

Dates: 09/07/2019 - 11/07/2019

Medical Practitioner's name: Dr John INGHAM

GMC reference number: 4334242

Primary medical qualification: MB BS 1996 University of London

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome

Erasure

Immediate order imposed

Tribunal:

Legally Qualified Chair	Mr Neil Mercer
Lay Tribunal Member:	Dr Nigel Westwood
Medical Tribunal Member:	Dr Thomas O'Leary

Tribunal Clerk:	Dr Joshua Kirby
-----------------	-----------------

Attendance and Representation:

Medical Practitioner:	Not present and not represented
Medical Practitioner's Representative:	N/A
GMC Representative:	Mr Peter Warne, Counsel

Attendance of Press / Public

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

Record of Determinations – Medical Practitioners Tribunal

Overarching Objective

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

Determination on Facts - 10/07/2019

Background

1. Dr Ingham qualified in London in 1996. At the time of the events he was practising as a locum GP in North East England.
2. Concerns about Dr Ingham's clinical performance first came to light following his participation in NHS England's appraisal and revalidation process. Dr Ingham's appraisal in April 2016 had highlighted gaps in evidence, limited quality improvement activity, and concerns regarding his clinical safety. Dr Ingham's appraiser had also expressed concerns regarding Dr Ingham's engagement with the appraisal process. The accumulation of those concerns resulted in a report being prepared for NHS England's Performance Advisory Group ('PAG'), which forms part of NHS England's managing performer concerns process. At a meeting on 5 July 2016 the PAG decided that NHS England could not be assured of Dr Ingham's clinical practice and a formal investigation was initiated. NHS England concluded its investigation and its findings were reported to the PAG on 7 March 2017.
3. NHS England wrote to Dr Ingham on 13 March 2017 informing him of the outcome of the investigation and the PAG's findings. Whilst recognising that Dr Ingham had made improvements, the PAG noted in particular the findings of the records review, where issues had been highlighted in relation to 'unacceptable read coding, lack of recording safety netting, where prescriptions were issued there was no record of side effects and there was a lack of recording of examination findings'. The PAG noted that Dr Ingham 'had discussed and reflected on some of the key themes identified from the records review and acknowledged that in some cases [he] could have managed things differently'. However, it could not 'be assured that the issues identified from the records review [had] been completely rectified'. In light of the PAG's concerns about Dr Ingham's record keeping, he was asked to sign a 'Voluntary Undertakings Agreement' ('VUA') agreeing to the following:
 1. To complete a record keeping audit to include demonstrating improvement in safety netting and risk management within 2 months of the PAG's decision and submit this to the Case Manager.

Record of Determinations – Medical Practitioners Tribunal

I understand that it is my professional responsibility to notify my employer(s) of this Voluntary Undertakings agreement as soon as possible.

I understand that NHS England has the discretion to inform the GMC of this Voluntary Undertaking agreement

4. Dr Ingham was informed that NHS England would then undertake a further records review in six months 'to determine whether the deficiencies in [Dr Ingham's] clinical practice and record keeping [had] been rectified'. Dr Ingham submitted his audit to NHS England in July 2017. In or around early September 2017, NHS England made arrangements for the further records review to take place. Upon contacting Dr Ingham's most recent employer, concerns were raised that Dr Ingham had not informed his employer of the existence of the VUA and that by not doing so he had failed to comply with it. Upon further investigation by NHS England in the autumn/winter of 2017-2018, more concerns were raised about Dr Ingham not having informed his other employers of the existence of the VUA. In addition, following a meeting between NHS England and Dr Ingham on 29 January 2018, further concerns arose about whether or not Dr Ingham had notified his employers of the existence of the VUA and, in March 2018, the PAG referred Dr Ingham to the GMC because of concerns about his probity.

5. The allegation that has led to Dr Ingham's hearing can therefore be summarised as follows. First, it is alleged that on 30 March 2017 Dr Ingham signed the VUA with NHS England and that the VUA included a declaration to the effect that Dr Ingham understood that it was his professional responsibility to notify his employer(s) of the VUA as soon as possible. It is alleged that Dr Ingham acted dishonestly, in that he failed to notify his employers (as identified in Schedule 1) of the VUA when he knew it required him to do so. It is further alleged that on 29 January 2018, during a meeting with NHS England, Dr Ingham confirmed that he had informed all his employers of the VUA, or words to that effect, which was untrue. It is alleged that Dr Ingham acted dishonestly on this occasion too, because he knew that the information he had provided to NHS England was untrue.

The Outcome of Applications Made during the Facts Stage

6. The Tribunal granted the GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), for the Tribunal to proceed to consider Dr Ingham's case in his absence. The Tribunal's full decision on the application is included at Annex A.

The Allegation and the Doctor's Response

7. The Allegation made against Dr Ingham is as follows:

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

Record of Determinations – Medical Practitioners Tribunal

1. On the 30 March 2017, you signed a Voluntary Undertaking Agreement ('VUA') with NHS England, which included the declaration; 'I understand that it is my professional responsibility to notify my employer(s) of this Voluntary Undertakings agreement as soon as possible'. **To be determined**
2. You failed to notify your employers, as identified in Schedule 1, of the VUA. **To be determined**
3. You knew that the VUA required you to notify your employers. **To be determined**
4. On the 29 January 2018, during a meeting with NHS England, you confirmed that you had informed all your employers of the VUA, or words to that effect, which was untrue. **To be determined**
5. You knew that the information you provided to NHS England was untrue. **To be determined**
6. Your actions as described at paragraphs 2 and 4 were dishonest by reasons of paragraph 3 and 5. **To be determined**

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

8. As noted at Annex A, on 26 November 2018 Dr Ingham emailed the GMC in response to its 'Rule 7 Allegation'. In that email, he stated that he '[did] not contest the allegations' sent to him. Those allegations are identical to those of which Dr Ingham was informed in the GMC's Notice of Allegation, sent to him by email on 21 May 2019 in advance of this hearing, and to be considered by this Tribunal. As Dr Ingham is neither present nor represented, his statement in his email of 26 November 2018 does not constitute a formal admission to the allegation under Rule 17(2)(d) and the allegation could not be announced as having been 'found proved' under Rule 17(2)(e). In light of any formal response to the allegation at this hearing, the Tribunal is therefore required to determine the entirety of the allegation made against Dr Ingham.

