

PUBLIC RECORD

Dates: 29/08/2023 - 06/09/2023

Medical Practitioner's name: Dr Marion-Sylvia GLUCK

GMC reference number: 6154253

Primary medical qualification: State Exam Med 1978 Universitat Hamburg

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

Summary of outcome

Suspension, 4 months.

Tribunal:

Lay Tribunal Member (Chair)	Mr Peter Scofield
Lay Tribunal Member:	Mrs Ann Bishop
Medical Tribunal Member:	Dr Richard Vautrey
Legal Assessor:	Mrs Julia Oakford (29/08/2023 - 01/09/2023) Mr Graham White (04/09/2023 – 06/09/2023)
Tribunal Clerk:	Miss Hinna Safdar

Attendance and Representation:

Medical Practitioner:	Present and represented
Medical Practitioner's Representative:	Mr Ranald Davidson, Counsel/QC, instructed by MDU
GMC Representative:	Mr Robin Kitching, Counsel

Attendance of Press / Public

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

Overarching Objective

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

Determination on Facts - 30/08/2023

Background

1. Dr Gluck qualified from the University of Hamburg in 1978 and worked in a number of posts in Hamburg until 1989, when she went to live in Australia. She passed the Australian Medical Council examination and worked in Australia as a medical doctor for 14 years, specialising in women's health, nutrition, holistic medicine and bioidentical hormone therapy.
2. Dr Gluck moved to Germany in 2006 before moving to the UK where she joined the GMC register in 2007.
3. She founded the Marion Gluck Clinic (MGC) in 2007, in London. Initially Dr Gluck needed to import the specialist drugs she prescribed as they were not available in the UK through a standard pharmacy. However, in 2009 she founded her own compounding pharmacy called 'London Specialist Pharmacy' (LSP).
4. In November 2012, Dr A began working for the MGC, where she remained until 2016. Following this, Dr A started in independent practice setting up her own clinic.
5. In 2018, another compounding pharmacy, Galenic Laboratories Ltd (trading as Roseway), was founded by Ms D, a former CEO of the MGC. Dr A's patients were initially only able to have prescriptions dispensed by the LSP, but later had the option to use Roseway.
6. Dr Gluck retired from clinical practice at the end of 2017 but applied for a temporary licence to practise, to help during the COVID pandemic. Her temporary licence was revoked

on 11 April 2022. Dr Gluck has applied for voluntary erasure from the medical register which was refused.

7. The allegation that has led to Dr Gluck’s hearing can be summarised as follows. It is alleged that on or around 26 November 2020, Dr Gluck asked Dr A for her login details to Roseway’s online portal, ‘eRoseway’. It is alleged that Dr Gluck personally used and allowed others to use Dr A’s login details to access confidential information about Roseway and confidential patient information. It is alleged that Dr Gluck acted dishonestly.

8. The initial concerns were raised with the GMC on 14 March 2022 by Ms D, Chief Executive of Roseway.

The Allegation and the Doctor’s Response

9. The Allegation made against Dr Gluck is as follows:

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

1. On or around 26 November 2020 you asked Dr E for her log in details (‘the Login’) to Galenic Laboratories Limited t/a Roseway Labs (‘Roseway’)’s online portal eRoseway. **Admitted and found proved**
2. On one or more occasion, you:
 - a. personally used; **To be determined**
 - b. facilitated someone else to use; **Admitted and found proved** the Login to access confidential information relating to Roseway.
3. On one or more occasion, you:
 - a. personally used; **To be determined**
 - b. facilitated someone else to use; **Admitted and found proved** the Login to access confidential patient information.
4. You did not have permission from Roseway to:
 - a. possess the Login; **Admitted and found proved**
 - b. access confidential information relating to Roseway; **Admitted and found proved**
 - c. access confidential patient information; **Admitted and found proved**

- d. facilitate someone else to use the Login to access confidential:
 - i. information relating to Roseway; **Admitted and found proved**
 - ii. patient information. **Admitted and found proved**
5. You knew you did not have permission from Roseway to:
 - a. possess the Login; **Admitted and found proved**
 - b. access confidential information relating to Roseway; **Admitted and found proved**
 - c. access confidential patient information; **Admitted and found proved**
 - d. facilitate someone else to use the Login to access confidential:
 - i. information relating to Roseway; **Admitted and found proved**
 - ii. patient information. **Admitted and found proved**
6. Your actions as described in paragraphs 1, 2 and 3 were dishonest by reason of paragraphs 4 and 5.
Admitted and found proved in relation to Paragraph 1, and sub-paragraphs 2(b), 3(b)
To be determined in relation to sub-paragraphs 2(a) and 3(a)

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

10. At the outset of these proceedings, through her counsel, Mr Ranald Davidson, Dr Gluck made admissions to some paragraphs and sub-paragraphs of the Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended ('the Rules'). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

The Facts to be Determined

11. In light of Dr Gluck's response to the Allegation made against her, the Tribunal is required to determine whether Dr Gluck personally used the Login to access confidential

information relating to Roseway and confidential patient information, and whether this behaviour amounted to dishonesty.

Witness Evidence

12. The Tribunal 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:

- Ms D, the Chief Executive and Co-founder of Roseway Labs, dated 30 January 2023;
- Mr C, the Director of GetMe Ltd, dated 30 January 2023.

13. Dr Gluck provided her own witness statement, dated 26 July 2023 and also gave oral evidence at the hearing.

14. The Tribunal also received evidence on behalf of Dr Gluck in the form of witness statements from the following witness who was not called to give oral evidence:

- Mr F, a Chartered Accountant, dated 31 May 2023.

