

PUBLIC RECORD

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

Medical Practitioner's name: Dr Laura CLARK

GMC reference number: 6147202

Primary medical qualification: MB ChB 2006 University of Manchester

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

Summary of outcome

No warning

Tribunal:

Legally Qualified Chair	Miss Gillian Temple-Bone
Lay Tribunal Member:	Ms Gail Mortimer
Medical Tribunal Member:	Dr Keith Dunnett
Tribunal Clerk:	Mx Nate Caruso-Kelly

Attendance and Representation:

Medical Practitioner:	Present, represented
Medical Practitioner's Representative:	Ms Claire Robinson, Counsel, instructed by Stephensons
GMC Representative:	Ms Katie Jones, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 26/09/2024

Background

1. Dr Clark gained her primary medical qualification in 2006 from the University of Manchester and became fully registered in August 2007. Dr Clark qualified as a GP in August 2011. Between 2011 and 2013, Dr Clark worked as a salaried GP in Oldham. In 2013, Dr Clark moved to a practice in Central Manchester as a salaried GP and later became a GP Partner, a role she held until 2017.
2. The allegation that has led to Dr Clark's hearing can be summarised as: Between 2013 and 2015, Dr Clark was employed by the Medi Slim Clinic ('the Clinic') and she knew that the Clinic distributed the Controlled Drugs Phentermine (18.6mg and 37.2mg tablets) and Diethylpropion (75mg tablets).
3. It is alleged that Dr Clark knew that XXX ('Ms A'), the nurse who owned the Clinic, was transporting the Controlled Drugs, assembling them into individual patient packs, and distributing them to patients, without the supervision of an appropriately qualified doctor. It is also alleged that Dr Clark knew that the Controlled Drugs were distributed to patients without an appropriately issued prescription, that one or more patients received them in bulk supplies, and that the stock was not properly monitored and/or recorded. Further, that during her employment at the Clinic, Dr Clark failed to raise patient safety concerns in respect of the activities of the Clinic to the appropriate authorities.
4. Finally, it is alleged that during her employment at the Clinic, Dr Clark failed to inform her Responsible Officer and/or NHS Appraiser of her employment at the Clinic, although she knew she was required to declare the full scope of her clinical work, and that this failure was dishonest.

5. Following an inspection of the Clinic on 21 September 2015 by a pharmacist clinical advisor to NHS England ('NHSE') with the assistance of the police, staff at the Clinic were found to be possibly in breach of legislation and their professional regulators' standards. Dr Clark, who was then working three hours a week on Monday evenings at the Clinic, immediately resigned her position and self-referred to the GMC on 2 October 2015. She self-referred with the assistance of her solicitor. Dr Clark provided answers to questions raised by the GMC via her solicitor on 16 October 2015, and the GMC closed the file on the investigation with no further action to be taken on 28 October 2015.

6. Following information received from the Nursing and Midwifery Council ('NMC'), police and NHSE in 2020, the GMC decided in May 2021, that a review of the closure decision from 2015 was necessary. That review took place in October 2021 when the case was re-opened and sent to a Case Examiner for a fresh decision. Dr Clark was notified of a referral to the MPTS in November 2022, seven years after the case was first closed. This hearing began on 12 September 2024, nine years after the decision to close the case.

The Outcome of Applications Made during the Facts Stage

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

8. Further, the Tribunal granted Dr Clark's application, made pursuant to Rule 34(1) of the Rules, that evidence of her 'interview' with the police on 21 September 2015 be excluded. The Tribunal's full decision on the application is included at Annex B.

9. Following the decision to exclude the evidence of Dr Clark's 'interview' with the police on 21 September 2015, the GMC made an application to withdraw paragraphs 4, 5, and 6 (b) – (i) of the Allegation, as there was no longer any evidence to support these paragraphs. Therefore, the Tribunal granted the application.

The Allegation and the Doctor's Response

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

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

1. Between 2013 and 2015, you were employed by the Medi Slim Clinic ('the Clinic'), and you knew that:
 - a. on one or more occasion, the Clinic distributed Controlled Drugs as set out in Schedule 1 (the 'Controlled Drugs');
To be determined.
 - b. without the supervision of an appropriately qualified doctor, Ms A was:
 - i. transporting the Controlled Drugs;
To be determined.
 - ii. assembling the Controlled Drugs into individual patient packs;
To be determined.
 - iii. distributing the Controlled Drugs to patients;
To be determined.
 - c. the Controlled Drugs were distributed to patients without an appropriately issued prescription;
To be determined.
 - d. one or more patients received bulk supplies of the Controlled Drugs;
To be determined.
 - e. the stock of Controlled Drugs within the Clinic was not properly maintained and/or recorded.
To be determined.

2. During your employment at the Clinic, you failed to:
- a. raise patient safety concerns in respect of the activities as described in paragraph 1 to the appropriate authorities;

To be determined.

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

To be determined.

3. You knew you were required to declare the full scope of your clinical work to your Responsible Officer and/or NHS Appraiser during your appraisals.

To be determined.

- ~~4. On 21 September 2015, you were interviewed by Cheshire Police and/or NHS England and you confirmed:~~

- ~~a. you held the key to the drug safe at the Clinic;~~
- ~~b. you were in possession of the drug safe key at all times;~~
- ~~c. you were responsible for ordering the Controlled Drugs for the Clinic;~~
- ~~d. the Controlled Drugs were always delivered to the Clinic;~~
- ~~e. you were always present when the drugs were delivered;~~
- ~~f. you signed for the delivery of the Controlled Drugs to the Clinic;~~
- ~~g. upon receiving the Controlled Drugs you and Ms A would:~~
- ~~i. count the Controlled Drugs;~~
- ~~ii. divide the Controlled Drugs into individual patient packs;~~
- ~~h. you would consult all of the Clinic's new patients.~~

Withdrawn under Rule 17(6).

- ~~5. You knew your statements at paragraph 4 were false in that you knew:~~
- ~~a. Ms A held the key to the drug safe;~~
 - ~~b. Ms A held possession of the drug safe key at all times;~~
 - ~~c. Ms A and/or Dr B were responsible for ordering Controlled Drugs for the Clinic;~~
 - ~~d. the Controlled Drugs were delivered to the home of Ms A and not to the Clinic;~~
 - ~~e. on one or more occasions:
 - ~~i. you were not present when the drugs were delivered;~~
 - ~~ii. you did not sign for delivery of the Controlled Drugs;~~
 - ~~iii. Ms A counted and distributed the Controlled Drugs into individual patient packs, and you were not present;~~
 - ~~iv. you did not consult all new patients at the Clinic.~~~~

Withdrawn under Rule 17(6).

4. Your actions as described in paragraph:
- a. 2b were dishonest by reason of paragraph 3;
To be determined.
 - ~~b. 4a were dishonest by reason of paragraph 5a;~~
Withdrawn under Rule 17(6).
 - ~~c. 4b were dishonest by reason of paragraph 5b;~~
Withdrawn under Rule 17(6).
 - ~~d. 4c were dishonest by reason of paragraph 5c;~~
Withdrawn under Rule 17(6).

~~e. 4d were dishonest by reason of paragraph 5d;~~

Withdrawn under Rule 17(6).

~~f. 4e were dishonest by reason of paragraph 5ei;~~

Withdrawn under Rule 17(6).

