all this into account when considering Dr Corkindale's state of mind at the time of events and her ability to prepare for this hearing of which she was only notified in March 2023.

43. In summary, the Tribunal found that Dr Corkindale had trusted the information provided to her by Ms A at her induction. The Tribunal had limited extracts from this induction pack; however, the 'Clinical Guidance' note which the Tribunal was provided with did not mention that the drugs used in the Clinic were Controlled Drugs. The SOP of the Clinic, patient and medical records were all unavailable to the Tribunal to assess as well as the induction bundle. There were no original documents for the Tribunal to consider.

44. Furthermore, the Tribunal found that the professional and long-established nature of the Clinic, which had employed another GP previous to Dr Corkindale, would have provided a false sense of legitimacy to Dr Corkindale. XXX. The Tribunal determined that, in these circumstances, it was not unreasonable for Dr Corkindale to have been unaware that the drugs she was prescribing to patients were Controlled Drugs.

45. The Tribunal therefore found paragraph 1(a) of the Allegation not proved.

Paragraph 1(b), (c), (d) and (e)

46. The Tribunal considered these paragraphs together. The Tribunal determined that, having found that Dr Corkindale was not aware that the drugs were Controlled Drugs, she could not have known that Ms A was acting inappropriately when she transported, assembled and distributed the drugs to patients. Nor could she have known that the Controlled Drugs were being distributed without an appropriate prescription, being supplied in bulk, or that the stock was not being appropriately managed.

47. The Tribunal therefore found paragraphs 1(b), (c), (d) and (e) of the Allegation not proved.

Paragraph 2(a)

48. The Tribunal determined that, having found that Dr Corkindale did not know that the drugs were Controlled Drugs, she had no reason to have patient safety concerns in relation to the activities of Ms A as set out in paragraph 1 of the Allegation. The Tribunal therefore

found that Dr Corkindale had not failed to raise patient safety concerns, as she could not reasonably have had any.

49. The Tribunal therefore found paragraph 2(a) of the Allegation not proved.

Paragraph 2(b)

50. The Tribunal considered Dr Corkindale's witness statement, in which she stated,

> *'I accept that I did not refer to this role in my appraisal documentation and I do not now recall whether I separately mentioned it to my Responsible Officer.*
>
> *Given the length of time that has passed since the appraisals in question, I do not recall exactly why I did not mention this role. However, I accept that I should have included my work at Medislim within my appraisal and wish to apologise for the fact that I did not do so.'*

51. The Tribunal also had regard to the Appraisals submitted in 2012 and 2014, which make no mention of the Clinic.

52. The Tribunal therefore found paragraph 2(b) of the Allegation proved.

Paragraph 3

53. The Tribunal first considered Dr Corkindale's account given to police in January 2016, when asked why she did not put the Clinic on her appraisals,

> *'Well… do you know, I, if you say you don't know what makes you do things, conscious level, you know, right. I was struggling for work at that time and I was a bit embarrassed.*
>
> *I always struggle, I always struggle with Appraisals, I always, because I was Locum in at the time … and it was very hard to get, you know, you didn't get feedback, you didn't get, the patients didn't come back to see you, you were transient and you were here, there and everywhere and it was the same the Clinic, you know, you didn't always see them for months and then, and it's all very hard just getting the basic stuff in NHS practices and, you know, and to, so I don't know if that was a conscious decision but, to not put it down …'*

54. The Tribunal further noted the 2012 Appraisal, in which Dr F noted that Dr Corkindale had provided a detailed letter to her about her '*difficulties of [XXX] as well as lack of locum work'*. The Tribunal was not provided with this letter, however Dr F confirmed in her oral evidence that she had discussed Dr Corkindale's personal issues with her at the time and that Dr Corkindale had been honest and open with her. The Tribunal took into account Dr Corkindale's XXX and personal issues, including XXX, as set out in her Appraisal. The Tribunal found Dr Corkindale had been open and honest about her personal difficulties when giving oral evidence and had limited memory of completing the Appraisal forms. DC E in oral evidence endorsed the transcription of his police interview with Dr Corkindale in January 2016 to the effect that Dr Corkindale had been extremely honest and open and had gone beyond what was required, to give the police a full picture of the workings of the Clinic.

