

PUBLIC RECORD

Dates: 13/11/2023 - 24/11/2023

Medical Practitioner's name: Dr Jodi LESTNER
GMC reference number: 7074254
Primary medical qualification: MB ChB 2010 University of Manchester

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

Summary of outcome

Erasure
Immediate order imposed

Tribunal:

Legally Qualified Chair	Miss Annie Hockaday
Lay Tribunal Member:	Ms Wanda Rossiter
Medical Tribunal Member:	Dr Laura Florence
Tribunal Clerk:	Mr Joel Taylor-Garratt

Attendance and Representation:

Medical Practitioner:	Not present, not represented
GMC Representative:	Ms Georgina Goring, 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 - 21/11/2023

1. This determination will be handed down in private. However, as this case concerns alleged misconduct and a conviction, a redacted version will be published at the close of the hearing.

Background

2. Dr Lestner qualified as a doctor in 2010. During her training as a junior doctor, in 2015 she enrolled in a PhD at the University of Liverpool ('UoL'). With funding from the USA, she worked on her PhD in the USA during 2016. She was successful in an application for a Clinical PhD Fellowship from the Medical Research Council and returned to the UK and worked as a PhD student trainee in a research lab at UoL from December 2016 and during most of 2017. After leaving UoL in early 2018, she went on to practice as an ST5 junior doctor in paediatrics in the West Midlands Training Program. An issue was first raised with the GMC by Staffordshire Police on 25 March 2019. More issues came to the attention of the GMC during their investigation.

3. The misconduct allegations against Dr Lestner involve three separate events which can be summarised as follows:

- (i) On 25 September 2017, Dr Lestner dishonestly forwarded to another member of the team at UoL a confirmation email from a supplier, which Dr Lestner had amended to include a FedEx tracking number that was not genuine;
- (ii) On 28 September 2017, Dr Lestner dishonestly submitted an Appendix 5 for the purposes of her Annual Review of Competency Progression ('ARCP') to Health Education England which purported to be signed by Professor B but was produced by her;

- (iii) On or around 2 August 2018, Dr Lestner, XXX, dishonestly caused or permitted to be put before the County Court a falsified letter to delay progress of the money claim against her.

4. In addition, it is alleged that, on 11 October 2019 at Stoke on Trent Crown Court, Dr Lestner was convicted of the criminal offence of perverting the course of public justice (for her conduct towards the police in relation to speeding offences in 2018), for which she was sentenced on 19 February 2020 to 4 months imprisonment suspended for 18 months, and ordered to carry out 120 hours of unpaid work.

5. XXX

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the GMC's application, made under Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), that the hearing should proceed in Dr Lestner's absence. The Tribunal's full decision on the application is included at Annex A.

7. The Tribunal determined under Rule 17(6) to make minor amendments to paragraphs 4 and 5 of the Allegation to clarify and narrow the focus to 'Appendix 5' of the ARCP process. The GMC supported the amendment. The Tribunal considered whether the amendments could be made without injustice to Dr Lestner, and if it was fair to do so. Fairness to the doctor was of prime importance, but fairness to the GMC and the public interest in the overarching objective must also be considered. The amendments did not introduce anything new or alter the substance, but narrowed the focus to Appendix 5, which was exhibited to witness statements relied on by the GMC and provided to the doctor prior to the hearing. Because the effect would be to narrow and clarify the allegation, the Tribunal was satisfied that it was not necessary or proportionate to adjourn to notify the absent doctor of the proposal or invite her submissions. The Tribunal considered that the amendments would not cause the doctor any injustice but were neutral to her interests and was consistent with dealing with the case fairly and justly. The Tribunal determined that it would be fair to make the amendments. The amended Allegation is set out below.

8. The Tribunal determined under Rule 17(6) to make a minor amendment to schedule 2 of the Allegation, XXX. The GMC supported the amendment. The Tribunal considered whether the amendment could be made without injustice to Dr Lestner and if it was fair to do so. Fairness to the doctor was of prime importance, but fairness to the GMC and the public interest in the overarching objective must also be considered. The amendment did not

introduce anything new XXX. Because the effect would be to make schedule 2 more accurate, the Tribunal was satisfied that it was not necessary or proportionate to adjourn to notify the absent doctor of the proposal or invite her submissions. The Tribunal considered that the amendment would not cause the doctor any injustice, but was neutral to her interests and was consistent with dealing with the case fairly and justly. The Tribunal determined that it would be fair to make the amendment. The amended Allegation is set out below.

The Allegation and the Doctor's Response

9. The Allegation made against Dr Lestner is as follows:

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

Confirmation Emails

1. On 25 September 2017, following a request from Ms A, you emailed and/or forwarded emails to Ms A and stated that confirmation emails for your orders were below. **To be determined**

2. You knew that the confirmation email included in the email chain referred to at paragraph 1 and dated 29 August 2017 for order SO0108035 from BEI Resources ('the Order'):

- a. did not have the tracking number 406818069234; **To be determined**
- b. had been amended by you to include the tracking number 406818069234; **To be determined**
- c. was not genuine. **To be determined**

3. Your actions at paragraph 1 were dishonest by reason of paragraph 2. **To be determined.**

ARCP

4. On or around 28 September 2017 you submitted an Appendix 5 ('Appendix 5') for the purposes of your Annual Review of Competency Progression ('the ARCP') to Health Education England West Midlands, that was: **Amended under Rule 17(6).**

- a. dated 28 September 2017; **To be determined**
 - b. purported to be signed by Professor B. **To be determined**
5. You knew that:
- a. Professor B had not undertaken a review of your research progress for the purposes of Appendix 5 of the ARCP; **Amended under Rule 17(6). To be determined**
 - b. you had produced ~~the ARCP~~ Appendix 5 yourself; **Amended under Rule 17(6). To be determined**
 - c. Professor B had not signed ~~the ARCP~~ Appendix 5; **Amended under Rule 17(6). To be determined**
 - d. you had signed ~~the ARCP~~ Appendix 5 in Professor B's name. **Amended under Rule 17(6). To be determined**
6. Your actions at paragraph 4 were dishonest by reason of paragraph 5. **To be determined**

County Court proceedings

7. On or around 2 August 2018 you caused or permitted to be put before the Clerkenwell and Shoreditch County Court, a letter ('the Letter') from the Neuro Intensive Care Unit ('the Unit') of the University Hospitals Birmingham NHS Foundation Trust dated 29 July 2018, that stated you had been admitted to the Unit. **To be determined**
8. You knew that:
- a. you had not been admitted to the Unit; **To be determined**
 - b. you or another on your behalf had falsified the Letter. **To be determined**
9. Your actions at paragraph 7 were dishonest by reason of paragraph 8. **To be determined**

Conviction

10. On 11 October 2019 at Stoke on Trent Crown Court you were convicted of two counts of committing an act/series of acts with intent to pervert the course of public justice. **To be determined**

11. On 19 February 2020 you were sentenced concurrently for both offences to:

a. 4 Months Imprisonment Suspended for 18 Months on Suspended Sentence (CJA 2003); **To be determined**

b. Suspended Sentence – must carry out Unpaid Work for 120 Hours before 18 February 2021 authorised officer will supervise work. **To be determined**

XXX

12. XXX

13. XXX

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

a. misconduct as referred to at paragraphs 1 - 9; **To be determined**

b. conviction as referred to at paragraphs 10 & 11; **To be determined**

c. XXX

The Admitted facts

10. Dr Lestner was not present at the hearing, nor was she represented, and therefore made no admissions at the hearing to any paragraphs of the Allegation. Counsel for the GMC informed the Tribunal that the doctor had not made written admissions in response to the Allegation.

Witness Evidence

11. The GMC relied on a bundle of five witness statements and a bundle of documents. They also provided a bundle of documents provided by Dr Lestner during the investigation, when Dr Lestner was engaging with the process. Dr Lestner did not provide further documents or any witness statement for consideration by this Tribunal. After being successful in her application to the case manager to postpone the June 2023 hearing date, she has not engaged in the process.
12. On 10 October 2023, the GMC sent a Rule 34(9) letter to Dr Lestner and provided draft bundles of witness statements and documents, the Allegation and a proposed timetable for the GMC witnesses to attend this hearing. The letter gave information about the hearing, the steps to be taken by the doctor to prepare, and the action the GMC would take if they did not hear back from the doctor. The letter warned that, if the doctor did not indicate by 24 October 2023 that she required a witness to provide oral evidence or be available for cross examination at the hearing, the GMC would still intend for the written statement to be provided to the Tribunal as evidence, which is not challenged by the doctor, and would not arrange for the witness to give evidence orally at the hearing.
13. Each of the five witness statements is signed and includes a statement of truth, confirmation that it was made in full knowledge that it may be used in regulatory proceedings, and confirmation that the witness is willing to attend a hearing to give evidence if asked to do so.
14. Dr Lestner did not reply or give notice that she required any GMC witness to attend to give oral evidence or be available for cross-examination. Nor did she object to any documents in the draft bundles being introduced as evidence. She did not attend the hearing (see Annex A). Dr Lestner has not challenged the witness statements or objected to the GMC relying on them as the evidence-in-chief of the witness concerned. In these circumstances, the GMC did not call their witnesses to attend.
15. The Tribunal considered that the witness statements were relevant to the allegations and it was fair to admit them into the evidence. The non-attendance of the GMC witnesses did not affect Dr Lestner's conduct of the hearing or participation in the process. The Tribunal noted the interests of the GMC and the public in the over-arching objective and in the determination of these proceedings. The Tribunal was mindful of its power to question a witness at any time under Rule 35 if it considered that it was appropriate to do so.
16. The Tribunal received, on behalf of the GMC, witness statements from the following witnesses who were not called to give oral evidence:

- Ms A, Research Technician at UoL in 2017;
- Prof B, Dr Lestner’s PhD supervisor at UoL;
- Ms E, Revalidation and Assessments Manager for Health Education England across the West Midlands;
- Ms F, claimant in the County Court proceedings against Dr Lestner;
- Dr G, Consultant in Neuro-Intensive Care at University Hospital Birmingham.

17. Dr Lestner has not provided a witness statement for this hearing. At an earlier stage, when she was engaging in advance of an Interim Order Tribunal (IOT) in October 2019 and an IOT Review in April 2020, she gave written accounts by letter and email of XXX, her time at UoL and of the events leading to her conviction. XXX, Mr H, who is medically qualified and trained as a neurosurgeon, also wrote a letter for the October 2019 IOT.

Documentary Evidence

18. The Tribunal had regard to the documentary evidence. This evidence included but was not limited to:

- Emails and documents relating to the confirmation email at UoL;
- Appendix 5 of the ARCP process and the ARCP outcome form;
- The 29 July 2018 letter to the County Court, orders of the court, and related documents for the claim against Dr Lestner XXX;
- Certificate of conviction and the Crown Court judge’s sentencing remarks;
- XXX;
- XXX;
- A character reference for Dr Lestner dated 9 September 2019.

The Tribunal’s Approach

19. In reaching its decisions on facts, the Tribunal bore in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Lestner 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.

20. The Legally Qualified Chair (‘LQC’) advised that the Tribunal should consider all of the evidence before coming to a conclusion about a witness’ credibility. The LQC also advised that the inherent probability or improbability of an event is a matter which can be taken into account when weighing the probabilities and in deciding whether an event occurred; that it is not the case that the more serious an allegation, the less likely that it is to have occurred, and

that it is not the case that the more serious the allegation the more cogent the evidence must be. The standard remains the balance of probabilities.

21. Counsel for the GMC submitted that there was a theme to the allegations of falsifying documents for personal gain and that there was a pattern of such behaviour. The LQC advised that if the Tribunal finds one such allegation proved, it is open to the Tribunal to consider whether that proven allegation is capable of establishing a propensity to act in that manner, and that if such a propensity is established, it may be capable of supporting the GMC's case in relation to another allegation of falsifying a document.