~~g. 4f were dishonest by reason of paragraph 5eii;~~

Withdrawn under Rule 17(6).

~~h. 4gi and 4gii were dishonest by reason of paragraph 5eiii;~~

Withdrawn under Rule 17(6).

~~i. 4h were dishonest by reason of paragraph 5iv.~~

Withdrawn under Rule 17(6).

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

To be determined.

Witness Evidence

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

- Dr C, Accountable Officer for Controlled Drugs at NHSE, dated 15 and 16 February 2024;
- Mr D, senior pharmacy professional advisor to NHSE, dated 8 February 2023 and 14 December 2023;
- DC E, Detective Constable in the Drug Expert Witness Unit at Cheshire Constabulary, dated 23 August 2023, 27 October 2023, 6 March 2024 and an undated statement;
- Dr F, Chief Medical Officer at Manchester and Trafford Local Care Organisations, GP and GP Appraiser, dated 16 February 2024.

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

- Patient B, dated 17 March 2023.

13. Dr Clark provided three statements dated 18 December 2015, and one dated 14 August 2024. She gave oral evidence at the hearing.

Documentary Evidence

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

- Record of police interview with Dr Clark, dated 18 December 2015 and 22 January 2016, including three prepared statements dated 18 December 2015;
- Police statement of Dr C, with exhibits, dated 20 July 2017;
- Police statement of Patient B, dated 14 July 2017;
- Police statement of Mr D, undated;
- Controlled Drugs declaration form, dated 16 March 2015;
- Email exchanges between Dr C, Mr D and DC E, dated between June and September 2015;
- Witness statement provided by Mr D to the NMC, undated;
- Schedules of drugs stock checks, order forms and delivery notes, dated between 2013 and September 2015;
- Report by law firm Blake Morgan, prepared for the police investigation, dated 5 January 2017;
- NICE Guidelines: Obesity: Identification, assessment and management, November 2014;
- NICE Guidelines: Controlled drugs and drug dependence, 2023;
- NICE Guidelines: Controlled drugs: safe use and management, April 2016;
- Good Medical Practice 2006;
- Good Medical Practice 2013;
- Good Practice in Prescribing and Managing Medicines 2013;
- Dr Clark's annual appraisal, dated 26 September 2014;
- Dr Clark's self-referral to the GMC, dated 2 October 2015;
- Letter to Dr Clark from the GMC, dated 16 October 2015;
- Medical Case Examiner's Advice undated but received 7 April 2021;
- Rule 12 Decision dated 19 May 2021; and
- Rule 12 Decision dated 6 October 2021.

The Tribunal's Approach

15. In reaching its decision on facts, the Tribunal has borne in mind that the burden of proof rests on the GMC and it is for the GMC to prove the Allegation. Dr Clark does not need

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

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

The Tribunal's Analysis of the Evidence and Findings

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

Paragraph 1(a)

18. The Tribunal noted the evidence of Dr Clark, in which she accepted that she had worked at the Clinic between 2013 and 2015. It then went on to consider whether Dr Clark knew, during her employment at the Clinic, whether the Clinic distributed Controlled Drugs, namely Phentermine and Diethylpropion.

19. The Tribunal took into consideration the absence of documents concerning the Clinic due to the passage of time. This included the 'induction bundle' described variously as voluminous and comprehensive; the Standard Operating Procedure for MediSlim referred to by Dr C from the Clinic inspection in 2015; patient records and medical records. When available it was noted by Dr C that none of the documents referred to the drugs as being Controlled Drugs. Regrettably, without sight of those documents, the Tribunal cannot rely on them to assist Dr Clark's contention that there was a professionalism about the Clinic apparent from the information she was given and the use of forms, patient records and medical records, nor to support the case of the GMC that Dr Clark should have conducted her own independent enquiries in the light of such information.

20. The Tribunal considered the various accounts given by Dr Clark about her knowledge of the drugs being supplied to patients by the Clinic. In her first police interview on 18 December 2015, Dr Clark provided several prepared statements, in which she stated:

‘When I started my role, the owner of the clinic [Ms A], provided me with a manual containing the processes within the clinic with regards to seeing patients. The folder, in summary, gave information with regards to what the patients received in terms of information. It provided information on the medications Phentermine and Diethylpropion and the MHRA information about these medications. The fact that it included regulatory information led me to believe the clinic was being properly run and fulfilled any regulatory requirements. In addition to this I was informed that the clinic had been subject to an inspection by a pharmacist and was meeting the necessary requirements.

...

In respect of the medication prescribed I followed existing procedures that were in place when I joined. The clinic had available 3 preparations, I assessed the patient and prescribed from the available medication, if appropriate. In respect of stock control, [Ms A] would transfer the figures and I had no reason not to trust them. I have no knowledge of transporting medication between the clinics or who would be responsible for them.’

21. The Tribunal then considered the account given by Dr Clark in her second police interview on 22 January 2016, in which she stated:

‘For medication, I was never invited to be involved other than stock checks in... looking after medicines, requisitions, I was, the medicines were just there and there was another doctor in the clinic that was running it who was reducing their hours, so my slot, if you like, was available, or like a locum doctor ...

5Q is a clinical guidance, this is the clinical guidance information that was given on the 2 medications, phentermine and diethylpropion. Dated 2004 at the top, at the bottom 2004, review 2009, and information referencing the MHRA ... It’s got references to the OMA about safety and the basic, the medications were appeared to be prescribed. ... this information cemented for me that everything was in place that was required, that it fulfilled any requirements that were needing to do so. And again further referencing about the medicines and control agency about approval for safety and efficacy [sic]’

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

‘During the course of the induction with the Clinic, Ms A provided me with a folder which included information regarding the clinic ... the folder also contained information about the medication which was used, including listed side effects, dosages and a background about how they controlled appetite. It contained references to published articles. The document titled ‘Clinical Guidance Notes on the use of Phentermine and Diethylpropion’ included in the pack I received is enclosed. ... in the induction documents that Ms A provided, there was nothing to suggest that the medications used by the Clinic were controlled drugs and in terms of categorisation, nothing stood out to me to suggest that these drugs were in fact controlled drugs. I accept that I did not look into the medication further. Nothing about the medication I was prescribing felt extraordinary and everything was so complete and well presented, that I did not feel more research was necessary. The way in which the drugs were managed at the Clinic did not alert me to the fact that these drugs were unusual or could be controlled drugs.’

23. The Tribunal noted that in her initial account to police in 2015, her second account in 2016, and her statement prepared for these proceedings, Dr Clark repeated her assertion that she relied on the information provided by Ms A at her induction in 2013. The Tribunal found that Dr Clark’s account of her reliance on this information was consistent, including her oral evidence to the Tribunal.

24. The Tribunal then considered the documents which were available from the induction pack. The Tribunal had been provided with the version of the document labelled 5Q by the police, entitled ‘Clinical Guidance’ that Dr Clark had described in her police interview. It was barely legible following photocopying and the original had been lost. The Tribunal were provided with a later copy, which seems to be the same document, updated in 2014. The Tribunal was mindful that this may not be identical to that which was included in the induction pack, however it had limited information available to it, given the passage of more than nine years since the 2015 inspection.