Documentary Evidence

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

- Department of Geriatric Medicine Discharge letter, dated 15 May 2023;
- Draft proposal email for LSP development, dated 18 March 2016;
- Dr Gluck's reflection documents, dated May 2023 and a subsequent undated addendum;
- Certificate of Continued Professional Development in Probity and Ethics, dated 24 May 2023;
- Booking confirmation email for Probity and Ethics course, dated 7 June 2023;
- Dr Gluck's CV;
- Various testimonials from colleagues.

The Tribunal's Approach

16. 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 Gluck 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.

17. The Legal Assessor reminded the Tribunal that it should only consider the evidence relevant to the fact-finding stage as some of the evidence is relevant to the impairment stage.

18. The Legal Assessor gave a good character direction, namely that good character could support credibility and/or propensity not to have acted as alleged. She stated that good character is not a defence and it is a matter for the Tribunal to give such weight to it as it considered appropriate.

The Tribunal's Analysis of the Evidence and Findings

19. 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 2(a) and Paragraph 3(a)

20. The Tribunal had to determine whether Dr Gluck had, on one or more occasion, personally used the Login to access confidential information relating to Roseway and confidential patient information.

21. The Tribunal reminded itself that the burden of proof rests on the GMC. It bore in mind that the GMC could not adduce any direct evidence as to what had occurred at the meeting held on 26 November 2020 at Dr Gluck's home.

22. Instead, Mr Kitching, on behalf of the GMC, invited the Tribunal to draw the inference that Dr Gluck had personally used the Login to eRoseway in order to access confidential information relating to Roseway and in order to access confidential patient information. He submitted that it strained credulity for Dr Gluck to say that she had never looked at Roseway's portal, and reminded the Tribunal that she was a successful businesswoman as well as a successful doctor. He submitted that her IT skills, albeit limited, were sufficient to access and to use the relevant information.

23. The Tribunal then considered the evidence provided by Dr Gluck, both in her witness statement and in her oral testimony. She fully accepted that she had obtained the E-Roseway

login details from Dr A, and that she had provided the details to those present at the meeting on 26 November 2020 by writing them on a piece of paper. She told the Tribunal that she herself had never used the login details, and that when the discussion about the Roseway portal was taking place she was preparing a meal. When cross-examined by Mr Kitching, she said that she had heard the discussion but she took no part in it.

24. On behalf of Dr Gluck, Mr Davidson submitted that there was an absence of any evidence that she had personally accessed the Roseway portal, and that any information contained within it was of no use or relevance to her as she was not involved in the development of the LSP portal. He reminded the Tribunal of Ms D's own email of 17 August 2022 in which she said, "*there is no direct evidence that Dr Gluck herself accessed the site but there is evidence that she was given the information and then access started.*"

25. The Tribunal had regard to Dr Gluck's admissions to facilitating others to use the login to access confidential information relating to Roseway and to patient information. It concluded that those admissions gave weight to her overall credibility. It bore in mind that prior to those events she was of good character.

26. Having considered all of the evidence placed before it, the Tribunal concluded that, in the absence of any direct evidence, it would be unsafe to draw the inference invited by the GMC. It concluded that the GMC had not discharged the burden of proof placed upon it in relation to sub-paragraphs 2(a) and 3(a) of the Allegation and therefore found those sub-paragraphs not proved.

Paragraph 6

27. Having made the determination set out above, it follows that Paragraph 6 of the Allegation is not proved in relation to sub-paragraphs 2(a) and 3(a) of the Allegation.

The Tribunal's Overall Determination on the Facts

28. The Tribunal has determined the facts as follows:

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

1. On or around 26 November 2020 you asked Dr A for her log in details ('the Login') to Galenic Laboratories Limited t/a Roseway Labs ('Roseway')'s online portal eRoseway. **Admitted and found proved**

2. On one or more occasion, you:
 - a. personally used; **Determination and found not proved**
 - b. facilitated someone else to use; **Admitted and found proved**
the Login to access confidential information relating to Roseway.

3. On one or more occasion, you:
 - a. personally used; **Determination and found not proved**
 - b. facilitated someone else to use; **Admitted and found proved**
the Login to access confidential patient information.

4. You did not have permission from Roseway to:
 - a. possess the Login; **Admitted and found proved**
 - b. access confidential information relating to Roseway; **Admitted and found proved**
 - c. access confidential patient information; **Admitted and found proved**
 - d. facilitate someone else to use the Login to access confidential:
 - i. information relating to Roseway; **Admitted and found proved**
 - ii. patient information. **Admitted and found proved**

5. You knew you did not have permission from Roseway to:
 - a. possess the Login; **Admitted and found proved**
 - b. access confidential information relating to Roseway; **Admitted and found proved**
 - c. access confidential patient information; **Admitted and found proved**
 - d. facilitate someone else to use the Login to access confidential:
 - i. information relating to Roseway; **Admitted and found proved**
 - ii. patient information. **Admitted and found proved**

6. Your actions as described in paragraphs 1, 2 and 3 were dishonest by reason of paragraphs 4 and 5.
Admitted and found proved in relation to Paragraph 1, and sub-paragraphs 2(b) and 3(b) of the Allegation
Determined and found not proved in relation to sub-paragraphs 2(a) and 3(a)

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 - 05/09/2023

29. The Tribunal now has to decide, in accordance with Rule 17(2)(l) of the Rules, whether, on the basis of the facts found proved, Dr Gluck's fitness to practise is impaired by reason of misconduct.