55. The Tribunal then considered Dr Corkindale's witness statement, in which she stated,

> *'Given the passage of time, I cannot now recall my thinking when I completed my appraisal documents in 2011 to 2015 except that I was not being deliberately dishonest.'*

56. With regard to the requirement to inform her Responsible Officer, the Tribunal noted that the system of Appraisals and Responsible Officers had only been initiated by the GMC in 2012. The Tribunal therefore found that while the scheme was in its infancy in 2014, the requirements may not have been clear to all registrants. With regard to appraisals more generally, Dr Corkindale had been practising as a GP since 2005 and therefore must have completed appraisals in the past, albeit not as part of the formal system which began in 2012.

57. The Tribunal therefore found that although Dr Corkindale was familiar with the local Appraisal system, the formal system of GMC Appraisal and Revalidation through Responsible Officers was in its infancy, and it is not unreasonable that she was unaware of the requirements in 2013 and 2014. The Tribunal further took into account Dr Corkindale's varied employment history and difficult personal circumstances at the time. The Tribunal therefore found that it was more likely than not that Dr Corkindale had been unaware of her obligation to include her work at the Clinic in her Appraisals or report to her Responsible Officer.

58. The Tribunal therefore found paragraph 3 of the Allegation not proved.

Paragraph 4

59. Having found that Dr Corkindale did not know she was required to disclose her work at the Clinic to her Appraiser, the Tribunal therefore found that she had not been acting dishonestly when she failed to do so.

60. The Tribunal therefore found paragraph 4(a) not proved.

The Tribunal's Overall Determination on the Facts

61. The Tribunal has determined the facts as follows:

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

1. Between approximately 2011 and 2015, you were employed at the Medi-Slim Clinic ('the Clinic'), and you knew that:

   a. on one or more occasion, the Clinic distributed Controlled Drugs as set out in Schedule 1 (the 'Controlled Drugs');

      Determined and found not proved.

   b. without the supervision of an appropriately qualified doctor, Ms A was:

      i. transporting the Controlled Drugs;

         Determined and found not proved.

      ii. assembling the Controlled Drugs into individual patient packs;

         Determined and found not proved.

      iii. distributing the Controlled Drugs to patients;

         Determined and found not proved.

   c. the Controlled Drugs were distributed to patients without an appropriately issued prescription;

      Determined and found not proved.

   d. one or more patients received bulk supplies of the Controlled Drugs;

Determined and found not proved.

e. the stock of Controlled Drugs within the Clinic was not properly maintained and/or recorded.

Determined and found not proved.

2. During your employment at the Clinic, you failed to:

a. raise patient safety concerns in respect of the activities as described in paragraph 1 to the appropriate authorities;

Determined and found not proved.

b. inform your Responsible Officer and/or NHS Appraiser of your employment at the Clinic.

Determined and found proved.

3. You knew you were required to declare all clinical posts to your Responsible Officer and/or NHS Appraiser during your appraisals.

Determined and found not proved.

4. Your actions as described in paragraph 2b was dishonest by reason of paragraph 3.

Determined and found not 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 - 27/09/2024

62. 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 Corkindale's fitness to practise is impaired by reason of misconduct.

The Evidence

63. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary.

Submissions

64. On behalf of the GMC, Ms Jones submitted that the GMC was neutral on the matter of impairment.

65. On behalf of Dr Corkindale, Mr Colman submitted that a finding of misconduct was not necessary in this case.

The Relevant Legal Principles

66. 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.

67. 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 then whether the finding of that misconduct could lead to a finding of impairment.

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

The Tribunal's Determination on Impairment

Misconduct

69. The Tribunal has found, in its determination on the facts, that Dr Corkindale failed to inform her Responsible Officer and/or NHS Appraiser of her employment at the Clinic, but that she did not know she was required to do so. It found that she should have known, but the formalised appraisal system and the Responsible Officer structures were in their infancy and so she did not. The Tribunal found that is not conduct that fellow professionals would find deplorable, and therefore it does not amount to misconduct.

70. The Tribunal noted that although Dr Corkindale was not made subject to GMC proceedings until 2022, she assisted the police with their enquiries from 2015 to 2020 and

XXX. XXX. The Tribunal was aware that Dr Corkindale would have had these matters at the forefront of her mind during those five years, as well as XXX.

71. The Tribunal noted that when Dr Corkindale was first informed of these proceedings in January 2022, it was to advise her that the GMC had decided not to investigate under the 5-year rule but that that decision was incorrect, and they may be in touch. She prepared an impact statement for these proceedings in which the Tribunal noted she had endured 17 months of uncertainty and stress before being advised that the case had been referred to the MPT. The delay in progressing matters since 2022 has adversely impacted her career, XXX. It must have been a huge shock for her to know that a matter which occurred more than eight years ago was now to be the subject of regulatory proceedings. The Tribunal was concerned that any doctor should be subject to such a lengthy delay. Whilst the Tribunal acknowledged the responsibility of the GMC to properly regulate and investigate every referral, the delay in this case is entirely due to the failure of the GMC to properly investigate matters in 2015, having been alerted to issues at the Clinic.

