Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 30/09/2019-04/10/2019

Medical Practitioner's name: Dr Kathleen BILTON

GMC reference number: 1425741

Primary medical qualification: MB BCh 1969 University of Wales

Type of case
New - Misconduct

Outcome on impairment
Impaired

Summary of outcome
Erasure
Immediate order of suspension

Tribunal:

Legally Qualified Chair**:**	Mr David Clark
Lay Tribunal Member:	Mr Andrew Waite
Medical Tribunal Member:	Dr Ammar Ghouri

Tribunal Clerk:	Ms Esther Morton

Attendance and Representation:

Medical Practitioner:	Not present and not represented
GMC Representative:	Ms Helena Duong, Counsel, instructed by GMC Legal

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 - 02/10/2019

Background

1. Dr Bilton qualified in 1969 and, at the time of events in question, was working as an Out of Hours ('OoH') GP at the Royal Glamorgan Hospital ('the Hospital'), part of the Cwm Taf University Health Board ('the Board').

2. On 23 December 2017, Patient A attended the OoH service at the Hospital and was seen by Dr Bilton. Patient A believed she was suffering from a urinary tract infection ('UTI'), and Dr Bilton prescribed antibiotics and pain-relief medication. Patient A returned home after the consultation but was admitted to hospital two days later and was subsequently diagnosed with sepsis. The GMC alleges that, during her consultation with Patient A, Dr Bilton failed to obtain an adequate history, failed to carry out an appropriate examination, and failed to make an adequate diagnosis. The GMC further alleges that Dr Bilton dishonestly recorded details of a purported examination in Patient A's notes.

3. On 3 February 2018, Ms B attended the OoH service at the Hospital with her son, Patient B, and was seen by Dr Bilton. Patient B was 28 months old at the time of the consultation. Ms B was concerned by Patient B's symptoms, which included fever, smelly breath, enlarged tonsils and flu-like symptoms. Dr Bilton prescribed Patient B antibiotics and discharged him from her care. On the way home from the consultation, Patient B became unresponsive. Ms B called an ambulance and Patient B was taken to hospital and subsequently diagnosed with sepsis and right upper lobe consolidation. The GMC alleges that Dr Bilton failed to carry out an appropriate examination of Patient B, and that she dishonestly recorded details of a purported examination in Patient B's records.

4. Patient A and Ms B subsequently complained to the Board, and the Board undertook an audit of all patients seen by Dr Bilton over a six-month period. This audit identified Patient C's consultation as also being of possible concern; Patient C consulted

with Dr Bilton on 12 March 2018, and the GMC alleges that Dr Bilton inappropriately prescribed Patient C Co-amoxiclav.

5. On 29 May 2018, Dr D, Assistant Medical Director for Professional Standards and Regulation at the Board, referred Dr Bilton to the GMC.

The Outcome of Applications Made during the Facts Stage

6. On day 1 of the hearing the Tribunal granted the following applications:

- The GMC's application, made pursuant to Rule 31 of the General Medical Council (Fitness to Practise Rules) 2004 as amended ('the Rules'), to proceed in Dr Bilton's absence. The Tribunal's full decision on this application is included at Annex A.

- The GMC's application to exclude certain potentially prejudicial material from the hearing bundle. The Tribunal's full decision on this application is included at Annex B. In granting this application, the Tribunal was satisfied that it would not be inappropriately influenced by its knowledge of the material.

7. On day 2 of the hearing, the Tribunal granted Ms Duong's application to ask supplementary questions of the GMC's expert witness, Dr E, in the absence of Dr Bilton. Ms Duong stated that Dr E provided two reports, and that there were a number of discrepancies between these reports. She stated that the supplementary questions would help clarify Dr E's evidence and could be favourable to Dr Bilton. The Tribunal considered that clarification of Dr E's evidence would assist with its decision-making, and would not prove unfair or prejudicial to Dr Bilton. Accordingly, it granted Ms Duong's application.

The Allegation and the Doctor's Response

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

Paragraph One
On 23 December 2017 you consulted with Patient A and you failed to:

a. obtain an adequate history, in that you did not ask Patient A about:

i. her previous GP consultation earlier that week;

ii. any previous urinary tract infections (UTIs);

iii. results from previous urine cultures;

iv. the antibiotics used to treat her previous UTIs;

v. any previous investigations that had been undertaken in relation to her history of UTIs;

vi. her history of breast cancer;

vii. the medication she was prescribed to treat her breast cancer; **To be determined in its entirety**

b. carry out an appropriate examination of Patient A in that you did not:

i. measure Patient A's:

a. temperature;

b. pulse;

c. respiratory rate;

d. oxygen saturations;

e. blood pressure;

ii. listen to Patient A's chest;

iii. palpate Patient A's abdomen; **To be determined in its entirety**

c. make an adequate diagnosis in that you diagnosed cystitis when the appropriate diagnosis was Pyelonephritis; **To be determined**

d. refer Patient A to be seen in a specialist hospital setting within 2 hours; **To be determined**

e. make an appropriate record of the consultation in that:

i. in the alternative to paragraph 1 a. you failed to make an adequate record of Patient A's history;

ii. you recorded details of a purported examination in Patient A's records as set out at Schedule 1. **To be determined in its entirety**

Paragraph Two
You knew that you had not examined Patient A; **To be determined**

Paragraph Three
Your action as described at paragraph 1 e. ii. was dishonest by reason of paragraph 2. **To be determined**

Paragraph Four
On 3 February 2018 you consulted with Patient B and you:

a. failed to carry out an appropriate examination of Patient B in that you did not:

i. measure Patient B's:

a. temperature;

b. pulse;

c. respirations;

d. oxygen level;

e. capillary refill time;

b. recorded details of a purported examination in Patient B's records as set out at Schedule 2. **To be determined in its entirety**

Paragraph Five
You knew that you had not:

a. measured Patient B's:

i. temperature;

ii. pulse;

iii. respirations;

b. examined Patient B's abdomen; **To be determined in its entirety**

Paragraph Six
Your action as described at paragraph 4 b. was dishonest by reason of paragraph 5. **To be determined in its entirety**

Paragraph Seven
On 12 March 2018 you consulted with Patient C and you inappropriately prescribed Co-amoxiclav in that:

a. Patient C was suspected to be allergic to penicillin;

b. you prescribed a child's dose;

c. it was contraindicated. **To be determined in its entirety**

Evidence

9. The Tribunal had regard to the evidence provided on behalf of the GMC. This evidence included, but was not limited to:

- A witness statement from Patient A, dated 25 April 2019, along with a copy of Patient A's original letter of complaint to the Board and the Board's response, and notes of a meeting between Patient A, her daughter and the Board on 16 April 2018;

- A witness statement from Patient A's daughter, Ms F, dated 25 April 2019;

- A witness statement from Ms B, dated 24 May 2019, along with a copy of Ms B's original letter of complaint to the Board and supporting documentation;

- A witness statement from Dr D, dated 16 May 2019, as well as copies of correspondence between the Board and the GMC;

- An expert report prepared by Dr E, GP and GMC expert witness, dated 21 September 2018, along with a supplemental report dated 19 June 2019;

- Medical records for Patients A, B, and C.