The Outcome of Applications Made during the Impairment Stage

30. The Tribunal granted Mr Davidson's application for Ms G, the Business Development Manager for Gluck Holdings Ltd from September 2015 to July 2017, to appear via video link in order to provide oral evidence on behalf of Dr Gluck.

Submissions

GMC Counsel submissions

31. On behalf of the GMC, Mr Kitching submitted that there were disputed issues of fact that the Tribunal needed to consider. Firstly, in relation to why Dr Gluck felt the need to look at the Roseway portal if the LSP portal was "*almost ready to go*", as she stated in evidence. Secondly, Mr Kitching submitted that the Tribunal needed to consider whether Dr Gluck truly gave no thought whatsoever to the ethical implications of what she was doing. Thirdly, whether Dr Gluck had been unaware of the continued use of the login details.

32. Mr Kitching reminded the Tribunal that misconduct was not contested by Dr Gluck and that she has admitted dishonesty. He referred the Tribunal to the following paragraphs of Good Medical Practice (2013) (GMP):

"1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues,1 are honest and trustworthy, and act with integrity and within the law.

36 You must treat colleagues fairly and with respect.

47 You must treat patients as individuals and respect their dignity and privacy.

50 You must treat information about patients as confidential. This includes after a patient has died.

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

77 You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals."

33. In relation to Dr Gluck's dishonesty, Mr Kitching submitted that, whilst both she and Dr E were medical professionals who should have known better, had it not been for her request for the Roseway login details, neither would be in the position they now find themselves. He referred the Tribunal to the profound impact these events have had upon Dr E, and said that this was an additional consequence of Dr Gluck's misconduct. He reminded the Tribunal of the effects of her misconduct on Roseway and on the Chief Pharmacist at LSP, who also faces regulatory action by the General Pharmaceutical Council.

34. Mr Kitching referred the Tribunal to additional GMC guidance, including '*Leadership and management for all doctors*' (2012) and '*Confidentiality: good practice in handling patient information*' (2017).

35. Mr Kitching submitted that, given the sheer number of breaches of the standards required of doctors, and the seriousness of those breaches, there was no doubt that her actions clearly constituted misconduct that was serious.

36. In relation to impairment, Mr Kitching acknowledged and accepted that Dr Gluck has demonstrated good evidence of insight into her wrongdoing. However, he submitted that her apologies to Dr E carry significantly more weight than what he described as her rather half-hearted apologies to Roseway, which were 'grudgingly' offered. Mr Kitching accepted that Dr Gluck had expressed genuine regret and remorse, particularly having involved others into the events which followed 26 November 2020.

37. Mr Kitching submitted that when the Tribunal considers the statutory overarching objective, it should find that there are two strands which are applicable to the circumstances

of this case, namely the declaration and upholding of proper professional standards and conduct, and the maintenance of public confidence in the profession. He submitted that, in order to satisfy those aspects of the public interest, a finding of current impairment is necessary.

Submissions of behalf of Dr Gluck

38. On behalf of Dr Gluck, Mr Davidson referred the Tribunal to the case of *Roylance v GMC (no2) (2000) 1 AC 311* in which ‘misconduct’ was defined as a ‘word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances’.

39. Mr Davidson conceded that there were serious breaches of propriety on the part of Dr Gluck and that, in the circumstances, there was no doubt that a finding of misconduct will follow. However, he submitted that there was no intention, on her part, to obtain information with a view to scrutinising patient records or to breach patient confidentiality. The primary purpose was made clear by Dr Gluck in her oral evidence and her written evidence, and was confirmed by the evidence of Dr E. The login details, he said, were obtained by Dr Gluck in order to test the functionality of the LSP portal in comparison with that of eRoseway.

40. Mr Davidson submitted that there was no attempt by Dr Gluck to deceive or pressurise Dr E into providing the login details. He said that Dr Gluck had been unaware of the significance of her request, and of the fact that she was asking Dr E to breach contractual terms or to breach the duty of confidentiality to patients, to which both doctors were subject. He reminded the Tribunal that no concerns had been raised either by Dr Gluck or Dr E, and contended that this was powerful evidence of Dr Gluck’s naivety.

41. Mr Davidson also submitted that the success of her business could not be taken as evidence of any sinister or premeditated motive on Dr Gluck’s part. He added that there was no evidence that Dr Gluck used the login details herself. Her involvement or knowledge of the use of the login details was limited to the one occasion, albeit significant and serious. He described her conduct as a one-off incident of naivety.

42. Mr Davidson reminded the Tribunal that this is the first and only occasion over a 45-year period that Dr Gluck has had to appear before any regulator or faced any disciplinary charges, within the United Kingdom or other countries where she worked, in Germany and in Australia. He added that Dr Gluck has reflected on the mistakes which she has made and has demonstrated genuine regret and remorse. She has expressed her apologies, not only to Dr E, but to others involved, including Roseway and Ms D.

43. Mr Davidson submitted that Dr Gluck has taken positive steps to address the lapse in her standards, which resulted in this particular case. She has attended two courses and produced certificates of attendance, the first on insight and the second on probity and ethics. Perhaps most importantly, Mr Davidson submitted, Dr Gluck has sought to introduce into her businesses further training and coaching so as to prevent similar mistakes happening again. He contended that this demonstrates not only her desire to prevent any recurrence on her part, unlikely as it may be, but also to prevent any similar mistakes happening involving others with whom she works. That, he submitted, is clearly indicative of the lessons she has learnt and wishes to impart to others for whom she is responsible.

