

PUBLIC RECORD

Dates: 21/11/2022 - 01/12/2022

Medical Practitioner's name: Dr Luciano MUTTI

GMC reference number: 6091284

Primary medical qualification: State DMS 1982 Universita degli Studi di Genova

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

Summary of outcome:

Warning

Tribunal:

Legally Qualified Chair	Mr Tim Bradbury
Lay Tribunal Member:	Mr John Ennis
Medical Tribunal Member:	Dr Candida Borsada
Tribunal Clerk:	Ms Hinna Safdar

Attendance and Representation:

Medical Practitioner:	Not present and represented
Medical Practitioner's Representative:	Mr Jason MacAdams, Counsel, instructed by Mr Evan Wright
GMC Representative:	Mr Kevin Slack, 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 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 - 30/11/2022

Background

1. Dr Mutti is an Italian Oncologist with a specialism in mesothelioma, who qualified in 1982 from the Università degli Studi di Genova. Prior to the events which are the subject of the hearing, Dr Mutti was the Head of the Department of General Medicine in the Vercelli Teaching University Hospital from 1999.
2. In 1991, Dr Mutti began a 3 year PhD programme at Turin University. On completion of his thesis, he passed the viva upon examination in Rome and successfully defended his thesis. However, Dr Mutti was not awarded a PhD certificate, because he did not go through the required administrative procedure for the issuing of a certificate of qualification.
3. By virtue of the fact that Dr Mutti had not been awarded a PhD certificate, it is alleged that Dr Mutti falsely claimed to hold a PhD in Oncology from the Turin University in respect of two job applications made in November 2012 and February 2013, grant applications in November 2014 and May 2015, and in a web profile in October 2014, at a time when he was employed as Chair of Cancer Medicine in the School of Life and Environmental Sciences at Salford University. It is further alleged that he falsely claimed to be Director/Chair of the Scientific Committee of the Buzzi Foundation for the Research of Mesothelioma in his Salford University web profile and in the grant application made in November 2014. It is alleged that Dr Mutti, in making these false claims, was acting dishonestly.
4. Initial concerns were raised by Ms A, Director of the Fondazione Buzzi Unicem in Italy, who emailed a letter to Salford University dated 15 December 2016, complaining that Dr Mutti's university website profile was inaccurate and stating that since June 2014 Dr Mutti had not had any 'relationship' with the Foundation and that he had only ever held the position of member of the Scientific Committee of the Foundation and, by implication, he had not been Director as stated in his web profile.
5. On 24 January 2017, within weeks of the email sent by Ms A, Salford University received a further unsolicited email complaining about the content of Dr Mutti's university web profile. This email from the University of Turin complained that Dr Mutti's web profile was incorrect in that it stated that he held a PhD from Turin University whereas no PhD had been obtained by Dr Mutti from this university.
6. It was following receipt of the latter email that an internal investigation was conducted by Salford University with a view to establishing whether Dr Mutti held a PhD in Oncology, whether the holding of a PhD was an essential criteria for Dr Mutti's role as chair

of Cancer Medicine, and whether Dr Mutti had misrepresented his qualifications during the application and interview process which had resulted in him being appointed Chair of Cancer Medicine at the School of Life and Environmental Sciences at Salford University in June 2014.

7. During the course of the investigation by Salford University, it was established that two research grant applications had been submitted by or on behalf of Dr Mutti respectively in November 2014 and May 2015, in which it had been stated that Dr Mutti was Chair of the Scientific Committee of the Buzzi Foundation and/or that he held a PhD in Oncology.

8. It was following the investigation by Salford University that a referral was made to the GMC. During the course of the GMC investigation, it was established that Dr Mutti had previously stated that he held a PhD when applying for two different NHS posts in Scotland. The first was in November 2012 when Dr Mutti had applied to be a Locum Consultant in Clinical or Medical Oncology at Raigmore hospital. The application stated that he had gained a PhD in Oncology in 1994. The second application was in February 2013 when Dr Mutti applied for the position of Locum Consultant in Medical Oncology at Ninewells hospital in Tayside. The CV he submitted with this application stated, under the heading '*post registration qualifications*', '*1994 PhD in Oncology, Turin University*'.

The Outcome of Applications Made during the Facts Stage

9. The Tribunal refused an application made in private session by Mr Jason MacAdam, on behalf of Dr Mutti, to stay proceedings as an abuse of process and an application made in the alternative to postpone the hearing. The Tribunal's full decision on the application is included at Annex A.

10. The Tribunal granted an application by the GMC to proceed in Dr Mutti's absence. The Tribunal's decision in this regard is also included in Annex A.

The Allegation and the Doctor's Response

11. The Allegation made against Dr Mutti is as follows:

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

NHS Highland

1. In an application form dated 20 November 2012, which you submitted for the position of Locum Consultant in Clinical or Medical Oncology at Raigmore Hospital, you indicated that you gained a PhD in Oncology in 1994, which was untrue. **To be determined**

NHS Tayside

2. When applying for the position of Locum Consultant in Medical Oncology at Ninewells Hospital you included your curriculum vitae dated 24 February 2013, which stated that in 1994 you gained a PhD in Oncology, or words to that effect, which was untrue. **To be determined**

The University of Salford ('Salford')

3. In or around October 2014 you wrote a biography for your Salford web profile which contained false information, in that it stated:
 - a. 'I hold [...] a PhD in Oncology from University of Turin, Italy'; **To be determined**
 - b. 'I am [...] Director of the scientific committee of the Buzzi Foundation for the research on Mesothelioma'. **Admitted and found proved**

Grant Applications

4. Between 13 October 2014 and 12 April 2018 you allowed the:
 - a. grant applications set out in Schedule 1 to be submitted, stating that you obtained a PhD in Oncology in 1994, or words to that effect, which was untrue; **To be determined**
 - b. grant application set out in Schedule 2 to be submitted, which stated 'Prof Mutti is the Chair of the Scientific Committee of the Buzzi Foundation for Research on Mesothelioma', which was untrue. **To be determined**
5. You knew that the details you provided / allowed to be provided about your qualifications and / or experience as set out in paragraphs 1 to 4 were untrue. **To be determined**
6. Your actions as described at paragraphs 1 to 4 were dishonest by reason of paragraph 5. **To be determined**

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

The Admitted Facts

12. At the outset of these proceedings, through his counsel Mr MacAdam, Dr Mutti admitted Paragraph 3(b) of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced this subparagraph of the Allegation as admitted and found proved.

The Facts to be Determined

13. In light of Dr Mutti's response to the Allegation made against him, the Tribunal was required to determine whether Dr Mutti's actions in submitting job and grant applications, and in submitting a web profile, claiming to hold a PhD in Oncology and/or claiming to be a Director/Chair of the Buzzi Foundation were dishonest.