25. The ‘Clinical Guidance’ stated as follows,

‘Phentermine and Diethylpropion are Licensed by the MHRA The Committee on Safety of Medicines has advised that, as with Amfepramone, there are no major public health

concerns in relation to Phentermine and Diethylpropion products remaining on the UK market.

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

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

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

Prescribing Phentermine and Diethylpropion

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

The MHRA have issued UK licences for

- Phentermine 15mg and 30mg*
- Diethylpropion 25mg*

Diethylpropion 75mg can be prescribed under a special licence'

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

'the information I was provided with felt comprehensive and detailed. The Clinic felt established, and I was aware that another Doctor worked at the Clinic before I began, and it was their work that was recorded and used as an example in the pack. Even the physical appearance of the building the Clinic was situated in felt professional. Ms A's office walls were adorned with certificates and qualifications. I estimate that there

were around 10 certificates in total, and I never doubted that the Clinic's activities were legitimate.'

27. The Tribunal found that Dr Clark had placed a great deal of trust in Ms A and the information she provided. The Tribunal considered that Ms A was a nurse with several decades of experiences, a marked difference from Dr Clark. When she began work at the Clinic in 2013, Dr Clark had been qualified as a GP for two years and during that time had taken a period of XXX leave.

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

29. The Tribunal further considered that the Clinic had been operating for more than 10 years by this time and was well established. The Tribunal was mindful that Dr Clark accepted she had never prescribed these drugs in her NHS practice. However, it found that the long-standing nature of the clinic and the large number of patients using it would indicate to Dr Clark that these drugs were acceptable for her to prescribe, albeit in an 'off-label' manner.

30. The Tribunal found that Dr Clark has given a consistent and clear account of her reasons for not making further enquiries with Ms A about the drugs. She stated to the police in 2015 and 2016 that she had not conducted independent research into the drugs. During her oral evidence Dr Clark accepted that she should have followed the usual steps to research the medication being prescribed, and she accepted that, if she had done so, she would have been aware that the drugs she was being asked to prescribe were Controlled Drugs.

31. The Tribunal was surprised that Dr Clark had not done such research, which may be regarded as routine by many medical professionals, for example, looking up the drugs in the British National Formulary ('BNF'). The BNF is the authority on the selection and use of medicines. The Tribunal accepted the submission that Dr Clark should have researched these drugs and the relevant guidelines on the handling and management of Controlled Drugs.

However, the Tribunal found it was not unreasonable for Dr Clark to place her trust in Ms A as a senior, more experienced nurse, who had been running the Clinic, apparently successfully, for many years with the aid of other doctors.

32. The Tribunal then considered whether the events of August 2015 should have alerted Dr Clark to the fact that the drugs were Controlled Drugs. The Tribunal considered Dr Clark's statement to police in December 2015, in which she set out,

'In late July 2015 the owner informed me that she had been liaising with the CQC about registration. I was not made aware of any impending inspections from any organisation. I was informed by the owner that a pharmacist would need to visit the clinic to 'check our storage'. This was done via a text message ... from late July onwards the owner said she was updating some of the clinic policies and it was brought to my attention that there would need to be some process changes including the receiving of medications. She also mentioned I may be required to assemble the medications but all of this was dependent on the pharmacist's visit to the clinic.'

33. The Tribunal noted text messages sent to Dr Clark from Ms A in July and August 2015,

*'... going to register clinics with care quality commission as guidelines have changed it's a bit of a pain and an expense but it at least we will be registered! ...
...the community ACDO pharmacist will want to check out storage etc and we will both have to be there it will be in a few weeks is there any Thursday or Friday you can't do? It's a pain cos they can only do Wednesday afternoon or Thursday and Friday! Just glad when it's sorted but at least we will be registered just a bit off hard work at the moment ha ...
... Laura hope you are ok! Our medicines management is now on Monday the 21st of September at 14.00hrs I hope this is ok for you it just means coming into the clinic bit earlier! ...'*

34. The Tribunal considered further text messages throughout August and September which referred repeatedly to a possible CQC registration and inspection from a pharmacist. The Tribunal found that it was reasonable for Dr Clark to take Ms A and the information provided at face value and believe her texts that the inspection was in regard to a possible CQC registration. The Tribunal bore in mind that, at this time, Dr Clark had no reason to believe that Ms A had been dishonest towards her about the operation of the Clinic or her role.

35. The Tribunal noted the mention of the ACDO in one message from Ms A. It was mindful that this stands for ‘Accountable Controlled Drugs Officer’, who, in this case, was Dr C. The Tribunal considered that this is not a common abbreviation which one would be expected to know, nor would it have alerted Dr Clark to the potential use of Controlled Drugs in the Clinic, as it was used in the context of a CQC inspection. The Tribunal further took into account that Ms A had used the words ‘community’ and ‘pharmacist’ which further confuse the meaning of the term ACDO. The Tribunal found that Ms A had obfuscated the meaning of the term and it was unlikely to have alerted Dr Clark to the use of Controlled Drugs in the Clinic.

36. The Tribunal then considered the requisition or order form which was signed by Dr Clark. The form had the appearance of a letter, headed with the Medislim ‘logo’, address and telephone number. The letter stated,

*‘Please supply the following medication for individual patient use:-
4 x 1000 Phentermine Hydrochloride 37.2mg SR tablets “Special”*

*Yours sincerely
(signature)*

*Dr Laura Clark Recieved 15/8/15
GMC 6147202 (signature)’*

37. Above the note ‘recieved 15/8/15’ was a darkened box which appeared to be a sticker affixed to the letter, that stated:

*‘PHENTERMINE HYDROCHLORIDE 37.2mg
EQUIVALENT TO 30mg PHENTERMINE
SLOW RELEASE TABLETS
1000 Tablets CD
...
Batch No: 15-005-092-0100 Expiry: 04/2017
...’*

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

39. The Tribunal bore in mind that Dr Clark accepted that the signature on the left was hers but denied that she had written her GMC number or signed and dated the document on the right-hand side of the page. She further denied that she had ever seen the sticker which contained the abbreviation 'CD'. The Tribunal was mindful that this was the only requisition form which had been signed by Dr Clark, and it had also been provided with dozens of requisition forms signed by Dr G over the period 2013-2015. It therefore took these into account when considering the legitimacy of Dr Clark's signature as confirmation of receipt of the drugs.

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

41. The Tribunal noted that the drug requisition form dated 24 September 2014 was set out as a letter with the MediSlim letterhead. The sticker was also the same as set out above, however it had been affixed to the page over the words 'Yours sincerely', and Dr G's signature. The typed words and signature were visible through the sticker, meaning it was transparent. The Tribunal concluded that it was more likely than not that Ms A was removing transparent stickers from the packaging on the medication after it had been received, and placing the sticker on the requisition form, before decanting the medication into smaller 'pots' for patient use.

42. The Tribunal therefore found that at the time Dr Clark signed the order form, it is unlikely that the sticker which contained the 'CD' marking was on it and therefore she could not know the drugs were Controlled Drugs by virtue of this requisition form. It is more likely that the sticker was affixed after the drugs had been received by Ms A, whom it is accepted by both parties was ordering the drugs to be delivered to her home.