44. Mr Davidson submitted that, in regard to Dr Gluck's admitted dishonesty, it should be viewed as being very much at the lower level of the spectrum. He concluded by saying that this is a case which did not require a finding of impaired fitness to practise.

The Relevant Legal Principles

45. The Legal Assessor advised the Tribunal that, should it consider it necessary to reach a finding on any disputed matters of fact prior to its consideration of serious misconduct and, if necessary, impairment of fitness to practise, then the burden of proof was on the GMC and the standard of proof was on the balance of probabilities. This advice was endorsed by Mr Kitching and Mr Davidson.

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

47. The Legal Assessor reminded the Tribunal of the principles of law relating to misconduct and current impairment, which are a matter of record on the transcript.

48. She referred to the case of *CHRE v NMC and Grant [2011] EWHC 927 (Admin)* ('Grant'):

'a) Whether the registrant has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm;

b) Whether the registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;

c) Whether the registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession.

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

49. The following two cases, referred to by counsel, were summarised by the Legal Assessor:

GMC v Uppal (2015) EWHC 1304 - this case related to a single incident of dishonesty in which the Tribunal did not find impairment. The judge concluded that it appeared to be an isolated lapse in an otherwise unblemished career, the risk of repeating the misconduct was extremely low, not least because of the registrant's insight and steps taken towards remediation. The Tribunal was entitled to conclude that patients and the public were not at risk and the public interest was satisfied by the finding of misconduct.

PSA v Nursing and Midwifery Council and SM CSIH 29 - this was an isolated error of judgment resulting in a finding of misconduct and the committee had in mind and weighed all material factors and the public interest when finding no impairment.

50. The Legal Assessor also referred to the case of *GMC v Armstrong (2021) EWHC 1658 (Admin)* - a dishonesty case in which the judge concluded that undue leniency risks undermining public confidence.

51. The Legal Assessor reminded the Tribunal that this is a two-stage process. It should first consider whether Dr Gluck's actions amounted to misconduct which was serious. If it so decided, it should then go on to determine whether or not her fitness to practise was

impaired, as of today, taking into account her 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.

52. The Legal Assessor reminded the Tribunal that it must consider which, if any, of the limbs of the overarching objective were engaged.

The Tribunal's Determination on Disputed Facts

53. Having determined that sub-paragraphs 2(a) and 3(a) of the Allegation were not proved, and that consequently Paragraph 6 of the Allegation in relation to those sub-paragraphs was not proved, the Tribunal was required to deal with the remaining elements of the Allegation at Stage 2. Those elements, in their entirety, were admitted and found proved at the outset of the hearing.

54. However, notwithstanding those admissions and findings, the GMC disputed some of the factual positions taken by Dr Gluck, set out in her witness statement and given in oral evidence. The Tribunal identified three areas of dispute arising from Mr Kitching's submissions:

- a) Was the LSP portal "*almost ready to go*" on or around 26 November 2020?
- b) Did Dr Gluck give no thought to the ethical implications of what she was doing on or around that date?
- c) Was Dr Gluck unaware of the continued use of the Roseway portal after 26 November 2020?

55. The Tribunal, firstly, had to decide whether or not it should reach findings of fact on those three areas of dispute. It reached the conclusion that, in fairness to the GMC as well as to Dr Gluck, it should make determinations in respect of the disputed factual basis of her admissions. Further, it concluded that it was necessary to do so in order to make informed and comprehensive decisions on misconduct and, if serious misconduct were to be found, on Dr Gluck's current fitness to practise.

56. Having reached that decision, the Tribunal had regard to the advice of the Legal Assessor and the agreement of both Mr Kitching and Mr Davidson that the burden and standard of proof should apply to that preliminary exercise, prior to the exercise of its own judgement at a later stage. Consequently, it bore in mind that, solely in relation to the

disputed facts, the burden of proof lay with the GMC and the standard of proof was the civil standard, namely the balance of probabilities.

Was the LSP portal “almost ready to go” on or around 26 November 2020?

57. When cross-examined by Mr Kitching, Dr Gluck answered a question about any advantage gained by LSP from using Roseway’s login by saying, *“Our portal was already done. I don’t see it as an advantage. I wanted to compare functionality.”* Mr Kitching then suggested that the LSP portal was not finished by 26 November 2020, and Dr Gluck said, *“it was nearly there”*.

58. The Tribunal noted Dr Gluck’s evidence that, *“In 2018/2019 the first version of the portal was active, but there were glitches, and we were working on version 2 of the portal. LSP engaged IT consultants on and off, but at this time nothing got properly resolved.”* The Tribunal also noted that version 2 of the LSP portal was, according to Dr Gluck, *“eventually completed at the end of 2021”* but not finally launched until June 2022. It follows that, on Dr Gluck’s own account, there was a period of at least two years before the completion of version 2.

59. It was approximately half-way through that period that the meeting held on 26 November 2020 took place. The Tribunal noted Dr Gluck’s statement, in which she said, *“Not long after this meeting, the IT developer was sacked as we were unimpressed with his work.”*

60. Having regard to the long period of time taken to finalise the second version of the LSP portal, and to the dismissal of the company’s IT developer, the Tribunal determined that, on the balance of probabilities, the LSP portal was not *“almost ready to go”* thereby giving rise to a perceived need for LSP to look at the Roseway portal on 26 November 2020.

Did Dr Gluck give no thought to the ethical implications of what she was doing on or around 26 November 2020?

