PUBLIC RECORD

Dates: 04/11/2024 - 06/11/2024

Medical Practitioner's name:	Dr Jotham CHIHANJA
GMC reference number:	7479079
Primary medical qualification:	MB ChB [Zimbabwe] 2009 University of Zimbabwe

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

Summary of outcome

Suspension, 3 months.

Tribunal:

Legally Qualified Chair	Mr Mark Scott
Lay Tribunal Member:	Mrs Valerie Paterson
Medical Tribunal Member:	Dr Ranjana Rani

Tribunal Clerk:	Mr John Poole

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Mr Alan Taylor, Counsel, instructed by Stephensons Solicitors
GMC Representative:	Mr Nigel Grundy, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts and Impairment - 05/11/2024

Background

1. Dr Chihanja qualified as a doctor in 2009 from the University of Zimbabwe. He worked as a doctor in Zimbabwe for a number of years before moving to the UK. He gained GMC registration in 2016 since which time he has primarily been undertaking locum work as a specialty and specialist (SAS) doctor in child and adolescent psychiatry. He is currently working as a SAS doctor in child and adolescent psychiatry at Nottinghamshire University Hospital NHS Foundation Trust.

2. The Allegation that has given rise to Dr Chihanja's hearing relates to misconduct concerns and a criminal conviction. In June 2023, Dr Chihanja was working as a locum speciality doctor in child and adolescent psychiatry working for Ellern Mede hospitals in Derby and Rotherham.

3. It is alleged that between 24 and 25 June 2023, whilst working on call at Ellern Mede Moorgate hospital in Rotherham and Ellern Mede Derby hospital, Dr Chihanja consumed alcohol.

4. It is further alleged that on 21 July 2023, at Sheffield Magistrates' Court, Dr Chihanja was convicted of driving a motor vehicle on 25 June 2023 after consuming so much alcohol that the proportion of it in his breath, namely 47 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit. It is alleged that on 21 July 2023 he was sentenced to pay a fine of £576 and was disqualified from holding or obtaining a driving licence for 12 months.

5. On Saturday 24 June 2023, at some time between 10pm and 10:30pm, Dr Chihanja attended Ellern Mede Moorgate hospital to take a blood sample from a patient. He then took the blood sample to Rotherham District General Hospital, located next to the Moorgate hospital. An investigation by Ellern Mede confirmed that there were no concerns about Dr Chihanja's conduct during his attendance at the hospital. Around two hours later, at about 1:10am on Sunday 25 June 2023, a police officer saw a car being driven by Dr Chihanja without lights on. The police signalled Dr Chihanja to stop, and he was arrested on suspicion of driving whilst under the influence of drink or drugs. Dr Chihanja was taken to the Police station in Rotherham where he was breathalysed at 1:53am, about 40 minutes after having

been stopped, and was found to have 47 microgrammes of alcohol in 100 millilitres of breath, the legal limit being 35 microgrammes.

6. Dr Chihanja was kept in police custody overnight and released at approximately 9:00am on Sunday 25 June 2023. From 5pm on Friday 23 June 2023 until 9am on Monday 26 June 2023, he had remained on-call but save attending to the blood sample, he was not called to go into the hospital or to provide any advice over the phone.

7. Dr Chihanja self-referred to the GMC via an email on Thursday 29 June 2023.

The Allegation and the Doctor's Response

8. The Allegation made against Dr Chihanja is as follows:

1. Between 24 and 25 June 2023 whilst working on call at Ellern Mede Moorgate and Ellern Mede Derby Hospitals, you consumed alcohol. Admitted and found proved

2. On 21 July 2023 at Sheffield Magistrates' Court you were convicted of driving a motor vehicle on 25 June 2023 on a road after consuming so much alcohol that the proportion of it in your own breath, namely 47 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit. Admitted and found proved

3. On 21 July 2023 you were sentenced to:

    a. pay a fine of £576.00; Admitted and found proved

    b. disqualification from holding or obtaining a driving licence for 12 months. Admitted and found proved

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

a. your misconduct in relation to paragraph 1; To be determined
b. your conviction in relation to paragraphs 2 and 3. To be determined

The Admitted Facts

9. At the outset of these proceedings, through his counsel, Mr Taylor, Dr Chihanja admitted to paragraphs 1, 2, 3(a. & b.) of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs of the Allegation as admitted and found proved.

Impairment

10. 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 Chihanja's fitness to practise is impaired by reason of misconduct and a conviction for a criminal offence.