22. In relation to the test for dishonesty, the LQC advised that the Tribunal must adopt a two-stage process involving (i) the doctor's actual state of knowledge or belief as to the facts at the time, and (ii) the objective standards of ordinary decent people. This two-stage process is set out in the case of *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords) [2017] UKSC 67 at [74]*:

'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.'

23. XXX

24. XXX

The Tribunal's Analysis of the Evidence and Findings

25. The Tribunal has considered each paragraph of the Allegation separately and has evaluated the evidence in order to make its findings of fact. It noted that some documents (relating to the County Court XXX claim, the conviction, and XXX refer to 'Jodi Marianne Parikh' or 'Mrs Parikh'. The Tribunal found that it is clear from the evidence as a whole, and is not disputed, that 'Parikh' is the married name of Dr Lestner.

26. XXX

XXX

27. XXX

28. XXX

29. XXX

30. XXX

31. XXX

32. XXX

33. XXX

34. XXX

35. XXX

36. XXX

37. XXX

38. XXX

Confirmation Emails

39. The GMC rely on the witness statements and exhibits of Ms A and of Prof B to prove paragraphs 1-3 of the Allegation. There is no evidence that someone witnessed Dr Lestner in the alleged act at the core of the allegation, of amending an email before forwarding it on. The GMC's case depends on evidence of surrounding circumstances. Counsel for the GMC was very thorough in presenting the written evidence to the Tribunal and in her submissions.

40. The Tribunal understood that the GMC's case, in summary, is that on 25 September 2017 Dr Lestner dishonestly forwarded to another member of the team at UoL, Ms A, a confirmation email dated 29 August 2017 for an order of a TB sample from a supplier, BEI

Resources ('BEI') ('the BEI 29 August Email'), which Dr Lestner had amended to include a FedEx tracking number that was not genuine. The GMC say (i) Dr Lestner inserted '406818069234' into the BEI 29 August Email, (ii) that number does not relate to a shipment from BEI, and (iii) that number is for a shipment from M Bio Resources. For ease of reference the Tribunal adopt a short version of the number 'FedEx 4*234'.

41. In her statement, Ms A did not suggest a motive for Dr Lestner to amend the BEI 29 August Email or suggest how or why it would have been to her advantage or personal gain to do so. Nor did Prof B suggest a motive in his statement. In response to a question from the Tribunal whether the GMC were advancing a case as to an alleged motivation, Counsel for the GMC said that they were not.

42. The Tribunal considered the email sent by Dr Lestner on 25 September 2017 to Ms A. The email begins '*Hiya, Below are the confirmation emails for the TB orders...*' and forwards three emails sent by BEI to Dr Lestner on 12 June 2017, 29 August 2017 and 21 September 2017 (the middle one is the BEI 29 August Email that is the subject of the falsification allegation). The Tribunal determined that these emails were sent to Ms A and therefore found paragraph 1 of the allegation proved.

43. The Tribunal understood that *if* BEI is not connected to the FedEx 4*234 shipment, BEI could not have known that number and could not have written that number into the BEI 29 August email. This would support the inference that the number was inserted by another, after BEI sent the email to Dr Lestner and before Dr Lestner forwarded it to Ms A. Counsel for the GMC submitted that when creating a new email to forward an earlier email, it is possible to edit the earlier email before forwarding it. The Tribunal accepted the potential for this to be done and proceeded on that basis for the purposes of this case (also noting that this might not be universally true depending on software).

44. The Tribunal considered that the GMC's case in paragraphs 2 and 3 of the Allegation depends on proving that 'FedEx 4*234' is not linked to BEI. A simple way for UoL to have clarified this would have been to ask BEI if FedEx 4*234 was from them. There is no evidence before the Tribunal of a direct communication from BEI to disown FedEx 4*234. Nor was there evidence of a direct communication from M Bio Resources to adopt FedEx 4*234. Further, there was no evidence that UoL asked BEI to re-send the BEI 29 August Email: this would have been another way for UoL to check its original content and to see if the forwarded version had been changed.

45. Instead, the GMC relied on the account of other circumstances given by Ms A, who in turn relies on what she was told by Ms L. There was no witness statement from Ms L.

46. Ms A gave an account of the circumstances that led her to investigate whether Dr Lestner had in fact ordered and received from BEI three shipments of a sample of *Mycobacterium tuberculosis* ('a TB strain'), in the period June - September 2017, to match the three emails forwarded by Dr Lestner. Her main reasons for doubting the accuracy of the BEI 29 August Email are (i) not seeing a sample in the lab when she looked on 12 September, the diary and the appearance of a vial produced by Dr Lestner on 13 September; (ii) her phone call to BEI on 25 September; (iii) what is stated on the face of the FedEx 4*234 document showing despatch from San Diego, and (iv) information given to her in an email exchange on 26 September with Ms L who is a UoL finance administrator.

47. Counsel for the GMC submitted that these elements were sufficient to demonstrate that Dr Lestner had falsified the tracking number in the BEI 29 August Email and had been dishonest about a 'second' or 'middle' order.

48. Ms A describes her phone call to BEI on Monday 25 September in paragraph 14 of her statement. The Tribunal accepted that she phoned BEI to ask how many strains were sent to UoL in the last 12 months and '*they confirmed there had been two shipments, one in June 2017 and another in September 2017*'. The GMC submitted that if the 29 August BEI email was accurate and genuine, this oral answer from BEI should have been 'three shipments' (June, early September and late September). The Tribunal found that this phone call took place when a genuine shipment from BEI was in progress. The Tribunal considered the possibility that the BEI spokesperson may not have had access to records to be in a position to confirm that 'there had been three shipments'. An undisputed BEI email on 21 September says the product '*will leave our facility on Friday, 22nd September 2017, but this is not necessarily the day it will leave the U.S. The order should be delivered to you in the early portion of next week*'. In an email on 27 September, Dr Lestner referred to this sample still being in transit according to the Fedex site. Ms A does not give details of the oral conversation on 25 September. She did not say that they pinned down the oral answer of 'two shipments' to the tracking numbers in the first and third undisputed emails forwarded by Dr Lestner, to preclude an intervening second order. The Tribunal considered that the lack of detail and the timing of the conversation introduced the potential for some ambiguity about the meaning of the oral answer from BEI and reduced the weight and significance to be given to this oral answer. The Tribunal was not satisfied that this phone call of itself precluded a total of three BEI shipments.

49. The Tribunal went on to consider the FedEx 4*234 document and found as follows. It shows 'ship date' 5 September 2017 from San Diego and actual delivery to Merseyside GB on 11 September 2017. On delivery it was signed for by XXX. It states the weight and dimension

of the item. It does not identify the shipper in words, but by a 6 digit number. The Tribunal has not been shown other FedEx documents from undisputed BEI orders to show that BEI has a different 6 digit shipper identity with FedEx.

50. The Tribunal accepted the GMC's point that all the exhibited emails from BEI give an address in Virginia, USA. The Tribunal noted that the point of despatch stated in the Fedex 4*234 document, San Diego, is many miles away on the West Coast. The place of despatch was far from BEI's usual address.

51. Ms A said that FedEx 4*234 document was for an *'ELISA kit from San Diego and does not represent the shipment of a strain of Mycobacterium tuberculosis from BEI to the University of Liverpool'* (witness statement paragraph 15). The basis for her assertion was what she was told by Ms L by email on 26 September. However, the Tribunal noted that Ms L refers to confusion in her email exchange with Ms A. The email subject is 'M Bio Resources'. Ms A asked Ms L about orders placed by Dr Lestner with M Bio Resources in San Diego. Ms L replied to refer to '2 Elisa Kits' and referred to attaching *'a typed up document explaining what I think happened as it all became rather confusing as [Mr P] was off sick and I couldn't locate his paperwork either'* (the attachment was not provided to the Tribunal). Ms A then asked for the tracking numbers and Ms L replied with two numbers, one of which is 'FedEx 4*234'. The Tribunal was not provided with any primary paperwork from M Bio Resources.

52. The Tribunal had no doubt that Ms L was working in good faith when providing this information to Ms A. However, the Tribunal took into account Ms L's reference to confusion and an absence of paperwork when considering the accuracy of her email to the effect that 'FedEx 4*234 was an Elisa Kit from M Bio Resources. The Tribunal found that this email from Ms L is *some* evidence that FedEx 4*234 was for an Elisa Kit from M Bio Resources. However, the Tribunal also noted that Ms A, at paragraph 17 of her statement no longer said that FedEx 4*234 was an Elisa kit, but said that it was *'for a strain'*. This inconsistency within Ms A's statement showed some confusion.

53. Ms A says in relation to the undisputed BEI shipment in June 2017 that *'the strain comes from QC, which is regulated'* but does not explain the relationship between BEI and QC (paragraph 6 witness statement). The Tribunal considered the possibility that if BEI sometimes uses a source 'QC', this might have an effect on the place of despatch in a FedEx document, but there was no evidence to explain the role of 'QC'.

54. The Tribunal considered other evidence which appears to be consistent with a genuine second shipment of a TB strain from BEI in early September:

- After delivery of the BEI shipment in June 2017, BEI emailed Dr Lestner to ask about the condition of the TB strain on delivery to UoL. On 24 August Dr Lestner wrote, *'I've placed a second order for 3 vials of the HN878 M. tuberculosis strain as we weren't sure what the lead time would be this time'*. The Tribunal considered that if Dr Lestner had not in fact placed a second order with BEI around this date, it was improbable that she would have made that assertion to Ms Q of BEI;
- A note of a team meeting on 11 September 2017 shows that Dr Lestner told the team *'New TB strain arrived and needs to be stored'*. Her claim is not inconsistent with the delivery at 08:27 on 11 September 2017 stated on the FedEx 4*234 document.

55. Prof B did not address the allegations about the BEI 29 August Email in the body of his witness statement (he focuses on the Appendix 5 for the ARCP process) but documents show that Ms A had referred the issue to him by 27 September 2017.

56. The Tribunal considered the emails between Prof B, Dr Lestner and Ms A on 27 September and made findings as follows. Prof B asked Dr Lestner if it is right that there have been *'3 strains bought from BEI (June 2017, late August/early September and late September'*. He asked for the paperwork and comments, *'There seems to be some confusion about all this from ITM finance and BEI'*. Ms L's emails showed that she is in 'ITM finance'. Dr Lestner replied a few hours later, ***'Yes thats right. We had one sent from PHRI and two from BEI. The strain we need is in transit according to fedex site. I sent Ms A the email trail with fedex tracking numbers for previous deliveries and the docs for the deliveries are in the TB admin file of the shared drive.'*** Dr Lestner continued:

'Could we have a chat about this - its getting a bit confusing because I'm getting emails from several people at BEI and now so is Ms A. I'd already started the ball rolling with them to look into whether the strain was the source of contamination and they kindly agreed to send a further strain, which I understand is not usual policy and I want to make sure that it arrives. The test strain they've grown was not contaminated after 8 weeks and I agree its highly unlikely that a biobank strain would be the source of contamination (just my opinion - maybe you've had experience of that).'

57. Dr Lestner's reply to Prof B was, on its face, to the effect of 'Yes' 3 strains were bought from BEI, of which one was sent from PHRI and two were sent from BEI. The Tribunal asked Counsel for the GMC about 'PHRI' but received no evidence of who or what PHRI was, where PHRI was based or what relationship PHRI had to BEI. The Tribunal considered that Dr Lestner's request *'Could we have a chat about this'* was consistent with an apparent willingness to address any confusion. Her reply was not evasive. Her reply was not consistent

with a need to conceal a deliberate falsification two days earlier when forwarding the email to Ms A. The Tribunal considered that the lack of evidence about PHRI was another factor to take into account when considering the significance or otherwise of despatch from ‘San Diego’ in the FedEx 4*234 document.