10. In addition, the Tribunal heard live oral evidence from the following witnesses:

- Patient A;
- Ms F;
- Dr D;
- Ms B;
- Dr E.

11. The Tribunal also had regard to evidence in support of Dr Bilton. This included:

- Professional testimonials provided on Dr Bilton's behalf to the Interim Orders Tribunal on 28 June 2018;
- Dr Bilton's Rule 7 response letter dated 22 November 2018;
- A redacted transcript from Dr Bilton's Interim Orders Tribunal hearing.

12. In her Rule 7 response letter, Dr Bilton's solicitors indicated that it was her practice, on occasions, to estimate rather than measure observations, and then to record a figure which reflected her estimation. The Tribunal took this explanation into account when considering, in particular, the question of dishonesty. However, the Tribunal attached little weight to Dr Bilton's explanation as it was not given in evidence at this hearing, and was not tested. In any event, the Tribunal did not consider that the explanation assisted Dr Bilton; nor did it cast a particularly good light on the performance of her professional responsibilities.

The Tribunal's Approach

13. 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 Bilton does not need to prove anything. The standard of proof is that applicable to civil proceedings,

namely the balance of probabilities. Applying this standard, the Tribunal must ask itself whether it is more likely than not that the events occurred.

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.

The Tribunal's Overall Determination on the Facts

15. The Tribunal has determined the facts as follows:

Paragraph One
On 23 December 2017 you consulted with Patient A and you failed to:

a. obtain an adequate history, in that you did not ask Patient A about:

i. her previous GP consultation earlier that week; **Found proved**

ii. any previous urinary tract infections (UTIs); **Found proved**

iii. results from previous urine cultures; **Found not proved**

iv. the antibiotics used to treat her previous UTIs; **Found proved**

v. any previous investigations that had been undertaken in relation to her history of UTIs; **Found not proved**

vi. her history of breast cancer; **Found not proved**

vii. the medication she was prescribed to treat her breast cancer; **Found not proved**

16. In respect of Patient A's consultation with Dr Bilton, the Tribunal was provided with Patient A's witness statement and letter of complaint to the Board, as well as the witness statement of Patient A's daughter, Ms F, who was also present at the consultation. The Tribunal also had regard to the expert reports prepared by Dr E and the oral evidence given by Patient A, Ms F, and Dr E at this hearing.

17. The Tribunal considered Patient A to be a clear and concise witness. It noted that her oral evidence was consistent with both her letter of complaint to the Board and with her GMC witness statement, and it found her to be a credible witness who did her best to assist this hearing. Patient A confirmed that, although unwell at the time of the consultation, she was nonetheless able to remember it in detail. Patient A's account was corroborated by that of her daughter, Ms F, who was also present at the consultation. The Tribunal similarly found Ms F to be a clear, consistent, and credible witness, and it noted that Ms F had a background in clinical healthcare, which enhanced her credibility.

18. The Tribunal considered that Dr E had a large amount of relevant experience, and it considered her evidence in relation to the nuances of OoH care to be particularly helpful. Having worked in OoH care herself, Dr E was able to help contextualise the Allegation, particularly in relation to the pressures and nature of OoH work. The Tribunal found Dr E's evidence to be measured, balanced, and honest. It noted that she was willing to reconsider some of her original findings, and considered that this added to her credibility. Overall, the Tribunal was satisfied that it could rely on Dr E's expert opinion.

19. Having found them to be credible and reliable witnesses, the Tribunal accepted the evidence of Patient A and Ms F, both of whom stated that Dr Bilton did not ask Patient A any of the questions set out at (i) to (vii) above. Patient A did volunteer some information at the consultation in relation to her UTI, and some information would have been available to Dr Bilton from Patient A's telephone triage notes, but the evidence before the Tribunal indicates that Dr Bilton did not explore this information with Patient A in any detail. On the basis of this evidence, the Tribunal was satisfied that Dr Bilton did not ask Patient A any of the questions listed at (i) to (vii) above.

20. Having found that Dr Bilton did not ask Patient A any of the questions listed above, the Tribunal next asked itself whether this constituted a failure to obtain an adequate history. In order to find a failing, the Tribunal must first be satisfied that a duty exists. The Tribunal therefore asked itself whether Dr Bilton had a duty to ask the questions listed at (i) to (vii). In assessing this, it had regard to the evidence of the GMC's expert witness, Dr E.

21. In relation to (i), (ii), and (iv), the Tribunal was satisfied from Dr E's evidence that Dr Bilton did have a duty to ask these questions, and that it was not sufficient for Dr Bilton to rely on any information given by either Patient A, or contained in the

telephone triage notes. Given that Dr Bilton did not ask these questions, the Tribunal found (i), (ii), and (iv) proved.

22. In relation to the remaining factors, Dr E described asking these questions as 'good practice', but added that not asking them would not amount to practice that fell below the expected standard. Dr E described some of these questions as 'small print' in her oral evidence and, as an example, stated that she would only expect the top 5% of medical students in an exam to ask questions about previous medication during a consultation. Given this, the Tribunal could not be satisfied that Dr Bilton had a duty to ask Patient A about the questions listed at (iii), (v), (vi), and (vii), and accordingly it found these subparagraphs of the Allegation not proved.

> b. carry out an appropriate examination of Patient A in that you did not:
>
> i. measure Patient A's:
>
> a. temperature;
>
> b. pulse;
>
> c. respiratory rate;
>
> d. oxygen saturations;
>
> e. blood pressure; **Found proved in its entirety**

23. As before, the Tribunal accepted the evidence of Patient A and Ms F, both of whom confirmed that Dr Bilton did not carry out any physical examination of Patient A. Both Patient A and Ms F confirmed that the only test carried out by Dr Bilton was testing Patient A's urine sample with a dipstick. Both Patient A and Ms F also confirmed that, with the exception of the dipstick, Dr Bilton did not use any equipment during the examination, nor did she lay her hands on Patient A at any point. The Tribunal accepted the evidence of Patient A and Ms F.