43. Finally, the Tribunal considered the form produced by Dr C which was received from the Clinic in March 2015. Dr C, in her evidence, stated that she, or a colleague, had conducted a Google search for local slimming clinics and sent each clinic a form and declaration setting out how they were prescribing, managing and storing Controlled Drugs. This form had been completed and returned to Dr C, setting out that the Clinic prescribed, supplied, sold, held stock of and disposed of Controlled Drugs – namely Phentermine and

Diethylpropion. The form was apparently signed by Dr Clark. The declaration section appeared as follows,

<i>'Name</i>	<i>Signature</i>	<i>Name and registration</i>
MEDI-SLIM	(Signed)	number (if healthcare
Address		professional) Please Print
MEDISLIM		DR LAURA CLARK
[XXX]		GMC 6147202
CHESHIRE		
XXXXXXX		
[XXX]		
 <i>Date of signing</i>		
16/3/15'		

44. The Tribunal took into account Dr Clark's evidence, that she had no recollection of signing this form, and would not have signed it as she did not believe she was prescribing Controlled Drugs at the Clinic. She further stated that the first time she saw this document was in preparation for these proceedings last year as it was exhibited by Dr C. The document had not formed part of the police investigation as it had been obtained in March 2015, several months before Patient B's attendance at hospital triggered NHSE's investigation of the Clinic.

45. The Tribunal was concerned that, given the passage of nine years since the document was created, Dr Clark was at a significant disadvantage in disproving that she had signed the form. The Tribunal took into account that Dr Clark was open with the police in 2015 and 2016, and it believed that she did not know the drugs were Controlled Drugs. Additionally, a closer examination of the form showed that the writing next to the word 'Cheshire' marked ~~XXXXXXX~~ was an attempt to cross out the post code of Ms A's home address. The Tribunal therefore found that it was more likely than not that the form had been filled out by Ms A and submitted to the ACDO by her.

46. In summary, the Tribunal found that Dr Clark had trusted the information provided to her by Ms A at her induction. The Tribunal had limited extracts from this induction pack; however, the 'Clinical Guidance' note which it was provided with did not mention that the drugs used in the Clinic were Controlled Drugs.

47. Furthermore, the Tribunal found that the professional and long-established nature of the Clinic, which had employed two doctors prior to Dr Clark, would have provided a false sense of legitimacy to Dr Clark. The Tribunal bore in mind that Dr Clark was a recently qualified GP and had never worked in a private clinic previously. The Tribunal determined that, in these circumstances, it was not unreasonable for Dr Clark to have been unaware that the drugs she was prescribing to patients were Controlled Drugs.

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

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

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

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

Paragraph 2(a)

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

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

Paragraph 2(b)

53. The Tribunal considered Dr Clark's witness statement, in which she stated,

'It is correct that I did not inform my appraiser that I was working at the Clinic during my appraisal process in 2014. As such my Responsible Officer will not have been made aware of this fact. I did not appreciate that I was required to raise this during my appraisal.'

54. The Tribunal also had regard to the appraisal submitted in September 2014, which makes no mention of the Clinic. At the start of this hearing, Dr Clark admitted the fact of her non-disclosure of this information during her Appraisal.

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

Paragraph 3

56. The Tribunal first took into account Dr Clark's witness statement, in which she stated,

'it is important to note that these events took place a decade ago. At this time, I had only ever completed two GP appraisals since 2011 when I joined the GP Register. Due to my inexperience, I was not aware that I was required to declare all private clinical posts in the NHS GP appraisal system.'

57. The Tribunal next considered a text message which Dr Clark sent to Ms A on 19 August 2015, when Ms A asked if she had discussed the Clinic at her last revalidation,

'I will discuss Medislim with my appraiser this Sept – didn't do before as I didn't know I had to as I think just counts as locum work. Hope all this helps.'

58. The Tribunal also considered Dr Clark's appraisal for 2015 which took place on 26 September 2014. In oral evidence, Dr F, Dr Clark's appraiser, explained that it took place earlier than usual due to Dr Clark going on XXX leave. The next appraisal date was Friday 25 September 2015, just days after the inspection of the Clinic on 21 September 2015. Whereas Dr F relied on the copy of the appraisal which took place on 26 September 2014 [referred to as the 2015 appraisal] to confirm Dr Clark had not told him of her employment at the Clinic, he did not know the date she did inform him due to the absence of the later appraisal documents.

59. The Tribunal noted the statement of Dr F, who stated,

'I confirm that Dr Clark did not inform me of her employment at Medi Slim Clinic in her 2015 appraisal. I recollect that she did inform me of her involvement in a slimming clinic, but that this was declared and discussed in a subsequent appraisal.'

Once the appraisal documents are signed off, they are returned electronically to the RO and the appraiser should not keep any records. Therefore, I do not have access to

any subsequent records to look back on to confirm when exactly Dr Clark informed me of her work at the slimming clinic. I am therefore unable to confirm when it was exactly that Dr Clark declared her work for Medi Slim, but I can confirm that it was definitely not declared in the 2015 appraisal. My recollection is that this was discussed in Dr Clark's next appraisal. However, as mentioned, due to the fact Dr Clark was about to go on [XXX] leave, I am not entirely sure when the next appraisal would have taken place.'

60. The Tribunal noted that Dr F was asked in oral evidence about the dates and clarified that the '2015 appraisal' he was referring to was the appraisal undertaken in September 2014, which was intended to be forward looking into 2015. The Tribunal therefore found that Dr Clark had declared her position at the Clinic to Dr F in September 2015.

61. With regard to the requirement to inform her Responsible Officer, the Tribunal noted that the system of Appraisals and Responsible Officers had only been initiated by the GMC in 2012. The Tribunal therefore found that while the scheme was in its infancy in 2014, the requirements may not have been clear to all registrants.

62. The Tribunal found that, while Dr Clark should have known that she was required to declare her role at the Clinic to her Appraiser, it was reasonable that she believed she did not need to declare private work. Furthermore, the Tribunal found that her contemporaneous message to Ms A showed that that was her belief at the time, and she corrected the position at her next appraisal, shortly after the inspection in September 2015. The Tribunal therefore determined that Dr Clark did not know that she was required to declare the full scope of her clinical work to her NHS Appraiser in her appraisals, when employed at the Clinic.

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

Paragraph 4(a)

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

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

The Tribunal's Overall Determination on the Facts

66. The Tribunal has determined the facts as follows:

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

1. Between 2013 and 2015, you were employed by the Medi Slim Clinic ('the Clinic'), and you knew that:
 - a. on one or more occasion, the Clinic distributed Controlled Drugs as set out in Schedule 1 (the 'Controlled Drugs');
Determined and found not proved.
 - b. without the supervision of an appropriately qualified doctor, Ms A was:
 - i. transporting the Controlled Drugs;
Determined and found not proved.
 - ii. assembling the Controlled Drugs into individual patient packs;
Determined and found not proved.
 - iii. distributing the Controlled Drugs to patients;
Determined and found not proved.
 - c. the Controlled Drugs were distributed to patients without an appropriately issued prescription;
Determined and found not proved.
 - d. one or more patients received bulk supplies of the Controlled Drugs;
Determined and found not proved.
 - e. the stock of Controlled Drugs within the Clinic was not properly maintained and/or recorded.
Determined and found not proved.

2. During your employment at the Clinic, you failed to:
- a. raise patient safety concerns in respect of the activities as described in paragraph 1 to the appropriate authorities;

Determined and found not proved.