Factual Witness Evidence

9. The Tribunal received oral and written evidence on behalf of the GMC from the following witness:
 - Dr A, Assistant Medical Director of NHS England North (Cumbria and North East), by telephone.

Record of Determinations – Medical Practitioners Tribunal

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

- Miss B, Programme Manager for NHS England.

Documentary Evidence

11. The Tribunal had regard to the documentary evidence provided by the GMC. This evidence included, but was not limited to:

- Dr A's witness statement, dated 2 August 2018;
- Miss B's witness statement, dated 3 September 2018;
- correspondence from NHS England to Dr Ingham regarding its investigation, its outcome, and the VUA;
- Dr Ingham's signed and witnesses copy of the VUA signed by him on 30 March 2017;
- the notes of Dr Ingham's meeting with NHS England on 29 January 2018;
- correspondence from NHS England to Dr Ingham regarding the PAG and Performers List Decision Panel;
- an email from Dr Ingham to NHS England, dated 22 February 2018, listing where he had worked since 30 March 2017;
- a copy of a spreadsheet produced by Miss B and detailing which of Dr Ingham's employers had not been informed of the VUA;
- an email from Dr Ingham to the GMC in response to the GMC's 'Rule 7 Allegation', in which Dr Ingham stated that he '[did] not contest the allegations';
- a letter from NHS England dated 24 May 2019 regarding Dr Ingham's removal from the Performers List; and
- a letter from NHS England to Dr Ingham, dated 5 February 2018 and an email dated 15 February 2018 regarding the meeting between NHS England and Dr Ingham on 29 January 2018.

The Tribunal's Approach

12. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Ingham does not need to prove anything. The Tribunal has not drawn any adverse inference from Dr Ingham's absence. 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.

13. In respect of the allegations that Dr Ingham acted dishonestly, the Tribunal bore in mind the test laid down by the Supreme Court in *Ivey v Genting Casinos (UK)*

Record of Determinations – Medical Practitioners Tribunal

Ltd 2017 UKSC 67, namely that the Tribunal should first ascertain subjectively the actual state of Dr Ingham's knowledge or belief as to the facts before then determining whether his conduct was dishonest applying the objective standards of ordinary decent people.

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1

On the 30 March 2017, you signed a Voluntary Undertaking Agreement ('VUA') with NHS England, which included the declaration; 'I understand that it is my professional responsibility to notify my employer(s) of this Voluntary Undertakings agreement as soon as possible'. **Determined and found proved**

15. Dr A's evidence was that the PAG considered the findings of NHS England's investigation into Dr Ingham's clinical practice in March 2017 and, as a result of remaining concerns about his record keeping, Dr Ingham was invited by the PAG to sign a VUA. The Tribunal noted that Dr Ingham was notified of the PAG's decision in a letter dated 13 March 2017, and that this letter enclosed a copy of the proposed VUA. Having had regard to the VUA, the Tribunal was satisfied that it included the declaration 'I understand that it is my professional responsibility to notify my employer(s) of this Voluntary Undertakings agreement as soon as possible'. The Tribunal has had regard to Dr Ingham's signed VUA, dated 30 March 2017, and returned to NHS England. In addition, the Tribunal noted that Dr Ingham has never contested that he signed the VUA or that the VUA contained the relevant declaration. The Tribunal therefore found this paragraph of the allegation proved.

Paragraph 2

You failed to notify your employers, as identified in Schedule 1, of the VUA.
Determined and found proved

16. Having had regard to the VUA and the declaration contained in it, the Tribunal was satisfied that Dr Ingham had a duty to notify his employers of its existence. The evidence of both Dr A and Miss B was that in or around early September 2017 NHS England made arrangements for a further review of Dr Ingham's records to take place. This involved contacting Dr Ingham's most recent employer, Gladstone House Surgery in Hartlepool. The evidence of both Dr A and Miss B was that having contacted Gladstone House Surgery, the practice informed NHS England that it had not been made aware of the existence of Dr Ingham's VUA. The Tribunal noted that NHS England considered that this may have been an oversight on Dr Ingham's part

Record of Determinations – Medical Practitioners Tribunal

and wrote to him on 18 September 2017, reminding him of the declaration contained in the VUA and his duty to notify his employers of its existence.

17. The uncontested evidence of Dr A and Miss B was that the further review of Dr Ingham's records took place in September 2017 and that recurring issues were again found in relation to Dr Ingham's record keeping. On 5 December 2017 an update regarding Dr Ingham's case was presented to the PAG and it was decided that a meeting should be arranged with Dr Ingham to discuss the ongoing issues regarding his record keeping and the PAG's concerns regarding his failure to notify Gladstone House Surgery of the VUA. That meeting took place on 29 January 2018. In the course of the meeting Dr Ingham was asked to confirm which practices had been informed of the VUA and it was agreed that he would email a list of the practices he had informed of the VUA to NHS England. Miss B's evidence was that NHS England then contacted the Practice Manager of each of Dr Ingham's employers by telephone and produced a spreadsheet detailing all the practices where Dr Ingham had worked since accepting the VUA and whether or not they had been informed by Dr Ingham of the VUA's existence. The Tribunal has had regard to the spreadsheet produced by Miss B. Schedule 1 correctly sets out the response of each of the employers who had been contacted, illustrating whether or not they had been informed by Dr Ingham of the VUA. The Tribunal noted that with the exception of two who did not respond and one who had been notified, all of the other practices had not been notified by Dr Ingham of the VUA.