24. It was suggested that it may be possible to assess a patient's respiratory rate by observation alone. The Tribunal heard from Dr E that it may have been possible for Dr Bilton to have observed the respiration rate in this way. However, having found that Dr Bilton did not undertake any of the other measurements listed above, the Tribunal determined that – on the balance of probabilities – Dr Bilton more likely than not did not observe Patient A's respiration rate by sight. It was highly unlikely, the Tribunal concluded, that Dr Bilton would have failed to undertake basic

measurements such as temperature and pulse, but then carry out a visual assessment of Patient A's respiratory rate.

25. In determining whether not taking these measurements amounted to a failure to carry out an appropriate examination, the Tribunal again had regard to Dr E's evidence. In her first expert report of 21 September 2018, Dr E opined that:

> 'If Patient A is to be believed, then none of the physical observations were taken nor was any examination undertaken. If this was the case, then Dr Bilton would have been acting at a level seriously below that expected of a reasonably competent GP as she did not put herself in a position to make a full assessment of Patient A and could have endangered the life of Patient A…'

26. Dr E added that, given Patient A's history and presentation, the need to measure her pulse, oxygen saturations, and temperature were of particular importance, as these would have been indicators of the seriousness of Patient A's condition. The Tribunal has found that Dr Bilton did not take any of these measurements and, having regard to Dr E's evidence that this fell seriously below the expected standard, it determined that this amounted to a failure to carry out an appropriate examination. The Tribunal therefore found Paragraph 1(b)(i) proved in its entirety.

ii. listen to Patient A's chest; **Found not proved**

27. The Tribunal accepted the evidence of Patient A and Ms F, both of whom clearly stated that Dr Bilton did not listen to Patient A's chest. In determining whether this amounted to a failing, the Tribunal had regard to the evidence of Dr E. Dr E described listening to Patient A's chest as 'good practice', but did not describe Dr Bilton's failure to do so as having fallen below the expected standard. Accordingly, the Tribunal determined that Dr Bilton did not have a duty to listen to Patient A's chest, and it therefore found this subparagraph of the Allegation not proved.

iii. palpate Patient A's abdomen; **Found proved.**

28. As above, the Tribunal accepted Patient A and Ms F's evidence that Dr Bilton did not palpate Patient A's abdomen. Here, however Dr E describes Dr Bilton's failure to palpate as being seriously below the expected standard, and the Tribunal therefore determined that Dr Bilton did have a duty to carry out this examination. Accordingly, it found this subparagraph of the Allegation proved.

c. make an adequate diagnosis in that you diagnosed cystitis when the appropriate diagnosis was Pyelonephritis; **Found not proved**

29. The Tribunal does not have any evidence before it to suggest that Patient A's appropriate diagnosis was in fact one of Pyelonephritis. The only reference to Pyelonephritis is found in a 6 April 2018 letter from the Board, but Pyelonephritis is not included in Patient A's medical records, nor is it found elsewhere in the papers. Patient A herself describes being hospitalised with sepsis, and her medical records and Dr E's reports support this.

30. Given the GMC has not provided any evidence to support the appropriate diagnosis being one of Pyelonephritis, the Tribunal determined that this subparagraph of the Allegation is not proved.

d. refer Patient A to be seen in a specialist hospital setting within 2 hours; **Found not proved**

31. Dr E informed the Tribunal in oral evidence that the NICE guidance recommends referring a patient with suspected sepsis to an appropriate hospital setting 'immediately', and she confirmed that 'immediately' could mean 2 hours within this context. However, the GMC has not provided any evidence to suggest that Dr Bilton suspected that Patient A was suffering from sepsis. In the absence of this evidence, the obligation to immediately refer Patient A in accordance with the NICE guidance is not established. It is possible that, had Dr Bilton carried out a proper examination, this may have led her to suspect that Patient A was suffering from sepsis, but equally it may have not led to this conclusion.

32. The Tribunal considered amending this charge to read 'immediately' instead of 'within 2 hours', but given the lack of evidence to support the finding that Dr Bilton suspected sepsis, it determined that the charge could not be proved either way. Accordingly, it found the above subparagraph not proved.

e. make an appropriate record of the consultation in that:

i. in the alternative to paragraph 1 a. you failed to make an adequate record of Patient A's history; **Found not proved**

33. The Tribunal has already found parts of the alternative proved, in other words that Dr Bilton failed to obtain an adequate history from Patient A. Accordingly, there was nothing for her to record, and this subparagraph of the Allegation falls.

> ii. you recorded details of a purported examination in Patient A's records as set out at Schedule 1. **Found proved**

34. As set out above, the Tribunal accepted the evidence of Patient A and Ms F, and found that Dr Bilton did not undertake an examination of Patient A. Dr Bilton recorded that an examination had taken place in Patient A's records, writing:

> 'TEMP- 38DEG PULSE-86/MIN RESPS- 16/MIN LUNGS CLEAR TENDER+ + 1-LEFT LOIN ENT-NAD. URINEKETONES
> + -r PROTEIN + + + BLOOD+ + r NITRITE + -n- + WBC+ * + *'

35. As this examination did not take place, this was a purported examination, and the Tribunal therefore found this subparagraph of the Allegation proved.

> **Paragraph Two**
> You knew that you had not examined Patient A; **Found proved**

36. The Tribunal took this paragraph of the Allegation to mean 'examined Patient A in the way you purported in your record'. The Tribunal accepted the evidence of Patient A and Ms F both of whom were adamant that no examination took place.

37. This was not a case where Dr Bilton carried out a partial examination and could have been confused about the extent of that examination; no examination was carried out at all, with no equipment being used, and no hands laid on Patient A. Accordingly, on the balance of probabilities, the Tribunal determined that Dr Bilton knew that she did not examine Patient A as purported, and it therefore found this paragraph of the Allegation proved.

> **Paragraph Three**
> Your action as described at paragraph 1 e. ii. was dishonest by reason of paragraph 2. **Found proved.**

38. In deciding dishonesty, the Tribunal applied the test set out in the case of *Ivey v Genting Casinos (UK) Ltd* 2017 UKSC 67 ('Ivey'), as follows:

- Firstly, what were the facts of the case;

- Secondly, what was Dr Bilton's state of mind at the time of events;

- Lastly, were Dr Bilton's actions dishonest by the standards of ordinary decent people.

39. The Tribunal has already established the facts, finding that Dr Bilton recorded measurements that she did not obtain, and examinations that she did not undertake. It has also established that Dr Bilton knew that she had not carried out these measurements and examinations when she recorded them in Patient A's records, so it went on to ask itself whether her actions were dishonest by the standards of ordinary decent people.