61. There was no dispute that those present at the meeting on 26 November 2020 used the Roseway login details to compare the functionality of the Roseway portal with the LSP version 2 portal, then under development. Dr Gluck’s evidence was that *“at that time I simply didn’t think about this being inappropriate and I certainly didn’t think about the confidential material that might be on the site or the intellectual property of the site. I just saw a problem, and saw a way to fix it, without thinking about the implications of what I suggested.”* She

went on to say *“I admit to being totally naïve. I can’t even say I exercised poor judgement, because the reality was that in the moment, I exercised no judgement.”*

62. Mr Kitching, in his submission, said that it was implausible that Dr Gluck gave absolutely no thought to the matter. He reminded the Tribunal that she had built three separate businesses *“from scratch”*, contended that she was *“savvy”* in the world of business and submitted that she understood there was an *“unauthorised”* use of the Roseway portal. He added that she had no regard to the ethical considerations, to the propriety of what she was doing or to patient confidentiality.

63. The Tribunal accepted Mr Kitching’s submission in relation to Dr Gluck’s business acumen, and concluded that it was more likely than not that she had some awareness of GDPR principles, both from her background as a businesswoman and as a doctor.

64. Further, the Tribunal concluded that Dr Gluck was aware of the commercial advantage to be gained by the use of the Roseway portal. She accepted that there was a desire to *“compare functionality.”* She said that she wanted to *“avoid making the same mistakes”* which were perceived to be apparent in the Roseway portal. The Tribunal considered it was self-evident that the purpose of the meeting on 26 November 2020 was to improve the LSP portal by reference to the Roseway portal.

65. In that respect, the Tribunal noted that, whilst Dr Gluck said in her oral evidence that the reference to the Roseway portal took only half an hour during an all-day leaders’ meeting, her written statement gave a different impression. She stated that, *“There was a meeting arranged with LSP’s IT Developer for 26 November 2020. The plan was for him to demonstrate his progress and to discuss the findings of our portal.”* After setting out the people present at the meeting, she went on to say, *“At some stage I volunteered that Dr A had access to the eRoseway portal and could perhaps demonstrate its functionality to us, so that we could understand the things she did not like and could improve the user experience.”*

66. The Tribunal concluded that, on the balance of probabilities, if not the sole item on the agenda, the main purpose of the meeting was to improve the functionality of the LSP portal, and that the decision to refer to the Roseway portal was consciously made in order to facilitate that exercise.

67. The Tribunal therefore found, as a matter of fact, that Dr Gluck did not *“give no thought”* to the ethical implications of what she was doing.

Was Dr Gluck unaware of the continued use of the Roseway portal after 26 November 2020?

68. In her witness statement, Dr Gluck said *“I did not personally use the login details that Dr A had supplied and other than the meeting on 26 November 2020, I was never present when those details were used again by others. I did not instruct anyone to use those details and no one ever told me that they had done so.”*

69. Mr Kitching, in his submission, said that the GMC did not accept that Dr Gluck gave no thought to the use of the Roseway portal made by others following the meeting on 26 November 2020.

70. The Tribunal found that the evidence provided by Dr Gluck in this respect was convincing. It has already referred to her limited IT skills, accepted by the GMC other than in relation to basic functions such as typing in login details. She was not, herself, an IT expert and employed someone else to develop the second version of the LSP portal. It therefore found no reason to reject her evidence that she gave no thought to the future use of the Roseway portal by others, and that she was unaware of any such use.

The Tribunal’s Determination on Misconduct

71. The Tribunal went on to consider if Dr Gluck’s actions amounted to misconduct and did so with reference to the relevant sections of GMP, which set out the standards that a doctor must continue to meet throughout their professional career. The Tribunal considered the following paragraphs to be relevant:

“1 Patients need good doctors. Good doctors make the care of their patients their first concern: they are competent, keep their knowledge and skills up to date, establish and maintain good relationships with patients and colleagues,1 are honest and trustworthy, and act with integrity and within the law.

36 You must treat colleagues fairly and with respect.

47 You must treat patients as individuals and respect their dignity and privacy.

50 You must treat information about patients as confidential. This includes after a patient has died.

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

77 You must be honest in financial and commercial dealings with patients, employers, insurers and other organisations or individuals."

72. The Tribunal considered that it was clear from the evidence that Dr Gluck had breached the standards set out in GMP with regard to all the paragraphs set out above.

73. The Tribunal also had regard to the Confidentiality: good practice in handling patient information (2017), as referred to by GMC counsel, in particular:

"5 Doctors, like everyone else, must comply with the law when using, accessing or disclosing personal information. The law governing the use and disclosure of personal information is complex, however, and varies across the four countries of the UK.

8 The advice in this guidance is underpinned by the following eight principles:

a Use the minimum necessary personal information. Use anonymised information if it is practicable to do so and if it will serve the purpose.

b Manage and protect information. Make sure any personal information you hold or control is effectively protected at all times against improper access, disclosure or loss.

c Be aware of your responsibilities. Develop and maintain an understanding of information governance that is appropriate to your role.

d Comply with the law. Be satisfied that you are handling personal information lawfully.

e Share relevant information for direct care in line with the principles in this guidance unless the patient has objected.

f Ask for explicit consent to disclose identifiable information about patients for purposes other than their care or local clinical audit, unless the disclosure is required by law or can be justified in the public interest.

g Tell patients about disclosures of personal information you make that they would not reasonably expect, or check they have received information about such disclosures, unless that is not practicable or would undermine the purpose of the disclosure. Keep a record of your decisions to disclose, or not to disclose, information.

h Support patients to access their information. Respect, and help patients exercise, their legal rights to be informed about how their information will be used and to have access to, or copies of, their health records.