72. Therefore, the prerequisite of serious misconduct was not established, and no finding of current impairment could be made.

73. Accordingly, the Tribunal did not go on to consider if Dr Corkindale's fitness to practise was impaired.

Determination on Warning - 27/09/2024

74. As the Tribunal determined that Dr Corkindale's fitness to practise was not impaired it considered whether in accordance with s35D(3) of the 1983 Act, a warning was required.

Submissions

75. On behalf of the GMC, Ms Jones submitted that a warning was not necessary in this case.

76. On behalf of Dr Corkindale, Mr Colman submitted that the conduct found does not approach the threshold for impairment and there is no likelihood of repetition. He submitted that this was an isolated incident, in the context of an otherwise good history, which has not been and will not be repeated.

The Tribunal's Determination on Warning

77. The Tribunal had regard to paragraphs 61-65 of The Sanctions Guidance (2024), as well as paragraphs 13, 14, 16, 20, 26 and 32 of the Guidance on Warnings (March 2021),

> *'16. A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:*
>
> - *there has been a significant departure from Good medical practice, or*
> - *there is a significant cause for concern following an assessment of the doctor's performance*
>
> *…*
>
> *20. The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.*
>
> *a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.*
>
> *b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.*
>
> *c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise. Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.*
>
> *d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).*
>
> *…*
>
> *26. In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.*
>
> *…*

32. If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:
a. the level of insight into the failings
b. a genuine expression of regret/apology
c. previous good history
d. whether the incident was isolated or whether there has been any repetition
e. any indicators as to the likelihood of the concerns being repeated
f. any rehabilitative/corrective steps taken
g. relevant and appropriate references and testimonials.'

78. The Tribunal made a finding that Dr Corkindale had failed to inform her Responsible Officer and/or her Appraiser of her employment at the Clinic. The Tribunal has found that this was as a result of an honest mistake and did not amount to misconduct. The Tribunal further noted that this was an isolated incident which has not been repeated in an otherwise good career. Dr Corkindale has demonstrated good insight, expressed regret and has had an otherwise good history.

79. The Tribunal considered that, being mindful of the overarching objective and the purpose of warnings, the matter that has been found proved does not warrant the imposition of a warning. The Tribunal therefore determined, that in all the circumstances of the case, a warning is neither necessary nor appropriate.

80. That concludes the case.

ANNEX A – 16/09/2024

Application to stay proceedings as an abuse of process

81. At the outset of the hearing, Mr Colman, counsel for Dr Corkindale, made a preliminary application pursuant to Rule 17(2)(a) of the Fitness to Practise Rules (2004, as amended) ('the Rules') to stay all paragraphs of the Allegation as an abuse of process.

Submissions

On behalf of Dr Corkindale

82. On behalf of Dr Corkindale, Mr Colman submitted that the proceedings should be stayed due to an abuse of process. He first submitted that the decision made by the NMC to strike Ms A off the nursing register has been relied upon as the reason for re-opening the case against Dr Corkindale under Rule 12 of the Rules. He submitted that the decision has been adduced in these proceedings and is rightly viewed as irrelevant. He further submitted that the decision by the NMC was not new information that shed light on the issues raised in 2015. He submitted that the issues should be determined by the GMC on the available primary evidence, not the secondary decision taken by the NMC.

83. Mr Colman further submitted that the decision made in the first instance to apply the 5-year rule should have been allowed, and the second Assistant Registrar ('AR') who reviewed the initial decision had no jurisdiction to overrule it. He submitted that whatever information the GMC had about Dr Corkindale in 2015 was clearly insufficient to decide that there was an allegation about her fitness to practise. He submitted that whatever information the GMC had in 2015 clearly does not satisfy the test under the 5-year rule for when the allegation was made or came to the GMC's attention. He submitted that in arrogating the decision about whether the 5-year rule applied, the GMC has deprived Dr Corkindale of the protection of the 5-year rule and therefore a stay is necessary to protect the integrity of the system.

84. Mr Colman submitted that it is now between 9 and 13 years since the dates of the Allegation. Various documentation is no longer available, and witnesses have poor memories of events. Patient records might have disclosed positives about the care Dr Corkindale afforded her patients. He submitted that it should not be assumed that any gaps in the evidence favour Dr Corkindale, as the police were very appreciative of her honesty, and XXX.