18. The Tribunal was therefore satisfied that Dr Ingham had a duty to notify his employers, as identified in Schedule 1, of the VUA and that he did not do so. It was satisfied that this constituted a failure on Dr Ingham's part. The Tribunal therefore found this paragraph of the allegation proved.

Paragraph 3

You knew that the VUA required you to notify your employers. **Determined and found proved**

19. Having had regard to the VUA which Dr Ingham signed on 30 March 2017 and returned to NHS England, the Tribunal was satisfied that the VUA was unequivocal that Dr Ingham had a duty to notify his employers of the VUA. Further, the evidence of Dr A was that Dr Ingham had been aware of that obligation at the time he was asked to sign the VUA and that the obligation was also reiterated to him in NHS England's letter of 18 September 2017 and again at subsequent meetings between NHS England and Dr Ingham. Dr A also confirmed in her oral evidence that the obligation to notify employers of the existence of the VUA was 'ongoing' from the date on which it was signed until NHS England had informed Dr Ingham that the VUA was no longer in force. The Tribunal was therefore satisfied that Dr Ingham knew that the VUA required him to notify his employers of its existence and it found this paragraph of the allegation proved.

Record of Determinations – Medical Practitioners Tribunal

Paragraph 4

On the 29 January 2018, during a meeting with NHS England, you confirmed that you had informed all your employers of the VUA, or words to that effect, which was untrue. **Determined and found proved**

20. The evidence of both Dr A and Miss B was that on 29 January 2018 a meeting took place between NHS England and Dr Ingham in which the ongoing concerns about his record keeping and the concerns about his failure to notify Gladstone House Surgery of the VUA were discussed. The Tribunal had regard to the notes of the meeting and in particular the following section:

- 3.61 [Dr A] stated that Gladstone House Surgery had informed NHS England that Dr Ingham had not informed them that he was subject to a Voluntary Undertakings agreement and asked if he could explain what had happened.
- 3.62 Dr Ingham advised that this had been an oversight as he works at numerous places.
- 3.63 [Dr A] asked Dr Ingham to inform NHS England of the practices that he has informed and how he had done so.
- 3.64 Dr Ingham advised that he had verbally informed the other practices he had been working at and stated that once he got the letter from NHS England regarding the VU he had gone back over this to ensure that he had informed his employers.
- 3.65 [Dr A] asked Dr Ingham to confirm who he had informed.
- 3.66 It was agreed that Dr Ingham would email [Ms C], Project Officer the names of the practices he had informed about his VU.'

21. The Tribunal noted that Dr Ingham was invited by NHS England to confirm the accuracy of the notes of the 29 January 2018 meeting and that whilst Dr Ingham took issue with other parts of the meeting notes, he did not take any issue with the extract referred to above. In light this, the Tribunal was satisfied that during the meeting Dr Ingham confirmed that he had informed all of his employers of the VUA, or words to that effect. The Tribunal has already found that Dr Ingham failed to inform his employers, as identified in Schedule 1, of the VUA. It was therefore satisfied that Dr Ingham's confirmation that he had informed all of his employers of the VUA was untrue. Consequently, the Tribunal found this paragraph of the allegation proved.

Record of Determinations – Medical Practitioners Tribunal

Paragraph 5

You knew that the information you provided to NHS England was untrue.

Determined and found proved

22. As noted above, Dr Ingham emailed the GMC on 26 November 2018 stating that he '[did] not contest the allegations' made against him and those allegations are identical to those under consideration by this Tribunal. On 3 August 2018 NHS England wrote to Dr Ingham regarding the outcome of its Performers List Decision Panel ('PLDP') on 31 July 2018, which Dr Ingham attended without representation. The Tribunal noted the following passage from that letter in particular:

'You presented your case to the Panel and advised that you fully accepted everything that the Panel had heard regarding NHS England's concerns. You advised that you could not excuse your behaviour in providing false information to NHS England, explaining that you had found the situation somewhat overwhelming.

You explained that, prior to your meeting with [Dr A] in January 2018, you had undertaken a lot of short-term locum posts, and found it difficult to identify a point of contact in these practices to discuss your VU with. You advised that, with hindsight, you recognise that you should have utilised your locum agency, who could have disclosed the VU to any employing practices on your behalf.'

23. The Tribunal noted that at the PLDP Dr Ingham appeared to accept that the information he had provided to NHS England was 'false'. The Tribunal was therefore satisfied that Dr Ingham knew that the information he provided to NHS England during the meeting on 28 January 2018 was untrue. It therefore found this paragraph of the allegation proved.

Paragraph 6

Your actions as described at paragraphs 2 and 4 were dishonest by reasons of paragraph 3 and 5.

Determined and found not proved in respect of paragraph 2

Determined and found proved in respect of paragraph 4

24. In making these findings, the Tribunal first considered whether Dr Ingham's failure to notify his employers of the VUA was dishonest because he knew that the VUA required him to do so. Applying the relevant test from *Ivey*, the Tribunal first ascertained subjectively the actual state of Dr Ingham's knowledge or belief as to the facts. The Tribunal was satisfied that Dr Ingham knew that he had a responsibility to notify his employers of the VUA but that he did not do so. The Tribunal considers this to have been a serious professional failing on Dr Ingham's part. However, having

Record of Determinations – Medical Practitioners Tribunal

applied the second part of the *Ivey* test the Tribunal could not be satisfied to the required standard that Dr Ingham's failure to notify his employers of the VUA would be considered dishonest applying the objective standards of ordinary decent people. The Tribunal was therefore satisfied that whilst Dr Ingham's failure to notify his employers was a serious one, it was not in and of itself dishonest. The Tribunal could not determine which was the more likely, that this was an act of dishonesty or a serious omission by a disorganised doctor. The Tribunal therefore found this paragraph not proved in respect of paragraph 2 of the allegation.