58. The documents showed that after Dr Lestner left UoL, on 13 March 2018 Prof B was contacted by Ms M on behalf of the Postgraduate Dean and Responsible Officer for trainees in the West Midlands. Prof B replied by email 14 March 2018 and attached an undated typed letter, which he described as written by him on 1 October 2017. The Tribunal noted that the letter describes concerns about Dr Lestner that were emerging in the research department in late September 2017 (including about the BEI orders) and considered that it was entirely plausible that Prof B wrote it in the context of discussions at that time and his decision to send Dr Lestner on holiday from 2 October 2017. The Tribunal had no reason to doubt what he said in the cover email that he wrote this letter on 1 October 2017 and found that he did so.

59. The letter written by Prof B on 1 October 2017 has a heading ‘*January 2017 - current*’ which includes (emphasis added by Tribunal):

*‘Jodi helped build the necessary infrastructure to enable her work to occur at UoL.....
This was a large amount of work and this was **conducted in a highly competent manner.***

.....

It has become increasingly apparent to me that Jodi is struggling with her studies as evidenced by [5 sub-paragraphs] ...

*4. An inability to solve day-to-day problems and progress her studies (a) **e.g. the TB strain has been repeatedly contaminated***

*5. Isolated working and poor communication for a project that requires strong teamwork. This has led to **considerable confusion about experiments** and experimental planning, and a recent breakdown in trust between Jodi and the rest of the team. (a) **e.g. we are not clear about what consumables Jodi has ordered and there are inconsistencies in what Jodi has told us and ITM’s procurement records. We are currently trying to resolve this.**’*

60. Under the next heading ‘*My Current assessment*’, Prof B described Dr Lestner as ‘XXX’; said that she denied any XXX problems but admits to anxieties related to delivery of her thesis; said that he has put her on holiday 2 October to 6 November 2017 as she had not had a holiday for a long time; XXX.

61. The Tribunal noted that in her letter dated 14 October 2019 for the first IOT hearing, Dr Lestner describes UoL raising an issue during 2018 about research misconduct at UoL and writes *'I do not believe that this complaint is substantiated and I did not knowingly act in any wrongful way during my time at Liverpool'*.

62. The Tribunal accepted that Ms A had reasonable grounds for wanting to clarify the position about orders from BEI and that there was some confusion at the time and some questions to be answered. The Tribunal noted what Prof B said in his email of 14 March 2018 to the effect that UoL did not pursue a formal investigation, because Dr Lestner was on holiday 2 October to 6 November 2017, XXX, did not return and resigned by email on 8 March 2018. He wrote that they would continue to investigate if she returned to work but *'this never happened'*. Dr Lestner mentioned correspondence and investigation by the Research Integrity team. Counsel for the GMC informed the Tribunal that no formal report on the issue of the BEI orders was produced and that the GMC did not have further correspondence of relevance to the BEI 29 August Email to provide to the Tribunal.

63. Counsel for the GMC submitted that the later criminal conviction for perverting the course of public justice was cross-admissible as evidence of another instance of providing falsely written documents. The Tribunal noted the lack of evidence or submission as to how it would have been to the advantage or personal gain of Dr Lestner to amend the BEI 29 August Email. This was in clear contrast to the obvious personal gain sought by Dr Lestner when she provided forged documents to the police to advance a false claim that she was assisting with transplant retrievals, to try to evade the consequences of her speeding offences (see the Tribunal's determination on the conviction below).

64. Overall, in light of the considerations set out above, the Tribunal was not satisfied that the GMC had provided sufficient reliable evidence to prove that it is more likely than not that Dr Lestner amended the BEI 29 August Email to insert FedEx 4*234 before she forwarded the email to Ms A.

65. For these reasons the Tribunal found paragraph 2 of the Allegation not proved. Having found paragraph 2 not proved, the Tribunal found paragraph 3 not proved.

ARCP

66. The GMC rely on the witness statements and exhibits of Prof B and Ms E to prove paragraphs 4-6 of the Allegation. There is no evidence that someone witnessed Dr Lestner in the actions at the core of the allegation. The GMC's case depended on evidence of

surrounding circumstances. Counsel for the GMC was very thorough in presenting the written evidence to the Tribunal and in her submissions.

67. The exhibited documents include Dr Lestner's 'Appendix 5' dated 28 September 2017 for her ARCP ('the Appendix 5'); the ARCP outcome form after the panel meeting on 12 October 2017, and emails in March 2018 between Ms M on behalf of the Postgraduate Dean and Responsible Officer for the West Midlands and Prof B.

68. The Tribunal understood that the GMC's case, in summary, was that Dr Lestner dishonestly produced the Appendix 5 and added Prof B's signature before she submitted it to Health Education England West Midlands for her own benefit, to aid her progression through the ARCP process.

69. The Tribunal considered the Appendix 5 and found as follows. It is headed '*Report on Academic Trainees' Progress*'. Entries are made to show that it relates to Dr Lestner who is '*out of programme*' as a full-time PhD student and is for the period 1 September 2016 to 1 September 2017. Entries are made to list '*Achievements and academic activity*'. Page 2 has a box headed '*Comments from academic/research supervisor*' and entries are made under four headings. It shows '*Name of Academic Supervisor: Prof B*' and an accompanying signature and also the signature of the trainee, Dr Lestner. Both signatures are presented as dated 28 September 2017.

70. Ms E, a revalidation and assessments manager for Health Education England across the West Midlands, gave details of the ARCP process. She explained that a trainee and their academic supervisor should complete an electronic Appendix 5; that the completed Appendix 5 is usually uploaded to the electronic e-Portfolio system by the trainee; that the Appendix 5 is assessed by the panel, and the panel produce an ARCP outcome form.

71. Ms E stated that her review of the records shows that this Appendix 5 was uploaded to the e-Portfolio on 28 September 2017 directly by Dr Lestner. She provided the ARCP outcome form dated 12 October 2017. Her evidence is not challenged by Dr Lestner.

72. The Tribunal determined that it was more likely than not that on or about 28 September 2017, Dr Lestner submitted the Appendix 5 dated 28 September 2017 and purportedly signed by Prof B. The Tribunal found paragraph 4 of the Allegation proved.

73. The Tribunal turned to the evidence of Prof B who denied input into the Appendix 5. He states:

'...This document has my signature on it. To the best of my knowledge I did not undertake and produce any report for Dr Lestner that year. I do not have a copy of this document for this year for Dr Lestner and have no recollection of filling this form in. I have searched my records and I could not find one.'

74. He said that the first time he saw the Appendix 5 was on 13 March 2018, when he received an email from Ms M asking if he had written and signed the Appendix 5. As found by the Tribunal above, Prof B replied on 14 March 2018 and attached an undated typed letter which he had written on 1 October 2017 (exhibit WH3). In this letter written only a few days after Dr Lestner uploaded the Appendix 5, Prof B wrote:

'I am writing because I need some help and advice about Jodi Lestner. Both of you may recall that I have worried about Jodi for some time, but now I think the time has come to consider several formal interventions...'

75. Prof B then set out events during periods that include the period covered by Appendix 5 and continues:

'It has become increasingly apparent to me that Jodi is struggling with her studies as evidenced by the following:

- 1. A complete absence of prepared work that could count towards her PhD...*
- 2. An inability to finish work that is started or respect deadlines. Focus appears to be a real problem...*
- 3. An inability to write up work from the USA...*
- 4. An inability to solve day-to-day problems and progress her studies...*
- 5. Isolated working and poor communication for a project that requires strong teamwork....'*

76. Under the heading 'My Current Assessment' he continued:

'XXX'

77. The Tribunal compared the opinions stated by Prof B in his 1 October 2017 letter with the positive comments entered into the Appendix 5 in the box for completion by the academic supervisor:

'General: Excellent progress.'

*Strengths: Continues to progress well in PhD. Has managed challenges that have arisen.
Works well with the group. Has maintained impressive output.*

Areas for Improvement: Continue. Well done.

Recommendations: No concerns, continue with progress towards thesis'

78. The Tribunal found that the positive comments in the Appendix 5 were in sharp contrast to the opinions stated by Prof B in his letter. The Tribunal considered it highly unlikely that Prof B held those positive views at the end of September 2017 or would have written those positive comments if writing the Appendix 5.

79. The Tribunal noted the absence of an obvious or self-evident reason for Prof B to deny involvement in a genuine Appendix 5, if he had in fact completed and signed it as a supervisor. The Tribunal took into account what Dr Lestner wrote in her accounts for the IOT in October 2019 and April 2020. She maintained that Prof B wrote her ARCP by stating that a subsequent reference to Alder Hey Hospital *'was not in keeping with the report he had written for my ARCP'*. She also refers to alleged *'inappropriate'* or *'harassing'* behaviour by Prof B that made her *'very uncomfortable'*. The Tribunal considered that Dr Lestner's comments about alleged inappropriate behaviour lacked detail and she has not sought to develop the issue for the purposes of these proceedings. The Tribunal considered that a motive for Prof B to now falsely distance himself from a previously genuine role in the Appendix 5 was not established.

80. The Tribunal noted the self-evident benefit to Dr Lestner of the positive comments in the Appendix 5, to assist her with her professional development by progressing through the ARCP process with success. The ARCP outcome form shows that on 12 October 2017, the panel placed reliance on the Appendix 5, stating *'Well done'*. The Tribunal was satisfied that there was a motive for Dr Lestner to produce the positive comments and add the signature of Prof B for her own gain.

81. The Tribunal noted the absence of direct evidence of how the signature of Prof B was added to the Appendix 5. It found that it was more likely than not that Dr Lestner, during her time at UoL as a PhD student being supervised by Prof B, had access to copies of his signature. It accepted that there are methods to copy a signature electronically and add it into another electronic document. As stated above, the Tribunal found that Dr Lestner uploaded the form.

82. On the basis of the considerations set out above, the Tribunal found it more likely than not that Prof B had not done a formal review of Dr Lestner’s research progress for the purposes of producing the Appendix 5 dated 28 September 2017, and had not added the positive comments or signed it. The Tribunal found it more likely than not that Dr Lestner produced the Appendix 5 herself and signed it in Prof B’s name. The Tribunal had taken into account the submission from Counsel for the GMC that the conviction for perverting the course of public justice, based on providing forged letters to the police prior to 25 March 2019 (see the determination below on the conviction allegation), was capable of showing a propensity for Dr Lestner to provide falsified documents for her own gain, and that this lent support to the weight to be given to the evidence of Prof B that he was not involved in the Appendix 5 and to the likelihood that Dr Lestner produced the positive comments and added his signature. The Tribunal considered that, even absent the conviction, other evidence about Appendix 5 was, in any event, sufficient to prove her actions in relation to the Appendix 5.

83. The Tribunal turned to the alleged dishonesty of Dr Lestner’s actions in relation to the Appendix 5 and had regard to the two-stage test in *Ivey*. The Tribunal started with her actual state of knowledge or belief at the time. Dr Lestner has not provided a witness statement to give evidence of her knowledge or belief at the time and has not sought to offer an honest explanation. XXX.

84. On the basis of its considerations above, the Tribunal was satisfied that the rational inference and conclusion to be drawn from the evidence of the circumstances was that Dr Lestner had actual knowledge that Prof B had not undertaken a review of her research progress for the purposes of the Appendix 5 and that she (not Prof B) produced and signed the Appendix 5. The Tribunal considered that her actions were deliberate and would be considered dishonest by the objective standards of ordinary decent people. The Tribunal therefore determined that paragraphs 5 and 6 of the Allegation were proved.