85. Mr Colman submitted that the police have noted XXX, and it is noted in her 2014 appraisal that she was XXX. He submitted that these proceedings are XXX not a good example of compassionate regulation.

86. Mr Colman submitted that if the GMC submit that the public interest demands a hearing of the Allegation, it should be borne in mind that the expert legal opinion obtained by NHS England stated that if Ms A had had the appropriate licences, she would have been able to continue the clinics. It also found that the doctors were not acting unlawfully. He submitted that public interest does not demand a hearing of the Allegation of dishonesty against Dr Corkindale. He stated that the first AR to review the case rightly observed that this was at the lower end of the spectrum of seriousness. He submitted that the GMC cannot maintain that a hearing of this Allegation of dishonesty is necessary in the public interest when they have previously made an application to withdraw it under Rule 28 of the Rules.

87. In summary, Mr Colman submitted that we are still in a position of having no more evidence than the information received in 2020 and 2021 from the NMC, NHS England, and the police. He submitted that the second AR found no flaw in the consideration of that evidence in the May 2021 closure decision and whatever further, belated investigations the GMC has made have produced no new evidence. He submitted that, in fact, evidence has been lost rather than gathered.

88. Finally, he submitted that as more time has passed, more delay has accrued and the GMC's case has not advanced. The Tribunal should therefore take action to reverse the closure decision previously made and stay these proceedings under either or both of the limbs of the test for abuse of process.

<u>On behalf of the GMC</u>

89. On behalf of the GMC, Ms Jones submitted that proceedings should not be stayed, and the case should proceed. She submitted that the GMC do not rely upon the decision by the NMC to strike Ms A off the nursing register, but it was relevant at the time of the Rule 12 decision by the second AR. She submitted that the fact that the GMC had been made aware that there were serious fitness to practise concerns about two of its registrants, in relation to roles they had held alongside a nurse whose regulator made findings against her which were so serious as to lead to her being struck off, could never properly be viewed by the GMC as irrelevant at that point in the investigation.

90. Ms Jones submitted that the GMC has a duty to always have regard to the overarching objective to protect the public and to decide that the concerns raised were irrelevant would not have been in furtherance of that overarching objective. She submitted that it is often the case that material that forms part of an original referral is ultimately not relied upon when the Allegation is finalised. This does not mean that such information should be deemed irrelevant at the point at which the GMC makes the decision about whether to open a case against a registrant.

91. In respect of the decision taken by the reviewing AR, Ms Jones submitted that that decision was reasonable in all the circumstances. She submitted that the decision maker explained why they were conducting the review, and properly dealt with each part of the test under Rule 12 of the Rules. She submitted that it was a reasonable conclusion for the decision maker to waive the 5-year rule in Dr Corkindale's case, because the GMC had been made aware of the concerns relating to Dr Corkindale in 2015 but had failed to acknowledge her involvement or to act on the information provided.

92. Ms Jones submitted that the original decision not to pursue the allegations made against Dr Corkindale was wrong, for the reasons advanced by the AR in the Rule 12 review. She submitted that had the proper enquiries been made in 2015, Dr Corkindale's identity would have been apparent, although Dr Corkindale did not self-refer to the GMC. She submitted that the proper processes had been followed in this matter by the Rule 12 review procedures and the decision reached is entirely reasonable and justifiable on the information set out within the decision. She therefore submitted that the defence have failed to establish that a stay is necessary in order to protect the integrity of the system. She reminded the Tribunal that a finding of an abuse of process in regulatory proceedings is very rare, and in this case, there is no evidence at all that the system has been manipulated.

93. As to delay, Ms Jones submitted that it is conceded that there has been considerable delay in this case reaching the Tribunal, but in order for the Tribunal to find that there has been an abuse of process on the ground of delay, the Tribunal must be satisfied that it would be impossible to give the registrant a fair trial. Ms Jones submitted that there are various contemporaneous documents in this case as well as witnesses who have been made available for cross examination. She submitted that both parties will be able to make submissions on the quality of the evidence and the Tribunal can be given a direction on delay. She submitted that the Tribunal should conclude that a fair trial is entirely possible and reject this application.