The Evidence

11. The Tribunal received written evidence on behalf of the GMC from Ms A, who was not called to give evidence. At the time of the events, Ms A was the Hospital Manager at Ellern Mede Derby. She provided a witness statement dated 9 May 2024, and a supplemental statement dated 14 June 2024. In her evidence she explained the specifics of Dr Chihanja's on-call shift generally and on the weekend of 23 - 26 June 2023. She explained that there would be a manager, junior doctor, consultant, and a senior management team on-call. She explained that on-call shifts began at 9.00am on Monday morning and ended at 9.00am the following Monday morning.

12. Dr Chihanja provided his own witness statement, dated 3 September 2024, and gave oral evidence to the Tribunal.

13. In Dr Chihanja's oral evidence he stated that he had attended a friend's barbeque/drinks party following his work at the hospital on the evening of Saturday 24 June 2023. He further stated that he had drank two large glasses of red wine when present at the barbecue/drinks party. He stated that he had only intended to pass through and was not intending to stay at the gathering. He stated that he felt sober and still in control of his mental faculties when he decided to drive his friends in order to go and get a pizza. Dr Chihanja said that he thought he was under the alcohol limit for driving. He stated that when he was pulled over by the police he knew he had been drinking and started to regret a lot of things. He said that he was in shock, very nervous and literally shivering. He denied that he was unsteady or incapable of understanding what was said to him, as described by Police Sergeant B.

14. Dr Chihanja stated that he had never drank alcohol before or since whilst being on-call. He stated that he will always be tormented by his error in judgement. He told the Tribunal that his mistake has had a profound effect on him personally, both in respect to his family life and work life. He talked about his career to date and stated that he had never been subject to fitness to practise proceedings, disciplinary proceedings or had any complaints that he could recall. He stated that Good Medical Practice ('GMP') is now part of his general reading and that being a doctor is not something to be taken for granted and must be earned at every point throughout one's career.

15. Dr Chihanja stated that he sincerely regrets ever putting himself and the public at risk of a traffic accident. He said that he had completed courses and reflections and promised he would not make this mistake ever again. He stated that he had reflected extensively on the triggers and would avoid putting himself in similar situations again. Dr Chihanja said that after

the incident he had decided not to consume alcohol at any time during his on-call days. Under cross-examination he confirmed that this was because alcohol effects the mind and could impact clinical decisions.

16. Dr Chihanja also told the Tribunal that whilst on-call in June 2023, it would have been normal to have been called into the hospital or called to provide advice on the phone, perhaps once or twice every two weeks.

17. Dr Chihanja was recalled by the Tribunal to clarify the on-call periods and to provide further comment on changes that he has made since the incident. He explained that the on-call rota at Ellern Mede involved him being on-call for two alternate weeks in the month, from 9.00am, on Monday to 9.00am the following Monday. During this he would cover the out-of-hour periods within the relevant week. He explained to the Tribunal that from the drink driving courses he had attended he now has an increased understanding of the time it can take for alcohol to clear from his system. As a result, he would no longer drink alcohol on a Sunday prior to an on-call period commencing at 9:00am the following morning.

Documentary Evidence

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

- Self-referral from Dr Chihanja, 29 June 2023
- Police Statement of Police Sergeant B, dated 25 June 2023. She had been the arresting officer and had described Dr Chihanja as appearing confused and unsteady on his feet, however, as detailed above this perception was contested by Dr Chihanja. She was not called to give evidence nor did the GMC seek a witness statement from her.
- Police Statement of Police Constable C, 12 July 2023
- Certificate of Conviction from Sheffield Magistrates Court, 21 July 2023
- Correspondence from Ellern Mede, including local Investigation Report
- Dr Chihanja Rule 7 Response
- Dr Chihanja's Curriculum Vitae
- Completion certificate of drink drive course, 26 November 2023
- Various Continuing Professional Development Certificates
- Various References in support of Dr Chihanja, including from Dr D, Medical Director and Responsible Officer, Ellern Mede Group

Submissions

GMC submissions

19. On behalf of the GMC, Mr Grundy invited the Tribunal to find that Dr Chihanja's fitness to practise is impaired.

20. Mr Grundy submitted that the question of impairment was still a matter for the Tribunal exercising its professional judgement. He reminded the Tribunal of the two-stage process to be adopted, that it must first consider the misconduct and conviction and then whether as result of that, Dr Chihanja's fitness to practise is impaired.

21. Mr Grundy submitted that there was an overlap between the circumstances of the alleged misconduct and conviction. He summarised that, whilst on call, Dr Chihanja consumed alcohol to such an extent that he was over the drink driving limit. Mr Grundy reiterated that Dr Chihanja had given a breath sample which read 47 microgrammes of alcohol in 100 millilitres of breath: the legal limit being 35 microgrammes in 100. He submitted that Dr Chihanja accepts that had he been called to go in to work, he would have been unfit to attend patients or to give advice because his thinking would have been impaired.