25. The Tribunal then considered whether Dr Ingham's untrue confirmation to NHS England, during the meeting on 29 January 2018, that he had notified all of his employers of the VUA was dishonest because he knew that the information he had provided was untrue. Again applying the relevant test from *Ivey*, the Tribunal was satisfied that Dr Ingham's actions in this regard were evidently dishonest. Dr Ingham knew that he had not notified all of his employers of the VUA and yet he maintained to NHS England that he had, or words to that effect. The Tribunal was in no doubt that providing untrue information to NHS England which Dr Ingham knew to be untrue would be considered dishonest applying the objective standards of ordinary decent people. The Tribunal therefore found this paragraph proved in respect of paragraph 4 of the allegation.

The Tribunal's Overall Determination on the Facts

26. The Tribunal has determined the facts as follows:

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

1. On the 30 March 2017, you signed a Voluntary Undertaking Agreement ('VUA') with NHS England, which included the declaration; 'I understand that it is my professional responsibility to notify my employer(s) of this Voluntary Undertakings agreement as soon as possible'. **Determined and found proved**
2. You failed to notify your employers, as identified in Schedule 1, of the VUA. **Determined and found proved**
3. You knew that the VUA required you to notify your employers. **Determined and found proved**
4. On the 29 January 2018, during a meeting with NHS England, you confirmed that you had informed all your employers of the VUA, or words to that effect, which was untrue. **Determined and found proved**

Record of Determinations – Medical Practitioners Tribunal

5. You knew that the information you provided to NHS England was untrue. **Determined and found proved**
6. Your actions as described at paragraphs 2 and 4 were dishonest by reasons of paragraph 3 and 5.
Determined and found not proved in respect of paragraph 2
Determined and found proved in respect of paragraph 4

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

Determination on Impairment - 10/07/2019

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

The Evidence

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

Submissions on Behalf of the GMC

3. In summary, Mr Warne submitted that the Tribunal should find that Dr Ingham's failure to notify his employers of the VUA and his dishonest conduct at the meeting with NHS England on 29 January 2018 amounted to serious misconduct. In the course of his submissions Mr Warne referred the Tribunal to 'Good Medical Practice' (2013 edition), and submitted that Dr Ingham's dishonest conduct breached the following principles contained therein:

- 1** Patients need good doctors. Good doctors [...] are honest and trustworthy, and act with integrity [...].
- 65** You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.
- 68** You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate.
- 73** You must cooperate with formal inquiries and complaints procedures and must offer all relevant information while following the guidance in

Record of Determinations – Medical Practitioners Tribunal

Confidentiality.

4. Mr Warne submitted that a fellow practitioner would consider Dr Ingham's actions to be deplorable. He submitted that had Dr Ingham notified his employers of the existence of the VUA then it would have been likely that Dr Ingham's employers would not have continued to use his services. Mr Warne therefore submitted that Dr Ingham's gain from not notifying his employers was the continuation of his locum sessions. In respect of Dr Ingham's dishonesty to NHS England during the meeting on 29 January 2018, Mr Warne submitted that at that point ten months had passed since Dr Ingham had signed the VUA. He submitted that Dr Ingham had, in effect, tried to 'brazen it out' during the meeting by providing information to NHS England which was untrue and which he knew to be untrue.

5. Referring the Tribunal to the factors indicating a doctor's fitness to practise may be impaired as set out by Dame Janet Smith in the fifth report to the Shipman Inquiry, and reiterated in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin), Mr Warne went on to submit that a finding of impaired fitness to practise should be made in order 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. Referring the Tribunal to the case of *GMC v Nwachuku* [2017] EWHC 2085 (Admin), Mr Warne submitted that it would be an unusual case where dishonesty is not found to impair a doctor's fitness to practise.

6. Finally, referring the Tribunal to the case of *Cohen v GMC* [2008] EWHC 581 (Admin), Mr Warne acknowledged that a finding of impaired fitness to practise does not automatically follow a finding of serious misconduct. However, Mr Warne went on to submit that whilst Dr Ingham showed some insight in his 'Rule 7' response, in which he accepted what he did was wrong, he has not provided the Tribunal with a reflective piece, evidence of any continuing professional development ('CPD'), or any evidence of courses he has undertaken. Mr Warne also reminded the Tribunal that Dr Ingham has breached the conditions imposed on him by NHS England and has been removed from the Performers List. Mr Warne submitted that in those circumstances the Tribunal could not be assured that Dr Ingham would not repeat his misconduct.

The Relevant Legal Principles

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

8. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first whether the facts as found proved amounted to misconduct and that the misconduct was serious and then whether the finding of that misconduct which was serious could lead to a finding of impairment.

Record of Determinations – Medical Practitioners Tribunal

9. The Tribunal must determine whether Dr Ingham’s fitness to practise is impaired today, taking into account Dr Ingham’s conduct at the time of the events and any relevant factors since then such as whether the matters are remediable, have been remedied and any likelihood of repetition.

The Tribunal’s Determination on Impairment

Misconduct

10. The Tribunal first considered whether the facts found proved constitute serious misconduct, that is, a serious breach of the standards of conduct and behaviour expected of a doctor which would be regarded as deplorable by fellow practitioners.