40. The Tribunal considered that Dr Bilton's actions deliberately gave a misleading impression of her consultation with Patient A, in circumstances where she must have known that her notes were likely to be relied on by other practitioners. Those practitioners would view the notes as giving an accurate record of the consultation based on a proper examination and the taking of measurements. In these circumstances, the Tribunal determined that Dr Bilton's actions would be regarded as dishonest by the standards of ordinary decent people and, accordingly, it found this paragraph of the Allegation proved.

Paragraph Four
On 3 February 2018 you consulted with Patient B and you:

a. failed to carry out an appropriate examination of Patient B in that you did not:

i. measure Patient B's:

a. temperature;

b. pulse;

c. respirations;

d. oxygen level;

e. capillary refill time; **Found proved in its entirety**

41. In relation to the paragraphs of the Allegation relating to Patient B, the Tribunal had regard to Ms B's witness statement, correspondence with the Board, and oral evidence at this hearing. It also had regard to the expert reports and oral evidence of Dr E.

42. The Tribunal considered Ms B to be a credible witness, who was consistent throughout her accounts. It noted that Ms B is an experienced healthcare professional, who has practised as a nurse for some 10 years, and that she was more aware of what measurements and investigations should have been carried out as a result of this. Ms B recorded in her witness statement that Dr Bilton placed her hand on Patient B's forehead and looked in his ears and throat, before listening to his chest with a stethoscope over his clothes, but that this was the extent of her examination of Patient B. At one point in her evidence, Ms B conceded that Dr Bilton could have examined Patient B's pulse and respiratory rate while listening to his chest. Her willingness to make such a concession added to her credibility in the eyes of the Tribunal because it demonstrated that her evidence was measured and balanced. The Tribunal accepted Ms B's evidence as to the extent of the examination.

43. In relation to (a) and (d), the Tribunal heard that Dr Bilton would have needed to use specialist equipment to measure temperature and oxygen saturation levels, and Ms B confirmed that Dr Bilton did not use any equipment other than a stethoscope. It therefore found that Dr Bilton did not measure Patient B's temperature or oxygen saturation levels.

44. In relation to (e), the Tribunal heard that Dr Bilton would have needed to have squeezed Patient B's hand or foot in order to measure the capillary refill time. There is nothing in Patient B's notes to indicate that such an examination took place, and Ms B makes no mention of it. Accordingly, the Tribunal found that Dr Bilton did not measure Patient B's capillary refill time.

45. In relation to pulse and respirations, the Tribunal heard from Dr E that Dr Bilton could in theory have measured these through Patient B's clothing while listening to his chest. Having already found that Dr Bilton did not undertake the other measurements listed above, the Tribunal determined that – on the balance of probabilities – it is more likely than not that Dr Bilton did not measure Patient B's pulse or respirations while listening to his chest. In reaching this decision it noted Dr E's evidence as to the difficulty of undertaking both of these measurements at the same time, particularly on a child.

46. Having found that Dr Bilton did not undertake any of the measurements listed above, the Tribunal next considered whether this amounted to a failing. In so doing, it had regard to the evidence of Dr E. In her oral evidence, Dr E stated that Dr Bilton's failure to carry out these measurements fell seriously below the expected standard.

47. The Tribunal therefore found that Dr Bilton had a duty to undertake these measurements, and accordingly, it found Paragraph Four proved in its entirety.

b. recorded details of a purported examination in Patient B's records as set out at Schedule 2. **Found proved**

48. As set out above, the Tribunal has found that despite Dr Bilton not undertaking a full examination of Patient B, she has nevertheless recorded the following precise information in Patient B's notes:

> 'crying. temp- 38.8deg pulse- 136/min resps- 32/min lungs clear ears- nad red throat with cryptic tonsils and
> exudate++. abdo- nad.'

Given that Dr Bilton did not measure temperature, pulse or respirations, the examination can only be a purported one, and the Tribunal therefore found this paragraph of the Allegation proved.

Paragraph Five
You knew that you had not:

a. measured Patient B's:

i. temperature;

ii. pulse;

iii. respirations;

b. examined Patient B's abdomen; **Found proved in its entirety**

49. For the reasons explained above, the Tribunal was satisfied that Dr Bilton did not measure Patient B's temperature, pulse or respirations. It was also satisfied from Ms B's evidence that Dr Bilton did not examine Patient B's abdomen. As set out in its assessment of Ms B's credibility, Ms B was an experienced healthcare professional

and would have been able to recognise an abdominal examination had one taken place. The Tribunal considered that these measurements and examination would all have required positive actions on Dr Bilton's part, and the Tribunal was satisfied that she knew that she had not carried them out. Accordingly, the Tribunal found Paragraph Five of the Allegation proved.

> **Paragraph Six**
> Your action as described at paragraph 4 b. was dishonest by reason of paragraph 5. **Found proved**

50. As set out in Paragraph Three above, the Tribunal applied the test set out in the case of *Ivey.* The Tribunal found that Dr Bilton recorded examinations in Patient B's notes that she knew had not taken place, and it asked itself whether her actions would be considered dishonest by the standards of ordinary decent people. The deliberate recording of information that Dr Bilton knew to be false in the notes of an unwell child would be regarded to be dishonest by those standards. Accordingly, the Tribunal found Paragraph Six of the Allegation proved.

> **Paragraph Seven**
> On 12 March 2018 you consulted with Patient C and you inappropriately prescribed Co-amoxiclav in that:
>
> a. Patient C was suspected to be allergic to penicillin;
>
> b. you prescribed a child's dose;
>
> c. it was contraindicated. **Found not proved in its entirety**

51. Unlike with Patient A and Patient B, the Tribunal has not heard any evidence from Patient C in relation to what was discussed during the consultation in question. The medical notes show that there was some discussion about Patient C's allergy to penicillin and the fact that she could tolerate amoxycillin. Dr E told the Tribunal that, if there had been proper discussion between Patient C and Dr Bilton about her possible intolerance, the prescribing of Co-amoxiclav may not have been inappropriate. The Tribunal concluded that the GMC had not discharged the burden of proof in establishing that the discussion which had taken place was inadequate in all the circumstances. Therefore, the Tribunal was not satisfied that the prescribing was inappropriate and it found Paragraph Seven of the Allegation not proved.

DETERMINATION ON IMPAIRMENT - 03/10/2019

1. The Tribunal must now decide whether, on the basis of the facts found proved, Dr Bilton's fitness to practise is impaired by reason of her misconduct.

2. The Tribunal has taken into account all of the evidence received during the facts stage of the hearing, as outlined in its earlier determination, as well as the submissions on impairment made by Ms Helena Duong, Counsel, on behalf of the GMC.