Witness Evidence

14. The Tribunal received oral evidence on behalf of the GMC from the following witnesses:

- Ms B, the Head of Quality and Enhancement at the University of Salford, in person;
- Professor C, the former Head of School for the School of Life and Environment Sciences at the University of Salford, in person;
- Professor D, the Chair of Molecular Medicine at the University of Salford, in person;
- Mrs E, the former Personal Assistant to the Dean of the School of Environment and Life Sciences at the University of Salford, in person;
- Ms A, the Chairman of the Board of the Fondazione Buzzi Unicem ('the Buzzi Foundation'), via video link;
- Professor F, the former Dean of the School of Environment and Life Sciences at the University of Salford, via video link;

15. The Tribunal also received evidence on behalf of the GMC in the form of witness statements from the following witnesses who were not called to give oral evidence:

- Mr G, an Investigation Officer in the Fitness to Practise Directorate at the GMC;
- Ms H, the Legal and Compliance Officer at the University of Salford.

16. Dr Mutti provided his own witness statement, dated 9 October 2019.

17. Briefly stated, it was Dr Mutti's case that he had attended the PhD programme in Turin University between 1991 and 1994. During this time, he had completed his thesis, and he had successfully defended it and he had passed his relevant PhD examination. However, he accepted that he had never undertaken the administrative process required for the issue of a formal PhD certificate. It was his case that following the obtaining of his PhD, he had pursued a career in clinical medicine and therefore the obtaining of a formal PhD certificate was of little importance to him and that it was not until he had applied for a research/academic post at Salford University in 2014 that he had given thought to and appreciated that he did not have a PhD certificate. Therefore, it was Dr Mutti's case, that he regarded himself as holding a PhD by virtue of the fact of his having not only completed the PhD program and his thesis, but also having successfully defended his thesis and passed the viva.

18. The GMC did not seek to challenge Dr Mutti's assertion that he had met all of the academic/research requirements for the award of a PhD, including the passing of the Viva examination. However, it was the GMC's case that the fact that Dr Mutti had never received a PhD certificate meant that he did not '*hold*' a PhD and neither could it be said that he had '*obtained*' or '*gained*' a PhD.

19. Further, it was Dr Mutti's case that, having appreciated the need for a PhD certificate at or about the time of his application to Salford University, he had been entirely open and honest with the job interview panel and had made clear that although he had completed his PhD and passed his examination, he did not hold a formal PhD certificate. It was his case that he had also explained to the interviewing panel that he had, apart from his PhD from Turin University, other equivalent postgraduate qualifications, training and experience.

20. The GMC did not seek to suggest that Dr Mutti had in any way sought to mislead Salford University or that he was anything other than entirely honest and transparent with them as to the nature and extent of his qualifications, notwithstanding that his initial online application and covering letter had asserted that he held a PhD from Turin University.

21. With regard to the sub-paragraphs of the Allegation concerning the representations that Dr Mutti had allegedly made regarding his being the Director/ Chair of the Scientific Committee of the Buzzi Foundation, Dr Mutti accepted that at the date that the website profile was submitted, and when the relevant grant application was submitted, he did not hold these roles because the Scientific Committee had been disbanded in June 2014. However, in essence it was Dr Mutti's case that this inaccuracy was an error caused by inadvertence and the assertion that he was currently the Director/Chair was not made deliberately or with any intention to deceive.

22. Further, the GMC did not seek to suggest that Dr Mutti describing himself as Director/Chair was untrue (as Ms A's evidence initially implied), rather it was the GMC's case that at the time that Dr Mutti had stated that he was a Director/Chair, he was not because the Committee had been disbanded in June 2014, some months previously. Accordingly, the true position at the relevant time was that he was a former or past Director/Chair.

Documentary Evidence

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

- A report of the Investigation into Dr Mutti prepared by Ms B, dated 25 July 2017;
- Notes of the Meeting between Dr Mutti and Ms B, dated 22 June 2017;
- Grant Application titled 'Metabolism of Mesothelioma Cancer Stem Cells as a New Therapeutic Target', dated 8 May 2015;
- Grant Application titles 'Overview of the proposed Institutional Links Collaboration', undated;

- Original pro-forma completed by Dr Mutti, dated October 2014;
- Amended pro-form completed by Dr Mutti, dated 27 January 2017;
- The European Research Council policy document on PhD and Equivalent Doctoral Degrees, undated;
- Certificate of Attendance on Human Oncology PhD programme at University of Turin and translation, dated 10 September 1993;
- Certified translation of certified document regarding positive result in final examination of the Doctoral Research Programme in Oncology on 14/09/1994, dated 16 June 2017;
- Letter from the Buzzi Foundation to members of the Scientific Committee, including Dr Mutti (sent by email), dated July 2014;
- Translations of Dr Mutti’s communications with the relevant Italian Ministry arranged by the GMC, undated.

The Tribunal’s Approach

24. 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 Mutti 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.

Dishonesty

25. Given that Dr Mutti faces an allegation of dishonesty, the Tribunal applied the test for dishonesty set out in *Ivey v Genting Casinos (UK) Limited (t/a Crockfords Club) [2017] UKSC 67*:

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

26. The Tribunal considered that it must ask itself three questions. Firstly, whether Dr Mutti acted in the way that is alleged by the GMC on the balance of probabilities. Secondly, what was the genuine knowledge or belief of Dr Mutti regarding the facts at the relevant time? And lastly, whether the actions of Dr Mutti would be considered dishonest by the standards of ordinary and decent people.

The Tribunal's Analysis of the Evidence and Findings

27. 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, 2, 3(a) and 4(a)

28. The Tribunal first considered whether the statements that Dr Mutti '*gained*' or '*held*' a PhD in Oncology as alleged in Paragraphs 1, 2, 3(a) and 4(a) of the Allegation were untrue.

29. The Tribunal first noted that, as previously stated, the GMC relied upon the fact that Dr Mutti had never undertaken the administrative process of applying for a formal PhD certificate as evidence of the fact that Dr Mutti had neither gained nor held a PhD. The GMC did not seek to dispute that in all other respects Dr Mutti had done that which was required for the obtaining of a PhD qualification. However, the GMC submitted that without a PhD certificate, Dr Mutti could not be said to either hold or have gained a PhD.

30. The Tribunal determined that as a matter of plain English and strictly speaking, it was implicit in a statement that someone has either gained or holds a PhD that the person has not only passed the necessary academic standard, but also they have been awarded a PhD certificate evidencing the fact that they hold a PhD qualification.

31. The Tribunal considered that this was particularly so when the representation was made within the context of a job application or grant application, or any other circumstances in which the holding of a necessary certificate would be regarded as important.

32. Accordingly, the Tribunal considered that to assert that one has obtained a PhD is a confirmation that one has been awarded a PhD certificate from the relevant awarding institution.

33. Therefore, the Tribunal concluded that Dr Mutti's statements that he had held/gained/obtained a PhD in Oncology in 1994 from the Univeristy of Turin were not, as a matter of strict interpretation, true.

34. The Tribunal therefore found Paragraphs 1, 2, 3(a), and 4(a) of the Allegation proved.

Paragraph 5

35. The Tribunal next considered whether in relation to Dr Mutti's untruthful statements that he held and/or obtained a PhD he knew that the statements were untrue at the time they were made as alleged in Paragraph 5.