11. The Tribunal found that Dr Ingham failed to notify his employers of the existence of the VUA, which he had signed as a result of concerns regarding his record keeping, and in particular issues identified around safety netting and risk management. NHS England do not publish VUAs: by not declaring his VUA Dr Ingham’s numerous employers had no means of discovering it. The Tribunal was in no doubt that Dr Ingham’s failure to notify his employers of the VUA when it was incumbent upon him to do so would be considered deplorable by fellow practitioners and amounted to misconduct which was serious. The Tribunal considered that this would be all the more the case given the fact that NHS England reminded Dr Ingham on subsequent occasions after the VUA had been signed that he was obliged to inform his employers of its existence.

12. The Tribunal also found that Dr Ingham acted dishonestly on 29 January 2018 during the meeting with NHS England. Dr Ingham told NHS England that he had informed all of his employers of the existence of the VUA which was untrue and Dr Ingham knew it to be untrue. The Tribunal was satisfied that by acting dishonestly in this way Dr Ingham breached those paragraphs of GMP referred to by Mr Warne in the course of his submissions. Acting with honesty and integrity at all times is a fundamental tenet of the medical profession and dishonesty undermines public confidence in it. The Tribunal was in no doubt that Dr Ingham’s dishonest conduct would be considered deplorable by fellow practitioners and amounted to misconduct which was serious.

13. The Tribunal therefore concluded that Dr Ingham’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

Impairment

Record of Determinations – Medical Practitioners Tribunal

14. The Tribunal having found that the facts found proved amounted to misconduct, went on to consider whether, as a result of that misconduct, Dr Ingham's fitness to practise is currently impaired. In so doing, the Tribunal was mindful of the judgment in the case of *Cohen v GMC* which sets out that a finding of impaired fitness to practise does not automatically follow a finding of serious misconduct. However, it also bore in mind the judgment in the case of *GMC v Nwachuku*, which notes that it would be an unusual case where dishonesty is not found to impair a doctor's fitness to practise.

15. The Tribunal first considered its findings in light of the factors indicating that a doctor's fitness to practise might be impaired as set out by Dame Janet Smith in the fifth report to the Shipman Inquiry, namely whether or not Dr Ingham:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.

16. Whilst Dr Ingham was asked to sign the VUA because of concerns about his record keeping and clinical practice, the Tribunal has not received any evidence to suggest that Dr Ingham has or is liable in the future to pose a clinical risk to patients. However, the Tribunal was satisfied that the remaining three factors set out by Dame Janet Smith are engaged in this case. It was satisfied that Dr Ingham's dishonesty brought the medical profession into disrepute and that Dr Ingham breached one of the fundamental tenets of the medical profession by acting dishonestly.

17. In respect of the level of insight Dr Ingham has shown into his misconduct, its seriousness, and its consequences, the Tribunal was of the view that Dr Ingham has thus far shown only partial insight, limited to the contents of his email to the GMC dated 26 November 2018. In that email Dr Ingham stated that he 'greatly regret[s] his actions' but goes on to say that he was 'not sure how it would be possible for [him] to demonstrate that this issue is easily remediable, or are unlikely to happen again'. However, the Tribunal has not been provided with any more substantial reflections from Dr Ingham about the nature and seriousness of his misconduct or of his understanding about how dishonesty undermines public confidence in the profession.

Record of Determinations – Medical Practitioners Tribunal

18. The Tribunal next considered, pursuant to *Cohen v GMC*, whether Dr Ingham's misconduct is capable of being remedied, whether it has been remedied, and whether it is highly unlikely to be repeated. The Tribunal acknowledged that dishonesty is capable of being remedied although remediation may be difficult to demonstrate. However, the Tribunal has not been presented with any evidence that Dr Ingham has remedied his dishonest misconduct or attempted to do so. The Tribunal has not been provided with any evidence that Dr Ingham has sought to remedy his misconduct. Given the absence of this evidence and Dr Ingham's partial insight, the Tribunal was satisfied that there remains a real risk that his misconduct might be repeated.

19. In any event, given the nature of its findings and their seriousness, the Tribunal was satisfied that, as per the judgment in the case of *CHRE v NMC and Grant*, the need to promote and maintain public confidence in the medical profession and the need to promote and maintain proper professional standards and conduct for members of the profession would be undermined if a finding of impaired fitness to practise were not made in this case. The Tribunal therefore determined that a finding of impaired fitness to practise was necessary in order to satisfy the second and third limbs of its statutory over-arching objective as set out above.

20. The Tribunal has therefore determined that Dr Ingham's fitness to practice is impaired by reason of misconduct.

Determination on Sanction - 11/07/2019

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

The Evidence

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

Submissions on Behalf of the GMC

3. In the course of his submissions Mr Warne referred the Tribunal to the 'Sanctions Guidance' (February 2018 edition). In summary, he submitted that the appropriate and proportionate sanction in this case is the erasure of Dr Ingham's name from the medical register. Mr Warne submitted that this is a case involving significant dishonesty and that Dr Ingham's dishonest conduct is fundamentally incompatible with continued registration. He submitted that Dr Ingham's dishonesty had occurred in the context of his clinical practice being investigated by NHS England which added to its seriousness. In addition, referring to the passage of time between Dr Ingham being reminded of his

Record of Determinations – Medical Practitioners Tribunal

obligation to notify his employers of the VUA and the meeting between Dr Ingham and NHS England on 29 January 2018, Mr Warne submitted that Dr Ingham had, in effect, 'let the lie run' and had, by omission, covered up the fact that he had not notified his employers. Referring the Tribunal to its determination on impairment, Mr Warne reminded it that it has not been provided with any evidence of Dr Ingham having remediated his dishonesty or having made any attempts to do so. Mr Warne conceded that Dr Ingham had expressed regret for his actions in his 'Rule 7' response but submitted that Dr Ingham has not substantiated his reflections. Mr Warne submitted that Dr Ingham's lack of insight is demonstrated by his not attempting to remedy his misconduct.