Submissions

3. In assessing misconduct, Ms Duong invited the Tribunal to consider the definition set out in the case of *Roylance v GMC (No 2) [2000] 1 AC AC311 ('Roylance')*, as follows:

> '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 references to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances. The misconduct is qualified in two respects. First, it is qualified by the word 'professional' which links the misconduct to the profession of medicine. Secondly, the misconduct is qualified by the word 'serious'….'

4. Ms Duong submitted that the findings in Dr Bilton's case amounted to serious misconduct in two respects: firstly, the consultations with Patients A and B fell seriously below the standard expected of a reasonably competent practitioner; and secondly, Dr Bilton dishonestly falsified the records of Patients A and B. Ms Duong submitted that these failings were in breach of a number of key principles set out in *Good Medical Practice* ('GMP'), and invited the Tribunal to find that Dr Bilton's actions amounted to serious professional misconduct in accordance with the principles set out in *Roylance*.

5. Turning to the question of impairment, Ms Duong invited the Tribunal to have regard to the test set out by Dame Janet Smith in the Fifth Shipman report ('the Shipman test'), as follows:

> 'Do our findings of fact … show that his/her fitness to practise is impaired in the sense that s/he:
>
> 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

d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.'

Ms Duong submitted that all four factors were engaged in Dr Bilton's case, given the Tribunal's findings at the Facts stage. Ms Duong added that Dr Bilton had not provided evidence of remediation or insight so as to negate the risk of repetition, meaning there remained a risk that Dr Bilton could repeat her misconduct in future. Accordingly, Ms Duong invited the Tribunal to find Dr Bilton's fitness to practise impaired by reason of her misconduct. Ms Duong submitted that such a finding was necessary in order to protect members of the public, to maintain public confidence in the profession, and to promote and maintain proper standards of conduct and behaviour for members of the medical profession.

6. In Dr Bilton's absence, Ms Duong very fairly invited the Tribunal to have regard to a number of factors in Dr Bilton's favour, including her many years of experience as a GP, her lack of fitness to practise history, her stated intention to retire from medical practice, and the positive testimonials received on her behalf.

The Relevant Legal Principles

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

8. The Tribunal must determine whether Dr Bilton's fitness to practise is impaired today. In doing so, it must take into account Dr Bilton's conduct at the time of events, as well as any relevant factors since then such as whether the matters are remediable, whether they have been remedied, and the likelihood of repetition.

The Tribunal's Determination on Impairment

9. In reaching its decision on impairment the Tribunal bore in mind that its primary responsibility is to the statutory overarching objective, which is as follows:

- To protect, promote, and maintain the health, safety, and well-being of the public;

- To promote and maintain public confidence in the medical profession;

- To promote and maintain proper professional standards and conduct for members of that profession.

Misconduct

10. The Tribunal first asked itself whether Dr Bilton's actions, as found proved by the Tribunal in its determination on Facts, amounted to misconduct. In so doing, it had regard to the principles set out in *Roylance* - as directed by Ms Duong - and it asked whether Dr Bilton's failings were in breach of the professional rules and standards, namely those set out in GMP. The Tribunal was assisted by the evidence of Dr E, who identified some of Dr Bilton's actions (if proved) as falling far below the standard expected of a medical practitioner.

11. The Tribunal determined that Dr Bilton's actions breached certain fundamental principles set out in GMP, and in particular, the following:

> 'Patients must be able to trust doctors with their lives and health. To justify that trust you must show respect for human life and make sure your practice meets the standards expected of you... [this includes]
>
> - Make the care of your patient your first concern.
>
> - Provide a good standard of practice and care…
>
> - Be honest and open and act with integrity…'

12. The Tribunal further determined that Dr Bilton's actions were also in breach of a number of individual paragraphs of GMP, namely the following:

> [15] 'You must provide a good standard of practice and care. If you assess, diagnose, or treat patients, you must:

> a adequately assess the patient's conditions, taking account of their history… their views and values; where necessary, examine the patient…
>
> [19] 'Documents you make (including clinical records) to formally record your work must be clear, accurate and legible. You should make records at the same time as the events you are recording or as soon as possible afterwards.'
>
> [65] 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession.'
>
> [71] 'You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading...'

13. Whilst the Tribunal was mindful that not all breaches of GMP amount to misconduct, it determined that Dr Bilton's pattern of poor patient care and clinical practice, as well as her repeated dishonesty, did amount to misconduct. The Tribunal was satisfied that, with the exception of its finding at 1(a) of the Allegation, all of the matters found proved fell seriously below the required standard. Although 1(a) may not amount to misconduct by itself, the Tribunal decided that – taken in the overall context of its findings – 1(a) is part of a pattern of poor patient care which does amount to misconduct.

14. The Tribunal considered that its findings in relation to Dr Bilton's dishonesty were particularly serious; the deliberate falsification of patient records could have had a direct detrimental impact on patient safety, misleading fellow practitioners into believing that Patient A and B's medical records were accurate. This dishonesty was not isolated, and occurred on two separate occasions. The Tribunal found that the apparent precision of the measurements recorded by Dr Bilton (for example, a temperature of 38.8 in Patient B's notes), indicated that she knew what measurements she should have taken, and was attempting to hide the fact that these measurements had not taken place. The Tribunal considered that Dr Bilton's dishonesty was at the higher end of the spectrum, given the impact it could have had on patient safety, and it determined that such dishonesty may well be described as deplorable by fellow practitioners.

15. Bearing the above in mind, the Tribunal concluded that Dr Bilton's actions in relation to all of the proven facts were sufficiently serious so as to amount to misconduct.

Impairment

16. Having found that Dr Bilton's actions amounted to misconduct, the Tribunal next considered whether Dr Bilton's fitness to practise is currently impaired by reason of that misconduct. In so doing it had regard to the Shipman test, as set out above.

17. The Tribunal determined that all four limbs of the Shipman test are engaged in Dr Bilton's case:

- In respect of limb (a), by failing to carry out proper examinations and deliberately entering misleading information in patient records, Dr Bilton put patients at risk of harm.

- In respect of (b), the Tribunal was satisfied that Dr Bilton's actions served to erode public trust and confidence in the medical profession, and undermined overall public confidence in the profession.

- In respect of (c) and (d), the Tribunal has found that Dr Bilton breached a number of fundamental tents of the profession and acted dishonesty, as set out above.

18. The Tribunal reminded itself that the Shipman test had been cited with judicial approval by Mrs Justice Cox in the case of *CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin) ('Grant').* Furthermore, in paragraph 74 of her judgment in *Grant*, Mrs Justice Cox said:

> '... In determining whether a practitioner's fitness to practice is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, 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.'