The Relevant Legal Principles

94. When reaching a decision as to whether the Allegation should be stayed as an abuse of process, the relevant law includes:

(i) The Tribunal has a discretion to stay the proceedings:
  (a) where it will be impossible to give the registrant a fair hearing and
  (b) where a stay is necessary to protect the integrity of the system

(ii) Stays should only be employed in exceptional circumstances

(iii) The Tribunal must when deciding whether to stay the proceedings be satisfied that a continuation of the hearing of the allegations would cause the registrant serious prejudice AND

(iv) weigh the unfairness, if any, towards the registrant and the public interest in the integrity and fairness of the process, against the public interest in ensuring that standards are upheld

95. Relevant case law includes *Balachandra v GDC* [2024] EWHC 18 Admin where the judge quoted the law on staying proceedings by referring to *R v Maxwell* [2011] 1 WLR 1837, in which Lord Dyson stated that the court has the power to stay proceedings in two categories of case, namely

(i) where it will be impossible to give the accused a fair trial, and

(ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.

96. In the first category of case, if the court concludes that an accused cannot receive a fair trial, it will stay the proceedings. The question of balancing of competing interests does not arise.

97. In the second category of case, the court is concerned to protect the integrity of the criminal justice system. Here a stay will be granted where the court concludes that in all the circumstances a trial will "offend the court's sense of justice and propriety".

98. Having regard to delay the tribunal is referred to the case of *Dutta v GMC* [2024] EWHC 1217, Art 6 ECHR. This establishes the right to a fair trial includes the right to expect the hearing to take place within a reasonable time. However, delay in itself is insufficient to establish an abuse of process. There is a need to identify specific evidence, or witnesses lost as a result of the delay. There needs to be a specific prejudice over and above the impact of the passage of time on the memory of witnesses. Otherwise, delay can be considered by the Tribunal who must guard against the potential prejudice caused by delay.

99. Regarding the issue of missing evidence the case of *Balachandra v GDC* [2024] EWHC 18 Admin establishes (applying the general rule from the case law) as stated by Ritchie J at para 118 that '*loss of evidence by the prosecuting authority does not necessarily mean disciplinary proceedings are to be stayed*. *The more specific rule is that prejudice or unfairness needs to be shown by the Registrant before the threshold is crossed. But that is not enough to grant the application. It must be shown that the registrant cannot receive a fair hearing without the evidence*. '

The Tribunal's Decision

100. The Tribunal first considered whether it would be impossible to give Dr Corkindale a fair trial. The Tribunal was mindful that to establish an abuse of process there is need for the Tribunal to identify specific evidence or witnesses lost because of the delay, and there must be a specific prejudice over and above the impact of the passage of time on the memory of witnesses.

101. The Tribunal was not satisfied that the missing documents, including the inspection report and patient records, prevented Dr Corkindale from having a fair trial and from putting her case to the Tribunal. Mr Colman did not specify anything in terms of missing patient records of relevance to the specific paragraphs of the Allegation. The same applied to the missing inspection report. The Tribunal could not identify a specific prejudice which arose from the missing documents which prevented Dr Corkindale from putting her case forward. The Tribunal can take into account the missing documents when considering the evidence as a whole, including when assessing the strength or weakness of the GMC's case. The Tribunal therefore did not find that the missing documents amounted to an abuse of process.

102. The Tribunal considered the effect of delay and that to establish an abuse of process there is a need for the Tribunal to identify specific evidence or witnesses lost because of the delay, and there must be a specific prejudice over and above the impact of time on the memory of witnesses. Mr Colman did not identify specific evidence or witnesses lost because of the delay that prevented Dr Corkindale from putting her case across. He did not identify a specific prejudice over and above the passage of time on the memory of witnesses together with the missing documents. The Tribunal was unable to identify specific evidence or witnesses lost because of the delay that prevented Dr Corkindale from presenting her case. The Tribunal found that the concerns raised as to the delay of nine years between the events and these proceedings can be mitigated against by consideration of the contemporaneous documents which are available and the oral cross-examination of witnesses and Dr

Corkindale. Further, a direction can be made to the Tribunal in legal advice to properly take into account the effect that the delay may have had upon the memories of the witnesses which will ensure that issues of delay alone do not prejudice Dr Corkindale such that she cannot receive a fair hearing. The Tribunal therefore did not find that the delay in these proceedings amounted to an abuse of process.

103. The Tribunal therefore concluded that despite both the delay and the missing documents it would not be impossible for Dr Corkindale to receive a fair trial due to the delay in bringing these proceedings. The Tribunal could not identify a specific prejudice over and above the impact of the passage of time which would prevent Dr Corkindale from answering the GMC's case or putting her case forward.

104. The Tribunal then considered whether a stay of proceedings was necessary to uphold the public interest in the integrity and fairness of the proceedings, weighed against the public interest in ensuring that standards are upheld.