Paragraph 5 as it related to Paragrahs 1 and 2

36. The Tribunal noted that Dr Mutti, in his Rule 7 response and his witness statement, had consistently maintained that he had completed the PhD course, submitted his thesis, and passed the necessary examination for the award of a PhD from Turin University.

Furthermore, he had explained his reasons for not having applied for his PhD certificate in 1994 or thereafter, namely that he was pursuing a career in clinical medicine and therefore the obtaining of a PhD certificate was of little significance to him at that time. It was in these circumstances that Dr Mutti had applied for the NHS locum positions at NHS Highland and NHS Tayside.

37. The Tribunal considered that this was a credible explanation and considered that it was likely that, in his own mind, Dr Mutti regarded himself as having a PhD in Oncology by virtue of his completing the PhD program, submitting his thesis, and passing the necessary examination at Turin University in 1994. The Tribunal further considered it to be credible that at the time the applications were made, Dr Mutti was either unaware or, more probably, had not put his mind to the process of obtaining a PhD certificate. The Tribunal had received documentary evidence as to the administrative process involved in the obtaining of a PhD certificate from the relevant ministry in Italy, as it was in 1994. The Tribunal noted that the administrative process appeared somewhat complex and by no means straightforward.

38. In determining that it was likely that Dr Mutti had genuinely believed that he held and/or had gained a PhD, and was therefore entitled to state that this was the case in his applications for locum work, the Tribunal considered it was significant that a PhD qualification was unlikely to be a requirement for the clinical positions he was applying for. Therefore, the Tribunal did not consider that Dr Mutti would have had any motive to claim that he held a PhD which he did not possess, there being no suggestion that he was not otherwise wholly qualified for the positions he was applying for at that time, namely a Locum Clinical Consultant.

39. Furthermore, the Tribunal considered that the subsequent events in 2014, when Dr Mutti applied for the post of Chair of Cancer Medicine at Salford University, and about which the Tribunal heard evidence from Professor C and Professor D, were by contrast significant.

40. It was Dr Mutti's case that the position he applied for at Salford University was his first application for an academic/research post and it was common ground between the GMC and Dr Mutti that amongst the criteria for appointment was the award of a PhD in Cancer Medicine. The evidence of Professor C who was one of Dr Mutti's interviewers for the post was that Dr Mutti had been entirely open and transparent as to the nature and extent of his qualifications and that he had been '*at pains*' to make clear that he did not have a certificate from Turin University for his PhD, but he had nevertheless other extensive postgraduate qualifications, training and experience which would have been, in any event, equivalent to a PhD.

41. The GMC had submitted that this evidence, namely Dr Mutti advancing equivalent postgraduate training as a qualification for the role, demonstrated that Dr Mutti must have known that he did not '*hold*', neither had he '*gained*' a PhD from Turin University. It

submitted that if Dr Mutti believed he had a PhD from Turin University, there would have been no need for him to seek to rely upon equivalent training. The Tribunal did not accept this line of reasoning. Rather, it considered that the evidence from Professor C and borne out by Dr Mutti's account was consistent with Dr Mutti asserting that which he believed to be true, namely that he had obtained a PhD, but not a certificate as proof of the same and he was asserting that he had since 1994 obtained extensive postgraduate training and experience which was, in any event, equivalent to a PhD. In this regard, the Tribunal noted that Professor C's evidence was to the effect that, given the role that was being applied for, the PhD qualification was of lesser importance when compared to the extensive training and experience Dr Mutti had obtained since 1994 and which, in Professor C's view, merited Dr Mutti's appointment to the role.

42. Furthermore, Professor C's evidence was that 1994 was well before the '*Bologna Agreement*' which set out to harmonize the recognition of qualifications within the EEA. Professor C stated that even had Dr Mutti possessed a PhD certificate from Turin, there would necessarily have been a discussion as to whether this qualification, or any other, was equivalent to a PhD awarded in the UK. Accordingly, the Tribunal did not consider that the GMC's submission that Dr Mutti's reference to equivalent qualifications, training or experience led to the conclusion that he was acknowledging at that time that he had not obtained a PhD from Turin University in 1994.

43. The Tribunal also noted that the GMC had sought to rely upon a statement allegedly made by Dr Mutti during the course of the Salford Investigation to Professor F, in which she said, at the conclusion of a meeting to discuss Dr Mutti's qualifications in April 2017, Dr Mutti had commented '*as he left the room that he had not been awarded the qualification*'. Dr Mutti disputed that he had said this to Professor F and the Tribunal noted that later in the investigation, Professor F had asserted that Dr Mutti had not directly answered the question whether he holds a PhD. In any event, the Tribunal considered that even if Dr Mutti had told Professor F that he had '*not been awarded the qualification*', this would be equally consistent with him saying he did not have a certificate as with an assertion that he had never qualified for a certificate.

44. In conclusion, the Tribunal was not satisfied on the balance of probabilities that when Dr Mutti applied for the post at NHS Highland and NHS Tayside, he knew that his statements regarding his having gained a PhD in Oncology were untrue. The Tribunal considered it more likely that he believed that he held a PhD, notwithstanding the fact that he had not taken the necessary steps to obtain a certificate.

45. The Tribunal therefore found Paragraph 5 of the Allegation as it related to Paragraphs 1 and 2 of the Allegation not proved.

Paragraph 5 as it related to Paragraph 3(a)

46. The Tribunal considered whether Dr Mutti knew that he did not have a PhD at the time he wrote his web profile for Salford University in October 2014.

47. At the time that Dr Mutti's biography was submitted to Salford University for inclusion on his web profile, Dr Mutti had recently been appointed to the position of Chair of Cancer Medicine, following the application and interview process as described above. Significantly at this time, Salford University had not received the communication from Turin University indicating that Dr Mutti had not obtained a PhD in Oncology from their institution. Neither had Dr Mutti been challenged or questioned in relation to his PhD. It was not until later, once the investigation by Salford University had commenced, that Dr Mutti was challenged about the status of his PhD qualification.

48. For the reasons given in relation to Paragraph 5 as it related to Paragraphs 1 and 2, the Tribunal considered that Dr Mutti believed in his own mind that he did hold a PhD from Turin University despite his not having obtained a PhD certificate. The Tribunal also noted that it was only in 2017 after Dr Mutti had been challenged about his PhD qualification during the Salford University investigation that he amended his website profile to state that he had completed the PhD course. Given that by this time Salford University had challenged the status of Dr Mutti's PhD, the Tribunal did not consider that this amendment amounted to an acceptance of the fact that he did not hold a PhD.

49. Accordingly, the Tribunal were not satisfied on the balance of probabilities that at the time Dr Mutti's biography was written in October 2014 for his Salford University web profile that he knew that the statement regarding his holding a PhD was untrue.

50. The Tribunal therefore found Paragraph 5 of the Allegation as it related to Paragraph 3(a) not proved.

Paragraph 5 as it related to Paragraph 4(a)

51. The Tribunal considered whether Dr Mutti knew that he did not have a PhD in Oncology at the time he allowed the submission of his grant applications in November 2014 and May 2015.