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

Determined and found proved.

3. You knew you were required to declare the full scope of your clinical work to your Responsible Officer and/or NHS Appraiser during your appraisals.

Determined and found not proved.

- ~~4. On 21 September 2015, you were interviewed by Cheshire Police and/or NHS England and you confirmed:~~

- ~~a. you held the key to the drug safe at the Clinic;~~
- ~~b. you were in possession of the drug safe key at all times;~~
- ~~c. you were responsible for ordering the Controlled Drugs for the Clinic;~~
- ~~d. the Controlled Drugs were always delivered to the Clinic;~~
- ~~e. you were always present when the drugs were delivered;~~
- ~~f. you signed for the delivery of the Controlled Drugs to the Clinic;~~
- ~~g. upon receiving the Controlled Drugs you and Ms A would:~~
- ~~i. count the Controlled Drugs;~~
- ~~ii. divide the Controlled Drugs into individual patient packs;~~
- ~~h. you would consult all of the Clinic's new patients.~~

Withdrawn under Rule 17(6).

- ~~5. You knew your statements at paragraph 4 were false in that you knew:~~
- ~~a. Ms A held the key to the drug safe;~~
 - ~~b. Ms A held possession of the drug safe key at all times;~~
 - ~~c. Ms A and/or Dr B were responsible for ordering Controlled Drugs for the Clinic;~~
 - ~~d. the Controlled Drugs were delivered to the home of Ms A and not to the Clinic;~~
 - ~~e. on one or more occasions:
 - ~~i. you were not present when the drugs were delivered;~~
 - ~~ii. you did not sign for delivery of the Controlled Drugs;~~
 - ~~iii. Ms A counted and distributed the Controlled Drugs into individual patient packs, and you were not present;~~
 - ~~iv. you did not consult all new patients at the Clinic.~~~~

Withdrawn under Rule 17(6).

4. Your actions as described in paragraph:
- a. 2b were dishonest by reason of paragraph 3;
Determined and found not proved.
 - ~~b. 4a were dishonest by reason of paragraph 5a;
Withdrawn under Rule 17(6).~~
 - ~~c. 4b were dishonest by reason of paragraph 5b;
Withdrawn under Rule 17(6).~~
 - ~~d. 4c were dishonest by reason of paragraph 5c;
Withdrawn under Rule 17(6).~~

~~e. 4d were dishonest by reason of paragraph 5d;~~

Withdrawn under Rule 17(6).

~~f. 4e were dishonest by reason of paragraph 5e;~~

Withdrawn under Rule 17(6).

~~g. 4f were dishonest by reason of paragraph 5eii;~~

Withdrawn under Rule 17(6).

~~h. 4gi and 4gii were dishonest by reason of paragraph 5eiii;~~

Withdrawn under Rule 17(6).

~~i. 4h were dishonest by reason of paragraph 5iv.~~

Withdrawn under Rule 17(6).

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

To be determined.

Determination on Impairment - 27/09/2024

67. 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 Clark's fitness to practise is impaired by reason of misconduct.

The Evidence

68. The Tribunal has taken into account all the evidence received during the facts stage of the hearing, both oral and documentary. In addition, the Tribunal received further evidence as follows.

69. Dr Clark provided her own reflective statement dated 26 September 2024.

70. The Tribunal also received in support of Dr Clark, four testimonials from employers and colleagues, all of which it has read.

Submissions

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

72. On behalf of Dr Clark, Ms Robinson submitted that a finding of misconduct is not necessary.

The Relevant Legal Principles

73. 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.

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

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

The Tribunal's Determination on Impairment

Misconduct

76. The Tribunal has found, in its determination on the facts, that Dr Clark failed to inform her Responsible Officer and/or NHS Appraiser of her employment at the Clinic, but that she did not know she was required to do so. It found that she should have known, but the formalised appraisal system and the Responsible Officer structures were in their infancy and so she did not. The Tribunal noted the glowing references to the quality of her work by her colleagues and is keenly aware of the reflection she has carried out since these events. The Tribunal found that is not conduct that fellow professionals would find deplorable, and therefore it does not amount to misconduct.

77. Following her self-referral to the GMC in 2015 Dr Clark was informed that her case was closed, and she would rightly have assumed that there would be no further

consequences. Since August 2022, however, when she was informed of the MPT proceedings, she has had to endure uncertainty and the potentially serious consequences of these proceedings. She has worked hard to progress her career and the testimonials are evidence of her diligence and exemplary work as a GP. She is a valued and supportive team member at her GP practice, impressing her colleagues over the years, in spite of the stress of these unresolved allegations. They testify to her remarkable resilience, her honesty and integrity.

78. The circumstances of the reopening of the case in 2021 and the delay in hearing this case, until 2024, has caused concern to the Tribunal. Whilst the Tribunal acknowledged the responsibility of the GMC to properly regulate and investigate every referral, the delay in this case is entirely due to the failure of the GMC to properly investigate matters in 2015. The Tribunal acknowledge that it will have adversely affected Dr Clark's personal and working life.

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

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

Determination on Warning - 27/09/2024

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

Submissions

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

83. On behalf of Dr Clark, Ms Robinson submitted that a warning was not necessary in this case.

The Tribunal's Determination on Warning

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

'16. A warning will be appropriate if there is evidence to suggest that the practitioner's behaviour or performance has fallen below the standard expected to a degree warranting a formal response by the GMC or by a MPTS tribunal. A warning will therefore be appropriate in the following circumstances:

- there has been a significant departure from Good medical practice, or*
- there is a significant cause for concern following an assessment of the doctor's performance*

...

20. The decision makers should take account of the following factors to determine whether it is appropriate to issue a warning.

a. There has been a clear and specific breach of Good medical practice or our supplementary guidance.

b. The particular conduct, behaviour or performance approaches, but falls short of, the threshold for the realistic prospect test or in a case before a tribunal, that the doctor's fitness to practise has not been found to be impaired.

c. A warning will be appropriate when the concerns are sufficiently serious that, if there were a repetition, they would likely result in a finding of impaired fitness to practise.

Warnings may be an appropriate response to any type of allegation (subject to the comments in paragraph 7 regarding cases solely relating to a doctor's health); the decision makers will need to consider the degree to which the conduct, behaviour or performance could affect patient care, public confidence in the profession or the reputation of the profession. If the decision makers consider that a warning is appropriate, the warning should make clear the potential impact of the conduct, behaviour or performance in question, accordingly.

d. There is a need to record formally the particular concerns (because additional action may be required in the event of any repetition).

...

26. In deciding whether to issue a warning the decision maker should apply the principle of proportionality, weighing the interests of the public with those of the practitioner. It is important to bear in mind, of course, that warnings do not restrict the practitioner's practice and should only be considered once the decision maker is satisfied that the doctor's fitness to practise is not impaired.

...