105. The Tribunal bore in mind throughout that it was not for the Tribunal to review the GMC procedures, to declare the GMC decisions or procedures unlawful. The Tribunal did take into consideration whether the effect of the GMC procedures impinged on the integrity and fairness of the proceedings. The Tribunal reminded itself that there needed to be exceptional circumstances to find an abuse of process. The Tribunal set out the chronology of events in regard to Dr Corkindale's case.

106. The events which have given rise to these proceedings occurred in September 2015. They concerned a registered nurse and two doctors, Dr H and Dr Corkindale, who were working at a Medislim clinic part-time. Dr H self-referred to the GMC on 2 October 2015. Dr H answered further questions from the GMC through her solicitors. The GMC were aware that the police and NHS England were involved, and that the investigation involved a nurse who had been treating patients with controlled drug medications without an appropriate licence and failing to adhere to the standards for the safe handling and storage of those drugs. The GMC closed the matter on 28 October 2015 and informed Dr H it would be taking no further action against her. Dr Corkindale did not self-refer to the GMC, although she had also been interviewed by the police and NHS England at the time. The GMC did not make any enquiries about other GPs working for the Medislim clinics. If the GMC had made such enquiries at the time, they would have known that Dr Corkindale was working at the clinics.

107. Dr Corkindale was interviewed by the police on 15 January 2016 and in February 2018 provided a statement XXX. Regulatory proceedings regarding Ms A did then take place. A referral was made by the NMC to the GMC on 20 November 2020. On 2 February 2021, the GMC were given the name of Dr Corkindale. The GMC made the decision on 14 May 2021 to apply the five-year rule under Rule 4(5), and not investigate the concerns raised against Dr Corkindale.

108. On 18 November 2021, the GMC was informed by the NMC that Ms A has been struck off the register. An AR reviewed the decision to close the case against Dr Corkindale, and it was concluded that the five-year rule had been wrongly applied because the GMC would have known about Dr Corkindale's involvement in the matter had it investigated in 2015. On 19 August 2022, the review took place and concluded that the closure decision in May 2021 was flawed, and the case against Dr Corkindale was re-opened. That AR recorded that the Rule 12 review process is not only about responding to requests by complainants or doctors when they are unhappy about a GMC decision, but also checking decisions internally to ensure correct decisions are being made. That AR noted that it was important to acknowledge that there had been errors on the part of the GMC decision making process and important to apologise to Dr Corkindale for any distress this may have caused. Reconsidering and potentially correcting a decision made following multiple GMC errors was an important part of the GMC regulatory function.

109. The Tribunal considered whether the chronology of events and the way in which the GMC have decided to review the earlier decision and its justification for doing so, offends the Tribunal's sense of justice to be asked to hear the case against Dr Corkindale. It weighed the unfairness towards Dr Corkindale and the public interest in the integrity and fairness of the process, against the public interest in ensuring that standards are upheld.

110. The Tribunal noted that although the cause of the delay in this case rests solely with the GMC, the public would expect that serious allegations such as the supply, handling, storage and distribution of a considerable volume of controlled drugs without the appropriate checks being applied, should be the subject of public regulatory proceedings, to ensure that standards are upheld.

111. The Tribunal then considered whether there are exceptional circumstances which justify a stay on proceedings. The Tribunal found that the information which caused the GMC to initiate a review of the decision to close the case against Dr Corkindale came from the NMC, the police and the Medical Case Examiner. The GMC were reasonable in their decision

to consider this as 'new' evidence, given that this was information that was provided by bodies which exist to protect the public. The Tribunal therefore find that the GMC decision making is not so inherently flawed that there are exceptional reasons for a stay in the proceedings to be granted due to an abuse of process.

112. The Tribunal therefore refused the application made on behalf of Dr Corkindale to stay the proceedings.

ANNEX B – 16/09/2024

Application to exclude evidence - Rule 34(1)

113. At the outset of the hearing, Mr Colman, counsel for Dr Corkindale, made a preliminary application pursuant to Rule 34(1) of the Fitness to Practise Rules (2004, as amended) ('the Rules') to exclude the evidence relating to the questioning of Dr Corkindale by Mr D and DC E at her home on 23 September 2015.