52. For the same reasons set out regarding Paragraph 5 of the Allegation as it related to Paragraph 3(a), the Tribunal was not satisfied on the balance of probabilities that Dr Mutti knew that he had not obtained a PhD in Oncology because for the reasons previously given, the evidence was consistent with Dr Mutti believing that he held a PhD, despite the fact that he did not have a PhD certificate. Again, at the time the grant applications were submitted, Dr Mutti's PhD qualification had not been questioned or challenged. This did not arise until 2017 when the Salford University investigation was initiated.

53. The Tribunal therefore found Paragraph 5 of the Allegation as it related to Paragraph 4(a) of the Allegation not proved.

Paragraph 4(b)

54. The Buzzi Foundation was founded in 2003 by Buzzi Unicem SpA, with the aim of promoting and supporting interventions aimed at improving the diagnosis and treatment of malignant mesothelioma. The Tribunal had evidence from Ms A, Director of the Buzzi Foundation, that up until July 2014, the Foundation had a Scientific Committee of which Dr Mutti was a member with others for a number of years. She gave evidence that during the period of time that Dr Mutti was a member, he had on numerous occasions acted as the Chair or '*Il Presidente*' during the meetings of the Committee. Ms A explained that this was more of an ad hoc appointment rather than a formal one provided for under the Foundation's constitution.

55. However, it was not the GMC's case that Dr Mutti had been untruthful in describing himself as either the '*Director*' or the '*Chair*'. However, it was the GMC's case that Dr Mutti had ceased to perform this role from July 2014 when he was notified by the Buzzi Foundation that the Scientific Committee was being disbanded. Therefore, as of October 2014, when the web profile was submitted to Salford University, and as of November 2014 when the grant application was submitted, he was no longer either Director or the Chair of the Scientific Committee. In these circumstances, the Tribunal considered that it necessarily followed that if Dr Mutti had described himself as either the '*past*' or '*former*' Director or Chair of the Scientific Committee, there could have been no suggestion that this was untrue.

56. In relation to the Allegation at Paragraph 4(b), the Tribunal had no evidence as to the precise process by which the grant applications had come to be made or the process by which the biographical details of Dr Mutti which contained the statements as to his association with the Scientific Committee, had come to be included. However, it was apparent from the face of the grant applications, which the Tribunal had sight of, that Dr Mutti was identified as a Principal Applicant for the grants, and that they contained the statement indicating a current role as Chair of the Scientific Committee.

57. Notwithstanding the limited evidence in relation to the circumstances surrounding the submissions of the grant applications, the Tribunal were able to infer from the content of the applications that they were being submitted in the name of Dr Mutti and the Tribunal inferred he had knowledge of the applications and a responsibility for the accuracy and truthfulness of the content.

58. The Tribunal considered that, similar to the web profile, Dr Mutti's position as '*the Chair of the Scientific Committee of the Buzzi Foundation for Research on Mesothelioma*' was out of date and at the date of the grant application was no longer true.

59. The Tribunal therefore found Paragraph 4(b) of the Allegation proved.

Paragraph 5 as it related to Paragraphs 3(b) and 4(b)

60. The Tribunal considered whether Dr Mutti knew that he was no longer the Director and/or the Chair of the Scientific Committee of the Buzzi Foundation when he asserted this

on his web profile for Salford University in October 2014 and in the grant application in November 2014.

61. The Tribunal heard evidence from Ms A that the Scientific Committee of the Buzzi Foundation was disbanded by resolution of the Foundation in June 2014 and that the members of the Committee, including Dr Mutti, were informed of this decision via an email which was sent in July 2014.

62. During the course of the Tribunal's deliberations, it noted that the email referred to by Ms A of July 2014 did not in any terms say that the Scientific Committee of the Buzzi Foundation had been disbanded or that the services of Dr Mutti had been dispensed with. The Tribunal raised this issue with GMC Counsel, Mr Slack and Mr MacAdam on behalf of Dr Mutti, as it had noted that Dr Mutti had admitted Paragraph 3(b) of the Allegation, relating to this. Mr MacAdam confirmed that it was Dr Mutti's case that he accepted that the committee had been disbanded in June 2014 and that he had been made aware of this fact at around this time.

63. Mr MacAdam further confirmed the Tribunal's understanding of Dr Mutti's case in relation to Paragraph 5 of the Allegation, in so far as it related to Paragraphs 3(b) and 4(b) of the Allegation, that the statements in respect of Dr Mutti's website profile (3(b)) and the grant application (4(b)) had been included inadvertently and that there had been no intention on his part to mislead or deceive. In short, the statements had been included in the website profile and the grant application through a failure to ensure that the contents were up to date at the time they were submitted.

64. The Tribunal noted that Dr Mutti had been '*the Director*' and/or '*the Chair*' of the Scientific Committee some 3 months before his website profile was written and some 5 months before the grant application was submitted.

65. In these circumstances, the Tribunal found that, if Dr Mutti had addressed his mind to the issue, he would have known that the statements referred to in Paragraphs 3(b) and 4(b) of the Allegation were untrue. Although the Tribunal noted that there was limited evidence as to when the grant application was drafted or who had prepared it prior to its submission on 27 November 2014, the Tribunal considered that because Dr Mutti was identified as a Principal Applicant in the application, it could be inferred that he would have known of the application's submission and had a responsibility for its content.

66. The Tribunal therefore found Paragraph 5 of the Allegation as it related to Paragraphs 3(b) and 4(b) of the Allegation proved.

Paragraph 6 as it related to Paragraphs 1, 2, 3(a), and 4(a)

67. The Tribunal, having found that Dr Mutti did not know that the statements regarding his holding a PhD as alleged at Paragraphs 1,2, 3(a), and 4(a), were untrue, the Tribunal found Paragraph 6 as it related to those paragraphs not proved.

Paragraph 6 as it related to Paragraphs 3(b) and 4(b)

68. The Tribunal considered that had Dr Mutti written the website profile and/or the grant application and deliberately claimed to be the current Director and/or Chair of the Scientific Committee of the Buzzi Foundation at a time when he knew that he was no longer performing this role with an intention to mislead, then such action would have been regarded as dishonest by the standards of ordinary and decent people.

69. However, the Tribunal did not consider that it was likely that the inclusion of these statements had been deliberate. The Tribunal considered that Dr Mutti would not have had any motive to lay claim to a current position on the Scientific Committee in circumstances where he could legitimately highlight his position on the Committee held over many years and which had only come to an end in recent months as a result of the Committee ceasing to exist.

70. The Tribunal did not consider it likely that there would be any advantage to Dr Mutti in describing himself as a current Director/Chair as opposed to a former or past Director/Chair or otherwise indicating the period over which he had held this position. Furthermore, no possible motive had been advanced on behalf of the GMC.