19. The Tribunal next asked whether Dr Bilton is liable to repeat this behaviour in future. The Tribunal noted that in the case of *Cohen v GMC [2008] EWHC 581 (Admin) ('Cohen')* Mr Justice Silber set out that:

> 'It must be highly relevant in determining if a doctor's fitness to practice is impaired that; first his or her conduct which led to the charge is easily remedied, second that it has been remedied and third that it is highly unlikely to be repeated.'

20. The Tribunal had regard to Dr Bilton's Rule 7 response letter, where she provided no explanation of her actions, nor any evidence that she had attempted to address the reasons behind them. Dr Bilton did accept that she had acted inappropriately, but did not accept that she had acted dishonestly. From this letter, the Tribunal concluded that her insight into her misconduct is very limited, and that she has made no obvious attempt to remediate it.

21. The Tribunal noted that Dr Bilton has retired from medical practice, as stated in recent correspondence with the GMC. However, the Tribunal had regard to the case of *General Optical Council v Clarke [2018] EWCA Civ 1463 ('Clarke')*, where Lord Justice Newey considered the link between retirement and the risk of repetition, commenting:

> 'Where misconduct is highly unlikely to be repeated in the course of continuing practice, that points towards fitness to practice. Where, on the other hand, repetition is improbable, merely because the [practitioner] will no longer be practising, that would not seem to be indicative of fitness to practice. If anything, cessation of practice may point in the opposite direction, since the [practitioner's] skills could deteriorate with lack of use.'

22. The Tribunal did consider Dr Bilton's long career as a medical practitioner, and had regard to the positive testimonials submitted to the IOT on her behalf. These speak highly of her on a personal level, and attest to her overall competence as a practitioner. However, the Tribunal balanced these testimonials with its overall findings on misconduct, and determined that it could place little weight on them given Dr Bilton's proven dishonesty and poor clinical practice.

23. The Tribunal has no evidence before it to suggest that Dr Bilton has remediated her misconduct, nor that she has shown sufficient insight to negate the risk of repetition. The Tribunal bore in mind that, whilst dishonesty is difficult to

remediate, it can be remedied in situations where the practitioner has acknowledged and accepted the seriousness of their actions. Such recognition is not present in Dr Bilton's case. Bearing in mind all of the above, the Tribunal determined that there remains an ongoing risk of repetition in Dr Bilton's case. Accordingly, and having regard to the statutory overarching objective, the Tribunal determined that a finding of impairment was necessary in order to guard against the risk posed to patients and the public by Dr Bilton, and further, that such a finding was necessary in order to safeguard public confidence in the medical profession.

DETERMINATION ON SANCTION - 04/10/2019

1. Having determined that Dr Bilton's fitness to practise is impaired by reason of her misconduct, the Tribunal now has to decide on the appropriate sanction, if any, to impose in her case.

2. The Tribunal had regard to all the evidence before it, as well as to the submissions made by Ms Duong on behalf of the GMC, as summarised below.

Submissions

3. Ms Duong set out what she believed to be the aggravating and mitigating factors in Dr Bilton's case, and she invited the Tribunal to consider the Sanctions Guidance ('SG'), taking it to a number of paragraphs that - in her submission - may assist with its deliberations

4. Turning to the relevant sanction to impose, Ms Duong submitted that there were no exceptional circumstances in Dr Bilton's case that would justify the Tribunal taking no action. Ms Duong similarly submitted that conditions would neither be workable or appropriate, and she invited the Tribunal to consider the seriousness of Dr Bilton's misconduct, Dr Bilton's lack of engagement with this hearing, as well as her stated intention to retire from medical practice, in support of this.

5. Ms Duong next submitted that, in the absence of any evidence of remediation and insight from Dr Bilton, suspension would not appropriate. In making this submission, she reminded the Tribunal that there was an ongoing risk of repetition, and that Dr Bilton had seemingly not taken any steps to address the concerns regarding her clinical practice, nor had she acknowledged her dishonesty. Accordingly, Ms Duong invited the Tribunal to erase Dr Bilton's name from the medical register.

6. In assessing whether erasure was the appropriate and proportionate response, Ms Duong reminded the Tribunal that it had found two separate instances of serious dishonesty, in addition to clinical concerns. Ms Duong submitted that, given the patient safety issues, the serious findings of dishonesty, and the lack of insight or remediation, erasure was the necessary response in order to protect the public, and to uphold proper professional standards and public confidence in the profession.

The Tribunal's Determination on Sanction

7. The decision as to the appropriate sanction to impose, if any, is a matter for this Tribunal exercising its own judgment. In reaching its decision the Tribunal has taken account of the SG, and has borne in mind that the purpose of a sanction is not to be punitive, although a sanction may have a punitive effect. The Tribunal has applied the principle of proportionality, weighing Dr Bilton's interests with the wider public interest. Throughout its deliberations the Tribunal has taken account of the requirements of the statutory overarching objective, as set out in its earlier determination on impairment.

8. The Tribunal first considered the aggravating and mitigating factors in Dr Bilton's case.

Mitigating Factors

9. In mitigation, the Tribunal identified and considered the following factors:

- The absence of any previous fitness to practice history - the Tribunal noted that Dr Bilton has enjoyed a long and otherwise successful career spanning over 50 years;

- Dr Bilton was under additional personal pressure due to family circumstances at the time the events occurred, as set out in her Rule 7 response letter;

- The positive testimonials received on Dr Bilton's behalf;

- The clinical context in which the failings occurred.

10. In relation to the last two factors, the Tribunal considered that these only offered mitigation to a limited extent. The testimonials, whilst positive, are very general in their content and do not address the specific findings made by this Tribunal. Similarly, the Tribunal was not provided with any information to suggest

that the authors were aware of the allegations against Dr Bilton. Given this, the Tribunal was not able to attach much weight to them.

11. In relation to the clinical context, the Tribunal heard from Dr E that OoH was a busy, stressful, and time-poor environment. It noted that, in addition to these regular pressures, the consultations with Patients A and B took place over the Christmas period and on a weekend respectively, when services are typically even busier than usual. The Tribunal considered that the context in which the failings occurred offered some mitigation in respect of the clinical failings, but determined that it offered no mitigation in respect of the deliberate falsification of clinical records. Further, it considered that the clinical errors made by Dr Bilton were basic in nature, and still fell below the expected standard even in a busy OoH environment.