Submissions

On behalf of Dr Corkindale

114. Mr Colman submitted that the evidence of the interview, which is an extract from a police MG5 summary document and passages from the witness statements of Mr D and DC E, be excluded from evidence. Mr Colman submitted that while there is mention of a caution being given in the summary, DC E and Mr D do not recall a caution being given. There is no note which purports to be a contemporaneous note of the questioning. The questions and answers do not from the basis of any Allegation against Dr Corkindale. Mr Colman further submitted that the questioning was not done at a police station, there was no audio or video recording, and Dr Corkindale was not offered or told of her right to legal advice.

115. Mr Colman submitted that a summary of the question and answers was put to Dr Corkindale in her later interview at the police station and she accepted that the contents of the questions and answers were accurate. No other version of the questions and answers was ever put to Dr Corkindale for agreement. Mr Colman submitted that, given the flagrant disregard of every safeguard required in relation to questioning a suspect under Code C of the Police and Criminal Evidence Act 1984 ('PACE'), fairness requires that the Tribunal should only consider the version of the 'interview' that was eventually put to Dr Corkindale and agreed by her in her formal police interview.

On behalf of the GMC

116. On behalf of the GMC, Ms Jones submitted that there is evidence that Dr Corkindale was cautioned before the interview. She noted that the summary in the MG5 states that a caution was given. She further submitted that, even if the Tribunal does find that there were breaches of the Police and Criminal Evidence Act 1984 ('PACE') Code C when the interview was conducted, the real question for the Tribunal to consider is whether it would be fair and relevant to admit the evidence.

117. Ms Jones submitted that this interview is Dr Corkindale's first account of the Allegation, taken two days after the inspection of the Medislim clinics. Ms Jones submitted that it does not form the basis of any Allegations, as in Dr H's case. She further submitted that while she accepts it is a summary and not a full account, there is nothing to suggest that it differs in any substantial way from subsequent accounts given by Dr Corkindale. She submitted that as this account does not differ from later accounts, which in fact include much more detail, it is difficult to see how Dr Corkindale would be prejudiced by the inclusion of the account. Ms Jones therefore submitted it would be fair to admit the account, and it is highly relevant as Dr Corkindale's first account.

The Relevant Legal Principles

118. When reaching a decision as to whether the questioning of Dr Corkindale on the 23 September 2015 is admissible, the relevant law includes:

(i) Rule 34(1) of the Rules: '*The committee or Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law*.'

(ii) The case of *Idenburg v GMC* (2000) where the court held that the test applied in a criminal jurisdiction could be applied to disciplinary proceedings. The test of admissibility was relevance to the issues to be determined, and that relevant evidence, even if illegally obtained, was admissible.

119. Section 78 of Code C of PACE applies in a criminal jurisdiction to protect a defendant. A Tribunal is not bound by that section but should take into consideration any possible breaches of PACE and questions of oppression. The Tribunal may wish to take it into consideration when considering whether to admit the relevant interview under Rule 34(1), applying the purposes of that section. Section 78 applications are made in the criminal jurisdiction on behalf of a defendant to exclude evidence where '*having regard to all the circumstances, including the circumstances in which the evidence was obtained, the*

admission of evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it.'

The Tribunal's Decision

120. The Tribunal considered the summary of the interview with Dr Corkindale carried out on 23 September 2015 at her home by Mr D and DC E. The summary is contained within the police MG5 document, provided to the GMC by the police. The Tribunal noted that the relevant section of the document was about a page long and made no mention of how long the interview lasted. It begins as follows:

> *'At 1230hrs on Wednesday 23rd September 2015 [Mr D] and DC [E] attended the home address of the defendant Dr CORKINDALE, GMC 6079483, to ask questions about the inspection carried out at Medi Slim, DC [E] cautioned CORKINDALE at this point. Again the [Mr D] led the questioning, during which she stated the following:'*

121. The Tribunal also considered the account of the interview given by DC E in his witness statement prepared for these proceedings. He stated:

> *'On 23 September 2015, [Mr D], and myself attended the home address of Dr Corkindale …'*

122. The Tribunal was mindful that the investigation into the Medislim clinics was being carried out by Mr D, a pharmacist, on behalf of NHS England, with the assistance of the police. The Tribunal found that this was evident from the summary in the MG5 which stated that Mr D led the questioning. Further, the Tribunal noted that the visit to Dr Corkindale's home was to '*ask questions about the inspection*', rather than a visit conducted with the intention of formally interviewing Dr Corkindale.

123. The Tribunal first considered that the police MG5 document did not purport to be a contemporaneous note of the interview and appeared to have been prepared on the basis of some notes. The Tribunal did not have a copy of these notes. Both DC E and Mr D have been unable to provide a copy. The Tribunal therefore took into account that the summary is not a contemporaneous account, and no contemporaneous account is available to it.