71. The Tribunal considered this particularly so in the circumstances where Dr Mutti was able to reference other very impressive current qualifications, achievements, and positions held which were set out in the web profile and grant application biographies, and which included:

- Chair of the Italian group for the Research and Therapy of Mesothelioma
- Director of the International Mesothelioma Interest Group
- Expert Leader of the European Respiratory Society for Chemotherapy and Novel Therapy for Mesothelioma
- Member of the Scientific Advisory Board of the Mesothelioma Applied Research Foundation
- Head of Department at the Vercelli Teaching University Hospital

72. The Tribunal considered that the statements in relation to Dr Mutti's position within the Scientific Committee were relatively minor inaccuracies that were more consistent with a lack of attention to detail or carelessness in the drafting of his biography within the website profile/ grant application, whether by himself or someone else who may have prepared his biography or who had populated the grant application. Dr Mutti's case was that the website profile had in fact been drafted by a PhD student from a CV provided to the by Dr Mutti that was not up to date.

73. It was not clear on the evidence before the Tribunal whether Dr Mutti had personally drafted the biography within the grant application or whether this had been done by someone else. However, for the reasons previously stated, the Tribunal considered that Dr

Mutti had a responsibility for the accuracy of the contents of his web profile and the grant applications submitted in his name.

74. In any case, the Tribunal considered that as Dr Mutti had previously held the position of Director or Chair of the Buzzi Foundation, and it was simply a matter of inaccuracy of tense, it was not an error significant enough to equate to evidence suggestive of Dr Mutti being deliberately dishonest and attempting to mislead.

75. The Tribunal therefore found Paragraph 6 of the Allegation as it related to Paragraphs 3(b) and 4(b) of the Allegation not proved.

76. Further, although it was not necessary for the purposes of the Tribunal's determination in relation to Paragraph 6 of the Allegation, it considered that there was positive evidence to suggest that Dr Mutti's actions had not been dishonest in relation to his qualifications.

77. The Tribunal noted the evidence before it regarding the NHS job applications (Paragraphs 1 and 2 of the Allegation) and the grant applications (Paragraph 4(a)) was limited to evidence of the applications themselves in which it had been stated Dr Mutti held a PhD. There was an almost complete absence of evidence with regard to the circumstances in which the job/grant applications had been submitted or how they had been processed and yet it was alleged that Dr Mutti's actions in relation to the same had been dishonest.

78. By contrast, the Tribunal had the advantage of considerable evidence in relation to the application made by Dr Mutti to Salford University in which he had also claimed to hold a PhD. It was evident from the evidence the Tribunal heard in relation to this application that notwithstanding the content of his application, Dr Mutti had been wholly open and transparent in relation to the nature of his qualifications and experience. Indeed, the Tribunal heard evidence from Professor C, a GMC witness, who made this abundantly clear. In these circumstances, the GMC had not, and could not, allege that Dr Mutti's statements made in his Salford application had been made dishonestly.

79. In the absence of any evidence relating to the circumstances in which the job applications had been made, the Tribunal had no reason to suppose, had it heard evidence in relation to the Tayside and Highland NHS applications, that Dr Mutti would not have shown the same level of candour as he had done with Salford University.

The Tribunal's Overall Determination on the Facts

80. The Tribunal has determined the facts as follows:

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

NHS Highland

1. In an application form dated 20 November 2012, which you submitted for the position of Locum Consultant in Clinical or Medical Oncology at Raigmore Hospital, you indicated that you gained a PhD in Oncology in 1994, which was untrue.
Determined and found proved

NHS Tayside

2. When applying for the position of Locum Consultant in Medical Oncology at Ninewells Hospital you included your curriculum vitae dated 24 February 2013, which stated that in 1994 you gained a PhD in Oncology, or words to that effect, which was untrue.
Determined and found proved

The University of Salford ('Salford')

3. In or around October 2014 you wrote a biography for your Salford web profile which contained false information, in that it stated:
 - a. 'I hold [...] a PhD in Oncology from University of Turin, Italy'; **Determined and found proved**
 - b. 'I am [...] Director of the scientific committee of the Buzzi Foundation for the research on Mesothelioma'. **Admitted and found proved**

Grant Applications

4. Between 13 October 2014 and 12 April 2018 you allowed the:
 - a. grant applications set out in Schedule 1 to be submitted, stating that you obtained a PhD in Oncology in 1994, or words to that effect, which was untrue; **Determined and found proved**
 - b. grant application set out in Schedule 2 to be submitted, which stated 'Prof Mutti is the Chair of the Scientific Committee of the Buzzi Foundation for Research on Mesothelioma', which was untrue. **Determined and found proved**
5. You knew that the details you provided / allowed to be provided about your qualifications and / or experience as set out in paragraphs 1 to 4 were untrue.
Determined and found not proved in relation to Paragraphs 1, 2, 3(a), and 4(a)

Determined and found proved in relation to Paragraphs 3(b) and 4(b)
6. Your actions as described at paragraphs 1 to 4 were dishonest by reason of paragraph 5. **Determined and found not proved**

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 - 01/12/2022

81. 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 Mutti's fitness to practise is impaired by reason of misconduct.

Submissions

GMC submissions

82. Mr Slack submitted that, despite Dr Mutti having been found to have not been dishonest, he had a duty to ensure that documents submitted on his behalf were accurate and truthful.

83. Mr Slack submitted that this was not a single omission, rather repeated errors. The Tribunal had found Dr Mutti's errors were consistent with his having been careless and displaying a lack of attention to detail. Mr Slack submitted that this applied to both Dr Mutti's grant application and his website profile. Whether or not these had been drafted by Dr Mutti himself or someone else was irrelevant, as the Tribunal had identified in its Determination on the Facts that Dr Mutti had a responsibility to ensure the accuracy and truthfulness of the contents. The nature of these documents is important; it is important for a grant application, where a doctor is requesting funding for research, to be accurate. Similarly, the very nature of a web profile is that it is open to be viewed by anyone and everyone, there is no limit on the number of people who may take what is published at face value. Therefore, it was necessary for this information to be accurate and true.

84. Mr Slack submitted that, on the basis of the facts the Tribunal found proved, there was a clear breach of paragraph 71 of Good Medical Practice (GMP):

*'71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.
a You must take reasonable steps to check the information is correct...'*

85. Mr Slack submitted that due to GMP being breached, the Tribunal would be entitled to find that the failings demonstrated by Dr Mutti in not ensuring the accuracy of the information contained in the grant application and website profile amounted to misconduct on his part. Negligence or inattention or carelessness in the completion of a grant application form should be viewed as more serious than errors in documents that were of lesser importance. Mr Slack submitted that Dr Mutti's repeated failings amounted to misconduct.

86. However, Mr Slack submitted that due to the limited findings the Tribunal had made on the facts and the passage of time since the events in question, it was not the GMC's submission that a finding of current impairment was appropriate.

Submissions on behalf of Dr Mutti

87. Mr MacAdam submitted that, based on the Tribunal's findings in the Determination on the Facts, Dr Mutti's misunderstanding regarding his holding a PhD and his reference to currently being the Chair of the Scientific Committee should not be characterised as misconduct. The former was not deliberate and the latter minor and at worst amounted to carelessness.