The Tribunal's Determination on Sanction

4. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. In so doing, it has given consideration to its findings of fact, its findings of misconduct and impaired fitness to practise as well as the submissions made by Mr Warne on behalf of the GMC. When making its decision the Tribunal paid particular attention to the 'Sanctions Guidance'.

5. Throughout its deliberations the Tribunal bore in mind that the purpose of sanctions is not to be punitive (although they may have a punitive effect), but to protect the public. This is the Tribunal's statutory overarching objective, which includes:

- protecting, promoting and maintaining the health, safety and well-being of the public;
- promoting and maintaining public confidence in the medical profession; and
- promoting and maintaining proper professional standards and conduct for members of that profession.

6. In making its decision, the Tribunal had regard to the principle of proportionality, weighing Dr Ingham's interests with those of the public. Before considering what action, if any, to take in respect of Dr Ingham's registration, the Tribunal considered and balanced the mitigating and aggravating features in this case.

Aggravating Factors

7. The Tribunal considered the following to be aggravating features in this case:

- Dr Ingham's failure to inform his employers of the existence of the VUA was a particularly serious professional failing. NHS England does not publish VUAs and Dr Ingham's employers had no other mechanism of

Record of Determinations – Medical Practitioners Tribunal

being aware of the existence of his VUA other than him notifying them of its existence. Dr Ingham's failure undermines the very basis of the VUA, which by its nature is a voluntary undertaking agreed by the doctor, not imposed on him, and which relies on the engagement and integrity of those to whom it applies;

- NHS England reminded Dr Ingham of his obligation to notify his employers of the existence of the VUA on several occasions and he continued to fail to do so;
- Dr Ingham's dishonesty was aggravated by the fact that it was a deliberate and direct lie to NHS England, a medical regulator, and it was intended to mislead NHS England into believing he had notified his employers of the existence of the VUA when he had not;
- Dr Ingham did, as Mr Warne put it in the course of his submissions, 'let the lie run'; Dr Ingham maintained the lie that he had notified his employers of the existence of the VUA for around ten months and continued to work without having informed his employers of it.

8. The Tribunal balanced those aggravating features against what it considered to be the mitigating features in this case.

Mitigating Factors

9. The Tribunal considered the following to be a mitigating factor:

- in his 'Rule 7' response email to the GMC on 26 November 2018, Dr Ingham stated that he did not contest the allegations against him and expressed regret for his actions. However, that broad admission and expression of regret was not substantiated by any formal admission during these proceedings or the provision of evidence demonstrating any meaningful reflection on his part into his misconduct, its seriousness, and its consequences.

10. Having considered and balanced the aggravating and mitigating factors in this case, the Tribunal concluded that the aggravating factors in this case are substantial, that they outweigh what little mitigation there is, and that they must be borne in mind when considering the appropriate and proportionate sanction.

11. In deciding what sanction, if any, to impose the Tribunal considered each of the options available to it, starting with the least restrictive.

No Action

Record of Determinations – Medical Practitioners Tribunal

12. The Tribunal first considered whether to conclude the case by taking no action. Taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case and that, given the seriousness of its findings, it would not be sufficient, proportionate, or in the public interest to conclude this case by taking no action.

Conditions

13. The Tribunal next considered whether to impose conditions on Dr Ingham's registration. In so doing, it bore in mind that any conditions imposed would need to be appropriate, proportionate, workable, and measurable. The Tribunal had regard to paragraph 82 of the Sanctions Guidance, and noted that conditions are likely to be workable where: the doctor has insight; a period of retraining and/or supervision is likely to be the most appropriate way of addressing any findings; the Tribunal is satisfied the doctor will comply with them; and the doctor has the potential to respond positively to remediation, retraining, or to their work being supervised.

14. However, in light of its findings, the Tribunal determined that it would not be possible to formulate a set of appropriate or workable conditions which could adequately address Dr Ingham's dishonest misconduct. Dr Ingham has shown only very limited insight and has not provided any evidence of him having remedied his misconduct or having attempted to do so. Further, the Tribunal is aware that having failed to comply with the VUA, conditions were imposed on Dr Ingham's practice by NHS England and he subsequently failed to comply with them, resulting in his name being removed from the Performers List. VUAs and conditions are predicated on the willingness of a doctor to engage with them and Dr Ingham has not done so in the past. The Tribunal was therefore not satisfied that Dr Ingham would comply with any conditions it were to impose on his registration or that he would positively respond to remediation. In any event, given the nature and seriousness of its findings, the Tribunal concluded that a period of conditional registration would not be a sufficient, appropriate, or proportionate sanction to satisfy the public interest.

Suspension

15. The Tribunal next considered whether it would be appropriate and proportionate to suspend Dr Ingham's registration. In so doing, it bore in mind that suspension from the medical register has a punitive effect (in that Dr Ingham would be prevented from practising medicine during any period of suspension) although this is not the intended effect of such a sanction (as noted at paragraph 91 of the guidance).

16. The Tribunal acknowledged that a sanction of suspension does have a deterrent effect and can be used to send a signal to Dr Ingham, the profession, and the public about what is regarded as behaviour unbecoming a registered doctor. The

Record of Determinations – Medical Practitioners Tribunal

Tribunal also acknowledged that suspension is an appropriate response to misconduct which is sufficiently serious that action is required in order to protect members of the public and to maintain public confidence in the profession but which falls short of being fundamentally incompatible with continued registration (as at paragraph 92 of the guidance). Further, it acknowledged that suspension may be appropriate, for example, where there has been an acknowledgement of fault and where it is satisfied that the behaviour is unlikely to be repeated (paragraph 93).