124. The Tribunal then considered the matter of whether or not Dr Corkindale received a formal caution before the interview. The summary from the MG5 stated that DC E cautioned Dr Corkindale. However, the Tribunal was mindful that DC E and Mr D are now unable to

recall the specific details of the interview, which occurred nine years ago, and therefore could not confirm that the caution was given or explained fully to Dr Corkindale.

125. The Tribunal then considered the matter of whether or not Dr Corkindale was informed of her right to legal advice. The summary contains no mention of Dr Corkindale being offered the opportunity to obtain legal advice or being advised of her right to obtain legal advice. The Tribunal noted that at her later police interviews Dr Corkindale had the benefit of legal representation. The Tribunal further took into account that Dr Corkindale later produced a witness statement XXX. The Tribunal found that these may have been circumstances in which Dr Corkindale believed she was being asked questions as a witness and was not aware of her right to obtain legal advice.

126. The Tribunal then considered the contents of the document. The section of the MG5 produced is about a page in length. It contains no note of the questions asked, only the answers elicited from Dr Corkindale. There is no audio or video recording the interview, nor is there a copy of any contemporaneous notes taken. Further, the Tribunal noted that while DC E and Mr D are available to give oral evidence, both have stated that they now have a limited memory of the interview, it having taken place nine years ago. The Tribunal therefore found that despite having those witnesses available to give oral evidence, it is unlikely that any more detail of the conversation can be recalled by those involved.

127. The Tribunal considered the submission made by Mr Colman that this summary was not put to Dr Corkindale to confirm its accuracy. The Tribunal considered the transcript of Dr Corkindale's formal police interview, in which DC E stated:

> *'[Mr D] contacted you and I contacted you, and we came to see you, at your home address, as part of that inspection. Now I'll just run through briefly the notes that I made at that inspection…'*

128. The Tribunal noted that DC E continues the interview by putting to Dr Corkindale statements which she made in the interview at her home, and Dr Corkindale agrees with or corrects him on his recollection. The Tribunal found that this transcript therefore contains an account of the interview at Dr Corkindale's home which she agreed to as part of a formal police interview, during which she had the benefit of legal representation and was properly cautioned. The Tribunal found that this transcript provided a more accurate record of the interview at Dr Corkindale's home, and she was given the opportunity, at the time, to correct it as she saw fit.

129. The Tribunal found that the failure to record the interview, the lack of evidence of a caution, and the failure to inform Dr Corkindale of her right to legal advice were in breach of Code C of PACE. The interview was not conducted in the usual manner, as opposed to later police interviews conducted with Dr Corkindale at the police station. The Tribunal found that these clear breaches of Code C of PACE would likely result in a successful application under s78 of PACE, were the document produced in criminal proceedings purporting to be a police interview. The Tribunal bore this in mind when making its findings under Rule 34(1) of the Rules.

130. The Tribunal then turned to the test under Rule 34(1) of the Rules. The Tribunal found that the summary was of some relevance to the Allegation. It was an account of Dr Corkindale's first interview with the police. The police interview at the police station conducted on 15 January 2016, provided DC E with the opportunity to 'put' his summary of the first interview to Dr Corkindale and for her to respond. It then considered whether it would be fair to Dr Corkindale to admit the summary into evidence.

131. The Tribunal has found, as stated above, that there was limited evidence that Dr Corkindale received a caution or had that caution explained to her. Further, there is no evidence that she received, or was offered the opportunity to obtain legal advice. The document itself is a brief note which contains no details of the questions asked or the length of questioning, nor are witnesses able to assist the Tribunal with clarifying these matters. The Tribunal further bore in mind that an account of the interview was put to Dr Corkindale during a later, formal police interview, and this evidence is available to the Tribunal.

132. The Tribunal therefore considered that to admit the document into evidence would be unfair to Dr Corkindale. It found that the circumstances in which the interview was conducted are a clear breach of Code C of PACE, and while that is not a standard which applies to these proceedings, it was unable to ignore the unfairness to Dr Corkindale that arose from those breaches. The Tribunal was mindful that the information in the document can be found elsewhere in the evidence, obtained under circumstances which complied with Code C of PACE and with the cooperation of Dr Corkindale while she had the benefit of legal advice.

133. The Tribunal therefore determined to grant the application and exclude the summary of Dr Corkindale' s interview with Mr D and DC E on 23 September 2015 from evidence.

SCHEDULE 1

Phentermine 18.6mg tablets

Phentermine 37.2mg tablets

Diethylpropion 75mg tablets