88. Mr MacAdam submitted that all of these allegations are now old, and no further allegations have been made. Dr Mutti has continued to practise and remains a credit to the profession whilst continuing to provide a valuable service to the public.

89. Mr MacAdam submitted that the Tribunal have available in Dr Mutti's statement a complete history of his very impressive career. Dr Mutti has been and remains eminent in his field and has been a credit to the medical profession. He has the advantage of not having ever been found to be at fault by his regulatory body.

90. Mr MacAdam submitted that, based upon the findings of the Tribunal, notwithstanding that Dr Mutti at the material times did not have a PhD, and was not the current Chair of the Buzzi Foundation Scientific Committee, he did not deliberately or materially mislead anyone. No patient or anyone else suffered any harm and the reputation of the medical profession has not suffered. Accordingly, Mr MacAdam submitted that Dr Mutti's fitness to practise medicine is not impaired.

The Relevant Legal Principles

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

92. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted: first to decide whether the facts as found proved amounted to misconduct, and if so to decide whether, as a consequence, Dr Mutti's fitness to practise is currently impaired.

93. If misconduct is found, the Tribunal must then go on to determine whether Dr Mutti's fitness to practise is currently impaired, taking into account Dr Mutti'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 Decision

Misconduct

94. The Tribunal had regard to the caselaw as referred to by GMC counsel, specifically the case of *Calhaem v General Medical Council* [2007] EWHC 2606. The Tribunal bore in mind that negligence can amount to misconduct but this has to be negligence that is of an order or degree as to amount to more than “mere” negligence and although multiple instances of negligence are more likely to amount to misconduct, a single incident that is particularly serious may, depending on the circumstances, amount to misconduct.

95. In Dr Mutti's case, the Tribunal considered that his error did not amount to a single incident however, it was the same error committed twice within weeks of each other, where he had failed to ensure the accuracy of his biography in respect of a web profile and a grant application.

96. As far as the Allegation regarding Dr Mutti ‘gaining/obtaining/holding’ a PhD was found to untrue, the Tribunal determined that Dr Mutti genuinely believed that his statements in this regard were true. The Tribunal did not consider that the circumstances were such that Dr Mutti was personally culpable in making these statements, rather that they were the product of a genuine misapprehension.

97. The Tribunal considered that Dr Mutti did not take the care that he should have done when it was submitted in his grant application and his website profile that he was the current Chair of the Scientific Committee of the Buzzi Foundation when this had ceased to exist.

98. However, given that this was essentially Dr Mutti making the same mistake on two occasions within weeks of each other, it did not in the Tribunal's judgement meet the threshold of being misconduct that could be regarded as serious and therefore did not amount to misconduct. Nevertheless, the Tribunal considered that this did represent a significant departure from GMP. The Tribunal accepted the GMC's submission that paragraph 71 of GMP was engaged. However, it determined that a breach of GMP in and of itself did not automatically amount to misconduct. The Tribunal considered that Dr Mutti's failing did amount to misconduct, but it did not amount to misconduct that was serious.

99. In all the circumstances, the Tribunal was of the view that a finding of misconduct was not required in this case to promote and maintain public confidence in the profession and proper professional standards in light of the nature of the failings involved, and would be disproportionate. In the absence of a finding of misconduct it necessarily followed that Dr Mutti's fitness to practise is not impaired by reason of misconduct.

100. The Tribunal has therefore determined that Dr Mutti's fitness to practise is not impaired.

Determination on Warning - 01/12/2022

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

Submissions

GMC submissions

102. On behalf of the GMC, Mr Slack invited the Tribunal to consider that a Warning was the appropriate response following the Tribunal's decision on impairment. He referred to the Sanctions Guidance, specifically paragraphs 61- 63 in relation to Warnings:

***61** Where a tribunal finds a doctor's fitness to practise is not impaired, it cannot impose a sanction. However, it must consider, under rule 17(2)(n) whether to:
a take no action
b issue a Warning if the doctor's conduct, behaviour or performance has significantly departed from the guidance in Good medical practice.*

***62** The tribunal may issue the doctor with a Warning about their future conduct or performance, with reference to the facts found proved.*

***63** Further guidance on the purpose of Warnings, the factors to take into account when considering whether to impose a Warning and the circumstances in which a Warning might be appropriate is set out in the Guidance on Warnings.*

103. Mr Slack referred the Tribunal to the Guidance on warnings (March 2021) (the Guidance):

***10** The power to issue Warnings, together with other powers available to the GMC and to MPTS tribunals, is central to their role of protecting the public which includes protecting patients, maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour.*

***11** Warnings allow the GMC and MPTS tribunals to indicate to a doctor that any given conduct, practice or behaviour represents a departure from the standards expected of members of the profession and should not be repeated. They are a formal response from the GMC and MPTS tribunals in the interests of maintaining good professional standards and public confidence in doctors. The recording of Warnings allows the GMC to identify any repetition of the particular conduct, practice or behaviour and to take appropriate action in that event. Breach of a Warning may be taken into account by a tribunal in relation to a future case against a doctor, or may itself comprise misconduct serious enough to lead to a finding of impaired fitness to practise.*

...

14 Warnings should be viewed as a deterrent. They are intended to remind the doctor that their conduct or behaviour fell significantly below the standard expected and that a repetition is likely to result in a finding of impaired fitness to practise. Warnings may also have the effect of highlighting to the wider profession that certain conduct or behaviour is unacceptable

...

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
...'

104. Mr Slack submitted that the issuing of a Warning would be entirely in keeping with the Guidance. He submitted that paragraphs 20 and 32 of the Guidance on Warnings were relevant in this case:

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).

...

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.*

105. Mr Slack submitted that a Warning would act as deterrent to others and would serve as a noting of Dr Mutti's failing on the record.

Submissions on behalf of Dr Mutti

106. On behalf of Dr Mutti, Mr MacAdam submitted that in light of the Tribunal's determinations, Dr Mutti was not behaving dishonestly, his failings did not amount to serious misconduct, and therefore a formal response was not warranted. The matters the Tribunal found proved occurred many years ago. Dr Mutti demonstrated insight regarding his failings by admitting to submitting the incorrect information on his website entry in relation to his position as Director/Chair of the Scientific Committee of the Buzzi Foundation and there has neither before nor throughout the following years been any repetition.

107. Mr MacAdam referred to the Tribunal's determination on Impairment in which it found that Dr Mutti included in documents that he held the qualification of PhD and that he was the Director of the Buzzi Foundation Scientific Committee but that when did so he was not dishonest. The Tribunal determined these were mistakes; in the case of his PhD, understandable by reference to the facts, and with regard to the Buzzi Foundation were all errors that were minor. Neither have caused any harm or disadvantage to patient's, employers or the reputation of the medical profession. Both were remedied promptly by Dr Mutti when the inaccuracy was drawn to his attention and there has been no repetition.

108. Mr MacAdam submitted that the Tribunal has noted Dr Mutti has an unblemished career and provided excellent public service. He concluded that for the Tribunal to subsequently impose a Warning on Dr Mutti would, by reference to the public interest criteria, be disproportionate.