17. Dr Ingham's engagement with this process has been limited. The Tribunal noted that there has only been a brief acknowledgement of fault by Dr Ingham, in November 2018, and that since March 2019 he has not meaningfully engaged with either the GMC or the MPTS. In addition, it bore in mind its previous finding that in light of Dr Ingham's very limited insight and in the absence of any evidence of him having remedied his misconduct, there is a very real risk that Dr Ingham will repeat his dishonest conduct. For these reasons, the Tribunal was satisfied that a period of suspension would not be an appropriate or proportionate sanction and, given the nature and seriousness of Dr Ingham's dishonesty, nor would such a sanction satisfy the public interest.

18. Moreover, having paid careful attention to the significant aggravating factors in this case, the Tribunal was satisfied that Dr Ingham's misconduct is fundamentally incompatible with continued registration. Dr Ingham failed to comply with his VUA and then 'let the lie run' and lied to NHS England during the meeting on 29 January 2018. The Tribunal was satisfied that such behaviour is fundamentally incompatible with continued registration because it undermines the purpose of VUAs which, by their very nature, are put in place to ensure patient safety and good clinical practice, and which rely on the integrity and willingness of the practitioner involved to engage with them.

19. Having concluded, then, that it would not be appropriate or proportionate to suspend Dr Ingham's registration, and having determined that his misconduct was fundamentally incompatible with continued registration, the Tribunal determined to erase Dr Ingham's name from the medical register.

Erasure

20. The Tribunal was in no doubt that Dr Ingham's dishonesty constituted a particularly serious departure from the principles set out in GMP and, as noted above, it was satisfied that the nature and seriousness of Dr Ingham's dishonesty is fundamentally incompatible with being a doctor (as per paragraph 109 of the guidance). In addition, it was satisfied, as noted in the aggravating factors set out above, that whilst Dr Ingham did not 'cover up' his dishonesty, it was nevertheless persistent, in that he 'let the lie run' for around ten months.

Record of Determinations – Medical Practitioners Tribunal

21. The Tribunal has already determined that Dr Ingham only has very limited insight. It has not been provided with any evidence that Dr Ingham has remedied his misconduct or made attempts to do so. Further, Dr Ingham has not been present during the course of these proceedings. In light of this, the Tribunal had regard to the judgment in the case of *Parkinson v NMC* [2010] EWHC 1898 (Admin) in which Mitting J stated as follows:

'a nurse [and in this case a doctor] who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure.'

22. In light of all the above the Tribunal was satisfied that the erasure of Dr Ingham's name from the medical register is an appropriate and proportionate sanction which would promote and maintain public confidence in the medical profession and promote and maintain proper professional standards and conduct for members of that profession. The Tribunal accepted that this sanction will have an impact upon Dr Ingham both professionally and financially, however the public interest outweighed Dr Ingham's interests in the specific circumstances of this case.

Determination on Immediate Order - 11/07/2019

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

Submissions on Behalf of the GMC

2. In summary, Mr Warne submitted that an immediate order of suspension should be imposed on Dr Ingham's registration in order to promote and maintain public confidence in the medical profession.

The Tribunal's Determination

3. In reaching its decision the tribunal referred to the relevant paragraphs of the 'Sanctions Guidance'. It exercised its own judgement and had regard to the principle of proportionality.

4. Given the nature and seriousness of its findings, including that there is a real risk Dr Ingham may repeat his misconduct, the Tribunal concluded that it would be inappropriate for Dr Ingham to practise without restriction pending the substantive order of erasure taking effect. It therefore determined that Dr Ingham's registration

Record of Determinations – Medical Practitioners Tribunal

should be suspended immediately in order to protect the public and to otherwise satisfy the public interest.

5. This means that Dr Ingham's registration will be suspended from when notification is deemed to have been served. The substantive direction, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Ingham, 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.

6. The interim order currently imposed on Dr Ingham's registration will be revoked when the immediate order takes effect.

7. That concludes this case.

Confirmed
Date 11 July 2019

Mr Neil Mercer, Chair

Record of Determinations – Medical Practitioners Tribunal

ANNEX A – 10/07/2019

Application to Proceed in Dr Ingham’s Absence

1. Dr Ingham was neither present nor represented at the hearing. Mr Warne therefore made an application, pursuant to Rule 31 of the Rules, for the Tribunal to proceed to consider Dr Ingham’s case in his absence.

Service

2. Mr Warne first invited the Tribunal to find, in accordance with Rules 15 and 40 of the Rules, that all reasonable efforts had been made to serve Dr Ingham with notice of this hearing.

3. In considering whether notice of this hearing had been properly served on Dr Ingham, the Tribunal had regard to the GMC’s Notice of Allegation, dated 21 May 2019, which was sent to an email address used by Dr Ingham to communicate with the GMC. The Tribunal also had regard to various pieces of correspondence, in the form of telephone notes and emails, which showed that the GMC had made a number of (unsuccessful) attempts to contact Dr Ingham about this hearing between May and July 2019.

4. Next, the Tribunal had regard to the MPTS Notice of Hearing, dated 22 May 2019, sent to Dr Ingham’s registered address by Special Delivery. The MPTS Notice of Hearing was also sent to Dr Ingham’s email address on the same day. The Tribunal was satisfied that both the hard copy and electronic copy of the Notice of Hearing contained, amongst other things, details of the date, time, and location of this hearing. The Tribunal noted that a relay receipt exists for the Notice of Hearing sent by email and that the hard copy sent by post was signed for by the signatory ‘Ingham’ on 23 May 2019.