120 You must not access a patient’s personal information unless you have a legitimate reason to view it.

Computer Misuse Act 1990 (UK):

It is an offence under this Act to gain unauthorised access to computer material. This would include using another person’s ID and password without authority to use, alter or delete data.”

74. The Tribunal also had regard to the *Leadership and management for all doctors (2012)* as referred to it by the GMC, particularly with reference Dr Gluck’s role as an employer:

“3 Most doctors work in multidisciplinary teams. The work of these teams is primarily focused on the needs and safety of patients. The formal leader of the team is accountable for the performance of the team, but the responsibility for identifying problems, solving them and taking the appropriate action is shared by the team as a whole.”

75. The Tribunal reminded itself of the circumstances of the case. that Dr Gluck had improperly obtained secure login details of another company from someone whom she used to employ, had provided those login details to the attendees at a meeting and had taken no steps to control who used those details or for how long. The Tribunal was particularly concerned by evidence demonstrating that the provision of the Roseway login details enabled access without authorisation over a period of 13 months, on 69 separate dates with 1542 accesses to individual pieces of information.

76. Dr Gluck has admitted that her actions involved dishonesty. The Tribunal also reminded itself that, whilst her unauthorised use of the Roseway portal was primarily for commercial benefit, the information contained within the site included details of patients, records of their consultations and details of their prescriptions.

77. Having regard to all the evidence, and to the standards set out in GMP and other relevant guidance, the Tribunal determined that Dr Gluck’s actions and omissions did amount to misconduct which was serious.

The Tribunal’s Determination on Impairment

78. The Tribunal, having found that the facts found proved amounted to misconduct which was serious, went on to consider whether, as a result of that misconduct, Dr Gluck's fitness to practise is currently impaired.

79. The Tribunal first considered whether the misconduct was remediable, whether it had been remedied and whether the risk of repetition was highly unlikely. It bore in mind that dishonesty is often said to be difficult to remediate. It also bore in mind that remediation could not, perhaps, be said to be complete at least until the outcome of the civil case between Roseway and LSP. Nonetheless, it was of the view that Dr Gluck's misconduct was capable of remediation. Indeed, it noted her regret and remorse, as well as her apologies. The Tribunal did not accept Mr. Kitching's submission that her apology to Roseway and/or Ms D was necessarily 'grudging'; instead, it considered the apology to have been qualified but not insufficient.

80. The Tribunal was of the view that Dr Gluck had demonstrated considerable insight into the unacceptable nature of her behaviour, and noted the significant steps she has already taken to avoid any recurrence. It concluded that she had demonstrated a well-developed process of remediation, and that the risk of repetition was highly unlikely.

81. The Tribunal bore in mind that, prior to the events of this case, Dr Gluck was of good character, and that she has had a career spanning over 45 years without disciplinary or regulatory action. It reminded itself of her standing within her chosen speciality, and had regard to the positive testimonials from colleagues, former colleagues and patients.

82. However, the Tribunal also had no doubt that her unauthorised use of a rival company's portal, made in order to gain a commercial advantage in the improvement of her own company's site, together with the unauthorised disclosure – whether intended or not – of confidential patient information brought the reputation of the medical profession into disrepute. Her actions breached fundamental tenets of the profession, and she was dishonest.

83. Having given full consideration to the serious nature of Dr Gluck's misconduct, to breaches of data protection principles and legislation, to her disregard for patient confidentiality and to her dishonesty the Tribunal reminded itself of its responsibility to uphold the overarching objective, namely:

- 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.

84. The Tribunal determined that the second and the third limbs of the overarching objective were engaged in this case. It has a duty to maintain the public's confidence in the profession and to declare and uphold proper standards of conduct and behaviour. Doctors occupy a position of privilege and trust in society and are expected to act with integrity. The public is entitled to expect that doctors will be honest and trustworthy at all times. Whilst it is accepted that Dr Gluck has worked hard to remediate, and has achieved a great deal, the Tribunal concluded that the public interest, and the need to uphold the overarching objective, would be undermined if a finding of impairment were not made.

85. Accordingly, the Tribunal determined that Dr Gluck's fitness to practise is impaired by reason of her misconduct.

Determination on Sanction - 06/09/2023

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

Submissions

On behalf of the GMC

87. On behalf of the GMC, Mr Kitching submitted that a period of suspension is the most appropriate sanction in this case and referred the Tribunal to those paragraphs of the Sanctions Guidance (2020)('SG') which he considered relevant.

88. Mr Kitching submitted that Dr Gluck's actions were a serious departure from the principles set out in GMP and her dishonesty was a 'course of conduct' that constituted a serious breach of a fundamental tenet of the medical profession. He invited the Tribunal to consider the effects of her misconduct on others, namely Dr E, Roseway, and the chief

pharmacist at the LSP who is now facing disciplinary action with his regulator. He said that the impact on others was an aggravating factor in this case.

89. Mr Kitching referred to the Tribunal's findings that Dr Gluck had taken comprehensive steps to remediate and reflect, had demonstrated significant insight, had made admissions, and that the risk of repetition was highly unlikely. Mr Kitching accepted that there has been no identified risk to patients. He submitted that a period of suspension would be proportionate in order to maintain public confidence and to uphold standards and would mark the seriousness of Dr Gluck's misconduct.

On behalf of Dr Gluck

90. Mr Davidson submitted that taking no action would be sufficient as a finding of impairment marked the seriousness of Dr Gluck's conduct. He submitted that her dishonesty was not a 'course of conduct', as submitted by Mr Kitching, but instead a 'on-off' event on one occasion involving one request.