32. If the decision makers are satisfied that the doctor's fitness to practise is not impaired or that the realistic prospect test is not met, they can take account of a range of factors to determine whether a warning is appropriate. These might include:

- a. the level of insight into the failings*

- b. a genuine expression of regret/apology*
- c. previous good history*
- d. whether the incident was isolated or whether there has been any repetition*
- e. any indicators as to the likelihood of the concerns being repeated*
- f. any rehabilitative/corrective steps taken*
- g. relevant and appropriate references and testimonials.'*

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

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

87. That concludes the case.

ANNEX A – 16/09/2024

Application to stay proceedings as an abuse of process

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

Submissions

On behalf of Dr Clark

89. On behalf of Dr Clark, Ms Robinson submitted that the proceedings should be stayed. With regard to delay, Ms Robinson submitted that it has been between nine and 11.5 years since Dr Clark was employed by Medislim. She submitted that various documents and records are now no longer available, including the inspection report produced by Mr D. She submitted that it is unrealistic for any witness to recall exactly what was said or done. She submitted that the delay has consequences which put Dr Clark at a significant disadvantage and this prejudice cannot now be rectified by the 'trial process'. She submitted that lost documents will not suddenly be found, and faded memories will not be able to make up for the fact that the initial interview with Dr Clark was not properly recorded. She further submitted that this is important in a case where almost all the dishonesty allegations are founded on an interview that took place nine years ago and was not recorded. She therefore submitted that a stay is necessary in this case because it is no longer possible for Dr Clark to receive a fair trial.

90. With regard to the integrity of the system, Ms Robinson submitted that by the time of the NMC referral in 2020, more than five years had elapsed since the events giving rise to the allegations and since Dr Clark self-referred to the GMC. She submitted that the five-year rule provides a safeguard against the pursuit of allegations which are more than five years old unless it is in the public interest to investigate them and that this is in place to ensure a fair process without there being any disadvantage to the registrant.

91. Ms Robinson further submitted that the review of the decision to close the case against Dr Clark in 2015 should have been reviewed by 2017, under Rule 12(4) of the Rules, but it did not take place until 2021. She submitted that the factors taken into account when deciding that exceptional circumstances applied which accounted for this delay are nothing more than circumstances which are routinely encountered.

92. Ms Robinson submitted that the decision to review the closure of the file in respect of Dr Clark relies on what is asserted to be new evidence from the NMC, the police and the Medical Case Examiner. She submitted that this is not new evidence and was certainly not ‘truly novel’. She submitted that information provided in 2020 and 2021 was about exactly the same inspection and clinic as self-referred by Dr Clark in 2015. She submitted that the GMC were aware of the involvement of NHS England and the police in 2015.

93. Finally, Ms Robinson submitted that although the decision to reverse the closure of the file on Dr Clark was made after the decision of the NMC to strike Ms A off the nursing register, and this information was relied upon to justify the reopening of the case against Dr Clark under Rule 12, the GMC has not sought to adduce the NMC decision in the current proceedings. She submitted that the sanction decision in regard to Ms A is entirely separate and it would be wholly wrong to suggest that it should have any relevance to a decision in Dr Clark’s case. She therefore submitted that it is necessary in this case to stay proceedings to protect the integrity of the system.

On behalf of the GMC

94. On behalf of the GMC, Ms Jones opposed the application to stay proceedings against Dr Clark on the basis of an abuse of process. With regard to delay, Ms Jones conceded that the events before the Tribunal occurred a good deal of time ago, however she submitted that the Tribunal should consider the following factors: the witnesses have had access to contemporaneous documents while preparing their witness statements, documents are available which include notes, correspondence, interview notes, transcripts, and witness statements. The registrant’s case can be put to the relevant witnesses who are available to give evidence. Concerns can be addressed in submissions, and concerns about delay can be addressed in directions to the Tribunal at the conclusion of the facts stage.

95. Ms Jones submitted that the Tribunal should take these factors into account and conclude that it is clear in this case that Dr Clark has failed to demonstrate that the delay and any prejudice caused by it is such that it would be impossible for Dr Clark to receive a fair trial.

96. With regard to protecting the integrity of the system, Ms Jones submitted that the procedures under Rule 12, the decision to review the closing of the case against Dr Clark, were followed entirely appropriately. She submitted that the decisions show full consideration was given to the relevant legal test and associated guidance. She further submitted that the conclusion that the original decision maker, who closed the case against

Dr Clark in 2015, was incorrect was clearly appropriate given that no enquires were made with the police or NHS England at that time.

97. In addition, Ms Jones submitted that the decision maker who reviewed the case against Dr Clark had additional information provided by the NMC, the police, and the Medical Case Examiner's advice and this may have been what led to a different decision. She submitted that the information provided was significantly different to the information which came from Dr Clark in 2015. If the GMC had been aware in 2015 that a fellow regulator and the police had raised concerns about Dr Clark and had it been in possession of the Medical Case Examiner's view, there is a high probability that a different decision would have been made at that time. She submitted that this means that the decision of the decision maker to class this as new information which may have led to a different decision was entirely reasonable.

98. Ms Jones further submitted that it was in the public interest that the matter be reopened given the seriousness of the matters which involved inappropriate prescription, storage and distribution of controlled drugs and potential fitness to practise concerns. She further submitted that, given the decision to review the closure was made more than two years after the closure, it was right that the decision maker considered whether there were exceptional circumstances. She submitted that the further referral from another regulator and the police, such as occurred in 2021, is a circumstance that is out of the ordinary and is not regularly or routinely encountered.

99. Finally, Ms Jones submitted that in addition to the evidence from the NMC and the police, the decision maker considered further comments that had been made on behalf of Dr Clark and explained how they factored those into the decision-making process. They had explained why they decided there was new information that may have led to a different outcome and that a fresh decision was necessary in the public interest. She submitted that this decision was entirely reasonable in all the circumstances.

100. In summary, Ms Jones submitted that the decision to review the case against Dr Clark was entirely reasonable and no stay is necessary to protect the integrity of the system. She submitted that the matters which the defence seek to rely on in this case fall short of the very high hurdle that is required in order for it to be appropriate for the Tribunal to take the exceptional course of exercising its discretion to allow a stay on the grounds of an abuse of process.

The Relevant Legal Principles

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

- (i) The Tribunal has a discretion to stay the proceedings:
 - (a) where it will be impossible to give the registrant a fair hearing and
 - (b) where a stay is necessary to protect the integrity of the system
- (ii) Stays should only be employed in exceptional circumstances
- (iii) The Tribunal must when deciding whether to stay the proceedings be satisfied that a continuation of the hearing of the allegations would cause the registrant serious prejudice AND
- (iv) weigh the unfairness, if any, towards the registrant and the public interest in the integrity and fairness of the process, against the public interest in ensuring that standards are upheld

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

- (i) where it will be impossible to give the accused a fair trial, and
- (ii) where it offends the court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case.

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

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

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

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

The Tribunal’s Decision

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

108. The Tribunal was not satisfied that the missing documents, including the inspection report and patient records, prevented Dr Clark from having a fair trial and from putting her case to the Tribunal. The allegation against Dr Clark does not rely upon patient records and both the Pharmacist from NHS England who conducted the inspection and DC E who accompanied him both made notes at the time and witness statements thereafter. Both witnesses can attend to be cross-examined. The Tribunal can take into account the missing documents when considering the evidence as a whole, including when assessing the strength or weakness of the GMC’s case. The Tribunal therefore did not find that the missing documents amounted to an abuse of process.