Aggravating Factors

12. Turning next to the aggravating factors in Dr Bilton's case, the Tribunal identified and considered the following:

- It has identified two separate incidents of serious and deliberate clinical failings – Dr Bilton chose not to carry out required measurements and examinations, and this put patients at unwarranted risk of harm;

- On each of these occasions, Dr Bilton acted dishonestly in a clinical context. This dishonesty took the form of deliberate falsification of clinical records, which Dr Bilton must have known placed Patients A and B at unwarranted risk of harm because any practitioners who might need to consult the notes at a later date would be misled as to the examination and measurements she had carried out;

- Dr Bilton's dishonesty was not spontaneous. It required an element of deliberation in choosing not to undertake a proper examination or measurements, but then to complete the notes as if these had taken place;

- The lack of insight Dr Bilton has shown into her clinical decision not to carry out the required examinations and measurements, and the lack of insight into the consequences her actions could have had for both patients and colleagues;

- The lack of insight Dr Bilton has shown into her dishonest behaviour, and the impact this dishonest behaviour could have had on patients, colleagues, and public trust in the profession;

- The fact that Patient B was a two-year-old child and therefore particularly vulnerable. Whilst the duty owed by a doctor to a patient is the same regardless of their age, the fact that Patient B was so young meant that Dr Bilton's failure to carry out appropriate tests meant she could have missed an important opportunity to identify factors that Patient B was unable to communicate himself.

13. Having considered these factors, the Tribunal next went on to consider the sanctions available to it in this case, starting with the least restrictive.

No Action

14. The Tribunal first considered whether to conclude Dr Bilton's case by taking no action. It considered that there were no exceptional or extraordinary circumstances that would warrant it taking no action, and that doing so would be wholly inappropriate and inadequate given its findings in relation to impairment. Taking no action would not serve to protect the public, nor would it go any way towards marking the seriousness of Dr Bilton's misconduct.

Conditions

15. The Tribunal next considered whether an order of conditions would be appropriate. In so doing, it bore in mind that any conditions imposed must be appropriate, workable, measurable and proportionate.

16. The Tribunal had regard to paragraph 82 of the SG, which sets out that conditions are likely to be appropriate in cases 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 doctor has the potential to respond positively to remediation, or retraining, or to their work being supervised.

17. As set out above and in its earlier determination on impairment, the Tribunal has already found that Dr Bilton lacks insight into both her clinical misconduct and into her dishonesty. Whilst a period of retraining or supervision might address the clinical concerns in Dr Bilton's case, retraining or supervision would not adequately address Dr Bilton's serious dishonesty which occurred in a clinical context. The Tribunal noted that Dr Bilton has stated her intention to retire from medical practice. Given this, it considered that Dr Bilton would be unlikely to engage with any opportunity to remediate, nor was she likely to respond positively to a period of supervision.

18. Bearing in mind the above, the Tribunal determined that conditions would not be workable in Dr Bilton's case. Further, even if conditions had been workable, the Tribunal determined that they would not adequately reflect the seriousness of Dr Bilton's misconduct, nor would they serve to protect the public or uphold public confidence in the medical profession.

Suspension

19. Turning next to whether an order of suspension would be appropriate, the Tribunal had regard to paragraph 91 of the SG, which sets out that:

> 'Suspension has a deterrent effect and can be used to send 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… although this is not its intention.'

20. The Tribunal had regard to paragraph 97 of the SG, which sets out - in so far as it is relevant - that suspension may be appropriate in the following cases:

- No evidence that demonstrates remediation is unlikely to be successful;
- The Tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour;
- A serious breach of GMP, but where the doctor's misconduct is not fundamentally incompatible with their continued registration.

21. In relation to the first point, the Tribunal has already set out that remediation is unlikely to be successful given Dr Bilton's lack of insight and her stated intention to retire from medical practice. Further, Dr Bilton has seemingly not undertaken any remediation since her initial referral to the GMC, despite being aware of the GMC allegation which set out the clinical concerns.

22. In relation to insight and repetition, the Tribunal has similarly already found that Dr Bilton lacks insight into both the seriousness of her clinical failings and into her dishonest actions. Dr Bilton has not provided any evidence to indicate that she appreciates how serious her actions were, nor any evidence as to why she acted dishonestly. She has not even acknowledged that her actions were dishonest. Accordingly, the Tribunal has found that there was an ongoing risk of repetition.

23. In relation to the last factor, the Tribunal has already found – as set out in its determination on impairment – that Dr Bilton's actions constituted a serious breach of GMP. In asking whether her misconduct was fundamentally incompatible with continued registration, it had regard to paragraph 108 of the SG, which sets out that:

> '…if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession, that is incompatible with continued registration as a doctor.'

24. The Tribunal considered that, by dishonestly falsifying patient records, Dr Bilton showed a blatant disregard for the standards designed to protect members of the public and maintain high standards. Dr Bilton acted in a deliberate and reckless manner, altering the records of two patients to indicate that she had carried out examinations that she knew she had not done. Her actions put both Patients A and B at risk, and failed to uphold the high standards expected of a medical practitioner. Accordingly, the Tribunal determined that Dr Bilton's misconduct is so serious as to be incompatible with continued registration. The Tribunal therefore determined that suspension would not be appropriate in Dr Bilton's case.

Erasure

25. In confirming whether erasure was the appropriate and proportionate sanction, the Tribunal had regard to paragraph 109 of the SG, which sets out a number of factors that indicate erasure may be appropriate. The Tribunal

determined that a number of these factors were present in Dr Bilton's case, as follows:

- A particularly serious departure from the principles set out in GMP where the behaviour is fundamentally incompatible with being a doctor;

- A deliberate or reckless disregard for the principles set out in GMP and/or patient safety;

- Dishonesty;

- Persistent lack of insight into the seriousness of her actions or the consequences.

26. The Tribunal also had regard to paragraph 125 of the SG, which confirms that falsifying or improperly amending patient records is an example of dishonesty in a professional context. The Tribunal further had regard to paragraph 128 of the SG, which sets out that:

> 'Dishonesty, if persistent… is likely to result in erasure.'

27. The Tribunal gave consideration as to whether Dr Bilton's dishonesty could be classed as 'persistent'. It is arguable whether two incidents of dishonesty could properly be said to be persistent, but the Tribunal did not find it necessary to make a decision on this point. It determined that the two separate incidents of dishonesty were sufficiently serious - both individually and collectively - to necessitate a sanction of erasure.

28. The Tribunal determined that the seriousness of Dr Bilton's misconduct, which includes her dishonesty, combined with her lack of insight and her failure to engage in remediation, indicate that erasure is the appropriate and proportionate sanction in her case. It determined that a sanction lesser than erasure would not serve to mark the seriousness of Dr Bilton's dishonesty, would fail to uphold proper professional standards of conduct and behaviour, and would fail to maintain public confidence in the medical profession. Accordingly, bearing in mind the above, the Tribunal determined to erase Dr Bilton's name from the medical register.