5. The Tribunal was therefore satisfied that all reasonable efforts had been made to inform Dr Ingham of these proceedings, and that notice of this hearing had been properly served upon him in accordance with the Rules.

Proceeding in Absence

6. In considering whether to proceed with the case in Dr Ingham’s absence, the Tribunal took into account the submissions made by Mr Warne on behalf of the GMC but exercised its own judgement. In accordance with the principles in *R v Jones* [2002] UKHL 5 and *GMC v Adeogba & Visvardis* [2016] EWCA Civ 162 it bore in mind that although it has the discretion to proceed to consider the case in the doctor’s absence, that discretion should be exercised with the utmost care and caution having regard to all the circumstances of which it is aware, with fairness to the practitioner being a prime consideration, but also taking into account fairness to the

Record of Determinations – Medical Practitioners Tribunal

GMC and the overall fairness of the proceedings. The Tribunal bore in mind that in making its decision it must balance Dr Ingham's interests against those of the GMC and the wider public interest.

7. In making its decision, the Tribunal bore in mind the need to protect the public. This is the Tribunal's statutory overarching objective, which includes:
 - protecting, promoting and maintaining the health, safety and well-being of the public;
 - promoting and maintaining public confidence in the medical profession; and
 - promoting and maintaining proper professional standards and conduct for members of that profession.
8. In all the circumstances, the Tribunal was satisfied that Dr Ingham is aware of these proceedings and that he has voluntarily absented himself from them.
9. The Tribunal noted that the last contact between the GMC and Dr Ingham was by telephone on 21 March 2019. During that telephone conversation with the GMC's representative, Dr Ingham stated that he would be attending this hearing. Since then, the GMC has endeavoured to contact Dr Ingham by both email and telephone without success. A telephone call to Dr Ingham on 8 May 2019 went unanswered, and emails to him on 21 May 2019 and 11 June 2019 respectively received no response. The latter email attached an index of the documents to be relied on by the GMC during the course of this hearing. The GMC emailed Dr Ingham again on 1 July 2019, this time attaching a copy of the proposed witness timetable for the hearing. Most recently, the GMC attempted to contact Dr Ingham by telephone on 8 July 2019, the day before this hearing was due to commence. That telephone call went unanswered and Dr Ingham did not reply to the voicemail left by the GMC's representative asking him to clarify whether or not he would be attending the hearing.
10. There has been no application for an adjournment from Dr Ingham and there has been no indication that he would attend a hearing on an alternative date. The Tribunal noted that Dr Ingham is not legally represented and there has been no indication that he wishes to seek representation or to be represented at the hearing.
11. The Tribunal was satisfied that whilst there may be some disadvantage to Dr Ingham in not being able to give his account of his current fitness to practise and make relevant oral submissions, any disadvantage to Dr Ingham arising out of his non-attendance at today's hearing was outweighed by the public interest in the fair and expeditious disposal of these proceedings.

Record of Determinations – Medical Practitioners Tribunal

12. In any event, the Tribunal noted that the hearing bundle contained an email from Dr Ingham to the GMC, dated 26 November 2018, in which Dr Ingham stated that he '[did] not contest the allegations' sent to him (and which are the same allegations to be considered by this Tribunal) and in which he went on to state:

'I greatly regret my actions , and would like to think that I would not put myself in such a position again. However, I am not sure how it would be possible for me to demonstrate that this issue is easily remediable, or are unlikely to happen again'.

13. In light of all the above, the Tribunal determined to exercise its discretion in accordance with Rule 31 and to proceed to consider Dr Ingham's case in his absence. It was satisfied that it was in the interests of justice to do so.

Record of Determinations – Medical Practitioners Tribunal

SCHEDULE 1

Practice/Employer	Period worked
Gladstone House Surgery	August 2017 & September 2017
Hallgarth Practice, Shildon (intrahealth)	August 2017 & September 2017
William Brown Centre, Peterlee -Intrahealth	Last session October 2017
Garden Park Surgery, Wallsend	2 and 3 August 2017
Wingate Medical Centre- Intrahealth	Dates after 30 March 2017
Chopwell Medical Practice	April 2017
Fell Tower Medical Centre, Low Fell	12 April 2017 (through locum staffing)
Albert Road Surgery, Jarrow	18 April 2017 and 25 October 2017
Park Gate, Darlington (Intrahealth)	4 dates during May & June 2017
Bridge Medical Shiremoor	1 day after 30 March 2017
Shinwell Medical Group	July 2017
Ponteland Medical Group	September 2017 (through locum staffing)
Brownley House Surgery, Langley Park	1 day in January 2018 (through locum staffing)
The Medical Centre,	December 2017/ January

Record of Determinations – Medical Practitioners Tribunal

Jarrow	2018
The Roseberry Practice, Billingham	November 2017/December 2017 (through locum staffing)
Newcastle Medical Centre	Last worked – 4 January 2018 (through locum staffing)
Railway Medical Group, Blyth	20/10/2017 (through locum agency)
Chastleton Medical Group, Framwellgate Moor	6 September, 27, 30, 31 & 3 November 2017 (through locum staffing)
The Rothbury Practice	Through locum agency dates after 30 March 2017
The Bridges Medical Practice, Gateshead	4 October & 18 October 2017 (through locum agency)
Wearside Medical Practice, Sunderland	January 2018 & February 2018. Booked to work there in March & April 2018 (through locum staffing)
Mr D (Locum management at Intrahealth). Intrahealth use agency locum Staffing	Dates after 30 march 2017
Locum staffing – Ms E	Currently employed
Northumbria Primary Care- Collingwood Practice in Blyth	February 2018