The Tribunal's Determination on Warning

109. The Tribunal reminded itself of the Guidance, in particular: the purpose of a Warning; the test for issuing a Warning; factors it should consider; and the principle of proportionality.

110. The decision whether or not to issue a Warning is a matter for the Tribunal making an evaluative judgment taking account of the circumstances of the particular case and having regard to the submissions of the parties. In deciding whether to issue a Warning the Tribunal has taken into account the Guidance and has applied the principle of proportionality, weighing the interests of the public with those of Dr Mutti.

111. The Tribunal has borne in mind the overarching objective, in particular to promote and maintain public confidence in the medical profession and to promote and maintain proper professional standards and conduct for the members of the profession.

112. The Tribunal reminded itself that while Dr Mutti's conduct did not amount to serious misconduct, it did represent a significant departure from GMP, specifically paragraph 71:

*'71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.
a You must take reasonable steps to check the information is correct...'*

113. The Tribunal therefore determined that Dr Mutti's conduct had fallen below the standard expected to a degree warranting a formal response by the Tribunal.

114. Dr Mutti's failings resulted from an error repeated in both a grant application and in his website profile, in the context of his professional practice. He undermined the principle that his work must be accurate, and that he must ensure that he takes care when submitting information that it is not false or misleading. The Tribunal found that, particularly in relation to the grant application, the lack of attention to detail was significant. The Tribunal considered that although Dr Mutti had not had any intention to mislead, the inaccurate statement made in the grant application, in which substantial funds were being sought, was nevertheless apt to mislead.

115. The Tribunal balanced the public interest in maintaining public confidence in the profession and declaring and upholding proper standards of conduct and behaviour against Dr Mutti's interests. In carrying out this balancing act the Tribunal considered Dr Mutti's previous good character, the passage of time since the events found proved and the fact that there had not been any repetition.

116. The Tribunal concluded that there is a need to issue a Warning in this case in order to maintain public confidence in the profession and to declare and uphold proper standards of conduct and behaviour. Accordingly, the Tribunal has issued the following Warning:

'Dr Mutti,

In October 2014, he submitted or allowed to be submitted information within his biography on his web profile for Salford University and in November 2014, in a grant application that he was the Director/Chair of the Scientific Committee of the Buzzi Foundation. This was at a time when the Scientific Committee of the Buzzi Foundation had been disbanded and the information he submitted was out-of-date. His statements were therefore inaccurate and false.

This conduct does not meet with the standards required of a doctor. It risks bringing the profession into disrepute and it must not be repeated. The required standards are set out in Good Medical Practice. In this case, paragraph 71 of Good Medical Practice is particularly relevant. Paragraphs 71 states:

*'71 You must be honest and trustworthy when writing reports, and when completing or signing forms, reports and other documents. You must make sure that any documents you write or sign are not false or misleading.
a You must take reasonable steps to check the information is correct...'*

Whilst this failing in itself is not so serious as to require any restriction on his registration, it is necessary in response to issue this formal Warning.'

117. This Warning will be published on the medical register in line with the publication and disclosure policy, which can be found at www.gmc-uk.org/disclosurepolicy

118. That concludes this case.

ANNEX A – 30/11/2022- PRIVATE

APPLICATION TO STAY PROCEEDINGS AS AN ABUSE OF PROCESS ALTERNATIVELY POSTPONE THE HEARING

119. On 21 November 2022, Mr Jason MacAdam, counsel for Dr Mutti, applied to stay proceedings as an abuse of process or, alternatively, postpone the hearing, XXX.

120. Mr MacAdam provided a written skeleton argument to stay the proceedings/postpone the hearing. Mr Kevin Slack, counsel for the GMC, opposed the applications and provided a skeleton argument in response. He also made an application for the Tribunal to proceed in Dr Mutti’s absence. Both counsel also made oral submissions to the Tribunal, summarised below.

Summary of submissions on behalf of Dr Mutti

121. Mr MacAdam submitted that the Tribunal has the power to stay proceedings where the circumstances are such that a doctor cannot have a fair hearing. He drew the Tribunal’s attention to the analogous jurisdiction of the criminal courts to stay proceedings as an abuse. Mr MacAdams conceded that the Tribunal was not bound by the practice of or procedure the criminal courts however, he submitted, that the Tribunal should be cognisant of, and adhere to, the practice and principles applied by them.

122. Mr MacAdam relied upon the first of the two recognised categories of abuse, namely that Dr Mutti could not have a fair hearing. XXX.

123. It was submitted that the prejudice to Dr Mutti XXX would be such as to make a fair hearing impossible and he reminded the Tribunal that the right to a fair trial provided by Article 6 of the European Convention of Human Rights XXX.

124. Further, Mr MacAdam submitted that, given that the allegations brought by the GMC include allegations of dishonesty, Dr Mutti would be at a disadvantage XXX he submitted, the Tribunal would be unable to properly assess: Dr Mutti’s command of the English language, his understanding at relevant times of the requirements for the award/holding of a PhD from the University of Turin, his understanding of what was appropriate to include in his application form/curriculum vitae when applying for positions and his conversations with others regarding his qualifications.

125. Mr MacAdam acknowledged that, in the event that the hearing proceeded in Dr Mutti’s absence, he had instructions and he would continue to represent Dr Mutti. Mr MacAdam also accepted that if, during the course of the hearing, the Tribunal were to conclude a fair hearing had become impossible it could stay the proceedings at that time.

126. In the alternative to Mr MacAdam’s primary submission that the proceedings should be stayed, he submitted that the proceedings should be postponed until such time that XXX,

and it followed therefore that he opposed the GMC's application to proceed in Dr Mutti's absence.

127. Mr MacAdam accepted that Dr Mutti had been served notice of the hearing in accordance with Rule 40 of the GMC's Fitness to Practice Rules 2004 as amended ('the Rules'). However, he referred the Tribunal to the principles established in *R v Jones* [2003] 1 AC 1 and emphasised that Dr Mutti's absence from the hearing XXX and as such, it was submitted, it would not be fair for the hearing to proceed in his absence and therefore it should be postponed.

Summary of submissions on behalf of the GMC

128. On behalf of the GMC, Mr Slack submitted that the defence application to stay the hearing was not served until Friday 17th November 2022 (one working day before the hearing). As a consequence of the late service (and later service still of the XXX in support of the application), it had not been possible for the Case Manager to consider the application prior to the start of the Tribunal hearing.

129. Mr Slack submitted that the Tribunal should consider the present application in the overall chronology of these proceedings. The case was originally listed for hearing in June 2020 but that hearing was postponed due to the COVID pandemic and re-listed for hearing in January 2021. The latter hearing, had not been postponed because of XXX as had been initially suggested on his behalf. Rather, it had been postponed by agreement because Dr Mutti had at the time been performing front-line work during the COVID pandemic.

130. With regard to the application to stay the proceedings as an abuse of process, Mr Slack submitted that the state of the XXX did not come close to establishing a basis for concluding that Dr Mutti's participation in the proceedings at any time in the future would be impossible.