109. The Tribunal noted that to establish an abuse of process there is a need for the Tribunal to identify specific evidence or witnesses lost because of the delay, and there must be a specific prejudice over and above the impact of the passage of time on the memory of witnesses. The Tribunal found that the concerns raised as to the delay of nine years between the events and these proceedings can be mitigated against by consideration of the contemporaneous documents which are available and the oral cross-examination of witnesses and Dr Clark. Further, a direction can be made to the Tribunal in legal advice to properly take into account the effect that the delay may have had upon the memories of the witnesses which will ensure that issues of delay alone do not prejudice Dr Clark such that she cannot receive a fair hearing. The Tribunal therefore did not find that the delay in these proceedings amounted to an abuse of process.

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

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

112. The Tribunal bore in mind throughout that it was not for the Tribunal to review the GMC procedures, to declare that the GMC decisions or procedures are unlawful. The Tribunal reminded itself that there needed to be exceptional circumstances to find an abuse of process. The Tribunal set out the chronology of events in regard to Dr Clark's case.

113. The events which have given rise to these proceedings occurred in September 2015 when the Medislim clinic (there were two clinics) where Dr Clark was working part-time was inspected. Dr Clark self-referred to the GMC on 2 October 2015. Dr Clark answered further questions from the GMC through her solicitors. The GMC were aware that the police and NHS England were involved, and that the investigation involved a nurse who had been treating patients with controlled drug medications without an appropriate licence and failing to adhere to standards for the safe handling and storage of those drugs. The GMC closed the matter on 28 October 2015 and informed Dr Clark it would be taking no further action against her.

114. Dr Clark subsequently gave two interviews to the police in December 2015 and January 2016 and provided three witness statements. The decision to close the case against Dr Clark was reviewed in May 2021, and an Assistant Registrar made the decision that a review into the closing of the case was necessary. In October 2021, a decision was made for a Case Examiner to make a fresh decision about whether to investigate the concerns about Dr Clark. The GMC did not investigate the matters in 2015, and only re-opened the case in 2021 after a referral was received from the NMC concerning Ms A, the owner of two Medislim clinics.

115. Dr Clark was not informed of the GMC investigation having been re-opened until November 2022 when she received notice of the allegations in a 'Rule 7 letter'.

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

117. The Tribunal found that although the cause of the delay in this case rests solely with the GMC, the public would expect that such serious allegations against a doctor regarding the supply, storage, prescription and distribution of a considerable volume of controlled drugs, without the appropriate checks would be the subject of public regulatory proceedings, to ensure that standards are upheld.

118. The Tribunal then considered whether there are exceptional circumstances which justify a stay on proceedings. The Tribunal found that the information which caused the GMC to initiate a review of the decision to close the case against Dr Clark came from the NMC, the police and the Medical Case Examiner. The GMC were reasonable in their decision to consider this as 'new' evidence, given that this was information that was provided by bodies which exist to protect the public, and it was considerably more information than had been supplied in 2015 by Dr Clark. The Tribunal therefore find that the GMC decision making is not so inherently flawed that there are exceptional reasons for a stay in the proceedings to be granted due to an abuse of process.

119. The Tribunal therefore refused the application made on behalf of Dr Clark to stay the proceedings.

ANNEX B – 16/09/2024

Application to exclude evidence - Rule 34(1)

120. At the outset of the hearing, Ms Robinson, counsel for Dr Clark, made a preliminary application pursuant to Rule 34 (1) of the Fitness to Practise Rules (2004, as amended) ('the Rules') to exclude a note of the interview between Dr Clark, Mr D and DC E on 21 September 2015.

Submissions

On behalf of Dr Clark

121. On behalf of Dr Clark, Ms Robinson submitted that the ‘interview’ on 21 September 2015 did not follow Code C of the Police and Criminal Evidence Act 1984 (‘PACE’). She submitted that Dr Clark was handed a piece of paper with the words of the police caution, however the caution was not read out or explained to her. It was not made clear to her that it was a formal interview. The reasons for the interview and what was being investigated were not explained to her. She was not asked whether she agreed to be interviewed. She was not told that she had the right to free and independent legal advice. The interview was not recorded via audio or video. The interview was not recorded in a detailed accurate written transcript of questions and answers. The notes made were not offered to Dr Clark to give her an opportunity to agree or disagree with them. Ms Robinson submitted that PACE Code C imposes safeguards for the questioning of a person during a voluntary police interview and these were not followed when Dr Clark was questioned.

122. Ms Robinson submitted that the lack of safeguards in respect of what took place on 21 September 2015 can be clearly seen when contrasted with the transcripts of later police interviews showing the procedures that were followed in those taped interviews on 18 December 2015 and 22 January 2016. She submitted that on those occasions, the caution was given and explained, the reasons for the interview were explained and the right to legal representation was explained.

123. Ms Robinson submitted that the breaches of Code C of PACE are significant and substantial, and that the number of breaches of Code C in this case have a cumulative effect. She submitted that the GMC seek to rely on the notes of the 21 September interview to found paragraphs accusing Dr Clark of dishonesty. To allow that evidence to be adduced, which was obtained without compliance with the safeguards required by Code C of PACE, would be unfair to Dr Clark.

On behalf of the GMC

124. On behalf of the GMC, Ms Jones submitted that the interview should be admitted into evidence. She submitted that Code C of PACE is specifically designed to provide protection to persons being detained and questioned by police officers and therefore only has application in the criminal jurisdiction. Ms Jones accepted that while Dr Clark was cautioned by way of a written caution, this was not explained to her. Ms Jones accepted there is no evidence that Dr Clark signed the notes of the interview, nor was it recorded. She further accepted that there is no evidence that Dr Clark was told that she was entitled to legal representation. Ms

Jones submitted that it is a matter for the Tribunal as to whether there were breaches of Code C during the interview. She submitted that the Tribunal should keep at the forefront of its mind the test that it must apply is under Rule 34(1), not the test in section 78 of PACE, which has no application before the Tribunal.

125. Ms Jones submitted that there is a clear record of what Dr Clark is alleged to have said. She was cautioned before she undertook the interview and therefore the formality of the interview should have been clear to her as a registered professional. She submitted that those that conducted the interview will be available for Dr Clark's representative to cross examine regarding the conduct of the interview and any inaccuracies alleged. She submitted that submissions can then be made on the reliability and accuracy of the account and would be considered by the Tribunal in the usual way.

126. Ms Jones further submitted that the evidence is clearly relevant to the issues in the case because it forms the basis of the Allegation of dishonesty, a very serious allegation. Ms Jones submitted that while the interview was not formally recorded and the notes are undated, the notes must have been prepared on the day of the interview as they are attached to an email sent by Mr D to Dr C on 21 September 2015 at 9.14pm. She submitted that this would assist the Tribunal in its assessment of the accuracy and reliability of the document. She reminded the Tribunal that it must consider fairness to both Dr Clark and the GMC.

127. Overall, Ms Jones submitted that evidence of the interview is highly relevant to the matters in issue and that it would be fair to admit it, notwithstanding that there may have been breaches of Code C of PACE. She submitted that the Tribunal can be satisfied that Dr Clark was cautioned at the beginning of the interview and so was aware of its serious nature, and in addition to that, the notes were made on the day of the interview, and the interviewers are available to be cross examined before the Tribunal makes any finding of fact.