County Court Proceedings

85. The GMC relied on the witness statements and exhibits of Ms F and Dr G to prove paragraphs 7-9 of the Allegation. There was no evidence that someone witnessed Dr Lestner in the actions at the core of the allegation. The GMC’s case depended on evidence of surrounding circumstances. Counsel for the GMC was very thorough in presenting the written evidence to the Tribunal and in her submissions.

86. The Tribunal understood that the GMC’s case, in summary, was that Dr Lestner, by means of a falsified letter dated 29 July 2018, dishonestly sought to influence a judge of the

County Court to delay the progress of a money claim against her. This allegation is separate from her role as a doctor and related to her private property dealings.

87. The documentary evidence included the XXX; email and social media messages XXX; a letter dated 29 July 2018; orders made by the County Court, Ms F's email to the GMC in June 2020, and the comments of Dr Lestner to the GMC in August 2020.

88. XXX. Ms F describes service of the court documents on Dr Lestner by recorded delivery and notification of successful delivery to Dr Lestner who signed receipt. The hearing was set for 20 August 2018. Ms F goes on to explain that a letter dated 29 July 2018 was submitted to the County Court on behalf of Dr Lestner, as defendant to the claim, to postpone the hearing. Her account is supported by her exhibited documents. The Tribunal noted that the documents showed a cross referencing error in a date in paragraph 5 of her statement but the date is clear from the exhibited document and the Tribunal did not regard this minor error as otherwise undermining her evidence.

89. On the basis of the order made by the judge on 2 August 2018 without a hearing (drawn up 14 August), the Tribunal found that the judge relied on the letter dated 29 July 2018 when deciding to vacate the hearing on 20 August 2018 and order a 6 month stay of the claim. A recital states, *'Upon reading correspondence from the neuro-intensive care unit (The Unit) of University Hospitals Birmingham NHS Foundation Trust dated 29 July 2018 concerning the defendant's admission to the unit'*.

90. The GMC's case depends on proving that the 29 July 2018 letter was falsified. The letter appears to be from 'NHS University Hospitals Birmingham' and purportedly signed by Dr G, Consultant of Neuro-Intensive Care Medicine at Queen Elizabeth Hospital. The letter confirms that *'Mrs Jodi Marianne Parikh'* was currently admitted *'on our neuro-intensive care unit for urgent and on-going medical care'*.

91. The Tribunal considered Dr G's statement. He stated that (i) it is not his signature and he did not write the letter; (ii) he does not recall Dr Lestner as one of his patients; (iii) he has checked the Trust's electronic system for her name, as Lestner and Parikh, and found no record of her as a patient in neuro-intensive care; (iv) that the letter gives a 'PID' number but patients in intensive care medicine are not allocated a 'PID', and (v) the slogan at the bottom of the letter is that of NHS England and not the Trust, the Trust's slogan being *'Building healthier lives'*. He concludes:

'I do not believe this letter to be genuine. I would never write a letter unless the patient was admitted in my care which would be corroborated by a patient record. As there is

no record of this patient, I believe that I did not write this letter and I confirm that it is not my signature’.

92. Ms F corroborated Dr G’s evidence that Dr Lestner was not a patient at the hospital in late July 2018. She says, *‘I was suspicious regarding the validity of this letter so called the trust who confirmed that Dr Lestner was not a patient at the hospital’.*

93. The Tribunal noted that Dr G was a consultant on the unit and Dr Lestner has not challenged his evidence or suggested a possible motive on his part now to put forward a false claim that she was not a patient, if she had been. The Tribunal did not receive expert evidence about the handwriting and has no expertise in that field, but noted that the signature on Dr G’s signed witness statement was very radically different to his apparent signature on the 29 July 2018 letter.

94. The Tribunal also noted the absence of a mention of an admission to a neuro-intensive care unit in all the evidence XXX.

95. The Tribunal took into account that when the GMC, in August 2020, informed Dr Lestner that it was investigating some additional allegations, Dr Lestner replied to the GMC investigation officer by email dated 21 August 2020 as follows:

‘XXX’

96. The Tribunal noted that Dr Lestner did not mention in this email that the proceedings had concluded on 12 April 2019, when the judge decided the claim in favour of Ms F, without a deduction for damage. XXX.

97. The Tribunal noted that Dr Lestner has neither denied nor admitted the allegation of dishonesty in relation to the 29 July 2018 letter that was put before the County Court. The Tribunal noted the self-evident benefit to the defendant to a money claim of delaying the progress of the claim. The Tribunal found that putting this letter before the judge was to the direct benefit of Dr Lestner XXX.

98. The Tribunal considered that Dr G was independent and gave detailed reasons for denying that it was his letter or signature. His evidence that Dr Lestner was not admitted to his unit as of 29 July 2018 is corroborated by Ms F’s phone inquiry to the hospital XXX. The Tribunal was satisfied that Dr Lestner was not a patient in the unit as of 29 July 2018 and that the letter was not genuine but was false.

99. The Tribunal turned to consider the issue of Dr Lestner’s knowledge of the false letter and her involvement in it being put before the County Court on or about 2 August 2018. Having regard to the two-stage test in *Ivey*, the Tribunal considered evidence of her actual state of knowledge or belief at the time. Dr Lestner did not provide a witness statement to give evidence of her knowledge or belief at the time and has not offered an honest explanation for the letter. Nor did she claim that the letter was the work of someone else of which she had no knowledge.

100. The order made on 2 August 2018 showed that, in addition to the letter dated 29 July 2018, the judge also relied on ‘*an email letter from the Defendant’s Mother*’. The Tribunal noted that if the application to postpone had been emailed to the court by Dr Lestner, that would have undermined the deception about her being a patient in a neuro-intensive care unit. The Tribunal considered that it was consistent with the intended deception that someone other than Dr Lestner should send the email to the court. The Tribunal considered that the identity of the sender (XXX or XXX) does not preclude knowledge or involvement by Dr Lestner.

101. The Tribunal noted that XXX. The Tribunal noted that she was the sole defendant to the claim and the evidence of Ms F of service of the court documents on her in April 2018. The Tribunal considered that it was reasonable to infer that Dr Lestner was aware of the forthcoming hearing on 20 August 2018.

102. The Tribunal considered that there was no explanation for the letter other than to try to delay the claim by deceiving the judge into forming the view that there was good reason to vacate the hearing on 20 August 2018 and stay the claim against Dr Lestner.

103. XXX.

104. On the basis of its considerations above, the Tribunal determined that the rational inference and conclusion to be drawn from the evidence of all the circumstances was that Dr Lestner had actual knowledge that she was not in the unit as of 29 July 2018 and that she or another on her behalf had created the falsified letter to put before the court. The Tribunal was satisfied that it was more likely than not that Dr Lestner permitted it to be put before the court on her behalf by an email from XXX/XXX.

105. The Tribunal took into account that the conviction for perverting the course of public justice was based on providing forged letters to the police prior to 25 March 2019 (see the determination below on the conviction allegation). The Tribunal considered that this was capable of showing a propensity for Dr Lestner to provide falsified documents for her own

gain, and that this was capable of lending support to the likelihood that she had knowledge of the false 29 July 2018 letter and that she permitted it to be put before the court on her behalf. However, the Tribunal noted that, even absent the conviction, other evidence about the 29 July 2018 letter was in any event sufficient for the Tribunal to conclude that it was more likely than not that allegations in relation to this letter were proved.

106. The Tribunal was satisfied that the letter was a deliberate attempt to deceive the court to obtain a personal advantage for Dr Lestner, to the detriment of XXX. The Tribunal considered that her actions would be considered dishonest by the objective standards of ordinary decent people. The Tribunal therefore determined that paragraphs 7, 8 and 9 of the Allegation were proved.

Conviction

107. The Tribunal considered the certificate of conviction, signed and dated 20 April 2020, and its schedules 1 and 2 ('the Certificate'). The Certificate states that on 11 October 2019, Jodi Marianne Parikh (Dr Lestner) was on her own confession convicted of two counts of committing an act/series of acts with intent to pervert the course of public justice, and that on 19 February 2020 she was sentenced concurrently for both offences to 4 months imprisonment suspended for 18 months, and to 120 hours community service.

108. The Tribunal noted Rule 34(3) which states:

'Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.'

109. In light of Rule 34(3) and the Certificate, the Tribunal found paragraph 10 of the Allegation proved. The Tribunal found that the Certificate and the Crown Court judge's sentencing remarks dated 19 February 2020 ('the Sentencing Remarks') are reliable evidence of the sentence, and determined that paragraph 11 of the Allegation is proved.

110. The Tribunal noted the letter from the probation service dated 24 April 2020 to the effect that, prior to the first Covid-19 lockdown, Dr Lestner carried out unpaid work and was on target to complete her hours earlier than expected.

111. Because Counsel for the GMC had invited the Tribunal to have regard to the conviction when considering its findings of fact about other allegations of misconduct, it is

relevant for the Tribunal, at this stage, to address the nature of the actions which underlie the conviction for perverting the course of public justice. The Tribunal considered (i) the Sentencing Remarks as a reliable and credible source of evidence, and (ii) the account given by Dr Lestner in her letter dated 14 October 2019 for the first IOT hearing, which she wrote after conviction but before sentence.

112. On the basis of the Sentencing Remarks, the Tribunal found as follows. The conviction is based on her conduct towards the police to try to evade the consequences of being caught speeding in March and August 2018 (not grossly excessive speeds). Initially, the two speeding offences were processed on the papers and she received points. She applied to set aside that outcome, for the reason that she had not seen the papers. Once the offences were re-opened, she argued for special reasons for her licence not to be endorsed, by falsely claiming that she was involved in transplant retrievals. Her conduct towards the police was as follows:

- She provided forged letters from two ambulance services to support her false claim about transplant retrievals;
- In order to avoid an interview with the police, she provided a forged letter purporting to be from her GP, to the effect that she had been admitted to hospital having gone into premature labour, when she was not so admitted;
- When she attended a police interview on 9 April 2019, she was XXX. The interview was rescheduled and Dr Lestner got legal representation. The Sentencing Remarks show that she had legal representation at sentence.

113. XXX. The Crown Court judge noted that she incurred a third speeding offence on 14 February 2019.

114. The Crown Court judge stated ‘*you are a highly intelligent individual*’ and a ‘*high achiever*’, refers to her ‘*deviousness*’ and comments on XXX:

*‘...you are now XXX which I am entirely satisfied played a major part in these matters because frankly otherwise your conduct would beggar belief. I think there is also an element of you thinking that you were above the law. I hope you now realise that is not the case. Perverting the course of justice is serious... **your conduct was persistent; it showed some sophistication; you made use of your professional knowledge and forged official looking letters to cover up the offences.***

...

...XXX I am satisfied that you are ashamed of yourself.’

115. Dr Lestner’s written account on 14 October 2019 included the following:

'XXX....

I panicked and wrote forged documents to submit to the Police... I understand the seriousness of this action and that it was wrongful and showed a serious lack of judgement. XXX. I was not truthful during this interview because of this.

....

My actions during XXX were out of character... Prior to this I have never done anything like this... I understand the seriousness of the charges brought against me. XXX.

.....

I reiterate that I am sincerely remorseful for my actions in my failure to be honest and compliant with the Police and the Court."

116. The Tribunal had not seen the scope of the issues before the IOT in October 2019 but it would appear from her letter dated 14 October 2019 that Dr Lestner was focussing on her conduct towards the police during XXX. The GMC was not yet investigating the allegation relating to the letter to delay the XXX claim in the County Court, because this issue was not brought to the attention of the GMC until June 2020.