131. Mr Slack submitted, when considering whether to proceed in absence, the Tribunal should have regard to the checklist of criteria in *R v Jones* [2003] 1AC 1. However, he submitted that, as the Court of Appeal recognized in the case of *GMC v Adeogba* [2016] EWCA Civ 162, the analogy between criminal proceedings and disciplinary proceedings before the MPTS should not be taken too far.

132. Mr Slack submitted that Dr Mutti will be legally represented at the hearing by Mr MacAdam should the Tribunal consider it is appropriate to proceed. Accordingly, the ability to cross-examine the witnesses called by the GMC will be unaffected, as will the ability to make any submission at the Rule 17(2)(g) stage.

133. Mr Slack submitted that XXX.

134. Mr Slack conceded that XXX

135. Mr Slack submitted that there is also a plain public interest in the economical, expeditious and efficient disposal of the allegations brought against Dr Mutti. This is already an old case where two previous hearings have been postponed. If a further postponement were to be granted, the medical evidence did not give any indication as to when the case could be heard. Six witnesses are due to be called by the GMC and there is a risk of recollections fading with the passage of time. In the circumstances, he submitted that the balancing of competing factors came down in favour of proceeding notwithstanding the absence of Dr Mutti.

136. In conclusion, Mr Slack submitted that if the Tribunal were persuaded that it would be unfair to proceed to hearing this week, then the appropriate outcome would be a further postponement rather than a stay. XXX.

The Relevant Legal Principles

Application to stay proceedings as an abuse of process

137. There are a variety of circumstances in which the jurisdiction to stay proceedings can be exercised both in criminal and regulatory proceedings. The relevant authorities identify broadly two categories of abuse. Firstly, where the defendant cannot receive a fair trial. Secondly, where it would be unfair for the defendant to be tried because it would offend the [Tribunal's] sense of justice and propriety to 'try the accused' in the particular circumstances of the case (*R v Maxwell* 2010 UKSC 48).

138. A stay of proceedings is a remedy of last resort: *AG Ref No 1 of 1990* [1992]1 QB 630.

Proceeding in Absence

139. The Tribunal had regard to the principles established in the House of Lords decision of *R v Jones* and *GMC v Adeogba* [2016] EWCA Civ 162.

140. In *R v Jones* the court recognised that the exercise of the discretion to proceed in the absence of the accused should be taken with great care and with a close regard to the overall fairness of the proceedings. The court identified a non-exhaustive list of factors to which the court should have regard in its determination of the issue. In particular, the court [or Tribunal] should consider whether the circumstances are such that the accused can be taken to have voluntarily waived their right to attend the hearing. Further, the court stated XXX.

141. However, in *GMC v Adeogba*, the Court of Appeal emphasised that the analogy between criminal proceedings and disciplinary proceedings should not be taken too far. Delivering judgement Lord Justice Leveson stated at paragraph 17:

'In my judgment, the principles set out in R v Hayward, as qualified and explained by Lord Bingham in R v Jones, provide a useful starting point for any direction that a legal assessor provides and any decision that a Panel makes under rule 31 of the Rules. Having said that,

however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision under rule 31 to continue a disciplinary hearing. This latter decision must also be guided by the context provided by the main statutory objective of the GMC, namely, the protection, promotion and maintenance of the health and safety of the public as set out in section 1(1A) of the [Medical Act 1983]. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance.

It goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC (described in this context as the prosecution in R v Hayward, para 22(5)). In that regard, it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.

‘There are other differences too. First, the GMC represent the public interest in relation to standards of healthcare. It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed’

‘Second, there is a burden on medical practitioners, as there is with all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession’.

The Tribunal’s Decision

142. The application to stay the proceedings, as opposed to simply postponing them, was premised on the proposition that XXX

143. The Tribunal having considered the XXX determined that there was no basis upon which it could properly conclude that, XXXX

144. Furthermore, the Tribunal determined that if the hearing proceeded in Dr Mutti’s absence, it could, at the conclusion of the GMC’s case, reconsider, either following a renewed application or of its own motion, whether to stay the proceedings as an abuse.

145. In relation to the applications to postpone/proceed in absence, the Tribunal had regard throughout to the overarching objective. The Tribunal also reminded itself of the need to strike a balance in terms of fairness between Dr Mutti and the GMC and the need to have regard to the wider public interest.

146. The Tribunal observed that, in terms of Dr Mutti's absence, the most recent application to postpone had been made late in the day, on 18 November at 3pm, XXX. Additionally, the record of a Pre-Hearing Meeting, at which Dr Mutti was represented, made only passing reference to the possibility of a postponement application and appeared to envisage that Dr Mutti would be participating albeit remotely.

147. XXX.

148. XXX.

149. XXX

150. Furthermore, Mr MacAdam confirmed, in answer to an enquiry by the Tribunal, that at the present time Dr Mutti continues to work in both a clinical and teaching capacity albeit mainly over a video link. XXX.

151. The Tribunal balanced Dr Mutti's interests with the public interest in deciding whether to proceed. In reaching its decision, the Tribunal determined that:

- Dr Mutti XXX Accordingly, and to this extent, the Tribunal considered that Dr Mutti's non-attendance was voluntary.
- XXX, the Tribunal was not satisfied that any postponement would secure Dr Mutti's attendance at any future hearing date;
- In the event that the Tribunal proceeded in Dr Mutti's absence, Mr MacAdam was instructed to continue to represent Dr Mutti, he had instructions, he was in communication with Dr Mutti and, if necessary, he would be able to obtain further instructions as the hearing progressed;
- Dr Mutti had provided comprehensive and detailed responses to the GMC's Allegation in the Rule 7 response and witness statement included within the proposed hearing bundle.
- The Tribunal would not draw any inference adverse to Dr Mutti by reason of his non-attendance/participation in the hearing.
- The present hearing has been fixed for a considerable period of time, a number of witnesses have been warned to attend who would be inconvenienced by a further postponement.
- There is a strong public interest that hearings concerning a medical practitioner's fitness to practise should be dealt with expeditiously and be determined within a reasonable time. The allegations date as far back as 2012 and there has already been a considerable delay since the matters in dispute arose.

152. In summary, the Tribunal took the view that it was not satisfied that there was sufficient evidence for it to conclude that Dr Mutti was unable to attend/participate in the hearing, if he chose to do so. The evidence presented to the Tribunal was late and unsatisfactory for the reasons identified. XXX.

153. Weighing up all the circumstances and balancing the interests of Dr Mutti and the interests of the GMC alongside the overarching objective, the Tribunal dismissed the application to postpone the hearing and determined to proceed in Dr Mutti's absence.

154. The Tribunal concluded that it would also not be in the public interest for there to be a long and open-ended delay to these proceedings. It further determined that it would be both fair and in the public interest for this hearing to proceed expeditiously.

155. The Tribunal has determined, based on the evidence before it, to refuse the application to stay proceedings as an abuse of process and concluded that it was appropriate to proceed in Dr Mutti's absence. The Tribunal reminded itself that no adverse inference should be drawn by reason of the fact of Dr Mutti non-attendance.