22. Mr Grundy submitted that when determining the seriousness of the conduct and determining whether it amounts to misconduct, the Tribunal should consider the wider public interest and the statutory overarching objective.

23. Mr Grundy submitted that paragraph 65 of GMP was relevant in this case, which provides that:

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

24. In relation to the wider public interest, Mr Grundy reminded the Tribunal of the case of the *NMC and Grant* where it was stressed that it is essential not to lose sight of the need to protect the public and to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession. Mr Grundy submitted that in determining whether fitness to practise is impaired by reason of misconduct and a conviction, the Tribunal should not only consider whether the practitioner continues to present a risk but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

25. In summary, Mr Grundy submitted that the Tribunal might consider Dr Chihanja has reflected on the matters which may be relevant to the risk of repetition. However, he submitted that from the public's perspective, it would be 'strange in the circumstances of this case', if a finding of impairment were not made.

<u>Submissions on behalf of Dr Chihanja</u>

26. On behalf of Dr Chihanja, Mr Taylor submitted that Dr Chihanja recognises that consuming alcohol whilst working, amounts to serious professional misconduct. Mr Taylor further submitted that Dr Chihanja recognises that in light of the conviction and associated

misconduct, a finding of impairment is likely to follow on the basis of upholding proper professional standards and public confidence in the profession requires a finding of impairment to be made.

27. Mr Taylor noted that PS B in her police statement had stated that Dr Chihanja had appeared confused and unsteady on his feet. But he highlighted the breathalyser test result and submitted this was consistent with Dr Chihanja's evidence of having drank two large glasses of wine. He submitted that PS B may well have misinterpreted Dr Chihanja's undoubted state of shock at having been stopped by the police.

28. Mr Taylor submitted that the incident was a matter of profound regret for Dr Chihanja. He highlighted that Dr Chihanja had self-referred to the GMC. Further, he submitted that Dr Chihanja had every intention of informing Ellern Mede and had wanted to speak to Dr D in person, but she had been in London. Mr Taylor drew the Tribunal's attention to an email from Dr D where she referred to Dr Chihanja trying to contact her the day after the incident (see email at paragraph 38).

29. In terms of insight, Mr Taylor submitted that Dr Chihanja had self-referred to the GMC, has engaged throughout the proceedings and made full admissions to the Allegation. He submitted that Dr Chihanja has been devastated by this incident and that his position from the outset has been consistent and underpins the authenticity and genuine nature of his insight. He said that the incident was an isolated, one-off, error of judgement.

30. Mr Taylor submitted that from 'the word go' Dr Chihanja has expressed deep remorse, highlighting that in the self-referral to the GMC on 29 June 2023, Dr Chihanja had stated:

> *'I would like to express my sincere regret at such despicable conduct from a myself as a member of the General medical council, knowing fully with medical background the seriousness of my actions and I fully understand the harm it could have caused to myself and other road users, also the strain it could have if I were to be involved in a road traffic accident given the pressures on the NHS…'*

31. Mr Taylor highlighted the email from a Human Resources and Payroll Manager at Ellern Mede on 24 July 2024 in which it was relayed that Dr Chihanja *'seemed very low, stated was disgusted and ashamed with himself and promised he never had and will not do such a thing again…'*

32. Mr Taylor highlighted the email from Dr D on 15 August 2023, in which she wrote that when she met with Dr Chihanja:

> *'…he was quite reflective of the situation, acknowledged what he did was a big mistake. He regretted his actions quoting he was disgusted and ashamed of himself and promised he never had and will not do such a thing again. I have had no reason*

for concern about this doctor's fitness to practice in the past and we have agreed to have a catch up monthly…'

33. In a further email from Dr D on 11 October 2023, she reported that:

'… Our local investigation did not identify any concerns about intoxication at work… I have met with him to reflect on the findings and he remains very remorseful about this incident and has confirmed he will never do such a thing again…'

34. Mr Taylor also highlighted Dr Chihanja's Rule 7 response of 15 January 2024, in which he wrote '*I fully acknowledge the severity of my actions and the potential risks my actions posed to not only myself but also to the patients who rely on me for their care.'*

35. Mr Taylor also highlighted Ms A's witness statement, dated 9 May 2024, in which she stated:

'…Dr Chihanja was extremely apologetic during the meeting. Having worked with him for a long time, it was clear that he was deeply affected by the situation. I asked him questions such as whether he would repeat his actions and if understood the implications. He seemed absolutely devastated by what had happened and genuinely did not think that having two glasses of wine would be an issue. He assured me that he would not do it again, and I genuinely got the impression from our meeting that he was sincere in his remorse…'

36. Mr Taylor submitted that Dr Chihanja has attended courses and engaged in long, detailed and meaningful reflection.

37. Lastly Mr Taylor reiterated Dr Chihanja's oral evidence to the Tribunal. He reminded the Tribunal that Dr Chihanja did not have to give oral evidence and submitted that subjecting himself to questioning further demonstrated Dr Chihanja's authenticity and sincerity.