117. On the basis of Dr Lestner's written account and the Sentencing Remarks, the Tribunal understood that XXX was a part of the context for her actions towards the police. The Tribunal noted that on 11 October 2019 she entered guilty pleas to perverting the course of public justice. The Tribunal understood that it was NOT her case in the criminal proceedings that she mis-appreciated the nature of her actions when providing the forged ambulance service letters to claim involvement in transplant retrievals or when providing the forged GP letter to avoid the original police interview. XXX. The evidence does not specify the date(s) on which she provided the forged letters to the police, but the GMC submit that it was late 2018 or early 2019, prior to the police referring the issue to the GMC on 25 March 2019. The Tribunal considered that Dr Lestner's own account and the Sentencing Remarks are on the basis that she knew that she was providing forged letters to the police and had the actual state of knowledge to make that conduct dishonest.

The Tribunal's Overall Determination on the Facts

118. The Tribunal has determined the facts as follows:

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

Confirmation Emails

1. On 25 September 2017, following a request from Ms A, you emailed and/or forwarded emails to Ms A and stated that confirmation emails for your orders were below. **Determined and found proved**

2. You knew that the confirmation email included in the email chain referred to at paragraph 1 and dated 29 August 2017 for order SO0108035 from BEI Resources ('the Order'):
 - a. did not have the tracking number 406818069234;
Not proved

 - b. had been amended by you to include the tracking number 406818069234;
Not proved

 - c. was not genuine.
Not proved

3. Your actions at paragraph 1 were dishonest by reason of paragraph 2.
Not proved

ARCP

4. On or around 28 September 2017 you submitted an Appendix 5 ('Appendix 5') for the purposes of your Annual Review of Competency Progression ('the ARCP') to Health Education England West Midlands, that was: **Amended under Rule 17(6)**.
 - a. dated 28 September 2017; **Determined and found proved**

 - b. purported to be signed by Professor B. **Determined and found proved**

5. You knew that:
 - a. Professor B had not undertaken a review of your research progress for the purposes of Appendix 5 of the ARCP; **Amended under Rule 17(6)**. **Determined and found proved**

 - b. you had produced ~~the ARCP~~ Appendix 5 yourself; **Amended under Rule 17(6)**. **Determined and found proved**

c. Professor B had not signed ~~the ARCP Appendix 5~~; **Amended under Rule 17(6). Determined and found proved**

d. you had signed ~~the ARCP Appendix 5~~ in Professor B's name. **Amended under Rule 17(6). Determined and found proved**

6. Your actions at paragraph 4 were dishonest by reason of paragraph 5. **Determined and found proved**

County Court proceedings

7. On or around 2 August 2018 you caused or permitted to be put before the Clerkenwell and Shoreditch County Court, a letter ('the Letter') from the Neuro Intensive Care Unit ('the Unit') of the University Hospitals Birmingham NHS Foundation Trust dated 29 July 2018, that stated you had been admitted to the Unit. **Determined and found proved**

8. You knew that:

a. you had not been admitted to the Unit;
Determined and found proved

b. you or another on your behalf had falsified the Letter.
Determined and found proved

9. Your actions at paragraph 7 were dishonest by reason of paragraph 8. **Determined and found proved**

Conviction

10. On 11 October 2019 at Stoke on Trent Crown Court you were convicted of two counts of committing an act/series of acts with intent to pervert the course of public justice. **Determined and found proved**

11. On 19 February 2020 you were sentenced concurrently for both offences to:

a. 4 Months Imprisonment Suspended for 18 Months on Suspended Sentence (CJA 2003);
Determined and found proved

b. Suspended Sentence – must carry out Unpaid Work for 120 Hours before 18 February 2021 authorised officer will supervise work.

Determined and found proved

XXX

12. XXX

13. XXX

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

- a. misconduct as referred to at paragraphs 1 - 9; **To be determined**
- b. conviction as referred to at paragraphs 10 & 11; **To be determined**
- c. XXX

Determination on Impairment - 23/11/2023

119. This determination will be handed down in private. However, as this case concerns misconduct and a conviction, a redacted version will be published at the close of the hearing.

120. The Tribunal now has to decide, in accordance with Rule 17(2)(l), whether, on the basis of the facts which it has found proved as set out before, Dr Lestner's fitness to practise is impaired by reason of misconduct, a conviction for a criminal offence XXX.

The Evidence

121. The Tribunal took into account all the evidence received during the facts stage of the hearing. No further evidence was adduced.

Submissions

122. On behalf of the GMC, Ms Goring, Counsel, submitted that Dr Lestner's fitness to practise was currently impaired by reason of her misconduct, conviction XXX.

123. In relation to misconduct, Ms Goring said that the Tribunal must follow a two-stage process: first to determine if the facts found proved amount to misconduct, and second to determine if the doctor's fitness to practise is currently impaired by reason of that misconduct. Ms Goring referred to *Roylance v The General Medical Council (Medical Act 1983) [1999] UKPC 16 (24th March 1999)*, which set out that 'misconduct' is a word of 'general effect, involving some act or omission which falls short of what would be proper in the circumstances' and that the standard of propriety may be found by reference to Good Medical Practice (2013) ('GMP').

124. Ms Goring reminded the Tribunal that it had found that Dr Lestner had acted dishonestly in forging official documentation. She submitted that this was clearly misconduct and would be considered deplorable by fellow members of the profession.

125. Ms Goring referred the Tribunal to paragraphs 1, 65 and 71 of GMP:

'1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues, are honest and trustworthy, and act with integrity and within the law.

65 You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.

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.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.'

126. Ms Goring submitted that the facts found proved breached all of these paragraphs and that Dr Lestner's dishonesty was repeated, of a persistent nature and serious. She reminded the Tribunal that the dishonesty in relation to the Appendix 5 for her ARCP was in a professional setting. She submitted that a criminal conviction, and acts of dishonesty, carry a presumption of impairment and that the dishonesty in this case was at the higher end of the

spectrum of seriousness. She reminded the Tribunal that Dr Lestner’s conviction was for perverting the course of public justice and submitted that this was a very serious matter.

127. Ms Goring referred to the approach for determining ‘impairment’ set out by Dame Janet Smith in The Fifth Shipman Report and as adopted by the court in *CHRE v NMC and P Grant [2011] EWHC 927 (Admin)* (‘the Grant test’). The Tribunal will consider:

‘a) Whether the registrant has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm.

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

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

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

128. Ms Goring submitted that the ‘patient safety’ limb (a) was not engaged in this case (noting that the Appendix 5 for the ARCP was during a PhD research role) but that the other three limbs (b) – (d) were engaged. She submitted that Dr Lestner’s actions had brought the profession into disrepute and that her conviction and dishonest conduct seriously undermined public confidence in the profession. She submitted that Dr Lestner had engaged in serious and sustained dishonesty, which breached a fundamental tenet of the profession.

129. Ms Goring submitted that it was necessary for the Tribunal to make a finding of current impairment regarding Dr Lestner’s misconduct and conviction to mark this sort of behaviour as unacceptable and to promote and maintain public confidence in the profession.

130. XXX.

131. Ms Goring reminded the Tribunal that it should consider the issues of insight and remediation. She referred to what Dr Lestner wrote in her letter of 14 October 2019 for the IOT. Dr Lestner fully accepted her recent criminal conviction, expressed remorse for her conduct towards the police that led to the conviction, XXX. However, Ms Goring urged caution when considering how much weight to give this letter when considering current impairment, because it was now four years old and was written when other aspects of the Allegation had not yet been put to Dr Lestner.

132. Ms Goring reminded the Tribunal that Dr Lestner had made no formal admissions and had not responded to the Allegation. She submitted that Dr Lestner had not demonstrated any insight into the findings of dishonesty in relation to the Appendix 5 for her ARCP in September 2017 or the 29 July 2018 letter that was put before the County Court. Ms Goring noted that when the GMC raised the issue of the County Court XXX claim with Dr Lestner in August 2020, Dr Lestner did reply to make some reference to there being an issue about the XXX, but her reply fell far short of what is required to demonstrate insight into the dishonest misconduct in putting a forged letter before the County Court to delay the claim.

133. Ms Goring submitted that Dr Lestner’s lack of insight and remediation meant that the Tribunal could not be satisfied that she would not repeat her misconduct in the future and therefore should find Dr Lestner’s fitness to practise to be currently impaired by virtue of her misconduct, conviction XXX.

The Relevant Legal Principles

134. The Tribunal noted 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.

135. In relation to the two-stage process to adopt when considering misconduct (as stated by Counsel for the GMC, above), the LQC advised that the threshold for disciplinary intervention is conduct that is linked to the practice of medicine or that otherwise brings the profession into disrepute, and it must be serious, the sort of conduct *‘which would be regarded as deplorable by fellow practitioners’* (Yeong v GMC [2009] EWHC 1923 (Admin) at [20] citing GMC v Meadow).

136. The Tribunal must determine whether Dr Lestner’s fitness to practice is impaired today by reason of serious misconduct, the conviction XXX. The Tribunal will consider the questions in limbs (b) – (d) in *Grant* (as stated by Counsel for the GMC, above). The Tribunal must consider the nature of Dr Lestner’s conduct at the time, and any relevant factors since then, such as insight gained by the doctor, whether the matters are remediable and have been remedied, and risk of repetition (Cohen v GMC (2008) EWHC 581 at [62-65]).

137. The Tribunal must pay close attention to the doctor’s current understanding of and attitude towards what she has done and whether the insight shown and/or remediation undertaken addresses the true seriousness of the case found proved against her (GMC v Khetyar [2018] EWHC 813).

138. The nature and extent of dishonesty may be variable and must be evaluated on a case-by-case basis. As set out in *Sun v General Medical Council [2023] EWHC 1515 at [38]*:

'...issues of probity, integrity and honesty are fundamental tenets of the medical profession, in a context where doctors occupy a position of privilege in trust and are expected to act in a manner which maintains public confidence and uphold proper standards of conduct.'

139. As set out in *Nkomo v GMC [2019] EWHC 2625 (Admin) at [35]*:

'The starting point is that dishonesty by a doctor is almost always extremely serious. There are numerous cases which emphasise the importance of honesty and integrity in the medical profession, and they establish a number of general principles. Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct.... Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance.... In such cases, personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member...'

140. Where a Tribunal considers that the case is one where the misconduct or conviction consists of violating a fundamental rule of the profession, and thereby undermines 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 promote and maintain public confidence in the practitioner and in the profession (*Grant at [74]*).

The Tribunal's Determination on Impairment

Misconduct

141. The Tribunal had regard to the facts found proved as set out in its facts determination. Paragraph 1 of the Allegation was proved, but this amounted only to sending an email. The related paragraphs 2 and 3 of the Allegation were not proved and therefore the Tribunal considered that paragraph 1 did not amount to misconduct.

Appendix 5 of the ARCP

142. In relation to paragraphs 4 – 6 of the Allegation, the Tribunal reminded itself of its findings that on 28 September 2017, Dr Lestner had acted dishonestly by submitting an

Appendix 5 which she had completed and signed in Prof B's name for the purpose of her ARCP. The Tribunal considered that this took place in her professional setting and involved making deliberate and conscious decisions to formulate positive comments about her performance, as if written by her academic supervisor, and to insert Prof B's signature. This dishonesty was aimed at deceiving Health Education England ('HEE') for her own benefit, to aid her progression through the ARCP process. It had the potential to harm the integrity of the training process.

143. XXX. On that basis the Tribunal had found dishonesty.

144. The Tribunal considered that her dishonest misconduct in relation to the Appendix 5 was a failure to act with integrity (GMP 1); was liable to damage the public's trust in the profession (GMP 65) and was a failure to be honest and trustworthy when completing and signing a form and instead created a false and misleading document (GMP 71). This was serious misconduct in the professional context, with intent to deceive an authority to aid her progression through the training process, and was a clear breach of paragraphs 1, 65 and 71 of GMP. The Tribunal found that this is unacceptable from a doctor and would be regarded as deplorable by fellow practitioners. The Tribunal determined that Dr Lestner's actions regarding the Appendix 5 of her ARCP constituted serious misconduct.