91. Mr Davidson submitted that Dr Gluck has shown regret and remorse for her actions and, despite being retired, has remediated extensively. He said that she had cooperated with the GMC and that she had participated fully during the hearing. He reminded the Tribunal of the medical evidence Dr Gluck had provided and said that the rigour of the process has *'imposed a toll'* on her.

92. Mr Davidson submitted that the finding of impairment alone met the overarching objective. It would be a proportionate response to the circumstances of the case. He reminded the Tribunal that Dr Gluck had now retired from clinical practice.

93. Mr Davidson submitted that there is no risk to patient safety or public protection. Whilst any dishonesty is serious, he submitted that in all the circumstances this is towards the lower end of the spectrum. Dr Gluck needs no more time to remediate, and the Tribunal in its determination on impairment set out that there is little else that can be expected of Dr Gluck in terms of evidence of remediation.

The Tribunal's Approach

94. The decision as to the appropriate sanction, if any, to impose is a matter for the Tribunal alone, exercising its own judgement. The Tribunal has given careful consideration to

all evidence adduced in this case, both oral and documentary, when reaching a decision on sanction.

95. The Tribunal reminded itself of the GMC's overarching statutory objective:

- 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.

96. In reaching its decision, the Tribunal gave careful consideration to the guidance set out within the SG. It reminded itself that sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect.

97. The Tribunal has borne in mind that, in deciding what sanction, if any, to impose, it should consider the sanctions available, starting with the least restrictive and then consider each sanction in ascending order. It should also have regard to the principle of proportionality, weighing the interests of the public against those of the doctor.

The Tribunal's Determination on Sanction

98. Before reaching its decision on what sanction, if any, to impose, the Tribunal concluded that it was necessary to reach its own decision on the contrary positions set out by Mr Kitching and Mr Davidson in relation to Dr Gluck's dishonesty. Mr Kitching described the dishonesty as being a 'course of conduct' rather than a single act. Mr Davidson, however, said that her dishonesty was a 'one-off' event involving one request on one occasion which was not repeated.

99. The Tribunal gave careful consideration to the evidence of both Dr Gluck and Dr E. Both doctors said, in evidence, that there had only been one request made either shortly before 26 November 2020 or on the day itself. Dr Gluck said that, having been given the Roseway login details by Dr E, she wrote the information on a piece of paper and gave it to those present at the meeting. The Tribunal accepted her evidence that she was not present when those details were used again by others.

100. The Tribunal therefore accepted Mr Davidson’s submission that Dr Gluck’s dishonesty was not a ‘course of conduct’ but was a ‘one-off’ incident.

101. Having resolved that area of dispute, the Tribunal went on to consider the aggravating and mitigating factors in this case.

102. The Tribunal bore in mind that Dr Gluck was an eminent and highly regarded doctor, whose request of Dr E placed her in a very difficult position. That request, which Dr E should have refused, was the starting point for the adverse consequences which subsequently impacted on Dr E herself, on Roseway, and on the LSP’s chief pharmacist. It was a single incident with multiple consequences. This, the Tribunal determined, was a significant aggravating factor.

103. The Tribunal then went on to consider the mitigating factors:

- Dr Gluck has demonstrated insight and the Tribunal considered that she understands the seriousness of her misconduct;
- Dr Gluck has achieved a great deal by way of remediation;
- Dr Gluck has offered apologies to Roseway, to the GMC, to Dr E, and to her own staff;
- Dr Gluck, despite being retired, has undertaken courses as well as implemented mandatory training relating to confidentiality and data protection in her businesses for her employees to undertake;
- Dr Gluck is of previous good character. She has been working for 45 years and has had no regulatory action or findings of impairment or dishonesty;
- There has been a lapse of almost three years since the events set out in the Allegation occurred with no evidence of any repetition;
- Dr Gluck has fully cooperated with the GMC’s investigation;
- Dr Gluck has fully engaged with these MPT proceedings in relation to her fitness to practise, despite being retired;
- Dr Gluck has provided the Tribunal with positive references and testimonials.

104. The Tribunal noted the evidence relating to Dr Gluck’s XXX, and the impact and stress of these proceedings. Whilst it accepted that evidence, and sympathised with Dr Gluck, these consequences post-dated the relevant events. It therefore found that they were of limited weight in terms of mitigation.

No action

105. The Tribunal first considered whether to conclude the case by taking no action. It bore in mind that taking no action following a finding of impaired fitness to practise would only be appropriate in exceptional circumstances. The Tribunal determined that there are no exceptional circumstances in this case. It determined that it would neither be sufficient, proportionate, nor in the public interest to conclude this case by taking no action.

Conditions

106. The Tribunal next considered whether to impose conditions on Dr Gluck's registration. It had regard to paragraph 81 of the SG:

81 Conditions might be most appropriate in cases:

a involving the doctor's health

b involving issues around the doctor's performance

c where there is evidence of shortcomings in a specific area or areas of the doctor's practice

d where a doctor lacks the necessary knowledge of English to practise medicine without direct supervision.

107. The Tribunal determined that none of these factors applied in this case. The Tribunal also bore in mind that conditions must be appropriate, proportionate, workable and measurable. It was of the view that it would not be possible for conditions to be formulated that address Dr Gluck's misconduct. The Tribunal did not, therefore, consider the imposition of conditions as a proportionate and appropriate sanction in this case.