38. Mr Taylor submitted that Dr Chihanja's remorse and insight has been consistent throughout. Mr Taylor then drew the Tribunal to various testimonials speaking to Dr Chihanja's character and integrity, in particular, he highlighted the testimonial from Dr D who stated:

'Dr Chihanji asked to speak to me the following working day when the offence took place and asked to meet with me in person as soon as possible. He discussed the concerns with me in detail presenting quite subdued and highly remorseful of his actions. He reported his actions to be stupid and unacceptable. He was repetitively apologetic and regretful of his actions and informed me of his own intentions to notify his own RO and the GMC although making clear he was worried as to the consequences. He however fully accepted responsibility for his wrong doings and was insightful into the implications it may have on his employment with the company and

the risk it posed to his registration and his licence to practice. He stated he had learnt a lesson for life and vowed never to do such a stupid mistake again…'

39. Mr Taylor submitted that the testimonials show that Dr Chihanja understands the implications of his actions for patient safety and the impact of his actions on public confidence in the profession and on the need to promote and maintain proper standards of conduct and behaviour for the members of the profession.

40. Mr Taylor submitted that Dr Chihanja's shame and remorse is genuine.

41. Mr Taylor submitted that the misconduct and conviction are remediable. He said that they were at the lower end of the spectrum of misconduct and observed that nobody came to any harm. He submitted that it was a lapse of judgement on Dr Chihanja's part and would not be repeated. He submitted that the 'proof of the pudding was in the eating', explaining that there has not been a repetition in the nearly 17 months since the incident.

42. Mr Taylor submitted that Dr Chihanja has attended relevant courses, including a [drink] driving course which allowed him to reduce the ban from driving for 12 months to 9 months. In addition, Dr Chihanja has undertaken a probity and ethics course.

43. Mr Taylor submitted that the Tribunal can be confident that Dr Chihanja has achieved full insight and that the risk of repetition is as minimal or negligible as it could be.

44. In summary, Mr Taylor submitted that Dr Chihanja recognises that a finding of impairment is necessary to uphold proper professional standards and public confidence in the profession. He emphasised, however, Dr Chihanja's previous good character, that it was an isolated lapse of judgement, Dr Chihanja's remorse and level of insight, the steps taken to remedy the concerns and that there has been no repetition.

The Relevant Legal Principles

45. Throughout its decision-making process the Tribunal bore in mind the overarching objective which is 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.

46. 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.

47. The Tribunal must determine whether Dr Chihanja's fitness to practise is impaired today, taking into account his 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.

48. In approaching the decision, the Tribunal was mindful of the two-stage process to be adopted: first, in addition to the conviction, whether the facts as found proved amounted to misconduct and whether the said misconduct was serious. It must then consider whether as a result of the conviction and/or misconduct, Dr Chihanja's fitness to practise is impaired today.

49. In considering the question of misconduct, the Tribunal was mindful that in the case of *Roylance v GMC [2000] 1 AC 311* it was said that misconduct is a *'word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances.' In this regard, the LQC advised the Tribunal to take note of the standards set out in Good medical practice (2013 version)('GMP').*

50. In relation to misconduct, the LQC also reminded the Tribunal of the case of *Remedy UK v the GMC [2010] EWHC 1245 (Admin)* where it was held said that:

> *'Misconduct was of two principal kinds: First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it could properly be described as misconduct going to fitness to practise. Second, it could involve conduct of a morally culpable or otherwise disgraceful kind which may, and often would, occur outwith the course of professional practice itself, but which brought disgrace upon the doctor and thereby prejudiced the reputation of the profession…'*

51. The Tribunal was mindful that a single negligent act or omission is less likely to cross the threshold of misconduct than multiple acts or omissions, but a single negligent act or omission, if particularly grave, might be characterised as misconduct.

52. The Tribunal was reminded that it must consider the seriousness of any misconduct. It noted that serious misconduct is often considered to be conduct which would be regarded as deplorable by fellow practitioners.