145. The Tribunal noted that in her letter dated 14 October 2019 about her recent conviction and XXX for the IOT, Dr Lester described her ARCP as written by Prof B. The Tribunal does not know whether the issue of the authenticity of Appendix 5 of her ARCP had yet been raised with her by the GMC. For the purposes of this hearing, Dr Lestner has not provided the Tribunal with any expression of her current attitude towards her dishonest misconduct in relation to the Appendix 5. There is no evidence of an acknowledgement or appreciation of the failing on her part, or of an apology to HEE or to Prof B for misusing his signature.

County Court proceedings

146. In relation to paragraphs 7-9 of the Allegation, the Tribunal reminded itself of its findings of dishonesty on the part of Dr Lestner, in relation to a falsified letter dated 29 July 2018 being put before the County Court on or about 2 August 2018 to the effect that she was in a neuro-intensive care unit, when she was not. The Tribunal considered that this was in the context of XXX and involved making conscious and deliberate decisions to fabricate the letter and provide it to the County Court. This dishonesty was aimed at deceiving a judge for her own financial benefit, to delay the progress of a money claim against her. It was to the

detriment of XXX whose ability to obtain a remedy against Dr Lestner was delayed without justification.

147. XXX. On that basis the Tribunal had found dishonesty.

148. The Tribunal considered that her dishonest misconduct in relation to the letter to the County Court was a failure to act with integrity (GMP 1); was liable to damage the public's trust in the profession (GMP 65) and was a failure to be honest and trustworthy when completing and signing a document and instead created a false and misleading document (GMP 71). This was serious misconduct, outside the work setting, with the intent to deceive a County Court to her own financial advantage and was a clear breach of paragraphs 1, 65 and 71 of GMP. The Tribunal considered that she had also breached paragraph 72 of GMP by dishonestly providing false evidence to the County Court in support of an application to postpone the forthcoming hearing:

'72 You must be honest and trustworthy when giving evidence to courts or tribunals. You must make sure that any evidence you give or documents you write or sign are not false or misleading.

a You must take reasonable steps to check the information is correct.

b You must not deliberately leave out relevant information.'

149. The Tribunal considered that Dr Lestner's deliberate deception of the County Court is unacceptable by a doctor and would be considered deplorable by fellow practitioners and amounted to serious misconduct. The Tribunal determined that this constituted serious misconduct.

150. As stated in its determination of facts above, when the GMC, in August 2020, informed Dr Lestner that it was investigating more allegations, Dr Lestner replied by email on 21 August 2020 to the effect that XXX and there was an unresolved dispute about XXX. Dr Lestner omitted to say that the proceedings had concluded on 12 April 2019, when the judge decided the claim in favour of Ms F, without a deduction XXX. For the purposes of this hearing, Dr Lestner has not provided the Tribunal with any expression of her current attitude towards this dishonest misconduct on or about 29 July 2018 to 2 August 2018. There is no evidence of an acknowledgement or appreciation of the failing on her part or of an apology to XXX, Ms F, or to Dr G for using his name on the forged letter.

Conviction

151. In relation to paragraphs 10 – 11 of the Allegation, the Tribunal reminded itself that Dr Lestner had been convicted on a guilty plea of two counts of perverting the course of public justice and sentenced to 4 months imprisonment suspended for 18 months and to carry out 120 hours of unpaid work.

152. As set out in its findings during the facts stage, which were based on the Sentencing Remarks of the Crown Court judge, the conviction was based on Dr Lestner's dishonest conduct towards the police to try to evade the consequences of being caught speeding in March and August 2018. She argued for special reasons for her licence not to be endorsed, by falsely claiming that she was involved in transplant retrievals. She provided forged letters from two ambulance services to support her false claim about transplant retrievals. In order to avoid an interview with the police, she provided a forged letter purporting to be from her GP, to the effect that she had been admitted to hospital having gone into premature labour, when she was not so admitted.

153. The Tribunal accepted that Dr Lestner had shown insight by pleading guilty in the Crown Court on 11 October 2019 and had accepted responsibility for her conduct towards the police in her letter dated 14 October 2019 for the IOT. The Tribunal noted, however, that it was the police who had referred her to the GMC on 25 March 2019. The Tribunal reminded itself of the letter from the probation service about her diligence in getting on with the unpaid work (until a Covid-19 lockdown intervened) and that her suspended sentence completed in August 2021.

154. The Tribunal also reminded itself that, in its findings of facts, it had set out extracts from the Sentencing Remarks and from Dr Lestner's letter dated 14 October 2019.

155. In addition to its earlier findings about the content of those documents, the Tribunal noted that the Crown Court judge refers to having had XXX, a letter from Dr K and a reference XXX, and that it was against that background that the judge made his remarks about *'deviousness'* and *'I think there is also an element of you thinking that you were above the law. I hope you now realise that is not the case. Perverting the course of justice is serious... your conduct was persistent; it showed some sophistication; you made use of your professional knowledge and forged official looking letters to cover up the offences'*.

156. XXX. The Tribunal understood that it was NOT her case in the criminal proceedings that she mis-appreciated the nature of her actions when providing the forged ambulance service letters to claim involvement in transplant retrievals or when providing the forged GP letter to avoid the original police interview. The Tribunal considered that Dr Lestner's own

account and the Sentencing Remarks are on the basis that she knew that she was providing forged letters to the police and had the actual state of knowledge to make that conduct dishonest.

157. In her letter dated 14 October 2019, XXX, Dr Lestner stated:

'...I panicked and wrote forged documents to submit to the Police...I understand the seriousness of this action and that it was wrongful and showed a very serious lack of judgement. XXX...I am sincerely remorseful of these actions...I am extremely sorry for the actions and understand the seriousness of the charges brought against me...I reiterate that I am sincerely remorseful for my actions in my failure to be honest and compliant with the Police and the Court.'

158. The Tribunal considered that Dr Lestner had used her knowledge and position as a doctor to formulate the false reason of assisting in transplant retrievals, to produce forged letters from two ambulance services and to produce a forged letter from her GP about a false admission to hospital. She used her professional role to assist her and lend weight to her deception. The Tribunal considered that a conviction for perverting the course of public justice was a very serious matter and Dr Lestner had done so in a way that took advantage of her role as a doctor. Having regard to limbs (b) – (d) set out in *Grant*, the Tribunal considered that Dr Lestner's conviction brought the profession into disrepute and breached the fundamental tenet of honesty, probity and integrity and was dishonest.

Impairment

159. The Tribunal went on to consider if the serious misconduct relating to the Appendix 5 of her ARCP, the serious misconduct relating to the letter to the County Court and the conviction for perverting the course of public justice mean that her fitness to practise is currently impaired.

160. This is not a case of one moment of bad judgment or bad choice while in a stressful clinical situation. The Tribunal considered that the three events were of a similar nature because they constituted three episodes of using deliberately falsified documents to practice a deliberate deception on an authority (HEE, the County Court, the police). The Tribunal considered that all three of these episodes of dishonesty breached the fundamental tenet of honesty, probity and integrity and brought the profession into disrepute. This undermines public confidence in the profession.

161. The Tribunal turned to consider Dr Lestner’s level of insight and any remediation. The Tribunal noted that evidence of Dr Lestner’s understanding and attitude towards what she has done was limited to (i) the accounts which she wrote October 2019 to August 2020 when she was engaging with the investigation in relation to her conviction XXX (at a time when other aspects of the Allegation may not yet have been put to her), and (ii) XXX. The Tribunal had not received from Dr Lestner a recent statement of her understanding and attitude towards all three episodes of dishonesty.

162. In relation to the Appendix 5, the Tribunal noted that, as set out above, Dr Lestner was, as of October 2019 still maintaining that Prof B had completed her ARCP. The Tribunal considered that Dr Lestner had not provided evidence of an acknowledgement or appreciation of the failing on her part, or of an apology to HEE or to Prof B for misusing his signature. There was no evidence of any insight or remediation.

163. As stated above, Dr Lestner had been informed in August 2020 that the GMC were starting to investigate the issue of the letter to the County Court and she replied, but the Tribunal found no evidence in her reply of any insight into, or remorse for, her misconduct. The Tribunal noted that Dr Lestner had not offered an apology to XXX or to Dr G and determined that she had not provided evidence of an acknowledgement or appreciation of the failing on her part. There was no evidence of insight or of any remediation.

164. The Tribunal considered that there was no evidence to enable it to ascertain Dr Lestner’s current understanding of, or attitude towards, her misconduct in relation to the Appendix 5 and the County Court proceedings. The Tribunal accepted that Dr Lestner had demonstrated some insight into her conviction, as set out above.

165. The Tribunal considered that the repeated nature of Dr Lestner’s dishonesty compounded the seriousness and demonstrated a persistent failing. Dr Lestner had, during three distinct episodes in September 2017, July 2018 and late 2018/early 2019 falsified documents to produce to an authority for her personal gain. The nature of this misconduct, coupled with an absence of evidence from Dr Lestner of her current understanding of and attitude towards the Appendix 5 and the County Court events, led the Tribunal to determine that it was impossible to conclude that there was no risk of repetition in the future, or that the risk was so small as to be acceptable. It was impossible to have grounds for optimism about her ability to comply with proper professional standards in the future.

166. The Tribunal reminded itself of the overarching objective and its duty 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. The Tribunal accepted

that there was no evidence of any harm to patients and noted the praise given by Dr O of Alder Hey Children’s hospital on 9 September 2019 *‘In my experience, Dr Parikh has been a consistently hard working, reliable and conscientious doctor. As the consultant in charge of the emergency department, I am always pleased to see her name on the rota...’* But in cases of significant professional dishonesty, mitigation has a necessarily limited role.

167. The Tribunal considered that Dr Lestner had used her position as a doctor to strengthen her deception to the police, had been dishonest towards HEE during her professional training, and in her private commercial dealings had been dishonest towards the County Court. Her three episodes of dishonesty towards authorities had seriously undermined public confidence in the profession. The Tribunal determined that it was necessary to find that Dr Lestner’s fitness to practise is currently impaired by reason of her serious misconduct and conviction in order to reaffirm clear standards of professional conduct so as to promote and maintain public confidence in the profession.

XXX

168. XXX

169. XXX

170. XXX

171. XXX

172. XXX

173. The Tribunal has therefore determined that Dr Lestner’s fitness to practise is impaired by reason of misconduct, a conviction for a criminal offence XXX.

Determination on Sanction - 24/11/2023

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

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

The Evidence

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

Submissions

177. On behalf of the GMC, Ms Goring, Counsel, submitted that a sanction of erasure was the most appropriate in this case, but that the decision was ultimately one for the Tribunal’s own judgement.

178. Ms Goring submitted that there were several aggravating factors. She said these included that Dr Lestner had engaged in three episodes of dishonest behaviour, all of a similar nature, involving a degree of pre-mediation and planning to falsify documents; the Appendix 5 misconduct was in her professional setting and involved deliberate and conscious decisions to formulate positive comments about her performance and to insert the signature of Prof B; for the conviction, she had used her knowledge and position as a doctor to bolster her deception towards the police and the Crown Court judge had said her conduct was sophisticated, and there was an absence of insight or remediation in relation to the Appendix 5 misconduct or the County Court letter misconduct.

179. In Dr Lestner’s absence, Ms Goring highlighted mitigating factors. She said that the correspondence in October 2019 shows that Dr Lestner was remorseful and apologetic for her dishonest actions towards the police that led to the conviction, and had pleaded guilty at trial. Ms Goring said that Dr Lestner had also shown insight XXX and had explained her understanding of her motivations for her actions towards the police at that time and of how she came to commit the crime.

180. Turning to the Sanctions Guidance (November 2020) (‘the SG’), Ms Goring reminded the Tribunal that it must begin by considering the least restrictive sanction and then move up through the sanctions until arriving at one that was appropriate and proportionate. Ms Goring submitted that there were no exceptional circumstances in this case that would justify the Tribunal taking no action in response to its finding of impairment.