DETERMINATION ON IMMEDIATE ORDER - 04/10/2019

1. Having determined to erase Dr Bilton's name from the Medical Register, the Tribunal next considered whether Dr Bilton's registration should be made subject to an immediate order of suspension.

2. Ms Duong submitted that an immediate order of suspension was necessary, given the findings made by the Tribunal at both impairment and sanction stage.

3. In making its decision the Tribunal has exercised its own judgment, and has taken account of the principle of proportionality. The Tribunal noted that it may impose an immediate order where it is satisfied that it is necessary for the protection of members of the public, is otherwise in the public interest, or is in the best interests of the doctor.

4. The Tribunal determined that, given its finding that erasure was necessary in order to protect the public, uphold public confidence in the medical profession, and maintain and uphold proper standards of conduct and behaviour, it followed that Dr Bilton's registration should be made subject to an immediate order of suspension. Such an order is necessary to protect members of the public, and is otherwise in the public interest.

5. This order means that Dr Bilton's registration will be suspended from the time when notification of this decision is deemed to have been served on her.

6. The substantive direction for erasure, as already announced, will take effect 28 days from when written notice of this determination has been served upon Dr Bilton, unless an appeal is made in the interim. If an appeal is made, the immediate order of suspension will remain in force until the appeal has concluded.

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

8. That concludes Dr Bilton's case.

Confirmed
Date 04 October 2019 Mr David Clark, Legally Qualified Chair

ANNEX A – 3 October 2019
DETERMINATION ON SERVICE AND PROCEEDING IN ABSENCE

Service

1. Dr Bilton is neither present nor represented at this hearing. The Tribunal had regard to the service bundle, which includes email and postal correspondence between Dr Bilton, the GMC and the MPTS in advance of this hearing.

2. The Tribunal noted that the GMC served today's hearing bundle and Notice of Allegation on Dr Bilton via email on 12 August 2019. The GMC's email set out the scheduled hearing dates (30 September to 7 October 2019), and made clear that:

> 'If you do not attend the hearing, the Tribunal may proceed in your absence and without your involvement. You should be aware that the Tribunal could impose a sanction… which could severely restrict your ability to practice…'

At 1743 on 12 August 2019, Dr Bilton replied to the GMC and confirmed that she had received this email.

3. On 27 August 2019, the MPTS served Notice of Hearing on Dr Bilton to both her registered email and postal addresses. This letter set out that:

> '…If you do not attend, and are not represented, the Tribunal can hear and make a decision about your case in your absence, under Rule 31 of the GMC (Fitness to Practise) Rules. If your fitness to practise is found to be impaired a sanction be imposed on your registration in your absence…'

The Tribunal had regard to the Royal Mail 'Track and Trace' documentation, which shows that this notice was signed for by someone named 'BILTON' on 28 August 2019.

4. Bearing the above in mind, the Tribunal was satisfied that the MPTS and the GMC have made all reasonable efforts to serve notice of today's hearing on Dr Bilton. Accordingly, it determined that service had been affected in accordance with the Rules.

Proceeding in absence

5. In deciding whether it was appropriate to proceed in Dr Bilton's absence, the Tribunal considered the principles set out in the cases of *R v Jones [2003] 1 AC 1* and *GMC v Adeogba* [2016] *EWCA Civ 162.* The Tribunal was primarily concerned with the question of fairness – to Dr Bilton, but also to the GMC and the wider public.

6. The Tribunal had regard to an email dated 5 August 2019 from Dr Bilton to the GMC, in which she wrote:

> '…After consultation with my solicitor this morning, I wish to inform you that I shall not be attending the Tribunal hearing. I have retired from practising medicine and will not be undertaking any further medical work. I honour the role of the GMC and I do not want my absence to be taken as a sign of disrespect for the proceedings…'

The Tribunal understood from this email that Dr Bilton is aware of these proceedings, and that she does not wish to attend or to participate. It noted that, whilst this email was sent prior to the MPTS serving formal Notice of Hearing on Dr Bilton, the email was sent in response to an earlier email from the GMC in relation to the hearing. Accordingly, the Tribunal was satisfied that Dr Bilton is aware of this hearing and has waived her right to attend.

7. At no time has Dr Bilton requested any adjournment of the hearing. The Tribunal inferred from this that Dr Bilton did not object to the hearing proceeding in her absence. There was no reason to believe that Dr Bilton would attend any future hearing should matters be adjourned today. Further, the Tribunal determined that adjourning would be of no benefit to Dr Bilton, nor would it be in the wider public interest given the public safety concerns in this case.

8. The Tribunal recognised that there is a disadvantage to Dr Bilton should the hearing proceed in her absence. She would not be able to question witnesses or present her own evidence. However, the Tribunal noted that it has received some evidence on Dr Bilton's behalf, including a letter from her representatives and a transcript from her IOT hearing. The Tribunal will consider this evidence fairly and appropriately, and will not draw any adverse inference from Dr Bilton's absence. Accordingly, weighing these various factors, the Tribunal determined that it was fair and appropriate to proceed with this hearing in Dr Bilton's absence.

ANNEX B – 3 October 2019
DETERMINATION ON EXCLUDING EVIDENCE

1. On Day 1 of the hearing Ms Duong, on behalf of the GMC, invited the Tribunal to exclude certain prejudicial evidence from the hearing bundle.

2. The material in question comprised documents relating to Dr Bilton's NHS Performers List status; details of the audit carried out as part of the Board's internal investigation; and parts of the IOT hearing transcript.

3. After discussion with Ms Duong, the Tribunal agreed that the evidence in question was not relevant to its decision-making process. This Tribunal is both professional and impartial, and it was satisfied that it could put the documentation in question from its mind. In reaching this decision it bore in mind the importance of fairness, especially given Dr Bilton is not present at this hearing, and it was satisfied that it could deal with Dr Bilton's case purely on the basis of the relevant evidence. The Tribunal also recognised the need for justice to be seen to be done. In this regard, the Tribunal was satisfied that an informed observer would have no residual concerns about the fairness of proceedings.

4. The Tribunal therefore excluded the evidence in question from its bundles, and put the documentation in question from its minds.

Schedule 1

TEMP- 38DEG PULSE-86/MIN RESPS- 16/MIN LUNGS CLEAR TENDER+ + 1- LEFT LOIN ENT-NAD. URINEKETONES
+ -r PROTEIN + + + BLOOD+ + r NITRITE + -n- + WBC+ * + *

Schedule 2

crying. temp- 38.8deg pulse- 136/min resps- 32/min lungs clear ears- nad red throat with cryptic tonsils and
exudate++. abdo- nad.