53. The Tribunal noted that a finding of misconduct or conviction does not automatically result in finding of impairment. It bore in mind, as advised in *Meadow v GMC [2007] 1 All ER 1, EWCA (Civil Division)*, that the purpose of fitness to practise proceedings:

> *'is not to punish the practitioner for past misdoings, but to protect the public against the actions or omissions of those who are not fit to practise. The FTP proceedings thus looks forward not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past.'*

54. In considering impairment, the Tribunal had regard to the factors identified by Dame Janet Smith in the Fifth Shipman Report, cited in *Council for Health and Regulatory Excellence*

v NMC and P Grant ('Grant'), namely, does its findings show that Dr Chihanja's fitness to practise is impaired in the sense that he:

> *'…*
> *b. has in the past or is likely 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*
> *…'*

55. The Tribunal bore in mind the case of *Cohen v General Medical Council [2008] EWHC 581 (Admin).* When considering fitness to practise, it must take account of such matters as the insight of the practitioner into the source of his misconduct and conviction. It must consider whether it is remediable and whether and any remedial steps have been taken and the risk of recurrence. The Tribunal also had regard to the case of *Yeong v General Medical Council (2009) EWHC 1923 (Admin), (2010) 1 WLR 548,* where the Court noted that there will be occasions where impairment of fitness to practise must be found as a matter of public policy, to uphold public confidence in the profession. Where to make no such finding would have an adverse impact on public confidence in the profession and the regulator.

The Tribunal's Determination on Impairment

Misconduct

56. The Tribunal considered whether the facts admitted and found proved at paragraph 1 of the Allegation amount to misconduct.

57. It was found that between 24 and 25 June 2023 whilst working on call at Ellern Mede Moorgate and Ellern Mede Derby Hospitals, Dr Chihanja consumed alcohol.

58. The Tribunal considered that drinking alcohol during the course of professional employment does have the potential to put patient safety at risk as it can impair a doctor's decision making. It noted that the amount of alcohol in his breath was such that he was above the legal limit to drive a car. The Tribunal noted the conflict in the evidence between Police Sergeant B's description of Dr Chihanja as being unsteady and confused, whereas Dr Chihanja denied this. The Tribunal determined that it was not necessary to resolve this conflict in the evidence as it could place reliance on the objective findings of the breath sample. Dr Chihanja himself had accepted that he would be unfit to attend patients at the hospital or to give medical advice. Moreover, it undermines public confidence in the profession. Whilst there is no evidence that patients came to harm, the Tribunal was satisfied that the conduct fell so far short of the standards expected so as to amount to misconduct, especially given the related conviction for drink driving. The Tribunal determined the misconduct was serious.

Conviction

59. The Tribunal also considered the conviction and sentence outlined at paragraphs 2 and 3 of the Allegation to be serious.

60. It considered that Dr Chihanja's actions had the potential to harm himself and other road users. In breaking the law by driving with excess alcohol, there was a potential risk of harm to himself and members of the public, and his actions ran contrary to what is expected of doctors.

61. In considering the misconduct and conviction together the Tribunal considered that the following paragraphs of GMP had been breached in this case:

> *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. [tribunal emphasis added by way of underlining to demonstrate the relevant wording]*
>
> *65. You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.*

Impairment

62. The Tribunal considered whether Dr Chihanja's fitness to practise is impaired by reason of his misconduct and conviction.

63. The Tribunal considered whether the misconduct and conviction is remediable, has been remedied and whether there is a risk of repetition.

64. The Tribunal was satisfied that the misconduct is remediable. It was also satisfied that the conviction was remediable and in the circumstances of this case had been remediated by Dr Chihanja having complied with his sentence and undertaking a drink driving course.

65. In relation to the misconduct, the Tribunal reminded itself that in order to remediate it was necessary to have insight.

66. The Tribunal noted Mr Taylor's submission in respect of Dr Chihanja's expression of remorse and his level of insight.

67. Having regard to all the documentary evidence and Dr Chihanja's oral evidence, the Tribunal was satisfied that Dr Chihanja has a good level of insight. It considered that he has learned from his mistakes. Moreover, Dr Chihanja had continued to work as a doctor since the incident and there had been no further regulatory concerns. The Tribunal further noted

that save for this incident Dr Chihanja was of good character. The Tribunal considered that his misconduct and conviction was an isolated incident and that Dr Chihanja has shown insight and taken steps to remediate. The Tribunal found Dr Chihanja's evidence to be sincere and genuine. In the Tribunal's view his remorse was authentic and this was also illustrated by the comments of multiple professionals who had discussed the incident with him. The Tribunal accepted the evidence of Dr Chihanja that subsequent to the incident he would no longer consume alcohol on the day prior to an on-call period commencing, due to his increased understanding of how long alcohol takes to clear from his system. The Tribunal concluded that as a result of his good insight, the isolated nature of the incident, the absence of any other concerns, and the remediation to date, the risk of repetition is low.