181. Ms Goring submitted that this was not a case where conditions would be appropriate. She said that, XXX, there were no workable conditions that could be imposed to address the misconduct or conviction. She asked the Tribunal to consider what condition could be effective to prevent a practitioner from dishonestly falsifying a document.

182. Ms Goring reminded the Tribunal that it had found the misconduct to be serious, that Dr Lestner had not provided evidence of having developed insight into her behaviour in relation to the Appendix 5 or the County Court letter and there was a real risk of repetition of dishonesty. Ms Goring submitted that an order of conditions was not sufficient to address the seriousness of the misconduct and the conviction or to protect public confidence in the profession.

183. Ms Goring reminded the Tribunal that *'dishonesty lies at the top end of the spectrum of gravity of misconduct'* and that *'personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member'*, as set out in the case of *Nkomo* in the Tribunal's impairment determination above.

184. In relation to suspension, Ms Goring submitted that Dr Lestner's misconduct and conviction were more serious than *'behaviour unbefitting a registered doctor'* in SG 91 and were better described as *'fundamentally incompatible with continued registration'*. She submitted that this case falls squarely within the following paragraphs of the SG:

'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.

...

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

185. Ms Goring submitted that there was persistent dishonesty in this case and that Dr Lestner had seriously, and repeatedly, breached paragraphs 1, 65 and 71 of GMP, as set out in the impairment determination.

186. Ms Goring submitted that erasure was the only appropriate and proportionate sanction and was necessary in order to protect public confidence and uphold proper professional standards in the profession.

The Tribunal's Determination on Sanction

187. The decision as to the appropriate sanction to impose, if any, is a matter for the Tribunal exercising its own judgement. In reaching its decision, the Tribunal has taken into account the SG and the statutory overarching objective.

188. The Tribunal bore in mind that the reason for imposing sanctions is to uphold the overarching objective to protect the public. Sanctions are not imposed to punish doctors, although they may have a punitive effect.

189. The Tribunal has taken a proportionate approach, balancing the interests of Dr Lestner with the public interest. It bore in mind that the reputation of the profession as a whole is more important than the interests of any individual doctor.

190. The Tribunal considered all relevant aggravations and mitigations. It bore in mind that matters of mitigation are likely to be of considerably less significance in regulatory proceedings than to a court imposing retributive justice, because the overarching concern of the professional regulator is the protection of the public. In this case, the evidence in relation to XXX as part of the background circumstances may be a relevant mitigating factor; the appropriate weight to be given to such a factor is a matter for the Tribunal.

191. The Tribunal reminded itself of what is stated about dishonesty by a doctor in paragraph [35] of *Nkomo*. Part of [35] is already set out in its determination on impairment, above. The Tribunal notes that [35] also includes '*Where dishonest conduct combined with a lack of insight, is persistent, or covered up, nothing short of erasure is likely to be appropriate*'.

192. The Tribunal bore in mind that any sanction must be proportionate to the gravity of the misconduct and impairment; that the authorities consistently emphasise the inherent gravity of dishonesty in a doctor; and that erasure for dishonesty is not automatic. In each case the Tribunal must assess the seriousness of the misconduct by reference to the SG to

determine a sanction, because the nature and extent of dishonesty may be variable (*Sawati v GMC [2022] EWHC 283 at [121, 127]*).

Aggravating factors

193. The Tribunal considered that it was an aggravating factor that Dr Lestner had engaged in three episodes of dishonesty, between September 2017 and early 2019 (SG 56a). As set out in its earlier determinations, her dishonesty involved falsifying documents to deceive three authorities for her own personal advantage. These episodes were sophisticated and premeditated and required planning. Her misconduct regarding the Appendix 5 was in her professional setting, and she had used her knowledge and position as a doctor to support her deception towards the police that led to her conviction. Her misconduct in providing a forged letter to the County Court was not only to her own advantage, but also harmed XXX whose ability to obtain a remedy to XXX from Dr Lestner was delayed without justification.

194. As set out in its determination on impairment, there was an absence of evidence of expression by Dr Lestner of any insight into the Appendix 5 misconduct or the County Court letter misconduct (SG 51). An acknowledgment and appreciation of a failing, and of its magnitude and consequences for others, is generally required for that failing to be properly understood, addressed and eliminated for the future; this is relevant to future risk to the overarching objective. The Tribunal recognised that Dr Lestner was entitled to put the GMC to proof of the allegations during the first stage of the hearing, but also recognised that the process allowed her the opportunity to address the Tribunal during the second and third stages and she had not done that.

Mitigating factors

195. The Tribunal, during the course of the hearing, gave careful consideration to the documents provided by Dr Lestner to the GMC when she was engaging with their investigation in late 2019 and 2020. Her written accounts for the IOT show her remorse regarding her conviction, following her guilty plea. She also expressed insight XXX and explained her understanding of her motivations for her dishonesty towards the police during the later stages of XXX and of how she came to commit the crime of perverting the course of public justice.

196. XXX

197. As stated in its determinations of fact and of impairment, the Tribunal accepted that it was possible that, XXX. However, for the reasons explored in detail in its earlier

determinations, the Tribunal found dishonesty in relation to the Appendix 5 and in relation to the County Court letter. XXX. The Crown Court judge, XXX found ‘*deviousness*’ and was satisfied that her conduct was ‘*persistent*’ and showed ‘*some sophistication*’. In any event, the Tribunal understood that personal mitigation should be given limited weight in cases of dishonest misconduct which damages the reputation of the profession, because the reputation of the profession is more important than the fortunes of an individual member.

No action

198. The SG says that on a finding of impairment, there must be exceptional circumstances to justify taking no action to protect the public. The Tribunal determined that there were no such circumstances in this case to justify taking no action.

Conditions

199. The Tribunal had regard to paragraph 81 of the SG:

’81 Conditions might be most appropriate in cases:

- a involving the doctor’s health*
- b involving issues around the doctor’s performance*
- c where there is evidence of shortcomings in a specific area or areas of the doctor’s practice*
- d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.’*

200. The Tribunal considered that, XXX. The findings include serious misconduct and a conviction, based on three episodes of dishonesty, and the Tribunal considered that conditions would not be sufficient to address the public interest in maintaining public confidence in the profession or in maintaining proper professional standards and conduct for practitioners. Conditions would not address the need to protect members of the public, who place trust in doctors, from practitioners on whose honesty and integrity they cannot rely. The Tribunal considered that the misconduct and conviction fall outside the scope of SG 81. It considered that the factors for conditions to be workable were not present in relation to the misconduct and conviction (albeit that there was evidence of insight in relation to the conduct leading to the conviction on a guilty plea in October 2019).

Suspension

201. Having determined that an order of conditions would not be an appropriate sanction, the Tribunal went on to consider suspension. It considered the following paragraphs of the SG:

- '91 *Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.*
- 92 *Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).*
- 93 *Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.'*

202. The Tribunal was satisfied that Dr Lestner's misconduct and conviction were so serious as to require action to be taken to protect members of the public and maintain public confidence in the profession (meeting the first part of SG 92).

203. In relation to SG 93, the Tribunal noted that, while Dr Lestner had acknowledged fault regarding her conduct towards the police that led to her conviction, there was no evidence of an acknowledgement of fault in relation to the Appendix 5 or the County Court letter. Given the lack of expression of her current understanding of and attitude towards these findings of fact, the Tribunal was not satisfied that there was no risk of repetition of similar episodes of dishonesty in future or that the risk was so small as to be acceptable. There was not sufficient evidence for the Tribunal to be satisfied that the behaviour is unlikely to be repeated.

204. The Tribunal also considered paragraph 97 of the SG, which sets out some factors that indicate when suspension may be appropriate. The Tribunal found that the misconduct and conviction did not match 97a, e or g as follows:

- '97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
- a A serious breach of Good medical practice, but where the doctor's misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.*
- e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
- g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

205. The Tribunal accepted that there was no evidence before it of repetition of similar behaviour to match SG 97(f). The Tribunal noted that 97(b), (c) and (d) were not relevant.

206. The Tribunal reminded itself of its findings during the facts stage and the impairment stage. It considered that Dr Lestner's dishonest behaviour during three episodes of providing falsified documents to deceive three different authorities between September 2017 and early 2019, was so serious as to be fundamentally incompatible with continued registration. Therefore, the Tribunal considered that an order of suspension would not be sufficient or appropriate to address the regulatory concern.

Erasure

207. The Tribunal went on to consider erasure. It had regard to paragraphs 108 and 109 of the SG, as set out above. The facts found proved do not present a risk to patient safety, but the Tribunal considered that the nature of her dishonest behaviour (as set out in its determination on impairment) was fundamentally incompatible with being a doctor and that erasure is necessary to maintain public confidence in the profession. It determined that

factors described in paragraphs 109 (a), (b),(h) and (j) of SG were present for the reasons set out in its earlier determinations.

208. In relation to the conviction, the Tribunal was mindful of paragraph 116 of the SG, that the purpose of these regulatory proceedings is not to punish a practitioner a second time for the offence they were found guilty of and noted that the period of her suspended sentence completed in August 2021. Rather, the regulatory purpose is to protect the public and maintain public confidence in, and proper professional standards of, the profession.

209. The Tribunal considered paragraphs 120 – 128 of the SG relating to dishonesty. In particular:

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

...

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.

...

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

210. In light of the above, the Tribunal determined that it would be consistent with the SG to conclude that the most appropriate and proportionate sanction for her misconduct and conviction was that her name should be erased from the register, because her persistent dishonesty was fundamentally incompatible with continued registration.

211. There was no suggestion of patients coming to harm and there was praise from Dr O in September 2019 for being a *‘consistently hard-working, reliable and conscientious doctor’*. The Tribunal considered that it was a sadness to lose an otherwise good clinician from the profession, but it is a fundamental tenet of the sanctions regime, reflecting the overarching objective, that the reputation of the profession as a whole is more important than any individual doctor. The Tribunal considered that there was nothing in the evidence before it to show circumstances to justify departing from the clear steer towards erasure set out in the SG.

212. The Tribunal determined that Dr Lestner, through her three episodes of dishonesty, had seriously undermined public confidence in the profession and had brought the profession into disrepute. It considered that the sanction of erasure was necessary to repair public confidence in the profession and to promote and maintain proper professional standards.

Determination on Immediate Order - 24/11/2023

213. Having determined that Dr Lestner's name should be erased from the register, the Tribunal now has to decide, in accordance with Rule 17(2)(o) of the Rules, whether Dr Lestner's registration should be subject to an immediate order.

Submissions

214. On behalf of the GMC, MS Goring, Counsel, submitted that an immediate order was necessary in this case.

215. Ms Goring referred the Tribunal to the relevant paragraphs of the SG and submitted that, despite there being no patient safety concerns in this case, the Tribunal had determined to erase Dr Lestner's name from the register to repair public confidence in the profession. She submitted that the SG made it clear that an immediate order of suspension may be appropriate to protect public confidence in the profession.

The Tribunal's Determination

216. In reaching its decision, the Tribunal has exercised its own judgement, taking into account all the circumstances. The Tribunal has borne in mind that it may impose an immediate order where it is satisfied that it is necessary for patient safety, to protect the public and/or to uphold public confidence in the medical profession. It has also borne in mind the guidance given in paragraphs 172 - 178 of the SG, in particular:

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

other interests of the doctor, which may be to return to work pending the appeal, and against the wider public interest, which may require an immediate order.

173 An immediate order might be particularly appropriate... where immediate action must be taken to protect public confidence in the medical profession.