The Relevant Legal Principles

128. When reaching a decision as to whether the questioning of Dr Clark on the 21 September 2015 is admissible, the relevant law includes:

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

- (ii) The case of *Idenburg v GMC* (2000) where the court held that the test of admissibility was relevance and was not restricted to a criminal jurisdiction could be applied to disciplinary proceedings.

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

The Tribunal's Decision

130. The Tribunal considered the summary of the interview provided by Mr D as an exhibit to his police witness statement. The Tribunal noted that the relevant section of the document was about half a page long and made no mention of how long the interview lasted. It begins as follows:

'With the assistance of DC [E] (PC) a targeted inspection visit was undertaken at 2:00pm 21 September. DI [H] was also in attendance. After introductions DC [E] and I began by interviewing Dr Laura Jane Le Roux Clark - Dr LC (GMC 6147202) who was firstly cautioned. ...'

131. The Tribunal further took into account DC E's witness statement, prepared for these proceedings, in which he stated,

'During the inspection, we spoke with Dr Clark first and [Mr D] explained why we carrying out the inspection and we asked her some questions. I attach a copy of notes made by myself during the inspection to my statement ... [Mr D] led the questioning. I sat in with [Mr D] and asked a couple of questions alongside him whilst my other colleagues went through the drugs that were in stock.'

132. The Tribunal also considered DC E's account of Dr Clark's interviews conducted at a police station on 18 December 2015 and 22 January 2016. He stated:

'Dr Clark was interviewed twice at Winsford Police Station under caution with her legal representative present. During the first interview, myself, [Mr D], Dr Clark and Dr Clark's legal representative were present. Dr Clark requested the second interview to go through the documentation she produced. During the second interview, myself, DC [I], Dr Clark and Dr Clark's legal representative were present.'

133. The Tribunal further took into account Mr D's statement, prepared for these proceedings, in which he stated,

'I carried out the inspection of Medi Slim at 14:00 on 21 September 2015. I first came to know/meet Dr Clark at the inspection visit. The inspection was carried out with the assistance of Merseyside Police. DC [E] and DI [H] were in attendance. Dr Clark was present and a registered nurse, [Ms A] was also present.'

134. The Tribunal was mindful that the investigation into the Medislim clinics was being carried out by Mr D, a pharmacist, on behalf of NHS England, with the assistance of the police. The Tribunal found that this was evident from the summary which stated, *'with the assistance of DC [E]'*, as well as the witness statements of Mr D and DC E. Further, the Tribunal noted that this appeared to be a visit to inspect the premises and gather information, rather than a visit conducted with the intention of formally interviewing Dr Clark.

135. The Tribunal then considered the matter of whether or not Dr Clark received a formal caution before the interview. The Tribunal bore in mind that it was accepted by both parties that Dr Clark was handed a written caution. It noted that the summary provided by Mr D notes that Dr Clark *'was firstly cautioned'*. The Tribunal further took into account transcripts of the later police interviews conducted with Dr Clark and found that a caution was recorded on those transcripts.

136. The Tribunal therefore found that there was no evidence that Dr Clark received a verbal caution. The Tribunal considered the submission made by the GMC that Dr Clark is a qualified professional and so should have understood the meaning of the written caution. The Tribunal was mindful that Dr Clark is a qualified professional, however it took into account the circumstances of the interview, as set out above, that this was an unannounced inspection carried out as an information gathering exercise. The Tribunal found that Dr Clark would have been caught unaware and unprepared for a formal police interview. It further found that the circumstances of the interview differed greatly from later interviews carried

out in the police station, where Dr Clark was clearly cautioned verbally, with additional explanation to ensure she understood it, and this was recorded on the transcript.

137. The Tribunal then considered the matter of whether or not Dr Clark had the benefit of legal representation at the interview. The summary contains no mention of Dr Clark being offered the opportunity to obtain legal advice or being advised of her right to obtain legal advice. The Tribunal noted that at her later police interviews Dr Clark had the benefit of legal representation. The Tribunal found that this was a further factor which showed that the interview was not conducted in the same manner as the later interviews at the police station. The Tribunal further took into account that the inspection was unannounced and appeared to be an information gathering exercise, circumstances in which Dr Clark would not be expected to know she was entitled to legal advice.

138. The Tribunal then considered the contents of the document which purports to be a note of the interview. The relevant section of the document is about half a page long. It contains no note of the questions asked, only the answers elicited from Dr Clark. There is no audio or video recording of the interview, nor is there a copy of the contemporaneous notes taken by DC E. The Tribunal was mindful that the document appears to have been produced later the same day on 21 September 2015 and is therefore contemporaneous. However, it also bore in mind that Mr D and DC E have both stated that they now have a limited memory of the interview, it having taken place nine years ago. The Tribunal therefore found that despite having those witnesses being available to give oral evidence, it is unlikely that any more detail of the conversation can be recalled by those involved, including Dr Clark.

139. The Tribunal found that the failure to record the interview, the lack of evidence of the caution given, and the failure to inform Dr Clark of her right to legal advice were in breach of Code C of PACE. The interview was not conducted in the usual manner, as opposed to later police interviews conducted with Dr Clark at the police station. The Tribunal found that these clear breaches of Code C of PACE would likely result in a successful application under s78 of PACE, were the document produced in criminal proceedings purporting to be a police interview. Whereas ordinarily, the availability of the persons involved to give oral evidence and be cross-examined might be able to address some of the shortcomings, the delay of nine years from 2015 to 2024, has made it difficult to right the potential unfairness to Dr Clark, arising from the circumstances in which that interview was conducted. Whilst not being bound by s.78 of PACE, the Tribunal weighed those issues in the balance when considering whether it would be fair in all the circumstances, particularly given the gravity of the

allegation arising from it, to admit that interview. The issues of fairness and relevance are the test laid down under Rule 34(1) of the Rules.

140. The Tribunal then turned to the test under Rule 34(1) of the Rules. The Tribunal found that the document was plainly relevant to the matters in consideration, as it forms the basis of paragraphs 4, 5, and 6 (b) – (i) of the Allegation, eight of which are allegations of dishonesty. It then considered whether it would be fair to Dr Clark to admit the document into evidence.

141. The Tribunal has found, as stated above, that Dr Clark received only a written caution, and there was no evidence that it was explained to her. Further, there is no evidence that she received, or was offered the opportunity to obtain, legal advice. The document itself is a brief note which contains no details of the questions asked or the length of questioning, nor are witnesses able to assist the Tribunal with clarifying these matters. The Tribunal further bore in mind that the interview was conducted as part of an unannounced inspection and Dr Clark had no time to prepare her answers or consider the gravity of the situation.

142. The Tribunal therefore determined that to admit the document into evidence would be unfair to Dr Clark. It found that the circumstances in which the interview was conducted are a clear breach of Code C of PACE, and while that is not a standard which applies to these proceedings, it was unable to ignore the unfairness to Dr Clark that arose from those breaches. The Tribunal was mindful that the document forms the basis of very serious allegations of dishonesty and to rely on a document produced in circumstances where Dr Clark was at such a disadvantage cannot be fair.

143. The Tribunal therefore determined to grant the application and exclude the notes of Dr Clark's interview with Mr D and DC E on 21 September 2015 from evidence.

SCHEDULE 1

Phentermine 18.6mg tablets

Phentermine 37.2mg tablets

Diethylpropion 75mg tablets