68. The Tribunal considered that, individually and cumulatively, the misconduct and conviction brought the medical profession into disrepute and breached a fundamental tenet of the medical profession. Notwithstanding Dr Chihanja's insight and remediation and that the risk of repetition is low, the Tribunal was mindful of its duty to the overarching objective. It considered that the need to uphold public confidence in the profession to promote and maintain proper standards of conduct and behaviour for the members of the profession, would be undermined if no finding of impairment were made. Dr Chihanja's actions had not prioritised the care of his patients. His actions also broke the law and his conduct on the night in question did not justify the trust of his patients or the public.

69. Accordingly, the Tribunal determined that Dr Chihanja's fitness to practise is impaired by reason of his misconduct and conviction.

Determination on Sanction - 06/11/2024

70. Having determined that Dr Chihanja's fitness to practise is impaired by reason of misconduct and a criminal conviction, 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

71. The Tribunal has taken into account evidence received during the earlier stages of the hearing and all the documentation, where relevant to reaching a decision on sanction.

Submissions

GMC submissions

72. On behalf of the GMC, Mr Grundy reminded the Tribunal that the main reason for imposing sanctions is to protect the public, and he referred to the statutory overarching objective which is a) to protect and promote the health, safety and well-being of the public,

b) to promote and maintain public confidence, and c) to promote and maintain proper professional standards and conduct for the members of the profession.

73. Mr Grundy submitted that sanctions are not imposed to punish or discipline doctors but may have a punitive effect. He also reminded the Tribunal of the principle of proportionality and that it should first consider the least restrictive sanction before considering more restrictive sanctions. He said that the Tribunal should weigh up the interests of the public against the interests of the doctor.

74. Mr Grundy submitted that there were no exceptional circumstances in this case that would justify taking no action. He submitted that whilst the Tribunal had found the doctor has a good level of insight and has taken steps to remediate, this does not justify taking no action.

75. Mr Grundy submitted that this case was too serious to be addressed by way of conditions and that, in any event, there were no workable conditions that could address the risk presented by Dr Chihanja's actions to public confidence in the profession.

76. Mr Grundy submitted that the appropriate sanction would be a short period of suspension. He submitted that the length of that short period was a matter for the Tribunal. He also submitted that in the circumstances, a review hearing would not be required.

77. In support of his submission that suspension was appropriate, Mr Grundy directed the Tribunal to paragraphs 91, 92 and 93 of the Sanctions Guidance (February 2024 version)('SG') which provide that.

> ***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..*

Submissions on behalf of Dr Chihanja

78. On behalf of Dr Chihanja, Mr Taylor agreed with the approach outlined by Mr Grundy and said that a very short period of suspension with no review was the appropriate sanction in this case.

79. Mr Taylor reiterated the overarching objective as being central to the Tribunal considerations, as well as the principle of proportionality. He highlighted the guidance in the case of *Pool v GMC 2014 [EWHC 3791 Admin]* that proportionality requires that there is a reasonable relationship between the penalty imposed and the misconduct giving rise to impairment.

80. Mr Taylor submitted that Dr Chihanja has already been punished for his conviction. He submitted that it was clear from paragraph 116 of the SG that *'The purpose of the hearing is not to punish the doctor a second time for the offences they were found guilty of…'* He submitted that the criminal courts and the regulatory process have different functions and different roles and that it is important in a case of this nature that the doctor is not essentially or effectively punished again for his conduct.

81. Mr Taylor submitted that the Tribunal should impose the bare minimum required to protect the public in the sense of promoting and maintaining proper professional standards of conduct for the members of the profession, and for promoting and maintaining public confidence in the profession.

82. Mr Taylor submitted that the Tribunal should bear in mind, when considering the minimum period required, the progress that has been made by Dr Chihanja in the intervening 17 months since the incident occurred.

83. Mr Taylor noted that the SG advises that a Tribunal is less able to take mitigating factors into account when the concern is about patient safety or is of a more serious nature, than if the concern is about public confidence in the profession. However, he submitted that this case was now essentially about public confidence in the profession and therefore the Tribunal can take into account the strong mitigating factors in this case.

84. Mr Taylor submitted that almost all of the mitigating factors outlined at paragraph 25 of the SG apply in this case, noting in particular the following:

> ***a*** *Evidence that the doctor understands the problem and has insight, and of their attempts to address or remediate it. This could include the doctor admitting facts relating to the case, apologising …, making efforts to prevent behaviour recurring…*
>
> ***b*** *Evidence that the doctor is adhering to important principles of good practice (ie keeping up to date, working within their area of competence), and of the doctor's character and previous history. This could include evidence that the doctor has not*

previously been found to have impaired fitness to practise by a tribunal, a previous MPTS panel or by the GMC's previous panels or committees.

c *Circumstances leading up to any incidents that raise concern ...*
...
e *Lapse of time since an incident occurred.*

85. In regard to insight and remediation, Mr Taylor reminded the Tribunal that it had found Dr Chihanja has good insight and has remediated. He submitted that Dr Chihanja understands the problem and has apologised consistently and profusely.