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

217. The Tribunal reminded itself of its determination on impairment as to the seriousness of Dr Lestner's misconduct and conviction. It also reminded itself of its determination on sanction that Dr Lestner's name should be erased from the register to protect public confidence in the profession and to promote and maintain proper professional standards. Considering paragraph 173 of the SG, the Tribunal was satisfied that an immediate order of suspension was appropriate in these circumstances and considered it necessary to impose such an order because of the serious nature of Dr Lestner's misconduct.

218. The Tribunal accepted that there were no patient safety concerns in this case XXX. The Tribunal considered that these recommendations meant that it would not be appropriate to permit Dr Lestner to practise without restriction during the 28 day appeal period.

219. In these circumstances, the Tribunal determined to impose an immediate order of suspension.

220. This means that Dr Lestner's registration will be suspended from the date on which notification of this decision is deemed to have been served upon her. The substantive direction, as already announced, will take effect 28 days from that date, unless an appeal is made in the interim. If an appeal is made, the immediate order will remain in force until the appeal has concluded.

221. The interim order will be revoked when the immediate order takes effect.

222. This concludes the case.

ANNEX A – 14/11/2023

Determination on proceeding in absence of Dr Lestner

223. Dr Lestner was neither present nor represented at the hearing. Ms Goring, Counsel on behalf of the GMC, informed the Tribunal that the GMC had not had any recent communication from Dr Lestner to say whether or not she would attend. This New MPT hearing involves allegations of misconduct, a conviction XXX.

224. The Tribunal considered whether it would be appropriate to proceed with this hearing in Dr Lestner's absence pursuant to Rule 31 of the GMC (Fitness to Practise) Rules 2004 ('the Rules'), which states:

'Where the practitioner is neither present nor represented at a hearing, the Committee or Tribunal may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.'

Service

225. Ms Goring, on behalf of the GMC, invited the Tribunal to find, in accordance with Rule 31 and Rule 40(1), that all reasonable efforts had been made to serve Dr Lestner with notice of this hearing. Ms Goring referred the Tribunal to the relevant documents and highlighted the correspondence sent by the GMC and by the Medical Practitioners Tribunal Service (MPTS) to the doctor's registered address.

226. The Tribunal had regard to the documents provided to it and the submissions made by Ms Goring. The Tribunal noted Rule 15(1)(b) and that Rule 40(1) requires the Notice of Hearing to be served in accordance with paragraph 8 of schedule 4 to the Medical Act 1983. Paragraph 8(2) lists permissible methods of service.

227. The Tribunal noted that a practitioner is required to maintain an up-to-date and effective registered address with the GMC (section 30 of the Medical Act 1983 and *GMC v Adeogba [2016] EWCA Civ 162* at [59]).

228. Service of a hard copy is provided for by paragraph 8(2)(a)-(d). The GMC rely on documentary evidence that the MPTS served a hard copy of the Notice of Hearing on 13 October 2023 as follows:

- Screenshots as at 3 November 2023 of the GMC registered address of Dr Lestner, effective since 1 February 2019;
- Copy of the MPTS Notice of Hearing dated 12 October 2023 headed 'Special Delivery' (the NoH);
- Confirmation from the Royal Mail of special delivery to the registered address of a large letter and that this was signed for at 10am on 13 October 2023 (Order 6629 created on 12 October 2023 for MPTS).

229. In addition, Ms Goring informed the Tribunal that the GMC's internal intra-web shows an entry on 12 October 2023 to the effect that the MPTS had sent the NoH.

230. The Tribunal was satisfied that there is sufficient reliable and credible evidence that the NoH letter was delivered on 13 October 2023 to Dr Lestner's registered address and was signed for. This was inside the 28 day time period (Rule 15(2)).

231. The Tribunal raised with Ms Goring the fact that there was reference in the May 2023 XXX to Dr Lestner having said, XXXX that she XXX were living in Cardiff as at May 2023, XXX. Counsel for the GMC informed the Tribunal that the GMC had not been notified by Dr Lestner of an address in Cardiff (or any other new address). The Tribunal was satisfied that there was no 'last known address' different to the registered address.

232. Having considered the evidence, the Tribunal was satisfied that all reasonable efforts had been made to serve Dr Lestner with a hard copy of the NoH at the registered address to comply with paragraph 8(2)(c) and/or (d) of schedule 4.

233. The Tribunal notes that the GMC had also sought to rely on service of the NoH by email. Service by email is provided for in paragraph 8(2)(e) and 8(6) of schedule 4. On 24 April 2019, Dr Lestner completed and signed a GMC form titled 'Your work details'. Under section 8 she provided an email address and her name, and while she did not sign in the box immediately underneath, she signed lower down. The Tribunal refer to this as 'the Provided Email'. The documents show that the GMC and Dr Lestner corresponded using the Provided Email (for example, exchanges in April and August 2020 and more recently on 12 June 2023).

234. The GMC provide evidence that on 10 October 2023 the MPTS emailed the NoH to the Provided Email. The Tribunal noted the lack of evidence of an electronic receipt showing that the email had been opened or of the recipient acknowledging receipt in some other way, as required by paragraph 8(6). The Tribunal was not satisfied that service of the NoH had been effected by email within the meaning of paragraph 8.

235. In relation to other documents, the Tribunal noted Rule 40(2). The GMC provided the Tribunal with evidence that a hard copy of the GMC Notice of Allegation had been delivered at 10am on 13 October 2023 to the registered address (Confirmation from the Royal Mail special delivery order 14029 created on 11 October 2023 for the GMC) to comply with rule 15(1)(a). The GMC had also sent an email on 10 October 2023 to the Provided Email attaching the rule 15 Notice of Allegation, the Rule 34(9) letter and a draft witness timetable. The Tribunal noted that the Rule 34(9) letter set out the date of the hearing.

236. The Tribunal was satisfied that all reasonable efforts had been made to serve Dr Lestner with notice of this hearing and that the condition in Rule 31 in relation to service was satisfied. The Tribunal moved on to consider its discretion to proceed in the absence of Dr Lestner.

Proceeding in Absence

237. The Tribunal was conscious that the discretion to proceed in the absence of a doctor should be exercised with caution and that the Tribunal must consider the circumstances carefully before deciding whether it is fair to proceed. The Tribunal noted that it must balance fairness to the doctor as a prime consideration, with fairness to the GMC and the interests of the public in the over-arching objective.

238. Ms Goring invited the Tribunal to proceed with the hearing in Dr Lestner's absence. She referred the Tribunal to *Adeogba* (above). The Tribunal also had regard to the propositions set out by Mr Justice Morris at paragraph 22 in *Ramaswamy v GMC* [2021] EWHC 1619 (Admin).

239. Ms Goring stated that Dr Lestner had not provided the Tribunal with a reason for her absence from the hearing and had not put forward an application to adjourn. Ms Goring said that the last act of engagement by the doctor was in June 2023.

240. Ms Goring stated that there was no evidence that an adjournment would guarantee Dr Lestner's attendance at any future hearing; she submitted that an adjournment was highly unlikely to lead to the doctor attending in future.

241. The hearing was originally listed for 26 June 2023. By email on 12 June 2023, Dr Lestner successfully applied to the case manager to postpone, giving the reason that she was XXX until mid-August 2023 and, that if the hearing was postponed, she would be better

equipped to actively participate in the proceedings. Ms Goring submitted that there had been plenty of time since mid-August 2023 for Dr Lestner to re-engage with the proceedings.

242. Ms Goring submitted that an adjournment due to Dr Lestner's absence was likely to result in a delay of about 12 months due to the difficulty of re-listing a three-week hearing.

243. Ms Goring stated that the GMC was not aware that Dr Lestner wanted to be represented at the hearing and that her solicitors had come off the record in early 2023.

244. Ms Goring submitted that the Tribunal should consider any possible disadvantage that the doctor might have, through not attending the hearing. Ms Goring submitted that disadvantage and the risk of reaching the wrong conclusion were mitigated by this being a document heavy case. The allegations include a conviction that is proved by a certificate; another allegation supported by an order made in the County Court, and another allegation XXX. The documents also include accounts written by the doctor in 2019 and 2020 in advance of interim order hearings. Ms Goring submitted that proceeding would not result in a great disadvantage in the light of the documentary evidence. She submitted that the doctor had been given every opportunity to engage with the process and to put forward her account at this hearing.

245. Ms Goring concluded by emphasising that this was a serious and wide-ranging case and further referred to *Adeogba*, particularly the dicta of Sir Brian Leveson that '*where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed*'.

The Tribunal's Decision

246. In deciding whether to proceed in Dr Lestner's absence, the Tribunal carefully considered all the information before it.

247. The Tribunal considered the extent of Dr Lestner's engagement with the regulatory process. The Tribunal understood from the documents that the GMC investigation began in Spring 2019 and Dr Lestner engaged at the outset. For example, she communicated with the GMC in advance of an interim order hearing in October 2019 and a review hearing April 2020 and by emails in August 2020.

248. The Tribunal noted that her most recent engagement was on 12 June 2023 when she applied successfully to postpone the 26 June 2023 date. The Tribunal understands that the case manager notified the doctor of the successful outcome by email; asked for her

availability but had no response; canvassed starting on 13 November 2023 but had no response, and then listed the hearing to start on 13 November 2023.

249. According to the note of the Pre-hearing meeting on 7 September 2023, 'Dr Lestner was sent an invitation to participate in the PHM, but as she has not indicated that she was unable to attend today's PHM, I decided to proceed in her absence'. The note records that it was not known whether Dr Lestner would attend or be represented at the hearing.

250. The Tribunal noted that Dr Lestner had not put forward any evidence to show a reason to adjourn and was not making an application to adjourn. The Tribunal was not aware of any message the Dr Lestner was delayed enroute. Further, the Tribunal invited the GMC to email Dr Lestner using the Preferred Email to let he know that the Panel had started their work. No reply was received.

251. The Tribunal noted that the disadvantage to a practitioner in not taking part in the hearing is mitigated by the overriding objective of the Rules to deal with cases fairly and justly. It noted that the GMC still has the burden of proving allegations at stage 1 and, that in the absence of admissions from the doctor at stage 1, the Tribunal will consider all the evidence and make findings of fact to determine what is more likely than not. Further, if the matter proceeds to stages 2 or 3, the GMC and the Tribunal should take reasonable steps to ensure that all relevant mitigation material provided by an absent practitioner is available for consideration by the panel, while noting that this is not an unlimited obligation (having regard to Lady Justice Simler at paragraph 84 of *Sanusi v GMC* [2019] EWCA Civ 172). The Tribunal has been provided with a bundle of documents provided by the doctor to the GMC during the process. The Tribunal considered there had been, and there still remained, an opportunity for Dr Lestner to submit further documents if she wished for the Tribunal to consider.

252. Notwithstanding the absence of an application for an adjournment, the Tribunal considered whether it would be appropriate to adjourn the hearing with a view to securing Dr Lestner's attendance. The Tribunal noted that for the interim hearing in April 2020 she provided a letter but did not attend. Given that Dr Lestner had not instructed representatives and had not engaged with the GMC or MPTS since June 2023, the Tribunal was not satisfied that an adjournment would secure her attendance at a future date. The Tribunal was satisfied that it was more likely than not that Dr Lestner was absent from this hearing voluntarily.

253. In the light of the factors set out above, the Tribunal balanced Dr Lestner's right to be present and give evidence against the wider public interest in the hearing proceeding in her

absence. The Tribunal noted the seriousness of the various allegations. It would run counter to the GMC's overarching objective if the process were frustrated by the absence of the doctor in the circumstances set out above. The Tribunal found no good reason not to proceed.

254. It considered that the public interest in proceeding to determine the allegations outweighed the benefit to Dr Lestner of an adjournment to permit her to attend, particularly in circumstances where the Tribunal was not satisfied that there would be any such attendance.

255. In the circumstances, the Tribunal was satisfied that the public interest in proceeding with the hearing outweighed Dr Lestner's right to attend and determined that it was appropriate to proceed in her absence.

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