Suspension

108. The Tribunal had regard to the following paragraphs of the SG:

"91 Suspension has a deterrent effect and can be used to send out a signal to the doctor, the profession and public about what is regarded as behaviour unbefitting a registered doctor. Suspension from the medical register also has a punitive effect, in that it prevents the doctor from practising (and therefore from earning a living as a doctor) during the suspension, although this is not its intention.

92 Suspension will be an appropriate response to misconduct that is so serious that action must be taken to protect members of the public and maintain public confidence in the profession. A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (ie for which erasure is more likely to be the appropriate sanction because the tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession).

93 Suspension may be appropriate, for example, where there may have been acknowledgement of fault and where the tribunal is satisfied that the behaviour or incident is unlikely to be repeated. The tribunal may wish to see evidence that the doctor has taken steps to mitigate their actions.

...

97 Some or all of the following factors being present (this list is not exhaustive) would indicate suspension may be appropriate.

a A serious breach of Good medical practice, but where the doctor’s misconduct is not fundamentally incompatible with their continued registration, therefore complete removal from the medical register would not be in the public interest. However, the breach is serious enough that any sanction lower than a suspension would not be sufficient to protect the public or maintain confidence in doctors.

...

e No evidence that demonstrates remediation is unlikely to be successful, eg because of previous unsuccessful attempts or a doctor’s unwillingness to engage.

f No evidence of repetition of similar behaviour since incident.

g The tribunal is satisfied the doctor has insight and does not pose a significant risk of repeating behaviour.

109. Whilst Dr Gluck’s misconduct was serious, involving several breaches of the standards set out in GMP, including those relating to honesty and integrity, the Tribunal determined that it was not fundamentally incompatible with continued registration. It concluded that all the relevant factors of the SG, set out above, were engaged in this case.

110. The Tribunal therefore concluded, after weighing all the factors, including the interests of Dr Gluck against the need to uphold the overarching objective, that a period of suspension was the appropriate and proportionate response in this case.

111. In so doing, it had regard to the guidance relating to erasure, set out in the SG. It gave careful attention to paragraphs 120 to 128, headed ‘Considering dishonesty’. Paragraph 125 of the SG sets out that:

*“125 Examples of dishonesty in professional practice could include:
a defrauding an employer
b falsifying or improperly amending patient records
c submitting or providing false references
d inaccurate or misleading information on a CV
e failing to take reasonable steps to make sure that statements made in formal documents are accurate.”*

112. The Tribunal concluded that none of those elements were present in this case. It also concluded that Dr Gluck’s dishonesty was not ‘persistent’ or ‘covered up’. It therefore determined that erasure would be disproportionate, punitive and excessive.

Length of Suspension

113. Having determined to impose a period of suspension on Dr Gluck’s registration, the Tribunal went on to consider the length of the period of suspension.

114. Having considered the relevant parts of the SG the Tribunal determined to suspend Dr Gluck’s registration from the medical register for a period of 4 months. It was satisfied that a period of suspension was necessary to mark the seriousness of Dr Gluck’s misconduct, and to uphold the overarching objective to maintain public confidence in the profession and to uphold proper professional standards. The Tribunal considered that a longer period of suspension would be disproportionate, given its findings set out above.

Review hearing

115. The Tribunal then considered whether to order a review hearing. It had regard to the SG in which it states that no doctor should be allowed to resume unrestricted practice following a period of suspension unless the Tribunal considers that they are safe to do so. The SG states that in some cases it may be ‘self-evident’ that following a short suspension there will be no value in a review hearing.

116. The Tribunal was satisfied that a review hearing was not necessary in this case given the very low risk of repetition, Dr Gluck’s insight and the extensive remediation she has demonstrated. It determined that a review hearing would serve no purpose.

Determination on Immediate Order - 06/09/2023

117. Having determined to suspend Dr Gluck’s registration, the Tribunal has considered, in accordance with Rule 17(2)(o) of the Rules, whether her registration should be subject to an immediate order.

Submissions

118. Mr Kitching stated that the GMC did not seek an immediate order in the case of Dr Gluck.

119. Mr Kitching referred the Tribunal to the relevant paragraphs of the SG in relation to immediate orders.

120. On behalf of Dr Gluck, Mr Davidson agreed with Mr Kitching. He submitted that patient safety was not an issue in this case and reminded the Tribunal that Dr Gluck was no longer in clinical practice.

The Tribunal’s Determination

121. The Tribunal had regard to paragraphs 172 to 178 of the SG. It took account of the guidance, and the specific basis upon which the Tribunal reached its determination on sanction, in particular:

“172 The tribunal may impose an immediate order if it determines that it is necessary to protect members of the public, or is otherwise in the public interest, or is in the best interests of the doctor

...

178 Having considered the matter, the decision whether to impose an immediate order will be at the discretion of the tribunal based on the facts of each case. The tribunal should consider the seriousness of the matter that led to the substantive

direction being made and whether it is appropriate for the doctor to continue in unrestricted practice before the substantive order takes effect.”

122. The Tribunal determined that an immediate order was not necessary to protect members of the public, nor was it otherwise in the public interest, nor was it in the interest of Dr Gluck.

123. The Tribunal therefore determined not to impose an immediate order of suspension on Dr Gluck’s registration.

124. This means that Dr Gluck’s registration will be suspended 28 days from the date on which written notification of this decision is deemed to have been served, unless she lodges an appeal. If Dr Gluck does lodge an appeal, she will remain free to practise unrestricted until the outcome of the appeal is known.

125. There is no interim order to revoke.

126. That concludes the case.