86. Mr Taylor submitted that another mitigating factor is that the conduct was an isolated incident in an otherwise unblemished career, and that Dr Chihanja's actions in consuming alcohol while on call were entirely out of character. He further added the finding of misconduct and impairment will be on Dr Chihanja's record and disclosable in the future.

87. Mr Taylor submitted that public confidence in the profession has already been promoted and maintained by dint of Dr Chihanja having undergone a rigorous disciplinary assessment and the findings of misconduct and impairment of his fitness to practise which will be on his record for life. He submitted that this too has a deterrent effect and sends a signal to the doctor and to the public and to members of the profession.

88. Mr Taylor submitted that Dr Chihanja has undergone a significant and genuine process of introspection, reflected fully and effectively, attended relevant courses and demonstrated how he has learned from these courses and put the learning into effect in his daily and professional life.

89. Mr Taylor also took the Tribunal through the testimonials provided which he submitted show Dr Chihanja to be a highly valued, very competent and well-liked doctor.

90. Mr Taylor submitted that there were no aggravating factors in this case.

91. Mr Taylor told the Tribunal that Dr Chihanja is the main breadwinner for his family and so any suspension would have a terrible financial impact.

92. In relation to taking no action, Mr Taylor accepted that there were no exceptional circumstances in this case and acknowledged that such circumstances are rare.

93. In relation to conditions, Mr Taylor acknowledged that conditions are normally designed for health cases, or cases involving deficient professional performance or an inadequate knowledge of English, which were not relevant in this case. He also acknowledged that he could not advance any workable conditions in the circumstances of this case.

94. With regards to suspension, Mr Taylor agreed that the paragraphs referred to by Mr Grundy, paragraph 91-93 of the SG, were relevant. Mr Taylor also submitted that following factors outlined at paragraph 97 of the SG were relevant:

> *'97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.*
>
> ***a** A serious departure from Good medical practice, but where the misconduct is not so difficult to remediate that complete removal from the register is in the public interest. However, the departure is serious enough that a sanction lower than a suspension would not be sufficient to protect the public.*
>
> *…*
>
> ***e** No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor's unwillingness to engage.*
>
> ***f** No evidence of repetition of similar behaviour since incident.*
>
> ***g** The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.'*

95. Mr Taylor submitted that, in applying the guidance, the Tribunal is directed toward a period of suspension. He further submitted that there had been ample acknowledgement of fault and there had also been remediation. The risk of repetition was low and complete removal from the register was not in the public interest. He stressed that there was no risk to patient safety and that, on the contrary, suspension would deprive patients of Dr Chihanja's services. In determining the length of suspension, Mr Taylor urged the Tribunal to have regard to all of the aforementioned.

96. In summary, Mr Taylor submitted that the SG allows the Tribunal to impose a very short period of suspension. He repeated that Dr Chihanja is the main breadwinner for his family and that in the particular circumstances of this case, the public interest would be adequately served by a short suspension of no longer than a month. Indeed, he suggested the Tribunal might even think that 14 days would be sufficient.

97. Mr Taylor also reminded the Tribunal of the case of *Giele v the GMC [2006] WLR 942,* and the importance of considering what an informed and reasonable member of the public would think, knowing all the circumstances of the case. In summary, he submitted that a reasonable and properly informed member of the public would not consider a 1 month suspension or even a 14 day suspension to be unreasonable or improper. He added that a period longer than one month was not necessary and would be punitive.

The Tribunal's Determination on Sanction

98. The Tribunal reminded itself that the decision as to the appropriate sanction to impose, if any, was a matter for it alone, exercising its own judgement. In reaching its decision on sanction, the Tribunal had regard to the SG, its findings on the facts, its determination on misconduct and impairment and the submissions made by Mr Grundy and Mr Taylor.

99. In reaching its decision, the Tribunal took account of the SG and the statutory overarching objective, which includes protecting and promoting the health, safety and well-being of the public, promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct.

100. The Tribunal bore in mind that the purpose of a sanction is not to be punitive, although it recognised that any sanction imposed may have a punitive effect. It reminded itself that in deciding what sanction, if any, to impose, it should start with the least restrictive. The Tribunal also reminded itself that an appropriate sanction was limited to what was necessary on the facts of this case to uphold the overarching objective.

Aggravating and Mitigating Factors

101. The Tribunal considered and balanced the aggravating and mitigating factors in this case.

102. In terms of aggravating factors, the Tribunal bore in mind that Dr Chihanja's actions in drinking alcohol whilst on-call and then driving a vehicle whilst over the legal limit, engendered a risk to Dr Chihanja himself as well as to members of the public, including patients.

103. In regard to mitigating factors, the Tribunal noted that Dr Chihanja has no regulatory history. It was a single isolated incident. There has been no evidence of repetition and Dr Chihanja has continued to work since the incident without any other concerns. The Tribunal found that his remorse was authentic, he made early admissions, has a good level of insight and has taken remediative action and implemented his learning.

No action

104. The Tribunal first considered whether to conclude the case by taking no action. It accepted that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances.

105. 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

106. The Tribunal next considered whether to impose conditions on Dr Chihanja's registration.

107. The Tribunal determined that given the serious nature of the misconduct and conviction, conditions would not be appropriate and would not sufficiently mark the seriousness of the Tribunal's findings.

Suspension

108. The Tribunal considered whether a period of suspension would be the appropriate sanction. It noted the submissions of parties and considered paragraphs 91-93, and 97a, e, f, and g of the SG to be relevant in this case.

109. The Tribunal was satisfied that suspension was the appropriate sanction. The Tribunal considered Dr Chihanja's actions amounted to behaviour unbefitting a registered doctor, and suspension was proportionate to the seriousness of his conviction and misconduct. Dr Chihanja's insight, remediation and the low risk of repetition made erasure inappropriate and disproportionate in the circumstances of this case.

Length of suspension

110. In considering the length of the suspension, the Tribunal was again mindful of the seriousness of its findings on facts and impairment. The Tribunal was also mindful of paragraphs 99 – 102 and 106 of the SG. Dr Chihanja's actions had risked patient safety and public confidence. His actions amounted to multiple departures from GMP. His impaired fitness to practise was not just based on his conviction but also his misconduct. His actions were not consistent with all three limbs of the overarching objective but particularly with promoting and maintaining public confidence in the profession and promoting and maintaining proper professional standards and conduct.

111. The Tribunal was mindful that it should only impose the minimum period of suspension that was necessary. In doing so it weighed up the interests of Dr Chihanja and the interests of the public. The Tribunal was mindful of Dr Chihanja being the main 'breadwinner' in his family. It also noted the content of the positive testimonials which spoke to his competence and skills, as well as his remorse and shame regarding the incident. However, an informed and reasonable member of the public would consider it a serious matter for Dr Chihanja to have consumed alcohol while on-call, and to have exceeded the legal limit for alcohol when driving (and for which he was subsequently convicted on 21 July 2023).

112. Having had regard to all the evidence, the Tribunal determined that a period of 3-months suspension would sufficiently mark the seriousness of the misconduct and conviction in this case and uphold the overarching objective including to maintain public confidence in the profession and uphold proper professional standards. In the Tribunal's view,

notwithstanding the doctor's remorse, insight, remediation and the low risk of repetition, a suspension of less than 3 months would fail to mark the seriousness of the misconduct and conviction. It would also be insufficient for upholding public confidence in the profession and promoting proper professional standards and conduct. It determined that a review hearing was not necessary having had regard to Dr Chihanja's level of insight, the remediation and the low risk of repetition.

Determination on Immediate Order - 06/11/2024

113. Having determined to suspend Dr Chihanja's registration for a period of 3 months, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether his registration should be subject to an immediate order.

Submissions

114. On behalf of the GMC, Mr Grundy submitted that an immediate order was not necessary. He submitted that Dr Chihanja does not pose a risk to patients and that in the circumstances the GMC does not apply for an immediate order.

115. On behalf of Dr Chihanja, Mr Taylor submitted that an immediate order was not necessary. He submitted that paragraph 172 of the SG advises that an immediate order needs to be necessary for the protection of members of the public, and that there was no such necessity in this case. He also submitted that there is a high bar for an immediate order in terms of the wider public interest only. He submitted that an immediate order was not necessary in the wider public interest which is served by the Tribunal's substantive direction of 3 months suspension.

The Tribunal's Determination

116. In reaching its decision, the Tribunal has exercised its own judgement and has taken account of the principle of proportionality. The Tribunal bore in mind that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public or otherwise in the public interest or is in the best interests of the practitioner.

117. The Tribunal determined that an immediate order was not necessary in this case to protect members of the public. It also considered that an immediate order was not otherwise in the public interest which it determined was served by its finding of impairment and the substantive sanction of 3 months suspension. Moreover, the Tribunal considered that an immediate order was not in Dr Chihanja's best interests.

118. This means that Dr Chihanja's registration will be suspended from the Medical Register 28 days from the date on which written notification of this decision is deemed to have been served, unless he lodges an appeal. If Dr Chihanja does lodge an appeal he will remain free to practise unrestricted until the outcome of any appeal is known.

119. There is no interim order to revoke.

120. That concludes the case.